PRINTER'S NO. 1100

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 962

Session of 2025

INTRODUCED BY KEEFER, JULY 31, 2025

REFERRED TO FINANCE, JULY 31, 2025

AN ACT

Amending Titles 53 (Municipalities Generally) and 72 (Taxation and Fiscal Affairs) of the Pennsylvania Consolidated Statutes, eliminating school district property taxes; imposing county and school district taxes; establishing the School District Emergency Fund and the School District Property Tax Elimination Fund; consolidating Articles II and III of the Tax Reform Code of 1971; in preliminary provisions relating to sales and use tax, providing for definitions; in taxation generally relating to sales and use tax, providing for exclusions and for transfer to county sales and use tax accounts; in preliminary provisions relating to personal income tax, providing for definitions; and making repeals.

This act may be referred to as the School Property Tax Elimination Act.

The General Assembly finds and declares as follows:

(1) School district property taxes are a fixed expense for property owners, which creates an unsustainable and regressive system of taxation impacting our fundamental rights of life, liberty and property. School district property taxes are not reflective of a property owner's ability to pay and are regressive in nature.

(2) The current rate of increase of school district property taxes is unsustainable due to factors frequently

beyond the control of local school officials and school boards, including underfunded pensions, rapidly escalating health care costs, more complex educational requirements for students and unfunded mandates.

(3) School district property taxes impact individuals differently. For example, if spouses are retired and one spouse passes away, the income reduction caused by the death is immediate, but the school district property tax burden remains unchanged. Other factors impacting older Pennsylvanians' ability to bear the burden of school district property taxes include the amount of financial assets in retirement, health, mobility and the proximity of family members. School district property taxes are problematic for working families as well, with young working families bearing the brunt of funding the State while managing such financial burdens as income taxes, exploding health care coverage costs and day care expenses.

(4) This Commonwealth faces an additional risk through its tax structure and limited job creation, as young working families continue to relocate from this Commonwealth, partly as a result of Pennsylvania's tax system being specifically geared to taxation of income from working citizens, with retirement income not being taxed.

(5) The Independent Fiscal Office reports that Pennsylvania is attracting more seniors as residents because of the tax status in this Commonwealth of retirement income, particularly when compared to neighboring states.

(6) The demographic changes to this Commonwealth, fueled by the combination of the exodus of younger people from this Commonwealth and the migration of older people into this

Commonwealth, have precipitated a growing financial crisis.

(7) School districts are fixed cost-intensive operations and seek stability in funding through property taxes, but the predictability and certainty of school district property taxes create contradictory impacts on property owners in meeting their tax obligations.

(8) School district property tax reform must be accomplished in an equitable manner in the form of the total elimination of school district property taxes for residential and commercial properties. Businesses in this Commonwealth alone cannot and should not bear the financial burden caused by the elimination of school district property taxes on residential property only. (See 53 Pa.C.S. § 9011(a).)

(9) School district property tax reform must also include rental properties, whereby each landlord must reduce rental payments required of each residential or commercial tenant in an amount equal to the reduction of taxes on real property attributable to a tenant's unit. (See 53 Pa.C.S. § 9017.)

(10) This act provides for the elimination of school district property taxes through the following:

(i) An increase in the sales, use and occupancy taxes, whereby a new or additional 2% tax shall be imposed on certain items and that money distributed to each county of this Commonwealth, which shall disburse money to school districts within the county from the School District Property Tax Elimination Fund. (See 53 Pa.C.S. Ch. 90A Subchs. C and F.) For this purpose, certain exclusions from taxation are eliminated, including certain clothing, candy and gum. (See 53

Pa.C.S. § 90A22(b.1).)

(ii) The imposition by each school district of a local tax on the personal income of resident taxpayers of the school district up to a maximum rate of 1.88%, the revenue from which shall be collected by and be solely for the use of school districts. (See 53 Pa.C.S. Ch. 90A Subch. D.) For this purpose, compensation is expanded to include taxation of old age or retirement benefits, with the exception of Social Security benefits and other similar types of benefits enumerated under the definition of "compensation." (See the definition of "compensation" in 72 Pa.C.S. § 2102, which effectuates these changes.)

(11) This act is not intended to reduce expenditures made to school districts in this Commonwealth. The purpose of this act is to shift a source of local school district funding away from school district property taxes in a manner that does not negatively impact school districts.

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

Section 1. Title 53 of the Pennsylvania Consolidated Statutes is amended by adding chapters to read:

CHAPTER 90

SCHOOL DISTRICT PROPERTY TAX ELIMINATION

Subchapter

A. Preliminary Provisions

B. Administration

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

9001. Scope of chapter.

9002. Definitions.

§ 9001. Scope of chapter.

This chapter relates to school district property tax elimination.

§ 9002. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Base year." The first fiscal year of a school district beginning after June 30, 2027.

"Board." The School District Property Tax Elimination Appeals Board.

"Department." The Department of Education of the Commonwealth.

"Earned income tax." A tax on earned income and net profits levied under:

(1) the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act; or

(2) the act of October 15, 2008 (P.L.1615, No.130).

"Emergency fund." The School District Emergency Fund established under section 9013 (relating to School District Emergency Fund).

"Fund." The School District Property Tax Elimination Fund established under section 90A51 (relating to School District Property Tax Elimination Fund).

"Secretary." The Secretary of Education of the Commonwealth.

SUBCHAPTER B

ADMINISTRATION

Sec.

9011. Prohibition.

<u>§ 9011. Prohibition.</u>

<u>(a) General rule.--Except as provided in subsection (b), for the first fiscal year of a school district beginning after December 31, 2029, and each fiscal year of the school district thereafter, the school district may not levy, assess or collect real property taxes.</u>

<u>(b) Exception.--Subsection (a) shall not apply to the collection of delinquent taxes.</u>

<u>(c) Penalty.--During any attempt after the prohibition under subsection (a), by a school district to reinstate real property taxes or levy against real property, the school district may not:</u>

<u>(1) Receive any future disbursements through the fund.</u>

<u>(2) Impose a personal income tax under Subchapter D of Chapter 90A (relating to personal income tax).</u>

<u>§ 9012. School District Property Tax Elimination Appeals Board.</u>

<u>(a) Establishment.--The School District Property Tax Elimination Appeals Board is established.</u>

<u>(b) Composition.--The board shall consist of the following members:</u>

<u>(1) Two representatives of the department, to be appointed by the secretary.</u>

<u>(2) A representative of the Pennsylvania State Education</u>

Association, to be appointed by the secretary.

(3) A representative of the Pennsylvania Association of School Business Officials, to be appointed by the secretary.

(4) A representative of the Pennsylvania School Boards Association, to be appointed by the secretary.

(5) An individual appointed by the President pro tempore of the Senate.

(6) An individual appointed by the Speaker of the House of Representatives.

(7) An individual appointed by the Majority Leader of the Senate.

(8) An individual appointed by the Majority Leader of the House of Representatives.

(9) An individual appointed by the Minority Leader of the Senate.

(10) An individual appointed by the Minority Leader of the House of Representatives.

(c) Chairperson.--The secretary shall appoint a chairperson of the board, who shall be one of the representatives of the department.

(d) Compensation.--Members of the board shall not be entitled to compensation for their services as members but shall be entitled to reimbursement for actual and necessary travel expenses.

(e) Vacancies.--A vacancy on the board shall be filled in the same manner as the original appointment.

(f) Quorum.--A majority of the appointed members of the board shall constitute a quorum. Action may be taken by the board at a meeting upon a vote of a quorum of its members present in person or through electronic means.

(g) Meetings.--

(1) The board shall hold the board's first meeting within 30 days of the effective date of this section.

(2) The board shall meet at the call of the chairperson or as otherwise provided by the board.

(3) Meetings of the board shall be subject to the requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings).

(h) Administrative support.--The department shall provide administrative support, meeting space, data, research and any other assistance or information required by the board to carry out the board's duties.

(i) Duties.--The board shall:

(1) Provide information to counties and school districts regarding the use of the fund and the requirements under this chapter.

(2) During the base year and the first three fiscal years immediately following the base year, periodically evaluate the finances of each school district in this Commonwealth to determine whether the school district is negatively impacted as a result of the elimination of school district property taxes and the replacement of that revenue through disbursements from the fund.

(3) Make a determination as to a request for supplemental funding under section 9014 (relating to supplemental funding).

§ 9013. School District Emergency Fund.

(a) Establishment.--The School District Emergency Fund is established as a separate fund in the State Treasury.

(b) Purpose.--The emergency fund shall be used to make disbursements at a time and in a manner determined by the board in accordance with section 9014 (relating to supplemental funding).

(c) Funding.--

(1) The sum of $500,000,000 is appropriated from the General Fund to the emergency fund for the fiscal years July 1, 2027, to June 30, 2029. The appropriation shall be a continuing appropriation and shall not lapse. The appropriation shall be allocated as follows:

(i) For fiscal year 2027-2028, $250,000,000.

(ii) For fiscal year 2028-2029, $250,000,000.

(2) For fiscal year 2029-2030, and each fiscal year thereafter, the department shall transfer the amount remitted under subsection (d) to the emergency fund. A school district may not receive supplemental funding under section 9014 in an amount in excess of the amount contained in the school district's segregated account under subsection (d)(3) plus any funds remaining from the appropriations under paragraph (1).

(d) Remittance.--

(1) By August 1, 2029, and each August 1 thereafter, each school district shall submit one quarter of 1% of the school district's budget for that school year to the department.

(2) By September 1, 2029, and each September 1 thereafter, the department shall transfer the amount remitted under paragraph (1) to the emergency fund.

(3) The amount transferred under paragraph (2) shall be segregated in the emergency fund by accounts for each separate school district.

§ 9014. Supplemental funding.

(a) Application.--

(1) A school district that is negatively impacted as a result of the elimination of school district property taxes and the replacement of that revenue through disbursements from the fund may apply to the board for special consideration of additional supplemental funding to the school district because the school district faces unforeseen or exigent financial circumstances.

(2) The request for supplemental funding shall specify the reasons and amount of the request, along with any course of action that may mitigate the request.

(b) Review and determination.--The board shall, in a timely manner, review the application under subsection (a) and determine the amount of supplemental funding to be received by the school district from the emergency fund.

(c) Absence of reciprocity agreement.--Upon application under subsection (a), money in the General Fund shall be paid to the school district to offset a revenue loss to the school district due to the absence of an income tax reciprocity agreement between the Commonwealth and another state. The board shall determine the amount of the payment based on the amount of residential real property tax levied and assessed by the school district in the base year.

(d) Notice.--The board shall notify the school district in writing of its determination.

§ 9015. Excess money.

If, as a result of the disbursements made through the fund, a school district receives more money during a fiscal year than the amount under the school district budget approved by the school district's board of school directors for that fiscal year, the school district shall reduce the earned income tax imposed by the school district or reduce any indebtedness of the school district by the difference between the amount of the fund disbursements and the amount under the school district budget.

§ 9016. Effect on basic education funding allocation.

This chapter is not intended to alter the basic education funding allocation.

§ 9017. Rent reductions.

(a) Amount of reduction.--Each landlord shall reduce rental payments required of each residential or commercial tenant in an amount equal to the reduction of taxes on real property attributable to the tenant's unit unless the landlord can confirm by a written disclosure that prior property tax increases over the past five years were not passed to each tenant. The amount of tax reduction attributable to each unit shall be based upon allocated square footage occupied or other reasonable criteria. The rental amount specified in a lease shall reflect any reduction in real property taxes under this chapter.

(b) Calculation.--The rental reduction per rental payment shall be calculated by dividing the total real property tax reduction applicable to the real property leased by the tenant by the number of payments required of the tenant during that tax year. In cases where more than one rental unit is situated upon a tract of real estate affected by the tax reduction, the landlord shall reduce the rent of each tenant in a proportion equal to the total amount of rent that the rental unit leased by the tenant bears to the total amount of rent of all rental units situated upon the tract of real estate.

(c) Time of reduction.--A landlord shall reduce the rental payments required of each tenant commencing with the first date on which the tenant is required to pay rent subsequent to the effective date of the elimination of the school real property tax and ending on the last date the tenant is required to pay rent under the lease. If a lease is on a month-to-month basis, rental payments shall only be reduced for the first month during which the tenant is required to pay rent subsequent to the effective date of the elimination of the school real property tax.

(d) Applicability.--This section shall apply to leases entered into before, on or after the effective date of this section.

(e) Taxability.--A reduction in rent provided under this section shall not be taxable.

§ 9018. Training.

The following may provide training regarding budget and financial management for school district officials as a result of the implementation of the fund:

(1) The board.

(2) An institution of higher education, as defined in section 118(c) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, that has expertise in financial management, budgeting, treasury operations and forecasting.

CHAPTER 90A

COUNTY AND SCHOOL DISTRICT TAXES

Subchapter

A. Preliminary Provisions

B. Subjects of Taxation

C. Sales and Use Tax

D. Personal Income Tax

E. Credits and Exemptions

F. Disbursement

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

90A01. Scope of chapter.

90A02. Definitions.

90A03. Scope and limitations.

§ 90A01. Scope of chapter.

This chapter relates to county tax imposition.

§ 90A02. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Base year." As defined in section 9002 (relating to definitions).

"Board of county commissioners." Includes the successor in function to the board of county commissioners in a county which has adopted a home rule charter under the former act of April 13, 1972 (P.L.184, No.62), known as the Home Rule Charter and Optional Plans Law, or under Subpart E of Part III (relating to home rule and optional plan government).

"County." A county-level municipality within this Commonwealth, regardless of classification. The term includes a county which has adopted a home rule charter or optional plan of government under the former Home Rule Charter and Optional Plans Law or under Subpart E of Part III.

"County sales and use tax account." The separate account established in the fund for each county under section 90A52(b) (relating to payments to counties).

"Current year." The calendar year or fiscal year for which the tax is levied.

"Department." The Department of Revenue of the Commonwealth.

"Domicile." As defined in section 501 of the Local Tax Enabling Act.

"Fund." The School District Property Tax Elimination Fund established under section 90A51 (relating to School District Property Tax Elimination Fund).

"Governing body." The board of county commissioners, including the successor in function to the board of county commissioners in a county which has adopted a home rule charter under the former Home Rule Charter and Optional Plans Law or under Subpart E of Part III.

"Individual." As defined in 72 Pa.C.S. § 2102 (relating to definitions).

"Local Tax Enabling Act." The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act.

"Ordinance." Includes a resolution.

"Personal income." Income enumerated in 72 Pa.C.S. § 2203 (relating to classes of income) as returned to and ascertained by the department, subject, however, to any correction thereof for fraud, evasion or error as finally ascertained by the Commonwealth.

"Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Taxpayer." An individual required under this chapter to file a tax return or to pay a tax.

§ 90A03. Scope and limitations.

It is the intent of this chapter to require each county and school district to levy, assess and collect taxes.

SUBCHAPTER B

SUBJECTS OF TAXATION

§ 90A11. General tax authorization.

(a) County.--Each county shall by ordinance levy, assess and collect or provide for the levying, assessment and collection of taxes on the subjects specified under this chapter within the geographical limits of the county.

(b) School district.--Each school district shall by resolution levy, assess and collect or provide for the levying, assessment and collection of taxes on the subjects specified under this chapter within the geographical limits of the school district.

(c) Local Tax Enabling Act.--

(1) Nothing under section 305 of the Local Tax Enabling Act shall be construed to require the vacation of an ordinance or resolution passed under the authority of Chapter 3 of the Local Tax Enabling Act as a result of the assessment and collection of taxes on the subjects specified under this chapter.

(2) The assessment and collection of taxes on the subjects specified under this chapter shall not apply to the provisions of section 311 of the Local Tax Enabling Act.

(3) The calculation of the aggregate amount of taxes under section 320 of the Local Tax Enabling Act shall not include any revenues derived from the assessment and collection of taxes on the subjects specified under this

chapter.

§ 90A12. Continuity of tax.

Each tax levied under this chapter shall continue in force on a calendar or fiscal year basis, as the case may be, without annual reenactment unless the rate of tax is increased or the tax is subsequently repealed.

SUBCHAPTER C

SALES AND USE TAX

Sec.

90A21. Construction.

90A22. Imposition.

90A23. Situs.

90A24. Licenses.

90A25. Rules and regulations and collection costs.

90A26. Procedure and administration.

§ 90A21. Construction.

The tax imposed by the governing body under this subchapter shall be in addition to any tax imposed by the Commonwealth under 72 Pa.C.S. Pt. II Subpt. A (relating to sales and use tax). Except for the differing situs provisions under section 90A23 (relating to situs), the provisions of 72 Pa.C.S. Pt. II Subpt. A shall apply to the tax.

§ 90A22. Imposition.

(a) Sales.--Each governing body shall, beginning October 1, 2029, levy and assess on each separate sale at retail of tangible personal property or services, as defined in 72 Pa.C.S. § 1102 (relating to definitions), within the boundaries of the county, a tax on the purchase price. The tax shall be collected by the vendor from the purchaser and shall be paid over to the Commonwealth.

(b) Use.--Each governing body shall, beginning October 1, 2029, levy and assess a tax on the use, within the county, of tangible personal property purchased at retail and on services purchased at retail, as defined in 72 Pa.C.S. § 1102, on the purchase price. The tax shall be paid over to the Commonwealth by the person who makes the use. The use tax imposed under this subchapter shall not be paid over to the Commonwealth by any person who has paid the tax imposed under:

(1) Subsection (a).

(2) This subsection to the vendor with respect to the use.

(b.1) Subjects of taxation.--Notwithstanding any exclusion from sales and use tax under 72 Pa.C.S. Pt. II Subpt. A (relating to sales and use tax), the tax under subsections (a) and (b) may be imposed on the following:

(1) The sale at retail or use of clothing and other related items, as specified in 72 Pa.C.S. § 1321(17)(ii) (relating to exclusions), except the sale at retail or use of used clothing, if the clothing is sold by an institution or organization that has received a determination of exception from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 501(c)(3)). The following apply:

(i) The exemption granted under this paragraph shall be limited to institutions or organizations that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(ii) No institution or organization shall be exempt under this paragraph, unless the institution or organization shall have issued to it by the department an exemption certificate declaring that the institution or organization is entitled to the exemption provided for by this paragraph.

(iii) All proceeds from sales exempted under this paragraph must be for section 501(c)(3) purposes.

(2) The sale at retail or use of candy or gum, as specified in 72 Pa.C.S. § 1321(40).

(c) Occupancy.--In any county within which a tax authorized by subsection (a) is imposed, there shall be levied, assessed and collected an excise tax on the rent on each occupancy of a room in a hotel in the county. The tax shall be collected by the operator or owner from the occupant and paid over to the Commonwealth.

(d) Rate and uniformity.--

(1) The tax under subsections (a), (b) and (c) shall be imposed at a rate of 2%.

(2) The tax imposed by subsections (a), (b) and (c) shall be uniform.

(e) Computation.--The tax imposed under this section shall be computed in the same manner under section 503(e)(2) of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(f) Deposit.--Taxes collected under this section shall be deposited into the fund.

§ 90A23. Situs.

(a) General rule.--Except as provided under subsections (b) and (c), the situs of sales at retail or uses, including leases, of motor vehicles, aircraft, motorcraft and utility services shall be determined in the manner specified by section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, and 72 Pa.C.S. Pt. II Subpt. A (relating to sales and use tax).

(b) Premium cable services.--The sale or use of premium cable service shall be deemed to occur at the service address in the county which is the address where the customer cable connection is located. This subsection shall determine the situs of premium cable service for the purpose of all local sales taxes, including those imposed under Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class and under Subdivision (e) of Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(c) Telecommunications service.--The situs of telecommunications service under this chapter shall be determined in accordance with regulations adopted by the department, which shall be uniform among all counties, and shall be consistent with regulations promulgated under Subdivision (e) of Article XXXI-B of the Second Class County Code, 72 Pa.C.S. Pt. II Subpt. A and Chapter 5 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

§ 90A24. Licenses.

A license for the collection of the tax imposed by this subchapter shall be issued in the same manner as is provided for in section 505 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class. Licensees shall be entitled to the same discount as provided in 72 Pa.C.S. § 1526 (relating to discount).

§ 90A25. Rules and regulations and collection costs.

(a) Rules and regulations.--Rules and regulations shall be applicable to the taxes imposed under section 90A23 (relating to situs) in the same manner as is provided under section 506(1) and (2) of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class.

(b) Administrative costs.--The department, to cover its costs of administration under this subchapter, shall be entitled to retain a sum equal to the costs of administration. When the annual operating budget for the department is submitted to the General Assembly, the department shall also submit to the chairperson and minority chairperson of the Appropriations Committee of the Senate and to the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives a report of the actual sums retained for costs of collection in the preceding fiscal year, together with all supporting details.

§ 90A26. Procedure and administration.

Prior to adopting an ordinance imposing a tax under this chapter, the governing body shall give public notice of its duty to adopt the ordinance in the manner provided by section 306 of the Local Tax Enabling Act.

SUBCHAPTER D

PERSONAL INCOME TAX

Sec.

90A31. Construction.

90A32. Local personal income tax.

90A33. Collections.

90A34. Rules and regulations.

90A35. Procedure and administration.

§ 90A31. Construction.

The tax imposed by the school district under this subchapter shall be in addition to any tax imposed by the Commonwealth under 72 Pa.C.S. Pt. II Subpt. B (relating to personal income tax). Except for the differing provisions under sections 90A41 (relating to credits), 90A42 (relating to low-income tax provisions) and 90A43 (relating to regulations), the provisions of 72 Pa.C.S. Pt. II Subpt. B shall apply to the tax.

§ 90A32. Local personal income tax.

Each school district shall adopt a resolution to, beginning October 1, 2029, levy, assess and collect a local tax on the personal income of resident taxpayers of the school district up to a maximum rate of 1.88%.

§ 90A33. Collections.

Each school district imposing a tax under section 90A32 (relating to local personal income tax) shall designate the tax officer who is appointed under section 507 of the Local Tax Enabling Act, or otherwise by law, as the collector of the tax. In the performance of the tax collection duties under this subchapter, the designated tax officer shall have all the same powers, rights, responsibilities and duties for the collection of the taxes which may be imposed under the Local Tax Enabling Act or as otherwise provided by law.

§ 90A34. Rules and regulations.

Taxes imposed under section 90A32 (relating to local personal income tax) shall be subject to the rules and regulations adopted by the department under Article III of the Tax Reform

Code.

§ 90A35. Procedure and administration.

Prior to adopting the resolution imposing the tax under section 90A32 (relating to local personal income tax), the school district shall give public notice of its duty to adopt the resolution in the manner provided by section 306 of the Local Tax Enabling Act.

SUBCHAPTER E

CREDITS AND EXEMPTIONS

Sec.

90A41. Credits.

90A42. Low-income tax provisions.

90A43. Regulations.

§ 90A41. Credits.

The provisions of section 317 of the Local Tax Enabling Act shall be used to determine any credits under the provisions of this chapter for any taxes imposed under section 90A32 (relating to local personal income tax) on the earned income portion of the personal income tax.

§ 90A42. Low-income tax provisions.

The provisions of 72 Pa.C.S. § 2204 (relating to special tax provisions for poverty) shall be applied by each school district which levies a tax under section 90A32 (relating to local personal income tax.

§ 90A43. Regulations.

Each school district may adopt regulations for the processing of claims under this subchapter.

SUBCHAPTER F

DISBURSEMENT

Sec.

§ 90A51. School District Property Tax Elimination Fund.

(a) Establishment.--The School District Property Tax Elimination Fund is established as a separate fund in the State Treasury.

(b) Purpose.--The fund shall be used to make disbursements at a time and in a manner determined by the Department of Education in consultation with the department and in accordance with Chapter 90 (relating to school district property tax elimination) for the purpose of eliminating school district property taxes.

(c) Sources.--The following shall be deposited into the fund:

(1) Money deposited under section 90A22(f) (relating to imposition).

(2) Money appropriated or transferred to the fund.

(3) Return on money in the fund.

(4) Grants, gifts, donations and other payments from a person or governmental entity to the fund.

§ 90A52. Payments to counties.

(a) Initial amounts.--During the first three fiscal years immediately following the base year, the State Treasurer shall make distributions to each county, on behalf of school districts within the county, from the fund in an amount equivalent to the total real property tax revenues collected by the school districts during the base year, without regard to the amount of money contained in the fund at the time of the distributions. The General Assembly shall appropriate as much money as necessary to allow the fund to remain solvent to make the distributions.

(b) County accounts.--For each county the (proper name) County Sales and Use Tax Account is established as a separate account within the fund.

(c) Subsequent amounts.--For the fourth fiscal year immediately following the base year, and each fiscal year thereafter, the following apply:

(1) Taxes imposed under section 90A22 (relating to imposition) shall be received by the department and paid to the State Treasurer and, along with interest and penalties, less any collection costs allowed under this chapter and any refunds and credits paid, shall be credited, based on the situs of the sales at retail or uses, to the respective county sales and use tax accounts. Money shall be credited to the county sales and use tax accounts not less frequently than every two weeks.

(2) Money in the county sales and use tax accounts shall not lapse or be transferred to any other fund, but shall remain in the county sales and use tax accounts. Pending their disbursement, money received on behalf of or deposited into the county sales and use tax accounts shall be invested or reinvested as is other money in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or reinvestment of the money shall be credited to the respective county sales and use tax accounts.

(3) The State Treasurer shall make periodic disbursements to each county, on behalf of school districts within the county, out of the money contained in the county's

sales and use tax account.

§ 90A53. Payments by counties.

Each county shall distribute to each school district a portion of the total disbursement to school districts which is equal to the total disbursement to school districts multiplied by the ratio of average daily membership of the school district divided by the sum of the average daily membership of all school districts in the county. For the purposes of this section, the term "average daily membership" shall mean "average daily membership" as defined by the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. For school districts located in more than one county, the average daily membership shall be multiplied by a factor calculated by dividing the square mileage of the school district located in the county by the total square mileage of the school district.

Section 2. Title 72 is amended by adding parts to read:

PART I

PRELIMINARY PROVISIONS

Chapter

1. General Provisions

CHAPTER 1

GENERAL PROVISIONS

Sec.

101. Scope of title.

102. Definitions.

§ 101. Scope of title.

This title relates to taxation and fiscal affairs.

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions under this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Revenue of the Commonwealth.

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

"Internal Revenue Code of 1954." The Internal Revenue Code of 1954 (68A Stat. 3).

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

"Liquor Code." The act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

"Mobile Telecommunications Sourcing Act." The Mobile Telecommunications Sourcing Act (Public Law 106-252, 114 Stat. 626).

"Secretary." The Secretary of Revenue of the Commonwealth.

"Tax Reform Code of 1971." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

PART II

STATE TAX PROVISIONS

Subpart

A. Sales and Use Tax

B. Personal Income Tax

SUBPART A

SALES AND USE TAX

Chapter

11. Preliminary Provisions

13. Taxation Generally

15. Procedure and Administration

CHAPTER 11

PRELIMINARY PROVISIONS

Sec.

1101. Scope of subpart.

1102. Definitions.

§ 1101. Scope of subpart.

This subpart relates to sales and use tax.

§ 1102. Definitions.

The following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adjustment services, collection services or credit reporting services." As follows:

(1) A service providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services provided by an adjustment bureau or collection agency, a consumer or mercantile credit reporting bureau, a credit bureau or agency, a credit clearinghouse or a credit investigation service.

(2) The term shall not include any of the following:

(i) Providing credit card service with collection by a central agency.

(ii) Providing debt counseling or adjustment services to individuals.

(iii) Billing or collection services provided by a local exchange telephone company.

"Affiliated person." A person that, with respect to another person:

(1) has a direct or indirect ownership interest of more than 5% in the other person; or

(2) is related to the other person because a third person, or group of third persons who are affiliated with each other as defined in this definition, holds a direct or indirect ownership interest of more than 5% in the related person.

"Animal housing facility." A roofed structure or facility, or a portion of the facility, used for occupation by livestock or poultry.

"Blasting." The use of a combustible or explosive composition in the removal of material resources, minerals and mineral aggregates from the earth, including the separation of the dirt, waste and refuse in which they are found.

"Building machinery and equipment." As follows:

(1) Generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment, limited to the following:

(i) Air conditioning, limited to heating, cooling, purification, humidification, dehumidification and ventilation.

(ii) Electrical.

(iii) Plumbing.

(iv) Communications limited to voice, video, data, sound, master clock and noise abatement.

(v) Alarms, limited to fire, security and detection.

(vi) A control system, limited to energy management, traffic and parking lot and building access.

(vii) A medical system, limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging.

(viii) A laboratory system.

(ix) A cathodic protection system.

(x) Furniture, cabinetry and kitchen equipment.

(2) The term shall include any of the following, together with integral coverings and enclosures, whether the item constitutes a fixture or is otherwise affixed to the real estate, whether damage would be done to the item or its surroundings upon removal or whether the item is physically located within a real estate structure:

(i) Boilers.

(ii) Chillers.

(iii) Air cleaners.

