

No. 1991-40

AN ACT

HB 1321

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 scope of sales and use tax, for the definitions of "claimant," "dependent," "household income," "total household income" and "poverty income" and for special tax provisions for poverty, for transfers to the Hazardous Sites Cleanup Fund and the Public Transportation Assistance Fund; further providing for reports by mutual thrift institutions; and making repeals.

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

Section 1. Section 201(g), (k)(8), (15), (16) and (18), (l), (m), (o)(4), (13) and (14), (z), (aa), (cc), (ii), (kk), (ll) and (mm) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or added August 4, 1991 (P.L.97, No.22), are amended and clause (o) is amended by adding a subclause 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:

* * *

(g) "Purchase price."

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

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

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

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

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

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

(6) *The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. The term "service fee," as used in this subclause, shall be the total charge or fee of the vendor or supplying entity minus the costs of the sup-*

plied employe which costs are wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity. To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

(7) Unless the vendor separately states that portion of the billing which applies to premium cable service as defined in clause (II) of this section, the total bill for the provision of all cable services shall be the purchase price.

* * *

(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 the operations of—

(A) The manufacture of tangible 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 34 Pa.C.S. (relating to game);

(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;

(D) Processing 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; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used 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, (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.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to the services enumerated in clauses (k)(11) through (18) and (w) through (kk), *except that the exclusion provided in this subclause for farming, dairying and agriculture shall apply to the service enumerated in clause (z).*

* * *

(15) The rendition for a consideration of employment agency services[,] or help supply services [or other personnel supply services].

(16) [The rendition for a consideration of computer programming services or other computer-related services, including, but not limited to, providing computer integrated systems design, computer processing, data preparation or processing services, information retrieval services or computer facilities management services.] *The rendition for a consideration of computer programming services; computer-integrated systems design services; computer processing, data preparation or processing services; information retrieval services; computer facilities management services; or other computer-related services. At a minimum, such services shall not include services that are part of electronic fund transfers, electronic financial transactions or services, banking or trust services, or management or administrative services, including transfer agency, shareholder, custodial and portfolio accounting services, provided directly to any entity that duly qualifies to be taxed as a regulated investment company or a real estate investment trust under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or to an entity that provides such services to an entity so qualifying.*

* * *

(18) The rendition for a consideration of [storage] *self-storage* service.

(l) "Storage." Any keeping or retention of tangible personal property within this Commonwealth for any purpose including the interim keeping, retaining or exercising any right or power over such tangible personal property. This term is in no way limited to the provision of [storage] *self-storage* service.

(m) "Tangible personal property." Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for non-residential use, electricity for non-residential use, [pay television], *except for minimum pay television premium cable service*, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telephone, telegraph and telecommunications service originating or terminating in the Commonwealth and charged to a

service address in this Commonwealth, intrastate telephone, telegraph and telecommunications service with the exception of subscriber line charges and basic local telephone service for residential use, provided further, the service address of any intrastate telephone, telegraph or telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telephone, telegraph and telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, is deemed attributable to the address of origination of the telephone, telegraph or telecommunications 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 tangible 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—

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is excluded from tax under other provisions of this article.

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

(i) The manufacture of tangible personal property;

(ii) 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 furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game);

(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;

(iv) Processing 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; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used 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 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) 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.

The exclusion provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to the services enumerated in clauses (o)(9) through ~~[(15)] (16)~~ and (w) through (kk), *except that the exclusion provided in subparagraph (ii) for farming, dairying and agriculture shall apply to the service enumerated in clause (z).*

* * *

(13) The obtaining by the purchaser of employment agency services[,] or help supply services [or other personnel supply services].

(14) **[The obtaining by the purchaser of computer programming services or other computer-related services, including, but not limited to, providing computer integrated systems design, computer processing, data preparation or processing services, information retrieval services or computer facilities management services.]** *The obtaining by the purchaser of computer programming services; computer-integrated systems design services; computer processing, data preparation or processing services; information retrieval services; computer facilities management services; or other computer-related services. At a minimum, such services shall not include services that are part of electronic fund transfers, electronic financial transactions or services, banking or trust services, or management or administrative services, including transfer agency, shareholder, custodial and portfolio accounting services, provided directly to any entity that duly qualifies to be taxed as a regulated investment company or a real estate investment trust under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or to an entity that provides such services to an entity so qualifying.*

* * *

(16) The obtaining by the purchaser of self-storage service.

