No. 1999-4

AN ACT

SB 557

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," revising and adopting sales and use tax provisions on processing exclusions, credit sales and bad debt sales; revising personal income tax provisions on small corporations; expanding eligibility for special poverty provisions; revising estimated tax declarations; eliminating Lottery Fund transfers; revising corporate net income tax provisions on nonprofit organizations, net loss deductions and apportionment of business income; revising capital stock franchise tax provisions to reduce the rate of taxation, reduce the minimum tax, and further provide for capital stock franchise tax exemptions, exclusions and proceeds; eliminating the utilities gross receipts tax on natural gas; making omnibus amendments to the public utility realty tax; providing for a tax credit for coal waste removal and ultraclean fuels; further providing for malt beverage tax credits; further providing for the rate of taxation for the Public Transportation Assistance Fund; further providing for estimated tax, for payment of harness and thoroughbred racing taxes and for corporate tax treatment of automobile clubs; and making a repeal.

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

Section 1. Section 201(d)(1.1) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7), 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:

* * *

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

* * *

(1.1) The processing of ***fruits or*** vegetables by cleaning, cutting, coring, ***peeling*** or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the ***fruits or*** vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

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Section 2. Section 204(57) of the act, added April 23, 1998 (P.L.239, No.45), is amended to read:

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

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(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, nonprofit educational institution or religious organization for religious purposes, provided that the building machinery and equipment and services thereto are not used in any unrelated trade or business; **[or]**

(ii) transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions; ***or***

(iii) transferred pursuant to a construction contract for a qualified business located in a keystone opportunity zone, provided that the building machinery and equipment and services thereto are for the exclusive use, consumption and utilization by the qualified business at its facility in a keystone opportunity zone.

Section 3. Section 246 of the act is amended to read:

Section 246. Collection ***and Payment*** of Tax on Credit Sales.—If any sale subject to tax hereunder is wholly or partly on credit, the **[taxpayer]** ***vendor*** shall require the purchaser to pay in cash at the time the sale is made, or within thirty days thereafter, the **[full tax due on the basis of]** ***total amount of tax due upon*** the entire purchase price. ***The vendor shall remit the tax to the department, regardless of whether payment was made by the purchaser to the vendor, with the next return required to be filed under section 217 of this act.***

Section 4. The act is amended by adding a section to read:

Section 247.1. Partial Refund of Sales Tax Attributed to Bad Debt.—(a) A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.

(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166).

The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of this act.

(b) The refund authorized by this section shall be limited to one-third of the sales tax paid to the department that is attributed to the bad debt, less one-third of any discount under section 227 of this act. Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction which includes both taxable and nontaxable

components shall be allocated proportionally between the taxable and nontaxable components.

(c) A vendor may assign its right to petition and receive a refund of sales tax attributed to a bad debt to an affiliated entity. A vendor may not assign its right to petition and receive a refund of sales tax attributed to a bad debt to any other person.

(d) No refund shall be granted under this section for any of the following:

(i) Interest.

(ii) Finance charges.

(iii) Expenses incurred in attempting to collect any amount receivable.

(e) The documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe.

(f) If the purchase price that is attributed to a prior bad debt refund is thereafter collected, in whole or in part, the vendor or affiliated entity shall remit the proportional tax to the department with the first return filed after the collection.

(g) Notwithstanding the provisions of section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) For purposes of this section, the term "affiliated entity" shall mean any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

Section 5. Section 301(s.2) of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. Unless specifically provided otherwise, any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997:

* * *

(s.2) "Small corporation" means any corporation which has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986, as amended to January 1, 1997[**, and which does not have passive investment income in excess of twenty-five per cent of its gross receipts. For purposes of this clause, "passive investment income" means**

gross receipts derived from royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account only to the extent of gains therefrom). For purposes of determining whether a corporation qualifies as a small corporation for purposes of this article, (i) a qualified Subchapter S subsidiary owned by a small corporation shall not be treated as a separate corporation, and all gross receipts and passive investment income of such qualified Subchapter S subsidiary shall be treated as earned by the parent corporation; and (ii) all intercorporate payments or distributions between the parent corporation and any qualified Subchapter S subsidiary owned by such corporation shall be eliminated].

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Section 6. Section 304(d)(1) of the act, amended April 23, 1998 (P.L.239, No.45), 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 five hundred dollars ($6,500) or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is thirteen thousand dollars ($13,000) 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 **[six thousand dollars ($6,000)]** ***six thousand five hundred dollars ($6,500)*** if claimed by married claimants or of six thousand five hundred dollars ($6,500) if claimed by a single claimant for the first additional dependent and an additional income allowance of **[six thousand dollars ($6,000)]** ***six thousand five hundred dollars ($6,500)*** for each additional dependent of the claimant. For purposes of this subsection, a claimant shall not be considered to be married if:

(i) The claimant and the claimant's spouse file separate returns; and

(ii) The claimant and the claimant's spouse live apart at all times during the last six months of the taxable year or are separated pursuant to a written separation agreement.

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Section 6.1. Section 307.6 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 307.6. Election after Revocation or Termination.—If a corporation has made an election under section 307 and if such election has been revoked pursuant to section 307.3 or terminated **[for exceeding the passive investment income limitation in section 301(s.2)]**, such corporation, and any successor corporation, shall not be eligible to make an election under section

307 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such revocation or termination is effective.

Section 7. Section 325(a) and (d) of the act, amended August 4, 1991 (P.L.97, No.22), are amended to read:

Section 325. Declarations of Estimated Tax.—(a) Every resident and nonresident individual, trust and estate shall at the time hereinafter prescribed make a declaration of his or its estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if his or its income, other than from compensation on which tax is withheld under this article, can reasonably be expected to exceed **[two thousand five hundred dollars ($2,500)]** ***eight thousand dollars ($8,000).***

* * *

(d) Except as hereinafter provided, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual, trust or estate determines that his or its income on which no tax has been withheld under this article can reasonably be expected to exceed **[two thousand five hundred dollars ($2,500)]** ***eight thousand dollars ($8,000)*** in the taxable year, as follows:

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

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

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

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

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Section 8. Section 360 of the act, amended July 21, 1983 (P.L.63, No.29), is amended to read:

[Section 360. Transfer of Funds.—An amount equal to the product of the present value of prizes of the Pennsylvania State Lottery won times the rate of tax provided in section 302 shall be transferred quarterly to the General Fund from the State Lottery Fund.]

Section 9. Section 401(1), (3)1, 2(a)(9) and 4(c) of the act, amended or added December 23, 1983 (P.L.370, No.90), December 3, 1993 (P.L.473, No.68), June 16, 1994 (P.L.279, No.48), June 30, 1995 (P.L.139, No.21), May 7, 1997 (P.L.85, No.7) and April 23, 1998 (P.L.239, No.45), 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, joint-stock association, or a business trust or a limited liability company, that for Federal income tax purposes is classified as a corporation, and (i) is doing business in this Commonwealth; or (ii) is carrying on activities in this Commonwealth; (iii) has capital or property employed or used in this Commonwealth; or (iv) owns 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. 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. Any corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

4. Any corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state that:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501);

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c)); or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

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(3) "Taxable income." 1. (a) In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar

year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation 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, additional 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.

(b.1) An additional deduction shall be allowed from taxable income in the amount of any interest income from securities issued by the United States or agencies or instrumentalities thereof, to the extent included in Federal taxable income but exempt from the tax imposed by this article under the laws of the United States, but reduced by any interest on indebtedness incurred to carry the securities, any expenses incurred in the production of such interest income and any other expenses deducted on the Federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code of 1986 (26 U.S.C. § 265) if the interest were exempt from Federal income tax. As used in the preceding sentence, "interest income" includes any amount received as a distribution or dividend from a regulated investment company, as defined in section 851 of the Internal Revenue Code, to the extent such distribution or dividend is derived from obligations free from State taxation under Article XXIX of this act or securities issued by the United States or agencies or instrumentalities thereof.

