

No. 1994-48

AN ACT

HB 868

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 defining "manufacture" for sales tax purposes; excluding magazine subscriptions and certain office building cleaning services from sales and use tax; providing specific situs provisions for local sales tax collection; further providing for special tax provisions for poverty and for Pennsylvania S corporations; requiring all employers to withhold wage taxes levied by cities of the first class; further providing for the taxation of business trusts, for loss carryforward and for the rate of corporate net income tax; repealing corporate net income tax revenue allocations to the Industrial Development Fund; further defining "capital stock value" for capital stock and franchise tax purposes; further providing for the bank shares tax, for the alternative bank shares tax and for the tax on title insurance companies; providing for the disclosure of certain gross receipts taxes; excluding transfers to family farm partnerships; providing for the imposition of a tax on the gross receipts of vehicle rental companies renting private passenger motor vehicles and for the collection and disposition of the tax revenues; providing a tax credit to certain business firms who contribute to neighborhood organizations and whose activities tend to upgrade impoverished areas; further providing for malt beverage limited tax credit; exempting spousal transfers from inheritance taxation; providing for the taxation of certain spousal trusts; providing for a transportation assistance fund; imposing additional powers and duties on the Department of Revenue; and making repeals.

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

Section 1. Section 201(c) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended August 4, 1991 (P.L.97, No.22), is 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:

* * *

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

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

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

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stock piles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag;

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

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

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least fifty thousand dollars (\$50,000). Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this clause, the following terms or phrases have the following meanings:

(i) "aircraft" means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) "armored vehicles" means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) "other defense-related vehicles" means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

The term "manufacture," shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

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Section 2. Section 204 of the act is amended by adding clauses to read:

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

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(50) The sale at retail or use of subscriptions for magazines. The term "magazine" refers to a periodical published at regular intervals not exceeding three months and which are circulated among the general public, 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 the periodical or publication regardless of where or by whom the printed advertising material was produced.

(51) The sale at retail or use of interior office building cleaning services but only as relates to the costs of the supplied 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 vender or supplying entity.

Section 3. Section 208(b.1) of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 208. Licenses.—* * *

(b.1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license. The department shall notify the applicant or licensee of any refusal, suspension or revocation. *Such notice shall be made by first class mail.* An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this article. In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process.

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Section 4. Section 281.2(b) of the act, added December 13, 1991 (P.L.373, No.40), is amended and the section is amended by adding a subsection to read:

Section 281.2. Transfers to Public Transportation Assistance Fund.—

* * *

(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 Assistance Fund established under [74 Pa.C.S. § 1314(a)] *Article XXIII.*

* * *

(d) Within 30 days of the close of any calendar month, .09 per cent (.0009) of the taxes received in the previous month under this article shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

Section 5. The act is amended by adding an article to read:

**ARTICLE II-A
SPECIAL SITUS FOR LOCAL SALES TAX**

Section 201-A. Situs of Local Sales Tax on Certain Leased or Rental Vehicles or Crafts.—(a) For purposes of this article only, the lease of a motor vehicle, trailer, semitrailer or mobilehome, as defined in 75 Pa.C.S. (relating to vehicles), or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to have been completed or used at the address of the lessee. In the case of a lease, the tax shall be paid by the lessee to the lessor.

(b) For purposes of this article only, the rental of a motor vehicle, trailer, semitrailer or mobilehome, as defined in 75 Pa.C.S., or of a motorboat, aircraft or other similar tangible personal property required under either Federal or State laws to be registered or licensed shall be deemed to be consummated at the place of business of the retailer. In the case of a rental, the tax due shall be paid by the renter to the retailer.

(c) This article shall only apply to any sales tax imposed under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code," and under the act of June 5, 1991 (P.L.9, No.6), known as the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class."

(d) For purposes of this article only, "lease" shall mean a contract for the use of a motor vehicle or other tangible personal property referred to in subsection (a) for a period of thirty days or more. "Rental" shall mean a contract for the use of a motor vehicle or other tangible personal property referred to in subsection (b) for a period of less than thirty days.

Section 6. Section 301 of the act is amended by adding a clause 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:

* * *

(d.1) "Corporation," as used in the definition of a "small corporation" in this section and for purposes of applying the provisions of section 303(a) with respect to a "reorganization" as defined in that section, the term "corporation" shall include a business trust to which 15 Pa.C.S. Ch. 95

(relating to business trusts) applies and that for Federal income tax purposes is taxable as a corporation. The term does not include:

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments of regulated investment companies.

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Section 7. Section 304(d)(1) of the act, amended December 13, 1991 (P.L.373, No.40), is amended to read:

Section 304. Special Tax Provisions for Poverty.—* * *

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

(1) If 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 **[one thousand five hundred dollars (\$1,500)]** *three thousand dollars (\$3,000)* for the first additional dependent and an additional income allowance of **[one thousand dollars (\$1,000)]** *three thousand dollars (\$3,000)* for each additional dependent of the claimant.

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Section 8. Section 324 of the act, added August 4, 1991 (P.L.97, No.22), is amended to read:

Section 324. General Rule.—When a partnership, association or Pennsylvania S corporation receives income from sources within this Commonwealth for any taxable year and any portion of such income is allocable to a nonresident partner, member or shareholder thereof, such partnership, association or Pennsylvania S corporation shall pay a withholding tax under this section at such time and in such manner as the department shall prescribe; however, notwithstanding any other provision of this article,

all such withholding tax shall be paid over [**within thirty days**] *on or before the fifteenth day of the fourth month* following the end of the taxable year.

Section 9. Section 359 of the act, amended December 21, 1977 (P.L.330, No.98), is amended to read:

Section 359. Saving Clause and Limitations.—(a) Notwithstanding anything contained in any law to the contrary, including but not limited to the provisions of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, 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 of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this article, except as hereinafter provided in subsection (b) of this section.

(b) (1) Notwithstanding the provisions of subsection (a) of this section to the contrary, any rate of tax imposed by ordinance of a city of the first class pursuant to the above cited Sterling Act on salaries, wages, commissions, compensation or other income received or to be received for work done or services performed within such city by persons who are not legal residents of such city, shall not, except as hereinafter provided, exceed the tax imposition rate of four and five-sixteenths per cent for the tax year 1977 or for any tax year thereafter.

(2) In the event such city by ordinance imposes a tax rate on residents or nonresidents in excess of the aforesaid tax rate on the income categories enumerated herein, the provisions of the ordinance imposing such tax rate increase on income of persons who are legal residents of such city, shall be deemed valid and legally effective within the meaning and application of subsection (a) herein. But the provisions of such ordinance imposing a tax rate in excess of four and five-sixteenths per cent with respect to persons who are not legal residents of such city shall be deemed suspended and without any validity to the extent that such tax rate exceeds the tax rate of four and five-sixteenths per cent on income of such nonresidents. And, such excess tax rate provisions shall remain suspended and without any validity until such date as the city of the first class, by ordinance, imposes a rate of tax on income of both legal residents or nonresidents of such city in excess of the tax rate imposition of five and three-fourths per cent per year. In such case the Legislature hereby declares such suspension to be removed and the tax rate valid as to nonresidents, provided, however, that such suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of such nonresidents does not exceed seventy-five per cent of the tax rate imposed by ordinance per year on the income of legal residents of such city. It is the intention of the Legislature by this subsection to impose certain terms and conditions with respect to the validity and legal effectiveness of the Sterling Act or of any ordinance of the city of the first class enacted pursuant thereto which imposes a tax on the income of nonresidents of such city.

(3) Notwithstanding the suspension provisions set forth heretofore, each city of the first class which imposes a tax pursuant to the above cited Sterling Act shall, by ordinance direct every employer maintaining an office or transacting business within such city and making payment of compensation (i) to a resident individual, or (ii) to a nonresident individual taxpayer performing services on behalf of such employer within such city, shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employe's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to such compensation. The method of determining the amount to be withheld shall be to withhold the highest amount of tax imposed with provision in such ordinance to provide refunds of the excess tax withheld to qualified nonresident taxpayers within four months of the end of each calendar year.

(4) In the event that all or any part of the provisions of subsection (b) of this section are declared by a court to be unconstitutional, it shall be the duty of the court to construe the remaining amendatory provisions to Article III in accordance with section 358.