(iv) Humidifiers.

(v) Fans.

(vi) Switchgear.

(vii) Pumps.

(viii) Telephones.

(ix) Speakers.

(x) Horns.

(xi) Motion detectors.

(xii) Dampers.

(xiii) Actuators.

(xiv) Grills.

(xv) Registers.

(xvi) Traffic signals.

(xvii) Sensors.

(xviii) Card access devices.

(xix) Guardrails.

(xx) Medial devices.

(xxi) Floor troughs.

(xxii) Grates.

(xxiii) Laundry equipment.

(3) The term shall not include any of the following:

(i) Guardrail posts.

(ii) Pipes.

(iii) Fittings.

(iv) Pipe supports and hangers.

(v) Valves.

(vi) Underground tanks.

(vii) Wire.

(viii) Conduit.

(ix) Receptacle and junction boxes.

(x) Insulation.

(xi) Ductwork.

(xii) Coverings.

"Building maintenance or cleaning services." As follows:

(1) Providing services, including any of the following:

(i) Janitorial, maid or housekeeping service.

(ii) Office or interior building cleaning or maintenance.

(iii) Window cleaning.

(iv) Floor waxing.

(v) Lighting maintenance such as bulb replacement.

(vi) Cleaning.

(vii) Chimney cleaning.

(viii) Acoustical tile cleaning.

(ix) Venetian blind cleaning.

(x) Cleaning and maintenance of telephone booths.

(xi) Cleaning and degreasing of service stations.

(2) The term shall not include any of the following:

(i) Repairs on buildings and other structures.

(ii) Maintenance or repair of boilers, furnaces and residential air conditioning equipment or parts of boilers, furnaces and residential air conditioning equipment.

(iii) Painting, wallpapering or applying other coverings to interior walls, ceilings or floors.

(iv) Exterior painting of buildings.

"Car-sharing program agreement." The terms and conditions that govern the use of a shared vehicle through a peer-to-peer car-sharing program.

"Commercial aircraft operator." A person, excluding a scheduled airline, engaging in any or all of the following:

(1) Aircraft charters.

(2) Aircraft leasing.

(3) Aircraft sales.

(4) Aircraft rental.

(5) Flight instruction.

(6) Air freight.

(7) Other flight activities for compensation.

"Commercial racing activities." Any of the following:

(1) Thoroughbred and harness racing at which pari-mutuel wagering is conducted under 3 Pa.C.S. Ch. 93 (relating to race horse industry reform).

(2) Fair racing sanctioned by the State Harness Racing Commission.

"Construction contract." As follows:

(1) A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of real estate or a real estate structure.

(2) The term shall not apply to services which are

taxable under any of the following:

(i) Paragraph (1)(ix) or (xi) of the definition of "sale at retail."

(ii) Paragraph (1)(vi) or (viii) of the definition of "use."

"Construction contractor." A person who performs an activity under a construction contract, including a subcontractor.

"Disinfecting or pest control services." As follows:

(1) A service providing disinfecting, termite control, insect control, rodent control or other pest control services, including deodorant servicing of restrooms, washroom sanitation service, restroom cleaning service, extermination service or fumigating service.

(2) As used in this definition:

(i) The term "fumigating service" shall not include the fumigation of agricultural commodities or containers used for agricultural commodities.

(ii) The term "insect control" shall not include the spraying of trees which are harvested for commercial purposes for gypsy moth control.

"Employment agency services." As follows:

(1) Providing employment services to a prospective employer or employee other than employment services provided by theatrical employment agencies and motion picture casting bureaus.

(2) The term shall include services provided by employment agencies, executive placement services and labor contractor employment agencies other than farm labor.

"Flight simulator." A device used for the training or instruction of an individual on a helicopter and similar rotorcraft.

"Forum." As follows:

(1) A place where sales at retail occur, whether physical or electronic.

(2) The term shall include a store, booth, Internet website, catalog or similar place.

"Gratuity." An amount paid or remitted for services performed in conjunction with a sale of food or beverages or hotel or motel accommodations when the amount is in excess of the charges and the tax for the food, beverages or accommodations, regardless of the method of billing or payment.

"Help supply services." As follows:

(1) Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished.

(2) The term shall include service provided by any of the following:

(i) Labor and manpower pools.

(ii) Employee leasing services.

(iii) Office help supply services.

(iv) Temporary help services.

(v) Usher services.

(vi) Modeling services.

(vii) Fashion show model supply services.

(3) The term shall not include services providing farm labor or human health-related services, including nursing, home health care and personal care. As used in this paragraph, the term "personal care" shall include providing at least one of the following types of assistance to persons

with limited ability for self-care:

(i) Dressing, bathing or feeding.

(ii) Supervising self-administered medication.

(iii) Transferring a person to or from a bed or wheelchair.

(iv) Routine housekeeping chores when provided in conjunction with and supplied by the same provider of the assistance listed in subparagraph (i), (ii) or (iii).

"Internet." The international nonproprietary computer network of both Federal and non-Federal interoperable packet switched data networks.

"Lawn care service." Providing services for lawn upkeep, including fertilizing, lawn mowing, shrubbery trimming and other lawn treatment services.

"Liquor." As defined in section 102 of the Liquor Code.

"Lobbying services." Providing the services of a lobbyist, as that term is defined in 65 Pa.C.S. § 13A03 (relating to definitions).

"Maintaining a place of business in this Commonwealth." As follows:

(1) Any of the following:

(i) Having, maintaining or using within this Commonwealth, either directly or through a subsidiary, representative or agent, an office, distribution house, sales house, warehouse, service enterprise or other place of business. This subparagraph shall include an agent of general or restricted authority or other representative, regardless of whether the place of business, representative or agent is located in this Commonwealth permanently or temporarily or whether the person or subsidiary maintaining the place of business, representative or agent is authorized to do business in this Commonwealth.

(ii) Engaging in an activity as a business in this Commonwealth by a person, either directly or through a subsidiary, representative or an agent, in connection with the lease, sale or delivery of tangible personal property or the performance of services for use, storage or consumption or in connection with the sale or delivery for use of the services described under paragraph (1) (vi), (vii), (viii), (ix), (x), (xi) or (xii) of the definition of "sale at retail," including having, maintaining or using an office, distribution house, sales house, warehouse or other place of business, a stock of goods or a solicitor, canvasser, salesman, representative or agent under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(iii) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property or the performance of services or in connection with the sale or delivery of the services described under paragraph (1) (vi), (vii), (viii), (ix), (x), (xi) or (xii) of the definition of "sale at retail" for residents of this Commonwealth by means of catalogs or other advertising, whether the orders are accepted within or without this Commonwealth.

(iv) Entering this Commonwealth to provide assembly, service or repair of tangible personal property, either directly or through a subsidiary, representative or agent.

(v) Delivering tangible personal property to locations within this Commonwealth if the delivery shall include the unpacking, positioning, placing or assembling of the tangible personal property.

(vi) Having contact within this Commonwealth which would allow the Commonwealth to require a person to collect and remit tax under the Constitution of the United States.

(vii) Providing a customer's mobile telecommunications service deemed to be provided by the customer's home service provider under the Mobile Telecommunications Sourcing Act. For purposes of this subparagraph, words and phrases used in this subparagraph shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(viii) As follows:

(A) Engaging in an activity as a business by a person, either directly or through a subsidiary, representative or agent, in connection with the lease, sale or delivery of tangible personal property into this Commonwealth or the performance of services for use, storage or consumption or in connection with the sale or delivery for use in this Commonwealth of at least $100,000 during the preceding 12-month calendar period.

(B) For a marketplace facilitator, this activity includes all sales, leases and deliveries of tangible personal property and all sales of services by the marketplace seller whose sales are facilitated through the marketplace facilitator's forum.

(C) For a peer-to-peer car-sharing program marketplace facilitator, this activity includes all sales, leases and deliveries of tangible personal property and all sales of services by the marketplace seller whose sales are facilitated through the peer-to-peer car-sharing program.

(2) The term shall not include any of the following:

(i) Owning or leasing of tangible or intangible property by a person who has contracted with an unaffiliated commercial printer for printing if the property is for use by the commercial printer and located at the Pennsylvania premises of the commercial printer.

(ii) Visits by a person's employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with the contract.

"Malt or brewed beverages." As defined in section 102 of the Liquor Code.

"Manufacture." As follows:

(1) The performance of manufacturing, fabricating, compounding, processing or other operations engaged in as a business, which place tangible personal property in a form, composition or character different from that in which it is acquired, whether for sale or use by the manufacturer.

(2) The term shall include any of the following:

(i) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities, including packaging which passes to the ultimate consumer, the tangible personal property has when transferred by the manufacturer to another. The following apply:

(A) For purposes of this subparagraph, the term "operation" shall include clean rooms and their component systems, including any of the following:

(I) Environmental control systems.

(II) Antistatic vertical walls and manufacturing platforms and floors, which are independent of the real estate.

(III) Process piping systems.

(IV) Specialized lighting systems.

(V) Deionized water systems.

(VI) Process vacuum and compressed air systems.

(VII) Process and specialty gases.

(VIII) Alarm or warning devices specifically designed to warn of threats to the integrity of the product or people.

(B) For purposes of clause (A), the term "clean room" is a location with a self-contained, sealed environment with a controlled, closed air system independent from the facility's general environmental control system.

(ii) The publishing and printing of books, newspapers, magazines and other periodicals.

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

(iv) Building, rebuilding, repairing and making additions to or replacements in or upon vessels designed for commercial use of registered tonnage of 50 tons or more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

(v) Research for the production of a new or improved product or utility service or method of producing a product or utility service, but not including market research or research for the improvement of administrative efficiency.

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

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

(A) "Aircraft." A fixed-wing aircraft, helicopter, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft or glider.

(B) "Armored vehicles." A tank, armed personnel carrier or other armed track or semitrack vehicle.

(C) "Other defense-related vehicles." A truck, truck-tractor, trailer, jeep or other utility vehicles, including an unmanned vehicle.

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

(3) The term shall not include any of the following:

(i) Constructing, altering, servicing, repairing or improving real estate.

(ii) Repairing, servicing or installing tangible personal property.

(iii) The producing of a commercial motion picture.

(iv) The cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

"Manufacturer of malt or brewed beverages." As defined in section 102 of the Liquor Code.

"Marketplace facilitator." As follows:

(1) A person that facilitates the sale at retail of tangible personal property.

(2) For purposes of this subpart, a person facilitates a sale at retail if the person or an affiliated person:

(i) lists or advertises tangible personal property for sale at retail in any forum; and

(ii) either directly or indirectly through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the person selling the property.

(3) The term includes a person that may also be a vendor.

"Marketplace seller." A person that has an agreement with a marketplace facilitator to facilitate sales for the person.

"Mobile telecommunications service." As defined in the Mobile Telecommunications Sourcing Act.

"Peer-to-peer car sharing." The authorized use of a shared vehicle by an individual, other than the owner of the vehicle, through a peer-to-peer car-sharing program.

"Peer-to-peer car-sharing payment." Full consideration paid or delivered, or promised to be paid or delivered, to the peer-to-peer car-sharing marketplace facilitator under a car-sharing program agreement, excluding charges for local sales or use tax, State sales or use tax or public transportation assistance fund fees.

"Peer-to-peer car-sharing program." A business platform that, through a peer-to-peer car-sharing marketplace, connects shared vehicle owners with drivers to enable the sharing of vehicles for financial consideration.

"Peer-to-peer car-sharing program marketplace." A forum on which a shared vehicle is listed or advertised for peer-to-peer car sharing.

"Peer-to-peer car-sharing program marketplace facilitator." A person that facilitates peer-to-peer car sharing through a peer-to-peer car-sharing marketplace and either directly or indirectly, through agreements or arrangements with third parties, collects the peer-to-peer car-sharing payment from the purchaser and transmits the payment to the shared vehicle owner.

"Person." A natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. When used in prescribing and imposing a penalty, fine or imprisonment, or both, the term, as applied to an association, shall include the members of the association and, as applied to a corporation, the officers of the corporation.

"Prebuilt housing." Either of the following:

(1) Manufactured housing, including a mobile home, which bears a label as required by and referred to in the act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act.

(2) Industrialized housing as defined in the act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

"Prebuilt housing builder." A person who makes a prebuilt housing sale to a prebuilt housing purchaser.

"Prebuilt housing purchaser." A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth.

"Prebuilt housing sale." A sale of prebuilt housing to a prebuilt housing purchaser, including a sale to a landlord, without regard to whether the person making the sale is responsible for installing the prebuilt housing or whether the prebuilt housing becomes a real estate structure upon installation. Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.

"Premium cable or premium video programming service." As follows:

(1) Includes the portion of cable television services, video programming services, community antenna television services or other distribution of television, video, audio or radio services which meets all of the following criteria:

(i) Is transmitted with or without the use of wires to purchasers.

(ii) Consists substantially of programming uninterrupted by paid commercial advertising which shall include programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or audio or radio broadcasting.

(iii) Does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system. The following apply:

(A) A basic service tier shall include any of the following:

(I) All signals of domestic television broadcast stations, any public, educational, governmental or religious programming and additional video programming signals or service added to the basic service tier by the cable operator.

(II) A single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier under subclause (I).

(B) A cable programming service tier shall include video programming other than any of the following:

(I) The basic service tier.

(II) Video programming offered on a pay-per-channel or pay-per-view basis.

(III) A combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

(2) If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase price:

(i) Charges for installation or repair of any premium cable or premium video programming service.

(ii) Upgrade to include additional premium cable or premium video programming service.

(iii) Downgrade to exclude all or some premium cable or premium video programming service.

(iv) Additional premium cable outlets in excess of

10.

(v) Other charges or fees related to premium cable or premium video programming services.

(3) The term shall not apply to the following:

(i) Transmissions by public television, public radio services or official Federal, State or local government cable services.

(ii) Local origination programming which provides a variety of public service programs unique to the community, programming which provides coverage of public affairs issues which are presented without commentary or analysis, including United States Congressional proceedings, or programming which is substantially related to religious subjects.

(iii) Subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

"Prepaid mobile telecommunications service." As follows:

(1) Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both, whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis.

(2) The term shall not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile

telecommunications service.

"Prepaid telecommunications." A tangible item containing a prepaid authorization number that can be used solely to obtain telecommunications service, including a renewal or increase in the prepaid amount.

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

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

(2) 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 the activity packages the property in sealed containers for wholesale distribution.

(3) 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 the activities are performed prior to sale to the ultimate consumer.

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

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

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

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

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

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

(10) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale. The operation of a saw mill or planing mill begins with the unloading by the operator of the saw mill or planing mill of logs, timber, pulpwood or other forms of wood material to be used in the saw mill or planing mill.

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

(12) 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.

(13) 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.

(14) The processing of used lubricating oils.

(15) The broadcasting of radio and television programs of licensed commercial or educational stations.

(16) The cooking or baking of bread, pastries, cakes, cookies, muffins and donuts when the person engaged in the

activity sells the items at retail at locations that do not constitute an establishment from which ready-to-eat food and beverages are sold. For purposes of this paragraph, a bakery, pastry shop and donut shop are not to be considered an establishment from which ready-to-eat food and beverages are sold.

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

(18) The preparation of dry or liquid fertilizer for sale.

(19) The production, processing and packaging of ice for wholesale distribution.

(20) The producing of mobile telecommunications services.

(21) The collection, washing, sorting, inspecting and packaging of eggs.

"Promoter." A person who directly or indirectly rents, leases or otherwise operates or grants permission to a person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under Subchapter A of Chapter 13 (relating to imposition of tax).

"Purchase at retail." As follows:

(1) Any of the following:

(i) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale by the person acquiring the property when the acquisition is made for the purpose of consumption or use, whether the acquisition is absolute or conditional, and by whatever means in which the acquisition is made.

(ii) The acquisition of a license to use or consume and the rental or lease of tangible personal property, other than for resale, regardless of the period of time the lessee has possession or custody of the property.

(iii) The obtaining for a consideration of those services described under paragraph (1)(ii), (iii) or (iv) of the definition of "sale at retail" other than for resale.

(iv) A retention after March 7, 1956, of possession, custody or a license to use or consume under a rental contract or other lease arrangement, other than as security, other than for resale.

(v) The obtaining for a consideration of those services described under paragraph (1)(vi), (vii), (viii), (ix), (x), (xi) or (xii) of the definition of "sale at retail."

(2) The term shall include the purchase of liquor from a Pennsylvania liquor store by a person for any purpose, and the purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by a person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor or purchases from an importing distributor by a distributor within the meaning of the Liquor Code.

(3) The term shall not include a purchase of malt or brewed beverages from a retail dispenser or a purchase of liquor or malt or brewed beverages from a person holding a retail liquor license under the Liquor Code, but shall

include purchase or acquisition of liquor or malt or brewed beverages other than under the Liquor Code.

"Purchase price." As follows:

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

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

(3) In determining the purchase price on the sale or use of taxable tangible personal property or a service where, because of affiliation of interests between the vendor and purchaser or irrespective of the affiliation, if for any other reason the purchase price declared by the vendor or taxpayer on the taxable sale or use of the tangible personal property or service is determined by the department not to be indicative of the true value of the article or service or the fair price of the article or service, the department shall, under uniform and equitable rules, determine the amount of

constructive purchase price upon the basis of which the tax shall be computed and levied. The rules shall provide for a constructive amount of purchase price for each sale or use which would naturally and fairly be charged in an arm's-length transaction in which the element of common interest between the vendor or purchaser is absent or if no common interest exists, any other element causing a distortion of the price or value is likewise absent. For the purpose of this paragraph where a taxable sale or purchase at retail transaction occurs between a parent and a subsidiary, affiliate or controlled corporation of the parent corporation, there shall be a rebuttable presumption that because of the common interest, the transaction was not at arm's length.

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

whether money or otherwise, to a person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession or custody of under a rental contract or lease arrangement.

(5) With respect to the tax imposed by Subchapter A of Chapter 13 upon tangible personal property originally purchased by the user of the property six months or longer prior to the first taxable use of the property within this Commonwealth, the user may elect to pay tax on a substituted base determined by considering the purchase price of the property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of the first use within this Commonwealth. The election must be made at the time of filing a tax return with the department and reporting the tax liability and paying the proper tax due plus all accrued penalties and interest, if any, within six months of the due date of the report and payment, as provided under section 1513(a) and (c) (relating to time for filing returns).

(6) The purchase price of employment agency services and help supply services shall be the service fee paid by the purchaser to the vendor or supplying entity. As used in this paragraph, the term "service fee" is the total charge or fee of the vendor or supplying entity minus the costs of the supplied employee, including wages, salaries, bonuses, commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the vendor or supplying entity.

To the extent that these costs are not itemized or stated on the billings, then the service fee shall be the total charge or fee of the vendor or supplying entity.

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

(8) The purchase price of prebuilt housing shall be 60% of the manufacturer's selling price, but a manufacturer of prebuilt housing who precollects tax from a prebuilt housing builder at the time of the sale to the prebuilt housing builder shall have the option to collect tax on 60% of the selling price or on 100% of the actual cost of the supplies and materials used in the manufacture of the prebuilt housing.

(9) The purchase price of malt or brewed beverages sold by a manufacturer of malt or brewed beverages directly to the ultimate consumer for consumption on or off premises shall be 25% of the retail sales price of the malt or brewed beverages sold for consumption on or off premises.

"Purchaser." As follows:

(1) A person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property or who obtains services in exchange for a purchase price.

(2) The term shall not include an employer who obtains services from the employer's employees in exchange for wages or salaries when the services are rendered in the ordinary scope of employment.

"Real estate structure." As follows:

(1) A structure or item purchased by a construction contractor under a construction contract with any of the following:

(i) A charitable organization, volunteer firefighters' organization, nonprofit educational institution or religious organization for religious purposes and which qualifies as an institution of purely public charity under the act of November 26, 1997 (P.L.508, No.55), known as the Institutions of Purely Public Charity Act.

(ii) The United States.

(iii) The Commonwealth, its instrumentalities or political subdivisions.

(2) The term shall include any of the following:

(i) Building machinery and equipment.

(ii) Developed or undeveloped land.

(iii) Streets, roads and highways.

(iv) Parking lots.

(v) Stadiums and stadium seating.

(vi) Recreational courts.

(vii) Sidewalks.

(viii) Foundations, structural supports, walls, floors, ceilings, roofs and doors.

(ix) Canopies.

(x) Millwork.

(xi) Elevators.

(xii) Windows and external window coverings.

(xiii) Outdoor advertising boards or signs.

(xiv) Airport runways.

(xv) Bridges, dams and dikes.

(xvi) Traffic-control devices, including traffic signs.

(xvii) Satellite dishes and antennas.

(xviii) Guardrail posts.

(xix) Pipes, fittings, pipe supports and hangers.

(xx) Valves.

(xxi) Underground tanks.

(xxii) Wire, conduit, receptacle and junction boxes.

(xxiii) Insulation.

(xxiv) Ductwork and ductwork coverings.

(xxv) A structure or item similar to the items listed in subparagraphs (i) through (xxiv), whether the structure or item constitutes a fixture or is affixed to the real estate, or whether damage would be done to the structure or item or its surroundings upon removal.

"Resale." As follows:

(1) Any of the following:

(i) A transfer of ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of the property is transferred but where the transferor retains title only as security for payment of the selling price, whether the transaction is designated as bailment lease, conditional sale or otherwise.

(ii) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described under paragraphs (2), (3) and (4) of the definition of "sale at retail" upon tangible personal property which is to be sold in the regular course of business or where the person incorporating the property has undertaken at the time of purchase to cause the property to be transported in interstate commerce to a destination outside this Commonwealth.

(2) The term shall include any of the following:

(i) Telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

(ii) Tangible personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible personal property and then transported outside this Commonwealth for use exclusively outside this Commonwealth.

(3) The term shall not include the sale of malt or brewed beverages by a retail dispenser or the sale of liquor or malt or brewed beverages by a person holding a retail liquor license within the meaning of the Liquor Code.

(4) The physical incorporation of tangible personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraph (2)(ii)(A), (B), (C) or (D) of the definition of "sale at retail" or paragraph (2)(ii)(A), (B), (C) or (D) of the definition of "use," whether the foundations at the time of construction or transfer constitute tangible personal property or real estate.

(5) The term does not include the purchase price or repair of a shared vehicle by a shared vehicle owner.

"Resident." Any of the following:

(1) A natural person who:

(i) is domiciled in this Commonwealth; or

(ii) maintains a permanent place of residence within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.

(2) A corporation which:

(i) is incorporated under the laws of this Commonwealth;

(ii) is authorized to do business or doing business within this Commonwealth; or

(iii) maintains a place of business within this Commonwealth.

(3) An association, fiduciary, partnership or other entity which:

(i) is domiciled in this Commonwealth;

(ii) is authorized to do business or doing business within this Commonwealth; or

(iii) maintains a place of business within this Commonwealth.

"Sale at retail." As follows:

(1) Any of the following:

(i) A transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether the transfer is absolute or conditional and by whatever means in which the transfer is made.

(ii) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(iii) The rendition for a consideration of the service of any of the following:

(A) Washing, cleaning, waxing, polishing or lubricating the motor vehicles of another, whether or not tangible personal property is transferred.

(B) Inspecting motor vehicles under the mandatory requirements of 75 Pa.C.S. (relating to vehicles).

(iv) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether the services are performed directly or by any means other than by coin-operated self-service laundry equipment for wearing apparel or household goods and whether tangible personal property is transferred, except services that are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate. This subparagraph shall not be deemed to impose tax upon these services in the preparation for sale of new items which are excluded from the tax under section 1321(17) (relating to exclusions) or upon diaper service.

(v) The retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described under subparagraph (ii), (iii) or (iv) under a rental or service contract or other arrangement, other than as security.

(vi) The rendition for a consideration of lobbying services.

(vii) The rendition for a consideration of adjustment services, collection services or credit reporting services.

(viii) The rendition for a consideration of secretarial or editing services.

(ix) The rendition for a consideration of disinfecting or pest control services, building maintenance or cleaning services.

(x) The rendition for a consideration of employment agency services or help supply services.

(xi) The rendition for a consideration of lawn care service.

(xii) The rendition for a consideration of self-storage service.

(xiii) The rendition for a consideration of a mobile telecommunications service.

(xiv) Car sharing through a shared vehicle owner, peer-to-peer car-sharing program marketplace facilitator or rental company.

(2) The term shall not include any of the following:

(i) A transfer of tangible personal property or rendition of services for the purpose of resale.

(ii) Except as provided under paragraph (3), the rendition of services or the transfer of tangible personal property including machinery and equipment and machinery and equipment parts and supplies to be used or consumed by the purchaser directly in the operations of any of the following:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, timbering, horticulture or floriculture when engaged in as a business enterprise. As used in this clause:

(I) The term "farming" shall include the propagation and raising of ranch raised fur-bearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game) and the propagation and raising of horses to be used exclusively for commercial racing activities.

(II) The term "timbering" shall include any of the following, except the harvesting of trees for clearing land for access roads:

(a) The business of producing or harvesting trees from forests, woodlots or tree farms for the purpose of the commercial production of wood, paper or energy products derived from wood by a company primarily engaged in the business of harvesting trees.

(b) All operations prior to the transport of the harvested product necessary for the removal of timber or forest products from the site, in-field processing of trees into logs or chips, complying with environmental protection and safety requirements applicable to the harvesting of forest products, loading of forest products onto highway vehicles for transport to storage or processing facilities and postharvesting site reclamation, including those activities necessary to improve timber growth or ensure natural or direct reforestation of the site.

(C) Except as provided under paragraph (4), the producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering the service.

(D) Processing.

(3) The exclusions under paragraph (2)(ii)(A), (B), (C) and (D) shall not apply to any of the following:

(i) A vehicle required to be registered under 75 Pa.C.S., except those vehicles used directly by a public utility engaged in business as a common carrier or to maintenance facilities or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate, other than directly used machinery, equipment, parts or foundations that may be affixed to the real estate.

(ii) Tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities or to the purchase or use of tangible personal property or services by a person other than the person directly using the property or services in the operations described under paragraph (2)(ii)(A), (B), (C) and (D).

(iii) The services described under any of the following:

(A) Paragraph (1)(vi), (vii), (viii), (ix), (x), (xi) and (xii).

(B) The definition of any of the following:

(I) "Adjustment services, collection services or credit reporting services."

(II) "Building maintenance or cleaning services."

(III) "Disinfecting or pest control services," except that the exclusion provided under this definition for farming, dairying and agriculture shall apply to disinfecting or pest control services.

(IV) "Employment agency services."

(V) "Help supply services."

(VI) "Lawn care service."

(VII) "Lobbying services."

(VIII) "Secretarial or editing services."

(IX) "Self-storage service."

(4) The exclusions under paragraph (2)(ii)(C) shall not apply to any of the following:

(i) Construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service.

(ii) Construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure.

(iii) Tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(5) If tangible personal property or services are utilized for purposes constituting a sale at retail and for purposes excluded from the definition of "sale at retail," it shall be presumed that the tangible personal property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user proves to the department that the predominant purposes for which the tangible personal property or services are utilized do not constitute a sale at retail.

(6) With respect to liquor and malt or brewed beverages, as follows:

(i) The term shall include the sale of liquor by a Pennsylvania liquor store to a person for any purpose and the sale of malt or brewed beverages by a manufacturer of malt or brewed beverages, distributor or importing distributor to a person for any purpose, except sales by a manufacturer of malt or brewed beverages to a distributor or importing distributor or sales by an importing distributor to a distributor within the meaning of the Liquor Code.

(ii) The term shall not include a sale of malt or brewed beverages by a retail dispenser or a sale of liquor or malt or brewed beverages by a person holding a retail liquor license under the Liquor Code, but shall include a sale of liquor or malt or brewed beverages other than under the Liquor Code.

"Secretarial or editing services." As follows:

(1) Providing services that include editing, letter writing, proofreading, resume writing, typing or word processing.

(2) The term shall not include court reporting and stenographic services.

"Self-storage service." As follows:

(1) Providing a building, a room in a building or a secured area within a building with separate access provided for each purchaser of self-storage service, primarily for the purpose of storing personal property.

(2) The term shall not include providing any of the following:

(i) Safe deposit boxes by financial institutions.

(ii) Storage in refrigerator or freezer units.

(iii) Storage in commercial warehouses.

(iv) Facilities for goods distribution.

(v) Lockers in airports, bus stations, museums and other public places.

"Shared vehicle." A vehicle that is available for sharing, including through a peer-to-peer car-sharing program.

"Shared vehicle owner." The registered owner, or a person designated by the registered owner, of a vehicle made available for sharing, including through a peer-to-peer car-sharing program.

"Show." An event, the primary purpose of which involves the display or exhibition of tangible personal property or services for sale, including a flea market, antique show, coin show, stamp show, comic book show, hobby show, automobile show, fair or similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under Subchapter A of Chapter 13.

"Soft drinks." As follows:

(1) All nonalcoholic beverages, whether carbonated or not, including any of the following:

(i) Soda water.

