

No. 1986-77

AN ACT

SB 560

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," further providing for the sales tax, the personal income tax, the corporate net income tax, the capital stock tax and the realty transfer tax; authorizing a local real estate transfer tax; and making repeals.

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

Section 1. Section 201(k)(8) and (o)(4)(B) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 9, 1972 (P.L.273, No.66) and December 9, 1980 (P.L.1136, No.202), are amended to read:

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:

* * *

(k) "Sale at retail."

* * *

(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 and the propagation of game birds for commercial purposes by holders of propagation permits issued under the act of June 3, 1937 (P.L.1225), known as "The Game Law";

(C) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in *producing, delivering or rendering* such

service[, whether or not such facilities constitute real estate: **Provided, however, "real estate" shall not include buildings, roads or similar facilities**];

(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 **or equipment** to be used or consumed in [**any**] **the** construction; reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment, parts or foundations therefor that may be affixed to such 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, supplies or equipment** 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) **construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or** (iii) 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.

* * *

(o) "Use."

* * *

(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 self-service laundry equipment for wearing apparel or household goods, 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—**

* * *

(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 which are directly used in *producing, delivering or rendering* such service[**whether or not such facilities constitute real estate: Provided, however, “real estate” shall not include buildings, roads or similar facilities**];
- (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 *those* vehicles directly used by a public utility engaged in the business as a common carrier **[or]** to maintenance facilities[**;** or to materials **[or]**, supplies *or equipment* to be used or consumed in **[any]** *the* construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment, parts or foundations therefor that may be affixed to such 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 *or services* by any person other than the person directly using the same in the **[aforesaid]** operations *described in subparagraphs (i), (ii), (iii) and (iv)*.

The exclusion provided in subparagraph (iii) shall not apply to (A) construction materials, *supplies or equipment* 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]** (B) *construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or* (C) 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.

* * *

Section 2. Section 302 of the act is repealed.

Section 3. The act is amended by adding a section to read:

Section 302.2. Imposition of Tax.—(a) There is hereby imposed a tax at the annual rate of two and one-tenth per cent on the privilege of receiving each of the classes of income hereinafter enumerated in section 303.

(b) There is hereby imposed a tax to be paid by nonresident individuals, estates or trusts at the annual rate of two and one-tenth per cent on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

(c) Any reference in this or any other act to section 302 or the tax imposed under section 302 shall be deemed a reference to section 302.2 and the tax imposed by this section.

Section 4. Section 303(a)(3) of the act, amended June 17, 1974 (P.L.325, No.105), is amended to read:

Section 303. Classes of Income.—(a) The classes of income referred to above are as follows:

* * *

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with accepted accounting principles and practices. For the purpose of this act, for the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

At the election of the taxpayer, the term "net gains or income" shall not include net gain in an amount not to exceed one hundred thousand dollars (\$100,000), or fifty thousand dollars (\$50,000) in the case of a separate return by a married individual, from the sale or exchange of the taxpayer's principal residence if the taxpayer has attained fifty-five years of age before the date of the sale or exchange. If the property is held by a husband and wife and they make a joint return for the taxable year of the sale or exchange and one spouse satisfies the age, ownership and use requirements of this clause with respect to the property, then both husband and wife shall be treated as satisfying the age, ownership and use requirements of this clause. For the purposes of this clause, the term "sale or exchange" shall include involuntary conversions such as the destruction, theft, seizure, requisition or condemnation of the property. For the purposes of this clause, the term "principal residence" shall mean the property that has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more during the five-year period ending on the date of the sale or exchange. The term "used" shall include time the property was unoccupied by the taxpayer due to the taxpayer being in a hospital, nursing home or personal care facility and the property was not used for rental purposes. The provisions of this clause shall not apply to any sale or exchange made prior to July 1, 1987. An election under this clause may be made or revoked at any time before the expiration of the period for making a claim for a refund of the tax imposed by this article for the taxable year in which the sale or exchange occurred. The provisions of this clause shall be used only once during the lifetime of the taxpayer or a spouse or a surviving spouse of any deceased taxpayer.

