

No. 2

AN ACT

HB 190

Relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I
SHORT TITLE

Section 101. Short Title.—This act shall be known and may be cited as the “Tax Reform Code of 1971.”

ARTICLE II
TAX FOR EDUCATION

PART I
DEFINITIONS

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) “Soft drinks.” All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsicola, Dr. Pepper, fruit juice when plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as “soft drinks,” of whatsoever kind, and are further described as including any and all beverages, commonly referred to as “soft drinks,” which are made with or without the use of any syrup. The term “soft drinks” shall not include natural fruit or vegetable juices or their concentrates, or non-carbonated fruit juice drinks containing not less than twenty-five per cent by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term “soft drinks” include coffee, coffee substitutes, tea, cocoa, natural fluid milk or non-carbonated drinks made from milk derivatives.

(b) "Maintaining a place of business in this Commonwealth."

(1) Having or maintaining within this Commonwealth, directly or by a subsidiary, an office, distribution house, sales house, warehouse, service enterprise or other place of business, or any agent of general or restricted authority irrespective of whether the place of business or agent is located here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this Commonwealth; or

(2) The engaging in any activity as a business within this Commonwealth by any person, directly or by a subsidiary, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, salesman, agent or representative under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services for residents of this Commonwealth by means of catalogues or other advertising, whether such orders are accepted within or without this Commonwealth.

(c) "Manufacture." The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not limited to—

(1) Every operation commencing with the first production stage and ending with the completion of personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another;

(2) The publishing of books, newspapers, magazines and other periodicals and printing;

(3) Refining, exploring, mining and quarrying for, or otherwise extracting from the earth any natural resources, minerals and mineral aggregates;

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner;

(5) Research having as its objective the production of a new or an improved (i) product or utility service, or (ii) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

The term "manufacture," shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing personal property.

(d) "Processing." The performance of the following activities when engaged in as a business enterprise:

(1) The cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(4) The rolling, drawing or extruding of ferrous and non-ferrous metals.

(5) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings (not including fabrication work done at the construction site).

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of non-alcoholic beverages for wholesale distribution.

(8) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.

(9) The milling for sale of flour or meal from grains.

(10) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(11) The processing of used lubricating oils.

(12) The broadcasting of radio and television programs of licensed commercial or educational stations.

(e) "Person." Any natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term "person," as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(f) "Purchase at retail."

(1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the same when such acquisition is made for the purpose

of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected.

(2) The acquisition of a license to use or consume, and the rental or lease of tangible personal property, other than for resale regardless of the period of time the lessee has possession or custody of the property.

(3) The obtaining for a consideration of those services described in subclauses (2), (3) and (4) of clause (k) of this section other than for resale.

(4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement (other than as security), other than for resale.

The term "purchase at retail" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania Liquor Store" by any person for any purpose, and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor" or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "purchase at retail" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any purchase or acquisition of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

(g) "Purchase price."

(1) The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, as herein defined, without any deduction on account of the cost or value of the property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the Commonwealth of Pennsylvania or any other expense except that there shall be excluded any separately stated deposit charge for returnable containers.

(2) There shall be deducted from the purchase price the value of any personal property actually taken in trade or exchange within this Commonwealth in lieu of the whole or any part of the purchase price. For the purpose of this subsection, the amount allowed by reason of personal property actually taken in trade or exchange shall be considered the value of such property.

(3) In determining the purchase price on the sale or use of taxable tangible personal property where, because of affiliation of interests between the vendor and purchaser, or irrespective of any such affiliation, if for any other reason the purchase price declared by the vendor or

taxpayer on the taxable sale or use of such tangible personal property is, in the opinion of the department, not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of purchase price for each such sale or use which would naturally and fairly be charged in an arms-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this clause where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of such parent corporation, there shall be a rebuttable presumption, that because of such common interest such transaction was not at arms-length.

(4) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines the full consideration paid or delivered to the vendor or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employe to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the purchase price if separately stated. There shall also be included as part of the purchase price the value of anything paid or delivered, or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession or custody of under a rental contract or lease arrangement.

(5) With respect to the tax imposed by subsection (b) of section 202 upon any tangible personal property originally purchased by the user of such property six months or longer prior to the first taxable use of such property within the Commonwealth, such user may elect to pay tax on a substituted base determined by considering the purchase price of such property for tax purposes to be equal to the prevailing market price of similar personal property at the time and place of such first use within the Commonwealth. Such election must be made by filing a notice thereof in the form specified by the department and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one year of the due date of such report and payment, as provided for by subsections (a) and (c) of section 217 of this article.

(h) "Purchaser." Any person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, or who obtains services in exchange for a purchase price but not including an employer who obtains services from his employes in exchange for wages or salaries when such services are rendered in the ordinary scope of their employment.

(i) "Resale."

(1) Any transfer of ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of such property is transferred but where the transferor retains title only as security for payment of the selling price whether such transaction be designated as bailment lease, conditional sale or otherwise.

(2) The physical incorporation of personal property as an ingredient or constituent into other personal property, which is to be sold in the regular course of business or the performance of those services described in subclauses (2), (3) and (4) of clause (k) of this section upon personal property which is to be sold in the regular course of business.

The term "resale" shall not include any sale of "malt or brewed beverages" by a "retail dispenser," or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of the "Liquor Code."

(j) "Resident."

(1) Any natural person (i) who is domiciled in the Commonwealth, or (ii) who maintains a permanent place of abode within the Commonwealth and spends in the aggregate more than sixty days of the year within the Commonwealth.

(2) Any corporation (i) incorporated under the laws of this Commonwealth, or (ii) authorized to do business or doing business within this Commonwealth, or (iii) maintaining a place of business within this Commonwealth.

(3) Any association, fiduciary, partnership or other entity (i) domiciled in this Commonwealth, or (ii) authorized to do business or doing business within this Commonwealth, or (iii) maintaining a place of business within this Commonwealth.

(k) "Sale at retail."

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of—

(i) Washing, cleaning, waxing, polishing or lubricating of motor

vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith; and

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated equipment and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service.

(5) Any retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement (other than as security).

(6) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause after April 15, 1959, pursuant to a rental or service contract or other arrangement (other than as security).

(7) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause after August 20, 1959, pursuant to a rental or service contract or other arrangement (other than as security).

(8) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause pursuant to a rental or service contract or other arrangement (other than as security).

The term "sale at retail" shall not include (i) any such transfer of tangible personal property or rendition of services for the purpose of resale, or (ii) such rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in any of the operations of—

(A) The manufacture of personal property;

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised fur-bearing animals;

(C) The producing, delivering or rendering of a public utility service,

or in constructing, reconstructing, remodeling, repairing or maintaining the facilities used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings;

(D) The processing of personal property as defined in clause (d) of this section.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to any vehicle required to be registered under The Vehicle Code, except those vehicles used directly by a public utility engaged in business as a common carrier, or to maintenance facilities or to materials or supplies to be used or consumed in any construction, reconstruction, remodeling, repair or maintenance of real estate.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in paragraphs (A), (B), (C) and (D) herein.

The exclusion provided in paragraph (C) shall not apply to (i) construction materials used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service, or (ii) tools and equipment used but not installed in the maintenance of facilities used in the production, delivering or rendition of a public utility service.

(9) Where tangible personal property or services are utilized for purposes constituting a "sale at retail" and for purposes excluded from the definition of "sale at retail," it shall be presumed that said property is subject to tax, unless the user prove that the purposes which constitute a "sale at retail" are minimal.

(10) The term "sale at retail" with respect to "liquor" and "malt or brewed beverages" shall include the sale of "liquor" by any "Pennsylvania liquor store" to any person for any purpose, and the sale of "malt or brewed beverages" by a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" to any person for any purpose, except sales by a "manufacturer of malt or brewed beverages" to a "distributor" or "importing distributor" or sales by an "importing distributor" to a "distributor" within the meaning of the "Liquor Code." The term "sale at retail" shall not include any sale of "malt or brewed beverages" by a "retail dispenser" or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any sale of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

(l) "Storage." Any keeping or retention of tangible personal property within this Commonwealth for any purpose including the interim keeping, retaining or exercising any right or power over such tangible personal property.

(m) "Tangible personal property." Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for non-residential use, electricity for non-residential use, intrastate telephone and telegraph service for non-residential use, spirituous or vinous liquor and malt or brewed beverages and soft drinks; but the term shall not include household supplies purchased at retail establishments for residential consumption, including but not limited to, soaps, detergents, cleaning and polishing preparations, paper goods, household wrapping supplies and items of similar nature, or sanitary napkins, tampons or similar items used for feminine hygiene. Nor shall said term include steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate telephone or telegraph service when purchased solely for residential use.

(n) "Taxpayer." Any person required to pay or collect the tax imposed by this article.

(o) "Use."

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to transportation, storage or consumption.

(2) The obtaining by a purchaser of the service of printing or imprinting of tangible personal property when such purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(3) The obtaining by a purchaser of the services of (i) washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services, and (ii) inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other personal property other than wearing apparel or shoes, whether or not the services are performed directly or by any means other than by means of coin-operated equipment, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service: And provided further, That the term "use" shall not include—

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the

taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is excluded from tax under other provisions of this article.

(B) The use or consumption of tangible personal property, including but not limited to machinery and equipment and parts therefor, and supplies or the obtaining of the services described in subclauses (2), (3) and (4) of this clause directly in any of the operations of—

(i) The manufacture of personal property;

(ii) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise;

(iii) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings;

(iv) The processing of personal property as defined in subclause (d) of this section.

The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to any vehicle required to be registered under The Vehicle Code except vehicles directly used by a public utility engaged in the business as a common carrier or maintenance facilities, or to materials or supplies to be used or consumed in any construction, reconstruction, remodeling, repair or maintenance of real estate. The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property by any person other than the person directly using the same in the aforesaid operations.

The exclusion provided in subparagraph (iii) shall not apply to (A) construction materials used to construct, reconstruct, remodel, repair or maintain facilities not used directly in the production, delivering or rendition of public utility service, or (B) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(5) Where tangible personal property or services are utilized for purposes constituting a "use," as herein defined, and for purposes excluded from the definition of "use," it shall be presumed that said property is subject to tax unless the user prove that the purposes which constitute a "use" as herein defined are minimal.

(6) The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an

“importing distributor” by a “distributor” within the meaning of the “Liquor Code.” The term “use” shall not include any purchase of “malt or brewed beverages” from a “retail dispenser” or any purchase of “liquor” or “malt or brewed beverages” from a person holding a “retail liquor license” within the meaning of and pursuant to the provisions of the “Liquor Code,” but shall include the exercise of any right or power incidental to the ownership, custody or possession of “liquor” or “malt or brewed beverages” obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the “Liquor Code.”

(7) The use of tangible personal property purchased at retail upon which the services described in subclauses (2), (3) and (4) of this clause have been performed shall be deemed to be a use of said services by the person using said property.

(p) “Vendor.” Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this article.

(q) “Department.” The Department of Revenue of the Commonwealth of Pennsylvania.

PART II IMPOSITION OF TAX

Section 202. Imposition of Tax.—(a) There is hereby imposed upon each separate sale at retail of tangible personal property or services, as defined herein, within this Commonwealth a tax of six per cent of the purchase price, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the Commonwealth as herein provided.

(b) There is hereby imposed upon the use, on and after the effective date of this act, within this Commonwealth of tangible personal property purchased at retail on or after March 7, 1956, and on those services described herein purchased at retail on and after April 15, 1959, a tax of six per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who makes such use as herein provided, except that such tax shall not be paid to the Commonwealth by such person where he has paid the tax imposed by subsection (a) of this section or has paid the tax imposed by this subsection (b) to the vendor with respect to such use. The tax at the rate of six per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred at the rate of three per cent or three and one-half per cent or four per cent or five per cent under the provisions of “The Tax Act of 1963 for Education.”

(c) Notwithstanding any other provisions of this article, the tax with respect to non-residential intrastate telephone service and intrastate telegraph service within the meaning of clause (m) of section 201 of this

article shall, except for telegrams paid for in cash at telegraph offices, be computed at the rate of six per cent upon the total amount billed to customers periodically for such services, irrespective of whether such billing is based upon a flat rate or upon a message unit charge.

Section 203. Computation of Tax.—The amount of tax imposed by section 202 of this article shall be computed as follows:

(a) If the purchase price is ten cents (10¢) or less, no tax shall be collected.

(b) If the purchase price is eleven cents (11¢) or more but less than eighteen cents (18¢), one cent (1¢) shall be collected.

(c) If the purchase price is eighteen cents (18¢) or more but less than thirty-five cents (35¢), two cents (2¢) shall be collected.

(d) If the purchase price is thirty-five cents (35¢) or more but less than fifty-one cents (51¢), three cents (3¢) shall be collected.

(e) If the purchase price is fifty-one cents (51¢) or more but less than sixty-eight cents (68¢), four cents (4¢) shall be collected.

(f) If the purchase price is sixty-eight cents (68¢) or more but less than eighty-five cents (85¢), five cents (5¢) shall be collected.

(g) If the purchase price is eighty-five cents (85¢) or more but less than one dollar and one cent (\$1.01), six cents (6¢) shall be collected.

(h) If the purchase price is more than one dollar (\$1.00), six per centum of each dollar of purchase price plus the above bracket charges upon any fractional part of a dollar in excess of even dollars shall be collected.

PART III EXCLUSIONS FROM TAX

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon

(1) The sale at retail or use of tangible personal property (other than motor vehicles, trailers, semi-trailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed) or services sold by or purchased from a person not a vendor in an isolated transaction or sold by or purchased from a person who is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in such transaction: Provided, That inventory and stock in trade so sold or purchased, shall not be excluded from the tax by the provisions of this subsection.

(2) The use of tangible personal property purchased by a nonresident person outside of, and brought into this Commonwealth for use therein for a period not to exceed seven days, or for any period of time when such nonresident is a tourist or vacationer and, in either case not consumed within the Commonwealth.

(3) The use of tangible personal property purchased outside this

Commonwealth for use outside this Commonwealth by a then nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible personal property into this Commonwealth in connection with his establishment of a permanent business or residence in this Commonwealth: Provided, That such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such business or residence, whichever first occurs. This exclusion shall not apply to tangible personal property temporarily brought into Pennsylvania for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of supplies and materials to be used in the fulfillment of contracts for the construction, reconstruction, remodeling, repairing, maintenance or sale of real estate when such contract was entered into

(i) Prior to March 7, 1956, and is at a fixed price not subject to change or modification by reason of the tax imposed by this act; or

(ii) Pursuant to the obligation of a bid or bids submitted prior to March 7, 1956, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of the tax imposed by the act in effect prior to this article.

Provided, however, That notice of such contract or bid by reason of which an exclusion is claimed under this subsection (4) must be given by the taxpayer to the department on or before June 15, 1956.

(5) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate, when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after March 7, 1956, but prior to April 15, 1959, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended April 15, 1959 (P.L.20), and from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(6) The sale at retail or use of materials to be incorporated into and

made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after April 15, 1959, but prior to August 20, 1959, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(7) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after August 20, 1959, but prior to June 1, 1963 shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of the tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(8) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after June 1, 1963, but prior to January 1, 1968, shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(9) The sale at retail or use of tangible personal property or services

subject to tax under this article, but which prior to the effective date of this article were excluded from tax under the provisions of the "Tax Act of 1963 for Education" shall be excluded from the tax imposed by this article, provided such sale at retail or use occurred pursuant to and in fulfillment of a written fixed price sales or construction contract or formal bid entered into on or after January 1, 1968, but prior to the effective date of this article by the person who otherwise would be subject to tax under this article and another, and which contract or bid cannot be altered, modified or withdrawn by the parties. The exclusion from tax provided herein shall not be claimed by any person from a vendor but shall be claimed only by the filing of a refund petition with the department as provided in this article.

(10) The sale at retail to or use by (i) any charitable organization, volunteer firemen's organization or nonprofit educational institution, or (ii) a religious organization for religious purposes of tangible personal property or services: Provided, however, That the exclusion of this clause shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used in the construction, reconstruction, remodeling, repairs and maintenance of any real estate, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

(11) The sale at retail, or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under the act of May 21, 1931 (P.L.194), known as the "Liquid Fuels Tax Act," and the act of January 14, 1952 (P.L.1965), known as the "Fuel Use Tax Act."

(12) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property or services.

(13) The sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by section 202.

(14) Sale at retail or use of vessels designed for commercial use of registered tonnage of fifty tons or more when produced by the builders thereof upon special order of the purchaser.

