

No. 1983-66

AN ACT

SB 302

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act 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," establishing the rate of tax on shares of banks, title insurance companies, bank and trust companies and trust companies; providing for the determination of the value of such shares and the exclusion of obligations of the United States in ascertaining the value of shares on the basis of a ratio of such obligations to total assets; imposing a single excise tax on certain banks, title insurance companies, bank and trust companies and trust companies; providing for franchise tax alternatives; codifying and amending the mutual thrift institutions tax; making technical and conforming corrections and changes; and making repeals.

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

Section 1. Section 701 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended to read:

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] years** beginning January 1, 1971 *through January 1, 1983, [and each year thereafter,]* at the rate of fifteen mills *and for the calendar year beginning January 1, 1984 and each year thereafter at the rate of one and seventy-five one thousandths per cent* 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.

Section 2. Section 701.1 of the act, added December 17, 1982 (P.L.1385, No.317), is amended to read:

Section 701.1. **[Construction of Tax.—The tax hereby imposed shall be a tax 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 the bank or savings institution, or by or in the name of any person, partnership, association, limited partnership, joint-stock association, or corporation holding shares of the capital stock of any such bank or savings institution, measured by the actual value of each share of capital stock as ascertained in the manner provided by section 701.]** *Ascertainment of Value; Exclusion of United States Obligations.—The value of shares shall be ascertained and fixed pursuant to section 701 by adding together the book value of capital stock paid in, the book value of the surplus and the book value of undivided profits with a deduction from the total thereof of an amount equal to the same percentage of such total as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this section, book values and deductions for United States obligations shall be determined by the Reports of Condition for each calendar quarter of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority; and book values shall be averaged as calculated by averaging book values as determined by such Reports of Condition. For purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124.*

Section 3. Section 801 of the act is amended to read:

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 *for calendar years beginning January 1, 1971 through January 1, 1983*, at the rate of fifteen mills *and for the calendar year beginning January 1, 1984 and each year thereafter at the rate of one and seventy-five one thousandths per cent* 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] the** undivided profits *and the unearned premium reserve*, 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.

Section 4. Section 801.1 of the act, added December 17, 1982 (P.L.1385, No.317), is amended to read:

Section 801.1. **[Construction of Tax.—The tax hereby imposed shall be a tax for the privilege of doing business in this Commonwealth or having capital or property employed in this Commonwealth, by or in the name of the company or corporation or by or in the name of any person, partnership, association, limited partnership, joint-stock association, or corporation holding shares of the capital stock of any such company or corporation, measured by the actual value of each share of capital stock as ascertained in the manner provided by section 801: Provided, That the act is not intended to, and shall not, affect or repeal any deduction or exclusion heretofore applicable in measuring the actual value of each share of capital stock (except obligations of the United States) and shall not affect or repeal any exemption from other State or local taxations heretofore in effect.]** *Ascertainment of Value; Exclusion of United States Obligations.—The value of shares shall be ascertained and fixed pursuant to section 801 by adding together the book value of capital stock paid in, the book value of the surplus, the book value of undivided profits and the book value of the unearned premium reserve with a deduction from the total thereof of an amount equal to the same percentage of such total as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this section, in the case of banks and bank and trust companies, book values shall be determined by the Reports of Condition made in each calendar quarter in the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority and in the case of title insurance and trust companies which do not file such Reports of Condition, book values shall be determined by generally accepted accounting principles as of the end of each calendar quarter in the preceding calendar year and book values shall in all cases be averaged as calculated by averaging book values as determined by such Reports of Condition or as determined at the end of each calendar quarter in the case of title insurance and trust companies which do not file such Reports of Condition. For the purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124.*

Section 5. The act is amended by adding a section to read:

Section 801.2. Reserve for Loan Losses.—In ascertaining the value of each share of stock pursuant to section 801, the Department of Revenue shall not increase the undivided profits by the amount of the valuation reserve for loan losses reported by such company on its Report of Condition made at the end of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation pursuant to section 161, 324 or 1817(a) of Title 12 of the United States Code, as amended. The “valuation reserve for loan losses” shall mean, in the case of a company which is an insured bank under the Federal Deposit Insurance Corporation Act, the amount deducted (under the caption of the reserve or

allowance for possible loan losses) from total loans on the Report of Condition prepared on the form and in accordance with the instructions of such Federal banking authorities and shall be binding on both the Department of Revenue and the company.