The term "net gains or income" shall not include gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corpora-

tion by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means—

- (i) a statutory merger or consolidation;
- (ii) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);
- (iii) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;
- (iv) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;
- (v) a recapitalization;
- (vi) a mere change in identity, form, or place of organization however effected; or
- (vii) the acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;
- (viii) a transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least eighty per cent of the total combined voting power of all classes of stock entitled to vote and at least eighty per cent of the total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's base for the stock or securities received shall be the same as the taxpayer's actual or attributed base for the stock, securities or property surrendered in exchange therefor.

* * *

Section 5. Section 325(a), (d) and (f) of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 325. 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 income, other than from compensation on which tax is withheld under this article, can reasonably be expected to exceed **[one thousand dollars (\$1,000)]** *two thousand five hundred dollars (\$2,500)*.

* * *

(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 income on which no tax has been withheld under this article can reasonably be expected to exceed **[one thousand dollars (\$1,000)]** *two thousand five hundred dollars (\$2,500)* 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.

* * *

(f) A declaration of estimated tax of an individual having a total estimated tax for the taxable year of **[fifty dollars (\$50)]** *one hundred dollars (\$100)* or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

* * *

Section 6. Section 402 of the act, amended June 29, 1984 (P.L.445, No.94), is amended to read:

Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of (i) doing business in this Commonwealth; or (ii) carrying on activities in this Commonwealth; (iii) having capital or property employed or used in this Commonwealth; or (iv) owning property 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 taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1971 and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977 through the calendar year 1984 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1985 *through calendar year 1986 and at the rate of eight and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1987* and each calendar 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 taxable income received by, and accruing to, such corporation during the first six months of the fiscal year commencing in the calendar year 1972 and at the rate of eleven per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1977 through the fiscal year commencing in 1984 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by and accruing to such corporation during the fiscal year commencing in 1985 *through the fiscal year commencing in 1986 and at the rate of eight and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year com-*

mencing in 1987 and during each fiscal year thereafter. No penalty prescribed by subsection (e) of section 3003 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.

Section 7. The definitions of "capital stock value," "foreign entity" and "net worth" in section 601(a) of the act, amended December 23, 1983 (P.L.360, No.89), are amended to read:

Section 601. Definitions and Reports.—(a) The following words, terms and phrases when used in this Article VI shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

"Capital stock value." The amount computed pursuant to the following formula: *the product of* one-half times the sum of the average net income capitalized at the rate of nine and one-half per cent plus seventy-five per cent of net worth, *from which product shall be subtracted fifty thousand dollars (\$50,000)*, the algebraic equivalent of which is

$$(.5 \times (\text{average net income} / .095 + (.75) (\text{net worth}))) - \$50,000$$

* * *

"Foreign entity." 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 or under the law of any foreign government, and doing business in and liable to taxation within the Commonwealth or *carrying on activities in the Commonwealth, including solicitation or either owning or* having capital or property employed or used in the Commonwealth by or in the name of any limited partnership or joint-stock association, copartnership or copartnerships, person or persons, or in any other manner doing business within and liable to taxation within the Commonwealth other than nonprofit corporations, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a foreign entity.

* * *

"Net worth."

(1) Net worth shall be the sum of the entity's issued and outstanding capital stock, surplus and undivided profits as per books set forth for the close of such tax year on the income tax return filed by the entity with the Federal Government, or if no such return is made, as would have been set forth had such return been made, subject, however, in either case to any correction thereof for fraud, evasion or error. In the case of any entity which has investments in the common stock of other corporations, the net worth shall be the consolidated net worth of such entity computed in accordance with generally accepted accounting principles. Net worth shall in no case be less than zero.

(2) If net worth as arrived at under clause (1) for the current tax year is greater than twice or less than one-half of the net worth which would have been calculated under clause (1) as of the first day of the current tax year, then net worth for the current tax year shall be the average of these two amounts.

* * *

Section 8. Section 1101-C of the act, added or amended May 5, 1981 (P.L.36, No.14), December 19, 1985 (P.L.356, No.102) and December 20, 1985 (P.L.489, 115), is amended to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section[, **except in those instances where the context clearly indicates a different meaning**]:

“Association.” A partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons *other than a private trust or decedent’s estate*.

“Corporation.” A corporation [or], joint-stock association, *business trust or banking institution which is* organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency[, **including, but not limited to, banking institutions**].

“Department.” The Department of Revenue of this Commonwealth.