(15) Sale at retail of tangible personal property or services used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of fifty tons or more upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

(16) The sale at retail or use of tangible personal property or services

to be used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels to be operated principally outside the limits of the Commonwealth.

(17) The sale at retail or use of prescription or non-prescription medicines, drugs or medical supplies, crutches and wheelchairs for the use of cripples and invalids, artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user, false teeth and materials used by a dentist in dental treatment, eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser and artificial braces and supports designed solely for the use of crippled persons.

(18) The sale at retail or use of coal.

(19) The sale at retail or use of supplies and materials to be used exclusively in the fulfillment of a contract for the construction, reconstruction, remodeling, repairing or maintenance of real estate, when such contract was entered into prior to March 7, 1956, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945": Provided, That notice of a claim of exemption under this clause is received by the department within fifteen days after the effective date of this clause.

(20) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after March 7, 1956, but prior to April 15, 1959, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended April 15, 1959 (P.L.20), and from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(21) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after April 15, 1959, but prior to August 20, 1959, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the

additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(22) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate when the contract was entered into on or after August 20, 1959, but prior to June 1, 1963, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of the tax imposed by section 201 of the Tax Act of 1963 for Education, as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(23) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after June 1, 1963, but prior to January 1, 1968, between the person who would otherwise be subject to the tax and a municipal authority incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(24) The sale at retail or use of motor vehicles, trailers and semi-trailers, or bodies attached to the chassis thereof, sold to a nonresident of Pennsylvania to be used outside of Pennsylvania and which are registered in a state other than Pennsylvania within twenty days after delivery to the vendee.

(25) The sale at retail or use of water.

(26) The sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing worn or carried on or about the human body but all accessories, ornamental wear, formal day or evening apparel, and articles made of fur on the hide or pelt or any

material imitative of fur and articles of which such fur, real, imitation or synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material, and sporting goods and clothing not normally used or worn when not engaged in sports shall not be excluded from the tax.

(27) The sale at retail or use of cigarettes.

(28) The sale at retail or use of religious publications sold by religious groups and Bibles and religious articles.

(29) The sale at retail or use of food and beverages for human consumption including candy, gum and similar confections, except that this exclusion shall not apply with respect to—

(i) Soft drinks;

(ii) Malt and brewed beverages and spirituous and vinous liquors;

(iii) Food and beverages (except when purchased at, or from a school or church in the ordinary course of activities of such organization) when the purchase price of the total transaction is more than ten cents (10¢), when purchased (i) from persons engaged in the business of catering, or (ii) from persons engaged in the business of operating restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels and other eating places. For the purpose of this subclause (iii), beverages shall not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks, and the price of such soft drinks shall be considered together with the price of other beverages and food in determining whether the purchase price of the total transaction is more than ten cents (10¢).

(30) The sale at retail or use of periodicals and publications which are published at regular intervals not exceeding three months, circulated among the general public and containing matters of general interest and reports of current events.

(31) The sale at retail or use of caskets and burial vaults for human remains and markers and tombstones for human graves.

(32) The sale at retail or use of flags of the United States of America and the Commonwealth of Pennsylvania.

(33) The sale at retail or use of textbooks for use in schools, colleges and universities, either public or private when purchased in behalf of or through such schools, colleges or universities provided such institutions of learning are recognized by the Department of Education.

Section 205. Alternate Imposition of Tax; Credits.—If any person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semi-trailers, and registered with the department in the “dealer’s class,” acquires a motor vehicle, trailer or semi-trailer for the purpose of resale, and prior to such resale, uses the motor vehicle, trailer or semi-trailer for a taxable use under this act during a period not exceeding one year from the date of acquisition to the date of resale, such person may, upon notice to the department within ten days

of the commencement of such use, elect to pay a tax equal to six per cent of the fair rental value of the motor vehicle, trailer or semi-trailer during such use. Should such motor vehicle, trailer or semi-trailer be used for a taxable use after a period of one year, the taxpayer shall be liable for a tax on the fair market value of such motor vehicle, trailer or semi-trailer at the time of acquisition, but shall be allowed a credit equal to the tax paid pursuant to the election provided for in this section. This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

Section 206. Credit Against Tax.—A credit against the tax imposed by this act shall be granted with respect to tangible personal property or services purchased for use outside the Commonwealth equal to the tax paid to another state by reason of the imposition by such other state of a tax similar to the tax imposed by this article: Provided, however, That no such credit shall be granted unless such other state grants substantially similar tax relief by reason of the payment of tax under this act.

PART IV LICENSES

Section 208. Licenses.—(a) Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not hitherto obtained a license from the department, shall, prior to the beginning of business thereafter, make application to the department, on a form prescribed by the department, for a license. If such person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) The department shall, after the receipt of an application, issue the license applied for under subsection (a) of this section. The license shall be nonassignable and of permanent duration.

(c) Any person who, upon the expiration of sixty days after the effective date of this act, shall maintain a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department pursuant to the provisions of this section, shall be guilty of a summary offense, and upon conviction thereof in a summary proceeding, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), and in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. The penalties imposed by this section shall be in addition to any other penalties imposed by this article.

(d) Failure of any person to obtain a license shall not relieve him of liability to pay the tax imposed by this article.

PART V
HOTEL OCCUPANCY TAX

Section 209. Definitions.—(a) For the purposes of this part V only, the following words, terms and phrases shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) “Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term “hotel” shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

(2) “Occupant.” A person (other than a “permanent resident,” as defined herein,) who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license or agreement.

(3) “Occupancy.” The use or possession or the right to the use or possession by any person (other than a “permanent resident,”) of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

(4) “Operator.” Any person operating a hotel.

(5) “Permanent resident.” Any occupant who has occupied or has the right to occupancy of any room or rooms in a hotel for at least thirty consecutive days.

(6) “Rent.” The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(b) The following words, terms and phrases and words, terms and phrases of similar import, when used in parts IV and VI of this article for the purposes of those parts only, shall, in addition to the meaning ascribed to them by section 201 of this article, have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) “Maintaining a place of business in this Commonwealth,” being the operator of a hotel in this Commonwealth.

(2) “Purchase at retail,” occupancy.

(3) “Purchase price,” rent.

(4) “Purchaser,” occupant.

(5) “Sale at retail,” the providing of occupancy to an occupant by an operator.

(6) “Tangible personal property,” occupancy.

(7) “Vendor,” operator.

(8) “Services,” occupancy.

(9) “Use,” occupancy.

Section 210. Imposition of Tax.—There is hereby imposed an excise tax of six per cent of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth as herein provided.

Section 211. Seasonal Tax Returns.—Notwithstanding any other provisions in this act, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of any operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by such persons at times other than those provided by section 221.

PART VI PROCEDURE AND ADMINISTRATION

CHAPTER I RETURNS

Section 215. Persons Required to Make Returns.—Every person required to pay tax to the department or collect and remit tax to the department shall file returns with respect to such tax.

Section 216. Form of Returns.—The returns required by section 215 shall be on forms prescribed by the department, and shall show such information with respect to the taxes imposed by this article as the department may reasonably require.

CHAPTER II TIME AND PLACE FOR FILING RETURNS

Section 217. Time for Filing Returns.—(a) Monthly, Bimonthly and Quarterly Returns:

(1) For the year in which this article becomes effective and in each year thereafter a return shall be filed quarterly by every licensee on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December, except as hereinafter provided.

(2) For the year in which this article becomes effective, and in each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds six hundred dollars (\$600). Such returns shall be filed on or before the fifteenth day of the second month succeeding the month with respect to which the return is made, except that the return due for the month of April, of each year, shall be filed on or before the twentieth day of May next following and the return due for the month of May of each year shall be filed on or before the

twentieth day of June next following. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

(3) For the year in which this article becomes effective, and for each year thereafter, every licensee required to file a quarterly return for the second calendar quarter shall file a single return for the months of April and May on or before the fifteenth day of June next following. The filing of such return shall not relieve the licensee of the duty to file a return on or before the last day of July next following and to remit therewith tax for the month of June.

(b) Annual Returns. For the calendar year 1971, and for each year thereafter, no annual return shall be filed, except as may be required by rules and regulations of the department promulgated and published at least sixty days prior to the end of the year with respect to which the returns are made. Where such annual returns are required licensees shall not be required to file such returns prior to the sixty-first day of the year succeeding the year with respect to which the returns are made.

(c) Other Returns. Any person, other than a licensee, liable to pay to the department any tax under this article, shall file a return on or before the last day of the month succeeding the month in which such person becomes liable for the tax.

(d) Small Taxpayers. The department, by regulation, may waive the requirement for the filing of quarterly return in the case of any licensee whose individual tax collections do not exceed seventy-five dollars (\$75) per calendar quarter and may provide for reporting on a less frequent basis in such cases.

Section 218. Extension of Time for Filing Returns.—The department may, on written application and for good cause shown, grant a reasonable extension of time for filing any return required under this part. However, the time for making a return shall not be extended for more than three months.

Section 219. Place for Filing Returns.—Returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

CHAPTER III PAYMENT OF TAX

Section 221. Payment.—When a return of tax is required under this part, the person required to make the return shall pay the tax to the department.

Section 222. Time of Payment.—(a) Monthly, Bimonthly and Quarterly Payments. The tax imposed by this article and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 217 and such payment must accompany the return for such preceding period.

(b) Annual Payments. If the amount of tax due for the preceding year

as shown by the annual return of any taxpayer is greater than the amount already paid by him in connection with his monthly or quarterly returns he shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other Payments. Any person other than a licensee liable to pay any tax under this article shall remit the tax at the time of filing the return required by this article.

Section 223. Other Times for Payment.—In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 217, the tax due shall be paid at the time such return is filed.

Section 224. Place for Payment.—The tax imposed by this article shall be paid to the department at the place fixed for filing the return.

Section 225. Tax Held in Trust for the Commonwealth:—All taxes collected by any person from purchasers in accordance with this article and all taxes collected by any person from purchasers under color of this article which have not been properly refunded by such person to the purchaser shall constitute a trust fund for the Commonwealth, and such trust shall be enforceable against such person, his representatives and any person (other than a purchaser to whom a refund has been made properly) receiving any part of such fund without consideration, or knowing that the taxpayer is committing a breach of trust: Provided, however, That any person receiving payment of a lawful obligation of the taxpayer from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust. Any person, other than a taxpayer, against whom the department makes any claim under this section shall have the same right to petition and appeal as is given taxpayer by any provisions of this part.

Section 226. Local Receivers of Use Tax.—Beginning on and after the effective date of this article, in every county, except in counties of the first class, the county treasurer is hereby authorized to receive use tax due and payable under the provisions of this article from any person other than a licensee. The receiving of such taxes shall be pursuant to rules and regulations promulgated by the department and upon forms furnished by the department. Each county treasurer shall remit to the department all use taxes received under the authority of this section minus the costs of administering this provision not to exceed one per cent of the amount of use taxes received, which amount shall be retained in lieu of any commission otherwise allowable by law for the collection of such tax.

Section 227. Discount.—If a return is filed by a licensee and the tax shown to be due thereon less any discount is paid all within the time prescribed, the licensee shall be entitled to credit and apply against the tax payable by him a discount of one per cent of the amount of the tax collected by him on and after the effective date of this article, as compensation for the expense of collecting and remitting the same and as a consideration of the prompt payment thereof.

CHAPTER IV
ASSESSMENT AND COLLECTION OF TAX

Section 230. Assessment.—The department is authorized and required to make the inquiries, determinations and assessments of the tax (including interest, additions and penalties) imposed by this article.

Section 231. Mode and Time of Assessment.—(a) Underpayment of Tax. Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, together with an addition of three per cent of such difference, which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added thereto and paid to the department an additional three per cent of such difference for each month thereof during which the assessment remains unpaid, but the total of all additions shall not exceed eighteen per cent of the difference shown on the assessment.

(b) Understatement of Tax. If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, such difference being hereafter sometimes referred to as the “deficiency.” A notice of assessment for the deficiency and the reasons therefor shall then be sent to the taxpayer. The deficiency shall be paid to the department within thirty days after a notice of the assessment thereof has been mailed to the taxpayer.

(c) Failure to File Return. In the event that any taxpayer fails to file a return required by this article, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within thirty days after a notice of such estimated assessment has been mailed to the taxpayer.

(d) Authority to Establish Effective Rates by Business Classification. The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use such rates in arriving at the apparent tax liability of a taxpayer.

Any assessment based upon such rates shall be prima facie correct, except that such rate shall not be considered where a taxpayer establishes that such rate is based on a sample inapplicable to him.

Section 232. Reassessment.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the

department within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within thirty days after receipt of the taxpayer's notice of intention to file a petition for reassessment. A petition for reassessment shall thereafter be filed within thirty days after such basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained therein are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly filed such petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

Section 233. Assessment to Recover Erroneous Refunds.—The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

Section 234. Review by Board of Finance and Revenue.—Within sixty days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 232 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not

made for the purpose of delay and that the facts set forth therein are true. The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.

Section 235. Appeal to Commonwealth Court.—Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may, within thirty days, appeal to the Commonwealth Court from the decision of the board or of the department, as the case may be, in the manner now or hereafter provided by law for appeals in the case of tax settlements.

Section 236. Burden of Proof.—In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 237. Collection of Tax.—(a) Collection by Department. The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by Persons Maintaining a Place of Business in the Commonwealth. (1) Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department.

(2) Any person required under this article to collect tax from another person, who shall fail to collect the proper amount of such tax, shall be liable for the full amount of the tax which he should have collected.

(c) Exemption Certificates. If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially such form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type which is never subject to the tax imposed or where the sale or lease is in interstate commerce, such certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor

from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the Department of Revenue.

(d) Direct Payment Permits. The department may authorize a purchaser or lessee who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used, to pay the tax directly to the department, and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department, and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

Section 238. Collection of Tax on Motor Vehicles, Trailers and Semi-Trailers.—Notwithstanding the provisions of clause (1) of subsection (b) of section 237 of this article, tax due on the sale at retail or use of a motor vehicle, trailer or semi-trailer required by law to be registered with the department under the provisions of "The Vehicle Code" shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semi-trailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due. The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semi-trailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this article.

Section 239. Precollection of Tax.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which such purchaser will collect upon making a sale at retail of such tangible personal property: Provided, however, That the department, pursuant to this section, may not require a vendor to precollect tax from a purchaser who purchases for resale more than one thousand dollars (\$1,000) worth of tangible personal property from such vendor per year.

In any case in which a vendor has been authorized to prepay the tax to the person from whom he purchased the tangible personal property for resale such vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if such duty shall arise only by reason of his sale of the tangible personal property with respect to which he is, under authorization of the department, to prepay the tax. The vendor, on making a sale at retail of tangible personal property with respect to which he has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously prepaid. Should such vendor collect a greater amount of tax in any reporting period than he had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, he must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

Section 240. Bulk and Auction Sales.—Every person who shall sell or cause to be sold at auction, or who shall sell or transfer in bulk, fifty-one per centum or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which such person is licensed or required to be licensed under the provisions of this article, or is liable for filing use tax returns in accordance with the provisions of this article, shall give the department ten days' written notice of the sale or transfer prior to the completion of the transfer of such property. Whenever the seller or transferor shall fail to give such notice to the department, or whenever the department shall upon written notice inform the purchaser or transferee that a possible claim for tax imposed by this act exists, any sums of money, property or choses in action or other consideration, which the purchaser or transferee is thereafter required to transfer over to the seller or transferor, shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller or transferor, and the purchaser or transferee is forbidden to transfer to the seller or transferor any such sums of money, property or choses in action to the extent of the amount of the Commonwealth's claim. For failure to comply with the provisions of this section, the purchaser or transferee shall be liable for the payment to the Commonwealth of any such taxes theretofore or thereafter determined to be due from the seller or transferor, and such liability may be assessed and enforced in the same manner as the liability for tax under this article: Provided, That nothing contained in this provision shall apply to sales or transfers made under any order of court: And provided further, That the written notice required to be filed with the department by this provision shall be deemed to satisfy the requirements of section 1403 of "The Fiscal Code" as to taxes imposed by this article.

Section 241. Collection upon Failure to Request Reassessment, Review or Appeal.—The department may collect any tax:

(1) If an assessment of tax is not paid within ten days or thirty days as the case may be after notice thereof to the taxpayer, and no petition for reassessment has been filed;

(2) Within sixty days from the date of reassessment, if no petition for review has been filed;

(3) Within thirty days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or of the expiration of the board's time for acting upon such petition, if no appeal has been made; and

(4) In all cases of judicial sales, receiverships, assignments or bankruptcies.