(ii) Ginger ale, Coca-Cola, lime cola, Pepsi, Dr. Pepper and root beer.

(iii) Fruit juice when plain or when carbonated water, flavoring or syrup is added.

(iv) Carbonated water.

(v) Orangeade and lemonade.

(vi) Other preparations and beverages commonly referred to as soft drinks, which are made with or without the use of any syrup.

(2) The term shall not include any of the following:

(i) Natural fruit or vegetable juices or their concentrates.

(ii) Noncarbonated fruit juice drinks containing not less than 25% by volume of natural fruit juices or of fruit juice which has been reconstituted to its original state, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned.

(iii) Coffee, coffee substitutes, tea or cocoa.

(iv) Natural fluid milk or noncarbonated drinks made from milk derivatives.

"Storage." As follows:

(1) The keeping or retention of tangible personal property within this Commonwealth for any purpose, including the interim keeping, retaining or exercising a right or power over the tangible personal property.

(2) The term is not limited to the provision of self-storage service.

"Tangible personal property." As follows:

(1) Corporeal personal property, including any of the following:

(i) Goods, wares and merchandise.

(ii) Steam and natural, manufactured and bottled gas for nonresidential use.

(iii) Electricity for nonresidential use.

(iv) Prepaid telecommunications.

(v) Premium cable or premium video programming service.

(vi) Spirituous or vinous liquor, malt or brewed beverages and soft drinks.

(vii) Interstate telecommunications service originating or terminating in this Commonwealth and charged to a service address in this Commonwealth.

(viii) Intrastate telecommunications service with the exception of:

(A) Subscriber line charges and basic local telephone service for residential use.

(B) Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate if the service address of an intrastate telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of an interstate or intrastate telecommunications service, a charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, but not including prepaid telecommunications, is deemed attributable to the address of origination of the telecommunications service.

(2) The term shall include the following, whether electronically or digitally delivered, streamed or accessed and whether purchased singly, by subscription or in any other manner, including maintenance and updates:

(i) Video.

(ii) Photographs.

(iii) Books.

(iv) Other taxable printed matter.

(v) Applications, commonly known as apps.

(vi) Games.

(vii) Music.

(viii) Other audio, including satellite radio service.

(ix) Canned software, notwithstanding the function performed, including support, except separately invoiced help desk or call center support.

(x) Other taxable tangible personal property electronically or digitally delivered, streamed or accessed.

"Taxpayer." A person required to pay or collect the tax imposed by this subpart, including a marketplace facilitator, a marketplace seller, a peer-to-peer car-sharing program marketplace facilitator and a shared vehicle owner.

"Telecommunications service." As follows:

(1) A one-way transmission or a two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media.

(2) The term shall include any of the following:

(i) Local, toll, wide-area or any other type of telephone service.

(ii) Private line service.

(iii) Telegraph service.

(iv) Radio repeater service.

(v) Wireless communication service.

(vi) Personal communications system service.

(vii) Cellular telecommunication service.

(viii) Specialized mobile radio service.

(ix) Stationary two-way radio service.

(x) Paging service.

(3) The term shall not include any of the following:

(i) Subscriber charges for access to a video dial tone system.

(ii) Charges to video programmers for the transport of video programming.

(iii) Charges for access to the Internet. Access to the Internet shall not include any of the following:

(A) The transport over the Internet or a proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.

(B) Telecommunications service purchased by an Internet service provider to deliver access to the Internet to its customers.

(iv) Mobile telecommunications service.

"Transient vendor." As follows:

(1) A person who satisfies all of the following conditions:

(i) Brings into this Commonwealth, by automobile, truck or other means of transportation, or purchases in this Commonwealth, tangible personal property the sale or use of which is subject to the tax imposed by this part or comes into the Commonwealth to perform services the sale or use of which is subject to the tax imposed by this part.

(ii) Offers or intends to offer tangible personal property or services for sale at retail within this Commonwealth.

(iii) Does not maintain an established office, distribution house, saleshouse, warehouse, service enterprise, residence from which business is conducted or other place of business within this Commonwealth.

(2) The term shall not include a person who:

(i) delivers tangible personal property within this Commonwealth under orders for the property which were solicited or placed by mail or other means; or

(ii) handcrafts items for sale at special events, including, but not limited to, fairs, carnivals, art and craft shows and other festivals and celebrations within this Commonwealth.

"Use." As follows:

(1) Any of the following:

(i) The exercise of a right or power incidental to the ownership, custody or possession of tangible personal property, including transportation, storage or consumption.

(ii) The obtaining by a purchaser of the service of any of the following:

(A) Printing or imprinting of tangible personal property when the purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(B) Washing, cleaning, waxing, polishing or lubricating of motor vehicles, whether a tangible personal property is transferred to the purchaser in conjunction with the services.

(C) Inspecting motor vehicles under the mandatory requirements of 75 Pa.C.S.

(D) Repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property other than wearing apparel or shoes, whether the services are performed directly or by any means other than by means of coin-operated self-service laundry equipment for wearing apparel or household goods, and whether tangible personal property is transferred to the purchaser in conjunction with the services, except the services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate. This clause shall not be deemed to impose tax upon these services in the preparation for sale of new items which are excluded from the tax under section 1321(17) or upon diaper service.

(iii) The obtaining by the purchaser of lobbying services.

(iv) The obtaining by the purchaser of adjustment services, collection services or credit reporting services.

(v) The obtaining by the purchaser of secretarial or editing services.

(vi) The obtaining by the purchaser of disinfecting or pest control services, building maintenance or cleaning services.

(vii) The obtaining by the purchaser of employment agency services or help supply services.

(viii) The obtaining by the purchaser of lawn care service.

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

(x) The obtaining by a construction contractor of tangible personal property or services provided to tangible personal property which will be used under a construction contract whether or not the tangible personal property or services are transferred.

(xi) The obtaining of mobile telecommunications service by a customer.

(xii) Car sharing through a shared vehicle owner, peer-to-peer car-sharing program marketplace facilitator or rental company.

(2) The term shall not include any of the following:

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

(ii) Except as provided under paragraph (3), the use or consumption of tangible personal property, including machinery and equipment and machinery and equipment parts and supplies or the obtaining of the services described under paragraph (1)(ii)(A), (B), (C) or (D) directly in the operations of any of the following:

(A) The manufacture of tangible personal property.

(B) Farming, dairying, agriculture, timbering, horticulture or floriculture when engaged in as a business enterprise. As used in this clause:

(I) The term "farming" shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. and the propagation and raising of horses to be used exclusively for commercial racing activities.

(II) The term "timbering" shall include any of the following, except the harvesting of trees for clearing land for access roads:

(a) The business of producing or harvesting trees from forests, woodlots or tree farms for the purpose of the commercial production of wood, paper or energy products derived from wood by a company primarily engaged in the business of harvesting trees.

(b) All operations prior to the transport of the harvested product necessary for the removal of timber or forest products from the site, in-field processing of trees into logs or chips, complying with environmental protection and safety requirements applicable to the harvesting of forest products, loading of forest products onto highway vehicles for transport to storage or processing facilities and postharvesting site reclamation, including those activities necessary to improve timber growth or ensure natural or direct reforestation of the site. The term shall not include the harvesting of trees for clearing land for access roads.

(C) Except as provided under paragraph (4), the producing, delivering or rendering of a public utility service or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering the service.

(D) Processing.

(iii) The providing of a motor vehicle to a nonprofit private or public school to be used by the school for the sole purpose of driver education.

(3) The exclusions provided under paragraph (2)(ii) shall not apply to any of the following:

(i) A vehicle required to be registered under 75 Pa.C.S. except those vehicles directly used by a public utility engaged in the business as a common carrier.

(ii) Maintenance facilities.

(iii) Materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations for the maintenance of real estate that may be affixed to the real estate.

(iv) Tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities or to the purchase or use of tangible personal property or services by a person other than the person directly using the same in the operations described under paragraph (2)(ii).

(v) The services described under any of the following:

(A) Paragraph (1)(vi), (vii), (viii), (ix), (x) or (xi).

(B) The definition of any of the following:

(I) "Adjustment services, collection services or credit reporting services."

(II) "Building maintenance or cleaning services."

(III) "Disinfecting or pest control services," except that the exclusion provided under this definition for farming, dairying and agriculture shall apply to disinfecting or pest control services.

(IV) "Employment agency services."

(V) "Help supply services."

(VI) "Lawn care service."

(VII) "Lobbying services."

(VIII) "Secretarial or editing service."

(IX) "Self-storage service."

(4) The exclusion provided under paragraph (2)(ii)(C) shall not apply to any of the following:

(i) Construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service.

(ii) Tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

(5) Where tangible personal property or services are utilized for purposes constituting a use, and for purposes excluded from the definition of "use," it shall be presumed that the property or services are utilized for purposes constituting a sale at retail and subject to tax unless the user proves to the department that the predominant purposes for which the property or services are utilized do not constitute a sale at retail.

(6) With respect to liquor and malt or brewed beverages, as follows:

(i) The term shall include the purchase of liquor from a Pennsylvania liquor store by a person for any purpose and the purchase of malt or brewed beverages from a manufacturer of malt or brewed beverages, distributor or importing distributor by a person for any purpose, except purchases from a manufacturer of malt or brewed beverages by a distributor or importing distributor, or purchases from an importing distributor by a distributor within the meaning of the Liquor Code.

(ii) The term shall not include a purchase of malt or brewed beverages from a retail dispenser or a purchase of liquor or malt or brewed beverages from a person holding a retail liquor license under the Liquor Code, but shall include the exercise of a right or power incidental to the ownership, custody or possession of liquor or malt or brewed beverages obtained by the person exercising the right or power in any manner other than under the Liquor Code.

(7) The use of tangible personal property purchased at retail upon which the services described under paragraph (1)(ii) have been performed shall be deemed to be a use of the services by the person using the property.

"Used prebuilt housing." Prebuilt housing that was previously subject to a sale to a prebuilt housing purchaser.

"Vendor." A person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property or rendering services, the sale or use of which is subject to the tax imposed by this subpart, including a marketplace facilitator, a marketplace seller, peer-to-peer car-sharing program marketplace facilitator or shared vehicle owner, but not including an employee who, in the ordinary scope of employment, renders services to an employer in exchange for wages and salaries.

CHAPTER 13

TAXATION GENERALLY

Subchapter

A. Imposition of Tax

B. Computation of Tax

C. Exclusions from Tax

D. Licenses

E. Hotel Occupancy Tax

F. Remote Sellers

SUBCHAPTER A

IMPOSITION OF TAX

Sec.

1301. Sale of tangible personal property or services.

1302. Use of tangible personal property or services.

1303. Telecommunications service.

1304. Coin-operated vending machines.
1305. Prepaid telecommunications.
1306. Prepaid mobile communications service.
1307. Prebuilt housing.
1308. Mobile telecommunications services.
1309. Malt or brewed beverages.

§ 1301. Sale of tangible personal property or services.

(a) Imposition.--There is imposed upon each separate sale at retail of tangible personal property or services within this Commonwealth a tax of 6% of the purchase price.

(b) Collection.--The tax under this section shall, except as otherwise provided, be collected by the vendor or other person required by this part from the purchaser and shall be paid to the Commonwealth as provided in this subpart.

§ 1302. Use of tangible personal property or services.

(a) Imposition.--There is imposed upon the use, on or after the effective date of this section, within this Commonwealth of tangible personal property purchased at retail on or after the effective date of this section and on those services described in this chapter and purchased at retail on or after the effective date of this section a tax of 6% of the purchase price.

(b) Collection.--The tax under this section shall, except as otherwise provided, be paid to the Commonwealth by the person who makes the use as provided under subsection (a), except that the tax shall not be paid to the Commonwealth by the person if the person has paid the tax imposed by section 1301 (relating to sale of tangible personal property or services) or has paid the tax imposed by this section to the vendor with respect to the use or the vendor advertises or holds out or states to the person directly or indirectly subject to the conditions specified in section 1584(b) (relating to crimes) that the vendor will pay the tax imposed by section 1301 or this section for the person. The tax at the rate of 6% imposed by this section shall not be deemed applicable if the tax has been incurred under the former act of March 6, 1956 (1955 P.L.1228, No.381), known as the Tax Act of 1963 for Education.

§ 1303. Telecommunications service.

(a) Imposition.--Subject to subsection (b), notwithstanding any other provision of this subpart, except for telegrams paid for in cash at telegraph offices, the tax with respect to telecommunications service shall be computed at the rate of 6% upon the total amount charged to customers for the services, irrespective of whether the charge is based upon a flat rate or upon a message unit charge.

(b) Exception.--Charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate shall not be subject to the tax under this section.

(c) Liability.--A telecommunications service provider shall have no responsibility or liability to the Commonwealth for billing, collecting or remitting taxes that apply to services, products or other commerce sold over telecommunications lines by third-party vendors.

(d) Credit.--To prevent actual multistate taxation of interstate telecommunications service, a taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telecommunications service to the extent of the amount of the tax properly due and paid to the other state.

§ 1304. Coin-operated vending machines.

Notwithstanding any other provision of this subpart, the sale or use of food and beverages dispensed by means of a coin-operated vending machine shall be taxed at the rate of 6% of the receipts collected from the machine which dispenses food and beverages taxable under this subpart.

§ 1305. Prepaid telecommunications.

(a) Imposition.--Notwithstanding any provision of this subpart, the sale or use of prepaid telecommunications evidenced by the transfer of tangible personal property shall be subject to the tax imposed by sections 1301 (relating to sale of tangible personal property or services) and 1302 (relating to use of tangible personal property or services).

(b) Transfer of tangible personal property.--

(1) Subject to paragraph (2), the sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by sections 1301 and 1302 and shall be deemed to occur at the purchaser's billing address.

(2) Notwithstanding paragraph (1), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this subpart on receipts of each sale. The service provider shall notify the department of the service provider's election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

§ 1306. Prepaid mobile communications service.

(a) Imposition.--Notwithstanding any other provision of this subpart, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by sections 1301 (relating to sale of tangible personal property or services) and 1302 (relating to use of tangible personal property or services).

(b) Transfer of tangible personal property.--

(1) Subject to paragraph (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by sections 1301 and 1302 and shall be deemed to occur at the purchaser's billing address or the location associated with the mobile telephone number or the point of sale, whichever is applicable.

(2) Notwithstanding paragraph (1), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of 6% of the receipts collected on each sale if the service provider elects to collect the tax imposed by this subpart on receipts of each sale. The service provider shall notify the department of the service provider's election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

§ 1307. Prebuilt housing.

Notwithstanding any other provision of this subpart, tax with respect to sales of prebuilt housing shall be imposed on the prebuilt housing builder at the time of the prebuilt housing sale within this Commonwealth and shall be paid and reported by the prebuilt housing builder to the department in the time and manner provided in this subpart, but a manufacturer of prebuilt housing may, at its option, precollect the tax from the prebuilt housing builder at the time of sale to the prebuilt housing builder. In any case where prebuilt housing is purchased and the tax is not paid by the prebuilt housing builder or precollected by the manufacturer, the prebuilt housing purchaser shall remit tax directly to the department if the prebuilt housing is used in this Commonwealth without regard to whether the prebuilt housing becomes a real estate structure.

§ 1308. Mobile telecommunications services.

Notwithstanding any other provisions of this subpart and in accordance with the Mobile Telecommunications Sourcing Act, the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117 of the Mobile Telecommunications Sourcing Act shall be subject to the tax of 6% of the purchase price, which tax shall be collected by the home service provider from the customer and shall be paid over to the Commonwealth as provided in this subpart if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. For purposes of this section, words and phrases used in this section shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

§ 1309. Malt or brewed beverages.

(a) Imposition.--The tax shall be imposed on a manufacturer of malt or brewed beverages with respect to sales of malt or brewed beverages sold by the manufacturer directly to the ultimate consumer for consumption on or off premises notwithstanding any of the following:

(1) Any other provision of this subpart.

(2) Article II-B of the Tax Reform Code of 1971.

(3) The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

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

(b) Payment.--The tax imposed under subsection (a) shall be paid and reported by the manufacturer of malt or brewed beverages to the department in the time and manner provided in this subpart.

(c) Local alcoholic beverage tax.--A school district or local government authorized to impose a local alcoholic beverage tax under the act of June 10, 1971 (P.L.153, No.7), known as the First Class School District Liquor Sales Tax Act of 1971, or 53 Pa.C.S. § 8602 (relating to local financial support) may impose or continue to impose a local alcoholic beverage tax on the sale at retail of malt or brewed beverages made by a manufacturer of malt or brewed beverages to the ultimate consumer for consumption on or off premises at the same rate as authorized under the First Class School District Liquor Sales Tax Act of 1971 or 53 Pa.C.S. § 8602 and notwithstanding anything to the contrary in such laws or in a local law or ordinance in existence on the effective date of this section.

(d) Effect of payment.--The payment of the tax imposed under subsection (a) shall eliminate the need for the ultimate consumer to pay or remit a sales or use tax on the related transaction or upon the subsequent use of the malt or brewed beverages.

SUBCHAPTER B

COMPUTATION OF TAX

Sec.

1311. Computation.

§ 1311. Computation.

The amount of tax imposed by Subchapter A (relating to imposition of tax) shall be computed as follows:

(1) If the purchase price is 10¢ or less, no tax shall be collected.

(2) If the purchase price is 11¢ or more but less than 18¢, 1¢ shall be collected.

(3) If the purchase price is 18¢ or more but less than 35¢, 2¢ shall be collected.

(4) If the purchase price is 35¢ or more but less than 51¢, 3¢ shall be collected.

(5) If the purchase price is 51¢ or more but less than 68¢, 4¢ shall be collected.

(6) If the purchase price is 68¢ or more but less than 85¢, 5¢ shall be collected.

(7) If the purchase price is 85¢ or more but less than $1.01, 6¢ shall be collected.

(8) If the purchase price is more than $1, 6% of each dollar of purchase price plus the bracket charges under paragraphs (1), (2), (3), (4), (5), (6) and (7) upon any fractional part of a dollar in excess of even dollars shall be collected.

SUBCHAPTER C

EXCLUSIONS FROM TAX

Sec.

1321. Exclusions.

1322. Alternate imposition of tax and credits.

1323. Credit against tax.

§ 1321. Exclusions.

The tax imposed under Subchapter A (relating to imposition of tax) shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property, other than a motor vehicle, trailer, semitrailer, motor boat, aircraft or other similar tangible personal property required under either Federal law or the laws of this Commonwealth to be registered or licensed, or a service sold by or purchased from a person not a vendor in an isolated transaction or sold by or purchased from a person who is a vendor but is not a vendor with respect to the tangible personal property or service sold or purchased in the transaction, provided that inventory and stock in trade sold or purchased shall not be excluded from the tax by the provisions of this section.

(2) The use of tangible personal property purchased by a nonresident person outside this Commonwealth and brought into this Commonwealth for use in this Commonwealth for a period not to exceed seven days or for any period of time when the nonresident is a tourist or vacationer and, in either case, not consumed within this Commonwealth.

(3) The use of tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then-nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings the tangible personal property into this Commonwealth in connection with the establishment of a permanent business or residence in this Commonwealth, if the property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment

of the business or residence, whichever occurs first. This exclusion shall not apply to tangible personal property temporarily brought into this Commonwealth for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

(4) The sale at retail or use of any of the following:

(i) Disposable diapers.

(ii) Premoistened wipes.

(iii) Incontinence products.

(iv) Colostomy deodorants.

(v) Toilet paper.

(vi) Sanitary napkins, tampons or similar items used for feminine hygiene.

(vii) Toothpaste, toothbrushes or dental floss.

(5) The sale at retail or use of any of the following:

(i) Any of the following when purchased directly by the user solely for the user's own residential use:

(A) Steam.

(B) Natural, manufactured and bottled gas.

(C) Fuel oil.

(D) Electricity.

(E) Intrastate subscriber line charges, basic local telephone service or telegraph service.

(ii) Charges for a telephone call paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) The sale at retail to or use of tangible personal property or services other than under a construction contract. The following apply:

(i) The exclusion under this paragraph applies to any of the following:

(A) A charitable organization.

(B) A volunteer firefighters' organization.

(C) A volunteer firefighters' relief association as defined in 35 Pa.C.S. § 7412 (relating to definitions).

(D) A nonprofit educational institution.

(E) A religious organization for religious purposes.

(ii) The exclusion under this paragraph shall not apply with respect to any of the following:

(A) Tangible personal property or services used in an unrelated trade or business carried on by the organization or institution.

(B) Materials, supplies and equipment used and transferred to the organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of a real estate structure, other than building machinery and equipment, except materials and supplies when purchased by the organization or institution for routine maintenance and repairs.

(iii) If the department has issued sales tax-exempt status to a volunteer firefighters' organization or a volunteer firefighters' relief association, the sales tax-exempt status may not expire unless the activities of the organization or association change so that the organization or association does not qualify as an institution of purely public charity, in which case the organization or association shall immediately notify the department of the change.

(iv) If the department ascertains that an organization or association no longer qualifies as an institution of purely public charity, the department may revoke the sales tax-exempt status of the organization or association.

(7) The sale at retail or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under 75 Pa.C.S. Ch. 90 (relating to liquid fuels and fuels tax).

(8) The sale at retail to or use by the United States, this Commonwealth or the Commonwealth's instrumentalities or political subdivisions of tangible personal property or services.

(9) The sale at retail or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers, all other wrapping supplies and kegs used to contain malt or brewed beverages, if the use is incidental to the delivery of personal property. A charge for wrapping or packaging shall be subject to tax at the rate imposed by Subchapter B (relating to computation of tax) unless the property wrapped or packaged will be resold by the purchaser of the wrapping or packaging service. As used in this paragraph, the term "carton" includes a corrugated box used by a person engaged in the manufacture of snack food products to deliver the manufactured product, whether or not the box is returnable for potential reuse.

(10) The sale at retail or use of a vessel designed for commercial use of registered tonnage of 50 tons or more if

produced by the builders of the vessel upon special order of the purchaser.

(11) The sale at retail of tangible personal property or services used or consumed in building, rebuilding, repairing, making an addition to or making a replacement in and upon a vessel designed for commercial use of registered tonnage of 50 tons or more upon special order of the purchaser or if the vessel is rebuilt, repaired or enlarged or when a replacement is made to the vessel upon order of or for the account of the owner.

(12) The sale at retail or use of tangible personal property or services used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on a vessel designed for commercial use of registered tonnage of 50 tons or more to be operated principally outside the limits of this Commonwealth.

(13) The sale at retail or use of any of the following:

(i) Prescription or nonprescription medicines, drugs or medical supplies.

(ii) Crutches and wheelchairs for the use of individuals with disabilities.

(iii) An artificial limb, artificial eye and artificial hearing device if designed to be worn on the person of the purchaser or user.

(iv) False teeth and materials used by a dentist in dental treatment.

(v) Eyeglasses if especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser.

(vi) Artificial braces and supports designed solely for the use of individuals with disabilities.

(vii) Any other therapeutic, prosthetic or artificial device designed for the use of a particular individual to correct or alleviate a physical incapacity, including a hospital bed, iron lung and kidney machine.

(14) The sale at retail or use of coal.

(15) The sale at retail or use of a motor vehicle, trailer and semitrailer, or a body attached to the chassis of a motor vehicle, trailer or semitrailer, which is:

(i) sold to a nonresident of this Commonwealth to be used outside this Commonwealth; and

(ii) registered in a state other than this Commonwealth within 20 days after delivery to the vendee.

(16) The sale at retail or use of water.

(17) As follows:

(i) Except as provided under subparagraph (ii), the sale at retail or use of all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing, including clothing patterns and items that are to be a component part of clothing, worn or carried on or about the human body.

(ii) The following shall not be excluded from the tax under this subpart:

(A) An accessory, ornamental wear, formal day or evening apparel or article made of fur on the hide or pelt or a material imitative of fur and an article of which the real, imitation or synthetic fur is the component material of chief value if the value is more than three times the value of the next most valuable component material.

(B) Sporting goods and clothing not normally used or worn by an individual who is not engaged in sports.

(18) The sale at retail or use of religious publications sold by religious groups, Bibles or religious articles.

(19) As follows:

(i) (A) Except as provided for under subparagraph (ii), the sale at retail or use of food and beverages for human consumption.

(B) The sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of the school or church.

(ii) The exclusion under subparagraph (i)(A) shall not apply with respect to any of the following:

(A) Soft drinks.

(B) Malt and brewed beverages and spirituous and vinous liquors.

(C) As follows:

(I) Food or beverages, whether sold for consumption on or off the premises, on a take-out or to-go basis or delivered to the purchaser or consumer if purchased from a person engaged in the business of catering or from a person engaged in the business of operating an establishment where ready-to-eat food and beverages are sold.

(II) For purposes of this subclause:

(a) An establishment under subparagraph (I) shall include a restaurant, cafe, lunch counter, private and social club, tavern, dining car, hotel, night club, fast food operation, pizzeria, fair, carnival, lunch cart, ice cream stand, snack bar, cafeteria, employee cafeteria, theater, stadium, arena, amusement park, carryout shop, coffee shop or other similar establishment, whether mobile or immobile.

(b) A bakery, pastry shop, donut shop, delicatessen, grocery store, supermarket, farmer's market, convenience store or vending machine shall not be considered an establishment under subparagraph (I) from which food or beverages ready-to-eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served ice-based products, including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages.

(c) Beverages under subparagraph (I) shall not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks.

(20) The sale at retail or use of a newspaper, including printed advertising materials circulated with the newspaper, regardless of where or by whom the printed advertising material was produced. As used in this paragraph, "newspaper" means a legal newspaper or a publication containing matters of general interest and reports of current events which qualifies as a newspaper of general circulation authorized to carry a legal advertisement as those terms are defined in 45

Pa.C.S. § 101 (relating to definitions), not including magazines.

(21) The sale at retail or use of a casket and burial vault for human remains and a marker and tombstone for human graves.

(22) The sale at retail or use of flags of the United States of America and the Commonwealth of Pennsylvania.

(23) The sale at retail or use of textbooks for use in a public or private school, college or university if purchased on behalf of or through the school, college or university and the school, college or university is recognized by the Department of Education.

(24) The sale at retail or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

(25) The sale at retail or use of a mail order catalog and direct mail advertising literature or materials, including electoral literature or materials, such as envelopes, address labels and a one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, including electoral literature or materials, through the United States Postal Service.

(26) The sale at retail or use of rail transportation equipment used in the movement of personal property.

(27) The sale at retail of a bus to be used under contract with a school district that is a replacement for a bus destroyed or lost in the flood of 1977 for a period ending December 31, 1977, in the counties of Armstrong, Bedford, Cambria, Indiana, Jefferson, Somerset and

Westmoreland, or the use of the bus.

(28) The sale at retail of a horse if, at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location, whether or not the charges for shipment are paid for by the seller or the purchaser. The following apply:

(i) The seller shall obtain a bill of lading, either from the carrier or from the purchaser, who, in turn, has obtained the bill of lading from the carrier reflecting delivery to the out-of-State address to which the horse has been shipped. The seller shall execute a Certificate of Delivery to Destination Outside of the Commonwealth form for each bill of lading reflecting out-of-State delivery. The seller shall be required to retain the certificate of delivery form to justify the noncollection of sales tax with respect to the transaction to which the form relates.

(ii) In a transaction where a horse is sold by the seller and delivered to a domiciled person, agent or corporation prior to the horse being delivered to an out-of-State location, the Certificate of Delivery to Destination Outside of the Commonwealth form must have attached to it bills of lading both for the transfer to the domiciled person, agent or corporation and from the domiciled person, agent or corporation to the out-of-State location.

(29) The sale at retail or use of fish feed purchased by or on behalf of sportsmen's clubs, fish cooperatives or nurseries approved by the Pennsylvania Fish and Boat Commission.

(30) The sale at retail of supplies and materials to tourist promotion agencies that receive grants from the Commonwealth for distribution to the public as promotional material or the use of the supplies and materials by a tourist promotion agency.

(31) The sale at retail of supplies and materials to tourist promotion agencies that receive grants from the Commonwealth for distribution to the public as promotional material or the use of the supplies and materials by a tourist promotion agency.

(32) The sale or use of brook trout (salvelinus fontinalis), brown trout (Salmo trutta) or rainbow trout (Salmo gairdneri).

(33) The sale at retail or use of a bus to be used exclusively for the transportation of children for school purposes.

(34) The sale at retail or use of firewood. For the purpose of this paragraph, "firewood" means the product of trees when severed from the land and cut into proper lengths for burning and pellets made from pure wood sawdust if used for fuel for cooking or hot water production or to heat a residential dwelling.

(35) The sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events, if the object is erected upon publicly owned property or property to be conveyed to a public entity upon the commemoration or memorialization of the historical event.

(36) The sale at retail or use of food or beverages or

other tangible personal property purchased in accordance with the Supplemental Nutrition Assistance Program (SNAP) under 7 U.S.C. Ch. 51 (relating to Supplemental Nutrition Assistance Program).