“Document.” Any deed, instrument or writing [whereby any lands, tenements or hereditaments within this Commonwealth or any interest therein shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, purchaser, or any other person] *which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate*, but does not include wills, mortgages, [transfers between corporations operating housing projects pursuant to the Housing and Redevelopment Assistance Law and the shareholders thereof, transfers between nonprofit industrial development agencies and industrial corporations purchasing from them, any transfers to or from nonprofit industrial development agencies, transfers to a nature conservancy or similar organization which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, and which has as its primary purpose the preservation of land for historic, recreational, scenic, agricultural or open space opportunities, and transfers between husband and wife, transfers between persons who were previously husband and wife but who have since been divorced provided such transfer is made within three months of the date of the granting of the final decree in divorce, or the decree of equitable distribution of marital property, whichever is later, and the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, transfers between parent and child or the spouse of such a child or between parent and trustee for the benefit of a child or the spouse of such child, transfers between a grandparent and grandchild or the spouse of such grandchild, by and between a principal and straw party for the purpose of placing a mortgage or ground rent upon the premises, correctional deeds without consideration, transfers to the United States, the Commonwealth of Pennsylvania, or to any of their instrumentalities, agencies or political subdi-

visions, by gift, dedication or deed in lieu of condemnation, or deed of confirmation in connection with condemnation proceedings, or reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation, leases, a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the repayment of the debt, or a transfer by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises is taken in trade by such builder as part of the consideration from the purchaser of a new previously unoccupied residential premises or any transfer from a mortgagor to the mortgagee whether pursuant to a foreclosure or in lieu thereof, or conveyances to municipalities, townships, school districts and counties pursuant to acquisition by municipalities, townships, school districts and counties of tax delinquent properties at sheriff sale or tax claim bureau, any transfer of a publicly owned, multipurpose stadium having a seating capacity of at least fifty thousand where such transfer occurs before January 1, 1986, or any transfer between religious organizations or other bodies or persons holding title to real estate for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes, or a transfer within a family from a sole proprietor family member to a family farm corporation or in any sheriff sale instituted by a mortgagee in which the purchaser of said sheriff sale is the mortgagee who instituted said sale.] *deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty years or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under section 1102-C.5 of this article.*

"Family farm corporation." A [Pennsylvania] corporation of which at least seventy-five per cent of [the] its assets [of which] are devoted to the business of agriculture[, which business, for the purposes of this definition,] and at least seventy-five per cent of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets[,] or animals intended for use in sporting or recreational activities;
- (3) Fur farming;

(4) Stockyard and slaughterhouse operations; or

(5) Manufacturing or processing operations of any kind[: **Provided, however, That at least seventy-five per cent of all of the stock of the corporation must be owned by members of the same family.**]

“Members of the same family.” Any individual, such individual’s brothers and sisters, the brothers and sisters of such individual’s parents and grandparents, the ancestors and lineal descendents of any of the foregoing [and], a spouse of any of the foregoing *and the estate of any of the foregoing*. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.

“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] *include* the *responsible members or general* partners [or members] thereof, and as applied to corporations, the officers thereof.

“Real estate.”

(1) *Any lands, tenements or hereditaments within this Commonwealth, including, without limitation, buildings, structures, fixtures, mines, minerals, oil, gas, quarries, spaces with or without upper or lower boundaries, trees and other improvements, immovables or interests which by custom, usage or law pass with a conveyance of land, but excluding permanently attached machinery and equipment in an industrial plant.*

(2) *A condominium unit.*

(3) *A tenant-stockholder’s interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement.*

“Real estate company.” *A corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety per cent or more of the ownership interest in which is held by thirty-five or fewer persons and which:*

(1) *derives sixty per cent or more of its annual gross receipts from the ownership or disposition of real estate; or*

(2) *holds real estate, the value of which comprises ninety per cent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.*

“Title to real estate.”

(1) *Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; or*

(2) *any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.*

“Transaction.” The making, executing, delivering, accepting, or presenting for recording of a document.

“Value.”