(c) Further additional deductions shall be allowed from taxable income in an amount equal to the amount of any reduction in an employer's deduction for wages and salaries as a result of the employer taking a credit for its FICA tax obligation on its employes' tips or "targeted jobs" pursuant to section 45B or section 51 of the Internal Revenue Code.

(d) Taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) capital gains; and (ix) accelerated cost recovery

deduction under section 57(a)(12)(B) of the Internal Revenue Code, but only to the extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government.

[(e) **Taxable income for tax years ending in 1981, 1982 and 1983 will also include the amount of the deduction related to depreciation claimed and allowable under section 168, accelerated cost recovery system, Internal Revenue Code of 1954, as amended by the Economic Recovery Tax Act of 1981, other than items of tax preference under section 57 which have been included in taxable income.**

(f) For the tax years beginning and ending in 1981 and 1982 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981.

(g) For the tax year beginning and ending in 1983 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981, plus an additional deduction to the extent of one-half of the deduction related to depreciation claimed and allowable on such recovery property under section 168 of the Internal Revenue Code of 1954, as amended, in excess of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981, if any.

(h) For tax years beginning in 1984, and for subsequent years, there shall be allowed as a deduction related to depreciation the amount allowable under section 168 of the Internal Revenue Code, as amended, with respect to recovery property.

(i) For all recovery property the amounts disallowed as a consequence of the aforesaid adjustments shall be recovered by an additional deduction from taxable income returned to and ascertained by the Federal Government in tax years commencing in 1984 of one-fourth of the sum per year or ten thousand dollars ($10,000) per year, whichever is greater, until the total amount has been recovered.

(j) In the case of fiscal year taxpayers, the deduction from taxable income related to depreciation shall be prorated so as to reflect the relative portions of each of the calendar years 1981, 1982 and 1983 included in the taxpayer's fiscal year, in a manner pursuant to regulations to be promulgated by the secretary.]

(k) A taxpayer reporting on a 52-53 week basis which closes its fiscal year on any of the last seven days in December or the first seven days of

January is deemed a calendar year taxpayer with a year ending date of December 31.

(l) For the purpose of computing the depreciation deduction which would have been allowable under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981: (i) tax preference items as set forth above shall not be included; (ii) property shall be depreciated for a period and with a method consistent with that employed for similar property in prior years; and (iii) for taxable years 1982 and 1983, no deduction shall be allowed for additional first year depreciation on section 179 property.

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

(n) In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, "taxable income" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended.

(o) In arriving at "taxable income" for Federal tax purposes for any taxable year beginning on or after January 1, 1981, no deduction shall be allowed for taxes imposed on or measured by net income.

(p) For taxable years beginning on or after January 1, 1998, in the case of a corporation that is a Pennsylvania S corporation, as defined in section 301(n.1), the term "taxable income" shall mean such corporation's net recognized built-in gain to the extent of and as determined for Federal income tax purposes under section 1374(d)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1374). For purposes of this article, a Pennsylvania S corporation and each qualified Subchapter S subsidiary, as defined in section 301(o.3), shall be treated as separate corporations.

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

(a) Division of Income.

* * *

(9) (A) Except as provided in subparagraph (B), all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus **[twice]** ***three times*** the sales factor, and the denominator of which is **[four]** ***five***.

(B) For purposes of apportionment of the capital stock - franchise tax as provided in section 602 of Article VI of this act, the apportionment fraction shall be the property factor plus the payroll factor plus the sales factor as the numerator, and the denominator shall be three.

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(c) (1) The net loss deduction shall be the lesser of **[one million dollars ($1,000,000)]** ***two million dollars ($2,000,000)*** 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. In no event shall the net loss deduction include more than five hundred thousand dollars ($500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

(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
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable years starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
1995 and thereafter	10 taxable years

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 **[one million dollars ($1,000,000)]** ***two million dollars ($2,000,000).***

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Section 10. The definitions of "domestic entity," "foreign entity" and "processing" in section 601(a) of the act, amended or added May 7, 1997 (P.L.85, No.7) and April 23, 1998 (P.L.239, No.45), 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:

* * *

"Domestic entity." Every corporation organized or incorporated by or under any laws of the Commonwealth, other than corporations of the first class 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.

(3) Any corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 ***(Public Law 99-514, 26 U.S.C. § 501)***.

(4) Any corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state that:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986[.];

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c)); or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

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"Foreign entity." Every corporation incorporated or organized by or under the laws of any jurisdiction other than the Commonwealth, 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 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.

(3) Any corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

(4) Any corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state that:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986[.];

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986; or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

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"Processing." The following activities when engaged in as a business enterprise:

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

(1.1) The processing of ***fruits or*** vegetables by cleaning, cutting, coring, ***peeling*** or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the ***fruits or*** vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

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

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

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

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

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

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

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

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

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

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

(10.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(11) The publishing of books, newspapers, magazines or other periodicals, printing and broadcasting radio and television programs by licensed commercial or educational stations.

(12) The processing of used lubricating oils.

(13) The blending, rectification or production by distillation or otherwise of alcohol or alcoholic liquors, except the distillation of alcohol from byproducts of winemaking for the sole purpose of fortifying wine.

(14) The salvaging, recycling or reclaiming of used materials to be recycled into a manufacturing process.

(15) The development or substantial modification of computer programs or software for sale to unrelated persons for their direct and independent use.

(16) The cleaning and roasting and the blending, grinding or packaging for sale of coffee from green coffee beans or the production of coffee extract.

(17) The refining, blasting, exploring, mining and quarrying for or otherwise extracting limestone, sand, gravel or slag from the earth or from waste or stock piles or from pits or banks and the cleaning, crushing, grinding, pulverizing, sizing or screening of limestone, sand, gravel or slag, including blast furnace slag.

* * *

Section 11. Section 602 of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

Section 602. Imposition of Tax.—(a) That every domestic entity from which a report is required under section 601 hereof, shall be subject to, and

pay to the department annually, a tax which is the greater of (i) **[three hundred dollars ($300) or (ii) the amount computed at the rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a)]** ***the amount computed by multiplying each dollar of the capital stock value as defined in section 601(a) by the appropriate rate of tax as set forth in subsection (h); or (ii) the minimum tax set forth in subsection (i)***, except that any domestic entity or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602: Provided, That, except for the imposition of the **[three hundred dollar ($300)]** minimum tax ***set forth in subsection (i)***, the provisions of this section shall not apply to the taxation of the capital stock of entities organized for manufacturing, processing, research or development purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, processing, research or development within the State, except such entities as enjoy and exercise the right of eminent domain, but every entity organized for the purpose of manufacturing, processing, research or development except such entities as enjoy and exercise the right of eminent domain shall pay the State tax of the greater of (i) **[three hundred dollars ($300) or (ii) the amount computed at the rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a)]** ***the amount computed by multiplying each dollar of the capital stock value as defined in section 601(a) by the appropriate rate of tax as set forth in subsection (h); or (ii) the minimum tax set forth in subsection (i)***, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to the manufacturing, processing, research or development business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this provision to relieve from State taxation, except for imposition of the **[three hundred dollar ($300) minimum tax under this section]** ***minimum tax set forth in subsection (i)***, only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business: and Provided further, That, except for the imposition of the minimum tax set forth in **[this section]** ***subsection (i)***, the provisions of this section shall not apply to the taxation of so much of the capital stock value attributable to student loan assets owned or held by an entity created for the securitization of student loans or by a trustee on its behalf.