* * *

(z) "Disinfecting or pest control services." Providing disinfecting, termite control, insect control, rodent control or other pest control services. Such services include, but are not limited to, deodorant servicing of rest rooms, washroom sanitation service, rest room cleaning service, extermination service or fumigating service. *As used in this clause, the term "fumigating service" shall not include the fumigation of agricultural commodities or containers used for agricultural commodities. As used in this clause, the term "insect control" shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.*

(aa) "Building maintenance or cleaning services." Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. This term shall not include repairs on buildings and other structures; *nor shall this term include the maintenance or repair of boilers, furnaces or parts thereof; the painting, wallpapering or applying other like coverings to interior walls, ceilings or floors; or the exterior painting of buildings.*

* * *

(cc) "Help supply services." Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. Such services include, but are not limited to, service of a type provided by labor and manpower pools, employe leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services. *The term shall not include human health-related services, including nursing, home health care and personal care. As used in this clause, "personal care" shall include providing at least one of the following types of assistance to persons with limited ability for self-care:*

(1) *dressing, bathing or feeding;*

(2) *supervising self-administered medication;*

(3) *transferring a person to or from a bed or wheelchair; or*

(4) *routine housekeeping chores when provided in conjunction with and supplied by the same provider of the assistance listed in subclause (1), (2) or (3).*

* * *

(ii) "Other computer-related services." Supplying computer-related services not described elsewhere in clauses (dd) through (hh). Such services include, but are not limited to, computer consulting services; data base development and data processing consulting services; disk, diskette or tape conversion services; disk, diskette or tape recertification services; computer hardware and software requirement analysis services; software documenta-

tion services; software installation services; software training services *if provided in conjunction with the purchase of software*; or reformatting or editing services.

* * *

(kk) “[Storage] *Self-storage service.*” [A] *Providing a building [or portion of], a room in a building or [similar structure for purposes] a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing [corporeal] personal property[, including, but not limited to, goods, wares or merchandise, spiritous or vinous liquor and malt or brewed beverages, furniture and household goods, automobiles, furs, textiles, perishable goods under refrigeration, farm products, cotton compresses or tobacco]. The term excludes providing:*

- (1) *safe deposit boxes by financial institutions;*
- (2) *storage [of such property which is unloaded from maritime vessels and then later stored or which is stored and then later loaded on maritime vessels when such storage or loading takes place within twenty-five miles of a “port district,” as defined by the act of July 10, 1989 (P.L.291, No.50), known as the “Philadelphia Regional Port Authority Act.”] in refrigerator or freezer units;*
- (3) *storage in commercial warehouses;*
- (4) *facilities for goods distribution; and*
- (5) *lockers in airports, bus stations, museums and other public places.*

[(ll) “Pay television.” Cable television; community antenna television; or any other distribution of television, video or radio services, with or without the use of wires, to subscribers or paying customers or users, including, but not limited to, installation and repair services, single-event video service or any service having any connection with such services.]

(ll) “*Premium cable service.*” *That portion of cable television services, community antenna television services or any other distribution-of-television, video, audio or radio services which meets all of the following criteria:*

- (1) *is transmitted with or without the use of wires to purchasers; and*
- (2) *which consists substantially of programming uninterrupted by paid commercial advertising which includes, but is not limited to, programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting. If a purchaser receives or agrees to receive premium cable service, then the following charges are included in the purchase price: charges for installation or repair of any premium cable service, upgrade to include additional premium cable service, downgrade to exclude all or some premium cable service, additional premium cable outlets in excess of ten or any other charge or fee related to premium cable services. The term shall not apply to transmissions by public television, public radio services or official Federal, State or local government cable services. Nor shall the term apply to local origination programming which provides a variety of public service programs unique to the community, programming which provides coverage of public affairs issues which are presented without commentary or analysis, including United*

States Congressional proceedings, or programming which is substantially related to religious subjects.

[(mm) “Minimum pay television.” That portion of pay television for which a periodic minimum fee is paid to receive pay television on an ongoing basis.]