(1) In the case of any [document granting, bargaining, selling, or otherwise conveying any land, tenement or hereditament, or interest therein] *bona fide sale of real estate at arm's length for actual monetary worth*, the amount of the actual consideration therefor, *paid or to be paid*, including liens or other encumbrances thereon *existing before the transfer and not removed thereby, whether or not the underlying indebtedness is assumed*, and ground rents, or a commensurate part [of the liens or other encumbrances thereon and ground rents] *thereof* where such liens or other encumbrances and ground rents also encumber or are charged against other [lands, tenements or hereditaments] *real estate*: Provided, That where such documents shall set forth a [small or] nominal consideration, the “value” thereof shall be determined from the price set forth in or actual consideration for the contract of sale[, or,];

(2) in the case of a gift, [or any other document without consideration, from] *sale by execution upon a judgment or upon the foreclosure of a mortgage by a judicial officer, transactions without consideration or for consideration less than the actual monetary worth [of the property granted, bargained, sold, or otherwise conveyed, which, in either event, shall not be less than the amount of the highest assessment of such lands, tenements or hereditaments for local tax purposes.] of the real estate, a taxable lease, an occupancy agreement, a leasehold or possessory interest, any exchange of properties, or the real estate of an acquired company, the actual monetary worth of the real estate determined by adjusting the assessed value of the real estate for local real estate tax purposes for the common level ratio of assessed values to market values of the taxing district as established by the State Tax Equalization Board, or a commensurate part of the assessment where the assessment includes other real estate;*

(3) *in the case of an easement or other interest in real estate the value of which is not determinable under clause (1) or (2), the actual monetary worth of such interest; or*

(4) *the actual consideration for or actual monetary worth of any executory agreement for the construction of buildings, structures or other permanent improvements to real estate between the grantor and other persons existing before the transfer and not removed thereby or between the grantor, the agent or principal of the grantor or a related corporation, association or partnership and the grantee existing before or effective with the transfer.*

Section 9. Section 1102-C of the act, added May 5, 1981 (P.L.36, No.14), is amended to read:

Section 1102-C. Imposition of Tax.—Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for or in respect of the vellum parchment or paper upon which such document is written or printed, a State tax at the rate of one per

cent of the value of the [property] *real estate* represented by such document, which State tax shall be payable at *the earlier of the time the document is presented for recording or within thirty days of [making, execution, delivery,] acceptance [or presenting for recording] of such document or within thirty days of becoming an acquired company.*

Section 10. Section 1102-C.1 of the act is repealed.

Section 11. The act is amended by adding sections to read:

Section 1102-C.2. Exempt Parties.—*The United States, the Commonwealth or any of their instrumentalities, agencies or political subdivisions shall be exempt from payment of the tax imposed by this article. The exemption of such governmental bodies shall not, however, relieve any other party to a transaction from liability for the tax.*

Section 1102-C.3. Excluded Transactions.—*The tax imposed by section 1102-C shall not be imposed upon:*

(1) *A transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings, or a reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation.*

(2) *A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States.*

(3) *A conveyance to a municipality, township, school district or county pursuant to acquisition by the municipality, township, school district or county of a tax delinquent property at sheriff sale or tax claim-bureau sale.*

(4) *A transfer for no or nominal actual consideration which corrects or confirms a transfer previously recorded, but which does not extend or limit existing record legal title or interest.*

(5) *A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants; however, if any of the parties take shares greater in value than their undivided interest, tax is due on the excess.*

(6) *A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.*

(7) *A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir.*

(8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

(9) A transfer for no or nominal actual consideration from a trustee to a beneficiary of an ordinary trust.

(10) A transfer for no or nominal actual consideration from trustee to successor trustee.

(11) A transfer:

(i) for no or nominal actual consideration between principal and agent or straw party; or

(ii) from or to an agent or straw party where, if the agent or straw party were his principal, no tax would be imposed under this article.

Where the document by which title is acquired by a grantee or statement of value fails to set forth that the property was acquired by the grantee from, or for the benefit of, his principal, there is a rebuttable presumption that the property is the property of the grantee in his individual capacity if the grantee claims an exemption from taxation under this clause.

(12) A transfer made pursuant to the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation, except where the department reasonably determines that the primary intent for such merger, consolidation or division is avoidance of the tax imposed by this article.

(13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

(14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority.