(b) (1) Every foreign entity from which a report is required under section 601 hereof, shall be subject to and pay to the department annually, a franchise tax which is the greater of (i) **[three hundred dollars ($300) or (ii) the amount computed at the rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a)]** ***the amount computed by multiplying each dollar of the capital stock value as defined in section 601(a) by the appropriate rate of tax as set forth in subsection (h); or (ii) the minimum tax set forth in subsection (i)***, upon a taxable value

to be determined in the following manner. The capital stock value shall be ascertained in the manner prescribed in section 601(a) of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: Provided, That the manufacturing, processing, research and development exemptions contained under section 602(a) shall also apply to foreign corporations and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth: and Provided further, That, except for the imposition of the minimum tax set forth in **[this section]** ***subsection (i)***, the provisions of this section shall not apply to the taxation of so much of the capital stock value attributable to student loan assets owned or held by an entity created for the securitization of student loans or by a trustee on its behalf. Any foreign corporation, joint-stock association, limited partnership or company subject to the tax prescribed herein may elect to compute and pay its tax under section 602(a): Provided, That any foreign corporation, joint-stock association, limited partnership or company electing to compute and pay its tax under section 602(a) shall be treated as if it were a domestic corporation for the purpose of determining which of its assets are exempt from taxation and for the purpose of determining the proportion of the value of its capital stock which is subject to taxation.

(2) The provisions of this article shall apply to the taxation of entities organized for manufacturing, processing, research or development purposes, but shall not apply to such entities as enjoy and exercise the right of eminent domain.

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

(e) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute the capital stock or franchise tax by applying the rate of tax provided in subsection (h) to ten per cent of the capital stock value as defined in section 601(a), but in no case shall the tax so computed be less than **[three hundred dollars ($300)]** ***the***

minimum tax set forth in subsection (i). If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

(f) Every domestic corporation and every foreign corporation (i) registered to do business in Pennsylvania; (ii) which maintains an office in Pennsylvania; (iii) which has filed a timely election to be taxed as a regulated investment company with the Federal Government; and (iv) which duly qualifies to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954 as amended, shall be taxed as a regulated investment company and shall be subject to the capital stock or franchise tax imposed by section 602, in either case for the privilege of having an office in Pennsylvania, which tax shall be computed pursuant to the provisions of this subsection in lieu of all other provisions of this section 602. The tax shall be in an amount which is the greater of **[three hundred dollars ($300)]** ***the minimum tax set forth in subsection (i)*** or the sum of the amounts determined pursuant to clauses (1) and (2):

(1) The amount determined pursuant to this clause shall be seventy-five dollars ($75) times that number which is the result of dividing the net asset value of the regulated investment company by one million, rounded to the nearest multiple of seventy-five dollars ($75). Net asset value shall be determined by adding the monthly net asset values as of the last day of each month during the taxable period and dividing the total sum by the number of months involved. Each such monthly net asset value shall be the actual market value of all assets owned without any exemptions or exclusions, less all liabilities, debts and other obligations.

(2) The amount determined pursuant to this clause shall be the amount which is the result of multiplying the rate of taxation applicable for purposes of the personal income tax during the same taxable year times the apportioned undistributed personal income tax income of the regulated investment company. For the purposes of this clause:

(A) Personal income tax income shall mean income to the extent enumerated and classified in section 303.

(B) Undistributed personal income tax income shall mean all personal income tax income other than personal income tax income undistributed on account of the capital stock or foreign franchise tax, less all personal income tax income distributed to shareholders. At the election of the company, income distributed after the close of a taxable year, but deemed distributed during the taxable year for Federal income tax purposes, shall be deemed distributed during that year for purposes of this clause. If a company in a taxable year has both current income and income accumulated from a prior year, distributions during the year shall be deemed to have been made first from current income.

(C) Undistributed personal income tax income shall be apportioned to Pennsylvania by a fraction, the numerator of which is all income distributed during the taxable period to shareholders who are resident individuals, estates

or trusts and the denominator of which is all income distributed during the taxable period. Resident trusts shall not include charitable, pension or profit-sharing, or retirement trusts.

(D) Personal income tax income and other income of a company shall each be deemed to be either distributed to shareholders or undistributed in the proportion each category bears to all income received by the company during the taxable year.

(g) In the event that a domestic or foreign entity is required to file a report pursuant to section 601(b) on other than an annual basis, the tax imposed by this section, including the **[three hundred dollar ($300)]** minimum tax ***set forth in subsection (i)***, shall be prorated to reflect the portion of a taxable year for which the report is filed by multiplying the tax liability by a fraction equal to the number of days in the taxable year divided by three hundred sixty-five days.

(h) The rate of tax for purposes of the capital stock and franchise tax for taxable years beginning within the dates set forth shall be as follows:

Taxable Year	Regular Rate	Surtax	Total Rate
January 1, 1971, to December 31, 1986	10 mills	0	10 mills
January 1, 1987, to December 31, 1987	9 mills	0	9 mills
January 1, 1988, to December 31, 1990	9.5 mills	0	9.5 mills
January 1, 1991, to December 31, 1991	11 mills	2 mills	13 mills
January 1, 1992, to December 31, 1997	11 mills	1.75 mills	12.75 mills
January 1, 1998, **[and each year thereafter]** ***to December 31, 1998***	11 mills	.99 mills	11.99 mills
January 1, 1999, and each year thereafter	***10.99 mills***	***0***	***10.99 mills***

(i) The minimum amount of capital stock and franchise tax for the taxable years beginning within the dates set forth shall be as follows:

Taxable Year Beginning	*Minimum Tax*
January 1, 1971, to December 31, 1983	***No minimum tax imposed***
January 1, 1984, to December 31, 1990	***$75 minimum tax***
January 1, 1991, to December 31, 1998	***$300 minimum tax***
January 1, 1999, and each taxable year thereafter	***$200 minimum tax***

Section 12. Section 602.3 of the act, amended or added August 4, 1991 (P.L.97, No.22) and December 13, 1991 (P.L.373, No.40), is amended to read:

Section 602.3. Deposit of Proceeds; Appropriation.—(a) The proceeds resulting from **[one-half]** ***one-quarter*** mill of the tax imposed pursuant to this

article as determined by the Secretary of Revenue shall be transferred to the Hazardous Sites Cleanup Fund. The proceeds from any taxable year beginning in 1991 resulting from one-quarter mill of the tax imposed pursuant to this article as determined by the Secretary of Revenue shall be transferred to the State Lottery Fund. The transfers required by this subsection shall be made by June 15 and December 15 of each appropriate calendar year.

(b) The funds deposited in the Hazardous Sites Cleanup Fund and the State Lottery Fund are hereby appropriated out of this account upon authorization by the Governor.

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

Section 13. Section 602.5 of the act, added May 7, 1997 (P.L.85, No.7), is amended to read:

Section 602.5. Shows and Flea Markets.—A corporation that confines its activities in this Commonwealth during the course of a calendar year to attendance at an organized "show" or "flea market" for the purpose of exhibiting its goods and making sales therefrom shall not be subject to the minimum tax imposed under this article, based solely upon such attendance if limited to no more than twenty days during the year, with no more than **[five]** ***seven*** days being consecutive.

Section 14. Section 1101(a) of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

Section 1101. Imposition of Tax.—(a) General Rule.—Every pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except motor vehicles and railroads, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone

company[,] ***and*** telegraph company **[and gas company]** now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone or telegraph business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills with a surtax equal to five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from passengers, baggage, and freight transported wholly within this State, from telegraph or telephone messages transmitted wholly within this State, except gross receipts derived from the sales of access to the Internet, as set forth in Article II, made to the ultimate consumer[**, or from the sales of gas to the public from a public utility, except gross receipts derived from sales to any municipality owned or operated public utility and except gross receipts derived from the sales for resale, to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale**] and from the transportation of oil done wholly within this State. **[The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas.]**

* * *

Section 15. Section 1104 of the act is repealed.