Section 6. Section 901 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

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 title insurance companies subject to tax under Article VIII *or XVI* of this act, *as the case may be*, 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.

Section 7. The act is amended by adding articles to read:

ARTICLE XIII
SINGLE EXCISE TAX ON CERTAIN BANKS,
TITLE INSURANCE COMPANIES, BANK AND
TRUST COMPANIES AND TRUST COMPANIES

Section 1301. Imposition of Tax.—There is hereby imposed for the calendar year 1983 a single excise tax, for the privilege of doing business in this Commonwealth, on each taxpayer subject to this article in the amount determined as hereinafter provided. The excise tax imposed by this article shall be in addition to taxes imposed by Article VII and Article VIII.

Section 1302. Taxpayers Subject to Tax.—*The taxpayers subject to this article shall be every bank having capital stock, title insurance company and bank and trust company and trust company which has refunds claimed or to be claimed or unpaid shares taxes subject to protest within the meaning of section 1303.*

Section 1303. Measurement of Tax.—*The tax payable by each taxpayer shall be calculated by multiplying the aggregate amount of the excise tax payable, as hereinafter provided, by all taxpayers subject to this article by a fraction, the numerator of which is the total of the refunds claimed or to be claimed and unpaid shares taxes subject to protest by each taxpayer subject to this article as a result of the decision of the Supreme Court of Pennsylvania in Dale National Bank v. Commonwealth, — Pa. —, 465 A.2d 965 (September 15, 1983) and the denominator of which is the total refunds claimed or to be claimed and unpaid shares taxes subject to protest by all taxpayers subject to this article as a result of such decision. Each reference to refunds or unpaid shares taxes in this article shall mean solely the refunds and unpaid shares taxes described in the preceding sentence and this article shall not affect refunds claimed or to be claimed or unpaid shares taxes subject to protest on any other basis or for any other reason and shall not impair any right or proceeding with respect to refunds claimed or to be claimed or unpaid shares taxes subject to protest which are not described in the preceding sentence.*

Section 1304. Publication of Total Refunds and Unpaid Shares Taxes Subject to Protest.—*Within thirty days after the effective date of this article, the Department of Revenue, referred to in this article as the “department,” shall publish in the Pennsylvania Bulletin a form for reporting the total refunds claimed or to be claimed and unpaid shares taxes subject to protest by each taxpayer subject to this article. Within thirty days after such publication, each taxpayer subject to this article shall file a report of (i) its total refunds claimed or to be claimed on the form prescribed by the department together with copies of the petitions or other documents in which such claims for refunds have been asserted and if such claims for refunds have not been asserted at the time the report is due, a statement of the amount of such claim to be asserted and (ii) its unpaid shares taxes subject to protest. As soon as practicable after receipt of such reports but not later than March 1, 1984, the department shall publish in the Pennsylvania Bulletin the total refunds claimed or to be claimed and unpaid shares taxes subject to protest by all taxpayers subject to this article. If any taxpayer subject to this article fails to make a timely filing of the report required by this section, the department shall calculate the refunds claimed or to be claimed and unpaid shares taxes subject to protest by such taxpayer by using refund petitions filed by such taxpayer. Notwithstanding the provisions of section 503 of the act of April 9, 1929 (P.L. 343, No. 176), known as “The Fiscal Code,” no claim for refund within the coverage of this article may be made except to the extent and in the amount set forth in the report filed or in the calculation made pursuant to this section after the due date of such report.*

Section 1305. Aggregate Amount of Excise Tax.—*The aggregate amount of the excise tax payable by all taxpayers subject to this article shall be equal to the total refunds claimed or to be claimed and the unpaid shares taxes subject to protest by all taxpayers subject to this article as may be determined and announced by the department in accordance with the provisions of this article. The purpose of this article is to provide revenues to the Commonwealth to match the anticipated revenues under Articles VII and VIII, as formerly in effect, which may be lost by reason of, or arising out of or supported by the interpretation of the provisions of such articles as construed by, the decision of the Supreme Court of Pennsylvania in Dale National Bank v. Commonwealth, — Pa. —, 465 A.2d 965 (September 15, 1983), and if for any reason no such revenues shall be lost, the tax imposed by this article shall be abated.*

Section 1306. Payment of Tax.—*The excise tax due under this article shall be payable on or before April 15, 1984 upon filing by each taxpayer of a report, in a form prescribed by the department, setting forth the computation of the tax. The amount of the tax payable by each taxpayer shall be computed on the basis of section 1303 using the maximum amount of the aggregate tax or such lesser amount as may have been announced by the department prior to the date of payment of the tax. No tax shall be payable and no report shall be required to be filed under this section if the department has announced that the entire tax has been abated prior to the date of payment of the tax.*