(c) (1) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall, within thirty days after becoming such an employer, register with the revenue commissioner of a city of the first class the employer's name and address and such other information as the revenue commissioner may require.

(2) Every employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall deduct from the salary, wages, commissions or compensation due that person, at the time of payment thereof, the tax imposed by the city of the first class on any salary, wage, commission or other compensation due that employe.

(3) Employers required to withhold taxes under the provisions of this subsection shall calculate the amount of salary, wages, commissions and compensation of employes as determined under the classes of income set forth in section 303 of this article.

(4) Every employer employing one or more persons who are residents of a city of the first class who pay any tax imposed under this article shall file a return and pay to the revenue commissioner the amount of taxes deducted as provided under clause (3) of this subsection. The return shall be on a form or forms furnished by the revenue commissioner and shall set forth the names and residences of each employe of that employer during all or any part of the period covered by the return, the amounts of salaries, wages, commissions or other compensation earned during such period by each employe, together with such other information as the revenue commissioner may require.

(5) The employer shall remit the return and the total tax deducted in accordance with time frames established by section 319 of this article.

(6) Annually, on or before the twenty-eighth day of February, every employer who has filed returns of tax withheld and remitted the tax through the year shall be required to file an Employer's Annual Reconciliation of Wage Tax Withheld, along with a copy of Form W-2 of the Internal Revenue Service for each employee, other listings or electronic data processing tapes, setting forth the following information: (i) name and address of employer; (ii) employer's Federal identification number; (iii) full name and residence address of each employee; (iv) employee's Social Security number; (v) total wages paid during the year before any deductions; and (vi) employer's city account number.

(7) Employers or their designated agents required to file with the revenue commissioner under this subsection shall not be required by the revenue commissioner to be bonded. Employer liability for taxes withheld under this subsection shall be the same as provided in sections 320 and 321 of this article.

(8) If an employer fails to deduct and withhold tax as prescribed in this subsection, it shall not relieve the employee from payment of such tax where payment cannot, for any reason, be obtained from the employer.

Section 10. Section 401(1) and (3)1(b) and 4 of the act, amended December 23, 1983 (P.L.370, No.90) and August 4, 1991 (P.L.97, No.22), are amended to read:

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

(1) "Corporation." A corporation having capital stock, joint-stock association, or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, *or a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies and that for Federal income tax purposes is taxable as a corporation*, and (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. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies and Pennsylvania S corporations. *The word shall not include:*

1. Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance,

administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

2. Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

* * *

(3) "Taxable income." 1. * * *

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government. For tax years beginning on or after January 1, 1991, [an] additional [deduction] *deductions* shall only be allowed for amounts included, under section 78 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned to and ascertained by the Federal Government *and for the amount of any dividends received from a foreign corporation included in taxable income to the extent such dividends would be deductible in arriving at Federal taxable income if received from a domestic corporation.*

* * *

4. (a) For taxable years beginning in 1982 through taxable years beginning in 1990 *and for the taxable year beginning in 1995 and each taxable year thereafter*, a net loss deduction shall be allowed from taxable income as arrived at under subclause 1 or, if applicable, subclause 2. For taxable years beginning in 1991 [and thereafter], *1992, 1993 and 1994*, the net loss deduction allowed for years prior to 1991 shall be suspended, and no carryover of net losses from taxable years 1988, 1989 [and 1990], *1990, 1991, 1992 and 1993* shall be utilized in calculating net income *for the 1991, 1992, 1993 and 1994 taxable years, but such net losses may be used as provided in paragraph (c) in calculating net income for the 1995 taxable year and for two taxable years thereafter.*

(b) A net loss for a taxable year is the negative amount for said taxable year determined under subclause 1 or, if applicable, subclause 2. Negative amounts under subclause 1 shall be allocated and apportioned in the same manner as positive amounts.

(c) The net loss deduction shall be the lesser of *\$500,000* or the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause

2. A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
[1983 and thereafter	3 taxable years]
<i>1983-1987</i>	<i>3 taxable years</i>
<i>1988</i>	<i>2 taxable years plus</i>
	<i>1 taxable year</i>
	<i>starting with the</i>
	<i>1995 taxable year</i>
<i>1989</i>	<i>1 taxable year plus</i>
	<i>2 taxable years</i>
	<i>starting with the</i>
	<i>1995 taxable year</i>
<i>1990-1993</i>	<i>3 taxable years</i>
	<i>starting with the</i>
	<i>1995 taxable year</i>
<i>1994</i>	<i>1 taxable year</i>
<i>1995</i>	<i>2 taxable years</i>
<i>1996 and thereafter</i>	<i>3 taxable years</i>

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. *The total net loss deduction allowed in any taxable year shall not exceed five hundred thousand dollars (\$500,000).*

(d) No loss shall be a carryover from a taxable year when the corporation elects to be treated as a Pennsylvania S corporation pursuant to section 307 of Article III of this act to a taxable year when the corporation is subject to the tax imposed under this article.

(e) Paragraph (d) shall not prevent a taxable year when a corporation is a Pennsylvania S corporation from being considered a taxable year for determining the number of taxable years to which a net loss may be a carryover.

(f) For purposes of the net loss deduction, the short taxable year of a corporation, after the revocation or termination of an election to be treated as a Pennsylvania S corporation pursuant to sections 307.3 and 307.4 of Article III of this act, shall be treated as a taxable year.

(g) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of a corporation in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, the limitations provided in the Internal Revenue Code with respect to net operating losses shall apply for the purpose of computing the portion of a net loss carryover recognized under paragraph (3)4(c) of this section. When any acquiring corporation or a transferor corporation participated in the filing of consolidated returns to the Federal Government, the entitlement of

the acquiring corporation to the Pennsylvania net loss carryover of the acquiring corporation or the transferor corporation will be determined as if separate returns to the Federal Government had been filed prior to the change in ownership by purchase, liquidation, acquisition of stock or reorganization.

* * *

Section 11. Section 402 of the act, amended August 4, 1991 (P.L.97, No.22), 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 through the calendar year 1990 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 calendar year 1991 *through the calendar year 1996 and at the rate of nine and ninety-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1997* and during each calendar year thereafter, with an additional surtax equal to one and seventy-five hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1991 and *[during each calendar year thereafter] through calendar year 1993 and with an additional surtax equal to one and forty-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1994 and with an additional surtax equal to forty-nine hundredths per cent per*

annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1995 and with an additional surtax equal to one-quarter of one per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1996 and with no surtax during calendar year 1997 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 commencing in 1987 through the fiscal year commencing in 1990 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 fiscal year commencing in 1991 through the fiscal year commencing in 1996 and at the rate of nine and ninety-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1997 and during each fiscal year thereafter, with an additional surtax equal to one and seventy-five hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1991 and [during each fiscal year thereafter] through fiscal year 1993 and with an additional surtax equal to one and forty-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during fiscal year 1994 and with an additional surtax equal to forty-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year

commencing in 1995 and with an additional surtax equal to one-quarter of one per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1996 and with no surtax during the fiscal year commencing in 1997 and 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 12. Section 402.1 of the act is repealed.