Section 16. Section 1101-A of the act, amended or added July 4, 1979 (P.L.60, No.27) and December 9, 1982 (P.L.1047, No.246), is amended to read:

Section 1101-A. 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) "Department." The Department of Revenue of the Commonwealth of Pennsylvania.

(2) "Public utility." Any person, partnership, association, corporation or other entity furnishing public utility service under the jurisdiction of the Pennsylvania Public Utility Commission or the corresponding regulatory agency of any other state or of the United States ***on December 31 of the taxable year***; and any electric cooperative corporation[**, municipality or municipality authority**] furnishing public utility service ***on December 31 of the taxable year***, but shall not mean any public utility furnishing public utility sewage services, or municipality or municipality authority furnishing public utility services.

(3) "Utility realty." All lands, together with all buildings, towers, smokestacks, dams, dikes, canals, cooling towers, storage tanks, reactor structures, pump houses, supporting foundations, enclosing structures,

supporting structures, containment structures, reactor containment outer shells, reactor containment vessels, turbine buildings, recovery tanks, solid waste area enclosures, primary auxiliary buildings, containment auxiliary safeguard structures, fuel buildings, decontamination buildings, and, all other structures and enclosures whatsoever which are physically affixed to the land, no matter how such structures and enclosures are designated and without regard to the classification thereof for local real estate taxation purposes, but not including machinery and equipment, whether or not housed within such building, structure or enclosure, ***or, after December 31, 1999, land and improvements to land that are indispensable to the generation of electricity,*** located within this Commonwealth **[and]** ***that at the end of the taxable year are*** owned by a public utility ***or its affiliate*** either directly or by or through a subsidiary**[, which are used or are]** ***and are used or*** in the course of development or construction for use, ***in whole or in part,*** in the furnishing, including producing, storing, distributing or transporting, of public utility service and which are not subject to local real estate taxation under any law in effect on April 23, 1968: Provided, however, That the following specified items shall be exempt from the tax hereby imposed:

(i) Easements or similar interests.

(ii) **[Railroad rights-of-way and superstructures thereon.]** ***Railroad beds or rails, land owned or used by a railroad as a right-of-way for a rail line and superstructures thereon. This subclause does not include stations, buildings, warehouses, shops, engine houses, plants or miscellaneous structures or the land appurtenant thereto.***

(iii) Pole, transmission tower, pipe, rail or other lines whether or not said lines are attached to the land or to any structure or enclosure which is physically affixed to the land.

[(iv) All lands, together with all buildings, dams, dikes, canals, pump houses, supporting structures, supporting foundations, turbine buildings and all other structures and enclosures whatsoever which are physically affixed to the land, no matter how such structures and enclosures are designated and without regard to the classification thereof for local real estate taxation purposes which are used or useful in the furnishing, including producing, storing, distributing or transporting, of hydroelectric power and energy: Provided, however, That the exemptions under this subclause shall not apply to items and lands which on the effective date of this act were used to furnish hydroelectric power and energy; and that the exemptions under this subclause shall commence in the first year in which the item or land is used and useful in furnishing hydroelectric power and energy, and shall remain in effect for a period of ten consecutive years thereafter.]

(4) "State taxable value." **[The cost of utility realty, less reserves for depreciation and depletion, as shown by the books of account of a public utility: Provided, That for any public utility which was not required to record annual depreciation on its utility realty prior to enactment of**

section 503 of the Public Utility Law or Title 66 Pa.C.S. § 1703 (relating to depreciation accounts; reports), the depreciation deduction prescribed in this definition shall be the book reserve or fifty per cent of the book cost, whichever is greater.] ***Current market value calculated by adjusting the assessed value for county real estate tax purposes for the taxable year for the common level ratio of assessed values to market values of the county as established by the State Tax Equalization Board after July 1 of the taxable year. During the pendency of an assessment appeal, the term means the amount which the public utility has stipulated or alleged as the current market value for the taxable year.***

(5) "Local taxing authority." A county, city, institution district, borough, town, township or school district having authority to impose taxes on real estate.

(6) "Realty tax equivalent." The total amount of ***real estate*** taxes which a local taxing authority could have imposed on utility realty ***for its fiscal year beginning in the taxable year*** but for this article, and unless otherwise provided shall be the product of the real estate property tax rate and the assessed valuation of utility realty.

(7) "Total tax receipts." The actual amount collected by a local taxing authority under all statutes authorizing the imposition of taxes, but shall not include fines, penalties, fees, licenses or receipts from any source other than taxes.

(8) "Assessed valuation." The assessed valuation of utility realty for county real estate tax purposes contained in the last adjusted valuation for the taxable year.

(9) "Millage rate."

(i) An amount calculated by the department by dividing the amount of the total realty tax equivalent reported to the department under section 1106-A by the amount of the total State taxable value of all utility realty located within this Commonwealth reported under section 1102-A. The amount shall be calculated to four decimal places.

(ii) For taxable year 1998, an amount calculated by the department by dividing the amount of the total State taxable value of all utility realty located within this Commonwealth reporting under section 1102-A into the greater of the total realty tax equivalent reported under section 1106-A or one hundred thirty-three million two hundred thousand dollars ($133,200,000).

(10) "Affiliate." An affiliated interest as defined in 66 Pa.C.S. § 2101 (relating to definition of affiliated interest).

(11) "Subsidiary." An entity:

(i) in which a public utility or affiliate is the beneficial owner, directly or indirectly, of shares of the entity that would entitle the public utility or affiliate to cast in excess of fifty per cent of the votes that all shareholders would be entitled to cast in the election of directors of the entity; or

(ii) which is a partnership, joint venture, limited liability company or similar entity, in which a public utility is a partner, is a participant, is a member or is in a similar relationship.

(12) "Assessment authority." The board of revision of taxes, board for the assessment and revision of taxes of a county, county commissioners in a county with no board of revision of taxes or board for the assessment and revision of taxes, or council of a city of the third class that has not elected to accept county assessments.

Section 17. Section 1102-A of the act, amended or added July 4, 1979 (P.L.60, No.27) and August 4, 1991 (P.L.97, No.22), is amended to read:

Section 1102-A. Imposition of Tax; Report; Interest and Penalties; *Tentative Tax.*—(a) **[On or before the first day of June of 1970 and of each year thereafter until and including June 1, 1983, every public utility shall pay to the State Treasurer, through the Department of Revenue, a tax at the rate of thirty mills upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year.**

(1) On or before April 15, 1984, for tax year 1983, every public utility shall report tax liability at the rate of thirty mills upon each dollar of the State taxable value of its utility realty at the end of calendar year 1983 and shall pay such tax on or before June 1, 1984.

(2) On or before April 15, 1984, and each year thereafter, every public utility shall report tentative tax liability for the current tax year equal to ninety per cent of the tax liability of the immediate prior year, and until December 31, 1991, pay twenty-five per cent of such amount on April 15, June 15, September 15 and December 15 of each year. For tax years beginning with 1992 and each year thereafter, said tentative tax shall be paid on April 15 of each year.

(3) On or before April 15, 1985, and every year thereafter, every public utility shall pay the remaining portion, if any, of the thirty mills tax due upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year, after accounting for any tentative tax payments made pursuant to this act.

(b) Each such payment shall be accompanied by a report, upon oath of the owner or responsible officer of the public utility, showing the amount and manner of computation of the State taxable value upon which such payment is based.