Section 1307. Credit for Refunds Due.—*Any taxpayer subject to this article shall be entitled to claim a credit against the tax due hereunder for the amount of the refunds it has asserted or intends to assert, provided the taxpayer submits with its tax report a statement withdrawing its petitions in which such claims for refunds are asserted or, if no petition for refund has been filed, waives its right to file such petition for refund. Such statement of withdrawal or waiver shall be in the form prescribed by the department.*

Section 1308. Additional Credit.—*Any taxpayer subject to this article who has paid a tax hereunder prior to an announcement by the department under which a lesser tax, or no tax, would be payable under this article shall be entitled to a credit or refund in the same manner as now provided by law for taxes paid under Articles VII and VIII.*

Section 1309. Applicability of Existing Law.—*The provisions of present laws for procedure, enforcement and penalties shall be applicable to the excise tax imposed hereunder.*

ARTICLE XIV

FRANCHISE SURTAX ALTERNATIVE ON BANKS

Section 1401. Definitions.—*The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:*

(1) “Adjusted net worth.” Net worth as adjusted pursuant to the provisions of section 1403.

(2) "Bank." Any bank 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.

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

(4) "Net worth." The sum of the book values of capital, surplus and undivided profits as determined under the accounting procedures used in reporting to the Federal Deposit Insurance Corporation or similar applicable deposit insurance institutions.

Section 1402. Imposition of Surtax.—(a) There is hereby imposed for the calendar year in which this article becomes effective, and for each calendar year thereafter, on banks for the privilege of doing business or having capital or property employed or used in this Commonwealth an annual-franchise surtax measured by adjusted net worth.

(b) The franchise surtax imposed by this section shall be an amount equal to the surtax rate for the calendar year multiplied by the bank's adjusted net worth. The surtax rate shall equal the tax rate contained in section 701 of Article VII multiplied by the surtax factor for such calendar year: Provided, That the surtax rate shall not be greater than eight per cent.

(c) The surtax factor for a calendar year is a fraction, the numerator of which is the total refunds of, and credits for, the tax imposed by Article VII prior to January 1, 1984 and resulting from the decision of the Supreme Court of Pennsylvania in *Dale National Bank v. Commonwealth*, — Pa. —, 465 A.2d 965 (September 15, 1983) authorized, approved or otherwise determined to be payable during such calendar year, and the denominator of which is 1.25 times the total amount of tentative tax paid under section 701 of Article VII for and during such calendar year.

(d) The surtax factor shall be calculated by the department and published in the *Pennsylvania Bulletin* as a notice pursuant to 45 Pa.C.S. § 725(a)(3) (relating to additional contents of *Pennsylvania Bulletin*). For a period of thirty days following such publication, the department shall, as permitted by law, make available for inspection by affected banks the information from which the surtax factor was calculated, excluding any information relating to the identity of any bank. Written objections and comments regarding the published surtax factor may be submitted by affected banks to the department during this thirty-day period. After considering such objections and comments, the secretary shall certify the surtax factor and cause it to be published in the *Pennsylvania Bulletin* as a notice pursuant to 45 Pa.C.S. § 725(a)(3). Any objection to the certified surtax factor may only be made in a petition for resettlement or a petition for refund.

(e) Every bank shall, on or before April 15 of the year following the year in which this article first applies, and each April 15 thereafter, pay the franchise surtax imposed by this section for the preceding calendar year to the department. Each such payment shall be accompanied by a report in writing, filed under oath or affirmation on the form provided by the department, setting forth the adjusted net worth of the bank for the preceding calendar year as provided in section 1403.