In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts: Provided, That the defense of failure of the department to mail notice of assessment or reassessment to the taxpayer and the defense of payment of assessment or reassessment may be raised in proceedings for collection by a motion to stay the proceedings.

Section 242. Lien for Taxes.—(a) Lien Imposed. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, addition or penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after same has been entered and docketed of record by the prothonotary of the county where such property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this act and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. No prothonotary shall require, as a condition precedent to the entry of such liens, the payment of the costs incident thereto.

(b) Priority of Lien and Effect on Judicial Sale; No Discharge by Sale on Junior Lien. The lien imposed hereunder shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property, subject to a lien imposed hereunder, upon a lien or claim over which the lien

imposed hereunder has priority as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid. There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof. The lien of the taxes, interest and penalties, shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for renewal of judgments, or as may be provided in "The Fiscal Code," and a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution on the lien, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address: And provided further, That the said lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom said lien has been entered, unless and until a writ of execution has been issued and a levy made upon said stock of goods, wares and merchandise.

(c) Duty of Prothonotary. Any wilful failure of any prothonotary to carry out any duty imposed upon him by this section shall be a misdemeanor, and, upon conviction, he shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both.

(d) Priority of Tax. Except as hereinbefore provided in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this article which are due and unpaid and are not collectible under the provisions of section 225 hereof, shall be paid from the first money available for distribution in priority to all other claims and liens, except in so far as the laws of the United States may give a prior claim to the Federal Government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this article, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

(e) Other Remedies. Subject to the limitations contained in this article as to the assessment of taxes, nothing contained in this section shall be construed to restrict, prohibit or limit the use by the department in collecting taxes finally due and payable of any other remedy or procedure available at law or equity for the collection of debts.

Section 243. Suit for Taxes.—(a) Commencement. At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the

Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) Procedure. The Attorney General shall prosecute the action and, except as provided herein, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) Other Remedies. The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this article or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

Section 244. Tax Suit Comity.—The courts of this Commonwealth shall recognize and enforce liabilities for sales and use taxes, lawfully imposed by any other state: Provided, That such other state extends a like comity to this Commonwealth.

Section 245. Service.—Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this article, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall forthwith be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

Section 246. Collection of Tax on Credit Sales.—If any sale subject to tax hereunder is wholly or partly on credit, the taxpayer shall require the purchaser to pay in cash at the time the sale is made, or within thirty days thereafter, the full tax due on the basis of the entire purchase price.

Section 247. Prepayment of Tax.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 222 of this article, but in such case if the purchaser shall fail to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for such tax and shall be entitled to a credit or refund of such tax paid. If the purchase price is thereafter collected, in whole or in part, the amount collected shall be first applied

to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after such collection. For any tax prepaid prior to the effective date of this article, credit may be claimed on any returns filed for the periods prior to the effective date of this article. Tax prepaid after the effective date of this article shall be subject to refund upon petition to the department under the provisions of section 252 of this article, filed within one hundred five days of the close of the fiscal year in which such accounts are written off.

CHAPTER V REFUNDS AND CREDITS

Section 250. Refund or Credit for Overpayment.—With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this act on the part of the person who made the overpayment, and shall refund any balance to such person.

Section 251. Restriction on Refunds.—No refund shall be made under section 250 without the approval of the Board of Finance and Revenue.

Section 252. Refunds.—The department shall, pursuant to the provisions of sections 253 and 254, refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this article and to which the Commonwealth is not rightfully entitled. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 232 of this article to the extent that said petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal: Provided further, That nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

Section 253. Refund Petition.—(a) Except as provided for in section 256 and in subsection (b) and (d) of this section, the refund or credit of tax, interest or penalty provided for by section 252 shall be made only where the person who has actually paid the tax files a petition for refund with the department within three years of the actual payment of the tax to the Commonwealth. Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and

places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 232, shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department within six months after the date the notice of assessment was mailed. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this article subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed within five years of the date of the payment of which a refund is requested. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

Section 254. Review by Board of Finance and Revenue.—Within sixty days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 253, the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 253 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out

in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a ¹lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The board shall give notice of its action to the department and to the petitioner.

Section 255. Appeal to the Commonwealth Court.—Any person aggrieved by the decision of the Board of Finance and Revenue under section 254, or by the board's failure to act upon a petition for review within six months may, within thirty days, appeal to the Commonwealth Court from the decision of the board or of the department, as the case may be, in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

Section 256. Extended Time for Filing Special Petition for Refund.—Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within three years of the payment. The provisions of sections 253, 254 and 255 shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax (without consideration of interest and penalties) paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction and, as such, this section shall be construed as extending right beyond that provided for by section 253, and not to limit such other section.

CHAPTER VI LIMITATIONS

Section 258. Limitation on Assessment and Collection.—The amount of the tax imposed by this act shall be assessed within three years after the

¹“ lessor” in original.

date when the return provided for by subsection (a) or (c) or under subsection (e) of section 217 is filed or the end of the year in which the tax liability arises whichever shall last occur. Any such assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

Section 259. Failure to File Return.—Where no return is filed, the amount of the tax due may be assessed and collected at any time as to taxable transactions not reported.

Section 260. False or Fraudulent Return.—Where the taxpayer wilfully files a false or fraudulent return with intent to evade the tax imposed by this article, the amount of tax due may be assessed and collected at any time.

Section 261. Extension of Limitation Period.—Notwithstanding any of the foregoing provisions of this part, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented, in writing, that such period be extended, the amount of tax due may be assessed at any time within such extended period. The period so extended may be extended further by subsequent consents, in writing, made before the expiration of the extended period.

CHAPTER VII INTEREST, ADDITIONS, PENALTIES AND CRIMES

Section 265. Interest.—If any amount of tax imposed by this article is not paid to the department on or before the last date prescribed for payment, interest on such amount at the rate of one-half of one per cent per month for each month, or fraction thereof, from such date, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined under subsection (a) or (c) of section 222 without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be thirty days after notice of such assessment.

Section 266. Additions to Tax.—(a) Failure to File Return. In the case of failure to file any return required by section 215 on the date prescribed therefor (determined with regard to any extension of time for filing), and in the case in which a return filed understates the true amount due by more than fifty per cent, there shall be added to the amount of tax actually due five per cent of the amount of such tax if the failure to file a proper return is for not more than one month, with an additional five per cent for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five per cent in the aggregate. In every such case at least two dollars (\$2) shall be added.

(b) Addition for Understatement. There shall be added to every

assessment under subsection (b) of section 231 an addition equal to five per cent of the amount of the understatement and no addition to the tax shall be paid under subsection (a) of section 231.

(c) Interest. If the department assesses a tax according to subsection (a) or (c) of section 231, there shall be added to the amount of the deficiency interest at the rate of one-half of one per cent per month for each month, or fraction thereof, from the date prescribed by subsection (a) or (c) of section 222 of this article for the payment of the tax to the date of notice of the assessment.

(d) Uncollectible Checks. Whenever any check issued in payment of any tax or for any other purpose shall be returned to the department as uncollectible, the secretary shall charge a fee of ten per cent of the face amount thereof plus all protest fees, to the person presenting such check to him to cover the cost of its collection in addition to the interest and penalties otherwise provided for by this article: Provided, however, That the additions imposed hereby shall not exceed two hundred dollars (\$200) nor be less than ten dollars (\$10).

Section 267. Penalties.—(a) Penalty Assessed as Tax. The penalties, additions, interest and liabilities provided by this article shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this article to “tax” imposed by this article shall be deemed also to refer to the penalties, additions, interest and liabilities provided by this part.

(b) Attempt to Evade or Defeat Tax. Any person who wilfully attempts, in any manner, to evade or defeat the tax imposed by this article, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this article, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

In any direct proceeding arising out of a petition for reassessment or refund as provided in this article, in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in this subsection (b), the burden of proof with respect to such issue shall be upon the department.

Section 268. Crimes.—(a) Fraudulent Return. Any person who with intent to defraud the Commonwealth shall wilfully make, or cause to be made, any return required by this article, which is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2000), or undergo imprisonment not exceeding three years, or both.

(b) Other Crimes. Except as otherwise provided by subsection (a) of this section, any person maintaining a place of business in this Commonwealth, who advertises or holds out or states to the public or to

any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this article will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in subclauses (2), (3) and (4) of clause (k) of section 201 of this article sold or, if added, that the tax or any part thereof will be refunded, other than when such person refunds the purchase price because of such property being returned to the vendor, and any person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or said services the sale or use of which by the purchaser is subject to tax hereunder, who shall wilfully fail or refuse to collect the tax from the purchaser and remit the same to the department, and any person who shall wilfully fail, neglect or refuse to file any return or report required by this article or any taxpayer who shall refuse to pay any tax, penalty or interest imposed or provided for by this article, or who shall wilfully fail to preserve his books, papers and records as directed by the department, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property or said services, or shall make, utter or issue a false or fraudulent exemption certificate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both: Provided, however, That any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at such place of business without being subject to the above penalty and fines. The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this article.

Section 269. Abatement of Additions or Penalties.—Upon the filing of a petition for reassessment or a petition for refund as provided under this article by a taxpayer, additions or penalties imposed upon such taxpayer by this act may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

CHAPTER VIII ENFORCEMENT AND EXAMINATIONS

Section 270. Rules and Regulations.—(a) General Provision. The department is hereby charged with the enforcement of the provisions of this article, and is hereby authorized and empowered to prescribe, adopt,

promulgate and enforce, rules and regulations not inconsistent with the provisions of this article, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, and the collection of taxes, penalties and interest imposed by this article. The department may prescribe the extent, if any, to which any of such rules and regulations shall be applied without retroactive effect.

(b) Sales between Affiliated Interests. In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of any such affiliation, if for any other reason, the purchase price of such sale is in the opinion of the department not indicative of the true value of the article or the fair price thereof, the department shall, pursuant to uniform and equitable rules, determine the amount of constructive purchase price upon the basis of which the tax shall be computed and levied. Such rules shall provide for a constructive amount of a purchase price for each such sale, which price shall equal a price for such article which would naturally and fairly be charged in an arm's-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent. For the purpose of this article where a taxable sale occurs between a parent corporation and a subsidiary affiliate or controlled corporation of such parent, there shall be a rebuttable presumption that because of such common interest such transaction was not at arm's-length.

Section 271. Keeping of Records.—(a) General Provision. Every person liable for any tax imposed by this article, or for the collection thereof, shall keep the records, render such statements, make the returns and comply with such rules and regulations as the department may, from time to time, prescribe regarding matters pertinent to his business. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon such person, or by regulations, to make such returns, render such statements or keep such records as the department deems sufficient to show whether or not such person is liable to pay or collect tax under this article.

(b) Persons Collecting Tax from Others. Any person liable to collect tax from another person under the provisions of this article shall file reports, keep records, make payments and be subject to interest and penalties as provided for under this article, in the same manner as if he were directly subject to the tax.

(c) Records of Nonresidents. A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of such business or businesses and of the tax due with respect thereto, which records shall at all times be retained within this Commonwealth unless retention outside the Commonwealth is authorized by the department. No taxes collected from purchasers shall be sent outside the Commonwealth without the written consent of, and in accordance with

conditions prescribed by the department. The department may require a taxpayer who desires to retain records or tax collections outside the Commonwealth to assume reasonable out-of-state audit expenses.

(d) **Keeping of Separate Records.** Any person doing business as a retail dealer who at the same time is engaged in another business or businesses which do not involve the making of sales taxable under this article, shall keep separate books and records of his businesses so as to show the sales taxable under this article separately from his sales not taxable hereunder. If any such person fails to keep such separate books and records, he shall be liable for tax at the rate designated in section 202 of this article upon the entire purchase price of sales from both or all of his businesses.

(e) **Other Methods.** In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method of segregating tax from sales receipts and keep records showing such segregation, all in accordance with proper accounting and business practices.

A vendor may apply to the department for permission to use a collection and recording procedure which will show such information as the law requires with reasonable accuracy and simplicity. Such application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke such permission upon thirty days' notice to the vendor. Refusal of the department to grant permission in advance to use such procedure shall not be construed to invalidate a procedure which upon examination shows such information as the law requires.

Section 272. Examinations.—The department or any of its authorized agents is hereby authorized to examine the books, papers and records of any taxpayer in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and assess the tax imposed by this article. The department may require the preservation of all such books, papers and records for any period deemed proper by it but not to exceed three years from the end of the calendar year to which the records relate. Every such taxpayer is hereby required to give to the department, or its agent, the means, facilities and opportunity for such examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable sales or use by any taxpayer or concerning any other matter relating to the enforcement or administration of this article, and to this end may compel the production of books, papers and records and the attendance of all persons whether as parties or witnesses whom it believes to have knowledge of such matters. The procedure for such hearings or examinations shall be the same as that provided by The Fiscal Code relating to inquisitorial powers of fiscal officers.

Section 273. Records and Examinations of Delivery Agents.—Every

agent for the purpose of delivery of goods shipped into the Commonwealth by a nonresident including, but not limited to, common carriers shall maintain adequate records of such deliveries pursuant to rules and regulations adopted by the department and shall make such records available to the department upon request after due notice.

Section 274. Unauthorized Disclosure.—Any information gained by the department as a result of any return, examination, investigation, hearing or verification, required or authorized by this article, shall be confidential, except for official purposes and except in accordance with proper judicial order or as otherwise provided by law, and any person unlawfully divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not in excess of one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both.

Section 275. Cooperation with Other Governments.—Notwithstanding the provisions of section 274, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either such officer, to inspect the tax returns of any taxpayer, or may furnish to such officer or to his authorized representative an abstract of the return of any taxpayer, or supply him with information concerning any item contained in any return or disclosed by the report of any examination or investigation of the return of any taxpayer. This permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this article.

Section 276. Interstate Compacts.—The Governor, or his authorized representative, is hereby vested with authority to confer with the Governor and the authorized representatives of other states with respect to reciprocal use tax collection between Pennsylvania and such other states.

The Governor, or his representative, is authorized to join with such authorities of other states to conduct joint investigations, to exchange information, hold joint hearings and enter into compacts or interstate agreements with such other states to accomplish uniform reciprocal use tax collections between those states who are parties to any compact or interstate agreement and the Commonwealth of Pennsylvania.

Section 277. Bonds.—(a) Taxpayer to File Bond. Whenever the department in its discretion, deems it necessary to protect the revenues to be obtained under the provisions of this article, it may require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or other entity, not authorized to do business within this Commonwealth or not having an established place of business therein and subject to the tax imposed by section 202 of this article, to file a bond issued by a surety company authorized to do business in this

Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in such amounts as it may fix, to secure the payment of any tax or penalties due, or which may become due, from such natural person or corporation. In order to protect the revenues to be obtained under the provisions of this article, the department shall require any nonresident natural person or any foreign corporation, association, fiduciary, partnership or entity, who or which is a building contractor, or who or which is a supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business therein and is subject to the tax imposed by section 202 of this article, to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in such amounts as it may fix, to secure the payments of any tax or penalties due, or which may become due, from such natural person, corporation or other entity. The department may also require such a bond of any person petitioning the department for reassessment, in the case of any assessment over five hundred dollars (\$500) or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require such a bond of any person who has on three or more occasions within a twelve month period either filed a return or made payment to the department more than thirty days late. In the event that the department determines that a taxpayer is to file such a bond, it shall give notice to such taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file such bond within five days after the giving of such notice by the department unless, within such five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or his representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or such representative. Such determination shall be final and shall be complied with within fifteen days after notice thereof is mailed to the taxpayer.

(b) **Securities in Lieu of Bond.** In lieu of the bond required by this section, securities approved by the department, or cash in such amount as it may prescribe, may be deposited. Such securities or cash shall be kept in the custody of the department, who may, at any time, without notice to the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by the department, at public or private sale, upon five days written notice to the depositor.

(c) **Failure to File Bond.** The department may file a lien pursuant to section 242 against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on such lien shall be refunded to the taxpayer with three per cent interest should a final determination be made that he does not owe any payment to the department.

PART VII
REPEALER; APPROPRIATION; EFFECTIVE DATE

Section 280. Repeal.—The act of March 6, 1956 (P.L.1228), known as the “Tax Act of 1963 for Education,” is repealed concurrently with the effective date of the various provisions of this article.