(37) The sale at retail or use of food and beverages by nonprofit associations which support sports programs or youth centers. As used in this paragraph:

(i) "Nonprofit association" means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or an entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including a youth or athletic association, volunteer fire association, ambulance association, religious organization, charitable organization, fraternal organization, veterans organization, civic association and a separately chartered auxiliary of the association or organization, if organized and operated on a nonprofit basis.

(ii) "Sports program" means baseball, softball, football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of 36 U.S.C. Ch. 2205 (relating to United States Olympic and Paralympic Committee), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or a portion of a program that is organized for recreational purposes and whose activities are substantially for those purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There shall be no age limitation for a program operated for persons with a physical or intellectual disability.

(iii) "Support" means:

(A) that the funds raised from sales are used to pay the expenses of a sports program or a youth center; or

(B) the nonprofit association sells food and beverages at a youth center or a location where a sports program is being conducted under this subpart.

(iv) "Youth center" means a fixed location used exclusively for programs for individuals who are 19 years of age or younger as long as the programs are:

(A) conducted primarily by volunteers;

(B) designed to advance recreational, civic or moral objectives; and

(C) conducted by an organization that is qualified under section 501(C)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3) (relating to exemption from tax on corporations, certain trusts, etc.)) and that has obtained an exemption number from the department as a charitable organization under paragraph (6).

(38) The sale at retail or use of a subscription for a magazine, including printed advertising materials circulated with the periodical or publication, regardless of where or by whom the printed advertising material was produced. As used

in this paragraph, "magazine" means a periodical published at regular intervals not exceeding three months, which is circulated among the general public, containing matters of general interest and reports of current events published for the purpose of disseminating information of a public character or devoted to literature, the sciences, art or some special industry.

(39) The sale at retail or use of an interior office building cleaning service, but only as it relates to the costs of the supplied employee, including wages, salaries, bonuses and commissions, employment benefits, expense reimbursements and payroll and withholding taxes, to the extent that these costs are specifically itemized or that these costs in aggregate are stated in billings from the seller or supplying entity.

(40) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(41) The sale at retail or use of a horse to be used exclusively for commercial racing activities and the sale at retail and use of feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies for a horse used exclusively for commercial racing activities.

(42) The sale at retail or use of tangible personal property or services used, transferred or consumed in installing or repairing equipment or a device designed to assist a person in ascending or descending a stairway when all of the following conditions are met:

(i) The equipment or device is used by a person who, by virtue of a physical disability, is unable to ascend or descend stairs without the aid of the equipment or device.

(ii) The equipment or device is installed or used in the person's place of residence.

(iii) A physician has certified the physical disability of the person in whose residence the equipment or device is installed or used.

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

(i) under a construction contract for a charitable organization, volunteer firefighters' organization, volunteer firefighters' relief association, nonprofit educational institution or religious organization for religious purposes, if the building machinery and equipment and services are not used in any unrelated trade or business; or

(ii) to the United States or the Commonwealth or its instrumentalities or political subdivisions.

(44) (Reserved).

(45) The sale at retail or use of a mold and related mold equipment used directly and predominantly in the manufacture of a product, notwithstanding whether the person that holds title to the equipment manufactures a product.

(46) The sale or use of used prebuilt housing.

(47) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.

(48) The sale at retail or use of tangible personal

property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise, whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(49) The sale at retail or use of separately stated fees paid under 13 Pa.C.S. § 9525 (relating to fees).

(50) The sale at retail to or use by a construction contractor, employed by a public school district under a construction contract, of materials and building supplies which, during construction or reconstruction, are made part of a public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

(i) is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and

(ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

(51) The sale at retail or use of investment metal bullion and investment coins. As used in this paragraph:

(i) "Investment metal bullion" means an elementary precious metal which has been put through a process of smelting or refining, including gold, silver, platinum and palladium, and which is in a state or condition that its value depends upon its content and not its form. The term shall not include a precious metal which has been assembled, fabricated, manufactured or processed in one or more specific and customary industrial, professional, aesthetic or artistic uses.

(ii) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium or other metal and of the United States or any foreign nation with a fair market value greater than any nominal value of such coins. The term shall not include commemorative medallions or jewelry or works of art made of coins.

(52) The sale at retail or use of copies of an official document sold by a government agency or a court. As used in this paragraph:

(i) "Court" shall include any of the following:

(A) An appellate court as defined in 42 Pa.C.S. § 102 (relating to definitions).

(B) A court of common pleas as defined in 42 Pa.C.S. § 102.

(C) The minor judiciary as defined in 42 Pa.C.S. § 102.

(ii) "Government agency" shall mean an agency as defined in section 102 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(iii) "Official document" shall mean a record as defined in section 102 of the Right-to-Know Law. The term shall include notes of court testimony, a deposition transcript, driving record, accident report, birth and death certificate, deed, divorce decree and other similar documents.

(53) The sale at retail or use of repair or replacement parts or software or software upgrades, including the

installation of those parts, software or software upgrades, exclusively for use in a helicopter and similar rotorcraft or a flight simulator or in the overhauling or rebuilding of a helicopter and similar rotorcraft or a flight simulator or helicopter and similar rotorcraft or flight simulator components.

(54) The sale at retail or use or lease of a helicopter or similar rotorcraft or a flight simulator, as well as training materials, operational documents and publications relating to the use or operation of helicopters and similar rotorcrafts and flight simulators.

(55) The sale at retail or use of aircraft parts, services to aircraft and aircraft components. For purposes of this paragraph, "aircraft" shall include a fixed-wing aircraft, powered aircraft, tilt-rotor or tilt-wing aircraft, glider or unmanned aircraft.

(56) The sale at retail or use of services related to the set up, tear down or maintenance of tangible personal property rented by an authority to exhibitors at a convention center or a public auditorium, established under any of the following:

(i) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority).

(ii) The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(iii) 16 Pa.C.S. (relating to counties).

(57) The sale at retail or use of food and beverages by a volunteer firemen's organization to raise funds for the purposes of the volunteer firemen's organization.

(58) The sale at retail of building materials and

supplies used for the construction or repair of an animal housing facility, regardless if the sale is made to the purchaser directly or pursuant to a construction contract.

(59) The sale at retail or use by a financial institution of canned computer software directly utilized in conducting the business of banking. For the purposes of this paragraph, the following words and phrases shall have the following meanings:

(i) "Directly utilized in conducting the business of banking" includes the purchase of canned computer software by a financial institution to be used in transactions with customers and service providers. The term does not include the purchase of canned computer software by entities, other than a financial institution, such as holding companies and subsidiaries of a financial institution.

(ii) "Financial institution" means an institution doing business in this Commonwealth subject to the tax imposed by Article VII or XV of the Tax Reform Code of 1971.

(60) The sale at retail or use of a multipurpose agricultural vehicle operated for the benefit of or pursuant to the operation of a farm owned or operated by the owner of the vehicle or a business whose enterprises and activities are considered part of farming. For the purposes of this paragraph, the following words and phrases shall have the following meanings:

(i) "Multipurpose agricultural vehicle" means a motor vehicle exempt from registration in accordance with 75 Pa.C.S. § 1302(17) (relating to vehicles exempt from registration) which is 66 inches or less in width and 2,000 pounds or less in dry weight and which is used exclusively for agricultural operations and only incidentally operated or moved upon the highways.

(ii) "Use of a multipurpose agricultural vehicle in farming" means repairing and maintaining buildings, including houses, garages, barns, stables, greenhouses, mushroom houses and storehouses, fences and stanchions, permanently affixed to real estate, as well as transporting farming personnel, collecting, conveying or transporting property to be used in farming and transporting or conveying the farm product after the final farming operation, which includes, but does not extend beyond, the operation of packaging for the ultimate consumer and storage.

(61) The sale at retail or use of tangible personal property manufactured for the purpose of initiating, supporting or sustaining breast feeding.

(62) The sale at retail or use of services related to the cleaning or maintenance of a storage trap utilized by a food service or restaurant establishment to collect grease waste.

§ 1322. Alternate imposition of tax and credits.

(a) Motor vehicle, trailer or semitrailer.--If a person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semitrailers, and registered with the department in the "dealer's class," acquires a motor vehicle, trailer or semitrailer for the purpose of resale, and prior to the resale, uses the motor vehicle, trailer or semitrailer for a taxable use under this subpart, the person may elect to pay a tax equal to 6% of the fair rental value of the motor vehicle, trailer or semitrailer during the use. This subsection shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

(b) Aircraft.--A commercial aircraft operator who acquires an aircraft for the purpose of resale, or lease, or is entitled to claim another valid exemption at the time of purchase, and subsequent to the purchase, periodically uses the aircraft for a taxable use under this subpart, may elect to pay a tax equal to 6% of the fair rental value of the aircraft during the use.

§ 1323. Credit against tax.

A credit against the tax imposed by Subchapter A (relating to imposition of tax) shall be granted with respect to tangible personal property or services purchased for use outside this Commonwealth equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by this subpart, except that no credit shall be granted unless the other state grants substantially similar tax relief by reason of the payment of tax under this subpart or under the former act of March 6, 1956 (P.L.1228, No.381), known as the Tax Act of 1963 for Education.

SUBCHAPTER D

LICENSES

Sec.

1331. Definitions.

1332. Application.

1333. Issuance and conditions.

1334. Administrative action.

1335. Penalties.

1336. Liability.

§ 1331. Definitions.

The following words and phrases when used in this subchapter shall, in addition to the meaning given to them in section 1102 (relating to definitions), have the meanings given to them in this section unless the context clearly indicates otherwise:

"Maintaining a place of business in this Commonwealth." Being an operator as defined in section 1341 (relating to definitions).

"Sale." The providing of occupancy to an occupant by an operator, as those terms are defined in section 1341.

"Services." Occupancy as defined in section 1341.

"Tangible personal property." Occupancy as defined in section 1341.

"Use." Occupancy as defined in section 1341.

§ 1332. Application.

A person maintaining a place of business in this Commonwealth, with the exception of a marketplace seller who makes no sales outside a forum for which a marketplace seller is required to collect sales tax on the seller's behalf, and a shared vehicle owner who makes no vehicle available for sharing outside a forum for which a peer-to-peer car-sharing program marketplace facilitator is required to collect sales tax on behalf of the shared vehicle owner selling or leasing services or tangible personal property, the sale or use of which is subject to tax, and who has not yet obtained a license from the department, shall, prior to the beginning of business, make application to the department, on a form prescribed by the department, for a license. If the person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

§ 1333. Issuance and conditions.

(a) Issuance.--After the receipt of an application, the department shall issue the license applied for under section 1332 (relating to application) if the applicant has filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan.

(b) Nonassignability.--A license under this subchapter shall be nonassignable.

(c) Renewal.--All licensees as of August 4, 1991, shall be required to file for renewal of the license on or before January 31, 1992. Licenses issued through April 30, 1992, shall be based on a staggered renewal system established by the department. Any license issued after April 30, 1992, shall be valid for a period of five years.

§ 1334. Administrative action.

(a) Authorization.--If an applicant for a license or a person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke the license.

(b) Notification.--

(1) The department shall notify the applicant or licensee of any refusal, suspension or revocation.

(2) The notice shall contain a statement that the refusal, suspension or revocation may be made public.

(3) The notice shall be made by first class mail.

(c) Appeal.--

(1) An applicant or licensee aggrieved by the

determination of the department may file an appeal pursuant to the provisions for administrative appeals in this subpart, except that the appeal must be filed within 30 days of the date of the notice.

(2) In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process.

(3) Notwithstanding sections 1596 (relating to unauthorized disclosure) and 2817(f) (relating to crimes) and sections 408(b), 603, 702, 802, 904 and 1102 of the Tax Reform Code of 1971 or any other provision of law to the contrary, if no appeal is taken or if an appeal is taken and denied at the conclusion of the appeal process, the department may disclose, by publication or otherwise, the identity of a person and the fact that the person's license has been refused, suspended or revoked under this section. Disclosure may include the basis for refusal, suspension or revocation.

§ 1335. Penalties.

(a) Fine and imprisonment.--A person that maintains a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having a valid license at the time of the sale or lease, shall be guilty of a summary offense and, upon conviction, be sentenced to pay a fine of not less than $300 nor more than $1,500 and, in default of the fine, to undergo imprisonment of not less than five days nor more than 30 days.

(b) Nature of penalties.--The penalties imposed by this section shall be in addition to any other penalties imposed by this subpart.

(c) Separate violations.--For purposes of this section, the offering for sale or lease of any service or tangible personal property, the sale or use of which is subject to tax, during any calendar day shall constitute a separate violation.

(d) Enforcement.--The secretary may designate employees of the department to enforce the provisions of this section. The employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided by the Pennsylvania Rules of Criminal Procedure.

§ 1336. Liability.

Failure of a person to obtain a license shall not relieve that person of liability to pay the tax imposed by this subpart.

SUBCHAPTER E

HOTEL OCCUPANCY TAX

Sec.

1341. Definitions.

1342. Imposition of tax.

1343. Collection of tax.

1344. Seasonal tax returns.

1345. Tourism Promotion Fund.

§ 1341. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accommodation fee." The amount by which the rent exceeds the discount room charge, if any.

"Booking agent." A person or entity which facilitates or collects payment for hotel accommodations on behalf of or for an operator. The term "booking agent" shall not include a person who merely publishes advertisements for accommodations.

"Discount room charge." The amount charged by an operator to a booking agent in connection with the sale of an accommodation by the booking agent.

"Hotel." As follows:

(1) A building or buildings in which the public may, for a consideration, obtain sleeping accommodations.

(2) The term shall not include a charitable, educational or religious institution summer camp for children, hospital or nursing home.

"Occupancy." The use or possession or the right to the use or possession by a person, other than a permanent resident, of a room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms.

"Occupant." As follows:

(1) A person who, for a consideration, uses or possesses or has a right to use or possess a room or rooms in a hotel under a lease, concession, permit, right of access, license or agreement.

(2) The term shall not include a permanent resident.

"Operator." A person operating a hotel or acting as a booking agent.

"Permanent resident." An occupant who has occupied or has the right to occupancy of a room or rooms in a hotel for at least 30 consecutive days.

"Rent." As follows:

(1) Any of the following:

(i) The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

(ii) Accommodation fees.

(iii) An amount for which the occupant is liable for the occupancy without any deduction from the amount, including an amount charged by a booking agent.

(2) The term shall not include a gratuity.

§ 1342. Imposition of tax.

(a) General rule.--An excise tax of 6% of the rent is imposed upon every occupancy of a room or rooms in a hotel in this Commonwealth.

(b) Booking agent.--If a booking agent acting for an operator collects payment for rent, the booking agent must collect and remit the following:

(1) The tax imposed under this section.

(2) Any additional or optional hotel tax imposed under:

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

(ii) The act of December 21, 1998 (P.L.1307, No.174), known as the Community and Economic Improvement Act.

(iii) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority);

(iv) 16 Pa.C.S. Chs. 149 (relating to fiscal affairs) and 161 (relating to grounds and buildings).

(v) The act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(c) Deposit into Tourism Promotion Fund.--Notwithstanding any provision of law to the contrary, the following shall apply:

(1) The collected and remitted tax imposed under subsection (b)(1) shall be deposited into the Tourism Promotion Fund established under section 1345 (relating to Tourism Promotion Fund).

(2) The collected and remitted tax imposed under subsection (b)(2) shall be deposited in accordance with a county ordinance.

(d) Accommodation fee.--An operator shall not be liable for tax owed regarding an accommodation fee.

(e) Disclosure.--A booking agent shall not be required to separately disclose to an occupant the amount of the tax imposed that relates to a discount room charge versus an accommodation fee.

§ 1343. Collection of tax.

The tax under this subchapter shall be collected by the operator from the occupant and paid over to the Commonwealth as provided in this subpart.

§ 1344. Seasonal tax returns.

Notwithstanding any other provisions in this subpart, the department may, by regulation, waive the requirement for the filing of quarterly returns in the case of an operator whose hotel is operated only during certain seasons of the year, and may provide for the filing of returns by persons at times other than those provided by Subchapter C of Chapter 15 (relating to payment of tax).

§ 1345. Tourism Promotion Fund.

(a) Establishment.--A restricted revenue account is established within the Treasury Department to be known as the Tourism Promotion Fund.

(b) Taxes and appropriation.--The tax collected by a booking agent on accommodation fees under section 1342 (relating to imposition of tax) shall be deposited into the Tourism Promotion Fund and disbursed upon appropriation for the purpose of promoting tourism in this Commonwealth.

(c) Department duties.--The Department of Community and Economic Development shall promulgate guidelines, rules and regulations as necessary to achieve the purpose of promoting tourism in this Commonwealth.

(d) Exceptions.--Money from the fund may not be used for the promotion or marketing operations of a tourism entity or for special events or grants until 30 days after the publication of the guidelines, rules and regulations under subsection (c) in the Pennsylvania Bulletin.

(e) Amount of funds.--

(1) No more than 50% of the funds available for disbursement under subsection (b) may be distributed for the purposes of promotion or marketing operations of a tourism entity or for special events or grants.

(2) Funding for the promotion or marketing operations of a tourism entity, special events or grants shall require a 50% cash or in-kind match.

(3) A single recipient of funding under paragraph (2) may not be awarded more than 15% of the total funds available for disbursement under subsection (b). This paragraph shall not apply to contracts entered into by the department for Statewide tourism promotion or marketing.

(f) Restrictions.--Funds available for disbursement under subsection (b) may not be used for capital projects or for the design, construction, rehabilitation, repair, installation or purchase of any building, structure or sign in this Commonwealth.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Promoting tourism." Activities and expenditures designed to increase tourism, including:

(1) Advertising, publicizing or otherwise distributing information for the purpose of attracting and welcoming tourists.

(2) Developing strategies to expand tourism.

(3) Funding the promotion or marketing operations of a tourism entity.

(4) Funding marketing and operations of special events and festivals designed to attract tourists.

"Tourism entity." A "tourism promotion agency" as defined in section 2 of the act of July 4, 2008 (P.L.621, No.50), known as the Tourism Promotion Act, destination marketing organization or regional attractions marketing agency.

SUBCHAPTER F

REMOTE SELLERS

Sec.

§ 1351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Affiliated person." A person that, with respect to another person:

(1) has a direct or indirect ownership interest of more than 5% in the other person; or

(2) is related to the other person because a third person, or group of third persons who are affiliated with each other as provided in this definition, holds a direct or indirect ownership interest of more than 5% in the related person.

"Forum." A place where sales at retail occur, whether physical or electronic. The term includes a store, booth, publicly accessible Internet website, catalog or similar place.

"Marketplace facilitator." As follows:

(1) A person that facilitates a sale at retail of tangible personal property. For purposes of this definition, a person facilitates a sale at retail if the person or an affiliated person:

(i) lists or advertises tangible personal property for sale at retail in any forum; and

(ii) directly or indirectly through agreements or arrangements with third parties collects the payment from the purchaser and transmits the payment to the person selling the property.

(2) The term shall include a person that may also be a vendor.

"Marketplace seller." A person that has an agreement with a marketplace facilitator pursuant to which the marketplace facilitator facilitates sales for the person.

"Notice and reporting requirements." The notice requirements under section 1353 (relating to notice requirements) and the reporting requirements under sections 1354 (relating to reports to purchasers and marketplace sellers) and 1355 (relating to reports to department).

"Referral." The transfer by a referrer of a potential purchaser to a person that advertises or lists products for sale on the referrer's platform.

"Referrer." As follows:

(1) A person, other than a person engaging in the business of printing or publishing a newspaper, that, pursuant to an agreement or arrangement with a marketplace seller or remote seller, does all of the following:

(i) Agrees to list or advertise for sale at retail one or more products of the marketplace seller or remote seller in a physical or electronic medium.

(ii) Receives consideration from the marketplace seller or remote seller from the sale offered in the listing or advertisement.

(iii) Transfers by telecommunications, Internet link or other means, a purchaser to a marketplace seller, remote seller or affiliated person to complete a sale.

(iv) Does not collect a receipt from the purchaser for the sale.

(2) The term shall include a person that may also be a vendor.

(3) The term shall not include a person that:

(i) provides Internet advertising services; and

(ii) does not provide the marketplace seller's or remote seller's shipping terms or advertise whether a marketplace seller or remote seller collects a sales or use tax.

"Remote seller." A person, other than a marketplace facilitator, marketplace seller or referrer, that does not maintain a place of business in this Commonwealth that, through a forum, sells tangible personal property at retail, the sale or use of which is subject to the tax imposed by this chapter. The term does not include an employee who in the ordinary scope of employment renders services to the employee's employer in exchange for wages and salaries.

§ 1352. Election.

(a) Duty.--Subject to subsections (c) and (d), on or before March 1, 2018, and on or before June 1 of each calendar year thereafter, beginning June 1, 2019, a remote seller, marketplace facilitator or referrer that had aggregate sales at retail of tangible personal property subject to tax under this subpart within this Commonwealth or delivered to locations within this Commonwealth worth at least $10,000 during the immediately preceding 12-calendar-month period shall file an election with the department to collect and remit the tax imposed under this subchapter or to comply with the notice and reporting requirements. The election shall be made on a form and in a manner prescribed by the department and, except as provided under subsection (e), shall apply to the next succeeding fiscal year.

(b) License.--A remote seller, marketplace facilitator or referrer that makes an election under subsection (a) to collect and remit the tax imposed under this subchapter shall obtain a license under Subchapter D (relating to licenses).

(c) Applicability for marketplace facilitator.--The requirement by a marketplace facilitator to make an election under subsection (a) shall only apply to the following:

(1) Sales at retail through the marketplace facilitator's forum made by or on behalf of a marketplace seller that does not maintain a place of business in this Commonwealth.

(2) Sales at retail made by a marketplace facilitator on its own behalf if the marketplace facilitator does not maintain a place of business in this Commonwealth.

(d) Applicability for referrer.--

(1) The requirement by a referrer to make an election under subsection (a) shall only apply to sales at retail:

(i) directly resulting from a referral of a purchaser to a marketplace seller that does not maintain a place of business in this Commonwealth;

(ii) directly resulting from a referral of a purchaser to a remote seller; and

(iii) of the referrer's own products if the referrer does not maintain a place of business in this Commonwealth.

(2) A referrer may make an election under subsection (a) for the sales described under paragraph (1)(i) and (ii) that is different from the election made for the sales described under paragraph (1)(iii).

(e) Effective period and change of election.--An election made on or before March 1, 2018, shall be in effect for the balance of the 2017-2018 fiscal year and for the 2018-2019 fiscal year. A remote seller, marketplace facilitator or referrer may change an election to comply with the notice and reporting requirements to an election to collect and remit the tax imposed under this subchapter at any time during a fiscal year by filing a new election with the department and obtaining a license under Subchapter D. The new election shall be effective 30 days after the filing and shall be effective for the balance of the fiscal year in which the new election was filed and for the next succeeding fiscal year.

(f) Deemed compliance.--A remote seller, marketplace facilitator or referrer who does not submit an election under subsection (a) or a new election under subsection (e) shall be deemed to have elected to comply with the notice and reporting requirements.

(g) Additional requirements.--In addition to records that may be required to be maintained under other applicable provisions of this subpart by a remote seller, a marketplace facilitator or referrer, remote seller, marketplace facilitator or referrer subject to this subpart shall also be subject to sections 1592 (relating to keeping of records) and 1594 (relating to examinations).

§ 1353. Notice requirements.

(a) Compliance.--A remote seller, marketplace facilitator or referrer required to make an election under section 1352 (relating to election) that does not elect to collect and remit the tax imposed by this subchapter shall comply with the applicable notice requirements of this section.

(b) Notice by remote seller or marketplace facilitator.--

(1) A remote seller or marketplace facilitator subject to the requirements of this section shall:

(i) Post a conspicuous notice on its forum that informs purchasers intending to purchase tangible personal property for delivery to a location within this Commonwealth that includes all of the following:

(A) Sales or use tax may be due in connection with the purchase and delivery of the tangible personal property.

(B) The Commonwealth requires the purchaser to file a return if use tax is due in connection with the purchase and delivery.

(C) The notice is required by this section.

(ii) Provide a written notice to each purchaser at the time of each sale at retail that includes all of the following:

(A) A statement that sales tax is not being collected in connection with the purchase.

(B) A statement that the purchaser may be required to remit use tax directly to the department.

(C) Instructions for obtaining additional information from the department regarding whether and how to remit use tax to the department.

(2) The notice required by paragraph (1)(ii) must be prominently displayed on all invoices and order forms and on each sales receipt or similar document, whether in paper or electronic form, provided to the purchaser. No statement that sales or use tax is not imposed on a transaction may be made by a remote seller or marketplace facilitator unless the transaction is exempt from sales and use tax under this subpart or other applicable Commonwealth law.

(c) Notice by referrer.--

(1) A referrer subject to the requirements of this

section shall post a conspicuous notice on its platform that informs purchasers intending to purchase tangible personal property for delivery to a location within this Commonwealth that includes all of the following:

(i) Sales or use tax may be due in connection with the purchase and delivery.

(ii) The person to which the purchaser is being referred may or may not collect and remit sales tax to the department in connection with the transaction.

(iii) The Commonwealth requires the purchaser to file a return if use tax is due in connection with the purchase and delivery and not collected by the person.

(iv) The notice is required by this section.

(v) Instructions for obtaining additional information from the department regarding whether and how to remit sales or use tax to the department.

(vi) If the person to whom the purchaser is being referred does not collect sales tax on a subsequent purchase by the purchaser, the person may be required to provide information to the purchaser and the department about the purchaser's potential sales or use tax liability.

(2) The notice required under paragraph (1) must be prominently displayed and may include pop-up boxes or notification by other means that appears when the referrer transfers a purchaser to another person to complete the sale.

§ 1354. Reports to purchasers and marketplace sellers.

(a) Contents.--A remote seller or marketplace facilitator required to make an election under section 1352(a) (relating to election) that does not elect to collect and remit the tax imposed by this subchapter shall, no later than January 31 of each year, provide a written report to each purchaser required to receive the notice under section 1353(b)(1)(ii) (relating to notice requirements) during the immediately preceding calendar year that includes all of the following:

(1) A statement that the remote seller or marketplace facilitator did not collect sales tax in connection with the purchaser's transactions with the remote seller or marketplace facilitator and that the purchaser may be required to remit use tax to the department.

(2) A list, by date, indicating the type and purchase price of each product purchased or leased by the purchaser from the remote seller or marketplace facilitator and delivered to a location within this Commonwealth.

(3) Instructions for obtaining additional information from the department regarding whether and how to remit use tax to the department.

(4) A statement that the remote seller or marketplace facilitator is required to submit a report to the department under section 1355 (relating to reports to department) that includes the name of the purchaser and the aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator.

(5) Additional information as the department may reasonably require.

(b) Form.--The department shall prescribe the form of the report required under subsection (a) and shall make the form available on its publicly accessible Internet website.

(c) Transmittal.--The report required under subsection (a) shall be mailed by first class mail in an envelope prominently marked with words indicating that important tax information is enclosed to the purchaser's billing address, if known, or, if unknown, to the purchaser's shipping address. If the purchaser's billing and shipping addresses are unknown, the report shall be sent electronically to the purchaser's last known e-mail address with a subject heading indicating that important tax information is being provided.

(d) Notice.--A referrer required to make an election under section 1352(a) that does not elect to collect and remit the tax imposed by this subchapter shall, no later than January 31 of each year, provide a written notice to each remote seller to whom the referrer transferred a potential purchaser located in this Commonwealth during the immediately preceding calendar year that includes all of the following:

(1) A statement that a sales or use tax may be imposed by the Commonwealth on the transaction.

(2) A statement that the remote seller may be required to make the election required by section 1352(a).

(3) Instructions for obtaining additional information regarding sales and use tax from the department.

§ 1355. Reports to department.

(a) Contents.--A remote seller or marketplace facilitator required to make an election under section 1352(a) (relating to election) that does not elect to collect and remit the tax imposed by this subchapter shall, no later than January 31 of each year, submit a report to the department. The report shall include, with respect to each purchaser required to receive the notice under section 1353(b)(1)(ii) (relating to notice requirements) during the immediately preceding calendar year, the following:

(1) The purchaser's name.

(2) The purchaser's billing address and, if different, the purchaser's last known mailing address.

(3) The address within this Commonwealth to which products were delivered to the purchaser.

(4) The aggregate dollar amount of the purchaser's purchases from the remote seller or marketplace facilitator.

(5) The name and address of the remote seller, marketplace facilitator or marketplace seller that made the sales to the purchaser.

(b) Report and contents.--A referrer required to make an election under section 1352(a) that does not elect to collect and remit the tax imposed by this subchapter shall, no later than January 31 of each year, submit a report to the department. The report shall include a list of persons who received the notice required under section 1354(d) (relating to reports to purchasers and marketplace sellers).

(c) Forms and availability.--The department shall prescribe the forms of the reports required under this section and shall make them available on its publicly accessible Internet website. The reports shall be submitted electronically in a manner as the department shall require.