Section 13. The definitions of "capital stock value," "domestic entity" and "foreign entity" in section 601(a) of the act, amended December 23, 1983 (P.L.360, No.89), July 2, 1986 (P.L.318, No.77) and August 4, 1991 (P.L.97, No.22), 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)**] *seventy-five thousand dollars (\$75,000)*, the algebraic equivalent of which is

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

* * *

"Domestic entity." Every corporation having capital stock, every joint-stock association, limited partnership and every company whatsoever, now or hereafter organized or incorporated by or under any laws of the Commonwealth, *every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies and that for Federal income tax purposes is taxable as a corporation*, other than corporations of the first class, nonprofit corporations and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a domestic entity. *The term "domestic entity" shall not include:*

(1) *Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of*

real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

* * *

“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, *every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies and that for Federal income tax purposes is taxable as a corporation*, 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. *The term “foreign entity” shall not include:*

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth

to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

* * *

Section 14. The heading of Article VII of the act is amended to read:

ARTICLE VII

BANK AND TRUST COMPANY SHARES TAX

Section 15. Section 701 of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 701. Imposition of Tax.—Every **[bank having capital stock, incorporated by or under any law of this Commonwealth or under any law of the United States, and located within this Commonwealth,]** *institution* shall, on or before March 15 in each and every year, make to the Department of Revenue a report in writing, verified as required by law, setting forth the full number of shares of the capital stock subscribed for or issued, as of the preceding January 1, by such **[bank having capital stock]** *institution*, and the taxable amount of such shares of capital stock determined pursuant to section 701.1. It shall be the duty of the Department of Revenue to assess such shares for the calendar years beginning January 1, 1971 through January 1, 1983, at the rate of fifteen mills and for the calendar years beginning January 1, 1984 through January 1, 1988, at the rate of one and seventy-five one thousandths per cent and for the calendar year beginning January 1, 1989, at the rate of 10.77 per cent and for the calendar year beginning January 1, 1990, and each calendar year thereafter at the rate of 1.25 per cent upon each dollar of taxable amount thereof, the taxable amount of each share of stock to be ascertained and fixed pursuant to section 701.1, and dividing this amount by the number of shares. It shall be the duty of every **[bank having capital stock]** *institution*, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar years beginning January 1, 1971 through January 1, 1991, such **[bank having capital stock]** *institution*, upon the date its report, herein required is made for such calendar years beginning January 1, 1971 through January 1, 1991, shall pay to the Department of Revenue not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year, and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That in case any **[bank having capital stock, incorporated under the law of this State or of the United States,]** *institution* shall collect, annually, from the shareholders thereof said tax, according to the provisions of this article, that have been subscribed for or issued, and pay the same into the State Treasury, through the Department of Revenue, the shares, and so much of the capital and profits of such **[bank having capital stock]** *institution* as shall not be invested in real estate, shall be exempt from local

taxation under the laws of this Commonwealth; and such **[bank having capital stock] institution** shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation and shall not be required to pay any tax thereon.

Section 16. Section 701.1 of the act, amended July 1, 1989 (P.L.95, No.21), is amended to read:

Section 701.1. Ascertainment of Taxable Amount; Exclusion of United States Obligations.—(a) The taxable amount of shares shall be ascertained and fixed by adding together the value determined under subsection (b) for the current and preceding five years and dividing the resulting sum by six. If **[a bank] an institution** has not been in existence for a period of six years, the taxable amount of shares shall be ascertained and fixed by adding together the values determined under subsection (b) for the number of years the **[bank] institution** has been in existence and dividing the resulting sum by such number of years.

(b) The value for each year required by subsection (a) shall be determined by adding together the book value of capital stock paid in, the book value of the surplus and the book value of undivided profits with a deduction from the total thereof of an amount equal to the same percentage of such total as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this subsection, book values and deductions for United States obligations for each year shall be determined by the Reports of Condition for each calendar quarter of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority; and book values shall be averaged as calculated by averaging book values as determined by such Reports of Condition. For purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124. For any year in which **[a bank] an institution** does not file four quarterly Reports of Condition, book values and deductions for United States obligations shall be determined by adding together the book values and deductions for United States obligations from each quarterly Reports of Condition filed for such year and dividing the resulting sums by the number of such Reports of Condition. *In the case of institutions which do not file such Reports of Condition, book values shall be determined by generally accepted accounting principles as of the end of each calendar quarter. For any year in which an institution which does not file Reports of Condition is not in existence for four quarters, the book value for that year shall be determined by adding together the book values for each quarter in which the institution was in existence and dividing by that number of quarters.* For purposes of this section, a partial year shall be treated as a full year.

(c) For purposes of this section:

(1) a mere change in identity, form or place of organization of one [bank] *institution*, however effected, shall be treated as if a single [bank] *institution* had been in existence prior to as well as after such change; and

(2) the combination of two or more [banks] *institutions* into one shall be treated as if the constituent [banks] *institutions* had been a single [bank] *institution* in existence prior to as well as after the combination and the book values and deductions for United States obligations from the Reports of Condition of the constituent [banks] *institutions* shall be combined. For purposes of the preceding sentence, a combination shall include any acquisition required to be accounted for by the surviving [bank] *institution* under the pooling of interest method in accordance with generally accepted accounting principles or a statutory merger or consolidation.

Section 17. The act is amended by adding sections to read:

Section 701.4. Apportionment.—*An institution may apportion its taxable amount of shares determined under section 701.1 in accordance with this subsection if the institution is subject to tax in another state based on or measured by net worth, gross receipts, net income or some similar base of taxation, or if it could be subject to such tax, whether or not such a tax has in fact been enacted. The following shall apply:*

(1) *The taxable amount of shares shall be apportioned in accordance with a fraction, the numerator of which is the sum of the payroll factor, the receipts factor and the deposits factor, and the denominator of which is three. If one of the factors is inapplicable, the denominator is two. If two of the factors are inapplicable, the denominator is one.*

(2) *The payroll factor is a fraction, the numerator of which is the total wages paid in this Commonwealth and the denominator of which is the total wages paid in all states. Wages are paid in a state if paid to an employe having a regular presence therein.*

(3) *The receipts factor is a fraction, the numerator of which is total receipts located in this Commonwealth and the denominator of which is the total receipts located in all states. Receipts do not include principal repayments on loans or credit, travel and entertainment cards. Receipts from sale or disposition of intangible and tangible property include only the net gain therefrom. The location of receipts shall be determined as follows:*

(i) *Receipts from loans are located at the place of origination.*

(ii) *All receipts from performance of services are located in a state to the extent the services are performed in the state. If services are performed partly within two or more states, the receipts located in each state shall be measured by the ratio which the time spent in performing such services in the state bears to the total time spent in performing such services in all states. Time spent in performing services in a state is the time spent by employes having a regular presence in the state in performing such services.*

(iii) *Receipts from lease transactions are located in the state in which the leased property is deemed located.*

(iv) *Interest or service charges, excluding merchant discounts, from credit, travel and entertainment card receivables and credit card holders' fees are located in the state in which the credit card holder resides in the case of an individual or, if a corporation, in the state of the cardholder's commercial domicile if, in either case, the institution maintains an office in such state. Otherwise, the receipts are located in the state in which the institution maintains an office which treats such receivables as assets on its books or records.*

(v) *Interest, dividends and net gains from the sale or disposition of intangibles, exclusive of those receipts described elsewhere in this section, are located in the state in which the institution maintains an office which treats such intangibles as assets on its books or records.*

(vi) *Fees or charges from the issuance of traveler's checks and money orders are located in the state in which such traveler's checks or money orders are issued.*

(vii) *Receipts from sales of tangible property are located in the state in which the property is delivered or shipped to a purchaser, regardless of the f.o.b. point or other conditions of the sale.*

(viii) *All receipts not specifically treated under this subsection are located in the state where the greatest portion of the income-producing activities are performed, based on costs of performance.*

(4) *The deposits factor is a fraction, the numerator of which is the average value of deposits located in this Commonwealth during the taxable year and the denominator of which is the average value of the total deposits during the taxable year. The average value of deposits is to be computed on a quarterly basis. Deposits are located in the state in which the institution maintains an office which properly treats the deposits as a liability on its books or records. A deposit is considered to be properly treated as a liability on the books or records of the office with which it has a greater portion of contact. In determining whether a deposit has a greater portion of contact with a particular office, consideration is given to:*

(i) *Whether the deposit account was opened at or transferred to that office by or at the direction of the depositor, regardless of where subsequent deposits or withdrawals are made.*

(ii) *Whether employes regularly connected with that office are primarily responsible for servicing the depositor's general banking and other financial needs.*

(iii) *Whether the deposit was solicited by an employe regularly connected with that office, regardless of where such deposit was actually solicited.*

(iv) *Whether the terms governing the deposit were negotiated by employes regularly connected with that office, regardless of where the negotiations were actually conducted.*

(v) *Whether essential records relating to the deposit are kept at that office and whether the deposit is serviced at that office.*

Section 701.5. 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:*

“Deposits.” *Deposits consist of those items specified for inclusion as such in quarterly Reports of Condition, but do not include deposits made by the Federal Government, its agencies or instrumentalities.*

“Employee.” *Any individual to whom wages are paid within the meaning of 26 U.S.C. § 3401.*

“Institution.”