Section 2. Section 204(4), (29) and (30) of the act, amended August 4, 1991 (P.L.97, No.22), are amended to read:

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

* * *

(4) The sale at retail or use of disposable diapers[,]; *pre-moistened wipes*; incontinence products[,]; *colostomy deodorants*; toilet paper[,]; sanitary napkins, tampons or similar items used for feminine hygiene; *or toothpaste, toothbrushes or dental floss.*

* * *

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

(i) Soft drinks;

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

(iii) Food or beverages **[ready to eat]**, whether sold for consumption on or off the premises or on a “take-out” or “to go” basis or delivered to the purchaser or consumer, when purchased **[(i)] (A)** from persons engaged in the business of catering[, **or (ii)]**; **or (B)** from persons engaged in the business of operating establishments *from which ready-to-eat food and beverages are sold*, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, **[vending machines.]** snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops[, **bakery, pastry and donut shops**] and other establishments whether mobile or immobile **[from which food or beverages ready to eat are sold]**. For purposes of this clause, *a bakery, a pastry shop, a donut shop, a delicatessen, grocery store, supermarket, farmer’s market or a convenience store shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, [cooked chicken,] sandwiches, [prepared salads,] food from salad bars, [prepared desserts,] hand-dipped or hand-served iced based products including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. For purposes of this subclause, beverages shall not include malt and brewed beverages and spirituous and vinous liquors but shall include soft drinks.* The sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization is not subject to tax.

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

information of a public character or devoted to literature, the sciences, art or some special industry. This exclusion shall also include any printed advertising material circulated with such periodical or publication regardless of where or by whom such printed advertising material was produced.] *The sale at retail or use of newspapers. For purposes of this section, the term "newspaper" shall mean a "legal newspaper" or a publication containing matters of general interest and reports of current events which qualifies as a "newspaper of general circulation" qualified to carry a "legal advertisement" as those terms are defined in 45 Pa.C.S. § 101 (relating to definitions), not including magazines. This exclusion shall also include any printed advertising materials circulated with such newspaper regardless of where or by whom such printed advertising material was produced.*

* * *

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

Section 281.2. Transfers to Public Transportation Assistance Fund.—
(a) All revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula set forth in subsection (b).

(b) Within 30 days of the close of any calendar month, .44 per cent (.0044) of the taxes received in the previous month under this article, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Assistance Transportation Fund), shall be transferred to the Public Assistance Transportation Fund established under 74 Pa.C.S. § 1314(a).

(c) In fiscal year 1991-1992, the Secretary of Revenue will ensure that ten million dollars (\$10,000,000) is deposited in the Public Assistance Transportation Fund from the combination of revenues received under former 74 Pa.C.S. § 1314(d) and transfers of periodical taxes received under this article.

Section 4. Sections 301(c.2), (e.1), (i.1), (i.2) and (o.2) and 304 of the act, amended or added August 4, 1991 (P.L.97, No.22), are amended to read:

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, as amended to the date on which this article is effective:

* * *

(c.2) "Claimant" means a person[:

(1) who is subject to the tax imposed under this article, *is not a dependent of another person*, but is entitled to claim against such tax the poverty tax provisions as provided by this act[;

(2) who has a taxable year of not less than twelve months; and

(3) with respect to whom no deduction under section 151 of the Internal

Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, is allowable to any nonhousehold member for a taxable year beginning in the calendar year in which the claimant's taxable year begins].

* * *

(e.1) "Dependent" means [any nonhousehold member with respect to whom a deduction under section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, is allowable to the claimant for the claimant's taxable year or to a household member for the claimant's taxable year] *a spouse or child who derives more than one-half of his total support during the entire taxable year from a claimant entitled to claim the poverty exemption. Any person who is a dependent pursuant to the provisions of the Internal Revenue Code during a taxable year shall prima facie be deemed a dependent for purposes of this act.*

* * *

(i.1) "Total household income" means all poverty income received by a claimant and every other household member for the taxable year of the claimant.

(i.2) "Household member" means any individual who, for more than one-half of the taxable year of the claimant, has as his principal place of abode the same home as the claimant and is a member of the same household as the claimant.]

* * *

(o.2) "Poverty income" means for the purpose of determining eligibility for special tax provisions [all taxable and nontaxable income from whatever source derived, including, but not limited to, salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.) except Medicare benefits, all benefits received under State unemployment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, realized capital gains, rentals, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first five thousand dollars (\$5,000) of the total of death benefit payments, and gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of three hundred dollars (\$300), but shall not include surplus food or other relief in kind supplied by a governmental agency or property tax or rent rebate or inflation dividend] *all moneys or property (including interest, 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) received of whatever nature and from whatever source derived, but not including (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar*

legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement; or (vii) any compensation received by United States servicemen serving in a combat zone.

* * *

Section 304. Special Tax Provisions for Poverty.—(a) The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article VIII of the Constitution of the Commonwealth of Pennsylvania which provides therein for the establishing as a class or classes of subjects of taxation the property or privileges of persons who, because of poverty are determined to be in need of special tax provisions hereby declares as its legislative intent and purpose to implement such power under such constitutional provision by establishing special tax provisions as hereinafter provided in this act.