(c) Payment of the tax hereby imposed may be enforced by any means provided by law for the enforcement of payment of taxes to the State.

(d) This article shall not be construed to apply to nor shall the tax be imposed upon any public utility furnishing any public utility sewage services, or upon any municipality or municipality authority furnishing any public utility services.] *A tax is hereby imposed on the State taxable value of utility realty at a millage rate calculated under subsection (b).*

(b) On or before November 1, 1999, for taxable year 1998, and on or before August 1, 2000, for taxable year 1999, and every year thereafter, the department shall calculate the millage rate for the taxable year and notify the public utility of the millage rate and the State taxable value of its utility realty. If an error in addition, subtraction, multiplication or division is present in a report or if an entry on a report is inconsistent with another entry and it is apparent which entry is correct, the millage rate shall be calculated using the correct mathematical result or entry. The public utility shall pay to the State Treasurer through the department a tax equal to the product of the millage rate and the State taxable value within forty-five days after the mailing date of the notice of determination.

(c) On or before May 1, 2000, for taxable year 2000, and every year thereafter, a public utility shall pay tentative tax equal to the lesser of:

(1) The tax imposed by this article for the second preceding taxable year.

(2) An amount equal to the tax computed under the law applicable to the taxable year and the estimated State taxable value of the public utility's utility realty for the taxable year at the rate applicable to the second preceding taxable year, except that the estimated tentative tax shall not be less than ninety per cent of the amount determined by the department to be due for the taxable year.

(d) Any amounts paid for taxable years 1998 and 1999 shall be deemed to be payment on account of tentative tax for those taxable years.

(e) If the tax hereby imposed is not paid by the date herein prescribed, or within any extension granted by the department, the unpaid tax shall bear interest at the rate **[of one per cent per month,]** *set forth in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code,"* and shall in addition be subject to a penalty of five per cent of the amount of the tax, which penalty may be waived or abated, in whole or in part, by the department unless the public utility has acted in bad faith, negligently, or with intent to defraud. *If tentative tax is not paid by the date required under this section, the unpaid tentative tax shall bear interest at the rate set forth in section 806 of "The Fiscal Code" for the period of underpayment but not beyond September 15 of the year following the close of the taxable year.*

(f) A payment of tax under subsection (c) shall include a report of the amount and manner of computation of the State taxable value of all utility realty and adjustments for the immediate preceding year. The report shall be made as prescribed by the department under oath or affirmation of the owner or responsible officer of the public utility. The report shall include:

(1) The State taxable values, locations and real estate tax parcel identification numbers of all utility realty.

(2) Any adjustment to the State taxable value previously reported under clause (1).

(3) Certified copies of all appeals filed under section 1105-A.

(g) Reports required under this section for taxable year 1998 shall be submitted on or before September 1, 1999.

Section 18. Section 1103-A of the act, added July 4, 1979 (P.L.60, No.27), is amended to read:

Section 1103-A. [**Surtax.—(a) On or before the sixtieth day following the effective date hereof, every public utility shall pay for the 1979-1980 fiscal year of the Commonwealth to the State Treasurer, through the Department of Revenue, a tax at the rate of one hundred five mills upon each dollar of the State taxable value of those items of its utility realty at the end of calendar year 1978, which were excluded from the tax imposed by the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," prior to the adoption hereof and which become subject to the tax under the provisions hereof.**

(b) Each such payment shall be accompanied by a report prepared in the manner prescribed by section 1102-A(b) with respect to such items, and each such report and payment shall be subject to the provisions of section 1102-A(c).

(c) The tax imposed by this section shall be in addition to any other tax imposed by this article.

(d) On or before the first day of September, 1980, the department shall ascertain the total amount of all moneys refunded or credited to public utilities as a result of petitions for refund arising out of or supported by the interpretation of the definition of "utility realty" previously contained in the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," as construed by the decision of the Supreme Court of Pennsylvania in Commonwealth v. Philadelphia Electric Company, 472 Pa. 530 (1977), together with the amount of potential refunds sought by public utilities in timely petitions which are pending before the Board of Finance and Revenue arising out of or supported by said decision. Should the surtax imposed by this section produce an amount of revenue in excess of the total obligation of the Commonwealth ascertained in the manner herein stated, the Department of Revenue shall determine the nearest millage rate calculated to produce the amount of said obligations, and shall reduce and recalculate the surtax paid by the said utilities upon the basis of such adjustment, and shall notify each such utility of its reduced surtax liability. Each such utility shall then be entitled to apply for a cash refund or credit in the manner provided by law and regulation.

(e) In order to implement the provisions of subsection (d), notwithstanding any provision of section 503 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," which may allow a more extended time for filing, no petition for refund of the tax imposed by the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," arising out of or supported by the interpretation of the previous definition of "utility realty" in the "Public Utility Realty Tax

Act," as construed by the decision of the Supreme Court of Pennsylvania in Commonwealth v. Philadelphia Electric Company, 472 Pa. 530 (1977) shall be timely unless said petition has been filed with the Board of Finance and Revenue on or before the first day of July 1980.] ***Assessment; Collection.—(a) The department shall make all inquiries, determinations and assessments of tax, interest, additions and penalties necessary to enforce this article.***

(b) The provisions of sections 337 through 345 shall apply to the assessment and collection of public utility realty tax under this article. A public utility shall not raise a defense or objection in a proceeding that could have been presented as part of an administrative or judicial remedy under section 1105-A or 1109-A.

(c) The amount of any tax or penalty imposed under this article shall be assessed within three years after the close of the taxable year or within one year of a final determination resulting from the public utility's appeal under section 1105-A, whichever is later.

Section 19. Section 1104-A of the act, amended or added July 4, 1979 (P.L.60, No.27) and December 9, 1982 (P.L.1047, No.246), is amended to read:

Section 1104-A. Effect of Payment; Additional Assessment*; Refunds; Rebates.*—(a) Payment of, or any exemption[**, created as the result of this act,**] from the tax imposed by **[the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," or section 1102-A, or section 1103-A,]** ***this article*** and the distribution to local taxing authorities prescribed by section 1107-A, shall be in lieu of local taxes upon utility realty, as contemplated by Article VIII, section 4, of the Constitution of Pennsylvania.**[: Provided, That in exempting the tax imposed by this article, the Commonwealth shall reimburse local taxing authorities for property tax foregone by this act.**

(b) If in any calendar year the amount determined by the department pursuant to section 1107-A(a)(2) shall exceed the total amount of tax collected pursuant to section 1102-A(a), the department shall determine the ratio which the amount of such excess bears to the total State taxable value of all utility realty reported to it pursuant to section 1102-A(b). The department shall notify each reporting public utility of such ratio, and it shall be the duty of such public utility, within forty-five days thereafter, to pay to the State Treasurer, through the Department of Revenue, an additional amount of tax equal to the product of (1) such ratio and (2) the State taxable value shown in its report required by section 1102-A(b). The provisions of section 1102-A(c) shall be applicable to such additional amount of tax.]

(b) The department may annually determine for every assessable taxable year whether the total amount of tax due under section 1102-A(a) exceeds the total amount of tax collected and the ratio that the amount of the excess bears to the total State taxable value of all utility realty reported

under section 1102-A. The ratio shall be calculated to four decimal places. The department shall notify a reporting public utility of the ratio. Within forty-five days of the mailing date of the notice, the public utility shall pay to the State Treasurer, through the department, an additional amount of tax equal to the product of the ratio and the State taxable value shown in the public utility's report under section 1102-A. Section 1103-A shall apply to the additional amount of tax.