(1) Every bank operating as such and having capital stock which is incorporated under any law of this Commonwealth, under the law of the United States or under the law of any other jurisdiction and is located within this Commonwealth.

(2) Every operating company having capital stock located within this Commonwealth having any of the powers of companies entitled to the benefits of an act, entitled “An act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies, the powers and privileges of companies incorporated under the provisions of section 29 of an act, entitled ‘An act to provide for the incorporation and regulation of certain corporations,’ approved April 29, 1874, and of the supplements thereto,” approved June 27, 1895, commonly known as trust companies.

(3) Every company organized and operating as a bank and trust company or as trust company having capital stock located in this Commonwealth, whether the institution is incorporated under any law of this Commonwealth, the law of the United States or any law of any jurisdiction. The term shall not include any of such companies, all of the shares of capital stock of which, other than shares necessary to qualify directors, are owned by a company which is liable to pay to the Commonwealth a tax pursuant to this article.

“Lease.” *Any leasing transaction in which the lessor would be treated as owner of the leased property under generally accepted accounting principles. All other transactions purporting to be leases shall be treated as loans for purposes of this article.*

“Located.” *An institution is located in this Commonwealth in a taxable year only if any one of the following apply:*

(1) Such institution maintains an office in this Commonwealth.

(2) One or more employees of the institution have a regular presence in this Commonwealth.

(3) Such institution has employes, representatives or independent contractors conducting business activities in its behalf in this Commonwealth.

(4) Such institution engages in regular solicitation in this Commonwealth, whether at a place of business, by traveling loan officers or other representatives, by mail, by telephone or other electronic means, and the solicitation results in the creation of a depository or direct

debtor/creditor relationship with a resident of this Commonwealth. For purposes of this article, mere processing or transfer through financial intermediaries of checks, credit card receivables, commercial paper and the like does not create a debtor/creditor relationship. A financial institution is engaged in regular solicitation within this Commonwealth if it has entered into any of the relationships listed in this clause with twenty or more residents of this Commonwealth during any tax period or if it has five million dollars (\$5,000,000) or more of assets attributable to sources within this Commonwealth at any time during the tax period.

(5) Such institution owns tangible property which is located in this Commonwealth and which is leased to others for their use.

(6) Such institution owns or leases tangible property which is located in this Commonwealth and which it uses in connection with its activities in this Commonwealth.

"Maintains an office." An institution maintains an office wherever it has established a regular, continuous and fixed place of business.

"Origination of loans." A loan is deemed to have originated in the state in which the office is located which properly treats the loan as an asset on its books or records. However, if an institution maintains an office in a state, the following rules apply:

(1) Loans secured primarily by real property are deemed to have originated at an office within the state in which the predominant part of the security real property is or will be located, if at least one of the following activities occurs at an office in the state:

- (i) application for the loan;*
- (ii) negotiation for the loan;*
- (iii) approval of the loan; or*
- (iv) administrative responsibility for the loan.*

(2) All other loans made to borrowers residing or having their commercial domicile within the state are deemed to have originated at an office within the state, if at least one of the following activities occurs at an office in the state:

- (i) application for the loan;*
- (ii) negotiation for the loan;*
- (iii) approval of the loan; or*
- (iv) administrative responsibility for the loan.*

"Property located in a state."

(1) Except as otherwise provided in this definition, tangible property, including leased property, shall be deemed to be located in the state in which the property is physically situated.

(2) Tangible personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment and the like, shall be deemed to be located in a state if:

(i) *the operation of the property is entirely within the state or the operation outside of the state is occasional or incidental to its operation within the state;*

(ii) *the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state; or*

(iii) *the state is the residence or commercial domicile of the lessee or other user of the property, where there is no principal base of operations and the operation of the property is in two or more states.*

“Regular presence of employes.” An employe shall be deemed to have a regular presence in a state if:

(1) *a majority of the employe’s service is performed within the state; or*

(2) *the office from which his activities are directed or controlled is located in the state, where a majority of the employe’s service is not performed in any one state.*

“State.” Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.

Section 18. The heading of Article VII-A of the act is amended to read:

ARTICLE VII-A
ALTERNATIVE BANK [SHARE] AND TRUST
COMPANY SHARES TAX

Section 19. Section 701-A of the act, added July 1, 1989 (P.L.95, No.21), is amended to read:

Section 701-A. Imposition of Tax.—(a) Except as modified by subsection (b), every [bank having capital stock, incorporated by or under any law of this Commonwealth or under any law of the United States, and located within this Commonwealth,] *institution* shall, on or before [April March 15th each and every year, make to the Department of Revenue a report in writing, verified as required by law, setting forth the full number of shares of the capital stock subscribed for or issued, as of the preceding January 1, by such [bank having capital stock] *institution*, and the value thereof as of the preceding January 1, which value shall be ascertained as hereinafter provided. It shall be the duty of the Department of Revenue to assess such shares at the rate specified by subsection (c) upon each dollar of value thereof, the value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares. It shall be the duty of every [bank having capital stock] *institution*, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue either from its general fund, or from the amount of said tax collected from its shareholders: [Provided, That such bank having capital stock, upon the date its report herein required is made for each calendar year, shall pay

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

(b) Every [bank] *institution* subject to tax under this article shall, within one hundred twenty days of the date this article becomes effective:

(1) Make a report for the calendar year to which this article first applies and pay such tax as may be due in accordance with this section.

(2) Make a report for the second calendar year to which this article applies and pay such tax as may be due in accordance with this section.

(c) The rate of tax imposed under this article for the first calendar year to which this article applies and the succeeding two calendar years shall be 3.85 per cent. The rate of tax imposed under this article for each calendar year thereafter shall be 1.075 per cent.

Section 20. Section 711-A of the act, added July 1, 1989 (P.L.95, No.21), is amended to read:

Section 711-A. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV *and Part I of Article VII* are incorporated by reference into this article insofar as they are applicable to the tax imposed under this article. *The taxable amount of shares under this article shall be apportioned under the provisions of section 701.4.*

Section 21. The heading of Article VIII of the act is amended to read:

ARTICLE VIII

TITLE INSURANCE [AND TRUST] COMPANIES SHARES TAX

Section 22. Section 801 of the act, amended August 4, 1971 (P.L.97, No.22), is amended to read:

Section 801. Imposition of Tax.—(a) Every company incorporated under the provisions of section 29 of an act, entitled “An act to provide for the incorporation and regulation of certain corporations,” approved April 29, 1874, and its supplements, or any other act of Assembly heretofore or hereafter approved, for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and encumbrances, [and every company entitled to benefits of, and every

company having any of the powers of, companies entitled to the benefits of an act, entitled "An act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies, the powers and privileges of companies incorporated under the provisions of section 29 of an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, and of the supplements thereto," approved June 27, 1895,] commonly known as title insurance [or trust] companies, [and every company organized as a bank and trust company or as a trust company under any act of Assembly heretofore or hereafter approved,] except any such companies, all of the shares of capital stock of which (other than shares necessary to qualify directors) are owned by a company which is liable to pay to the Commonwealth a tax on shares, shall, on or before March 15 in each and every year, make to the Department of Revenue a report in writing, setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the taxable amount of such shares of capital stock determined pursuant to section 801.1. It shall be the duty of the Department of Revenue, to assess such shares for taxation for calendar years beginning January 1, 1971 through January 1, 1983, at the rate of fifteen mills and for the calendar years beginning January 1, 1984, through January 1, 1988, at the rate of one and seventy-five one thousandths per cent and for the calendar year beginning January 1, 1989, at the rate of 10.77 per cent and for the calendar year beginning January 1, 1990, and each calendar year thereafter at the rate of 1.25 per cent upon each dollar of the taxable amount thereof, the taxable amount of each share of stock to be ascertained and fixed pursuant to section 801.1, and dividing this amount by the number of shares.

(b) It shall be the duty of every such company, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar years beginning January 1, 1971 through January 1, 1991, every such company shall, at the time of making its report for the calendar years beginning January 1, 1971 through January 1, 1991, compute the tax and pay to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders, not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That upon the payment of the tax fixed by this act into the State Treasury, through the Department of Revenue, the shares and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth. The procedure, in case the Department of Revenue be not satisfied with the report made by any title insurance [or trust] company, and

the penalties for failing to make such report and pay the tax, shall be as provided by law.