(15) A transfer from a nonprofit industrial development agency or authority to a grantee purchasing directly from it, but only if:

(i) the grantee shall directly use such real estate for the primary purpose of manufacturing, fabricating, compounding, processing, publishing, research and development, transportation, energy conversion, energy production, pollution control, warehousing or agriculture; and

(ii) the agency or authority has the full ownership interest in the real estate transferred.

(16) A transfer by a mortgagor to the holder of a bona fide mortgage in default in lieu of a foreclosure or a transfer pursuant to a judicial sale in which the successful bidder is the bona fide holder of a mortgage, unless the holder assigns the bid to another person.

(17) Any transfer between religious organizations or other bodies or persons holding title for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes.

(18) A transfer to a conservancy which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities.

(19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least seventy-five per cent of each class of the stock thereof.

(20) A transfer between members of the same family of an ownership interest in a real estate company or family farm corporation.

(21) A transaction wherein the tax due is one dollar (\$1) or less.

(22) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof.

In order to exercise any exclusion provided in this section, the true, full and complete value of the transfer shall be shown on the statement of value. For leases of coal, oil, natural gas or minerals, the statement of value may be limited to an explanation of the reason such document is not subject to tax under this article.

Section 1102-C.4. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.—Except as otherwise provided in section 1102-C.3, documents which make, confirm or evidence any transfer or devise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

Section 1102-C.5. Acquired Company.—(a) A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change:

(1) does not affect the continuity of the company; and

(2) of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety per cent or more of the total ownership interest in the company within a period of three years.

(b) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this act.

(c) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county.

Section 12. Section 1103-C of the act, added May 5, 1981 (P.L.36, No.14), is amended to read:

Section 1103-C. **[Transfer by Broker] Credits Against Tax.**—
(a) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as [part of the] consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer. [If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid, and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.]

(b) Where there is a transfer by a builder of residential property which was transferred to the builder within the preceding year as consideration for the purchase of new, previously unoccupied residential property, a credit for the amount of the tax paid at the time of the transfer to the builder shall be given to the builder toward the amount of the tax due upon the transfer.

(c) Where there is a transfer of real estate which is devised by the grantor, a credit for the amount of tax paid at the time of the devise shall be given the grantor toward the tax due upon the transfer.

(d) Where there is a conveyance by deed of real estate which was previously sold under a land contract by the grantor, a credit for the amount of tax paid at the time of the sale shall be given the grantor toward the tax due upon the deed.

(e) If the tax due upon the transfer is greater than the credit given under this section, the difference shall be paid. If the credit allowed is greater than the amount of tax due, no refund or carryover credit shall be allowed.

Section 13. The act is amended by adding a section to read:

Section 1103-C.1. Extension of Lease.—*In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lessee is fixed or if a method for calculating the rental charge is established.*

Section 14. Sections 1104-C, 1105-C, 1106-C, 1108-C and 1109-C of the act, added May 5, 1981 (P.L.36, No.14), are amended to read:

Section 1104-C. **Proceeds of Judicial Sale.**—The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith. *If the proceeds of the sale are insufficient to pay the entire tax herein imposed, the purchaser shall be liable for the remaining tax.*

Section 1105-C. **Documentary Stamps.**—*(a) The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting for recording such document. Such stamps shall be affixed in such manner that their removal will require the continued applica-*

tion of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, That the department may prescribe such other method of cancellation as it may deem expedient.

(b) The use of documentary license meter impressions or similar indicia of payment in lieu of stamps as required by this article may be permitted in the discretion of the department.

Section 1106-C. Furnishing Stamps.—(a) The department shall prescribe, prepare and furnish stamps to each recorder of deeds, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article.

(b) The department shall allow each county a commission equal to one per cent of the face value of the stamps *sold* or two hundred fifty dollars (\$250) whichever is greater. The recorder of deeds shall pay the commission herein allowed to the general fund of the county. The department shall pay the premium or premiums on any bond or bonds required by law to be procured by recorder of deeds for the performance of their duties under this article.

(c) All moneys paid into the State Treasury during the effective period of this article shall be credited to the General Fund.

Section 1108-C. Failure to Affix Stamps.—No document upon which tax is imposed by this article shall *at any time* be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this Commonwealth, or recorded in the office of any recorder of deeds of any county of this Commonwealth, unless a documentary stamp or stamps as provided in this article have been affixed thereto.