(b) The General Assembly having determined that there are persons within this Commonwealth whose incomes are such that imposition of a tax thereon would deprive them and their dependents of the bare necessities of life and having further determined that poverty is a relative concept inextricably joined with actual income and the number of people dependent upon such income deems it to be a matter of public policy to provide special tax provisions for that class of persons hereinafter designated to relieve their economic burden.

(c) For the taxable year **[1991] 1974** and each year thereafter any claimant who meets the following standards of eligibility established by this act as the test for poverty shall be deemed a separate class of subject of taxation, and, as such, shall be entitled to the benefit of the special provisions of this act.

(d) Any claim for special tax provisions hereunder shall be determined in accordance with the following:

(1) If **[total household income is seven thousand dollars (\$7,000)]** *the poverty income of the claimant during an entire taxable year is six thousand three hundred dollars (\$6,300)* or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of **[two thousand dollars (\$2,000) for each dependent and household member]** *one thousand five hundred dollars (\$1,500) for the first additional dependent and an additional income allowance of one thousand dollars (\$1,000) for each additional dependent of the claimant.*

(2) If **[total household income does not exceed the]** *the poverty income of the claimant during an entire taxable year does not exceed the poverty income* limitations prescribed by clause (1) by more than the dollar category

contained in subclauses (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of this clause, the claimant shall be entitled to a refund or forgiveness based on the per centage prescribed in such subclauses of any moneys which have been paid over to (or would except for the provisions herein be payable to) the Commonwealth under this article:

- (i) Ninety per cent if not in excess of one hundred dollars (\$100).
- (ii) Eighty per cent if not in excess of two hundred dollars (\$200).
- (iii) Seventy per cent if not in excess of three hundred dollars (\$300).
- (iv) Sixty per cent if not in excess of four hundred dollars (\$400).
- (v) Fifty per cent if not in excess of five hundred dollars (\$500).
- (vi) Forty per cent if not in excess of six hundred dollars (\$600).
- (vii) Thirty per cent if not in excess of seven hundred dollars (\$700).
- (viii) Twenty per cent if not in excess of eight hundred dollars (\$800).
- (ix) Ten per cent if not in excess of nine hundred dollars (\$900).

Section 5. Section 602.3 of the act is amended by adding a subsection to read:

Section 602.3. Deposit of Proceeds; Appropriation.—* * *

(c) The transfer of any proceeds resulting from the one-half mill tax imposed pursuant to this article to the Hazardous Site Cleanup Fund as authorized in subsection (a) shall not be applicable to fiscal year 1991-1992. In lieu of the 1991-1992 fiscal year transfer, the Governor shall authorize the transfer of proceeds in excess of seventeen million dollars (\$17,000,000) from the revenue resulting from the one-half mill tax imposed pursuant to this article to the Hazardous Site Cleanup Fund pursuant to the transfer schedule set forth in subsection (a). The Governor may transfer any unexpended portion of the seventeen million dollars (\$17,000,000) to the Hazardous Site Cleanup Fund.

Section 6. Section 1502.5 of the act, added October 14, 1988 (P.L.737, No.106), is amended to read:

[Section 1502.5. Sunset.—The provisions regarding apportionment, credits and additional filing requirements in accordance with sections 1502.1, 1502.2 and 1502.3 of this article shall not be applicable for calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter.]

Section 7. The provisions of 74 Pa.C.S. § 1314(d) are repealed.

Section 8. The Secretary of Revenue shall facilitate the transfer of funds under section 281.2 of the act.

Section 9. It is the intent of the General Assembly that the Department of Revenue levy, assess and collect the tax imposed by section 202 of this act on retail sales from vending machines in the same manner and on the same taxable item as was in effect prior to August 4, 1991.

Section 10. The amendment of sections 301 and 304 of the act shall be retroactive to January 1, 1991.

Section 11. This act shall take effect as follows:

- (1) The amendment or addition of sections 201(g), (k)(8), (15), (16) and (18), (l), (m), (o)(4), (13), (14) and (16), (z), (aa), (cc), (ii), (kk), (ll) and (mm), 204(30) and 281.2 of the act shall take effect January 1, 1992.

- (2) Sections 7 and 8 of this act shall take effect January 1, 1992.
- (3) The remainder of this act shall take effect immediately.

APPROVED—The 13th day of December, A. D. 1991.

ROBERT P. CASEY