Section 23. Section 801.1 of the act, amended July 1, 1989 (P.L.95, No.21), is amended to read:

Section 801.1. Ascertainment of Taxable Amount; Exclusion of United States Obligations.—(a) The taxable amount of shares shall be ascertained and fixed by adding together the value determined under subsection (b) for the current and preceding five years and dividing the resulting sum by six. If a company has not been in existence for a period of six years, the taxable amount of shares shall be ascertained and fixed by adding together the value determined under subsection (b) for the number of years the company has been in existence and dividing the resulting sum by such number of years.

(b) The value for each year required by subsection (a) shall be determined by adding together the book value of capital stock paid in, the book value of the surplus, the book value of undivided profits and the book value of the unearned premium reserve with a deduction from the total thereof of an amount equal to the same percentage of such total as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this subsection, in the case of **[banks and bank and trust companies, book values and the deduction for United States obligations for each year shall be determined by the Reports of Condition made in each calendar quarter in the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority and in the case of]** title insurance **[and trust]** companies **[which do not file such Reports of Condition]**, book values and the deduction for United States obligations for each year shall be determined by generally accepted accounting principles as of the end of each calendar quarter in the preceding calendar year and book values shall in all cases be averaged as calculated by averaging book values as determined **[by such Reports of Condition or as determined]** at the end of each calendar quarter **[in the case of title insurance and trust companies which do not file such Reports of Condition]**. For the purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124. For any year in which a bank or bank and trust company does not file four quarterly Reports of Condition, book values and deductions for United States obligations shall be determined by adding together the book values and deductions for United States obligations from each quarterly Reports of Condition filed for such year and dividing the resulting sums by the number of such Reports of Condition. For any year in which a title insurance company **[or trust company]** is not in existence for the full year, book values and deductions for United States obligations shall be determined by adding together the book values and deductions for United States obligations as of the end of each calendar quarter in which the company was in existence at the end of such calendar quarter and dividing

the resulting sums by the number of such calendar quarters. For purposes of this section, a partial year shall be treated as a full year.

(c) For purposes of this section:

(1) a mere change in identity, form or place of organization of one company, however effected, shall be treated as if a single company had been in existence prior to as well as after such change; and

(2) the combination of two or more companies into one shall be treated as if the constituent companies had been a single company in existence prior to as well as after the combination and the book values and deductions for United States obligations [**from the Reports of Condition or**] as determined by generally accepted accounting principles as of the end of each calendar quarter of the constituent companies shall be combined. For purposes of the preceding sentence, a combination shall include any acquisition required to be accounted for by the surviving company under the pooling of interest method in accordance with generally accepted accounting principles or a statutory merger or consolidation.

Section 24. Section 802 of the act is amended to read:

Section 802. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article insofar as they are applicable to the tax imposed hereunder. *The taxable value of shares under this article shall be apportioned under the provisions of section 701.4, except that, in addition, for purposes of section 701.4(3), receipts from the issuance of title insurance shall be located in the state in which the real property that is insured is located.*

Section 25. The heading of Article VIII-A and sections 801-A, 802-A and 811-A of the act, added July 1, 1989 (P.L.95, No.21), are amended to read:

ARTICLE VIII-A
ALTERNATIVE TITLE INSURANCE [AND
TRUST] COMPANIES SHARES TAX

Section 801-A. Imposition of Tax.—(a) Except as modified by subsection (b), every company incorporated under the provisions of section 29 of the act of April 29, 1874 (P.L.73, No.32), known as the “Corporation Act of 1874,” and its supplements, or any other act of Assembly heretofore or hereafter approved, for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens and encumbrances, [**and every company entitled to benefits of, and every company having any of the powers of, companies entitled to the benefits of the act of June 27, 1895 (P.L.399, No.286), entitled “An act conferring upon certain fidelity, insurance, safety deposit, trust and savings companies the powers and privileges of companies incorporated under the provisions of section twenty-nine of an act, entitled ‘An act to provide for the incorporation and regulation of certain corporations,’ approved April 29, 1874, and of the supplements thereto,” approved June 27, 1895,**] commonly known as title insurance [or trust] companies,

[and every company organized as a bank and trust company or as a trust company under any act of Assembly heretofore or hereafter approved,] except any such companies, all of the shares of capital stock of which (other than shares necessary to qualify directors) are owned by a company which is liable to pay to the Commonwealth a tax on shares, shall, on or before April 15 in each and every year, make to the Department of Revenue a report in writing setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the value thereof as of January 1 preceding, which shall be ascertained as hereinafter provided. It shall be the duty of the Department of Revenue, to assess such shares for taxation at the rate specified by subsection (c) upon each dollar of the value thereof, the value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus, the undivided profits and the unearned premium reserve, and dividing this amount by the number of shares.

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

(b) Every company subject to tax under this article shall, within one hundred twenty days of the date this article becomes effective:

(1) Make a report for the calendar year to which this article first applies and pay such tax as may be due in accordance with this section.

(2) Make a report for the second calendar year to which this article applies and pay such tax as may be due in accordance with this section.

(c) The rate of tax imposed under this article for the first calendar year to which this article applies and the succeeding two calendar years shall be 3.85 per cent. The rate of tax imposed under this article for each calendar year thereafter shall be 1.075 per cent.

Section 802-A. Ascertainment of Value; Exclusion of United States Obligations.—The value of shares shall be ascertained and fixed pursuant to

section 801-A by adding together the book value of capital stock paid in, the book value of the surplus, the book value of undivided profits and the book value of the unearned premium reserve with a deduction from the total thereof of an amount equal to the same percentage of such total as the book value of obligations of the United States bears to the book value of the total assets. For purposes of this section, in [the case of banks and bank and trust companies, book values shall be determined by the Reports of Condition made in each calendar quarter in the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority and in] the case of title insurance [and trust] companies [which do not file such Reports of Condition], book values shall be determined by generally accepted accounting principles as of the end of each calendar quarter in the preceding calendar year and book values shall in all cases be averaged as calculated by averaging book values as determined [by such Reports of Condition or as determined] at the end of each calendar quarter [in the case of title insurance and trust companies which do not file such Reports of Condition]. For the purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124.

Section 811-A. Procedure; Enforcement; Penalties.—Parts III, IV, V, VI and VII of Article VI are incorporated by reference into this article insofar as they are applicable to the tax imposed under this article. *The taxable value of shares under this article shall be apportioned under the provisions of section 701.4, except that, in addition, for purposes of section 701.4(3), receipts from the issuance of title insurance shall be located in the state in which the real property that is insured is located.*

Section 26. Section 1101 of the act is amended by adding a subsection to read:

Section 1101. Imposition of Tax.—* * *

(i) *Itemization of Gross Receipts Tax.*—

(1) *Interexchange telecommunications carriers may surcharge and disclose as a separate line item on a customer's bill all gross receipts taxes imposed on interexchange telecommunications carriers services performed wholly within this Commonwealth.*

(2) *For four monthly billing cycles from the effective date of this act, all interexchange telecommunications carriers shall provide the customer with information in the carriers' monthly billing that the gross receipts line item surcharge is not a tax increase, but merely a disclosure of taxes presently and previously paid by the customer.*

(3) *As used in this subsection, the term "interexchange telecommunications carrier" has the meaning as defined in 66 Pa.C.S. § 3002 (relating to definitions).*

Section 27. Section 1101-C of the act is amended by adding a definition to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section:

* * *

“Family farm partnership.” A partnership of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of the interests in the partnership are 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.

* * *

Section 28. Section 1102-C.3(20) of the act, added July 2, 1986 (P.L.318, No.77), is amended and the section is amended by adding a clause to read:

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

* * *

(19.1) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least seventy-five per cent of the interests in the partnership.

(20) A transfer between members of the same family of an ownership interest in a real estate company [or], family farm corporation or family farm partnership which owns real estate.

* * *

Section 29. Section 1102-C.5 of the act is amended by adding a subsection to read:

Section 1102-C.5. Acquired Company.—* * *

(b.1) A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests 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 partnership under this act.