(f) *The franchise surtax imposed by this section shall be a tax obligation for the calendar year incurred and shall be additional to any other tax imposed by this act.*

(g) *Notwithstanding the provisions of section 503 of the act of April 9, 1929 (P.L. 343, No. 176), known as "The Fiscal Code," or the provisions of any other statute which may allow a more extended time for filing, no petition for refund of the tax imposed by Article VII for years prior to 1984 shall be timely unless said petition has been filed with the Board of Finance and Revenue within sixty days after the date on which this article takes effect.*

Section 1403. Computation of Adjusted Net Worth.—*The adjusted net worth of any bank shall be ascertained by deducting from net worth an amount equal to the same percentage of net worth as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this article, book values and deductions for United States obligations shall be determined by the Reports of Condition made for each calendar quarter of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority and book values shall be averaged as calculated by averaging book values as determined by such Reports of Condition. The obligations of the United States as used herein shall include all such obligations coming within the scope of 31 U.S.C. § 3124.*

Section 1404. 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 taxes imposed hereunder.*

ARTICLE XIV-A FRANCHISE SURTAX ALTERNATIVE ON TITLE INSURANCE AND TRUST COMPANIES

Section 1401-A. Definitions.—*The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:*

(1) *"Adjusted net worth." Net worth as adjusted pursuant to the provisions of section 1403-A.*

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

(3) *"Net worth." The sum of the book values of capital, surplus, undivided profits and unearned premium reserve as determined under the accounting procedures used in reporting to the Federal Deposit Insurance Corporation or other applicable regulatory authority and in the case of title insurance and trust companies which do not file such reports, book values shall be determined by generally accepted accounting principles.*

(4) *"Title insurance or trust company." Every company incorporated under the provisions of section 29 of the act of April 29, 1874 (P.L. 73, No. 32), known as the "General Corporation Law," 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 the act of June 27, 1895 (P.L.399, No.286), 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," 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 the taxes imposed under Article XIV or this article.

Section 1402-A. Imposition of Surtax.—(a) *There is hereby imposed for the calendar year in which this article becomes effective, and for each calendar year thereafter, on title insurance or trust companies for the privilege of doing business or having capital or property employed or used in this Commonwealth an annual franchise surtax measured by adjusted net worth.*

(b) The franchise surtax imposed by this section shall be an amount equal to the surtax rate for the calendar year multiplied by the title insurance or trust company's adjusted net worth. The surtax rate shall equal the tax rate contained in section 801 of Article VIII multiplied by the surtax factor for such calendar year: Provided, That the surtax rate shall not be greater than eight per cent.

(c) The surtax factor for a calendar year is a fraction, the numerator of which is the total refunds of, and credits for, the tax imposed by Article VIII prior to January 1, 1984, and resulting from the decision of the Supreme Court of Pennsylvania in Dale National Bank v. Commonwealth, — Pa. —, 465 A.2d 965 (September 15, 1983), authorized, approved or otherwise determined to be payable during such calendar year, and the denominator of which is 1.25 times the total amount of tentative tax paid under section 801 of Article VIII for and during such calendar year.

(d) The surtax factor shall be calculated by the department and published in the Pennsylvania Bulletin as a notice pursuant to 45 Pa.C.S. § 725(a)(3) (relating to additional contents of Pennsylvania Bulletin). For a period of thirty days following such publication, the department shall, as permitted by law, make available for inspection by affected title insurance or trust companies the information from which the surtax factor was calculated, excluding any information relating to the identity of any title insurance or trust company. Written objections and comments regarding the published surtax factor may be submitted by affected title insurance or trust companies to the department during this thirty-day period. After considering such objections and comments, the secretary shall certify the surtax factor and cause it to be published in the Pennsylvania Bulletin as a notice pursuant to 45 Pa.C.S. § 725(a)(3). Any objection to the certified surtax factor may only be made in a petition for resettlement or a petition for refund.

(e) *Every title insurance or trust company shall, on or before April 15 of the year following the year in which this article first applies and each April 15 thereafter, pay the franchise surtax imposed by this section for the preceding calendar year to the department. Each such payment shall be accompanied by a report in writing, filed under oath or affirmation on the form provided by the department, setting forth the adjusted net worth of the company for the preceding calendar year as provided in section 1403-A.*

(f) *The franchise surtax imposed by this section shall be a tax obligation for the calendar year incurred and shall be additional to any other tax imposed by this act.*

(g) *Notwithstanding the provisions of section 503 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or the provisions of any other statute which may allow a more extended time for filing, no petition for refund of the tax imposed by Article VIII for years prior to 1984 shall be timely unless said petition has been filed with the Board of Finance and Revenue within sixty days after the date on which this article takes effect.*

Section 1403-A. Computation of Adjusted Net Worth.—The adjusted net worth of any title insurance or trust company shall be ascertained by deducting from net worth an amount equal to the same percentage of net worth as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this article, book values and deductions for United States obligations shall be determined by the Reports of Condition made for each calendar quarter of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority and book values shall be averaged as calculated by averaging book values as determined by such Reports of Condition. For purposes of this article in the case of title insurance and trust companies which do not file such reports, book values shall be determined by generally accepted accounting principles as of the end of each calendar quarter in the preceding calendar year and book values shall in all cases be averaged as calculated by averaging book values as determined at the end of each calendar quarter. The obligations of the United States as used herein shall include all obligations coming within the scope of 31 U.S.C. § 3124.