(c) If for a taxable year the amount due on notice of determination is less than the amount paid by the public utility to the department on account of that amount and the public utility is satisfied with the amount due, the department shall enter the amount of the difference as a credit to the account of the public utility.

(d) If for a taxable year the total amount of tax collected under section 1102-A is finally determined to exceed the amount determined by the department under section 1107-A(a)(2) or if for taxable year 1998 the total amount of tax collected under section 1102-A is finally determined to exceed the greater of the total State taxable value of all utility realty reported to the department pursuant to section 1102-A or one hundred thirty-three million two hundred thousand dollars ($133,200,000), the department shall compute the ratio, to four decimal places, that the amount of the excess bears to the total State taxable value of all utility realty under 1102-A. The department shall notify the reporting public utility of the ratio, and the State Treasurer shall rebate the excess to the public utility as a credit in an amount equal to the product of the ratio and the State taxable value of its utility realty. For purposes of section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," any amount rebated shall be deemed to have been overpaid seventy-five days following the date of notice.

Section 20. Sections 1105-A and 1106-A of the act, added July 4, 1979 (P.L.60, No.27), are amended to read:

Section 1105-A. Local Assessment of Utility Realty; Initial Assessment; Procedure and Appeals.—(a) It shall be the duty of the several elected and appointed assessors of real property to assess **[and]**, value ***and enroll*** all utility realty in the same manner as is provided by law for the assessment **[and]**, valuation ***and enrollment*** of real estate. ***After December 31, 1998, assessors shall enroll utility realty separately from the other real estate of a public utility, affiliate or subsidiary.***

(b) Such utility realty shall be initially assessed on or before October 1, 1970, whichever is later, and thereafter shall be assessed or reassessed at the same time and in the same manner as real estate.

(c) [A] ***Except as provided in subsection (d), a*** public utility may appeal from the assessment of its utility realty, including the initial assessment, in the manner provided by law for appeals from assessment of real estate. If appeals are pending at the time a local taxing authority prepares its report for submission to the department as prescribed by section 1106-A,

the report shall include as the assessment for the utility realty appealed the amount which the public utility has stipulated or alleged as the proper assessment.

(d) Notwithstanding any other provision of law, for taxable years 1998 and 1999, a public utility may file an appeal from the assessment of its utility realty on or before July 30, 1999.

(e) In an administrative or court proceeding under this section regarding the local assessment of utility realty, a local taxing authority that has substantially prevailed may be awarded reasonable costs incurred in relation to the administrative or court proceeding.

Section 1106-A. Reports by Local Taxing Authorities.—(a) **[On]** ***Except for taxable year 1998, on*** or before the first day of April of 1971 and of each year thereafter, each local taxing authority shall submit to the department ***as prescribed by the department***:

(1) The name and address of each public utility owning utility realty within its jurisdiction, and the assessed **[value]** ***valuations, State taxable values, realty tax equivalents, real estate tax rates and real estate parcel identification numbers*** of such utility realty ***for the local taxing authority's fiscal year which began in the taxable year.***

[(2) Its real estate tax rate for its current fiscal year.

(3) The realty tax equivalent, which is the assessed value of clause (1) multiplied by the tax rate of clause (2).]

(4) Its total tax receipts for its last completed fiscal year.

(5) Any adjustment to the assessed values, tax rates, realty tax equivalents or total tax receipts previously reported pursuant to clauses (1) **[to]** ***and*** (4).

(b) If a local taxing authority shall fail to file the report required by subsection (a) by the date therein prescribed, or within any extension granted by the department, it shall forfeit its right to share in the next-ensuing distribution made pursuant to section 1107-A.

(c) Notwithstanding section 731 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," relating to confidential information, reports filed under this section shall be public.

(d) A report filed by a local taxing authority shall be deemed to be prima facie correct unless rebutted by a preponderance of the evidence.

(e) If an amount reported under section 1102-A or this section is finally changed or corrected under section 1105-A or 1109-A, the local taxing authority and the public utility shall make a compensating adjustment on the first report filed following the change or corrections as an adjustment to the taxable year's total realty tax equivalent and total State taxable value so that amounts raised under this article shall not be less than the gross amount of real estate taxes which a local taxing authority could have imposed on real property but for the exemption provided under this article.

(f) A report required by this section for taxable year 1998 shall be submitted on or before September 1, 1999.

Section 21. The act is amended by adding sections to read:

Section 1106.1-A. Duplicates.—(a) By July 1, 1999, the appropriate assessment authority shall provide written notice to all public utilities of the assessment, valuation and predetermined ratio relating to utility realty for the current and immediate preceding fiscal year and the requirements to appeal the assessment, valuation or ratio.

(b) By April 1, 2000, and every year thereafter, the appropriate assessment authority shall provide written notice to a public utility of a new or changed assessment, valuation and predetermined ratio and the requirements to appeal the assessment, valuation or ratio.

Section 1106.2-A. Affiliates and Subsidiaries.—An affiliate or subsidiary of a public utility shall notify the local taxing authority in which the utility realty is located within thirty days if the entity is no longer an affiliate or subsidiary of the public utility.

Section 22. Section 1107-A of the act, added July 4, 1979 (P.L.60, No.27), is amended to read:

Section 1107-A. Distribution to Local Taxing Authorities.—(a) From the reports received by it in each year pursuant to section 1106-A, the department shall determine:

(1) The total tax receipts shown in all such reports.

(2) The total realty tax equivalent shown in all such reports.

(b) **[On]** ***Except as provided in subsection (b.1), on*** or before the first day of October of 1971 and of each year thereafter, the department shall distribute to each reporting local taxing authority its share of the total realty tax equivalent determined pursuant to subsection (a)(2), which share shall be the ratio which the total tax receipts reported by that local taxing authority bear to the total tax receipts determined pursuant to subsection (a)(1).

(b.1) On or before October 1, 1999, the department shall distribute to each reporting local taxing authority its share of the greater of:

(1) the total realty tax equivalent determined pursuant to subsection (b); or

(2) one hundred thirty-three million two hundred thousand dollars ($133,200,000).

(c) For the purpose of making such payment, the department shall make requisition therefor in the manner prescribed by "The Fiscal Code."

Section 23. The act is amended by adding a section to read:

Section 1109-A. Objections by Public Utilities.—(a) Except as provided in subsection (b), a public utility may appeal a finding affecting the calculation of the millage rate, additional assessment or rebate by filing a petition for recalculation with the Board of Finance and Revenue within thirty days after the date of notice of the millage rate, assessment or rebate. The petition shall include evidence that the finding is incorrect and arguments substantiating its claim.

(b) A defense in a proceeding for the collection of the tax under this article or an objection raised as part of a proceeding may not be raised if the defense or objection could have been presented had the person appealed under subsection (a).

(c) The petition shall include an affidavit that it is not made for the purpose of delay and that the facts set forth therein are true.

(d) The Board of Finance and Revenue shall dispose of the petition for recalculation within thirty days of its receipt.

(e) The action of the Board of Finance and Revenue on a petition filed under this section shall be final.

(f) For purposes of this section, the term "finding" shall mean:

(1) an entry on a report that is inconsistent with another entry, the correctness of which is apparent; or

(2) a ministerial computation that is made without the use of administrative discretion or judgment.

Section 24. The act is amended by adding an article to read:

ARTICLE XVIII-A
COAL WASTE REMOVAL AND ULTRACLEAN FUELS TAX CREDIT

Section 1801-A. Short Title.—This article shall be known and may be cited as the "Coal Waste Removal and Ultraclean Fuels Act."

Section 1802-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:

"Department" means the Department of Revenue of the Commonwealth.

"Developer" means the owner-operator of a facility, as defined in this section, or the operator of the facility that has sold the facility in new condition to a third party from whom that operator has simultaneously leased back the facility for a minimum period of twelve years.