* * *

Section 30. The act is amended by adding articles to read:

**ARTICLE XVI-A
PASSENGER CAR RENTAL TAX**

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

“Motor vehicle.” *A private passenger motor vehicle designed to transport fifteen or fewer passengers that is rented without a driver and is part of a fleet of five or more passenger vehicles used for that purpose, owned or leased by the same person or entity.*

“Vehicle rental company.” *Any business entity engaged in the business of renting motor vehicles in this Commonwealth.*

Section 1602-A. Passenger Car Rental Tax.—*(a) Each vehicle rental company shall collect, at the time the motor vehicle is rented in this Commonwealth, on each rental contract for a period of twenty-nine or fewer consecutive days, a tax equal to two per cent of the purchase price of the rental.*

Section 1603-A. Reporting and Remittance of Tax.—*(a) The tax shall be reported and remitted in the same manner as the tax imposed by Article XXIII of this act, except that, no later than February 15 of each calendar year, each vehicle rental company shall file a report with the Department of Revenue on a form prescribed by the department. The report shall include the amount of tax remitted during the previous calendar year and the total amount of motor vehicle licensing and title fees imposed by the Commonwealth under 75 Pa.C.S. (relating to vehicles) on the vehicle rental company's motor vehicles and paid to the Commonwealth by the vehicle rental company in the previous calendar year.*

(b) When reconciling the reports and remittances filed during the previous calendar year with the annual report, the department shall allow against the tax imposed by subsection (a) a credit equal to the total amount of licensing and title fees imposed by the Commonwealth under 75 Pa.C.S. on the vehicle rental company's motor vehicles and paid to the Commonwealth by the vehicle rental company in the previous calendar year. The department shall refund to the taxpayer the credit verified from the annual report. The amount of such verified credit shall not exceed the amount of tax collected and remitted by the taxpayer for the calendar year for which the claim is made. If the amount of the tax collected exceeds the amount of licensing fees and title fees paid the Commonwealth, the excess collection shall be deposited by the department into the General Fund.

(c) Unless otherwise noted, the provisions of Article II of this act shall apply to the tax required under this article.

Section 1604-A. Application.—*This article shall apply to all rental contracts entered into on or after July 1, 1994.*

ARTICLE XIX-A NEIGHBORHOOD ASSISTANCE TAX CREDIT

Section 1901-A. Short Title.—*This article shall be known and may be cited as the Neighborhood Assistance Act.*

Section 1902-A. Definitions.—*The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:*

“Business firm.” *Any business entity authorized to do business in this Commonwealth and subject to taxes imposed by Article IV, VI, VII, VII-A, VIII, VIII-A, IX or X of this act.*

“Community services.” *Any type of counseling and advice, emergency assistance or medical care furnished to individuals or groups in an impoverished area.*

“Comprehensive service plan.” *A strategy developed jointly by a neighborhood organization and a sponsoring business firm or private company for the stabilization and improvement of an impoverished area within an urban neighborhood or rural community.*

“Comprehensive service project.” *Any activity conducted jointly by a neighborhood organization and a sponsoring business firm which implements a comprehensive service plan.*

“Crime prevention.” *Any activity which aids in the reduction of crime in an impoverished area.*

“Education.” *Any type of scholastic instruction or scholarship assistance to an individual who resides in an impoverished area that enables him to prepare himself for better life opportunities.*

“Enterprise zones.” *Specific locations with identifiable boundaries within impoverished areas which are designated as enterprise zones by the Secretary of Community Affairs.*

“Impoverished area.” *Any area in this Commonwealth which is certified as such by the Department of Community Affairs and the certification is approved by the Governor. Such certification shall be made on the basis of Federal census studies and current indices of social and economic conditions.*

“Job training.” *Any type of instruction to an individual who resides in an impoverished area that enables him to acquire vocational skills so that he can become employable or be able to seek a higher grade of employment.*

“Neighborhood assistance.” *Furnishing financial assistance, labor, material and technical advice to aid in the physical improvement of any part or all of an impoverished area.*

“Neighborhood organization.” *Any organization performing community services, offering neighborhood assistance or providing job training, education or crime prevention in an impoverished area, holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and approved by the Department of Community Affairs.*

“Private company.” *Any agricultural, industrial, manufacturing or research and development enterprise as defined in section 3 of the act of*

May 17, 1956 (1955 P.L.1609, No.537), known as the "Pennsylvania Industrial Development Authority Act," or any commercial enterprise as defined in section 3 of the act of August 23, 1967 (P.L.251, No.102), known as the "Economic Development Financing Law."

"Qualified investments." Any investments made by a private company which promote community economic development pursuant to a plan which has been developed in cooperation with and approved by a neighborhood organization operating pursuant to a plan for the administration of tax credits approved by the Department of Community Affairs.

Section 1903-A. Public Policy.—It is hereby declared to be public policy of this Commonwealth to encourage investment by business firms in offering neighborhood assistance and providing job training, education, crime prevention and community services, to encourage contributions by business firms to neighborhood organizations which offer and provide such assistance and services and to promote qualified investments made by private companies to rehabilitate, expand or improve buildings or land which promote community economic development and which occur in portions of impoverished areas which have been designated as enterprise zones.

Section 1904-A. Tax Credit.—(a) Any business firm which engages or contributes to a neighborhood organization which engages in the activities of providing neighborhood assistance, job training or education for individuals, community services or crime prevention in an impoverished area or private company which makes qualified investment to rehabilitate, expand or improve buildings or land located within portions of impoverished areas which have been designated as enterprise zones shall receive a tax credit as provided in section 1905-A if the Secretary of Community Affairs annually approves the proposal of such business firm or private company. The proposal shall set forth the program to be conducted, the impoverished area selected, the estimated amount to be invested in the program and the plans for implementing the program.

(b) The Secretary of Community Affairs is hereby authorized to promulgate rules and regulations for the approval or disapproval of such proposals by business firms or private companies and provide a listing of all applications received and their disposition in each fiscal year to the General Assembly by October 1 of the following fiscal year.

(c) The total amount of tax credit granted for programs approved under this act shall not exceed fourteen million seven hundred fifty thousand dollars (\$14,750,000) of tax credit in any fiscal year, subject to the following:

(1) two million dollars (\$2,000,000) of the total amount of tax credit shall be allocated for comprehensive service projects, but the Secretary of Community Affairs may reallocate any unused portion of the two million dollars (\$2,000,000) for any other program authorized by this act if insufficient applications are made for comprehensive service projects; and

(2) *four million dollars (\$4,000,000) of the total amount of tax credit shall be set aside exclusively for private companies which make qualified investments to rehabilitate, expand or improve buildings or land which promote community economic development and which occur in portions of impoverished areas which have been designated as enterprise zones.*

Section 1905-A. Grant of Tax Credit.—The Department of Revenue shall grant a tax credit against any tax due under Article IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV of this act, or any tax substituted in lieu thereof in an amount which shall not exceed fifty per cent of the total amount invested during the taxable year by the business firm or twenty per cent of qualified investments by a private company in programs approved pursuant to section 1904-A of this act: Provided, That a tax credit of up to seventy per cent of the total amount invested during the taxable year by a business firm or up to thirty per cent of the amount of qualified investments by a private company may be allowed for investment in programs where activities fall within the scope of special program priorities as defined with the approval of the Governor in regulations promulgated by the Secretary of the Department of Community Affairs. Regulations establishing special program priorities are to be promulgated during the first month of each fiscal year and at such times during the year as the public interest dictates. Such credit shall not exceed two hundred fifty thousand dollars (\$250,000) annually, except in the case of comprehensive service projects which shall be allowed an additional credit equal to seventy per cent of the qualifying investments made in comprehensive service projects; however, such additional credit shall not exceed one hundred seventy-five thousand dollars (\$175,000) annually. No tax credit shall be granted to any bank, bank and trust company, insurance company, trust company, national bank, savings association, mutual savings bank or building and loan association for activities that are a part of its normal course of business. Any tax credit not used in the period the investment was made may be carried over for the next five succeeding calendar or fiscal years until the full credit has been allowed. The total amount of all tax credits allowed pursuant to this act shall not exceed fourteen million seven hundred fifty thousand dollars (\$14,750,000) in any one fiscal year.