Section 1404-A. 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 taxes imposed hereunder.

ARTICLE XV MUTUAL THRIFT INSTITUTIONS TAX

Section 1501. Definitions.—As used in this article "mutual thrift institution" shall be construed to mean every savings bank without capital stock incorporated by or under any law of this Commonwealth, every building and loan association, every savings and loan association incorporated under the laws of this Commonwealth, every Federal savings and loan association

incorporated under the laws of the United States and every 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.

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—

(a) Every mutual thrift institution shall annually, upon April 15 of each year beginning in the year 1984, make a report to the Department of Revenue, setting forth the entire amount of net earnings or income received or accrued by said mutual thrift institution from all sources during the preceding year, and such other information as the department may require, and upon such net earnings or income the said mutual thrift institution shall pay into the State Treasury, through the Department of Revenue, for the use of the Commonwealth, a State excise tax at the rate of eleven and one-half per cent upon such annual net earnings or income, for the privilege of doing business in the Commonwealth. Every mutual thrift institution shall be required to make payment of tentative tax pursuant to the provisions of Article XXX. The remaining portion of the tax due shall be paid at the time the report prescribed herein is required to be made.

(b) If, however, any such mutual thrift institution closes its fiscal year, not upon December 31 but upon some other date, the tax shall be imposed upon such annual net earnings or income received or accrued during its fiscal year beginning in the year 1983 and during each fiscal year thereafter, and the annual report of net earnings or income received or accrued during each fiscal year shall be made, and the remaining tax due thereon shall be paid within one hundred five days after the close of such fiscal year. Each such mutual thrift institution shall be required to make payment of tentative tax pursuant to the provision of Article XXX.

(c) Net earnings or income or net operating loss shall be determined in accordance with generally accepted principles of accounting, either on a cash or accrual or combined cash and accrual basis, depending on the method of bookkeeping employed by each mutual thrift institution, and in computing such net earnings or income or net operating loss, amounts credited or paid as dividends or interest to shareholders, holders of accounts or depositors shall be included among the allowable deductions.

(d) For the calendar year 1983 and fiscal years beginning in 1983 and thereafter, a net operating loss, as defined under subsection (c), shall be allowed as a deduction and can be carried forward three succeeding years. The net operating loss shall be carried to the earliest taxable year to which such loss may first be carried.

(e) Mutual thrift institutions subject to the provisions of this article shall be exempt from all other corporate taxes imposed by the Commonwealth for State purposes, and from all local taxation imposed by political subdivisions of this Commonwealth under the authority of the laws of this Commonwealth, except taxes on real estate or transfers thereof.

Section 1503. Settlement and Resettlement of Tax.—*The settlement and resettlement of taxes imposed by this article, including the granting of extensions of time to file reports and the rights of the taxpayer to present and*

prosecute a petition for resettlement, a petition for review, or an appeal to court, or to file a petition for refund, and the imposition of interest and penalties, shall be governed by the provisions of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," relevant to capital stock and franchise taxes.

Section 1504. Timely Mailing Treated as Timely Filing and Payment.—Notwithstanding the provisions of any State law to the contrary, whenever a report or payment of all or any portion of a State tax is required by law to be received by the Department of Revenue or other agency of the Commonwealth on or before a day certain, the institution shall be deemed to have complied with such law if the letter transmitting the report or payment of such tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received. For the purposes of this article, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

Section 1505. Tax Credits; Legislative Intent.—Any tax paid by any mutual thrift institution under the provisions of the act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift Institutions Tax Act," as amended, the act of June 25, 1982 (P.L.652, No.184), entitled "An act amending the act of June 22, 1964 (P.L.16, No.2), entitled 'An act imposing a State excise tax on net earnings or income of mutual thrift institutions; requiring the filing of reports and payment of the tax; providing certain exemptions from the tax and repealing part of an act imposing other taxes,' providing for the deduction and carryover of net operating losses in determining net earnings for the tax on mutual thrift institutions," for taxable years beginning during 1983 shall be credited to and applied against the tax imposed by this article without the necessity for the filing of any petition or request by the taxpayer with the Department of Revenue, it being the intention of the General Assembly that this article be a reenactment of such act, although amending such act to include "savings institutions with capital stock" within the definition of "mutual thrift institution." Any institution which would have been entitled to a net operating loss carryforward under the provisions of the act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift Institutions Tax Act," as amended, to calendar year 1983 and fiscal years beginning after January 1, 1983 shall remain entitled to such loss carryforward.