Section 281. Appropriation for Refunds, Etc.—So much of the proceeds of the tax imposed by this article as shall be necessary for the payment of refunds, enforcement, or administration, under this article, is hereby appropriated for such purposes.

Section 282. Effective Date.—The provisions of this article shall take effect immediately, except that clauses (k) (4), (m) and (o) (4) of section 201, clause (c) of section 202, and clause (17) of section 204 shall take effect July 1, 1971.

ARTICLE III
PERSONAL INCOME TAX

PART I
DECLARATION OF POLICY: DEFINITIONS

Section 301. Declaration of Intent and Policy.—The Legislature, in imposing a flat rate tax on income defined in this article, hereby declares its legislative intent and policy to provide a fair and practical method of taxation and to effectuate an income tax which shall constitutionally conform to the uniformity provisions of section 1, of Article VIII, of the Constitution, by utilizing and uniformly applying in this article those terms, definitions, classifications and other provisions of the Federal Internal Revenue Code of 1954, as amended, as they relate to the Federal Income Tax on individuals, being the same code which the General Assembly has heretofore employed in the Pennsylvania “Corporate Net Income Tax” and “Corporation Income Tax” acts relating to the imposition of income taxes on corporations.

Section 302. Definitions.—Any term used in this article shall have the same meaning as when used in comparable context in the laws of the United States relating to Federal income taxes unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954 and other provisions of the laws of the United States relating to Federal income taxes, all as amended and effective on the date such reference is required by this article:

(a) “Compensation” means any form of remuneration as defined in section 3401 (a) of the Internal Revenue Code.

(b) “Department” means the Department of Revenue of the Commonwealth of Pennsylvania.

(c) “Employe” means any employe as defined in section 3401 (c) of

the Internal Revenue Code. Any person from whose compensation an employer is required to withhold Federal income tax shall prima facie be deemed an employe.

(d) "Employer" means an employer as defined in section 3401 (d) of the Internal Revenue Code. Any person required to withhold Federal income tax from compensation paid shall prima facie be deemed an employer.

(e) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity, whether domiciliary or ancillary.

(f) "Individual" means a natural person.

(g) "Nonresident individual" means any individual who is not a resident of the Commonwealth.

(h) "Nonresident estate or trust" means any estate or trust which is not a resident estate or trust.

(i) "Person" means any individual, employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident, and the plural as well as the singular number.

(j) "Resident individual" means an individual who is domiciled in this Commonwealth unless he maintains no permanent place of abode in this Commonwealth and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than thirty days of the taxable year in this Commonwealth; or who is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in this Commonwealth.

(k) "Resident estate" means the estate of a decedent who at his death was a resident individual.

(l) "Resident trust" means a trust created by the will of a decedent who at his death was a resident individual and any trust created by, or consisting of property transferred to such trust by a person who was a resident individual.

(m) "State" means any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any foreign country, or any political subdivision of any of the foregoing.

(n) "Tax" includes interest, penalties and additions to tax, and further includes the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.

(o) "Taxable year" means the taxable period on the basis of which a taxpayer is required to file his Federal income tax return pursuant to the Internal Revenue Code.

(p) "Taxpayer" means any person subject to the tax imposed by this article or any employer required to withhold tax on compensation paid.

(q) "Taxable income." Except as otherwise provided herein,

“taxable income” means the same as “taxable income” as defined in the Internal Revenue Code and will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) depletion; and (ix) capital gains which is required to be returned to and ascertained by the Federal Government pursuant to said code, subject to the following adjustments:

(1) Subtraction of interest income derived from obligations of the United States Government to the extent included in adjusted gross income.

(2) Addition of interest income derived from obligations of states, political subdivisions, instrumentalities and public authorities thereof other than Pennsylvania or its political subdivisions, instrumentalities or public authorities to the extent not included in adjusted gross income.

(3) In the case of a nonresident individual, estate or trust estate or trust “taxable income” and the adjustments required by subsections (a) and (b) above shall include only income derived from sources within this Commonwealth.

(4) The respective shares of an estate or trust and its beneficiaries in the additions and subtractions to taxable income shall be in proportion to their respective shares of distributable net income of the estate or trust as defined in the Internal Revenue Code. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary in the additions and subtractions shall be in proportion to his share of the estate or trust income for such year, under local law or the terms of the instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the additions and subtractions shall be allocated to the estate or trust.

(5) In the case of a nonresident estate or trust, the respective shares of the estate or trust and of its beneficiaries shall be determined in the manner set forth by this subsection (q); however, in determining the taxable income of a nonresident estate or trust or of any nonresident beneficiary thereof, there shall be taken into account only the income of the estate or trust, or the beneficiary’s share thereof, derived from sources within this Commonwealth.

(r) (1) “Income from sources within this Commonwealth” means all taxable income to the extent that it is earned, received or acquired from sources within this Commonwealth:

(i) by reason of ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or

(ii) in connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition or personal services performed in this Commonwealth; or

(iii) as a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article.

(2) Income from tangible personal property shall constitute income from sources within this Commonwealth only to the extent that such income is from property employed in a trade, profession, occupation or business carried on in this Commonwealth.

PART II IMPOSITION OF TAX

Section 305. Incidence and Rate.—For the privilege of receiving, earning or otherwise acquiring income from any source whatsoever, in the case of a resident individual, estate or trust of this Commonwealth, or from sources within this Commonwealth, in the case of a nonresident individual, estate or trust of this Commonwealth, there is levied and imposed an annual tax of three and five-tenths per cent of the taxable income of the taxpayer.

Section 306. Beneficiary of Grantor Trust.—The taxable income of a person who is required to include income from a trust in his Federal income tax return under the provisions of subpart E of subchapter J of the Internal Revenue Code shall be computed with reference to the income of the trust as if such income were the income of the taxpayer rather than the trust.

PART III NONRESIDENT INDIVIDUALS

Section 308. Nonresident Individuals; Taxable Income.—The taxable income of a nonresident individual shall be that part of his Federal taxable income derived from sources within this Commonwealth as defined in subsection (r) of section 302 of this article.

Section 309. Husband and Wife.—(a) Separate Federal Return. If the Federal taxable income of husband or wife who are both nonresidents of this Commonwealth is determined on a separate Federal return, their taxable incomes from sources within this Commonwealth shall be separately determined.

(b) Joint Federal Return. If the Federal taxable income of husband and wife who are both nonresidents is determined on a joint Federal return, their tax shall be determined in this State on their joint taxable income.

(c) One Spouse a Nonresident. If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined

on their separate taxable incomes from sources within this Commonwealth on such forms as the department shall prescribe, unless both elect to determine their joint taxable income in this Commonwealth as if both were residents. If a husband and wife file a joint Federal income tax return, but determine their taxable income from sources within this Commonwealth separately, they shall compute their taxable incomes from sources within this Commonwealth as if their Federal taxable incomes had been determined separately.

Section 310. Allocation of Income of Nonresident.—Where a nonresident taxpayer engages in a business, trade, profession or occupation partly within and partly without this Commonwealth, and, as a result thereof or for other reasons that portion of the income derived from or connected with sources within this Commonwealth cannot readily or accurately be ascertained, the department shall by regulation prescribe uniform rules for apportionment or allocation of so much of such taxpayer's income as fairly and equitably represents income derived from sources within this Commonwealth.

PART IV CREDITS AGAINST TAX

Section 315. Tax Withheld.—(a) The amount withheld under section 322 shall be allowed to the recipient of the compensation as a credit against the tax imposed on him by this article.

Section 316. Income Taxes Imposed by Other States.—(a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on him by another state with respect to income which is also subject to tax under this article.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this article that the amount of the taxpayer's taxable income subject to tax by the other jurisdiction bears to his entire taxable income.

Section 317. Taxes Imposed by Political Subdivisions of This Commonwealth.—(a) Every resident or nonresident individual, estate or trust subject to tax under this article shall be allowed a credit against the tax otherwise due under this article equal to thirty per cent of the amount of any local taxes imposed on and paid by such individual, estate or trust to any political subdivision of this Commonwealth during the calendar year 1971, except that such credit shall not apply to local taxes imposed on real estate, realty transfers or amusements.

(b) For local taxes described in subsection (a) imposed and paid in the taxable years beginning after December 31, 1971, the amount of credit base provided in this section shall not exceed thirty per cent of the total amount of the local taxes which were imposed upon and paid by such individual, estate or trust during the calendar year 1971 to political

subdivisions of this Commonwealth, except that in the case where no such local taxes were imposed upon and paid by such individual, estate or trust during the calendar year 1971, then the percentage rate shall be applied to the total amount of such local taxes which were imposed upon and paid by such individual, estate or trust during the calendar year in which such taxes were first imposed and paid and the amount so determined shall each year thereafter constitute the base on which the tax credit rate shall be applied.

Section 318. Tax Paid by Trust on Accumulated Income.—A beneficiary of a trust whose taxable income includes all or part of an accumulation distribution or a capital gain distribution by a trust, as defined in section 665 of the Internal Revenue Code, shall be allowed a credit against the tax otherwise due under this article equal to all or a proportionate part of any tax paid by the trust under this article for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in sections 666 and 669 of the Internal Revenue Code. The credit shall not reduce the tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution or capital gain distribution were excluded from taxable income.

Section 319. Tax Credit for Taxpayer Class.—(a) Declaration of Legislative Purpose. The General Assembly, in recognition of section 2 (b) (ii) of Article VIII of the Constitution of Pennsylvania which provides for the establishing as a class or classes of subjects of taxation, the property or privileges of persons who, because of age, disability, infirmity or poverty are determined to be in need of tax exemption or of special tax provisions, hereby declares as its legislative intent and purpose to execute its power under such constitutional provision by establishing a special tax credit provision, as hereinafter provided in subsections (b) and (c) of this section.

(b) Establishing of Class; Tax Credit. Pursuant to the provisions of said section of the Constitution of Pennsylvania there is hereby legislatively determined and established in the schedule provided in subsection (c) of this section, a class of taxpayers who by reason of poverty, age, disability or infirmity are in need of special tax relief and the members of such class, on and after the effective date of this article, shall be entitled to claim a credit against the amount of tax which would otherwise be due under this article. The class of taxpayers and the members thereof who qualify for such tax credit and the amount thereof shall be determined solely by reference to the taxable income and exemption schedule set forth in subsection (c) of this section.

(c) Tax Credit Schedule for Taxpayer Class.

SCHEDULE
VANISHING TAX CREDITS

Net Taxable Income	Tax at 3.5%	Number of Exemptions					
		1	2	3	4	5	6
\$ 100	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50	\$ 3.50
200	7.20	7.20	7.20	7.20	7.20	7.20	7.20
300	10.80	10.80	10.80	10.80	10.80	10.80	10.80
400	14.40	14.40	14.40	14.40	14.40	14.40	14.40
500	18.00	18.00	18.00	18.00	18.00	18.00	18.00
600	21.60	<u>21.60</u>	21.60	21.60	21.60	21.60	21.60
700	25.20	<u>22.50</u>	25.20	25.20	25.20	25.20	25.20
800	28.80	21.60	28.80	28.80	28.80	28.80	28.80
900	32.40	20.70	32.40	32.40	32.40	32.40	32.40
1000	36.00	19.80	36.00	36.00	36.00	36.00	36.00
1100	39.60	18.90	39.60	39.60	39.60	39.60	39.60
1200	43.20	18.00	<u>43.20</u>	43.20	43.20	43.20	43.20
1300	46.80	17.10	<u>45.00</u>	46.80	46.80	46.80	46.80
1400	50.40	16.20	43.20	50.40	50.40	50.40	50.40
1500	54.00	15.30	41.40	54.00	54.00	54.00	54.00
1600	57.60	14.40	39.60	57.60	57.60	57.60	57.60
1700	61.20	13.50	37.80	61.20	61.20	61.20	61.20
1800	64.80	12.60	36.00	<u>64.80</u>	64.80	64.80	64.80
1900	68.40	11.70	34.20	<u>67.50</u>	68.40	68.40	68.40
2000	72.00	10.80	32.40	64.80	72.00	72.00	72.00
2100	75.60	9.90	30.60	62.10	75.60	75.60	75.60
2200	79.20	9.00	28.80	59.40	79.20	79.20	79.20
2300	82.80	8.10	27.00	56.70	82.80	82.80	82.80
2400	86.40	7.20	25.20	54.00	86.40	86.40	86.40
2500	90.00	6.30	23.40	51.30	<u>90.00</u>	90.00	90.00
2600	93.60	5.40	21.60	48.60	<u>86.40</u>	93.60	93.60
2700	97.20	4.50	19.80	45.90	82.80	97.20	97.20
2800	100.80	3.60	18.00	43.20	79.20	100.80	100.80
2900	104.40	2.70	16.20	40.50	75.60	104.40	104.40
3000	108.00	1.80	14.40	37.80	72.00	108.00	108.00
3100	111.60	.90	12.60	35.10	68.40	<u>111.60</u>	111.60
3200	115.20	.00	10.80	32.40	64.80	<u>112.50</u>	115.20
3300	118.80	.00	9.00	29.70	61.20	108.00	118.80
3400	122.40	.00	7.20	27.00	57.60	103.50	122.40
3500	126.00	.00	5.40	24.30	54.00	99.00	126.00
3600	129.60	.00	3.60	21.60	50.40	94.50	129.60
3700	133.20	.00	1.80	18.90	46.80	90.00	<u>133.20</u>
3800	136.80	.00	.00	16.20	43.20	85.50	135.00
3900	140.40	.00	.00	13.50	39.60	81.00	129.60

4000	144.00	.00	.00	10.80	36.00	76.50	124.20
4100	147.60	.00	.00	8.10	32.40	72.00	118.80
4200	151.20	.00	.00	5.40	28.80	67.50	113.40
4300	154.80	.00	.00	2.70	25.20	63.00	108.00
4400	158.40	.00	.00	.00	21.60	58.50	102.60
4500	162.00	.00	.00	.00	18.00	54.00	97.20
4600	165.60	.00	.00	.00	14.40	49.50	91.80
4700	169.20	.00	.00	.00	10.80	45.00	86.40
4800	172.80	.00	.00	.00	7.20	40.50	81.00
4900	176.40	.00	.00	.00	3.60	36.00	75.60
5000	180.00	.00	.00	.00	.00	31.50	70.20
5100	183.60	.00	.00	.00	.00	27.00	64.80
5200	187.20	.00	.00	.00	.00	22.50	59.40
5300	190.80	.00	.00	.00	.00	18.00	54.00
5400	194.40	.00	.00	.00	.00	13.50	48.60
5500	198.00	.00	.00	.00	.00	9.00	43.20
5600	201.60	.00	.00	.00	.00	4.50	37.80
5700	205.20	.00	.00	.00	.00	.00	32.40
5800	208.80	.00	.00	.00	.00	.00	27.00
5900	212.40	.00	.00	.00	.00	.00	21.60
6000	216.00	.00	.00	.00	.00	.00	16.20
6100	219.60	.00	.00	.00	.00	.00	10.80
6200	223.20	.00	.00	.00	.00	.00	5.40
6300	226.80	.00	.00	.00	.00	.00	.00
6400	230.40	.00	.00	.00	.00	.00	.00
6500	234.00	.00	.00	.00	.00	.00	.00
6600	237.60	.00	.00	.00	.00	.00	.00
6700	241.20	.00	.00	.00	.00	.00	.00
6800	244.80	.00	.00	.00	.00	.00	.00
6900	248.40	.00	.00	.00	.00	.00	.00
7000	252.00	.00	.00	.00	.00	.00	.00
7100	255.60	.00	.00	.00	.00	.00	.00
7200	259.20	.00	.00	.00	.00	.00	.00
7300	262.80	.00	.00	.00	.00	.00	.00
7400	266.40	.00	.00	.00	.00	.00	.00
7500	270.00	.00	.00	.00	.00	.00	.00
7600	273.60	.00	.00	.00	.00	.00	.00
7700	277.20	.00	.00	.00	.00	.00	.00
7800	280.00	.00	.00	.00	.00	.00	.00
7900	284.40	.00	.00	.00	.00	.00	.00
8000	288.00	.00	.00	.00	.00	.00	.00
8100	291.00	.00	.00	.00	.00	.00	.00
8200	295.20	.00	.00	.00	.00	.00	.00
8300	298.80	.00	.00	.00	.00	.00	.00
8400	302.40	.00	.00	.00	.00	.00	.00