Section 1906-A. Decision in Writing.—The decision of the Secretary of Community Affairs to approve or disapprove a proposal pursuant to section 1904-A of this act shall be in writing, and, if it approves the proposal, it shall state the maximum credit allowable to the business firm. A copy of the decision of the Secretary of Community Affairs shall be transmitted to the Governor and to the Secretary of Revenue.

Section 31. Section 2010(b) of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2010. Limited Tax Credits.—* * *

(b) As used in this section:

“Amounts paid.” The phrase means (i) amounts actually paid, or (ii) at the taxpayer’s election, amounts promised to be paid under firm purchase contracts actually executed during any calendar year falling within the effective period of this section: Provided, however, That there shall be no duplication of “amounts paid” under this definition.

“Effective period.” The period from January 1, 1974, to [December 31, 1993] *December 31, 1998*, inclusive.

“Qualifying capital expenditures.” Amounts paid by a taxpayer during the effective period of this section for the purchase of items of plant, machinery or equipment for use by the taxpayer within this Commonwealth in the manufacture and sale of malt or brewed beverages: Provided, however, That the total amount of qualifying capital expenditures made by a taxpayer within a single calendar year shall not exceed two hundred thousand dollars (\$200,000).

“Secretary.” The Secretary of Revenue of the Commonwealth of Pennsylvania where not otherwise qualified.

“Taxpayer.” A manufacturer of malt or brewed beverages claiming a tax credit or credits under this section and having an annual production of malt or brewed beverages that does not exceed three hundred thousand (300,000) barrels.

* * *

Section 32. Section 2107 of the act is amended by adding a subsection to read:

Section 2107. Transfers Subject to Tax.—* * *

(d) All succeeding interests which follow the interest of a surviving spouse in a trust or similar arrangement, to the extent specified in section 2113, are transfers subject to tax as if the surviving spouse were the transferor.

Section 33. Sections 2108(b) and 2111(k) and (m) of the act, added August 4, 1991 (P.L.97, No.22), are amended to read:

Section 2108. Joint Tenancy.—* * *

(b) [Except as provided in subsection (c), this] This section shall not apply to property and interests in property passing by right of survivorship to the survivor of husband and wife.

* * *

Section 2111. Transfers Not Subject to Tax.—* * *

(k) Property subject to a power of appointment, whether or not the power is exercised, and notwithstanding any blending of such property with the property of the donee, is exempt from inheritance tax in the estate of the donee of the power of appointment, *except as provided in section 2113.*

* * *

(m) *Transfers of property to or for the use of a husband or wife of the decedent are exempt from inheritance tax.* Property owned by husband and wife with right of survivorship is exempt from inheritance tax. [If the ownership was created within the meaning of section 2107(c)(3), the

entire interest transferred shall be subject to tax under section 2107(c)(3) as though a part of the estate of the spouse who created the co-ownership.]

* * *

Section 34. Section 2112 of the act is amended by adding subsections to read:

Section 2112. Exemption for Poverty.—* * *

(f) *The credit provided in this section shall not be greater than the tax imposed.*

(g) *This section shall not apply to the estates of decedents dying on or after January 1, 1998.*

Section 35. The act is amended by adding a section to read:

Section 2113. Trusts and Similar Arrangements for Spouses.—In the case of a transfer of property for the sole use of the transferor's surviving spouse during the surviving spouse's lifetime, all succeeding interests which follow the interest of the surviving spouse shall not be subject to tax as transfers by the transferor, but rather shall be deemed to be transfers subject to tax by the surviving spouse of the property held in the trust or similar arrangement at the death of the surviving spouse. The succeeding interests shall be valued at the death of the surviving spouse and taxed at the tax rates applicable to dispositions by the surviving spouse. Any exemption from tax based upon the kind or location of property shall be based upon the kind or location of property held in the trust or similar arrangement at the surviving spouse's death.

Section 36. Section 2116(a) and (e) of the act, added August 4, 1991 (P.L.97, No.22), are amended and the section is amended by adding a subsection to read:

Section 2116. Inheritance Tax.—(a) (1) Inheritance tax upon the transfer of property passing to or for the use of any of the following shall be at the rate of six per cent:

(i) grandfather, grandmother, father, mother[, husband, wife] and lineal descendants; or

(ii) wife or widow and husband or widower of a child.

(1.1) Inheritance tax upon the transfer of property passing to or for the use of a husband or wife shall be:

(i) At the rate of three per cent for estates of decedents dying on or after July 1, 1994, and before January 1, 1996.

(ii) At the rate of two per cent for estates of decedents dying on or after January 1, 1996, and before January 1, 1997.

(iii) At the rate of one per cent for estates of decedents dying on or after January 1, 1997, and before January 1, 1998.

(2) Inheritance tax upon the transfer of property passing to or for the use of all persons other than those designated in subclause (1) or (1.1) or exempt under section 2111(m) shall be at the rate of fifteen per cent.

(3) When property passes to or for the use of a husband and wife with right of survivorship, one of whom is taxable at a rate lower than the other, the lower rate of tax shall be applied to the entire interest.

* * *

(b.1) The inheritance tax due upon the transfer of property passing to or for the use of a husband or wife shall be the lesser of the tax imposed under subsection (a)(1.1) or the tax due after the allowance of the credit provided for under section 2112.

* * *

(e) If the rate of tax which will be applicable when [a future] *an* interest vests in possession and enjoyment cannot be established with certainty, the department, after consideration of relevant actuarial factors, valuations and other pertinent circumstances, may enter into an agreement with the person responsible for payment to establish a specified amount of tax which, when paid within sixty days after the agreement, shall constitute full payment of all tax otherwise due upon such transfer. *Rights of withdrawal of a surviving spouse not exercised within nine months of the transferor's death shall be ignored in making such calculations.*

* * *

Section 37. Section 2130(1) and (2) of the act, added August 4, 1991 (P.L.97, No.22), are amended to read:

Section 2130. Deductions Not Allowed.—The following are not deductible:

[(1) The value of assets claimed for the spouse's allowance under 20 Pa.C.S. § 2102 (relating to share of surviving spouse).]

(2) Claims of a former [or surviving] spouse, or others, under an agreement between the former [or surviving] spouse and the decedent, insofar as they arise in consideration of a relinquishment or promised relinquishment of marital or support rights.

* * *

Section 38. Section 2144 of the act is amended by adding a subsection to read:

Section 2144. Source of Payment.—* * *

(e.1) In the absence of a contrary intent appearing in the instrument creating the trust or similar arrangement and in the absence of a contrary direction by the surviving spouse, the inheritance tax, including interest, due at the death of a surviving spouse with respect to a trust or similar arrangement to which section 2113 is applicable shall be paid out of the principal of the trust or similar arrangement. The payment shall be made by the trustee or other fiduciary in possession of the property and, if not so paid, shall be made by the transferee of such principal.

* * *

Section 39. The act is amended by adding an article to read:

ARTICLE XXIII
PUBLIC TRANSPORTATION ASSISTANCE FUND

Section 2301. Public Transportation Assistance Fund.—(a) *There is hereby created a special fund in the State Treasury to be known as the Public Transportation Assistance Fund. Moneys deposited into the fund and interest which accrues from those funds shall be used for the purposes delineated in 74 Pa.C.S. § 1310 (relating to distribution of funding).*

(b) *Funds received under the provisions of this section, as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each month into the fund. Unless otherwise specifically noted, the provisions of Article II shall apply to the fees and taxes imposed by subsections (c), (d) and (e). Unless otherwise specifically noted, the provisions of Article XI-A shall apply to the tax imposed under subsection (f).*

(c) *There is hereby imposed a fee on each sale in this Commonwealth of new tires for highway use at the rate of one dollar (\$1) per tire. The fee shall be collected by the seller from the purchaser and remitted to the Department of Revenue. No exclusions or exemptions, other than those for governmental entities provided under Article II, shall apply to the fees and taxes imposed by this section.*

(d) *There is hereby imposed on each lease of a motor vehicle subject to tax under Article II an additional tax of three per cent of the total lease price charged. As used in this subsection, the term “motor vehicle” does not include trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) (relating to trucks and truck tractors).*

(e) *There is hereby imposed on each rental of a motor vehicle subject to tax under Article II a fee of two dollars (\$2) for each day or part of a day for which the vehicle is rented.*

(f) *Every entity required to pay the tax imposed under Article XI-A shall, in addition to that tax, pay an additional tax of twelve (12) mills upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year.*

Section 40. Section 3003(a) and (b) of the act, amended October 14, 1988 (P.L.737, No.106) and August 4, 1991 (P.L.97, No.22), are amended to read:

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

Article XI-A of this act, such taxpayers, commencing with the calendar year 1970 and fiscal years beginning during the calendar year 1970 and each taxable year thereafter, on or before the fifteenth day of March for calendar year taxpayers, and on or before the fifteenth day of the third month after the close of its previous fiscal year for fiscal year taxpayers, shall report annually and pay on account of the tax due for the current year, an amount to be computed by applying the current tax rate to ninety per cent of such tax base from the immediate prior year as may be applicable with respect to the tax being reported.