(d) Submission and statement.--A report required under this section shall be submitted by an officer of the remote seller, marketplace facilitator or referrer and shall include a statement, made under penalty of perjury, by the officer that the remote seller, marketplace facilitator or referrer made reasonable efforts to comply with the notice and reporting requirements of this subpart.

§ 1356. Liability and penalties.

(a) Assessment.--The department shall assess a penalty in the amount of $20,000 or 20% of total sales in Pennsylvania during the previous 12 months, whichever is less, against a remote seller, marketplace facilitator or referrer that makes an election under section 1352(a) (relating to election) to comply with the notice and reporting requirements, or is deemed to have made such election under section 1352(f), and fails to comply with the requirements under section 1354 (relating to reports to purchasers and marketplace sellers) or 1355 (relating to reports to department). The penalty shall be assessed separately for each violation but may only be assessed once in a calendar year.

(b) Subject to penalties.--A remote seller, marketplace facilitator or referrer that makes an election under section 1352(a) to collect and remit the tax imposed under this subchapter shall be subject to all of the provisions of this part with respect to the collection and remittance of the tax and shall be subject to all of the penalties, interest and additions for failing to comply with the provisions of this subpart except as provided in this section.

(c) Abatement.--The department may abate or reduce any penalties or addition imposed under subsection (b) due to hardship or for good cause shown for a period which ends as follows:

(1) Except as otherwise provided under paragraph (2), February 1, 2027.

(2) For tangible personal property described under paragraph (2) of the definition of "tangible personal property" under section 1102 (relating to definitions), February 1, 2028.

(d) Relief from liability.--A marketplace facilitator or referrer is relieved of liability under subsection (b) if the marketplace facilitator or referrer can show to the satisfaction of the department that the failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator or referrer by a marketplace seller or remote seller.

(e) Class action.--A class action may not be brought against a marketplace facilitator or referrer on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator or referrer, regardless of whether the action is characterized as a tax refund claim. Nothing in this subsection shall affect a purchaser's right to seek a refund from the department under other provisions of this subpart.

§ 1357. Application.

Nothing in this section shall affect the obligations of a vendor to register with the department and to collect and remit sales tax or use tax.

§ 1358. Transfer to county sales and use tax accounts.

Beginning October 1, 2029, 2% of the tax imposed under Subchapter A (relating to imposition of tax) that is collected and remitted by a remote seller, a marketplace facilitator or a referrer shall be transferred to the School District Property Tax Elimination Fund and credited under 53 Pa.C.S. § 90A52 (relating to payments to counties) to the respective county sales and use tax accounts in the same proportion that each county's receipts under section 90A22 (relating to imposition) bears to the total receipts under section 90A22 for all counties. The amount transferred shall include interest and penalties, less any collection costs allowed and any refunds and credits paid.

CHAPTER 15

PROCEDURE AND ADMINISTRATION

Subchapter

A. Preliminary Provisions

B. Returns

C. Payment of Tax

D. Assessment and Collection of Tax

E. Refunds and Credits

F. Limitations

G. Interest, Additions, Penalties and Crimes

H. Enforcement and Examinations

I. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

1501. Definitions.

§ 1501. Definitions.

The following words and phrases when used in this chapter shall, in addition to the meaning given to them in section 1102 (relating to definitions), have the meanings given to them in this section unless the context clearly indicates otherwise:

"Maintaining a place of business in this Commonwealth." Being an operator as defined in section 1341 (relating to definitions).

"Purchase price." Rent as defined in section 1341.

"Purchaser." An occupant as defined in section 1341.

"Sale." The providing of occupancy to an occupant by an operator, as those terms are defined in section 1341.

"Services." Occupancy as defined in section 1341.

"Tangible personal property." Occupancy as defined in section 1341.

"Use." Occupancy as defined in section 1341.

"Vendor" An operator as defined in section 1341.

SUBCHAPTER B

RETURNS

§ 1511. Persons required to make returns.

Every person required to pay tax to the department or collect and remit tax to the department, but not including a marketplace seller who solely makes sales through a marketplace facilitator that is required to collect sales tax on the seller's behalf and receives a certification from the marketplace facilitator that the marketplace facilitator will collect, report and remit the proper sales tax, shall file returns with respect to the tax.

§ 1512. Form of returns.

The returns required by section 1511 (relating to persons required to make returns) shall be on forms prescribed by the department and shall show the information with respect to the taxes imposed by this subpart as the department may reasonably require.

§ 1513. Time for filing returns.

(a) Quarterly and monthly returns.--

(1) For the calendar year 1971, and in each year

thereafter, a return shall be filed quarterly by every licensee on or before the 20th day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) For the calendar year 1971, and in each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds $600 and is less than $25,000. The return shall be filed on or before the 20th day of the next succeeding month with respect to which the return is made. A licensee required to file monthly returns under this section shall be relieved from filing quarterly returns.

(3) With respect to every licensee whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds $25,000 and is less than $100,000, the licensee shall, on or before the 20th day of each month, file a single return consisting of all of the following:

(i) Either of the following:

(A) An amount equal to 50% of the licensee's actual tax liability for the same month in the preceding calendar year if the licensee was a monthly filer or, if the licensee was a quarterly or semi-annual filer, 50% of the licensee's average actual tax liability for that tax period in the preceding calendar year. The following shall apply:

(I) The average actual tax liability shall be the actual tax liability for the tax period divided by the number of months in that tax period.

(II) For licensees that were not in business during the same month in the preceding calendar year or were in business for only a portion of that month, the amount shall be 50% of the average actual tax liability for each tax period the licensee has been in business.

(III) If the licensee is filing a tax liability for the first time with no preceding tax periods, the amount shall be zero.

(B) An amount equal to or greater than 50% of the licensee's actual tax liability for the same month.

(ii) An amount equal to the taxes due for the preceding month, less any amounts paid in the preceding month as required by subparagraph (i).

(4) With respect to each month by every licensee whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds $100,000, the licensee shall, on or before the 20th day of each month, file a single return consisting of the amounts under paragraph (3)(i)(A) and (ii).

(5) The amount due under paragraph (3)(i) or (4) shall be due the same day as the remainder of the preceding month's tax.

(6) The department shall determine whether the amounts reported under paragraph (3) or (4) shall be remitted as one combined payment or as two separate payments.

(7) The department may require the filing of the returns and the payments for these types of filers by electronic means approved by the department.

(8) A licensee filing returns under paragraph (3) or (4) shall be relieved of filing quarterly returns.

(9) If a licensee required to remit payments under paragraph (3) or (4) fails to make a timely payment or makes a payment which is less than the required amount, the department may, in addition to any applicable penalties, impose an additional penalty equal to 5% of the amount due under paragraph (3) or (4) which was not timely paid. The penalty under this paragraph shall be determined when the tax return is filed for the tax period.

(b) Annual returns.--

(1) For the calendar year 1971, and for each year thereafter, no annual return shall be filed, except as may be required by rules and regulations of the department promulgated and published at least 60 days prior to the end of the year with respect to which the returns are made.

(2) If annual returns are required, licensees shall not be required to file returns prior to the 20th day of the year succeeding the year with respect to which the returns are made.

(c) Other returns.--A person, other than a licensee, liable to pay to the department a tax under this subpart shall file a return on or before the 20th day of the month succeeding the month in which the person becomes liable for the tax.

(d) Small taxpayers.--The department, by regulation, may waive the requirement for the filing of a quarterly return in the case of a licensee whose individual tax collections do not exceed $75 per calendar quarter and may provide for reporting on a less frequent basis in such cases.

§ 1514. Extension of time for filing returns.

(a) General rule.--Except as provided under subsection (b), the department may, on written application and for good cause shown, grant a reasonable extension of time for filing a return required under this subpart.

(b) Exception.--The time for making a return shall not be extended for more than three months.

§ 1515. Place for filing returns.

Returns shall be filed with the department at its main office or at a branch office which the department may designate for filing returns.

§ 1516. Timely mailing treated as timely filing and payment.

(a) Postmark.--Notwithstanding the provisions of any State tax law, whenever a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with the law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Evidence.--For the purposes of this subpart, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

SUBCHAPTER C

PAYMENT OF TAX

Sec.

1521. Payment.

1522. Time of payment.

1523. Other times for payment.

1524. Place for payment.

1525. Tax held in trust for Commonwealth.

1526. Discount.

§ 1521. Payment.

When a return of tax is required under this subpart, the person required to make the return shall pay the tax to the department.

§ 1522. Time of payment.

(a) Monthly and quarterly payments.--The tax imposed by this subpart and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 1513 (relating to time for filing returns) and payment must accompany the return.

(b) Annual payments.--If the amount of tax due for the preceding year as shown by the annual return of a taxpayer is greater than the amount already paid by the taxpayer in connection with the taxpayer's monthly or quarterly returns, the taxpayer shall send with the annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments.--A person other than a licensee liable to pay tax under this subpart shall remit the tax at the time of filing the return required by this subpart.

§ 1523. Other times for payment.

If the department authorizes a taxpayer to file a return at other times than those specified under section 1513 (relating to time for filing returns), the tax due shall be paid at the time the return is filed.

§ 1524. Place for payment.

The tax imposed by this subpart shall be paid to the department at the place fixed for filing the return.

§ 1525. Tax held in trust for Commonwealth.

(a) Establishment, enforceability and good faith.--All taxes collected by a person from purchasers in accordance with this subpart and all taxes collected by a person from purchasers under color of this subpart, including all taxes paid by a person who advertises or holds out or states, directly or indirectly, that the person will pay the tax for the purchaser, which have not been properly refunded by the person to the purchaser shall constitute a trust fund for the Commonwealth, and the trust shall be enforceable against the person, the person's representatives and any person, other than a purchaser to whom a refund has been made properly, receiving any part of the fund without consideration or knowing that the taxpayer is committing a breach of trust, provided that a person receiving payment of a lawful obligation of the taxpayer from the fund shall be presumed to have received the payment in good faith and without any knowledge of the breach of trust.

(b) Petition and appeal.--A person, other than a taxpayer, against whom the department makes a claim under this section shall have the same right to petition and appeal as is given taxpayers by any provisions of this chapter.

§ 1526. Discount.

If a return is filed by a licensee and the tax shown to be due on the return less any discount is paid all within the time prescribed, the licensee shall be entitled, as compensation for the expense of collecting and remitting the tax and as a consideration of the prompt payment of the tax, to credit and shall apply against the tax payable by the licensee a discount of the lesser of:

(1) 1% of the amount of the tax collected; or

(2) as follows:

(i) $25 per return for a monthly filer;

(ii) $75 per return for a quarterly filer; or

(iii) $150 per return for a semiannual filer.

SUBCHAPTER D

ASSESSMENT AND COLLECTION OF TAX

Sec.

1531. Assessment.

1532. Mode and time of assessment.

1533. Reassessment.

1534. Assessment to recover erroneous refunds.

1535. Burden of proof.

1536. Collection of tax.

1537. Collection of tax on motor vehicles, trailers and semitrailers.

1538. Precollection of tax.

1539. Bulk and auction sales.

1540. Collection upon failure to request reassessment, review or appeal.

1541. Lien for taxes.

1542. Suit for taxes.

1543. Tax suit comity.

1544. Service.

1545. Collection and payment of tax on credit sales.

1546. Prepayment of tax.

1547. Refund of sales tax attributed to bad debt.

1548. Registration of transient vendors.

1549. Bond.

1550. Notification to department and inspection of records.

1551. Seizure of property.

1552. Fines.
1553. Transient vendors subject to subpart.
1554. Promoters.

§ 1531. Assessment.

(a) Authorization.--The department is authorized and required to make the inquiries, determinations and assessments of the tax imposed by this subpart. This subsection includes interest, additions and penalties.

(b) Notice of assessment.--A notice of assessment and demand for payment shall be mailed to the taxpayer. The notice shall specify the basis of the assessment.

(c) Marketplace facilitator.--A marketplace facilitator is relieved of liability under this section if the marketplace facilitator can show to the satisfaction of the department that the failure to collect the correct amount of tax was due to incorrect information given to the marketplace facilitator by a marketplace seller.

(d) Marketplace seller.--A marketplace seller is relieved of liability under this section pertaining to those sales made through a marketplace facilitator, when the marketplace facilitator certifies to the seller that the marketplace facilitator will collect, report and remit the proper sales tax, unless the seller gave incorrect information to the marketplace facilitator.

§ 1532. Mode and time of assessment.

(a) Underpayment of tax.--Within a reasonable time after a return is filed, the department shall examine the return. If the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference and 3% of the difference. The assessment shall be paid to the department within 10 days after a notice of the assessment has been mailed to the taxpayer. If the assessment is not paid within 10 days, an additional 3% of the difference for each month during which the assessment remains unpaid shall be added to the assessment total, but the total of all additions shall not exceed 18% of the difference shown on the assessment.

(b) Understatement of tax.--If the department determines that a return of a taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the deficiency between the amount of tax shown in the return and the amount determined. A notice of assessment for the deficiency and the reasons for the deficiency shall be sent to the taxpayer. The deficiency shall be paid to the department within 30 days after a notice of the assessment has been mailed to the taxpayer.

(c) Failure to file return.--If a taxpayer fails to file a return required by this chapter, the department may make an estimated assessment, based on information available, of the proper amount of tax owed by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 30 days after a notice of the estimated assessment has been mailed to the taxpayer.

(d) Authority to establish effective rates by business classification.--The department may:

(1) make the studies necessary to compute effective rates by business classification, based upon the ratio between:

(i) the tax required to be collected; and

(ii) taxable sales; and

(2) use the rates in computing the tax liability of a taxpayer.

(e) Tax rate.--

(1) Except as set forth in paragraph (2), an assessment based upon the rates shall be prima facie correct.

(2) If a taxpayer establishes that the rate is based on a sample inapplicable to the taxpayer, the rate shall not be considered.

§ 1533. Reassessment.

A taxpayer against whom an assessment is made may petition the department for a reassessment under Article XXVII of the Tax Reform Code of 1971.

§ 1534. Assessment to recover erroneous refunds.

The department may file an assessment to recover an erroneous refund. The assessment must be filed within the later of:

(1) two years of granting a refund or credit; or

(2) the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted.

§ 1535. Burden of proof.

In a petition for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant.

§ 1536. Collection of tax.

(a) Collection by department.--The department shall collect the tax in the manner provided by law.

(b) Remitters.--

(1) This subsection applies to all of the following:

(i) A person that:

(A) maintains a place of business in this Commonwealth; and

(B) sells or leases tangible personal property or services, with the exception of a marketplace seller who solely makes sales through a marketplace facilitator that is required to collect sales tax on the marketplace seller's behalf and receives a certification from the marketplace facilitator that the marketplace facilitator will collect, report and remit the proper sales tax, the sale or use of which is subject to tax.

(ii) A person not otherwise required to collect tax that:

(A) delivers tangible personal property to a location within this Commonwealth; and

(B) unpacks, positions, places or assembles the tangible personal property.

(2) Except as set forth in section 1537(a) (relating to collection of tax on motor vehicles, trailers and semitrailers), a person subject to paragraph (1)(i) shall:

(i) collect the tax from the purchaser or lessee at the time of making the sale or lease; and

(ii) remit the tax to the department.

(3) All of the following apply to a person subject to paragraph (1)(ii):

(i) The person shall collect the tax from the purchaser at the time of delivery. The person is deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under this subpart.

(ii) The person shall remit the tax to the department if:

(A) the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered; and

(B) the purchaser has not provided the person with proof that:

(I) the tax imposed by this chapter has been or will be collected by the seller; or

(II) the purchaser provided the seller with a valid exemption certificate.

(4) (i) A vendor maintaining a place of business within this Commonwealth under paragraph (1)(vii) of the definition of "maintaining a place of business in this Commonwealth" under section 1102 (relating to definitions) in calendar year 2018 shall collect sales tax from July 1, 2019, through March 31, 2020.

(ii) A vendor maintaining a place of business within this Commonwealth under paragraph (1)(vii) of the definition of "maintaining a place of business in this Commonwealth" under section 1102 in calendar years after 2018 shall collect sales tax from the second quarter, beginning April 1, of the following calendar year through the first quarter, ending March 31, of the next calendar year.

(5) Each person that is required under this chapter to collect tax from another person and that fails to collect the proper amount of tax shall be liable for the full amount of the tax which should have been collected.

(b.1) Collection by marketplace facilitators.--A marketplace facilitator maintaining a place of business in this Commonwealth must collect and remit the sales tax on all sales, leases and deliveries of tangible personal property, and all sales of services, by marketplace sellers whose sales are facilitated through the marketplace facilitator's forum.

(c) Exemption certificates.--

(1) Except as provided under paragraph (2), if the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in the form prescribed by the department.

(2) An exemption certificate under paragraph (1) need not be furnished if:

(i) the tangible personal property or service is of a type which is never subject to the tax imposed; or

(ii) the sale or lease is in interstate commerce.

(3) If a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in the form, and valid for the period of time, prescribed by the department.

(4) The department shall provide each school district and intermediate unit with a permanent tax exemption number.

(5) An exemption certificate shall relieve the vendor from liability under this section if the exemption certificate:

(i) is complete and regular;

(ii) on its face discloses a valid basis of exemption; and

(iii) is taken in good faith.

(6) An exemption certificate shall be presumed to be

taken in good faith and the burden of proving otherwise shall be on the department if all of the following conditions are met:

(i) The exemption certificate is accepted by a vendor in the ordinary course of the vendor's business.

(ii) The exemption certificate is from any of the following:

(A) An individual domiciled within this Commonwealth.

(B) An association, fiduciary, partnership, corporation or other entity which:

(I) is authorized to do business within this Commonwealth; or

(II) has an established place of business within this Commonwealth.

(iii) The exemption certificate:

(A) on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being purchased; or

(B) is provided to the vendor by a charitable, religious or educational association or by a volunteer firefighters' relief association or volunteer firemen's organization and contains the charitable exemption number of the association or organization.

(iv) If the purchase price is at least $200, the exemption certificate is accompanied by a sworn declaration, on a form provided by the department, of an intended usage of the property or service which would render the usage or service nontaxable.

(c.1) Authorization to obtain information.--In lieu of the exemption certificate required under subsection (c), the department may authorize a vendor to obtain similarly specific information from the vendor's purchasers. This information includes, but is not limited to, the name and address of the purchaser and a valid basis for exemption. The purchases made under this subsection must be made with a verifiable source of payment connected to the specific purchaser. The information regarding each purchase shall be available at the time the return is filed for the period covering the purchase. The information shall be retained in accordance with section 1592 (relating to keeping of records). No authority shall be granted or exercised, except upon application to and acceptance by the department, in the department's discretion. If authority is granted, it shall be subject to conditions specified by the department.

(d) Direct payment permits.--

(1) The department may authorize a purchaser or lessee to pay the tax directly to the department and waive the collection of the tax by the vendor if the purchaser or lessee acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or service will be used.

(2) Authorization under paragraph (1) requires:

(i) application to the department; and

(ii) issuance by the department of a direct payment permit.

(3) If a direct payment permit is granted:

(i) its use shall be subject to conditions specified by the department; and

(ii) payment of tax on all acquisitions under the permit shall be made directly to the department by the permit holder.

§ 1537. Collection of tax on motor vehicles, trailers and semitrailers.

(a) Requirement.--

(1) Notwithstanding section 1536(b)(1) (relating to collection of tax), except as set forth in paragraph (2), tax due on the sale at retail or use of a motor vehicle, trailer or semitrailer required by law to be registered under 75 Pa.C.S. Ch. 13 (relating to registration of vehicles) shall be paid by the purchaser or user directly to the Department of Transportation under 75 Pa.C.S. § 1103.1(b) (relating to application for certificate of title).

(2) Paragraph (1) does not apply to a mobile home.

(b) Tax paid or not due.--The Department of Transportation may not issue a certificate of title under 75 Pa.C.S. § 1105 (relating to issuance of certificate of title) until the tax has been paid or evidence satisfactory to the Department of Transportation has been given to establish that tax is not due.

(c) Cancellation or suspension of certificate of title.--The Department of Transportation may cancel or suspend a record of certificate of title or registration of a motor vehicle, trailer or semitrailer if the check received in payment of the tax is not paid upon demand.

(d) First encumbrance.--The tax shall be considered as a first encumbrance against a vehicle under subsection (a)(1), and the vehicle may not be transferred without payment in full of the tax and interest or penalties which have accrued.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Mobile home." As defined in 75 Pa.C.S. § 102 (relating to definitions).

"Motor vehicle." As defined in 75 Pa.C.S. § 102.

"Semitrailer." As defined in 75 Pa.C.S. § 102.

"Trailer." As defined in 75 Pa.C.S. § 102.

§ 1538. Precollection of tax.

(a) Precollection of tax.--

(1) Except as set forth in paragraph (2), the department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which the purchaser will collect upon making a sale at retail of the tangible personal property.

(2) The department may not require a vendor to precollect tax from a purchaser who purchases for resale more than $1,000 worth of tangible personal property from the vendor per year.

(b) Licensing.--If a vendor has been authorized to prepay the tax to the person from whom the vendor purchased the tangible personal property for resale, the vendor prepaying the tax may, under the regulations of the department, be relieved from the vendor's duty to secure a license if the duty arises only by reason of the sale of the tangible personal property with respect to which the vendor is, under authorization of the department, to prepay the tax.

(c) Reimbursement.--

(1) On making a sale at retail of tangible personal property with respect to which the vendor has prepaid the tax, the vendor shall separately state at the time of resale the proper amount of tax on the transaction and reimburse the taxes which the vendor has previously prepaid.

(2) If a vendor collects a greater amount of tax in a reporting period than the vendor had previously prepaid upon purchase of the property with respect to which the vendor prepaid the tax, the vendor shall file a return and remit the balance to the Commonwealth at the time when a return would otherwise be due with respect to the sale.

§ 1539. Bulk and auction sales.

A person is subject to section 1403 of the Fiscal Code if the person:

(1) sells or causes to be sold at auction, or sells or transfers in bulk, at least 51% of a stock of goods, wares, merchandise, fixtures, machinery, equipment, buildings or real estate involved in a business for which the person is licensed or required to be licensed under this subpart; or

(2) is liable for filing use tax returns under this subpart.

§ 1540. Collection upon failure to request reassessment, review or appeal.

(a) Collection.--The department may collect a tax:

(1) If, after notice to the taxpayer, an assessment of tax is not paid within 10 days, for assessments made under section 1532(a) (relating to mode and time of assessment), or 30 days, for assessments made under section 1532(b), as long as no petition for reassessment has been filed.

(2) Within 60 days from the date of reassessment, if no

petition for review has been filed.

(3) Unless an appeal is made, within 30 days from:

(i) the date of the decision of the Board of Finance and Revenue upon a petition for review, if no appeal has been made; or

(ii) expiration of the board's time for acting upon the petition, if no appeal has been made.

(4) In all cases of judicial sales, receiverships, assignments or bankruptcies.

(b) Raising defenses.--

(1) Except as set forth in paragraph (2), in a proceeding for the collection of tax, a taxpayer may not raise a defense which could have been determined by the department, the board or a court of competent jurisdiction.

(2) In a motion to stay a proceeding for the collection of tax, a taxpayer may raise any of the following defenses:

(i) The department's failure to mail notice of assessment or reassessment.

(ii) Payment of assessment or reassessment.

§ 1541. Lien for taxes.

(a) Lien imposed.--

(1) If a person liable to pay a tax neglects or refuses to pay the tax, the amount, including interest, addition or penalty, together with any other costs, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of the person, but only after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated.

(2) The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of

all liens for taxes imposed by this subpart and penalties and interest.

(3) It shall be the duty of each prothonotary receiving the lien to enter and docket the lien of record in the prothonotary's office, which shall be indexed as judgments are now indexed.

(4) A prothonotary may not require, as a condition precedent to the entry of the liens, the payment of the costs of entering the liens into record.

(b) Priority of lien and effect on judicial sale and no discharge by sale on junior lien.--

(1) The lien imposed under this section shall:

(i) have priority from the date of its recording;

(ii) be fully paid and satisfied out of the proceeds of a judicial sale of property subject to the lien before any other obligation, judgment, claim, lien or estate to which the property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made and real estate taxes and municipal claims against the property; and

(iii) be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien.

(2) For a judicial sale of property, subject to a lien imposed under this section on a lien or claim over which the lien imposed under this section has priority, the sale shall discharge the lien imposed under this section only to the extent that the proceeds are applied to its payment, and the lien shall continue in full force and effect as to the balance remaining unpaid.

(3) An inquisition or condemnation may not be made on a judicial sale of real estate made by the Commonwealth under this section. The following shall apply:

(i) The lien of the taxes, interest and penalties shall continue for five years from the date of entry and may be revived and continued in the manner provided for renewal of judgments, on or after March 4, 1971, or as may be provided in the Fiscal Code.

(ii) A writ of execution may directly issue on the lien without the issuance and prosecution to judgment of a writ of scire facias, if not less than 10 days before issuance of an execution on the lien, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at the taxpayer's last known post office address.

(iii) The lien shall have no effect on a stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, until a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Duty of prothonotary.--A prothonotary who willfully fails to carry out a duty imposed under this section commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of $1,000 or to imprisonment for not more than one year, or both.

(d) Priority of tax.--Except as provided in this chapter, each tax imposed by this part which is due and unpaid and is not collectible under section 1525 (relating to tax held in trust for Commonwealth) shall be paid from the first money available for distribution in priority to each other claim and lien, except as the laws of the United States may give a prior claim to the Federal Government. A person charged with the administration or distribution of a property or estate who violates this section shall be personally liable for taxes imposed by this part, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

(e) Other remedies.--Subject to the limitations in this subpart as to the assessment of taxes, nothing in this section shall be construed to restrict, prohibit or limit the use by the department in collecting taxes finally due and payable of another remedy or procedure available at law or equity for the collection of debts.

§ 1542. Suit for taxes.

(a) Commencement.--The department may, within three years after a tax is finally due and payable, commence an action in the courts of the United States, this Commonwealth or any state in the name of the Commonwealth to collect tax due together with additions, interest, penalties and costs as provided at law or in equity for the collection of ordinary debts.

(b) Procedure.--The Attorney General shall prosecute the action and, except as provided in this subpart, the Rules of Civil Procedure and the laws of this Commonwealth relating to civil procedures and remedies shall be available in the proceedings.

(c) Other remedies.--The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this subpart or by the laws of this Commonwealth. This section shall not be limited by nor is intended to limit any process, remedy or procedure.

§ 1543. Tax suit comity.

The courts of this Commonwealth shall recognize and enforce a liability for sales and use tax lawfully imposed by another state, if the other state extends a like comity to this Commonwealth.

§ 1544. Service.

A person maintaining a place of business within this Commonwealth shall appoint the Secretary of the Commonwealth as the person's agent for the acceptance of service of process or notice in proceedings for the enforcement of the civil provisions of this part. The following shall apply:

(1) Service made upon the Secretary of the Commonwealth as the agent shall have the same legal force and validity as if the service had been personally made upon the person.

(2) If service cannot be made upon the person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth, and a copy of the process or notice shall also be personally served upon an agent or representative of the person who may be found within this Commonwealth.

(3) If no agent or representative may be found, a copy of the process or notice shall be sent by registered mail to the person at the last known address of the person's principal place of business, home office or residence.

§ 1545. Collection and payment of tax on credit sales.

If a sale subject to tax under this subpart is wholly or partly on credit, the vendor shall require the purchaser to pay in cash at the time the sale is made, or within 30 days thereafter, the total amount of tax due upon the entire purchase price. The vendor shall remit the tax to the department, notwithstanding whether payment was made by the purchaser to the vendor, and the next return must be filed under section 1513 (relating to time for filing returns).

§ 1546. Prepayment of tax.

If a vendor is forbidden by law to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 1522 (relating to time of payment). If the purchaser fails to pay to the vendor the total amount of the purchase price and the tax, and the amount is written off as uncollectible by the vendor, the vendor shall not be liable for the tax and shall be entitled to a credit or refund of the tax paid. The following shall apply:

(1) If the purchase price is later collected, in whole or in part, the amount collected shall be first applied to the payment of the entire tax portion of the bill and shall be remitted to the department by the vendor with the first return filed after the collection.

(2) For tax prepaid prior to March 4, 1971, credit may be claimed on returns filed for the periods prior to March 4, 1971.

(3) Tax prepaid after March 4, 1971, shall be subject to refund upon petition to the department under section 1561 (relating to refunds), filed within 105 days of the close of the fiscal year in which the accounts are written off.

§ 1547. Refund of sales tax attributed to bad debt.

(a) Conditions.--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 total purchase price.

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

(3) The debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986.

(b) Petition.--A petition for refund under this section must be filed with the department within the time limitations prescribed by section 3003.1(a) of the Tax Reform Code of 1971.