2500	90.00	90.00	90.00	90.00	90.00	90.00	90.00
2600	93.60	93.60	93.60	93.60	93.60	93.60	93.60
2700	97.20	97.20	97.20	97.20	97.20	97.20	97.20
2800	100.80	100.80	100.80	100.80	100.80	100.80	100.80
2900	104.40	104.40	104.40	104.40	104.40	104.40	104.40
3000	108.00	108.00	108.00	108.00	108.00	108.00	108.00
3100	111.60	111.60	111.60	111.60	111.60	111.60	111.60
3200	115.20	115.20	115.20	115.20	115.20	115.20	115.20
3300	118.80	118.80	118.80	118.80	118.80	118.80	118.80
3400	122.40	122.40	122.40	122.40	122.40	122.40	122.40
3500	126.00	126.00	126.00	126.00	126.00	126.00	126.00
3600	129.60	129.60	129.60	129.60	129.60	129.60	129.60
3700	133.20	133.20	133.20	133.20	133.20	133.20	133.20
3800	136.80	136.80	136.80	136.80	136.80	136.80	136.80
3900	140.40	140.40	140.40	140.40	140.40	140.40	140.40
4000	144.00	144.00	144.00	144.00	144.00	144.00	144.00
4100	147.60	147.60	147.60	147.60	147.60	147.60	147.60
4200	151.20	151.20	151.20	151.20	151.20	151.20	151.20
4300	154.80	<u>154.80</u>	154.80	154.80	154.80	154.80	154.80
4400	158.40	<u>157.50</u>	158.40	158.40	158.40	158.40	158.40
4500	162.00	151.20	162.60	162.60	162.60	162.60	162.60
4600	165.60	144.90	165.50	165.60	165.60	165.60	165.60
4700	169.20	138.60	169.20	169.20	169.20	169.20	169.20
4800	172.80	132.30	172.80	172.80	172.80	172.80	172.80
4900	176.40	126.00	176.40	176.40	176.40	176.40	176.40
5000	180.00	119.70	<u>180.00</u>	180.00	180.00	180.00	180.00
5100	183.60	113.40	<u>172.80</u>	183.60	183.60	183.60	183.60
5200	187.20	107.10	165.60	187.20	187.20	187.20	187.20
5300	190.80	100.80	158.40	190.80	190.80	190.80	190.80
5400	194.40	94.50	151.20	194.40	194.40	194.40	194.40
5500	198.00	88.20	144.00	198.00	198.00	198.00	198.00
5600	201.60	81.90	136.80	<u>201.60</u>	201.60	201.60	201.60
5700	205.20	75.60	129.60	<u>202.50</u>	205.20	205.20	205.20
5800	208.80	69.30	122.40	194.40	208.80	208.80	208.80
5900	212.40	63.00	115.20	186.30	212.40	212.40	212.40
6000	216.00	56.70	108.00	178.20	216.00	216.00	216.00
6100	219.60	50.40	100.80	170.10	219.60	219.60	219.60
6200	223.20	44.10	93.60	162.00	<u>223.20</u>	223.20	223.20
6300	226.80	37.80	86.40	153.90	<u>225.00</u>	226.80	226.80
6400	230.40	31.50	79.20	145.80	216.00	230.40	230.40
6500	234.00	25.20	72.00	137.70	207.00	234.00	234.00
6600	237.60	18.90	64.80	129.60	198.00	237.60	237.60
6700	241.20	12.60	57.60	121.50	189.00	241.20	241.20
6800	244.80	6.30	50.40	113.40	180.00	<u>244.80</u>	244.80
6900	248.40	.00	43.20	105.30	171.00	247.50	248.40

7000	252.00	.00	36.00	97.20	162.00	237.60	252.00
7100	255.60	.00	28.80	89.10	153.00	227.70	255.60
7200	259.20	.00	21.60	81.00	144.00	217.80	259.20
7300	262.80	.00	14.40	72.90	135.00	207.90	262.80
7400	266.40	.00	7.20	64.80	126.00	198.00	266.40
7500	270.00	.00	.00	56.70	117.00	188.10	<u>270.00</u>
7600	273.60	.00	.00	48.60	108.00	178.20	259.20
7700	277.20	.00	.00	40.50	99.00	168.30	248.40
7800	280.00	.00	.00	32.40	90.00	158.40	237.60
7900	284.40	.00	.00	24.30	81.00	148.50	226.80
8000	288.00	.00	.00	16.20	72.00	138.60	216.00
8100	291.00	.00	.00	8.10	63.00	128.70	205.20
8200	295.20	.00	.00	.00	54.00	118.80	194.40
8300	298.80	.00	.00	.00	45.00	108.90	183.60
8400	302.40	.00	.00	.00	36.00	99.00	172.80
8500	306.00	.00	.00	.00	27.00	89.10	162.00
8600	309.60	.00	.00	.00	18.00	79.20	151.20
8700	313.20	.00	.00	.00	9.00	69.30	140.40
8800	316.80	.00	.00	.00	.00	59.40	129.60
8900	320.46	.00	.00	.00	.00	49.50	118.80
9000	324.00	.00	.00	.00	.00	39.60	108.00
9100	327.60	.00	.00	.00	.00	29.70	97.20
9200	331.20	.00	.00	.00	.00	19.80	86.40
9300	334.80	.00	.00	.00	.00	9.90	75.60
9400	338.40	.00	.00	.00	.00	.00	64.80
9500	342.00	.00	.00	.00	.00	.00	54.00
9600	345.60	.00	.00	.00	.00	.00	43.20
9700	349.20	.00	.00	.00	.00	.00	32.40
9800	352.80	.00	.00	.00	.00	.00	21.60
9900	356.40	.00	.00	.00	.00	.00	10.80
10000	360.00	.00	.00	.00	.00	.00	.00

LINE INDICATES POINT AT WHICH THERE IS NO TAX LIABILITY.

PART V WITHHOLDING OF TAX

Section 322. Requirement of Withholding Tax.—Every employer maintaining an office or transacting business within this Commonwealth and making payment of taxable compensation (i) to a resident individual, or (ii) to a nonresident individual taxpayer performing services on behalf of such employer within this Commonwealth, shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employe's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to such compensation. The method of determining the

amount to be withheld shall be prescribed by regulations of the department, with due regard to any credits allowable against his tax under this article.

Section 323. Information Statement.—Every employer required to deduct and withhold tax under this article shall furnish to each such employe to whom the employer has paid compensation during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of compensation is made, a written statement in such manner and in such form as may be prescribed by the department showing the amount of compensation paid by the employer to the employe, the amount deducted and withheld as tax, and such other information as the department shall prescribe.

Section 324. Time for Filing Employers' Returns.—Every employer required to deduct and withhold tax under this article shall file a quarterly withholding return on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December. Such quarterly returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

Section 324.1. Monthly, Semi-monthly and Quarterly Payment of Taxes Withheld.—Every employer withholding tax under this article shall pay over to the department or to a depository designated by it the tax required to be deducted and withheld under this article.

(1) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be less than three hundred dollars (\$300), such employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 324, except that commencing with the year 1971, and each year thereafter every employer required to file a quarterly return for the second calendar quarter shall with respect to the tax deducted and withheld for the months of April and May pay such tax over to the department on or before June 15 next following. The payment of the April and May tax withholdings shall not relieve the employer of the duty to file a quarterly return on or before the last day of July next following and remit therewith the tax deducted and withheld for the month of June.

(2) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be three hundred dollars (\$300) or more but less than one thousand dollars (\$1,000), such employer shall pay the tax monthly, on or before the fifteenth day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(3) Where the aggregate amount required to be deducted and

withheld by any employer for each quarterly period can reasonably be expected to be one thousand dollars (\$1,000) or more, such employer shall pay the tax semi-monthly, within three banking days after the close of the semi-monthly period.

Notwithstanding anything in this section to the contrary, whenever any employer fails to deduct or truthfully account for or pay over the tax withheld or file returns as prescribed by this article, the department may serve a notice on such employer requiring him to withhold taxes which are required to be deducted under this article and deposit such taxes in a bank approved by the department in a separate account in trust for and payable to the department, and to keep the amount of such tax in such account until payment over to the department. Such notice shall remain in effect until a notice of cancellation is served on the employer by the department.

Section 325. **Employer's Liability for Withheld Taxes.**—Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the department and any additions to tax penalties and interest with respect thereto, shall be considered the tax of the employer. All taxes deducted and withheld from employes pursuant to this article or under color of this article shall constitute a trust fund for the Commonwealth and shall be enforceable against such employer, his representative or any other person receiving any part of such fund.

Section 326. **Employer's Failure to Withhold.**—If an employer fails to deduct and withhold tax as prescribed herein and thereafter the tax against which such tax may be credited is paid, the tax which was required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved of the liability for any penalty, interest, or additions to the tax imposed with respect to such failure to deduct and withhold.

Section 327. **Designation of Third Parties to Perform Acts Required of Employers.**—In case a fiduciary, agent or other person has the control, receipt, custody or disposal of, or pays the compensation of an employe or a group of employes, employed by one or more employers, the department is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this article as the department may by regulation prescribe. Except as may be otherwise prescribed by the department, all provisions of this article which are applicable to an employer shall be applicable to a fiduciary, agent or other person so designated.

PART VI ESTIMATED TAX

Section 330. **Declarations of Estimated Tax.**—(a) Every resident and

nonresident individual shall at the time hereinafter prescribed make a declaration of his estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if his taxable income, other than from compensation on which tax is withheld under this article, can reasonably be expected to exceed one thousand dollars (\$1,000).

(b) For the purposes of this article, the term "estimated tax" means the amount which an individual estimates to be his tax due under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax under this article.

(c) A husband and wife entitled to make a joint declaration of Federal estimated tax may make a joint declaration of estimated tax hereunder as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Except as hereinafter provided, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual determines that his taxable income on which no tax has been withheld under this article can reasonably be expected to exceed one thousand dollars (\$1,000) in the taxable year, as follows:

(1) If the determination is made on or before April 1 of the taxable year, a declaration of estimated tax shall be filed no later than April 15 of the taxable year.

(2) If the determination is made after April 1 but before June 2 of the taxable year, the declaration shall be filed no later than June 15 of such year.

(3) If the determination is made after June 1 but before September 2 of the taxable year, the declaration shall be filed no later than September 15 of such year.

(4) If the determination is made after September 1 of the taxable year, the declaration shall be filed no later than January 15 of the year succeeding the taxable year.

(e) Notwithstanding subsection (d), of this section, a declaration of estimated tax of an individual having an estimated taxable income from farming for the taxable year which is at least two-thirds of his total estimated taxable income for the taxable year may be filed at any time on or before January 15 of the succeeding year.

(f) A declaration of estimated tax of an individual having a total estimated tax for the taxable year of fifty dollars (\$50) or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(g) An individual may amend a declaration under regulations of the department.

(h) If on or before January 31 of the year succeeding a taxable year, an individual files his return for the entire taxable year for which a declaration was required to be filed within the time prescribed by subsection (d) (4) of this section and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration which was required to be filed no later than January 15.

(2) Such return shall be considered as the amendment permitted by subsection (g) to be filed on or before January 15 provided the amount of the tax shown on the return is greater than the amount of the estimated tax shown in a declaration previously made.

(i) This article shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) This article shall apply to an individual having a taxable year of less than twelve months in accordance with procedures prescribed in regulations of the department.

Section 331. Payments of Estimated Tax.—(a) The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on or before the succeeding June 15, September 15, and January 15, respectively.

(2) If the declaration is not required to be filed on or before April 15 of the taxable year and is filed after April 15, but before June 16 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the succeeding September 15 and January 15, respectively.

(3) If the declaration is not required to be filed on or before June 15 of the taxable year and is filed after June 15 but before September 16 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the succeeding January 15.

(4) If the declaration is not required to be filed on or before September 15 of the taxable year and is filed after September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is not filed within the time prescribed therefor, or after the expiration of any extension of time therefor, clauses (2), (3) and (4) of this subsection shall not apply, and there shall be paid at the time of such filing the amount of all installments of estimated tax which were due and payable on or before the date the declaration was filed, and the remaining installments shall be paid at such times and in such amounts as they would have been payable if the declaration had been filed when due.

(b) If an individual described in subsection (e) of section (relating to farmers) makes a declaration of estimated tax after September 15 of the taxable year, but before the following January 15, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) If any amendment of a declaration is filed, the remaining unpaid installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

PART VII RETURNS AND PAYMENT OF TAX

Section 335. Returns and Liability.—On or before the date when the taxpayer's Federal income tax return is due or would be due if the taxpayer were required to file a Federal income tax return, a tax return under this article shall be made and filed by or for every taxpayer having taxable income for the taxable year.

Section 336. Returns of Married Individuals, Deceased or Disabled Individuals and Fiduciaries.—(a) If the Federal income tax liability of husband or wife is determined on a separate Federal return, their income tax liabilities and returns under this article shall be separate.

(b) If the Federal income tax liabilities of husband and wife (other than a husband and wife described in subsection (c)) are determined on a joint Federal return, or if neither files a Federal return:

(1) they shall file a joint tax return under this article and their tax liabilities shall be joint and several; or

(2) they may elect to file separate returns under this article on a single form if they comply with the requirements of the department in setting forth information, in which event their tax liabilities shall be separate, except as provided in subsection (d).

(c) If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this article on such single or separate forms as may be required by the department, in which event their tax liabilities shall be separate except as provided in subsection (d) unless both elect to determine their joint taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(d) If husband and wife file separate tax returns under this article on a single form pursuant to subsections (b) or (c) and:

(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the department to the credit of the other spouse if the sum of the payments by such other spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.

(2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses, or if either is deceased, to the survivor.

Provided, however, That the provisions of this subsection (d) shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

(e) The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

(f) The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property, or by his duly authorized agent.

(g) The return for an estate or trust shall be made and filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

Section 337. Time and Place for Filing Returns and Paying Tax.—A person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the department on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The department shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this article and for payment of any tax.

Section 338. Signing of Returns and Other Documents.—(a) Any return, declaration, statement or other document required to be made pursuant to this article shall be signed in accordance with regulations or instructions prescribed by the department.

(b) Any return, statement, or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this article shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

Section 339. Extensions of Time.—(a) A taxpayer who is granted a Federal extension of time by the Commissioner of Internal Revenue for filing any return, declaration, statement or other document shall be

automatically entitled to a similar extension of the time for filing any corresponding return, declaration, statement or other document required pursuant to this article. No application for such extension need be made, provided that evidence of the granting of the Federal extension accompany the return, declaration, statement or other document filed pursuant to this article.

(b) In all other cases the department may, upon application, grant a reasonable extension of time for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

Section 340. Requirements Concerning Returns, Notices, Records and Statements.—(a) The department may prescribe by regulation for the keeping of records, the content and form of returns, declarations, statements and other documents and the filing of copies of Federal income tax returns and determinations. The department may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the department may deem sufficient to show whether or not such person is liable for tax under this article.

(b) (1) When required by regulations prescribed by the department:

(i) Any person required under the authority of this article to make a return, declaration, statement, or other document shall include in such return, declaration, statement or other document such identifying number as may be prescribed for securing proper identification of such person.

(ii) Any person with respect to whom a return, declaration, statement, or other document is required under the authority of this article to make a return, declaration, statement, or other document with respect to another person, shall request from such other person, and shall include in any such return, declaration, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(2) For purposes of this section, the department is authorized to require such information as may be necessary to assign an identifying number to any person.

(c) Every partnership having a resident partner or having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, gain, loss and deduction, and such other pertinent information as the department may by regulations prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subsection, "taxable year" means year or period which

would be a taxable year of the partnership if it were subject to tax under this article.

(d) The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or crediting in any calendar year of amounts of one thousand dollars (\$1,000) or more to any taxpayer. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employes of this Commonwealth, or of any municipal corporation or political subdivision of this Commonwealth having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on compensation required to be furnished by an employer to an employe, shall constitute the return of information required to be made under this section with respect to such compensation.

Section 341. Report of Change in Federal Taxable Income.—If the amount of a taxpayer's Federal taxable income reported on his Federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority of the United States, the taxpayer shall report to the department such change or correction in Federal taxable income within ninety days after the final determination of such change or correction, or as otherwise required by the department, and shall either concede the accuracy of such determination or state wherein he claims it is erroneous. Any taxpayer filing an amended Federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the department may require. The department may by regulation prescribe such exceptions to the requirements of this section as it deems appropriate.

PART VIII PROCEDURE AND ADMINISTRATION

Section 345. Payment on Notice and Demand.—Upon receipt of notice and demand from the department, there shall be paid the amount of any tax due under the provisions of this article stated in such notice and demand.