Section 1109-C. Statement of Value; Penalty.—(a) Every document [**when**] lodged with or presented to any recorder of deeds in this Commonwealth for recording, shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by [**an affidavit**] *a statement of value* executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. The provisions of this subsection shall not apply to any *excludable* real estate transfers which are exempt from taxation based on family relationship. *Other documents presented for the affixation of stamps shall be accompanied by a certified copy of the document and statement of value executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article.*

(b) Any recorder of deeds who shall record any document upon which tax is imposed by this article without the proper documentary stamp or stamps affixed thereto as required by this article as is indicated in such document or accompanying [**affidavit,**] *statement of value* shall, upon summary conviction [**before any magistrate, alderman or justice of the peace, or other**

officer having the powers of a committing magistrate], be sentenced to pay a fine of fifty dollars (\$50) and costs of prosecution, and in default of payment thereof, undergo imprisonment for not more than thirty days[: **Provided, That when any document shall have been recorded, it shall be presumed that all requirements of law affecting the title to any real property conveyed thereby have been complied with].**

Section 15. The act is amended by adding a section to read:

Section 1109-C.1. Civil Penalties.—(a) If any part of any underpayment of tax imposed by this article is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the underpayment.

(b) In the case of failure to record a declaration required under this article on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause, there shall be added to the tax 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 fifty per cent in the aggregate.

Section 16. Sections 1110-C, 1111-C and 1112-C of the act, added May 5, 1981 (P.L.36, No.14), are amended to read:

Section 1110-C. Unlawful Acts; Penalty.—(a) It shall be unlawful for any person to:

(1) **[make, execute, deliver,]** accept or present for recording or cause to be **[made, executed, delivered,]** accepted or presented for recording any document, without the full amount of tax thereon being duly paid; or,

(2) make use of any documentary stamp to denote payment of any tax imposed by this article without cancelling such stamp as required by this article or as prescribed by the department; or,

(3) fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the department under the provisions of this article.

(b) Any person violating any of the provisions of subsection (a) shall be guilty of a **[misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) and costs of prosecution, or to undergo imprisonment of not more than ninety days, or both, in the discretion of the court] summary offense.**

(c) It shall be unlawful for any person to:

(1) fraudulently cut, tear or remove from a document any documentary stamp; or,

(2) fraudulently affix to any document upon which tax is imposed by this article any documentary stamp which has been cut, torn or removed from any other document upon which tax is imposed by this article, or any documentary stamp of insufficient value, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate or other article; or,

(3) wilfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any person for use, or knowingly use the same; or,

(4) knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this article: Provided, That the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause; or,

(5) knowingly or wilfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps.

(d) Any person violating any of the provisions of subsection (c) shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than five years, or both, in the discretion of the court] of the second degree.

(e) A person who makes a false statement of value or declaration of acquisition, when he does not believe the statement or declaration to be true, is guilty of a misdemeanor of the second degree.

Section 1111-C. **[Failure to Pay Tax] Determination and Notice of Tax; Review.**—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make a determination of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such determinations shall be made **[so that notice thereof shall reach the parties against whom made]** within three years after the date of the recording of the document.

(b) Promptly after the date of such determination, the department shall send[,] by **[registered]** 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 determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation 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 the date of **[any determination] filing of any petition for redetermination** to dispose of **[any] the petition [for redetermination]**. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

(c) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

Section 1112-C. **Lien.**—(a) Any tax determined to be due by **[any person hereunder] the department** and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after said lien has been entered and docketed of record by the prothonotary of the county where such property is situated. **[The]**

(a.1) At any time after it makes a determination of additional tax, penalty or interest, the department may [at any time] transmit to the prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest, and 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. [A] After the department's determination becomes final, 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] certified mail to the taxpayer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(b) 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.

(c) [The department may at any time transmit, to the prothonotaries of the respective counties of the Commonwealth to be by them entered of record and indexed as judgments are now indexed, certified copies of all liens, 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 certified mail to the taxpayer at his last known post office address.

(d) The lien imposed hereunder shall continue for five years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments, or as may be provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 17. The act is amended by adding a section and an article to read:

Section 1113-C. Refunds.—(a) Whenever the amount due upon determination, redetermination or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no determination of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any

application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed within two years after the date of payment.