(c) Private-label credit card accounts.--In the case of private-label credit card accounts not qualifying under subsection (a), a vendor or lender that makes an election under subsection (d) may file a petition for refund of sales tax that the vendor has previously reported and paid to the department if all of the following conditions are met:

(1) No refund was previously allowed with respect to the portion of the account written off as a bad debt.

(2) The account has been found worthless and written off, either in whole or in part, as bad debt on the books and records of the lender or an affiliate of the lender.

(3) The account has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 by the lender or an affiliate of the lender.

(d) Joint election for refund.--In order to be eligible for a refund under subsection (c), the lender and the vendor must execute and file with the department a joint election, signed by both parties, designating which party is entitled to claim the refund. The election may not be revoked unless a written notice is signed by the party that signed the election being revoked and is filed with the department.

(e) Payment of refund.--The refund authorized by this section is limited to the sales tax paid to the department that is attributed to the bad debt, less any discount under section 1526 (relating to discount). The following apply:

(1) Partial payments by the purchaser shall be prorated between the original purchase price and the sales tax due on the sale.

(2) Payments made on a transaction which includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(f) Assignment of right to petition.--A vendor or a lender may assign the vendor's or lender's right to petition and receive a refund of sales tax attributed to a bad debt to an affiliate.

(g) Exceptions.--No refund shall be granted under this section for any of the following:

(1) Interest.

(2) Finance charges.

(3) Expenses incurred in attempting to collect an account receivable.

(h) Documentation.--Documentation requirements are as follows:

(1) A person claiming a refund under this section shall, on request, make available documentation supporting the claimed refund, including:

(i) The date of the original sale and the name and Pennsylvania sales tax license number of the retailer.

(ii) The name and address of the purchaser.

(iii) The amount that the purchaser paid or agreed to pay.

(iv) Taxable and nontaxable charges.

(v) The amount on which the retailer reported and paid sales tax.

(vi) All payments or other credits applied to the account of the purchaser.

(vii) Evidence that the uncollected amount was:

(A) designated as a bad debt in the books and records of the vendor or lender, as appropriate; and

(B) claimed as a bad debt deduction for Federal income tax purposes.

(viii) The county in which local sales tax was incurred.

(ix) The unpaid portion of the sales price.

(x) A certification, under penalty of perjury, that no person collected money on the bad debt for which the refund is claimed.

(xi) Any other information required by the department.

(2) A person claiming a refund under this section may provide alternative forms of documentation to the department if appropriate in light of the volume and character of uncollectible accounts. The following apply:

(i) If a vendor remits sales or use tax to the Commonwealth and to another state, the entity claiming a refund under this section may use an apportionment method to substantiate the amount of Pennsylvania tax included in the bad debts to which the refund applies.

(ii) The apportionment method must use the vendor's

Pennsylvania and non-Pennsylvania sales, the vendor's taxable and nontaxable sales and the amount of tax the vendor remitted to Pennsylvania.

(i) Collection of tax of prior bad debt.--

(1) If the purchase price which is attributed to a prior bad debt refund is collected in whole or in part by the vendor or lender or an affiliate of the vendor or lender, the entity claiming the refund shall remit the proportional tax to the department with the first return filed after the collection. If the entity is not required to file periodic returns, the entity shall remit the proportional tax to the department with another return under section 1513 (relating to time for filing returns).

(2) Consideration received for the assignment, sale or other transfer of a bad debt with respect to which a refund has been granted shall be deemed to be a collection of a prior bad debt. This paragraph does not apply to a transfer to an entity that is part of the same affiliated group, as defined by section 1504 of the Internal Revenue Code of 1986.

(3) A person that collects, in whole or in part, the purchase price attributed to a prior bad debt refund is required to maintain adequate documentation to allow the department to determine whether the purchase price attributed to a prior bad debt refund has been collected. Information under this paragraph includes the pertinent facts required by subsection (h).

(4) If the department determines that a prior bad debt has been collected, in whole or in part, and that the proportional tax has not been properly reported and paid to the department, the person that claimed the refund on the

transaction shall report and pay the proportional tax to the department plus applicable interest and penalty under this chapter.

(j) Interest.--Notwithstanding section 806.1 of the Fiscal Code, no interest shall be paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(k) Procedure.--

(1) No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section.

(2) No deduction or credit for bad debt may be taken on a return filed with the department.

(3) This section provides the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(l) Bad debts.--A private-label credit card does not authorize a refund with respect to a bad debt attributable to a sale by a person not related to the private-label credit card.

(m) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Affiliate." A person that is:

(1) an affiliated entity, under section 1504 of the Internal Revenue Code of 1986, of a vendor; or

(2) a person described under paragraph (1) or (2) of the definition of "lender" that would be an affiliated entity, under section 1504 of the Internal Revenue Code of 1986, of a vendor but for the fact the person is not a corporation, an assignee or another transferee of a person described under paragraph (1) or (2) of the definition of "lender."

"Lender." Any of the following:

(1) A person that owns or has owned a private-label credit card account purchased directly from a vendor that reported the tax under this subpart.

(2) A person that owns or has owned a private-label credit card account under a contract directly with a vendor that reported the tax under this subpart.

(3) A person that is:

(i) an affiliate of a person described under paragraph (1) or (2); or

(ii) an assignee or other transferee of a person described under paragraph (1) or (2).

"Private-label credit card." As follows:

(1) A charge card, credit card or other instrument serving a similar purpose which:

(i) carries, refers to or is branded with the name or logo of a vendor; and

(ii) can be used for purchases from the vendor.

(2) The term does not include a card or instrument which may also be used to make purchases from a person other than the vendor whose name or logo appears on the card or instrument or that vendor's affiliates.

§ 1548. Registration of transient vendors.

(a) Registration required.--Prior to conducting business or commencing operations within this Commonwealth, a transient vendor shall register with the department. The application for registration must be in the form and contain information the department prescribes and shall set forth truthfully and accurately the information required by the department. The registration must be renewed and updated annually.

(b) Certificate.--Upon registration and the posting of the bond required by section 1549 (relating to bond), the department shall issue to a transient vendor a certificate valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, if the department is satisfied that the transient vendor has complied with this chapter.

(c) Possession of certificate.--The transient vendor must possess the certificate at all times when conducting business within this Commonwealth and shall exhibit the certificate upon demand by authorized employees of the department or a law enforcement officer.

(d) Information on certificate.--The certificate issued by the department shall state that the transient vendor named on the certificate has registered with the department and shall provide notice to the transient vendor of all of the following:

(1) The requirements of section 1550(a) (relating to notification to department and inspection of records).

(2) Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor's certificate.

(3) Conducting business within this Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.

§ 1549. Bond.

(a) Posting.--Upon registration with the department, a transient vendor must post a bond with the department in the amount of $500 as surety for compliance with the provisions of this subpart.

(b) Reduction or elimination.--After a period of demonstrated compliance with the provisions of this subpart, or if the transient vendor provides the license number of a promoter that has notified the department of a show under section 1554(a) (relating to promoters), the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.

(c) Voluntary suspension of certificate.--A transient vendor may file a request for voluntary suspension of certificate with the department. If the provisions of this subpart have been complied with and the department has possession of the transient vendor's certificate, the department shall return the bond posted to the transient vendor.

§ 1550. Notification to department and inspection of records.

(a) Notification.--Prior to entering this Commonwealth to conduct business, a transient vendor shall notify the department in writing of each location where the transient vendor intends to conduct business and each date on which the transient vendor intends to conduct business.

(b) Inspection of sales records.--When conducting business in this Commonwealth, a transient vendor shall permit authorized employees of the department to inspect the transient vendor's sales records, including sales receipts and inventory or price lists, and tangible personal property offered for sale at retail.

(c) Suspension or revocation of certificate.--The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:

(1) fails to notify the department under subsection (a);

(2) provides the department with false information

regarding the conduct of business within this Commonwealth;

(3) fails to collect sales tax on all tangible personal property or services sold which are subject to the sales tax; or

(4) fails to file with the department a tax return as required by section 1513 (relating to time for filing returns).

(d) Regulations.--The department shall promulgate regulations necessary to implement this section.

§ 1551. Seizure of property.

(a) Seizure for noncompliance.--If a transient vendor conducting business in this Commonwealth fails to exhibit a valid certificate upon demand by an authorized employee of the department, the authorized employee may seize, without warrant, the tangible personal property and the means of transportation used to transport or carry the property. Except as set forth in subsection (b), property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department under procedures promulgated by regulation.

(b) Release of seized property.--Property seized under subsection (a) shall be released upon any of the following:

(1) Presentation of a valid certificate to an authorized employee of the department.

(2) Registration by the transient vendor with the department and the posting of a bond in the amount of $500, either immediately or within 15 days after the property is seized.

§ 1552. Fines.

A transient vendor conducting business within this Commonwealth when the transient vendor's certificate is suspended or revoked under sections 1549(b) (relating to bond) and 1550(c) (relating to notification to department and inspection of records), commits a misdemeanor of the third degree for each offense.

§ 1553. Transient vendors subject to subpart.

A transient vendor shall be subject to the provisions of this subpart in the same manner as a vendor who maintains a place of business within this Commonwealth.

§ 1554. Promoters.

(a) Application for license.--A promoter of a show in this Commonwealth may file with the department an application for a promoter's license stating the location and dates of each show. The application must be filed at least 30 days prior to the opening of the first show and be in the form as the department may prescribe.

(b) Issuance.--Except as otherwise provided, within 15 days after receipt of an application for a license, the department shall issue to the promoter, without charge, a license to operate a show. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless the promoter receives notice from the department denying the application for a promoter's license.

(c) Compliance.--A promoter who is a vendor under section 1102 (relating to definitions) shall comply with all the provisions of this subpart applicable to vendors and with the provisions of this section applicable to promoters.

(d) License required.--A licensed promoter may not permit a person to display for sale or sell tangible personal property or services subject to tax under Subchapter A of Chapter 13 (relating to imposition of tax) at a show unless the person is licensed under Subchapter D of Chapter 13 (relating to licenses) and provides to the promoter the information required under section 1593 (relating to reports and records of promoters).

(e) Penalties.--

(1) A licensed promoter is subject to denial of a license or revocation of an existing license issued under this section for any of the following:

(i) Permitting a person to display for sale or to sell tangible personal property or service without first having been licensed under Subchapter D of Chapter 13.

(ii) Failing to maintain records of a show under section 1593.

(iii) Knowingly maintaining false records.

(iv) Failing to comply with this section or a regulation promulgated by the department pertaining to shows.

(2) In addition to the penalties under paragraph (1), the department may deny a promoter a license certificate to operate a show for a period of not more than six months from the date of the denial. The penalty shall be in addition to any other penalty imposed by this subpart.

(3) Within 20 days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing under 2 Pa.C.S. (relating to administrative law and procedure).

SUBCHAPTER E

REFUNDS AND CREDITS

Sec.

1561. Refunds.

1562. Refund petition.

1563. Extended time for filing special petition for refund.

§ 1561. Refunds.

The following apply:

(1) The department shall, under Article XXVII of the Tax Reform Code of 1971, refund all taxes, interest and penalties paid to the Commonwealth under this subchapter to which the Commonwealth is not rightfully entitled.

(2) Refunds shall be made to the person or the person's heir, successor, assign or other personal representative who paid the tax.

(3) A refund shall not be made under this section with respect to a payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment under section 2702 of the Tax Reform Code of 1971 to the extent that the petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal.

(4) Nothing in this section shall prohibit a taxpayer who has filed a timely petition for reassessment from amending the petition to a petition for refund if the petitioner has paid the tax assessed.

§ 1562. Refund petition.

(a) General rule.--Except as provided for in section 1563 (relating to extended time for filing special petition for refund) and subsection (b), the refund or credit of tax, interest or penalty provided for in section 1561 (relating to refunds) shall be made only if the person who has paid the tax files a petition for refund with the department under Article XXVII of the Tax Reform Code of 1971 within the time limits of section 3003.1 of the Tax Reform Code of 1971.

(b) Payment.--A refund or credit of tax, interest or penalty paid as a result of an assessment made by the department under section 1532 (relating to mode and time of assessment) shall be made only if the person who has paid the tax files a petition for a refund with the department under Article XXVII of the Tax Reform Code of 1971 within the time limits of section 3003.1 of the Tax Reform Code of 1971. The filing of a petition for refund under this subsection shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of payment of the assessment.

§ 1563. Extended time for filing special petition for refund.

(a) Filing.--A party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against the other person, file a special petition for refund, notwithstanding the person's failure to timely file a petition under section 3003.1 of the Tax Reform Code of 1971.

(b) Applicability.--Article XXVII of the Tax Reform Code of 1971 shall apply to a special petition for refund, except that the department may not act on the petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction.

(c) Overpayments.--If a petition is filed under this section to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded to the extent of the actual tax, without consideration of interest and penalties, paid by the other party to the transaction.

(d) Construction.--The purpose of this section is to avoid duplicate payment of tax if a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to the transaction. This section shall be construed as extending a right beyond that provided for by section 1562 (relating to refund petition) and not to limit section 1562.

SUBCHAPTER F

LIMITATIONS

§ 1571. Limitation on assessment and collection.

The amount of the tax imposed by this subpart shall be assessed within three years after the date when the return under section 1513(a) or (c) (relating to time for filing returns) is filed or the end of the year in which the tax liability arises, whichever occurs later. An assessment may be made at any time during the period, notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of the year. Credit may not be given for a penalty previously assessed or paid.

§ 1572. Failure to file return.

If no return is filed, the amount of the tax due may be assessed and collected at any time as to taxable transactions not reported.

§ 1573. False or fraudulent return.

If a taxpayer willfully files a false or fraudulent return with intent to evade the tax imposed by this subpart, the amount of tax due may be assessed and collected at any time.

§ 1574. Extension of limitation period.

Notwithstanding any other provision of this subpart, if, before the expiration of the period in section 1571 (relating to limitation on assessment and collection) for the assessment of a tax, a taxpayer has consented in writing that the period be extended, the amount of tax due may be assessed at any time within the extended period. The extended period may be extended further by subsequent consents in writing made before the expiration of the extended period.

SUBCHAPTER G

INTEREST, ADDITIONS, PENALTIES AND CRIMES

Sec.

1581. Interest.

1582. Additions to tax.

1583. Penalties.

1584. Crimes.

1585. Abatement of additions or penalties.

§ 1581. Interest.

If an amount of tax imposed by this subpart is not paid to the department on or before the last date prescribed for payment, interest on the amount at the rate of 0.75% per month for each month, or fraction of a month, shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined under section 1522(a) or (c) (relating to time of payment) without regard to any extension of time for payment. For an amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be 30 days after notice of the assessment.

§ 1582. Additions to tax.

(a) Failure to file return.--For a failure to file a return required by section 1511 (relating to persons required to make returns) on the date prescribed for filing the return, including any extensions, and for a return filed which understates the true amount due by more than 50%, 5% of the amount of the tax shall be added to the amount of tax due if the failure to file a proper return is for not more than one month and an additional 5% for each additional month, or fraction of a month, during which the failure continues, not to exceed 25% in the aggregate. At least $2 shall be added to each failure to file a proper return under this subsection.

(b) Addition for understatement.--There shall be added to every assessment under section 1532(b) (relating to mode and time of assessment) 5% of the amount of the understatement and no addition to the tax shall be paid under section 1532(a).

(c) Interest.--If the department assesses a tax under section 1532(a), (b) or (c), there shall be added to the amount of the deficiency interest at the rate of 0.75% per month for each month, or fraction of a month, from the date prescribed by section 1522(a) or (c) (relating to time of payment) for the payment of the tax to the date of notice of the assessment.

§ 1583. Penalties.

(a) Penalty assessed as tax.--The penalties, additions, interest and liabilities provided by this subpart shall be paid upon notice and demand by the department and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this chapter to tax imposed by this subpart shall also be deemed to refer to the penalties, additions, interest and liabilities provided by this chapter.

(b) Attempt to evade or defeat tax.--

(1) A person who willfully attempts to evade or defeat the tax or the payment of the tax imposed by this subpart or to assist another person to evade or defeat the tax or the payment of the tax imposed by this subpart, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

(2) In a direct proceeding arising out of a petition for reassessment or refund as provided in this chapter in which an issue of fact is raised with respect to whether a return is fraudulent or with respect to the propriety of the imposition by the department of the penalty prescribed in this subsection, the burden of proof shall be on the department.

§ 1584. Crimes.

(a) Fraudulent return.--A person who, with intent to defraud the Commonwealth, willfully makes or causes to be made a return required by this subpart which is false commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $2,000 or to imprisonment for not more than three years, or both.

(b) Other crimes.--

(1) A person commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $1,000 and costs of prosecution or to imprisonment for not more than one year, or both, for any of the following:

(i) Except as otherwise provided under subsection (a), advertising, holding out or stating to the public or to a purchaser or user, directly or indirectly, that the tax or any part of the tax imposed by this subpart will not be added to the purchase price of the tangible personal property or services described under paragraph (1)(ii), (iii), (iv), (vi), (vii), (viii), (ix), (x), (xi) and (xii) of the definition of "sale at retail" in section 1102 (relating to definitions) or that the tax or any part of the tax will be refunded, other than when the person refunds the purchase price because of the property being returned to the vendor.

(ii) For a person selling or leasing tangible personal property or services subject to tax under this subpart, except as otherwise provided, willfully failing to collect the tax from the purchaser and timely remitting the tax to the department or willfully failing or neglecting to timely file a return or report required by this subpart.

(iii) Refusing to timely pay a tax, penalty or interest imposed or provided for under this subpart.

(iv) Willfully failing to preserve books, papers and records as directed by the department or refusing to permit the department or the department's authorized agents to examine books, records or papers.

(v) Knowingly making an incomplete, false or fraudulent return or report.

(vi) Preventing the full disclosure of the amount or character of taxable sales purchases or use made by the person or any other person.

(vii) Providing a person with a false statement as to the payment of tax with respect to particular tangible personal property or services.

(viii) Creating or issuing a false or fraudulent exemption certificate.

(2) Notwithstanding paragraph (1), a person may advertise or hold out or state to the public or to a purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this subpart will be absorbed and paid by the person subject to the following conditions:

(i) The person shall expressly state on a receipt, invoice, sales slip or other similar document evidencing the sale given to the purchaser that the person will pay the tax imposed by this subpart on behalf of the purchaser and shall not indicate or imply that the transaction is exempt or excluded from tax imposed by this subpart.

(ii) A receipt, invoice, sales slip or other similar document evidencing a sale given to the purchaser shall separately state the amount of tax.

(iii) The person, when recording the sale in the person's books and records, shall separately state the purchase price and the tax.

(iv) The amount of tax shall be calculated by multiplying the total purchase price by the rate of tax imposed by Subchapter A (relating to imposition of tax).

(3) If a person advertises or holds out or states to the public or to a purchaser or user, directly or indirectly, that the person will absorb and pay the tax, subject to the conditions of this subsection, the person shall be solely responsible and liable for a tax imposed by this subpart, notwithstanding any provisions of this subpart to the

contrary, and shall not be entitled to a refund of tax.

(c) Sales suppression devices and phantomware.--

(1) Subject to paragraph (2), notwithstanding any other provision of this subpart, a person who purchases, installs or uses in this Commonwealth an automated sales suppression device or zapper or phantomware with the intent to defeat or evade the determination of an amount due under this part commits a misdemeanor. The following apply:

(i) A person who, for commercial gain, sells, purchases, installs, transfers or possesses in this Commonwealth an automated sales suppression device or zapper or phantomware with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due under this part commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine specified under subparagraph (ii) or to imprisonment for not more than one year, or both. A person who uses an automated sales suppression device or zapper or phantomware shall be liable for all taxes, interest and penalties due as a result of the use of the device.

(ii) If a person is guilty of an offense under this paragraph and the person sold, installed, transferred or possessed not more than three automated sales suppression devices or zappers or phantomware, the person commits an offense punishable by a fine of not more than $5,000.

(iii) If a person commits an offense under this paragraph and the person sold, installed, transferred or possessed more than three automated sales suppression devices or zappers or phantomware, the person commits an offense punishable by a fine of not more than $10,000.

(2) This subsection shall not apply to a corporation that possesses an automated sales suppression device or zapper or phantomware for the sole purpose of developing hardware or software to combat the evasion of taxes by use of automated sales suppression devices or zappers or phantomware.

(3) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph unless the context clearly indicates otherwise:

"Automated sales suppression device" or "zapper." A software program carried on a memory stick or removable compact disc, accessed through an Internet link or through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports.

"Electronic cash register." A device that keeps a register or supporting document through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing retail sales transaction data in whatever manner.

"Phantomware." A hidden programming option, which is either preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate a transaction record that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

"Transaction data." Includes information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address and identification number of the vendor and the receipt or invoice number of the transaction.

(d) Prosecution.--This section shall not preclude prosecution under any other law.

(e) Penalties.--The penalties imposed by this section shall be in addition to any other penalties imposed by this subchapter.

§ 1585. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or a petition for refund as provided under this subpart by a taxpayer, additions or penalties imposed upon the taxpayer by this part may be waived or abated, in whole or in part, if the petitioner has established that the petitioner has acted in good faith, without negligence and with no intent to defraud.

SUBCHAPTER H

ENFORCEMENT AND EXAMINATIONS

Sec.

1598. Interstate compacts.
1599. Bonds.
1599.1. Remote sales reports.
1599.2. Class actions.

§ 1591. Rules and regulations.

(a) General rule.--The department is charged with the enforcement of this chapter and may prescribe, adopt, promulgate and enforce rules and regulations consistent with this chapter relating to any matter or thing pertaining to the administration and enforcement of this chapter and the collection of taxes, penalties and interest imposed by this chapter. The department may prescribe the extent, if any, to which the rules and regulations shall be applied without retroactive effect.

(b) Sales between affiliated interests.--

(1) In determining the purchase price of taxable sales where, because of affiliation of interests between the vendor and the purchaser or irrespective of an affiliation, or for any other reason, the purchase price of the sale is not indicative of the true value or fair price of the article, the department shall determine the amount of constructive purchase price upon which the tax shall be computed and levied.

(2) The rules shall provide for a constructive amount of a purchase price for each sale, which shall equal a price for the article which would naturally and fairly be charged in an arm's-length transaction in which the element of common interests between vendor and purchaser, or, if no common interest exists, any other element causing a distortion of the price or value is absent.

(3) For the purpose of this chapter, if a taxable sale

occurs between a parent corporation and a subsidiary affiliate or controlled corporation of the parent, there shall be a rebuttable presumption that because of the common interest the transaction was not at arm's length.

§ 1592. Keeping of records.

(a) General rule.--Every person liable for a tax imposed by this chapter or for the collection of a tax shall keep records, render statements, make returns and comply with rules and regulations as the department may prescribe. The department as it deems necessary may require a person, by notice served upon the person or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not the person is liable to pay or collect tax under this chapter.

(b) Persons collecting tax from others.--A person liable to collect tax from another person under this chapter shall file reports, keep records, make payments and be subject to interest and penalties provided for under this chapter in the same manner as if the person was directly subject to the tax.

(c) Records of nonresidents.--

(1) A nonresident who does business in this Commonwealth as a retail dealer shall keep adequate records of each business and of the tax due, which shall be retained within this Commonwealth unless retention outside this Commonwealth is authorized by the department.

(2) Taxes collected from purchasers may not be sent outside this Commonwealth without the written consent of, and in accordance with conditions prescribed by, the department.

(3) The department may require a taxpayer who desires to retain records or tax collections outside this Commonwealth

to assume reasonable out-of-State audit expenses.

(d) Keeping of separate records.--A person doing business as a retail dealer who at the same time is engaged in another business which does not involve the making of sales taxable under this chapter shall keep separate books and records of each business to show the sales taxable under this chapter separately from the sales not taxable under this chapter. If a person fails to keep separate books and records, the person shall be liable for tax at the rate designated under Subchapter A of Chapter 13 (relating to imposition of tax) on the entire purchase price of sales from each business.

(e) Other methods.--If a vendor gives no sales memoranda or uses registers showing only total sales, the vendor shall adopt some method of segregating tax from sales receipts and keep records showing the segregation, in accordance with proper accounting and business practices.

(f) Collection and recording procedure.--

(1) A vendor may apply to the department for permission to use a collection and recording procedure which will show the information required by law with reasonable accuracy and simplicity.

(2) The application shall contain a detailed description of the procedure to be adopted.

(3) Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected.

(4) The department may revoke the permission upon 30 days' notice to the vendor.

(5) Refusal of the department to grant permission in advance to use the procedure shall not be construed to

invalidate a procedure which, upon examination, shows the information required by law.

§ 1593. Reports and records of promoters.

Every licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of every person whom the promoter permits to display for sale or sell tangible personal property or services subject to tax under Subchapter A of Chapter 13 (relating to imposition of tax) at the show. The records shall be open for inspection and examination at any reasonable time by the department or a duly authorized representative, and the records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that the records be kept for a longer period of time.

§ 1594. Examinations.

The following apply:

(1) The department or an authorized agent may examine the books, papers and records of a taxpayer in order to verify the accuracy and completeness of a return made or, if no return was made, to ascertain and assess the tax imposed by this chapter.

(2) The department may require the preservation of each book, paper and record for a period deemed proper by the department but not to exceed three years from the end of the calendar year to which the records relate.

(3) Every taxpayer shall give to the department, or its agent, the means, facilities and opportunity for examination and investigation. The department may examine any person,

under oath, concerning taxable sales or use by a taxpayer or concerning any other matter relating to the enforcement or administration of this chapter and for this purpose may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom the department believes to have knowledge of the matters.

(4) The procedure for hearings or examinations shall be the same as that provided by the Fiscal Code relating to inquisitorial powers of fiscal officers.

§ 1595. Records and examinations of delivery agents.

Every agent, for the purpose of delivery of goods shipped into this Commonwealth by a nonresident, including common carriers, shall maintain adequate records of the deliveries under rules and regulations adopted by the department and shall make the records available to the department upon request.

§ 1596. Unauthorized disclosure.

(a) Confidentiality and exceptions.--Information gained by the department as a result of a return, examination, investigation, hearing or verification required or authorized by this chapter shall be confidential, except:

(1) for official purposes; or

(2) in accordance with proper judicial order or as otherwise provided by law.

(b) Penalty.--A person unlawfully divulging information commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than $1,000 along with the costs of prosecution, or to imprisonment for not more than one year, or both.

§ 1597. Cooperation with other governments.

(a) General rule.--Subject to subsection (b), notwithstanding section 1596 (relating to unauthorized disclosure), the department may:

(1) permit the Commissioner of Internal Revenue of the United States, the proper officer of any state or the authorized representative of either officer to inspect the tax returns of a taxpayer; or

(2) furnish to the officer or to an authorized representative under paragraph (1) an abstract of the return of a taxpayer or information concerning an item contained in a return or disclosed by the report of an examination or investigation of the return of a taxpayer.

(b) Condition.--Permission under subsection (a) shall be granted only if Federal law or the statutes of another state grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this chapter.

§ 1598. Interstate compacts.

(a) General authority.--The Governor, or an authorized representative, may confer with the Governor or authorized representatives of other states regarding reciprocal use tax collection between the Commonwealth and other states.

(b) Use of compacts and agreements.--The Governor, or an authorized representative, may join with the authorities of other states to conduct joint investigations, exchange information, hold joint hearings and enter into compacts or interstate agreements with other states to accomplish uniform reciprocal use tax collections between those states who are parties to a compact or interstate agreement and the Commonwealth.

<u>§ 1599. Bonds.</u>

<u>(a) Taxpayer to file bond.--</u>

<u>(1) If the department deems it necessary to protect the revenues to be obtained under this chapter, the department may require a nonresident individual or a foreign corporation, association, fiduciary, partnership or other entity not authorized to do business in this Commonwealth or not having an established place of business in this Commonwealth and subject to the tax imposed by Subchapter A of Chapter 13 (relating to imposition of tax) to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount fixed by the department, to secure the payment of tax or penalties due or which may become due, from the individual or entity.</u>

<u>(2) To protect the revenues to be obtained under this subchapter, the department shall require a nonresident individual or foreign corporation, association, fiduciary, partnership or other entity that is a building contractor or supplier delivering building materials for work in this Commonwealth and is not authorized to do business within this Commonwealth or does not have an established place of business in this Commonwealth and is subject to the tax imposed by Subchapter A of Chapter 13, to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in an amount fixed by the department to secure the payments of tax or penalties due or which may become due, from the individual or entity.</u>

<u>(3) In addition to a bond under paragraph (1) or (2),</u>

the department may require a bond of a person petitioning the department for reassessment in the case of an assessment of more than $500 or where the ultimate collection is in jeopardy.

(4) The department may, for a period of three years, require a bond of a person who has, on three or more occasions within a 12-month period, either filed a return or made payment to the department more than 30 days late. The following shall apply:

(i) If the department determines that a taxpayer is to file a bond, the department shall give notice to the taxpayer and specify the amount of the bond required.

(ii) The taxpayer shall file the bond within five days after notice is given by the department unless, within those five days, the taxpayer requests in writing a hearing before the secretary or a representative.