Section 346. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

Section 347. Procedure for Reassessment.—Promptly after the date of an assessment by the department, the department shall send by mail

a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.

Section 348. Review by Board of Finance and Revenue.—Within ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. The Board of Finance and Revenue shall act in disposition of such petitions filed with it within six months after they have been received, and in the event of failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.

Section 349. Appeal to the Commonwealth Court.—Any person, or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue may, within sixty days, appeal to the Commonwealth Court from the decision of the Board of Finance and Revenue in the manner now or hereafter provided by law for appeals from decisions of said board in tax cases.

Section 350. Collection of Tax.—The department shall collect the taxes imposed by this article in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

Section 351. Collection upon Failure to Request Reassessment, Review or Appeal.—(a) The department may collect any tax:

- (1) After ninety days from the date of mailing of a copy of the notice of assessment, if no petition for reassessment has been filed;
- (2) After ninety days from the date of mailing of notice of the department's action thereon, if no petition for review has been filed;

(3) Within sixty days from the date of mailing of notice of the decision of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon such petition, if no decision has been made; or

(4) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

In any such proceeding for the collection of the tax imposed by this article, the person against whom the assessment was made shall not be permitted to set up any ground of defense that might have been presented to the department, the Board of Finance and Revenue or the Commonwealth Court if such person had properly pursued his administrative remedies under this article.

Section 352. Lien for Tax.—(a) If any person liable to pay any tax neglects or refuses to pay the same on the date the tax becomes collectible, the amount of such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth against all real estate within the Commonwealth of such person from and after such date.

(b) The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this article. It shall be the duty of each prothonotary receiving such lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to, and be fully before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of said real estate with which said real estate may subsequently become charged, or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time such tax lien is recorded, save and except the cost of sale and of the writ upon which it is made and real estate taxes imposed or assessed upon said property. The lien of said taxes shall continue for five years from the date of entry and may be revived and continued, in the manner now or hereafter provided for renewal of judgments, and it shall be lawful for a writ of scire facias to issue and be prosecuted to judgment in the manner in which such writs are ordinarily employed.

(c) Any wilful failure of any prothonotary to carry out any duty imposed upon him by this section shall be a misdemeanor and, upon conviction, he shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and cost of prosecution, or to undergo imprisonment not exceeding one year, or both.

Section 353. Refund or Credit of Overpayment.—(a) In the case of any overpayment, the department may credit the amount of such overpayment against any liability in respect of the tax imposed by this article on the part of the person who made the overpayment and shall refund any balance to such person.

(b) The department is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

(c) If the taxpayer has paid as an installment of estimated tax more than the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in subsection (a) or (b).

Section 354. Restrictions on Refunds.—No credit or refund shall be made under section 353 without the approval of the Board of Finance and Revenue, except such credits or refunds as arise:

(1) By reason of the overpayment of an installment of estimated tax;

(2) Upon the filing of a final return showing less tax due after the application of the allowable credits than the amount of tax withheld from the taxpayer's compensation or the amount of tax paid by him as estimated tax; or

(3) Upon the filing of an amended return or a report of change in Federal taxable income disclosing less tax due than the taxpayer has theretofore paid.

Section 355. Limitations on Assessment and Collection.—(a) The amount of any tax imposed by this article shall be assessed within three years after the return or any report of change in Federal taxable income, whichever is later, is filed. For the purposes of this subsection and subsection (b), a return filed before the last day prescribed for the filing thereof, or before the last day of any extension of time for the filing thereof, shall be considered as filed on such last day.

(b) If the taxpayer omits from taxable income an amount properly includable therein which is in excess of twenty-five per cent of the amount of taxable income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(c) Where no return is filed, or if a taxpayer shall fail to report a change in Federal taxable income or, when required, to file an amended return, the amount of the tax due may be assessed at any time.

(d) Where the taxpayer files a false or fraudulent return with intent to evade the tax imposed by this article, the amount of tax due may be assessed at any time.

Section 356. Extension of Limitation Period.—Notwithstanding section 355, where, before the expiration of the period prescribed therein a taxpayer has consented in writing that such period be extended, the amount of tax due may be assessed at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

Section 357. Limitations on Refund or Credit.—Any application for

refund must be filed with the Board of Finance and ¹Revenue within three years from the time the return, amended return, or report of change in Federal taxable income is required to be filed, determined without regard to any extension of time or within two years from the time the tax was paid, whichever is later.

Section 358. Interest.—If any amount of tax imposed by this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate of one-half of one per cent per month, for each month or fraction thereof from such date, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

Section 359. Additions.—(a) In case of failure to file any return required under section 335 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent, in the aggregate, but in no case shall the amount added be less than five dollars (\$5).

(b) If any part of any underpayment of any tax imposed by this article is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five per cent of the underpayment.

(c) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the underpayment. This amount shall be in lieu of any amount determined under subsection (b).

(d) (1) If any taxpayer fails to file a declaration of estimated tax or fails to pay all of any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate of six per cent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to eighty per cent of the tax (two-thirds in the case of an individual described in subsection (e) of section 330) shown on the return for the taxable year (or if no return was filed, of the tax for such year) over the amount, if any, of the installments paid on or before the last day prescribed for such payment.

¹"Review" in original.

No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(2) No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the lesser of:

(A) The amount which would have been required to be paid on or before such date if the estimated tax were:

(i) the tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(ii) an amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year; or

(B) An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) Any person required to collect, account for and pay over any tax imposed by this article who wilfully fails to collect such tax or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not collected or not accounted for and paid over. No penalty shall be imposed under subsection (b) or (c) of section 359 for any offense to which this section is applicable.

(f) Any person required under the provisions of section 323 to furnish a statement to an employe who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section 323 and the regulations prescribed thereunder, shall, for each such failure, be subject to a penalty of fifty dollars (\$50) for each employe.

(g) Whenever any check issued in payment of any tax, or for any other purpose required by this article, shall be returned to the department as uncollectible, the department shall charge a fee of ten per cent of the face amount thereof, plus all protest fees, to the person presenting such check to the department, to cover the cost of its collection in addition to the interest and penalties otherwise provided for in this article: Provided, That the additions imposed hereby shall not exceed two hundred dollars (\$200) nor be less than ten dollars (\$10).

Section 360. Crimes.—(a) Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof shall, in addition to other penalties provided by law, be guilty of

a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding twenty-five thousand dollars (\$25,000) or to undergo imprisonment not exceeding two years, or both.

(b) Any person required under this article to collect, account for and pay over any tax imposed by this article who wilfully fails to collect or truthfully account for and pay over such tax, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine not exceeding twenty-five thousand dollars (\$25,000) or to undergo imprisonment not exceeding two years, or both.

(c) Any person required under this article to pay any tax or to make a return, keep any records or supply any information, who wilfully fails to pay such tax or make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding two years, or both.

(d) Any person who wilfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter, or wilfully aids or assists in, or procures, counsels or advises the preparation or presentation, in connection with any matter arising under this article, of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding two years, or both.

(e) Any person who wilfully delivers or discloses to the department any list, return, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding two years, or both.

(f) It shall be unlawful for any officer or employe of the Commonwealth to divulge or to make known in any manner whatever, not provided by law, except for official purposes, to any person, the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law, and it shall be unlawful for any person to print or publish in any manner whatsoever

not provided by law, any return or any part thereof or source of income, profits, losses or expenditures appearing in any return, and any person committing an offense against the foregoing provisions shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both, together with the costs of prosecution; and, if the offender be an officer or employe of the Commonwealth, he shall be dismissed from office or discharged from employment.

(g) Notwithstanding subsection (f), it shall be lawful for any officer or employe of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in any action or proceeding in any court on behalf of the department under the provisions of this article to which it is a party, or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof or the inspection by the Attorney General or other legal representatives of the Commonwealth of the return of any taxpayer who shall bring action to review the tax based thereon or against whom an action or proceeding has been instituted for the collection or recovery of the tax imposed by this article.

Section 361. Rules and Regulations.—The department is hereby charged with the enforcement of the provisions of this article, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article and the collection of taxes imposed by this article.

Section 362. Examination.—The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, and to require the production of a copy of his return as made to and filed with the Federal Government, if one was so made and filed, in order to verify the accuracy of any return made, or if no return was made, to ascertain and assess the tax imposed by this article. Every such taxpayer or supposed taxpayer is hereby directed and required to give to the department or its duly authorized agent the means, facilities and opportunity for such examinations and investigations as are hereby provided and authorized. The department is hereby authorized to examine any person under oath concerning any taxable income which was or should have been returned

for taxation, and to this end may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes have knowledge of such taxable income. The procedure for such hearing or examination shall be the same as that provided by "The Fiscal Code" relating to inquisitorial powers of fiscal officers.

Section 363. Cooperation with Other Governmental Agencies.—Notwithstanding the provisions of subsection (f) of section 359, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any political subdivision of this Commonwealth or of any other state imposing tax based upon the incomes of individuals, or the authorized representative of such officer, to inspect the tax returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer, or supply him with information concerning any item of income contained in any return of any taxpayer. Such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this Commonwealth charged with the administration of the personal income tax law thereof.

Section 364. Appropriation for Refunds.—So much of the proceeds of the tax imposed by this article as shall be necessary for the payment of refunds, enforcement, or administration, under this article, is hereby appropriated for such purposes.

PART IX MISCELLANEOUS PROVISIONS

Section 370. Effective Date.—Except as hereinafter provided this article shall take effect immediately, and the tax imposed hereby shall apply to taxable years ending after December 31, 1970: Provided, however, That a taxpayer who filed returns on the basis of a fiscal year or who is the beneficiary of an estate or trust or member of a partnership which files its returns under this article or with the Federal Government on the basis of a fiscal year, shall be subject to tax for his first taxable period on an apportioned basis reflecting the portion of his fiscal year or of the fiscal year of the estate, trust or partnership which postdates December 31, 1970, as prescribed by the department by regulations. Section 359 which provides for additions or penalties to the tax shall not take effect until thirty days after the date on which the department has promulgated and issued regulations relating to the duties and liabilities imposed on taxpayers under this article.

ARTICLE IV
CORPORATE NET INCOME TAX

PART I
DEFINITIONS

Section 401. Definitions.—The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Corporation.” A corporation having capital stock, joint-stock association, or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, and doing business in this Commonwealth, or having capital or property employed or used in this Commonwealth by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association or corporation. The word “corporation” shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies.

(2) “Department.” The Department of Revenue of this Commonwealth.

(3) “Net income.” 1. In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, net income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the net income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government: Provided, That additional deductions shall be allowed from net income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government: Provided further, That taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) depletion; and (ix) capital gains. No deduction shall be allowed for net operating losses sustained by the corporation during any other fiscal or calendar year. In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, “net income” shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954,

as amended. In arriving at "net income" for Federal tax purposes for any taxable year beginning on or after January 1, 1971, any corporate net income tax paid to the Commonwealth pursuant to the provisions of this article shall not be allowed as a deduction however, the amount of corporate net income tax so paid and excluded from net income shall not be apportioned but shall be subject to tax at the rate imposed under this article.

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1954, as amended, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the net income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

(1) As used in this definition, unless the context otherwise requires:

(A) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(B) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(C) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(D) "Financial organization" means any safe deposit company, credit union, small loan company, sales finance company, or investment company.

(E) "Nonbusiness income" means all income other than business income.

(F) "Public utility" means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(G) "Sales" means all gross receipts of the taxpayer not allocated under this definition.

(H) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(I) "This state" means the state in which the relevant tax return is filed or, in the case of application of this definition to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this definition.

(3) For purposes of allocation and apportionment of income under this definition, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (5) through (8).

(5) (A) Net rents and royalties from real property located in this State are allocable to this State.

(B) Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in this State, or in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (A) Capital gains and losses from sales of real property located in this State are allocable to this State.

(B) Capital gains and losses from sales of tangible personal property are allocable to this State if the property had a situs in this State at the time of the sale, or the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(7) Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

(8) (A) Patent and copyright royalties are allocable to this State if

and to the extent that the patent or copyright is utilized by the payer in this State, or if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this State if:

(A) The individual's service is performed entirely within the State;

(B) The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

(C) Some of the service is performed in the State and the base of

operations or if there is no base of operations, the place from which the service is directed or controlled is in the State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale.

(17) Sales, other than sales of tangible personal property, are in this State if:

(A) The income-producing activity is performed in this State; or

(B) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this definition do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition the Secretary of Revenue or the Secretary of Revenue may require, in respect to all or any part of the taxpayer's business activity:

(A) Separate accounting;

(B) The exclusion of any one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Railroad, Truck, Bus or Airline Companies.

(1) All business income of railroad, truck, bus or airline companies shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which is the taxpayer's total revenue miles within this Commonwealth during the tax period and the denominator of which is the total revenue miles of the taxpayer everywhere during the tax period. For purposes of this subsection revenue mile shall mean the average receipts derived from the transportation by the taxpayer of persons or property one mile. Where revenue miles are derived from the transportation of both persons and property, the revenue mile fractions attributable to each such class of transportation shall be computed separately, and the average of the two fractions, weighted in accordance with the ratio of total receipts from each such class of transportation everywhere to total receipts from both such classes of transportation everywhere, shall be used in apportioning income to this Commonwealth.

(2) Nonbusiness income of railroad, truck, bus or airline companies shall be allocated as provided in paragraphs (5) through (8) of clause (a) of subclause 2 of the definition of net income.

(c) Pipeline or Natural Gas Companies.

(1) All business income of pipeline companies shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which is the revenue ton miles, revenue barrel miles or revenue cubic feet miles within this Commonwealth during the tax period and the denominator of which is the total revenue ton miles, revenue barrel miles or the revenue cubic feet miles of the taxpayer everywhere during the tax period. For purposes of this subsection a revenue ton mile, revenue barrel mile or a revenue cubic foot mile shall mean respectively the receipts derived from the transportation by the taxpayer of one ton of solid property, one barrel of liquid property or one cubic foot of gaseous property transported one mile.

(2) All business income of natural gas companies subject to regulation by the Federal Power Commission or by the Pennsylvania Public Utility Commission shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which shall be the cubic foot capacity of the taxpayer's pipelines in this Commonwealth, and the denominator of which shall be the cubic foot capacity of the taxpayer's pipelines everywhere, at the end of the tax period. For the purpose of this subsection, the cubic foot capacity of a pipeline shall be determined by multiplying the square of its radius (in feet) by its length (in feet).

(3) Nonbusiness income of pipeline companies or natural gas companies subject to regulation by the Federal Power Commission or by the Pennsylvania Public Utility Commission shall be allocated as provided in paragraphs (5) through (8) of clause (a) of subclause 2 of the definition of net income.

(d) Water Transportation Companies.

(1) Water Transportation Companies Operating on High Seas. All business income of water transportation companies operating on high seas shall be apportioned to this Commonwealth by multiplying the business income by a fraction, the numerator of which is the number of port days spent inside the Commonwealth and the denominator of which is the total number of port days spent inside and outside of the Commonwealth. The term "port days" does not include periods when the ships are not in use because of strikes or withheld from service for repair or because of seasonal reduction of services. Days in port are computed by dividing the aggregate number of hours in all ports by twenty-four.

(2) Water Transportation Companies Operating in Inland Waters. All business income of water transportation companies operating on inland waters shall be apportioned to this Commonwealth by multiplying the business income by a fraction, the numerator of which is the taxpayer's

total revenue miles within this Commonwealth during the tax period and the denominator of which is the total revenue miles of the taxpayer everywhere during the tax period. In the determination of revenue miles, one-half of the mileage of all navigable waterways bordering between the Commonwealth and another state shall be considered Commonwealth miles. For purposes of this subclause, revenue miles shall mean the revenue receipts derived from the transportation by the taxpayer of persons or property one mile.

(3) Nonbusiness income of water transportation companies shall be allocated as provided in paragraphs (5) through (8) of clause (a) of subclause 2 of the definition of net income.

3. In case the entire business of a corporation which has filed a timely election and has qualified to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954, as amended, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the net income of such corporation for the fiscal or calendar year as defined in subclause 1 hereof, as shall be attributable to business transacted within this Commonwealth by multiplying such net income by a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities, where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

(4) "Person." Every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to associations, shall mean the partners or members thereof, and as applied to corporations the officers thereof.