"Facility" includes all plant and equipment purchased or constructed by or on behalf of the developer which is used within this Commonwealth by the developer to produce one or more qualified fuels.

"Internal Revenue Code" means the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Qualified fuels" means those fuels produced from nontraditional coal culm and silt feedstocks as defined in section 29(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 29(c)).

"Qualifying property" means tangible personal property and other forms of tangible property which qualify for investment tax credit treatment and which meet all of the following requirements:

(1) Be acquired through a purchase, as defined under section 179(d)(2) of the Internal Revenue Code (26 U.S.C. § 179(d)(2)), or constructed by the developer for its own use.

(2) Be depreciable under section 167 of the Internal Revenue Code (26 U.S.C. § 167).

(3) Have a useful life of greater than or equal to four years.

(4) Be located within this Commonwealth.

(5) Be used by the developer in the production of qualified fuels.

(6) Be acquired by purchase or constructed on or after January 1, 2000, and before January 1, 2013.

(7) Not be the subject of any tax credit otherwise available to the developer under this act.

"Tax credit base" means only the cost or other basis of qualifying property that is properly transferred to the facility's basis for depreciation for Federal income tax purposes between January 1, 2000, and December 31, 2012.

Section 1803-A. Investment Tax Credits Program.—(a) A developer of a new facility for the production of one or more qualified fuels shall be allowed an investment tax credit against the taxes imposed under Articles II, IV and VI of this act. The amount of the credit shall be computed as a percentage applied to the cost or other basis for Federal income tax purposes of qualifying property.

(b) (1) The investment tax credit shall be computed as fifteen per cent of the tax credit base.

(2) The maximum investment tax credit available for application, whether claimed by one or more taxpayers, shall not exceed fifteen per cent of the capital cost of the facility.

(3) Any amount of allowable investment tax credit not used in the tax year for which the credit was claimed can be carried forward by the claiming taxpayer to succeeding years until the full amount of allowable credit has been used.

(c) (1) The developer, upon notice to the department as specified by the department, may sell or assign, in whole or in part, any investment tax credit afforded under this section to one or more taxpayers if no claim for allowance of such credit has been filed.

(2) A taxpayer recipient by purchase or assignment of any portion of the developer's investment tax credit under paragraph (1) shall initially claim such credit, upon notice to the department of the derivative basis of the credit in compliance with procedures specified by the department, for the tax year in which the purchase or assignment is made, but in no event subsequent to the filing of an income tax return for the year 2012.

(3) Any taxpayer who acquires any portion of the developer's investment tax credit by sale or assignment for value and without notice by the developer of any irregularity or invalidity shall not suffer any

disallowance of the credit or the imposition of any adjustment or fraud penalty attributable to conduct by the developer.

(d) (1) If prior to the expiration of any qualifying property's useful life, as used to calculate depreciation for Federal income tax purposes, the developer, upon mandatory notice to the department in compliance with procedures specified by the department, disposes of any qualifying property, in a transaction other than a sale-leaseback transaction, upon which the department has previously allowed an investment tax credit claimed by any taxpayer, a portion of all such credit shall be recaptured and added to the developer's tax liability for the tax year in which the qualifying property is disposed.

(2) The portion of the investment tax credit previously allowed, which is subject to recapture from the developer, shall be equal to a fraction whose numerator is the number of years remaining to fully depreciate for Federal income tax purposes the qualifying property disposed and whose denominator is the total number of years over which the property otherwise would have been subject to depreciation by the developer.

(3) In calculating the recapture percentage, the year of disposition of the qualifying property is considered a year of remaining depreciation.

(e) The department shall verify the validity of any claim for allowance of any investment tax credit afforded under this section and, in the case of a fraudulent claim, may assess against the developer a penalty of one hundred and twenty-five per cent of the credit improperly claimed.

(f) The tax credits authorized by this section shall not exceed eighteen million dollars ($18,000,000) in the aggregate during any year.

Section 1804-A. Contract Required.—(a) In order for a developer to claim investment tax credits under this article, the developer must enter into a contract with the Commonwealth that provides as follows:

(1) The term of the contract shall be twenty-five years, beginning with the first tax year in which the investment tax credits are claimed.

(2) The developer shall make periodic payments to the Commonwealth, which payments may not exceed in the aggregate forty-six million eight hundred thousand dollars ($46,800,000) over the term of the contract.

(3) The periodic payments shall occur every five years and each payment shall be nine million three hundred sixty thousand dollars ($9,360,000), except as provided in paragraphs (4), (5) and (6).

(4) For the first five-year period, the amount specified in paragraph (3) shall be reduced by:

(i) An amount equal to the business losses of the developer, if any, relating to the facility that are sustained in the first and second years of the contract, provided such amount does not exceed three million seven hundred forty-four thousand dollars ($3,744,000) for both years.

(ii) Allowable offsets identified in subsection (b), provided that such offsets do not exceed nine million three hundred sixty thousand dollars ($9,360,000).

(5) For the remaining five-year periods, the amount specified in paragraph (3) shall be reduced by the amount of allowable offsets identified in subsection (b), provided that such offsets do not exceed nine million three hundred sixty thousand dollars ($9,360,000) during any five-year period.

(6) To the extent the amount of allowable offsets during any five-year period exceeds nine million three hundred sixty thousand dollars ($9,360,000), the excess may be carried over and added to the allowable offsets taken in the following five-year period, provided that the excess is applied first.

(b) For purposes of this section, "allowable offset" includes all of the following:

(1) An amount equal to the corporate net income tax, capital stock and franchise tax and personal income tax related to the construction, ownership and operation of the facility.

(2) An amount equal to all personal income tax withheld from the developer's employes.

(3) An amount equal to all sales and use tax related to the operation and construction of the facility.

(4) The amount paid by the developer of any new tax enacted by the Commonwealth following the effective date of this article.

Section 1805-A. Requirements.—Tax credits authorized by this article shall not be granted unless the developer has obtained an investment tax credit from the Federal Government or an investment by a person other than an agency or instrumentality of the Commonwealth, or any combination thereof, in an amount equal to or greater than the tax credit granted by this article.

Section 25. Section 2010 of the act, amended or added December 22, 1989 (P.L.775, No.110), June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), is amended to read:

Section 2010. Limited Tax Credits.—(a) The General Assembly of the Commonwealth, conscious of the financial pressures facing small brewers in Pennsylvania and the attendant risk of business failure and loss of employment opportunity, declares it public policy that renewal and improvement of small brewers be encouraged and assisted by a limited tax subsidy to be granted during the period set forth in this section.

(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, **[1998]** ***2003***, 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.

(c) A tax credit or credits shall be allowed for each calendar year to a taxpayer, as hereinafter provided, not to exceed in total amount the amount of qualifying capital expenditures made by the taxpayer and certified by the secretary.

(d) A taxpayer desiring to claim a tax credit or credits under this section shall, in accordance with regulations promulgated by the secretary, report annually to the secretary the nature, amounts and dates of qualifying capital expenditures made by him and such other information as the secretary shall require. If satisfied as to the correctness of such a report, the secretary shall issue to the taxpayer a certificate establishing the amount of qualifying capital expenditures made by the taxpayer and included within said report. The taxpayer shall also provide to the secretary the number of employes, total production of malt or brewed beverages and the amount of capital expenditures made by the taxpayer at each location operated by the taxpayer or a parent corporation, subsidiary, joint venture or affiliate. Also, the taxpayer shall notify the secretary of any contract for production held with another manufacturer. The secretary shall file a report annually with the Chief Clerk of the House of Representatives and with the Secretary of the Senate outlining the employment, production, expenditures and tax credits authorized under this section.