ARTICLE XI-D
LOCAL REAL ESTATE TRANSFER TAX

Section 1101-D. Imposition.—The duly constituted authorities of the following political subdivisions—cities of the second class, cities of the second class A, cities of the third class, boroughs, incorporated towns, townships of the first class, townships of the second class, school districts of the second class, school districts of the third class and school districts of the fourth class, in all cases including independent school districts—may, in their discretion, by ordinance or resolution, for general revenue purposes, levy, assess and collect or provide for the levying, assessment and collection of a tax upon a transfer of real property or an interest in real property within the limits of the political subdivision, regardless of where the instruments making the transfers are made, executed or delivered or where the actual settlements on the transfer take place, to the extent that the transactions are subject to the tax imposed by Article XI-C. In addition, such political subdivision may impose a local real estate transfer tax upon additional classes or types of transactions if the tax was imposed by the political subdivision under the act of December 31, 1965 (P.L.1257, No.511), known as “The Local Tax Enabling Act,” prior to the effective date of this article. A tax imposed under this article shall be subject to rate limitations provided by section 5 and section 17 of “The Local Tax Enabling Act.”

Section 1102-D. Administration.—A tax imposed under this article shall be administered, collected and enforced under the act of December 31, 1965 (P.L.1257, No.511), known as “The Local Tax Enabling Act.”

Section 18. Section 3003(b.1) of the act, added July 1, 1985 (P.L.78, No.29), is amended and the section is amended by adding a subsection to read:

Section 3003. Prepayment of Tax.—* * *

(b.1) Notwithstanding the provisions of subsections (a) and (b), the tentative tax due with respect to the capital stock and franchise tax for taxable years commencing [with] during calendar year 1986 [and for each taxable year thereafter] shall be computed by applying the current tax rate to eighty-five per cent of such tax base from the year preceding the immediate prior year.

(b.2) Notwithstanding the provisions of subsections (a), (b) and (b.1), the tentative tax due, with respect to the capital stock and franchise tax for taxable years commencing during calendar year 1987 and for each taxable year thereafter, shall be computed by applying the current tax rate to eighty per cent of such tax base from the year preceding the immediate prior year.

* * *

Section 19. If the amendment to the definition of “capital stock value” as provided by section 7, or the application thereof to any person or circum-

stance is held invalid, it is the intent of the General Assembly that such amendment shall be severable and "capital stock value" shall be defined as if this amendment had never been enacted.

Section 20. The amendment to section 201 and the amendment to section 601 to the definition of "foreign entity" shall apply retroactively to January 1, 1985. Nothing contained in the amendment to section 201 or in the amendment to section 601 to the definition of "foreign entity" shall affect or impair litigation relating to tax years prior to 1985. It is the intent of the General Assembly that the amendment to section 201 and the amendment to section 601 to the definition of "foreign entity" are to clarify existing law. The amendment to section 201 and the amendment to section 601 to the definition of "foreign entity" shall not be construed to indicate a presumption that it is the intent of the General Assembly to change the existing law.

Section 21. 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 hereafter enacted or adopted by any political subdivision, providing for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this act.

Section 22. If any word, phrase, clause, sentence, section or provision of Article XI-C or XI-D of the act 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 act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional word, phrase, clause, sentence, section or provision thereof not been included herein.

Section 23. The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, is repealed insofar as it is inconsistent with this act.

Section 24. The amendments to Article XI-C and the new provisions of Article XI-D shall apply to any document made, executed, delivered, accepted or presented for recording subsequent to the effective date of sections 8 through 17 inclusive of this amendatory act and shall not apply to any document made, executed and delivered prior to the effective date of sections 8 through 17 inclusive of this amendatory act, provided such document is presented for recording prior to August 1, 1986.

Section 25. (a) Section 6 of this act shall apply to taxable years beginning on and after January 1, 1987.

(b) Except as provided in section 20 of this act, section 7 of this act shall apply to taxable years beginning on and after January 1, 1987.

Section 26. (a) Section 4 of this act shall take effect July 1, 1987.

(b) Sections 5 and 18 of this act shall take effect January 1, 1987.

(c) Sections 6 and 8 through 17 inclusive of this act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1986.

DICK THORNBURGH