PART II IMPOSITION OF TAX

Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of doing business in this Commonwealth, or having capital or property employed or used in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association, or corporation, a State excise tax at the rate of twelve per cent per annum upon each dollar of net income of such corporation received by, and accruing to, such corporation during the calendar year 1971 and each year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year, and has

certified such fact to the department as required by section 403 of this article, in which case, such tax, at the rate of twelve per cent, shall be levied, collected, and paid upon all net income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1971 and ending in the calendar year 1972 and during each fiscal year thereafter.

PART III REPORTS AND PAYMENT OF TAX

Section 403. Reports and Payment of Tax.—(a) For the purpose of ascertaining the amount of tax payable under this article, it shall be the duty of every corporation, liable to pay tax under this article, on or before April 15, 1972, and each year thereafter, to transmit to the department, upon a form prescribed, prepared and furnished by the department, an annual report under oath or affirmation of its president, vice-president or other principal officer, and of its treasurer or assistant treasurer of net income taxable under the provisions of this article. Such report shall set forth:

(1) A true copy of its return to the Federal Government of the annual net income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate;

(2) If no return was filed with the Federal Government the report made to the department shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the department may require.

(b) For the purpose of ascertaining the amount of tax payable under this article for the taxable year 1971, and each taxable year thereafter, it shall be the duty of every corporation liable to pay tax under this article, on or before April 30, 1971, and on or before the end of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, and each year thereafter, to transmit in like form and manner an additional tentative report and make payment pursuant to the provisions of the act of March 16, 1970 (P.L. 180).

(c) The amount of all taxes, imposed under the provisions of this article, not paid on or before the times as above provided, shall bear interest at the rate of six per cent per annum from the date they are due and payable until paid, except that if the taxable income has been, or is increased by the Commissioner of Internal Revenue, or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute a petition for resettlement, a petition for

review, or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it in the manner prescribed by law.

(d) If the officers of any corporation shall neglect, or refuse to make any report as herein required, or shall knowingly make any false report, the following percentages of the amount of the tax shall be added by the department to the tax determined to be due on the first one thousand dollars (\$1,000) of tax ten per cent, on the next four thousand dollars (\$4,000) five per cent, and on everything in excess of five thousand dollars (\$5,000) one per cent, no such amounts added to the tax shall bear any interest whatsoever.

(e) If any corporation closes its fiscal year not upon December 31, but upon some other date, and reports to the Federal Government as of such other date, or would so report were it to make a return to the Federal Government, such corporation shall certify such fact to the department, and shall make the annual report, herein required, within thirty days after the return to the Federal Government is due, or would be due were it to be required of such corporation, subject in all other respects to the provisions of this article. The tentative report required of such corporation shall be due not later than four months after the end of the next preceding fiscal year.

(f) If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the net income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified.

Section 404. Consolidated Reports.—The department shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations, subject to the provisions of this article, to make a consolidated report, showing the combined net income.

Section 405. Extension of Time to File Reports.—The department may, upon application made to it, in such form as it shall prescribe, on or prior to the last day for filing any annual report, and upon proper cause shown, grant to the corporation, required to file such report, an extension of not more than sixty days within which such report may be filed, and in case the Federal income tax authorities at any time grant a longer extension of time for filing such reports with the Federal Government, the department may grant an additional extension of time for filing the annual report under this article of not more than thirty days after the termination of the Federal extension, but the amount of tax due shall, in such cases, nevertheless, be subject to interest from the due dates and at the rates fixed by this article.

Section 406. Changes Made by Federal Government.—(a) If the amount of the net income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of

Internal Revenue or by any other agency or court of the United States, such corporation, within thirty days after the receipt of such final change or correction, shall make a corrected report, under oath or affirmation, to the department showing such finally changed or corrected net income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of such correction, which results in an increase in net income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, there should be any change made in the amount of the net income of any corporation upon which tax is imposed by this article, the department shall have the power, and its duty shall be to resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General, as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue, as in the case of original settlements.

(c) Where a report of change, correction, or redetermination of Federal income, or Federal tax, has been filed after a petition for review, or an appeal has been taken, such report shall be deemed a part of the original annual report upon petition of the taxpayer at any subsequent proceeding as though it had been filed with such original report, and no separate petition for review or appeal from the resettlement resulting from such report of change, correction, or redetermination shall be necessary.

(d) The provisions of this section shall not be construed so as to permit a resettlement based upon the allowance of any deduction on account of net operating losses, sustained in other fiscal or calendar years, that are not allowed as deductions under the definition of "net income" as contained in this article.

(e) The provisions of this section shall apply to every corporation which was doing business in Pennsylvania in the year for which the Federal income has been changed, irrespective of whether or not such corporation has thereafter merged, consolidated, withdrawn or dissolved. Any clearance certificate issued by the department shall be conditioned upon the requirement that in the event of a change in Federal income for any year for which taxes have been paid to the Commonwealth, the corporation or its successor or its officers or its directors shall file with the department a report of change and pay any additional State tax resulting therefrom.

PART IV
SETTLEMENT AND RESETTLEMENT

Section 407. Settlement and Resettlement.—(a) All taxes due under this article shall be settled by the department, and such settlement shall be subject to audit and approval by the Department of the Auditor General, and shall, so far as possible, be made so that notice thereof may reach the taxpayer before the end of two years after the tax report was required to be made.

(b) Promptly after the date of any such settlement, the department shall send, by mail or otherwise, a copy thereof to such corporation. The tax imposed by this article shall be settled, resettled, and otherwise imposed and adjusted in the same manner, within the same periods of time, and right of resettlement, review, appeal, and refund, as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

(c) If, within a period of one year after the date of any settlement, the department is not satisfied with such settlement, or if at any time the net income as returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States with the result that tax, in addition to the amount paid, is due under this article, the department is hereby authorized and empowered to make a resettlement of the tax due by such corporation, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.

Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made.

The resettlement shall be subject to audit and approval by the Department of the Auditor General as in the case of original settlement, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue as in the case of original settlements.

(d) If any corporation shall neglect or refuse to make any report and payment of tax required by this article, the department shall estimate the tax due by such corporation and subject to audit and approval by the Department of the Auditor General, settle the amount due by it for taxes, penalties, and interest thereon as prescribed herein, from which settlement there shall be no right of review or appeal, but the department, with the approval of the Department of the Auditor General, may require a report to be filed, and thereupon make a settlement based upon such report and cancel the estimated settlement.

PART V
ENFORCEMENT: RULES AND REGULATIONS;
INQUISITORIAL POWERS OF THE DEPARTMENT

Section 408. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.—(a) The department is hereby charged with the enforcement of the provisions of this article, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations, not inconsistent with this article, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article, and the collection of taxes, penalties, and interest imposed by this article. The department is hereby required to have such rules and regulations, promulgated and adopted, printed and shall distribute the same to any person upon request.

(b) The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and settle the tax imposed by this article. Every such corporation is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this article, shall be confidential, except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than six months, or both.

(c) Whenever any person, acting for or on behalf of the department, shall in good faith institute legal proceedings for any violations of the provisions of this article, and for any reason shall fail to recover costs of record, such costs shall be a charge upon the proper county, as shall such costs in the event defendant is imprisoned for failure to pay fine or costs, or both, and shall be audited and paid as are costs of like character in said county.

(d) The powers, conferred by this article upon the department, relating to the administration or enforcement of this article, shall be in addition to, but not exclusive of, any other powers heretofore or hereafter conferred upon the department by law.

PART VI
RETENTION OF RECORDS BY CORPORATION

Section 409. Retention of Records.—Each corporation shall maintain and keep for a period of three years after any report is filed under this article, such record or records of its business within this Commonwealth for the period covered by such report and other pertinent papers, as may be required by the department.

PART VII
PENALTIES

Section 410. Penalties.—(a) Any person violating any of the provisions of section 409 shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than six months, or both.

(b) Any person who shall wilfully make a false and fraudulent return of net income made taxable by this article, shall be guilty of wilful and corrupt perjury, and, upon conviction thereof, shall be subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this article.

(c) Any person, who wilfully fails, neglects, or refuses to make a report or to pay the tax as herein prescribed, or who shall refuse to permit the department to examine the books, papers, and records of any corporation liable to pay tax under this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding six months, or both. Such penalty shall be in addition to any other penalties imposed by this article.

PART VIII
REPEALER; EFFECTIVE DATE

Section 411. Repeal.—The act of May 16, 1935 (P.L.208), known as the “Corporate Net Income Tax Act,” is repealed.

Section 412. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE V
CORPORATION INCOME TAX

PART I
DEFINITIONS

Section 501. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Corporation.” A corporation having capital stock, joint-stock

association or limited partnership, either organized under the laws of this Commonwealth, the United States, or any other state, territory or foreign country or dependency, and carrying on activities in this Commonwealth, or owning property in this Commonwealth by or in the name of itself or any person, partnership, association, limited partnership, joint-stock association, or corporation. The word "corporation" shall not include nonprofit corporations, building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies.

(2) "Department." The Department of Revenue of this Commonwealth.

(3) "Net income."

1. Net income shall be defined as set forth in Article III.

2. In the case of corporations owning property or carrying on activities within and without this Commonwealth, the net income of such corporations derived from sources within this Commonwealth for the fiscal or calendar year shall be determined by allocations and apportionments of net income as set forth in Article III.

(4) "Sources within this Commonwealth" includes tangible or intangible property located or having a situs in this Commonwealth and any activities carried on in this Commonwealth, regardless of whether carried on in intrastate, interstate or foreign commerce.

(5) "Carrying on activities" shall include every act, power or privilege exercised or enjoyed in this Commonwealth as an incident to, or by virtue of, the powers and privileges acquired by the nature of the corporate organization.

PART II IMPOSITION OF TAX

Section 502. Imposition of Tax.—Every corporation carrying on activities in this Commonwealth or owning property in this Commonwealth by or in the name of itself or any person, partnership, joint-stock association or corporation shall be subject to and shall pay a State property tax on net income derived from sources within this Commonwealth at the rate of twelve per cent per annum upon each dollar of such net income received by and accruing to such corporation during the calendar year 1971 and each year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year and has certified such fact to the department as required by section 403 of Article IV, in which case such tax at the rate of twelve per cent shall be levied, collected and paid upon each dollar of such net income received by and accruing to such corporation during the fiscal year commencing in the calendar year 1971 and each year thereafter: Provided, however, That such net income shall not include income for any period for which the corporation is subject to taxation under Article IV.

PART III
PROCEDURE; ENFORCEMENT; PENALTIES

Section 503. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

PART IV
REPEALER; EFFECTIVE DATE

Section 505. Repeal.—The act of August 24, 1951 (P.L.1417), known as the "Corporation Income Tax Law," is repealed.

Section 506. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE VI
CAPITAL STOCK--FRANCHISE TAX

PART I
VALUATION OF CAPITAL STOCK

Section 601. Valuation of Capital Stock.—Hereafter, except in the case of corporations of the first class, nonprofit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance, or trust companies, building and loan associations, and insurance companies, it shall be the duty of every corporation having capital stock, every joint-stock association, limited partnership, and every company whatsoever, now or hereafter organized or incorporated by or under any laws of this Commonwealth, and of every corporation, joint-stock association, limited partnership, and company whatsoever, now or hereafter incorporated or organized by or under the law of any other state or territory of the United States, or by the United States, or by any foreign government, and doing business in and liable to taxation within this Commonwealth or having capital or property employed or used in this Commonwealth by or in the name of any limited partnership or joint-stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner, to make annually a report in writing to the Department of Revenue on a form or forms to be prescribed and furnished by it setting forth in addition to any other information required by the Department of Revenue:

First. The amount of its capital stock at the close of the year for which report is made, together with the highest selling price per share, and the average selling price thereof during said year.

Second. Its debt account.

Third. Its income account, together with the disposition of any net income, and its profit and loss statement.

Fourth. Its general balance sheet.

Fifth. Its real estate and tangible personal property, if any, owned and permanently located outside of the Commonwealth, and value of the same; and the value of the property, if any, exempt from taxation.

Sixth. A valuation and appraisal, in the manner hereinafter provided, of the capital stock of the said corporation, company, joint-stock association, or limited partnership, at its actual value in cash as it existed at the close of the year for which the report is made.

The affidavit of two of the officers of such corporation, limited partnership, joint-stock association or company, shall be attached to said report. Such affidavit shall be in the form required by the Department of Revenue, but shall state, in addition to any other averments required by the department, that, with fidelity and according to the best of their knowledge and belief, the affiants have estimated, valued and appraised, as shown in said report, the capital stock of the said corporation at its actual value in cash as it existed at the close of the year for which report is made; taking into consideration, first, the average which said stock sold for during the year; and second, the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends, expended in betterments, or carried into the surplus or sinking fund; and third, the actual value indicated or measured by consideration of the intrinsic value of its tangible property and assets, and of the value of its good will and franchises and privileges, as indicated by the material results of their exercise, taking also into consideration the amount of its indebtedness.

The time for filing annual reports may be extended; taxpayers may be permitted to file their annual and tentative reports on a fiscal year basis; the procedure in case the Department of Revenue is not satisfied with the appraisal made by the officers of the taxpayer, and the penalties for failing to file reports and pay taxes shall be as prescribed by law.

PART II IMPOSITION OF TAX

Section 602. Imposition of Tax.—(a) That every domestic corporation other than corporations of the first class, nonprofit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, and every joint-stock association, limited partnership, and company whatsoever, from which a report is required under section 601 hereof, shall be subject to, and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a tax

at the rate of ten mills, upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed in section 601, for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, except that any domestic corporation, limited partnership, joint-stock association or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602.

(b) Every foreign corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under section 601 hereof, shall be subject to and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a franchise tax at the rate of ten mills for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, upon a taxable value to be determined in the following manner. The actual value of its whole capital stock of all kinds, including common, special, and preferred, shall be ascertained in the manner prescribed in section 601 of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV.

The provisions of this subsection shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes.

(c) It shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association, or limited partnership, upon which a tax is imposed by this section, to transmit the amount of said tax to the Department of Revenue within the time prescribed by law: Provided, That for the purposes of this act interest in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly: Provided, further, That corporations, limited partnerships, and joint-stock associations, liable to a tax under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them and in which the whole body of stockholders or members, as such, have the entire equitable interest in remainder; but corporations, limited partnerships, and joint-stock associations, owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders or members thereof as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals.

(d) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute said tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the actual value of its whole capital stock. If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

The term "holding company" shall mean any corporation (i) at least ninety per cent of the gross income of which for the taxable year is derived from dividends, interest, gains from the sale or other disposition of stock or securities and the rendition of management and administrative services to subsidiary corporations, and (ii) at least sixty per cent of the actual value of the total assets of which consists of stock securities or indebtedness of subsidiary corporations.

The term "subsidiary corporation" shall mean any corporation, a majority of the total issued and outstanding shares of voting stock of which are owned by the taxpayer corporation directly or through one or more intervening subsidiary corporations.

(e) Notwithstanding any other provisions contained in this section 602, relating to the appraisal, allocation or apportionment of the value of the capital stock of a corporation subject to tax in the Commonwealth of Pennsylvania, every domestic corporation and every foreign corporation registered to do business in Pennsylvania and (i) which maintains an office in Pennsylvania and (ii) which has filed a timely election to be taxed as a regulated investment company with the Federal Government and (iii) which duly qualifies to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954 as amended, shall be taxed as a regulated investment company and shall be subject to the capital stock or franchise tax imposed by section 602, which tax shall be computed in the following manner:

(1) The value of its capital stock shall be determined by adding its net asset values as of the last day of each month during the taxable period or year and dividing the total sum by the number of months involved, for which purpose net asset value means the actual market value of all assets owned by such corporation without any exemptions or exclusions less all of its liabilities, debts and other obligations.

(2) The proportion of such value taxable in this Commonwealth at the rate of ten mills, shall be determined by applying to such value a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

(3) Any regulated investment company shall have the right annually, to elect to compute its capital stock or franchise tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the capital stock value of such corporation. If exercised this election shall be in lieu of any other apportionment or allocation to which such corporation would otherwise be entitled.

PART III
PROCEDURE; ENFORCEMENT; PENALTIES

Section 603. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI, and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

PART IV
REPEAL; EFFECTIVE DATE

Section 605. Repeal.—Sections 20 and 21, act of June 1, 1889 (P.L.420), entitled “A further supplement to an act entitled ‘An act to provide revenue by taxation,’ approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine,” are repealed.