(b) For the taxable years commencing with calendar year 1979 and for each taxable year thereafter, the tentative tax due for the current year shall be computed by applying the current tax rate to ninety per cent of such tax base from the year preceding the immediate prior year as may be applicable with respect to the tax being reported; except that with respect to the aforesaid gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, and the aforesaid insurance premiums tax, such amount shall continue to be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year as may be applicable with respect to the tax being reported; except that corporations shall not be required to report or pay tentative tax with respect to the corporate net income tax on account of any taxable year commencing with calendar year 1986 and each taxable year thereafter; except that corporations shall not be required to report or pay tentative tax with respect to the capital stock and franchise tax on account of any taxable year commencing with calendar year 1988 and each taxable year thereafter; except that the tentative tax with respect to the mutual thrift institution's tax for calendar year 1988 and fiscal years beginning in 1988 shall be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year; and except that the mutual thrift institution shall not be required to report or pay tentative tax with respect to the mutual thrift institution's tax on account of any taxable year commencing with tax year 1992 and any taxable year thereafter.

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

* * *

Section 41. The act is amended by adding sections to read:

Section 3003.5. Refund Petitions.—(a) Effective January 1, 1995, petitions for refund of taxes, penalties, fines, additions and other moneys collected by the Department of Revenue except those claims for refunds of liquid fuels taxes paid by political subdivisions, farmers, nonpublic schools not operated for profit, volunteer fire companies, volunteer rescue squads, volunteer ambulance services, users of liquid fuel in propeller-driven

aircraft or engines and agencies of the Federal Government and of the Commonwealth and the Boat Fund of the Pennsylvania Fish and Boat Commission shall be heard and determined by the Department of Revenue as provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," and the Department of Revenue shall thereafter have the powers and duties formerly granted to the Board of Finance and Revenue with respect to such refunds. Also effective January 1, 1995, the Board of Finance and Revenue shall no longer have the power and duty to hear and determine any petition for refund of taxes, penalties, fines, additions or other moneys collected by the Department of Revenue, except that thereafter the board may either hear and determine any such petitions filed with it prior to January 1, 1995, or it may transfer such petitions to the Department of Revenue.

(b) Appeals.—The decision of the Department of Revenue on a petition for refund under this section may, in the first instance, be appealed to the Board of Finance and Revenue in the manner provided by section 1103 of "The Fiscal Code" except that the Board of Finance and Revenue shall act finally in disposition of such petitions within twelve months after they have been received.

Section 3003.6. Timely Filing.—A taxpayer shall be deemed to have timely filed a petition for resettlement, a petition for reassessment, a petition for redetermination or any other protest relating to the assessment of tax or any other matter relating to any tax imposed by this act if the letter transmitting the petition is received by the Department of Revenue or is postmarked by the United States Postal Service on or prior to the final day on which the petition is required to be filed.

Section 3003.7. Failure to Make Payment by Electronic Fund Transfer.—Any person who fails to make a payment covered by section 9 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," by a method prescribed in that section shall in addition to any other penalty, interest or addition provided by law, be liable for a penalty of three per cent of the total tax due, not exceeding one thousand dollars (\$1,000).

Section 3003.8. Method of Filing.—(a) Notwithstanding any provision of law, the Department of Revenue may allow the electronic filing of any tax return or documents.

(b) For the purposes of this section, the Department of Revenue may determine alternative methods for the signing, subscribing or verifying of a return, statement or other document that shall have the same validity and consequences as the actual signing by the taxpayer.

Section 3003.9. Bad Checks.—If any check in payment of any amount receivable under Article IV, VI, VII, IX, XI or XXX is not paid upon presentment, in addition to any other penalties provided by law, the Department of Revenue shall charge the person who tendered such check a fee equal to ten percent of the face amount thereof, plus any protest fees,

provided that the addition imposed hereby shall not exceed five hundred dollars (\$500) nor be less than ten dollars (\$10).

Section 42. (a) The following acts and parts of acts are repealed:

Act of May 23, 1919 (P.L.239, No.131), entitled "An act requiring the county commissioners of the several counties and all collectors and assessors of taxes for local purposes in this Commonwealth, to furnish to the Secretary of Internal Affairs, or his representatives, any and all other statistics and information relating to the collection and assessing of said taxes, in addition to those required to be furnished under existing laws, as may be demanded by him."

Act of July 2, 1937 (P.L.2797, No.584), entitled, as amended, "An act requiring collectors of city, county, borough, town, township, and school district taxes, to file certain reports with the quarter sessions court and the Department of Community Affairs; directing such department to prepare and furnish forms for such reports, making such reports available for public inspection; and making violation of the act a misdemeanor."

Act of November 29, 1967 (P.L.636, No.292), known as the Neighborhood Assistance Act.

74 Pa.C.S. § 1314.

(b) The following statutory provisions are hereby repealed to the extent that they conflict with the provisions of this act for filing with the Board of Finance and Revenue of petitions for the refund of taxes and other moneys collected by the Department of Revenue:

Section 1104.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 17 of the act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act.

Section 21 of the act of December 5, 1933 (Sp.Sess., P.L.38, No.6), known as the Spirituous and Vinous Liquor Tax Law.

Section 16 of the act of January 14, 1952 (1951 P.L.1965, No.550), known as the Fuel Use Tax Act.

Sections 346, 347, 1254, 2009, 2181 and 3003.1 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

75 Pa.C.S. §§ 9604 and 9611.

(c) The provisions of 15 Pa.C.S. § 9501(c) are repealed to the extent that they would affect any tax imposed under Articles III, IV or VI of the act for any taxable year beginning on or after January 1, 1995.

(d) The following acts or parts of acts are repealed insofar as they are inconsistent with the provisions of Article II-A:

Section 3153-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

Section 504(b) of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(e) The provisions of 66 Pa.C.S. § 1509 are repealed insofar as they are inconsistent with this act.

Section 43. This act shall apply as follows:

(1) The amendment of sections 301, 401 and 601 of the act pertaining to business trusts and net loss deductions shall apply to all taxable years beginning on or after January 1, 1995.

(2) The amendment of sections 304 and 324 and the definition of "capital stock value" in section 601 of the act shall apply with respect to any taxable year beginning on or after January 1, 1994.

(3) The amendment or addition of sections in Articles VII, VII-A, VIII, VIII-A and section 3003 of the act shall apply to the taxable year beginning January 1, 1995, and each taxable year thereafter.

(4) (i) The amendment or addition of sections 2112(f) and (g) and 2116(a), (b.1) and (e) of the act shall apply to the estates of all decedents dying on or after July 1, 1994, and to inter vivos transfers made by decedents dying on or after July 1, 1994, regardless of the date of the transfer.

(ii) The remainder of the amendment or addition of Article XXI of the act shall apply to the estates of decedents dying on or after January 1, 1998, and to inter vivos transfers made by decedents dying on or after January 1, 1998, regardless of the date of the transfer.

Section 44. The amendment of section 402 of the act shall be retroactive to January 1, 1994.

Section 45. This act shall take effect as follows:

(1) The amendment or addition of sections 204(51), 281.2(b) and (d) and Article XXIII of the act shall take effect April 1, 1995.

(2) The amendment of section 359 and the addition of Article XVI-A of the act shall take effect in 60 days.

(3) Section 42(b) and (c) of this act shall take effect January 1, 1995.

(4) The remainder of this act shall take effect July 1, 1994, or immediately, whichever is later.

APPROVED—The 16th day of June, A.D. 1994.

ROBERT P. CASEY