ARTICLE XVI

FINANCIAL INSTITUTION ALTERNATIVE FRANCHISE TAX

PART I

DEFINITIONS

Section 1601. Definitions.—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) **“Department.”** *The Department of Revenue of this Commonwealth.*

(2) **“Financial institution.”** *A bank having capital stock, a title insurance company, a bank and trust company or a trust company, any of which is organized under the laws of the Commonwealth or is organized under the laws of the United States and located in this Commonwealth and is doing business in this Commonwealth or having capital or property employed or used in this Commonwealth. The term does not include a building and loan association, a savings institution or a savings and loan association.*

(3) **“Taxable income.”** 1. (a) *For any taxable year, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government; or in the case of a financial institution participating in the filing of consolidated returns to the Federal Government, the taxable 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.*

(b) *Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation or financial institution but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government.*

(c) *Further additional deductions shall be allowed from taxable income in an amount equal to the amount of any reduction in an employer's deduction for wages and salaries as a result of the employer taking a credit for “new jobs” or “targeted jobs” pursuant to section 44B or 51 of the Internal Revenue Code of 1954.*

(d) *Taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code of 1954 but only to the extent that such preference items are not included in taxable income as returned to and ascertained by the Federal Government:*

- (1) *Excess investment interest.*
- (2) *Accelerated depreciation on real property.*
- (3) *Accelerated depreciation on personal property subject to a net lease.*
- (4) *Amortization of certified pollution control facilities.*
- (5) *Amortization of railroad rolling stock.*
- (6) *Stock options.*
- (7) *Reserves for losses on bad debts of financial institutions.*
- (8) *Capital gains.*
- (9) *Accelerated cost recovery deduction under section 57(a)(12)(B) of the Internal Revenue Code of 1954.*

(e) *There shall be added to taxable income any interest received and excluded from taxable income as returned to and ascertained by the Federal Government and no deduction shall be allowed for interest received and included in taxable income as returned to and ascertained by the Federal Government.*

(f) *A taxpayer reporting on a fifty-two-fifty-three-week basis which closes its fiscal year on any of the last seven days in December or the first seven days of January is deemed a calendar year taxpayer with a year ending date of December 31.*

(g) *No deduction shall be allowed for the amount of the net operating loss deduction allowed under section 172 of the Internal Revenue Code.*

(h) *In arriving at "taxable income" for Federal tax purposes, no deduction shall be allowed for taxes imposed on or measured by net income.*

2. *A net loss deduction arising from a year in which the taxpayer was subject to the tax imposed under this article shall be allowed from taxable income.*

(a) *A net loss for a taxable year is the negative amount for such taxable year determined under subclause 1.*

(b) *The net loss deduction shall be the lesser of the amount of the net loss or losses which may be carried forward to the taxable year or taxable income. A net loss for a taxable year may only be carried forward for three years. The earliest net loss shall be carried forward to the earliest taxable year to which such loss may first be carried.*

(4) *"Person." Every natural person or financial institution. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to a financial institution, shall mean the officers thereof.*

PART II IMPOSITION OF TAX

Section 1611. Imposition of Tax.—(a) Every financial institution 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, a State excise tax at the rate determined in subsection (c), upon each dollar of taxable income of such financial institution received by and accruing to such financial institution during each calendar year except where a financial institution reports to the Federal Government on the basis of a fiscal year and has certified such fact to the department as required by section 1621, in which case such tax shall be levied, collected and paid upon all taxable income received by and accruing to such financial institution during the fiscal year commencing in each calendar year in which it is subject to this tax.