Section 606. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE VII
BANK SHARES TAX

PART I
IMPOSITION OF TAX

Section 701. Imposition of Tax.—Every bank or savings institution having capital stock, incorporated by or under any law of this Commonwealth or under any law of the United States, and located within this Commonwealth, shall, on or before April 15 in each and every year, make to the Department of Revenue a report in writing, verified as required by law, setting forth the full number of shares of the capital stock subscribed for or issued, as of the preceding January 1, by such bank or savings institution having capital stock, and the actual value thereof as of the preceding January 1, which actual value shall be ascertained as hereinafter provided. It shall be the duty of the Department of Revenue to assess such shares for the calendar year beginning January 1, 1971, and each year thereafter, at the rate of fifteen mills upon each dollar of actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus, and undivided profits, and dividing this amount by the number of shares. It shall be the duty of every bank or savings institution having capital stock, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar year beginning January 1, 1971, and each year thereafter,

such bank or savings institution having capital stock, upon the date its report, herein required is made for such calendar year beginning January 1, 1971, and each year thereafter, shall pay to the Department of Revenue not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year, and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That in case any bank or savings institution having capital stock, incorporated under the law of this State or of the United States, shall collect, annually, from the shareholders thereof said tax of fifteen mills, on the dollar upon the actual value of all the shares of stock of said bank or savings institution, according to the provisions of this article, that have been subscribed for or issued, and pay the same into the State Treasury, through the Department of Revenue, the shares, and so much of the capital and profits of such bank or savings institution having capital stock as shall not be invested in real estate, shall be exempt from local taxation under the laws of this Commonwealth; and such bank or savings institution having capital stock shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation and shall not be required to pay any tax thereon.

PART II PROCEDURE; ENFORCEMENT; PENALTIES

Section 702. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

PART III REPEALER; EFFECTIVE DATE

Section 705. Repeal.—Clause 1 of section 1, act of July 15, 1897 (P.L.292), entitled “An act to provide revenue by taxation,” is repealed.

Section 706. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE VIII TITLE INSURANCE AND TRUST COMPANIES SHARES TAX

PART I IMPOSITION OF TAX

Section 801. Imposition of Tax.—Every company incorporated under the provisions of section 29 of an act, entitled “An act to provide for the incorporation and regulation of certain corporations,” approved April 29, 1874, and its supplements, or any other act of Assembly heretofore or

hereafter approved, for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and encumbrances, and every company entitled to benefits of, and every company having any of the powers of, companies entitled to the benefits of an act, entitled "An act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies, the powers and privileges of companies incorporated under the provisions of section 29 of an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, and of the supplements thereto," approved June 27, 1895, commonly known as title insurance or trust companies, and every company organized as a bank and trust company or as a trust company under any act of Assembly heretofore or hereafter approved, except any such companies, all of the shares of capital stock of which (other than shares necessary to qualify directors) are owned by a company which is liable to pay to the Commonwealth a tax on shares, shall, on or before April 15 in each and every year, make to the Department of Revenue a report in writing, setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the actual value thereof as of January 1 preceding, which shall be ascertained as hereinafter provided. It shall be the duty of the Department of Revenue, to assess such shares for taxation at the rate of fifteen mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus, and undivided profits, and dividing this amount by the number of shares.

It shall be the duty of every such company, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar year beginning January 1, 1971, and each year thereafter, every such company shall, at the time of making its report for the calendar year beginning January 1, 1971, and each year thereafter, compute the tax and pay to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders, not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That upon the payment of the tax fixed by this act into the State Treasury, through the Department of Revenue, the shares and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth. The procedure, in case the Department of Revenue be not satisfied with the report made by any title insurance or trust company, and the penalties for failing to make such report and pay the tax, shall be as provided by law.

PART II
PROCEDURE; ENFORCEMENT; PENALTIES

Section 802. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article insofar as they are applicable to the tax imposed hereunder.

PART III
REPEALER; EFFECTIVE DATE

Section 805. Repeal.—Section 1, act of June 13, 1907 (P.L.640), entitled “An act to provide revenue by levying a tax upon the shares of stock of companies incorporated under the provisions of section twenty-nine of an act, entitled ‘An act to provide for the incorporation and regulation of certain corporations,’ approved April twenty-ninth, one thousand eight hundred and seventy-four, and the supplements thereto; for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and encumbrances; and of companies entitled to the benefits of, and of companies having any of the powers of, companies entitled to the benefits of an act, entitled ‘An act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies the powers and privileges of companies incorporated under the provisions of section twenty-nine of an act, entitled “An act to provide for the incorporation and regulation of certain corporations,” approved April twenty-ninth, Anno Domini one thousand eight hundred and seventy-four, and of the supplements thereto,’ approved June twenty-seventh, one thousand eight hundred and ninety-five, commonly known as title insurance or trust companies,” is repealed.

Section 806. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE IX
INSURANCE PREMIUMS TAX

PART I
DEFINITIONS

Section 901. Definitions.—The following terms, when used in this act, shall have the meaning ascribed to them in this section:

(1) “Insurance company” means every insurance company, association or exchange, incorporated or organized by or under the laws of this Commonwealth, the United States, territories, dependencies, other states, or foreign governments, and engaged in transacting insurance

business of any kind or classification within this Commonwealth, except purely mutual beneficial associations whose funds for the benefit of members and families or heirs are made up entirely of the weekly, monthly, quarterly, semi-annual or annual contributions to their members and the accumulated interest thereon and corporations organized under the act of June 21, 1937 (P.L.1948), known as the "Nonprofit Hospital Plan Act," and the act of June 27, 1939 (P.L.1125), known as the "Nonprofit Medical, Osteopathic, Dental and Podiatry Service Corporation Act."

(2) "Gross premiums" means premiums, premium deposits or assessments received by any insurance company, whether received in money or in the form of notes, credits, or any other substitutes for money, and whether collected in this Commonwealth or elsewhere. Gross premiums shall not include: (i) amounts returned on policies canceled or not taken; (ii) premiums received for reinsurance; (iii) in the case of mutual insurance companies, associations, exchanges, and stock companies with participating features, that portion of the advanced premiums, premium deposits or assessments returned in cash or credited to members or policyholders, whether as dividends, earnings, savings, or return deposits, upon the expiration or termination of their contracts; and (iv) notes or other obligations received by mutual insurance companies to secure contingent premium liabilities to the extent that no assessment has been made and collected against said notes or obligations.

PART II IMPOSITION OF TAX

Section 902. (a) Imposition of Tax.—Every insurance company, as herein defined, transacting business in the Commonwealth of Pennsylvania, shall pay to the department, a tax at the rate of two per cent of the gross premiums received from business done within this Commonwealth during each calendar year, except that any insurance company which was not subject to this tax prior to 1971 shall be taxed at the rate of one per cent for the year 1971 and thereafter at the rate of two per cent.

(b) Disposition of Taxes.—The taxes paid by foreign fire insurance companies under this act shall continue to be distributed and used for firemen's relief pension or retirement purposes, as provided by section two of the act, approved the twenty-eighth day of June, one thousand eight hundred ninety-five (Pamphlet Laws 408), as amended; and the taxes paid by foreign casualty insurance companies under this act shall continue to be distributed and used for police pension, retirement or disability purposes as provided by the act, approved the twelfth day of May, one thousand nine hundred forty-three (Pamphlet Laws 259), as amended.

All other taxes received under this act shall be credited to the General Fund for general revenue purposes.

PART III
ANNUAL REPORT

Section 903. Annual Report.—Every insurance company shall make a report to the department on a form prescribed by it on or before April 15 of each year, showing the gross premiums received from business transacted in the Commonwealth during the year ending December 31 preceding. When making such report, the insurance company shall compute and pay to the Commonwealth the tax upon the gross premiums received from business transacted within this Commonwealth during such preceding year.

PART IV
PROCEDURE; ENFORCEMENT; PENALTIES

Section 904. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

PART V

Section 905. Repeal.—The act of February 21, 1961 (P.L.33), entitled “An act imposing a State tax on gross premiums, premium deposits, and assessments received from business transacted within this Commonwealth by certain insurance companies, associations, and exchanges; requiring the filing of annual and tentative reports and the computation and payment of tax; providing for the rights, powers and duties of the Department of Revenue, the taxpayers and officers thereof; and providing penalties,” is repealed.

Section 906. Effective Date.—This article shall take effect immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE X
CAPITAL STOCK TAX ON FOREIGN CORPORATIONS

PART I
DEFINITIONS

Section 1001. Definitions.—The following terms when used in this article shall have the meanings ascribed to them in this section:

(1) “Foreign corporation” means any corporation, limited partnership or joint-stock association chartered or created by or under the laws of any other state or of the United States or of any foreign country, which has been issued a certificate of authority by the Department of State to do

business within this Commonwealth and which either (i) has its principal office or chief place of business located within this Commonwealth, or (ii) has any part of its capital actually employed within this Commonwealth. The term "foreign corporation" shall not include foreign insurance companies and foreign nonprofit corporations which do not have capital stock.

(2) "Increase of capital" means, (i) as to foreign corporations doing business in this Commonwealth, any increase of capital in excess of the amount actually employed in this Commonwealth at any time prior to January 1, 1971 by such corporations reporting on a calendar year basis, or at any time prior to the first day of any fiscal year, beginning in the calendar year 1971, by such corporations reporting on a fiscal year basis; (ii) as to corporations admitted to do business in this Commonwealth after the effective date of this article, capital actually employed within this Commonwealth at the time of or after receiving a certificate of authority to do business from the Department of State and any increase thereof.

PART II IMPOSITION OF TAX

Section 1002. Imposition of Tax.—From and after the effective date of this article, every foreign corporation, in addition to complying with all the laws of the Commonwealth now or hereafter in effect, shall, for the privilege of exercising its franchises in Pennsylvania, pay to the department an excise tax of one-third of one per cent upon the amount of any increase of capital actually employed within this Commonwealth: Provided, That credit shall be allowed for said excise tax in the following cases:

(1) Merger of domestic corporation or corporations and/or foreign corporation or corporations with a foreign corporation and the surviving foreign corporation in the merger is then authorized, or will immediately thereafter be authorized, by a certificate of authority to transact business in this Commonwealth.

(2) Consolidation of two or more foreign corporations or of domestic and foreign corporations (one or more of each), and the corporation formed by the consolidation is a foreign corporation which is then authorized, or will immediately thereafter be authorized, by a certificate of authority to transact business in this Commonwealth.

In such cases, the surviving or consolidated foreign corporation shall be entitled to credit upon any excise tax due and payable hereunder equal to the excise tax computed at the rate of one-third of one per cent on the value of the assets of the merging or consolidating foreign corporation or corporations actually employed by such surviving or consolidated foreign corporation within this Commonwealth within the provisions and intent of this article, and such proportion of the total excise tax of the merging

or consolidating domestic corporation or corporations paid or relieved from payment on its authorized or issued and outstanding capital stock, determined by the ratio that the value of the assets of such domestic corporation or corporations actually employed by such surviving or consolidated foreign corporation within this Commonwealth within the provisions and intent of this article bears to the value of the total assets of such domestic corporation.

(3) In arriving at the amount of tax due under this article, a taxpayer shall apportion the increase in capital by the use of the formula applicable to the operations of the corporation as set forth in section 401.

PART III REPORTS

Section 1003. Initial and Annual Report.—Every foreign corporation shall annually file a report with the department for information purposes on a form prescribed by the department stating (i) the state or country in which incorporated or created, (ii) the date of incorporation or organization, (iii) location of its chief office in this Commonwealth, (iv) the name and address of its president and treasurer, (v) the greatest amount of capital actually employed within this Commonwealth during the preceding calendar or fiscal year, (vi) the greatest amount of capital actually employed within this Commonwealth at any time prior to the preceding calendar or fiscal year, and (vii) such other information as the department shall require for the purpose of this article.

PART IV PROCEDURE; ENFORCEMENT; PENALTIES

Section 1004. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

PART V REPEALER; EFFECTIVE DATE

Section 1005. Repeal.—The act of July 25, 1953 (P.L.560), entitled “An act to provide revenue for State purposes by imposing an excise tax upon any increase in capital, as defined, actually employed in Pennsylvania, by any foreign corporation, limited partnership or joint-stock association; requiring the filing of reports; providing for rights, powers and duties of the Department of Revenue, the taxpayers and officers thereof; imposing interest and penalties; and repealing a certain act relating to foreign corporations, limited partnerships and joint-stock associations,” is repealed.

Section 1006. Effective Date.—This article shall take effect

immediately, and the tax imposed shall apply to taxable years beginning January 1, 1971 and thereafter.

ARTICLE XI
UTILITIES GROSS RECEIPTS TAX

PART I
IMPOSITION OF TAX

Section 1101. Imposition of Tax.—Every railroad company, pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any railroad, pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except taxicabs, motor buses and motor omnibuses, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company, express company, electric light company, waterpower company, hydro-electric company, gas company, palace car company and sleeping car company, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone, telegraph, express, electric light and power, waterpower, hydro-electric, gas, palace car or sleeping car business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from passengers, baggage, and freight transported wholly within this State, from telegraph or telephone messages transmitted wholly within this State, from express, palace car or sleeping car business done wholly within this State, or from the sales of electric energy or gas, except gross receipts derived from sales of gas to any municipality owned or operated public utility and except gross receipts derived from the sales for resale of electric energy or gas, to persons, partnerships, associations,

corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale and from the transportation of oil done wholly within this State. The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas. The said tax shall be paid within the time prescribed by law, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, copartnership, limited partnership, association, joint-stock association or corporation, or person or persons, to transmit to the Department of Revenue on or before April 15 of each year an annual report, and under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, associations, joint-stock associations, limited partnerships, person or persons, derived from all sources, and of gross receipts from business done wholly within this State, during the period of twelve months immediately preceding January 1 of each year. It shall be the further duty of the treasurer or other proper officer of every such corporation or association and every individual liable by law to report or pay said tax, except municipalities, to transmit to the Department of Revenue on or before April 30 of each year, a tentative report in like form and manner for each twelve month period beginning January 1, of each year. The tentative report shall set forth (i) the amount of gross receipts received in the period of twelve months next preceding and reported in the annual report; or (ii) the gross receipts received in the first three months of the current period of twelve months; and (iii) such other information as the Department of Revenue may require.

Upon the date its tentative report is required to be made, the corporation, association or individual making the report shall compute and pay to the Department of Revenue on account of the tax due for the current period of twelve months, at its election (i) for the year 1971 not less than twenty-nine and one-third mills of the dollar amount of its gross receipts reported for the entire preceding period of twelve months; or (ii) for the year 1971 not less than one hundred and seventeen and one-third mills of the dollar amount of its gross receipts received within the first three months of the current period of twelve months.

The time for filing reports may be extended, estimated settlements may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the tax shall be as prescribed by the laws defining the powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed by this section shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock

associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable under this section for any tax upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

This article shall be construed to apply to municipalities, and to impose a tax upon the gross receipts derived from any municipality owned or operated public utility or from any public utility service furnished by any municipality, except that gross receipts shall be exempt from the tax, to the extent that such gross receipts are derived from business done inside the limits of the municipality, owning or operating the public utility or furnishing the public utility service.

PART II PROCEDURE; ENFORCEMENT; PENALTIES

Section 1102. Procedure; Enforcement; Penalties.—Parts III, IV, VI, and VII of Article IV are incorporated by reference into this article in so far as they are consistent with this article and applicable to the tax imposed hereunder.

PART III REPEALER

Section 1103. Repeal.—Section 23, act of June 1, 1889 (P.L.420), entitled “A further supplement to an act entitled ‘An act to provide revenue by taxation,’ approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine,” is repealed.

ARTICLE XII GENERAL PROVISIONS

Section 1201. Saving Clause.—(a) Notwithstanding anything contained in any law to the contrary, the validity of any ordinance or part of any ordinance or any resolution or part of any resolution, and any amendments or supplements thereto now or hereinafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this code.

(b) Nothing contained in this code shall be construed to relieve any person, corporation or other entity from the filing returns or from any taxes, penalties or interest imposed by the provisions of any laws which were in effect prior to being repealed by this code, or effect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws or prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of taxes, penalties or interest due to the Commonwealth under any of the laws which were in effect prior to being repealed by this code.

Section 1202. Constitutional Construction.—If any word, phrase, clause, sentence, section or provision of this code is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this code. It is hereby declared as the legislative intent that this code would have been adopted had such unconstitutional word, phrase, clause, sentence, section or provision thereof not been included herein.

Section 1203. Effective Date.—The provisions of this code, except as otherwise specified, shall take effect immediately.

APPROVED—The 4th day of March, 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 2.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent "T" at the end.

Secretary of the Commonwealth.