(iii) The necessity, propriety and amount of the bond shall be determined by the secretary or a representative of the department at the hearing.

(iv) The determination shall be final and shall be complied with within 15 days after notice is mailed to the taxpayer.

(b) Securities in lieu of bond.--

(1) In lieu of the bond required by this section, securities approved by the department or cash in an amount as the department may prescribe may be deposited.

(2) Securities or cash shall be kept in the custody of the department, which may, at any time, without notice to the depositor, apply the securities or cash to tax, interest or penalties due, and for that purpose the securities may be

sold by the department at public or private sale upon five days' written notice to the depositor.

(c) Failure to file bond.--The department may file a lien under section 1541 (relating to lien for taxes) against a taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on the lien shall be refunded to the taxpayer with 3% interest if a final determination is made that the taxpayer does not owe any payment to the department.

§ 1599.1. Remote sales reports.

(a) Report.--

(1) Within 90 days of the publication of the notice under subsection (b), the Independent Fiscal Office, in conjunction with the department, shall submit a detailed report outlining the plans concerning the implementation of the legislation referenced in subsection (b) or other substantially similar Federal legislation which would grant the Commonwealth the authority to impose and collect the tax under this chapter due on sales from remote sellers.

(2) The report under paragraph (1) shall be submitted to the following:

(i) The chairperson and minority chairperson of the Appropriations Committee of the Senate.

(ii) The chairperson and minority chairperson of the Finance Committee of the Senate.

(iii) The chairperson and minority chairperson of the Appropriations Committee of the House of Representatives.

(iv) The chairperson and minority chairperson of the Finance Committee of the House of Representatives.

(3) The report under paragraph (1) shall include all of the following:

(i) The amount of State money necessary to implement the legislation described under subsection (b) or other substantially similar legislation. The amount shall be itemized, and all costs, including personnel, office expenses and other related costs, shall be included.

(ii) The amount of State tax revenue expected to result from the implementation of the legislation described under subsection (b) or other substantially similar legislation for the fiscal year and for the five subsequent fiscal years.

(iii) The source of money that will be utilized to pay for the legislation described under subsection (b) or other substantially similar legislation implementation program.

(iv) The legal and practical issues concerning the propriety of collecting and enforcing the tax imposed under this chapter from remote sellers.

(v) The number of other states which have a similar law in effect and the success or deficiency of the law.

(vi) Proposed draft legislation concerning the implementation of the legislation described under subsection (b) or other substantially similar legislation.

(vii) A detailed timetable on when separate tasks must be completed for full implementation on an estimated start date.

(b) Notice.--The secretary shall transmit notice to the Legislative Reference Bureau for publication in the next available issue of the Pennsylvania Bulletin that Federal legislation relating to remote sellers has been enacted.

(c) Definition.--As used in this section, the term "remote seller" shall have the same meaning as defined in section 1351 (relating to definitions).

§ 1599.2. Class actions.

A class action may not be brought against a marketplace facilitator on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether the action is characterized as a tax refund claim. Nothing in this section shall affect a purchaser's right to seek a refund from the department under other provisions of this subpart.

SUBCHAPTER I

MISCELLANEOUS PROVISIONS

Sec.

1599.11. Appropriation for special purposes.

1599.12. Transfers to Public Transportation Assistance Fund.

§ 1599.11. Appropriation for special purposes.

The proceeds of the tax imposed under this part necessary for the payment of refunds, enforcement or administration are appropriated for those purposes.

§ 1599.12. Transfers to Public Transportation Assistance Fund.

(a) Transfer.--Revenues received on or after July 1, 1992, from the imposition of the tax on periodicals shall be transferred to the Public Transportation Assistance Fund according to the formula described under subsection (b).

(b) Formula.--Within 30 days of the close of any calendar month, 0.44% of the taxes received in the previous month under this subchapter, less amounts collected in the previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Assistance Transportation Fund), shall be transferred to the Public Transportation Assistance Fund.

(c) Transfer to Public Assistance Transportation Fund.--In fiscal year 1991-1992, the secretary shall deposit $10,000,000 into the Public Assistance Transportation Fund from the combination of money received under former 74 Pa.C.S. § 1314(d) and transfers of periodical taxes received under this section.

(d) Further transfer.--Within 30 days of the close of any calendar month, 0.09% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund.

(e) Other transfer.--Within 30 days of the close of any calendar month, 0.417% of the taxes received in the previous month under this chapter shall be transferred to the Public Transportation Assistance Fund.

SUBPART B

PERSONAL INCOME TAX

Chapter

CHAPTER 21

PRELIMINARY PROVISIONS

Sec.
2101. Scope of subpart.
2102. Definitions.

§ 2101. Scope of subpart.

This subpart relates to personal income tax.

§ 2102. Definitions.

The following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accepted accounting principles and practices." Unless otherwise provided for in this subpart, the accounting principles, systems or practices, including the installment sales method of reporting, which are acceptable by standards of the accounting profession and which are consistent with the regulations of the department providing the principles and practices.

"Association." As follows:

(1) A form of unincorporated enterprise which:

(i) is subject to the tax imposed under Article IV of the Tax Reform Code of 1971; or

(ii) is required to make a return under section 6042 of the Internal Revenue Code of 1986.

(2) The term shall not include a partnership or investment company.

"Business." An enterprise, activity, profession, vocation, trade, joint venture, commerce or other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, Pennsylvania S corporation, association or other unincorporated entity.

"Charitable trust." A trust operated exclusively for religious, charitable, scientific, literary or educational purposes.

"Claimant." A person who:

(1) is subject to the tax imposed under this subpart;

(2) is not a dependent of another taxpayer for purposes of section 151 of the Internal Revenue Code of 1986; and

(3) is entitled to claim against the tax the poverty tax provisions as provided under this subpart.

"Compensation." As follows:

(1) The term means and shall include salaries, wages, commissions, bonuses and incentive payments, whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

(2) The term shall include:

(i) Any part of a distribution under a plan described in section 409A(d)(1) of the Internal Revenue Code of 1986, as amended, attributable to an elective deferral of income or the income on an elective deferral of income, whether paid or payable during employment or to a retired individual upon or after retirement from service.

(ii) Distributions or other payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment to the extent that the distributions or payments, including investment earnings, exceed previously taxed contributions. The term with respect to these benefits shall not mean or include the following:

(A) Benefits paid under 42 U.S.C. Ch. 7 (relating to Social Security).

(B) A pension that is provided in lieu of old age and survivor benefit payments under t 42 U.S.C. Ch. 7 to a person whose employment was not covered under 42 U.S.C. Ch. 7. The total amount of a Social Security substitute pension may not exceed the maximum Federal old age and survivor benefit payments, less any Federal old age and survivor benefit payments received under 42 U.S.C. Ch. 7 for employment covered under 42 U.S.C. Ch. 7.

(C) Military pension payments or military survivor's benefit payments paid to individuals by the United States with respect to service in the Armed Forces of the United States.

(D) Distributions from a pension plan of an employee of money contributed by the employee, but if the employee cannot determine the basis of the money contributed to the pension plan, 15% of the amount of the distributions shall be deemed compensation.

(3) The term shall not include any of the following:

(i) Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.

(ii) Disability, retirement or other payments arising under worker's compensation acts, occupational disease acts and similar legislation by a government.

(iii) (Reserved).

(iii.1) Beginning after December 31, 2029, contributions made to a plan commonly recognized as an old age or retirement benefit plan paid to persons retired from service after reaching a specific age or after a stated period of employment.

(iv) Payments commonly known as public assistance or unemployment compensation payments by a governmental agency.

(v) Payments to reimburse actual expenses.

(vi) Payments made by employers or labor unions, including payments made under a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986, for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits if the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits.

(vii) Compensation received by a member of the armed forces of the United States serving in a combat zone.

(viii) Payments received by a foster parent for in-home care of foster children from an agency or political subdivision of the Commonwealth or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1954 which is licensed by the Commonwealth or a political subdivision as a placement agency.

(ix) Payments made by employers or labor unions for employee benefit programs covering Social Security or retirement.

(x) Personal use of an employer's owned or leased property or employer-provided services.

"Corporate item." An item, including income, gain or loss, deduction or credit, determined at the Pennsylvania S corporation level, which is required to be taken into account for a Pennsylvania S corporation's taxable year.

"Corporation." For purposes of applying the provisions of section 2203(a) (relating to classes of income) with respect to a "reorganization" as defined in that section, the term shall include any of the following:

(1) A business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies.

(2) A common law business trust.

(3) A limited liability company that, for Federal income tax purposes, is taxable as a corporation or an investment company.

"Dependent." A child who is the dependent of a claimant for purposes of section 151 of the Internal Revenue Code of 1986.

"Dividends." As follows:

(1) A distribution in cash or property made by a corporation, association, business trust or investment company with respect to the corporation's, association's, business trust's or investment company's stock out of accumulated earnings and profits or out of earnings and profits of the year in which the dividend is paid.

(2) The term shall not include any of the following:

(i) A distribution of the stock of a corporation made by the corporation originally issuing the stock to its stockholders if the distribution is not treated as personal income for Federal individual income tax purposes.

(ii) For taxable years beginning on or after January 1, 1993, a distribution made by an investment company out of earnings and profits derived from interest that is statutorily free from State and local taxation under Article XXIX of the Tax Reform Code of 1971 or the laws of the United States.

"Employee." An individual from whose wages an employer is required under the Internal Revenue Code of 1986 to withhold Federal income tax.

"Employer." An individual, partnership, association, corporation, governmental body or agency or other entity that is required under the Internal Revenue Code of 1986 to withhold Federal income tax from wages paid to an employee.

"Fiduciary." A guardian, trustee, executor, administrator, receiver, conservator or person acting in a trust or similar capacity, whether domiciliary or ancillary.

"Health savings account." As defined in section 223(d) of the Internal Revenue Code of 1986, as amended.

"Income." For a resident individual, estate or trust, the term shall mean the same as compensation, net profits, gains, dividends, interest or income under section 2203.

"Income from sources within this Commonwealth." As follows:

(1) For a nonresident individual, estate or trust, the term shall mean the same as compensation, net profits, gains, dividends, interest or income under section 2203 to the extent that the income is earned, received or acquired from sources within this Commonwealth:

(i) by reason of ownership or disposition of an interest in real or tangible personal property in this Commonwealth;

(ii) in connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth;

(iii) as a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state under regulations promulgated by the department under this subpart;

(iv) from intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth; or

(v) as gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than noncash prizes of the Pennsylvania State Lottery.

(2) For a nonresident individual, estate or trust, the term shall not include items of income specified in paragraph (1) received or acquired from an investment company registered with the Securities and Exchange Commission under 15 U.S.C. Ch. 2D Subch. I (relating to investment companies).

"Individual." As follows:

(1) A natural person.

(2) The term shall include a member of a partnership or association and a shareholder of a Pennsylvania S corporation.

"Installment sales method of reporting." As follows:

(1) The method by which a taxpayer reports the gain upon the sale of tangible personal property or real property when at least one payment is to be received in a taxable year following the taxable year of sale, whether the property is sold or otherwise disposed of in an isolated transaction or from the inventory of a dealer or broker.

(2) Taxpayers may elect to allocate the gain upon the transactions in equal proportion to each payment to be received. Taxpayers who do not elect to allocate the gain upon the transactions in equal proportion to each payment received shall report all gains upon the sale in the taxable year in which the transaction occurred.

(3) For the purposes of this definition:

(i) The gain upon the transaction shall be the difference between the sales price and the seller's basis in the property.

(ii) The sales price shall be the face amount of the evidence of indebtedness given in exchange for the property sold or otherwise disposed of together with the value of other consideration received by the seller. If the evidence of indebtedness fails to state a price, the evidence of indebtedness shall be valued at the fair market value of the property sold, less the value of other property or cash received in the same transaction.

(iii) The installment sales method of reporting shall not be used for transactions made to lend money or render services.

"Internal Revenue Code of 1986." The Internal Revenue Code of 1986, as amended to January 1, 1997, unless the reference contains the phrase "as amended" and refers to no other date, in which case the reference shall be to the Internal Revenue Code of 1986 as it exists as of the time of application of this subpart.

"Investment company." An incorporated or unincorporated enterprise registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

"Nonresident estate or trust." An estate or trust which is not a resident estate or trust. The term shall not include a charitable trust or pension or profit sharing trust.

"Nonresident individual." An individual who is not a resident of this Commonwealth.

"Partnership." A domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is classified as a partnership.

"Partnership item." An item, including income, gain or loss, deduction or credit determined at the partnership level, which is required to be taken into account for a partnership's taxable year.

"Pennsylvania S corporation." As follows:

(1) A small corporation that does not have a valid election under section 2231 (relating to election by small corporation) in effect.

(2) A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation without regard to whether an election under section 2231 has been made with respect to the subsidiary.

"Person." An individual, employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident. For the purpose of determining eligibility for special tax provisions, the term shall mean an individual.

"Poverty." An economic condition where the total amount of poverty income is insufficient to adequately provide a claimant, the claimant's spouse and dependent children with the necessities of life.

"Poverty income." For the purpose of determining eligibility for special tax provisions, all money or property, including interest, gains or income derived from obligations which are statutorily free from State or local taxation under the laws of the United States or this Commonwealth, received of any nature and from any source, but not including any of the following:

(1) Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.

(2) Disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by a government.

(3) Payments commonly recognized as old age or retirement benefits that are excluded under paragraph (2)(ii) of the definition of "compensation" under this section.

(4) Payments commonly known as public assistance, or unemployment compensation payments by a governmental agency.

(5) Payments to reimburse actual expenses.

(6) Payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

(7) Compensation received by a member of the armed forces of the United States serving in a combat zone.

"Publicly traded partnership." An entity defined under section 7704 of the Internal Revenue Code of 1986 with equity securities registered with the Securities and Exchange Commission under 15 U.S.C. § 781 (relating to registration requirements for securities).

"Qualified student loan." As follows:

(1) Indebtedness incurred by a taxpayer to pay educational expenses, which are:

(i) Incurred on behalf of the taxpayer at the time the indebtedness is incurred.

(ii) Paid or incurred within a reasonable period of time before or after the indebtedness is incurred.

(iii) Attributable to education furnished during a period in which the recipient is a student.

(2) The term includes indebtedness used to refinance indebtedness that qualifies as a qualified student loan.

(3) The term does not include indebtedness owed by a taxpayer to a person related to the taxpayer.

"Qualified Subchapter S subsidiary." A domestic or foreign corporation which, for Federal income tax purposes, is treated as a qualified Subchapter S subsidiary as defined in section 1361(b)(3)(B) of the Internal Revenue Code of 1986, as amended to January 1, 2005.

"Received." For the purpose of computation of income subject to tax under this subpart, the term shall mean "received, earned or acquired," and the phrase "received, earned or acquired" shall be construed according to the method of accounting required by the department under this subpart for computing and reporting income subject to the tax.

"Resident estate." The estate of a decedent who, at the time of the decedent's death, was a resident individual.

"Resident individual." An individual who:

(1) is domiciled in this Commonwealth, unless the individual maintains no permanent place of abode in this Commonwealth, maintains a permanent place of abode elsewhere and spends in the aggregate not more than 30 days of the taxable year in this Commonwealth; or

(2) is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than 183 days of the taxable year in this Commonwealth.

"Resident trust." Any of the following:

(1) A trust created by the will of a decedent who, at the time of the decedent's death, was a resident individual.

(2) A trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of the creation or transfer was a resident. The term under this paragraph shall not include a charitable trust or pension or profit-sharing trust.

"Small corporation." A corporation that has a valid election in effect under Subchapter S of Chapter 1 of the Internal Revenue Code of 1986, as amended to January 1, 2005.

"Social Security substitute pension." A pension that is provided in lieu of old age and survivor benefit payments under 42 U.S.C. Ch. 7 (relating to Social Security) to a person whose employment was not covered under the Social Security Act.

"Special tax provisions." A refund or forgiveness of all or part of a claimant's liability under the provisions of this subpart.

"State." Except as provided under section 2303(a) (relating to income taxes imposed by other states), a state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States or a foreign country.

"Student loan interest." Interest paid during the taxable year on a qualified student loan, including required and voluntary interest payments, to attend a college, university, vocational school or other postsecondary educational institution eligible to participate in a student aid program administered by the United States Department of Education.

"Tax." Includes interest, penalties, additions to tax and the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.

"Taxable year." Any of the following:

(1) The taxable period on the basis of which a taxpayer or claimant is required to file a Federal income tax return under the Internal Revenue Code of 1986.

(2) If a taxpayer or claimant is not required to or does not file a Federal income tax return, the calendar year. The following shall apply:

(i) For the initial period during which the tax is first imposed, the term shall mean the period beginning June 1, 1971, and ending with the taxable period on the basis of which a taxpayer or claimant is required to file the taxpayer's Federal income tax return under the Internal Revenue Code of 1986.

(ii) If the taxpayer or claimant is not required to or does not file a Federal income tax return, December

31, 1971.

"Taxpayer." As follows:

(1) An individual, estate or trust subject to the tax imposed by this subpart.

(2) A partnership having a partner who is a taxpayer under this title.

(3) A Pennsylvania S corporation having a shareholder who is a taxpayer under this subpart and a person required to withhold tax under this subpart.

CHAPTER 22

TAXATION GENERALLY

SUBCHAPTER A

IMPOSITION OF TAX

§ 2201. Imposition of tax.

(a) Resident taxation.--Except as provided in subsection (c), each resident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 2203 (relating to classes of income), a tax upon each dollar of income received by the resident during the resident's taxable year at the rate of 3.07%.

(b) Nonresident taxation.--Except as provided in subsection (c), each nonresident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income enumerated in section 2203 from sources within this Commonwealth, a tax upon each dollar of income received by the nonresident during the nonresident's taxable year at the rate of 3.07%.

(c) Classes of income.--The classes of income under section 2203 (relating to classes of income) received by a resident trust, and the classes of income received by a nonresident trust from sources within this Commonwealth, shall be taxable to the grantor of the trust or another person to the extent the grantor or other person is treated as the owner of the trust under sections 671, 672, 673, 674, 675, 676, 677, 678 and 679 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, whether or not the income is distributed or distributable to the beneficiaries of the trust or accumulated.

§ 2202. Rate changes occurring during taxable year.

Notwithstanding the provisions of section 2201 (relating to imposition of tax), the tax rate used for the computation of tax for a taxable year where the rate changes during the taxable year shall be the monthly weighted average of the rates applicable during the taxable year, regardless of when during the taxable year the income is received.

§ 2203. Classes of income.

(a) Classes of income specified.--The classes of income are as follows:

(1) Compensation, which shall be defined as salaries, wages, commissions, bonuses and incentive payments, whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent and whether in cash or in property, except income derived from the United States Government for active duty outside this Commonwealth as a member of the armed forces of the United States and income from the United States Government or the Commonwealth for active State duty for emergency within or outside this Commonwealth, including duty ordered under 35 Pa.C.S. Ch. 76 (relating to Emergency Management Assistance Compact). The following shall apply:

(i) Compensation of a cash-basis taxpayer shall be considered received if the compensation is actually or constructively received for Federal income tax purposes consistent with United States Treasury regulations and rulings under the Internal Revenue Code of 1986, as amended, except that, for purposes of computing tax under this subpart:

(A) Amounts lawfully deducted, not deferred, and withheld from the compensation of employees shall be considered received by the employee as compensation at the time the deduction is made.

(B) Contributions to an employees' trust, pooled fund or other arrangement which is not subject to the claims of creditors of the employer made by an employer on behalf of an employee or self-employed individual at the election of the employee or self-employed individual under a cash or deferred arrangement or salary reduction agreement shall be deemed received by the employee or individual as compensation at the time the contribution is made, regardless of when the election is made or a payment is received.

(C) A contribution to a plan by, on behalf of or attributable to a self-employed person shall be deemed received at the time the contribution is made.

(D) Employer contributions to a Roth IRA custodial account or employee annuity shall be deemed received, earned or acquired only when distributed, when the plan fails to meet the requirements of section 408A of the Internal Revenue Code of 1986, as amended, or when the plan is not operated in accordance with the requirements of section 408A of the Internal Revenue Code of 1986, as amended.

(E) Employee contributions to an employees' trust, pooled fund, custodial account or contract or employee annuity may not be deducted or excluded from compensation.

(F) This subparagraph shall not apply to compensation excluded under paragraph (3)(iii.1) of the definition of "compensation" in section 2102 (relating to definitions).

(ii) For purposes of determining when deferred compensation of employees other than employees of exempt organizations and State and local governments is required to be included in income, the rules of sections 83, 451 and 409A of the Internal Revenue Code of 1986, as amended, shall apply.

(iii) For purposes of determining when deferred compensation of employees of exempt organizations and State and local governments is required to be included in income, the rules of sections 83, 451, 457 and 409A of the Internal Revenue Code of 1986, as amended, shall apply.

(2) Net profits, which shall be defined as the net income from the operation of a business, profession or other activity, after provision for all costs and expenses incurred in the conduct of the business, profession or other activity, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income. For purposes of calculating net income under this paragraph, to the extent a taxpayer properly deducts an amount under section 195(b)(1)(A) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated under section 195(b)(1)(A) of the Internal Revenue Code of 1986, as amended, the taxpayer shall be permitted a deduction in equal amount in the same taxable year.

(3) Net gains or income from disposition of property as follows:

(i) The term shall be defined as net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after the effective date of this paragraph by any of the following:

(A) The Commonwealth.

(B) A public authority, commission, board or other agency created by the Commonwealth.

(C) A political subdivision of the Commonwealth or a public authority created by a political subdivision.

(D) The Federal Government as determined in accordance with accepted accounting principles and practices.

(ii) For the purpose of this subpart:

(A) For the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

(B) The terms "net gains or income" and "net losses" shall not include gains or income or loss derived from obligations which are statutorily free from State or local taxation under Article XXIX of the Tax Reform Code of 1971 or the laws of the United States.

(iii) For the purpose of this subpart, the term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation that is a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in the corporation or in another corporation that is a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in the corporation if, immediately after the exchange, the person or persons are in control of the corporation. The following shall apply:

(A) For purposes of this subparagraph, stock or securities issued for services shall not be considered as issued in return for property.

(B) For purposes of this subparagraph, the term "reorganization" shall mean any of the following:

(I) A statutory merger or consolidation.

(II) The acquisition by one corporation in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of the other corporation, whether or not the acquiring corporation had control immediately before the acquisition.

(III) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation. In determining whether the exchange is solely for stock, the assumption by the acquiring corporation of a liability of the other or the fact that property acquired is subject to a liability shall be disregarded.

(IV) A transfer by a corporation of all or a part of its assets to another corporation if, immediately after the transfer, the transferor, or one or more of the transferor's shareholders, including persons who were shareholders immediately before the transfer, or any combination thereof, is in control of the corporation to which the assets are transferred.

(V) A recapitalization.

(VI) A mere change in identity, form or place of organization.

(C) The acquisition by one corporation, in exchange for stock of a corporation, referred to in this clause as a "controlling corporation," which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under clause (B)(I) if the transaction would have qualified under clause (B)(I) if the merger had been into the controlling corporation and no stock of the acquiring corporation is used in the transaction.

(D) A transaction otherwise qualifying under clause (B)(I) shall not be disqualified by reason of the fact that stock of a corporation, referred to in this clause as a "controlling corporation," which, before the merger, was in control of the merged corporation is used in the transaction if, after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation, other than stock of the controlling corporation distributed in the transaction, and, in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of the corporation.

(E) For purposes of this subparagraph:

(I) The term "control" shall mean the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

(II) The term "a party to a reorganization" shall include a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under clause (B)(I) by reason of clause (C), the term "a party to a reorganization" shall include the controlling corporation referred to in clause (C).

(F) Notwithstanding any other provisions of this subparagraph, upon every exchange or conversion, the taxpayer's base for the stock or securities received shall be the same as the taxpayer's actual or attributed base for the stock, securities or property surrendered in exchange for the stock or securities received.

(iv) For the purpose of this subpart, the term "sale, exchange or other disposition" shall not include any of the following:

(A) A transfer by a common trust fund described in section 584 of the Internal Revenue Code of 1986 of all or substantially all of its assets to one or more companies described in section 851 of the Internal Revenue Code of 1986 in exchange for stock or units of beneficial interest in the company or companies to which the assets are transferred and the distribution of the stock or units by the fund to its participants in exchange for the participants' interest in the fund, if no gain or loss is recognized on the transfer or distribution for Federal income tax purposes. Upon each exchange, the taxpayer's base for the assets, stock or units received shall be the same as the taxpayer's actual or attributed base for the assets, stock, units or interest surrendered in exchange for the assets, stock or units.

(B) A transfer of an interest in an enterprise treated as a partnership for purposes of this subpart in exchange for an interest in another enterprise treated as a partnership for purposes of this subpart, a liquidation made in connection with a transfer or an exchange made under a statutory merger, consolidation or division of enterprises so treated unless taxable income or gain is recognized for Federal income tax purposes. Upon each exchange, the taxpayer's base for the interest received shall be the same as the taxpayer's actual or attributed base for the interest surrendered in exchange.

(v) For the purpose of this subpart, the term "net gains or net income, less net losses," shall not include a gain or loss from the sale, exchange or other disposition of the taxpayer's principal residence. The following shall apply:

(A) For purposes of this subparagraph, the term "principal residence" shall mean the property that has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more during the five-year period ending on the date of the sale, exchange or disposition. The following apply:

(I) In the case of property only a portion of which, during the five-year period ending on the date of the sale, exchange or disposition, has been owned or used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more, this subparagraph shall apply with respect to the portion of the gain from the sale, exchange or disposition of the property as determined under regulations prescribed by the department to be attributable to that portion.

(II) In the case of a principal residence a portion of which has never been subject to the allowance for depreciation, this subparagraph shall apply with respect to the portion of the gain from the sale, exchange or disposition of the property as is determined under regulations prescribed by the department to be attributable to that portion.

(B) The provisions of this subparagraph shall not apply to a sale, exchange or disposition if, during the two-year period ending upon the date of the sale, exchange or disposition, there was a prior sale, exchange or disposition by the taxpayer of a principal residence unless the sale, exchange or disposition is by reason of a change in employment, health or, to the extent provided in regulations, unforeseen circumstances.

(C) This subparagraph shall not apply to any sale, exchange or disposition made prior to January 1, 1998.

(vi) For purposes of this subpart, the term "net gains or income" and "net losses" shall not include gains or income or losses which are excluded from Federal taxation under section 1400Z-2 of the Internal Revenue Code of 1986, as amended. Net gains or net income, less net losses, which are excluded under this subparagraph shall be included in income to the extent they are included in gross income under section 1400Z-2(b) of the Internal Revenue Code of 1986, as amended. Section 1400Z-2(c) of the Internal Revenue Code of 1986, as amended, shall apply in the computation of net gains or net income and net losses.

(4) Net gains or income derived from or in the form of rents, royalties, patents and copyrights.

(5) Dividends. The term "dividends" shall not include gains or income or losses which are excluded from Federal taxation under section 1400Z-2 of the Internal Revenue Code of 1986, as amended. Gains or income or losses which are excluded under this paragraph shall be included in income to the extent they are included in gross income under section 1400Z-2(b) of the Internal Revenue Code of 1986, as amended. Section 1400Z-2(c) of the Internal Revenue Code of 1986, as amended, shall apply in the computation of net gains or net income and net losses.

(6) Interest derived from obligations which are not statutorily free from State or local taxation under the laws of the United States or this Commonwealth, an amount paid under contract of life insurance or endowment or annuity contract which is includable in gross income for Federal income tax purposes and an amount paid out of the Archer Medical Savings Account (Archer MSA) or health savings account that is includable in the gross income of an account beneficiary for Federal income tax purposes.

(7) Gambling and lottery winnings other than noncash prizes of the Pennsylvania State Lottery.

(8) Net gains or income derived through estates or trusts. To the extent that income or gain is subject to tax under one of the classes of income enumerated in this section, the income or gain shall not be subject to tax under another class.

(b) Computation of income.--Income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes income in keeping the taxpayer's books. If the department determines that no method has been regularly used or the method used does not clearly reflect income, the computation of income shall be made under a method which, in the opinion of the department, clearly reflects income.

(c) Depreciation deduction.--

(1) In computing income, a depreciation deduction shall be allowed for the exhaustion, wear and tear and obsolescence of property being employed in the operation of a business or held for the production of income.

(2) Except as provided in paragraph (3), the deduction must be reasonable and shall be computed in accordance with the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of the property's reasonably estimated useful economic life under the straight-line method or other method prescribed by the department.

(3) A taxpayer may use any depreciation method, recovery method or convention that is also used by the taxpayer in determining Federal net taxable income if, when placed in service, the property has the same adjusted basis for Federal income tax purposes and the method or convention is allowable for Federal income tax purposes at the time the property is placed in service or under the Internal Revenue Code of 1986, whichever is earlier.