(b) *Payment of the tax imposed by this section shall operate to exempt a financial institution and the shares thereof from all other corporate taxes imposed by the Commonwealth for State purposes and from all taxes imposed by political subdivisions except taxes on real estate and taxes on transfers of real estate.*

(c) *Subject to provisions of this act establishing the effective date for this article, the excise tax rate will be set as the ratio of the taxes that would be assessed under provisions of Articles VII and VIII as of January 1, 1984 to the total taxable income of all taxpayers reported under Parts III and IV of this article for 1983, or 1982 if 1983 reports are not available. In the event*

that this article becomes effective in 1985 or later, the department shall compute the aforementioned ratio using information for the most recent year for which it is available both for taxes that would be assessed under provisions of Articles VII and VIII and for total taxable income of all taxpayers reported under Parts III and IV of this article. Within sixty days of the effective date of this article, the department shall publish a notice in the Pennsylvania Bulletin using the most recent available reports that the financial institution alternative franchise tax is effective.

(d) The excise tax rate shall be calculated by the department and published in the Pennsylvania Bulletin as a notice pursuant to 45 Pa.C.S. § 725(a)(3) (relating to additional contents of Pennsylvania Bulletin). For a period of thirty days following such publication, the department shall, as permitted by law, make available for inspection by affected financial institutions the information from which the excise tax rate was calculated, excluding any information relating to the identity of any financial institution. Written objections and comments regarding the published excise tax rate may be submitted by affected financial institutions to the department during this thirty-day period. After considering such objections and comments, the secretary shall certify the excise tax rate and cause it to be published in the Pennsylvania Bulletin as a notice pursuant to 45 Pa.C.S. § 725(a)(3). Any objection to the certified excise tax rate may only be made in a petition for resettlement or a petition for refund.

PART III PROCEDURE; ENFORCEMENT; PENALTIES

Section 1621. 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. The provisions of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," are incorporated by reference into this article insofar as they are applicable to the tax imposed hereunder.

Section 1622. Time Period.—(a) Notwithstanding the provisions of section 1621 of this article, the report and payment of tax for the first calendar year for which this tax is effective shall be required to be made within sixty days of the date on which the department publishes the notification of the rate as required in section 1611(d).

(b) Any tax paid by any financial institution under the provisions of Article VII or VIII for the first or second calendar year for which this tax is effective shall be credited to and applied against the tax imposed by this article for such calendar year without the necessity for the filing of any petition or request by the taxpayer.

(c) Notwithstanding the provisions of section 1621, the report and payments of tentative tax for the second calendar year which are due prior to a date thirty days after the date on which a determination is made that the tax imposed under this article shall become effective, shall be required to be made within sixty days of said date.

PART IV
ADDITIONAL REPORTING REQUIREMENTS

Section 1631. Additional Reporting Requirements.—(a) *It shall be the duty of every financial institution, on or before June 15, 1984 and on or before October 15 of 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 the taxable income of the financial institution as defined in section 1601(3). The department shall have the authority to require a report of 1982 taxable income within thirty days should it be deemed necessary in order to determine a rate pursuant to section 1611(c). Such report shall set forth:*

(1) A true copy of its return to the Federal Government of the annual taxable income arising or accruing in the calendar or fiscal year next preceding.

(2) If no return was filed with the Federal Government, information as would have been contained in a return to the Federal Government had one been made.

(3) Such other information as the department may require, including, but not limited to, information relative to the situs of its property, payroll and gross receipts.

(b) If the officers of any corporation shall neglect or refuse to make any report as required in subsection (a) of this section or shall knowingly make any false report, a penalty in the amount of one per cent of the amount of taxable income computed under this article is hereby imposed.

Section 1632. Reports to General Assembly.—*Not later than April 15 of each calendar year, the Secretary of Revenue shall submit to the Chairman and Minority Chairmen of the House and Senate Appropriations Committees a report providing data for the year preceding the prior year relative to the yield or potential yield of any tax calculated pursuant to this article. Upon request, the secretary shall make available to the said chairmen aggregated data compiled from the reports required pursuant to this article.*

Section 8. Section 3003(a) and (b) of the act, amended July 21, 1983 (P.L.63, No.29), are amended to read:

Section 3003. Prepayment of Tax.—(a) *Notwithstanding the provisions of this act, or any other State tax law to the contrary, which required taxpayers to make payment of tentative tax, including but not limited to the capital stock and franchise tax, corporate net income and corporation income tax, gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, insurance premiums tax, mutual thrift institutions tax, net earnings tax, or other similar tax law requiring payment of tentative tax, but excluding the prepayment by banks [and savings institutions] under Article VII or XVI and title insurance and trust companies under Article VIII or XVI, and public utilities under Article XI-A of this act, such taxpayers, commencing with the calendar year 1970 and fiscal years beginning during the calendar year 1970*

and each taxable year thereafter, on or before the fifteenth day of April for calendar year taxpayers, and on or before the fifteenth day of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, shall report annually and pay on account of the tax due for the current year, an amount to be computed by applying the current tax rate to ninety per cent of such tax base from the immediate prior year as may be applicable with respect to the tax being reported.