(e) Upon receipt from a taxpayer of a certificate from the secretary issued under subsection (c), the Secretary of Revenue shall grant a tax credit or credits in the amount certified against any tax then due or thereafter becoming due from the taxpayer under this article. No credit shall be allowed against any tax due for any taxable period ending after December 31, **[1998]** ***2003***.

Section 26. Section 2301(f) of the act, added July 1, 1994 (P.L.413, No.67), is amended to read:

Section 2301. Public Transportation Assistance Fund.—* * *

(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)]** ***seven and six-tenths (7.6)*** mills upon each dollar of the State taxable value of its utility realty **[at the end of the preceding calendar year]**.

Section 27. Section 3003.2(h) of the act, amended May 7, 1997 (P.L.84, No.7), is amended to read:

Section 3003.2. Estimated Tax.—* * *

(h) The tax imposed on shares of institutions and title insurance companies **[and the tax imposed on public utility realty]** shall be paid in the manner and within the time prescribed by Article VII**[, VIII or XI-A]** ***or VIII*** of this act, but subject to the interest provided in section 3003.3 of this article.

* * *

Section 28. The act is amended by adding sections to read:

Section 3003.12. Harness and Thoroughbred Racing.—Notwithstanding the provisions of section 222 of the act of December 17, 1981 (P.L.435, No.135), known as the "Race Horse Industry Reform Act," regarding the payment of taxes, all corporations licensed to conduct harness horse race meetings or thoroughbred horse race meetings shall remit the taxes imposed under section 222(a.1) within twenty days of the close of each calendar month.

Section 3003.13. Corporate Tax Treatment of Certain Automobile Clubs.—(a) Notwithstanding any other provision of law, the "taxable income" of an automobile club for purposes of the tax imposed by Article IV of this act shall be separately computed and limited to income from the following activities:

(1) The conduct of the business of insurance by the automobile club, or subsidiary or affiliate thereof, in the capacity of an insurance company, association or exchange, insurance agency or brokerage, as these terms are defined in the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

(2) The conduct of a travel agency business.

(b) Notwithstanding any other provision of law, the "capital stock value" of an automobile club for purposes of the tax imposed by Article VI of this act shall be separately computed and limited to the value attributed to the following activities:

(1) The conduct of the business of insurance by the automobile club, or subsidiary or affiliate thereof, in the capacity of an insurance company, association or exchange, insurance agency or brokerage, as these terms are defined in "The Insurance Department Act of 1921."

(2) The conduct of a travel agency business.

(c) For purposes of the taxes imposed by Articles IV and VI of this act, an automobile club shall be deemed not to be a membership organization subject to the Federal limitations on deductions from taxable

income under section 277 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 277).

(d) The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Automobile club." A nonprofit corporation, trust or other entity whose membership is open to the general public, and that provides services and conducts activities on behalf of its members, including all of the following:

(1) Motor vehicle registration, title transfer and license application and renewal services.

(2) Motor vehicle travel assistance, including road maps, trip itineraries, tour guides and emergency roadside assistance.

(3) Promotion of the development and provision of safe and convenient motor vehicle travel conditions, services and facilities.

(4) Promotion of the construction, maintenance and use of efficient, adequate and safe highway systems.

(5) Education of motorists and the traveling public in the principles of traffic and motor vehicle safety and related matters.

"Travel agency business." The arrangement, in exchange for a fee, commission or salary, of vacation or travel packages or services, sightseeing tours, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus or other mode of transportation or hotel or other accommodations.

Section 29. Nothing contained in section 1101-A, 1102-A, 1103-A, 1104-A, 1105-A, 1106-A, 1106.1-A, 1106.2-A, 1107-A, 1109-A, 2301(f) or 3003.2(h) of the act shall be construed to relieve any person, corporation or other entity from the filing of reports or from any tax, tentative tax, penalty or interest imposed by the provisions of any laws which were in effect prior to being amended or repealed by this act, or affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of any tax, tentative tax, penalty or interest due to the Commonwealth under any of the laws which were in effect prior to being amended or repealed by this act.

Section 30. Nothing in the amendment of section 2301(f) of the act shall constitute a change in a rate of a tax requiring an adjustment in the 1995-1996 fiscal tax revenue base under 66 Pa.C.S. § 2810(c)(4) or a rate change under 74 Pa.C.S. § 1765.

Section 31. The provisions of 75 Pa.C.S. § 9901 are repealed.

Section 32. This act shall apply as follows:

(1) Notwithstanding the time limitations of section 307.1(b) of the act, a small corporation which is subject to the tax imposed under Article IV of the act or which owns a qualified Subchapter S corporation subsidiary which is subject to the tax under Article IV of

the act may elect to be taxed as a Pennsylvania S corporation for taxable years beginning after December 31, 1998, if the limitations of section 307.6 of the act do not apply. Such election shall be valid for a taxable year commencing after December 31, 1998, through the effective date of this section if the election is filed with the department before September 16, 1999.

(2) Notwithstanding paragraph (1), any corporation which made a Pennsylvania S corporation election under section 307 of the act which was terminated for exceeding the passive investment income limitation for a taxable year beginning prior to January 1, 1999, may elect to be taxed as a Pennsylvania S corporation for taxable years beginning after December 31, 1998. Such election shall be valid for a taxable year commencing after December 31, 1998, through the effective date of this section if the election is filed with the department before September 16, 1999.

(3) The amendment or addition of sections 246 and 247.1 of the act shall apply to amounts deducted as bad debt on Federal income tax returns required to be filed after January 1, 1999.

(4) The following provisions shall apply to the taxable years beginning after December 31, 1997:

(i) The amendment of section 401(1) of the act.

(ii) The amendment of the definitions of "domestic entity" and "foreign entity" in section 601(a) of the act.

(iii) The addition of section 3003.13 of the act.

(5) The amendment or addition of sections 301(s.2), 304(d)(1), 307.6, 401(3)2(a)(9) and 4(c), 602, 602.3, 602.5 and 2010 of the act shall apply to the taxable years beginning after December 31, 1998.

(6) The amendment of section 204(57) of the act shall apply to transactions which take place after December 31, 1998.

(7) The amendment or addition of sections 1101-A, 1102-A, 1103-A, 1104-A, 1105-A, 1106-A, 1106.1-A, 1107-A and 2301 of the act shall apply retroactively to January 1, 1998.

(8) The repeal of 75 Pa.C.S. § 9901 shall apply retroactively to taxable years beginning after December 31, 1997.

(9) The amendment of section 360 of the act shall apply to prizes won after June 30, 1999.

(10) The amendment of the definition of "processing" in section 601(a) of the act shall apply to taxable years beginning after December 31, 1998.

(11) The amendment of section 325(a) and (b) of the act shall apply to taxable years beginning after December 31, 1999.

Section 33. This act shall take effect as follows:

(1) The following provisions shall take effect July 1, 1999:

(i) The amendment of the definition of "processing" in section 201(d) of the act.

(ii) The amendment of section 360 of the act.

(iii) The addition of section 3003.12 of the act.

(iv) The addition of Article XVIII-A of the act.

(2) The amendment of section 325(a) and (d) of the act shall take effect January 1, 2000.

(3) The amendment of section 1101(a) of the act and the repeal of section 1104 of the act shall take effect on January 1 of the first taxable year following enactment of legislation to restructure and deregulate the natural gas utility industry in the Commonwealth and to allow customers to purchase natural gas supply services from their choice of supplier. The Secretary of Revenue shall publish notice of the enactment of this legislation in the Pennsylvania Bulletin.

(4) The remainder of this act shall take effect immediately.

APPROVED—The 12th day of May, A.D. 1999.

THOMAS J. RIDGE