(b) For the taxable years commencing with calendar year 1979 and for each taxable year thereafter, the tentative tax due for the current year shall be computed by applying the current tax rate to ninety per cent of such tax base from the year preceding the immediate prior year as may be applicable with respect to the tax being reported; except that with respect to the aforesaid gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, and the aforesaid insurance premiums tax, such amount shall continue to be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year as may be applicable with respect to the tax being reported.

The tax imposed on shares of [bank and savings institutions] banks and title insurance and trust companies, *the tax imposed by Article XVI* and the tax imposed on public utility realty shall be paid in the manner and within the time prescribed by Article VII, Article VIII or Article XI-A, as the case may be, but subject to the additions and interest provided in subsection (e) of this section.

* * *

Section 9. (a) Each bank, trust company, bank and trust company and title insurance company shall remit unpaid 1983 taxes by April 15, 1984. Unpaid 1983 taxes are the difference between each taxpayer's 1983 obligation as would have been calculated under the law in effect January 1, 1983, and that taxpayer's 1983 tentative taxes paid. Any claim that such payment is not due or that the provision for such payment is invalid or unenforceable may be made only by filing a claim for refund as provided by existing law. Failure to remit unpaid 1983 taxes will subject the taxpayer to a 20% penalty in addition to other interest and penalties prescribed by law.

(b) Refunds claimed or to be claimed as a result of the decision of the Supreme Court of Pennsylvania in *Dale National Bank v. Commonwealth*, — Pa. —, 465 A.2d 965 (September 15, 1983), shall not be credited with interest after the effective date of this act, notwithstanding section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 10. (a) Section 7 of the act of August 7, 1963 (P.L.549, No.290), as amended, to the extent it applies to Article XVI and to the determination of the values of shares under Articles VII and VIII of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971 is hereby repealed. The act of June 22, 1964 (P.L.16, No.2), as amended, known as The Mutual Thrift Institutions Tax Act, is repealed effective for

calendar year 1983 and fiscal years beginning after January 1, 1983. Section 701.2 of Article VII and section 801.2 of Article VIII of the Tax Reform Code of 1971 are repealed effective January 1, 1984.

(b) All acts and parts of acts which exempt from taxation any obligations, including any profits made on the sale thereof, or the interest on any obligations issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision, are repealed insofar as they are inconsistent with this act. All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 11. Nothing contained in this amendatory act shall be construed to relieve any person, corporation or other entity from filing returns or from any taxes, penalties or interest imposed by the provisions of this or any other statutes which were in effect prior to being amended or repealed by this amendatory act; or to affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws; or to 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 such laws.

Section 12. (a) The amendments to sections 701, 701.1, 801 and 801.1 shall take effect January 1, 1984.

(b) The amendments adding section 801.2 shall take effect immediately and shall apply retroactively to January 1, 1982.

(c) The amendments to section 901 shall take effect immediately.

(d) The amendments adding Article XIII shall take effect immediately and shall apply retroactively to calendar year 1983 and the provisions thereof shall be considered nonseverable.

(e) The amendments adding Articles XIV and XIV-A shall not take effect unless a final judgment or decree by a court of competent jurisdiction not subject to further review or appeal determines that the tax imposed by Article XIII conflicts with any Federal statute, with the Constitution of the United States or the Constitution of Pennsylvania. If Articles XIV and XIV-A take effect, they shall apply retroactively to January 1 of the year in which the judgment or decree becomes final.

(f) The amendments adding Article XV shall take effect immediately and shall apply retroactively to calendar year 1983 and to tax years beginning on or after January 1, 1983.

(g) Section 1611 shall not take effect unless a final judgment or decree by a court of competent jurisdiction not subject to further review on appeal determines that the tax imposed by Article VII or VIII, as amended by this act, conflicts with any Federal statute, with the Constitution of the United States or the Constitution of Pennsylvania. If section 1611 takes effect, it shall apply retroactively to January 1 of the year preceding the year in which the court decision becomes final. The remainder of Article XVI shall take effect immediately.

- (h) The amendments to Article XXX shall take effect immediately.
- (i) The remainder of this act shall take effect immediately.

APPROVED—The 1st day of December, A. D. 1983.

DICK THORNBURGH