(4) The basis of property shall be reduced, but not below zero, for depreciation by the greater of the following:

(i) The amount deducted on a return and not disallowed, but only to the extent the deduction results in a reduction of income.

(ii) The amount allowable using the straight-line method of depreciation computed on the basis of the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of the property's reasonably estimated useful economic life, regardless of whether the deduction results in a reduction of income.

(d) Section 179 Property.--The cost of property commonly referred to as Section 179 Property may be treated as a deductible expense only to the extent allowable under the version of section 179 of the Internal Revenue Code in effect at the time the property is placed in service or under section 179 of the Internal Revenue Code of 1986, whichever is earlier. The basis of Section 179 Property shall be reduced, but not below zero, for costs treated as a deductible expense. The amount of the reduction shall be the amount deducted on a return and not disallowed, regardless of whether the deduction results in a reduction of income.

(e) Federal limitations.--This subpart shall be subject to applicable Federal limitations on State income taxation.

(f) Applicability of Internal Revenue Code of 1986.--

(1) The requirements of sections 1031 and 1035 of the Internal Revenue Code of 1986, as amended, shall be applicable.

(2) Except as provided in this subpart and without regard to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code of 1986, the requirements of sections 106(b) and (d), 220 and 223 of the Internal Revenue Code of 1986 shall be applicable.

(3) The provisions of section 1033 of the Internal Revenue Code of 1986, as amended, shall be applicable.

(4) The provisions of section 451(f) of the Internal Revenue Code of 1986, as amended, shall be applicable.

(g) Qualified tuition programs.--

(1) An amount paid as a contribution to a qualified tuition program shall be deductible from taxable income on the annual personal income tax return. The amount paid as a contribution to a qualified tuition program allowable as a deduction under this subsection shall be subject to an annual limitation not to exceed the threshold for exclusion from gifts as provided in section 2503(b) of the Internal Revenue Code of 1986, as amended, per designated beneficiary. The deduction shall not result in taxable income being less than zero.

(2) (i) The following shall not be subject to tax under this subpart:

(A) An amount distributed from a qualified tuition program that is excludable from tax under section 529(c)(3)(B) of the Internal Revenue Code of 1986, as amended.

(B) A rollover that is excludable from tax under section 529(c)(3)(C) of the Internal Revenue Code of 1986, as amended.

(C) Undistributed earnings on a qualified tuition program.

(D) The value of a medal awarded by or prize money received from the United States Olympic Committee on account of competition in the Olympic Games or Paralympic Games.

(E) An amount received by an employee through an employer's matching contribution to an account as defined under Article XIX-J of the Tax Reform Code of 1971.

(ii) A change in designated beneficiaries under section 529(c)(3)(C) of the Internal Revenue Code of 1986, as amended, shall not constitute a taxable event under this subpart.

(3) An amount distributed from a qualified tuition program that is not described under paragraph (2) shall be taxable under this subpart.

(4) For purposes of this subsection:

(i) The term "designated beneficiary" shall have the same meaning as provided in section 529(e)(1) of the Internal Revenue Code of 1986, as amended.

(ii) The term "qualified tuition program" shall have the same meaning as provided in section 529(b)(1) of the Internal Revenue Code of 1986, as amended.

(5) As follows:

(i) The classes of income under this section shall not include an amount which is excluded from Federal gross income under sections 276 and 278(a) of the COVID-Related Tax Relief Act of 2020, enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260, 134 Stat. 1182).

(ii) No deduction may be disallowed from an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan under subparagraph (i).

(6) The classes of income under this section shall not

include a payment received by an individual from the United States under section 2201 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136, 134 Stat. 281) or sections 272 and 273 of the Consolidated Appropriations Act, 2021.

(7) An amount received from the Federal or State government or Norfolk Southern Railway, or an agent thereof, as a result of the train derailment that occurred in East Palestine, Ohio, on February 3, 2023, shall not be considered income subject to the tax imposed by this subpart.

(h) Drilling and development costs.--

(1) Except as provided in paragraph (2), a person who incurs intangible drilling and development costs as defined in section 263(c) of the Internal Revenue Code of 1986, as amended, and regulations under the Internal Revenue Code of 1986, as amended, shall capitalize the costs and recover them over a 10-year period in the taxable year the costs are incurred.

(2) A person may elect to currently expense up to one-third of the costs in the taxable year in which the costs are incurred and recover the remaining costs over a 10-year period beginning in the taxable year the costs are incurred.

(i) Unconstitutional classes severable.--If one or more or part of one or more classes of income under subsection (a) are held to be unconstitutional by a final decision of a court of last resort, the unconstitutional class or classes or part of a class or classes of income shall be deemed severable, and the tax imposed by this subpart shall apply with respect to all the remaining classes of income or parts of classes of income enumerated in subsection (a) as if the unconstitutional class or classes of income or part or parts of classes of income had not been included in this subpart.

(j) Student loan interest.--The amount of student loan interest paid during a taxable year by a resident individual shall be deductible from taxable income on the annual personal income tax return, provided that the deduction may not:

(1) exceed $2,500 per taxable year; and

(2) result in taxable income being less than zero.

(k) Depletion of natural deposit.--A person may claim a deduction for depletion of a mine, oil and gas well and other natural deposit in accordance with the provisions of sections 611, 612, 613, 613A, 614, 616 and 617 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 611 et seq.) in effect on the effective date of this subsection.

§ 2204. Special tax provisions for poverty.

(a) Intent.--The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article VIII of the Constitution of Pennsylvania which provides for the establishment as a class or classes of subjects of taxation the property or privileges of persons who, because of poverty, are determined to be in need of special tax provisions, declares as its legislative intent and purpose to establish special tax provisions as provided in this subpart.

(b) Public policy determination.--The General Assembly, having determined that there are individuals in this Commonwealth whose incomes are at a level that imposition of a tax on those incomes would deprive the individuals and the individuals' dependents of the bare necessities of life, and having further determined that poverty is a relative concept inextricably joined with actual income and the number of individuals dependent upon the income, deems it to be a matter of public policy to provide special tax provisions for that class of individuals designated to relieve the individuals' economic burden.

(c) Eligibility.--For the taxable year 1974 and each year thereafter, a claimant who meets the standards of eligibility for poverty specified in this section shall be deemed a separate class of subject of taxation and shall be entitled to the benefit of the special provisions of this subpart.

(d) Determination of poverty.--A claim for special tax provisions under this section shall be determined in accordance with the following:

(1) If the poverty income of a claimant during an entire taxable year is $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 $13,000 or less, the claimant shall be entitled to a refund or forgiveness of money which has been paid over to, or would except for the provisions of this subpart be payable to, the Commonwealth under this subpart, with an additional income allowance of $9,500 for each dependent of the claimant. For purposes of this subsection, a claimant shall not be considered to be married if all of the following apply:

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

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

(2) If the poverty income of the claimant during an

entire taxable year does not exceed the poverty income limitations under paragraph (1) by more than the dollar categories contained in this paragraph, the claimant shall be entitled to a refund or forgiveness based on the percentage prescribed in this paragraph of money which has been paid over to, or would except for the provisions of this subpart be payable to the Commonwealth under this subpart:

(i) Ninety percent if not more than $250.

(ii) Eighty percent if not more than $500.

(iii) Seventy percent if not more than $750.

(iv) Sixty percent if not more than $1,000.

(v) Fifty percent if not more than $1,250.

(vi) Forty percent if not more than $1,500.

(vii) Thirty percent if not more than $1,750.

(viii) Twenty percent if not more than $2,000.

(ix) Ten percent if not more than $2,250.

(3) If an individual has a taxable year of less than 12 months, the poverty income of the individual shall be annualized in a manner as the department may prescribe.

§ 2205. Alternative special tax provision for poverty study.

(a) Study.--The General Assembly directs the Joint State Government Commission to conduct or provide for a comprehensive study to determine whether alternative forms of special tax provisions for poverty would be more beneficial to persons who, because of poverty, are determined to be in need of special tax provisions.

(b) Comparison study.--The study shall include a comparison between the special tax provisions for poverty specified under section 2204 (relating to special tax provisions for poverty) and the earned income credit allowable under section 32 of the

Internal Revenue Code of 1986, as amended.

(c) Effects of Federal law.--The study shall consider any effects of linking the alternative special tax provisions for poverty to Federal law, including misuse that may be inherent in the Federal program.

(d) Fiscal costs.--The study shall ascertain any differences between the fiscal costs to the Commonwealth of the special tax provisions for poverty specified under section 2204 and projected fiscal costs of other alternative provisions.

(e) Consultants.--The Joint State Government Commission may hire or retain consultants, utilizing a request for proposal procedure, as necessary to assist in the performance of its duties under this section.

(f) Report.--The executive director of the Joint State Government Commission shall present a report summarizing the results of this study to the chairperson and minority chairperson of the Finance Committee of the Senate and the chairperson and minority chairperson of the Finance Committee of the House of Representatives after August 1, 2009, and before September 1, 2009.

§ 2206. Pennsylvania ABLE Savings Program tax exemption.

(a) Exempt amounts.--The following shall be exempt from all taxation by the Commonwealth and its political subdivisions:

(1) Undistributed earnings on an account.

(2) An amount distributed from an account that is not included in gross income under section 529A(c)(1) of the Internal Revenue Code of 1986.

(b) Contributions.--

(1) An amount contributed to an account shall be deductible from the taxable income of the contributor under

this subpart for the tax year the contribution was made.

(2) The total contributions made by a contributor during a taxable year to all accounts that are allowable as a deduction under this section may not exceed the dollar amount under section 2503(b) of the Internal Revenue Code of 1986.

(3) The deduction may not result in the contributor's taxable income being less than zero.

(4) The department and the Treasury Department shall cooperate in verifying account information relating to contributions to an account itemized by a contributor and the contributor's specific contributions.

(c) Taxable income.--An amount that is distributed from an account and not otherwise exempt from taxation under this section shall be taxable income to the designated beneficiary under this subpart.

(d) Change in beneficiaries.--A change in designated beneficiaries under section 529A(c) of the Internal Revenue Code of 1986 shall not constitute a taxable event.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Account." An ABLE savings account as defined in section 102 of the Pennsylvania ABLE Act.

"Contributor." An individual who makes a contribution to an account as defined in section 102 of the Pennsylvania ABLE Act.

"Designated beneficiary." As defined in section 102 of the Pennsylvania ABLE Act.

"Pennsylvania ABLE Act." The act of April 18, 2016 (P.L.128, No.17), known as the Pennsylvania ABLE Act.

"Pennsylvania ABLE Savings Program." The program established under the Pennsylvania ABLE Act.

"Qualified disability expense." As defined in section 102 of the Pennsylvania ABLE Act.

SUBCHAPTER B

ESTATES AND TRUSTS

§ 2211. Taxability of estates, trusts and their beneficiaries.

(a) General rule.--Except as provided in subsection (b), the income of a beneficiary of an estate or trust with respect to the estate or trust shall consist of the part of the income or gains received by the estate or trust for the estate's or trust's taxable year ending within or with the beneficiary's taxable year which, under the governing instrument and applicable State law, is required to be distributed, paid or credited to the beneficiary. The income or gains of the estate or trust, if any, taxable to the estate or trust shall consist of the income or gains received by the estate or trust which has not been distributed or credited to the estate's or trust's beneficiaries.

(b) Exception.--Subsection (a) shall not apply to the extent the grantor or another person is taxable on the income of the trust under section 2201(c) (relating to imposition of tax).

SUBCHAPTER C

PARTNERSHIPS

§ 2221. Taxability of partners.

Except as provided under section 2223 (relating to tax imposed at partnership level), a partnership as an entity shall not be subject to the tax imposed by this subpart, but the income or gain of a member of a partnership with respect to the partnership shall be subject to the tax, and the tax shall be imposed on the member's share, whether or not distributed, of the income or gain received by the partnership for the partnership's taxable year ending within or with the member's taxable year.

§ 2222. Tax treatment determined at partnership level.

The classification or character of a partnership item shall be determined at the partnership level. This section shall not prohibit the department from adjusting a partner's return.

§ 2223. Tax imposed at partnership level.

(a) Underreported income.--

(1) A partnership underreporting income by more than $1,000,000 for a tax year shall be liable for the tax, excluding interest, penalties or additions at the tax rate applicable to the tax year, on the underreported income without regard to the tax liability of the partners for the underreported income.

(2) The department shall assess the partnership for the tax on the underreported income.

(3) The department may not assess the partners for the underreported income or the tax on the underreported income. The partnership shall be required to provide an amended statement to each partner as required under section 2707(c)(3) (relating to requirements concerning returns, notices, records and statements) of the partner's pro rata share of the underreported income within 90 days of the assessment

becoming final.

(4) Nothing in this subsection shall relieve the partners of the partners' tax liability on the underreported income.

(b) Credit.--Each partner shall be allowed a credit for the partner's share of the tax assessed against the partnership under subsection (a) and paid by the partnership. The credit shall be allowed for the partner's taxable year in which the underreported income was required to be reported.

(c) Applicability.--Subsection (a) shall apply to the following partnerships:

(1) A partnership that has 11 or more partners who are natural persons.

(2) A partnership that has at least one partner which is a corporation, limited liability company, partnership or trust.

(3) A partnership that has only partners who are natural persons and elects to be subject to this subsection. The election must be included on the partnership return to be filed with the department.

(d) Publicly traded partnership.--This section shall not apply to a publicly traded partnership.

(e) Tax liability.--Nothing under this section shall require one partner to be liable for the payment of a tax liability of another partner.

(f) Appeals.--Appeals involving a deficiency assessed under this section may only be pursued by the partnership. A reassessment of tax liability shall be binding on the partners.

SUBCHAPTER D

PENNSYLVANIA S CORPORATIONS

Sec.

2231. Election by small corporation.

2232. Manner of making election.

2233. Effective years of election.

2234. Revocation of election.

2235. Termination by corporation ceasing to be small corporation.

2236. Termination year.

2237. Taxable year of Pennsylvania S corporation.

2238. Income of Pennsylvania S corporation.

2239. Income of Pennsylvania S corporations taxed to shareholders.

2240. Limitation on pass-through of losses to shareholders.

2241. Adjustments to basis of stock of shareholders.

2242. Distributions.

§ 2231. Election by small corporation.

A small corporation may elect not to be taxed as a Pennsylvania S corporation. The election requires the consent of 100% of the outstanding shares of the small corporation on the day on which the election is made. A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation whether or not an election has been made with respect to the subsidiary.

§ 2232. Manner of making election.

(a) General rule.--An election made under section 2231 (relating to election by small corporation) shall be made in the manner prescribed by the department.

(b) Election.--An election under section 2231 may be made for any taxable year at any time during the preceding taxable year or at any time on or before the due date or extended due date of the small corporation's tax return under Article IV of the Tax Reform Code of 1971.

§ 2233. Effective years of election.

An election made under section 2231 (relating to election by small corporation) shall be effective for the taxable year for which the election is made and for each succeeding taxable year unless revoked or terminated.

§ 2234. Revocation of election.

(a) Revocation of election.--An election under section 2231 (relating to election by small corporation) may be revoked if shareholders holding more than one-half of the shares of stock of the corporation consent to the revocation. The corporation and a successor corporation shall not be eligible to revoke an election under this section for a taxable year prior to the corporation's fifth taxable year which begins after the first taxable year for which an election is effective unless the corporation becomes a qualified Subchapter S subsidiary.

(b) Effective date of revocation.--A revocation under subsection (a) shall be effective on the first day of the taxable year if made on or before the 15th day of the third month of the taxable year. If the revocation is made after that date, the revocation shall be effective for the following taxable year.

§ 2235. Termination by corporation ceasing to be small corporation.

(a) Termination of status.--If a corporation ceases to be a small corporation, the corporation's status as a Pennsylvania S corporation shall terminate.

(b) Effective date of termination.--The termination shall be effective on the date on which the corporation ceases to be a small corporation.

§ 2236. Termination year.

(a) Termination year generally.--The portion of the termination year of a Pennsylvania S corporation ending before the first day the termination is effective shall be treated as a short taxable year for which the corporation is a Pennsylvania S corporation.

(b) Termination year as short taxable year.--The portion of the year beginning on the first day the termination is effective shall be treated as a short taxable year for purposes of the tax imposed under Article IV of the Tax Reform Code of 1971.

(c) Income and expenses.--The allocation of income and expense items to be taken into consideration in each short year shall be made in accordance with regulations as may be issued by the department.

§ 2237. Taxable year of Pennsylvania S corporation.

The taxable year of a Pennsylvania S corporation shall be the same taxable year that the corporation uses for Federal income tax purposes.

§ 2238. Income of Pennsylvania S corporation.

(a) General rule.--A Pennsylvania S corporation shall not be subject to the tax imposed under this subpart, except as provided under subsection (f), but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this subpart.

(b) Imposed tax treated as loss.--If a tax is imposed on a Pennsylvania S corporation or a qualified Subchapter S subsidiary owned by a Pennsylvania S corporation under section 1374 of the Internal Revenue Code of 1986, as amended to January 1, 1997, or under Article IV or former Article VI of the Tax

Reform Code of 1971 for a taxable year, for purposes of section 2239 (relating to income of Pennsylvania S corporations taxed to shareholders), the amount of tax imposed shall be treated as a loss sustained by the Pennsylvania S corporation during that year. In the case of taxes imposed under section 1374 of the Internal Revenue Code of 1986, as amended to January 1, 1997, or Article VI of the Tax Reform Code of 1971, the character of the loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to the tax.

(c) Distribution of property.--If a Pennsylvania S corporation makes a distribution of property, other than an obligation of the corporation, with respect to the Pennsylvania S corporation's stock and the fair market value of the property exceeds the property's adjusted basis in the hands of the corporation, gain shall be recognized on the distribution as if the property had been sold to the distributee at its fair market value.

(d) Computation of items.--An election which may affect the computation of items derived from a Pennsylvania S corporation shall be made by the corporation.

(e) Deduction.--A deduction, except a net loss deduction, which was disallowed when a corporation was subject to the tax imposed under Article IV of the Tax Reform Code of 1971 shall be allowed in years in which the corporation is a Pennsylvania S corporation to the same extent and in the same manner that the deduction would have been allowed if the corporation had remained subject to the tax imposed under Article IV of the Tax Reform Code of 1971.

(f) Underreported income.--A Pennsylvania S corporation with underreported income shall be subject to the following:

(1) The following apply:

(i) A Pennsylvania S corporation underreporting income by more than $1,000,000 for any tax year shall be liable for the tax, excluding interest, penalties or additions, at the tax rate applicable to the tax year, on the underreported income without regard to the tax liability of the shareholders for the underreported income.

(ii) The department shall assess the Pennsylvania S corporation for the tax on the underreported income. The department shall not assess the shareholders for the underreported income or the tax on the underreported income. The Pennsylvania S corporation shall be required to provide an amended statement to each shareholder as required under section 2702 (relating to return of Pennsylvania S corporation) of the shareholder's pro rata share of the underreported income within 90 days of the assessment becoming final.

(iii) Nothing in this subsection shall relieve the shareholders of the shareholders' tax liability on the underreported income.

(2) Each shareholder shall be allowed a credit for the shareholder's share of the tax assessed against the Pennsylvania S corporation under paragraph (1) and paid by the Pennsylvania S corporation. The credit shall be allowed for the shareholder's taxable year in which the underreported income was required to be reported.

(3) Paragraph (1) shall apply to the following Pennsylvania S corporations:

(i) A Pennsylvania S corporation which has 11 or more shareholders.

(ii) A Pennsylvania S corporation which elects to be subject to this subsection. The election must be included on the Pennsylvania S corporation return filed with the department.

(4) Nothing in this section shall require one shareholder to be liable for the payment of a tax liability of another shareholder.

(5) Appeals involving the deficiency assessed under this section may be filed only by the Pennsylvania S corporation. A reassessment of tax liability shall be binding on the shareholders.

§ 2239. Income of Pennsylvania S corporations taxed to shareholders.

(a) Shareholder income or loss.--Each shareholder of a Pennsylvania S corporation shall take into income the shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(b) Calculation.--Each shareholder's pro rata share of an item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of all items to each day of the taxable year and then dividing that portion pro rata among the shares outstanding on that day.

(c) Determination of items.--The character of an item included in the shareholder's pro rata share shall be determined as if the item were realized directly by the shareholder from the source from which the item was realized by the corporation or incurred in the same manner as incurred by the corporation.

(d) Deduction.--With respect to a deduction allowed under section 2238(e) (relating to income of Pennsylvania S corporation), a nonresident shareholder shall be allowed the deduction only to the extent that the previously disallowed deduction would have been considered a deduction related to income from sources within this Commonwealth, within the meaning of section 2102 (relating to definitions), during the taxable year when the deduction was disallowed.

(e) Subsidiary not separate corporation.--For the purposes of this subpart, a qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall not be treated as a separate corporation. All assets, liabilities and items of income, deduction and credit of the qualified Subchapter S subsidiary shall be treated as assets, liabilities and items of income, deduction and credit of the parent Pennsylvania S corporation.

§ 2240. Limitation on pass-through of losses to shareholders.

(a) Aggregate losses.--The aggregate amount of losses taken into account by a shareholder of a Pennsylvania S corporation under section 2239 (relating to income of Pennsylvania S corporations taxed to shareholders) shall not exceed the sum of the adjusted basis of the shareholder's stock in the Pennsylvania S corporation, determined after applying section 2241(a) (relating to adjustments to basis of stock of shareholders) for the taxable year and the shareholder's adjusted basis of indebtedness of the Pennsylvania S corporation to the shareholder, determined before applying section 2241(d) for the taxable year.

(b) Carryover of losses prohibited.--There shall be no carryover of losses by the shareholders of a Pennsylvania S corporation.

§ 2241. Adjustments to basis of stock of shareholders.

(a) Increase of basis.--The basis of the stock of a shareholder in a Pennsylvania S corporation shall be increased for any period by the shareholder's share of the corporation's income, including nontaxable income, as determined under section 2239 (relating to income of Pennsylvania S corporations taxed to shareholders).

(b) Decrease of basis.--The basis of a shareholder's stock in a Pennsylvania S corporation shall be decreased for any period, but not below zero, by a distribution by the corporation to the shareholder which was not included in the income of the shareholder under section 2242 (relating to distributions) and by the shareholder's share of the corporation's losses as determined under section 2239 to the extent that the loss reduced the shareholder's income subject to the tax imposed under this subpart or a tax measured by net income, imposed on the shareholder by another state.

(c) Excess losses.--If for a taxable year a shareholder's basis in the stock of a Pennsylvania S corporation is reduced to zero, excess losses will reduce the shareholder's basis, but not below zero, in any indebtedness of the Pennsylvania S corporation to the shareholder.

(d) Reduced basis.--If a shareholder's basis in any indebtedness is reduced under subsection (c), the reduction shall be restored before the shareholder's basis in the Pennsylvania S corporation's stock is increased.

§ 2242. Distributions.

(a) Distribution of property to shareholder.--A distribution of property by a Pennsylvania S corporation which has no accumulated earnings and profits to a shareholder of the corporation shall not be included in the shareholder's income to the extent that it does not exceed the shareholder's adjusted basis in the stock. An amount of the distribution in excess of the adjusted basis in the stock shall be treated as a gain from the sale, exchange or other disposition of property.

(b) Excess treated as dividend.--

(1) A distribution of property by a Pennsylvania S corporation which has accumulated earnings and profits shall be treated in the same manner as a distribution by a Pennsylvania S corporation without earnings and profits to the extent of the corporation's accumulated adjustment account.

(2) The portion of the distribution in excess of the accumulated adjustment account will be treated as a dividend to the extent of the accumulated earnings and profits of the corporation.

(3) A portion of the distribution in excess of the accumulated earnings and profits of the corporation shall be treated in the same manner as a distribution from a Pennsylvania S corporation without accumulated earnings and profits.

(c) Non-pro rata distribution.--In the case of a non-pro rata distribution of property, the adjustment shall be limited to an amount which bears the same ratio to the balance in the account as the number of shares sold, exchanged or otherwise disposed of bears to the number of shares in the corporation outstanding immediately before the sale, exchange or disposition.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Accumulated adjustment account." An account of the Pennsylvania S corporation which is cumulatively adjusted for the most recent continuous period during which the corporation has been a Pennsylvania S corporation by increasing the account for corporate income and decreasing the account for corporate losses and all distributions of property by the corporation to the shareholders which were not included in the income of the shareholders, provided that no adjustment shall be made for income or loss not in any of the classes of income enumerated in section 2203 (relating to classes of income) or for a nondeductible expense.

SUBCHAPTER E

OTHER ENTITIES

Sec.

2251. Treatment of unincorporated entities with single owners.

§ 2251. Treatment of unincorporated entities with single owners.

Unless subject to tax under Article IV of the Tax Reform Code of 1971, an unincorporated entity that has a single owner shall be disregarded as an entity separate from the entity's owner.

SUBCHAPTER F

NONRESIDENT INDIVIDUALS

Sec.

2261. Nonresident individuals and taxable income.

2262. Spouses.

2263. Allocation of income of nonresident.

§ 2261. Nonresident individuals and taxable income.

The income of a nonresident individual shall be the part of the nonresident individual's income derived from sources within this Commonwealth as defined in this subpart.

§ 2262. Spouses.

(a) Separate return.--For spouses who are both nonresidents of this Commonwealth and subject to tax under this subpart, if the income of either spouse is determined on a separately filed return, each spouse's income from sources within this Commonwealth shall be separately determined.

(b) One spouse a nonresident.--If a spouse is a nonresident of this Commonwealth and the other spouse is a resident of this Commonwealth, separate taxes shall be determined on the spouses' separate incomes on forms as the department shall prescribe, unless both spouses elect to determine the spouses' joint income as if both spouses were residents of this Commonwealth, in which case the spouses' tax liabilities shall be joint and several.

§ 2263. Allocation of income of nonresident.

If a nonresident taxpayer earns, receives or acquires income from sources partly within and partly outside this Commonwealth or engages in a business, trade, profession or occupation partly within and partly outside this Commonwealth and that portion of the income derived from or connected with sources within this Commonwealth cannot readily or accurately be ascertained, the department shall by regulation prescribe uniform rules for apportionment or allocation of the amount of the taxpayer's income as fairly and equitably represents income derived from sources within this Commonwealth and subject to tax under this subpart.

CHAPTER 23

CREDITS AGAINST TAX

Sec.

2301. Tax withheld.
2302. Tax paid under previous act.
2303. Income taxes imposed by other states.

§ 2301. Tax withheld.

The amount withheld under section 2502 (relating to requirement of withholding tax) shall be allowed to the taxpayer from whose income the tax was withheld as a credit against the tax imposed on the taxpayer by this subpart.

§ 2302. Tax paid under previous act.

The amount of tax withheld from an employee and paid over to the Commonwealth or paid over by a taxpayer as an estimated payment under former Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, which was repealed by the act of August 31, 1971 (P.L.362, No.93), shall be held as a credit against the tax imposed by former Article III of the Tax Reform Code of 1971.

§ 2303. Income taxes imposed by other states.

(a) Credit.--

(1) A resident taxpayer, before allowance of a credit under section 2301 (relating to tax withheld), shall be allowed a credit against the tax otherwise due under this subpart for the amount of income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on the resident taxpayer or on a Pennsylvania S corporation in which the resident taxpayer is a shareholder, to the extent of the resident taxpayer's pro rata share of the tax determined under section 2239 (relating to income of Pennsylvania S corporations taxed to shareholders), by another state with respect to income which is also subject to tax under this subpart.

(2) For purposes of this subsection, the term "state" shall only include a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and a territory or possession of the United States.

(b) Credit limit.--The credit provided under this section shall not exceed the proportion of the tax otherwise due under this subpart that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to the taxpayer's entire taxable income.

CHAPTER 24

CONTRIBUTIONS OF REFUNDS BY CHECKOFF

SUBCHAPTER A

PRELIMINARY PROVISIONS

§ 2401. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Individual income tax." The tax imposed under this subpart.

§ 2402. Operational provisions.

(a) Expiration.--Except as described in subsection (b), a checkoff established under this chapter and applicable for the first time in a taxable year beginning after December 31, 2009, shall expire four years after the beginning of the first taxable year.

(b) No expiration.--Notwithstanding subsection (a), the checkoffs established under the following sections shall not expire:

(1) Section 2411 (relating to contributions to breast and cervical cancer research).

(2) Section 2412 (relating to contributions for wild resource conservation).

(3) Section 2413 (relating to contributions for organ and tissue donation awareness).

(4) Section 2414 (relating to contributions for juvenile diabetes cure research).

(5) Section 2415 (relating to contributions for military family relief assistance).

(6) Section 2416 (relating to contributions for Children's Trust Fund).

(7) Section 2417 (relating to contributions for American Red Cross).

SUBCHAPTER B

CONTRIBUTIONS

§ 2411. Contributions for breast and cervical cancer research.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to breast and cervical cancer research.

(b) Deduction from refund.--The amount designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Pennsylvania Breast Cancer Coalition.

(d) Instructions for contributions.--The department shall provide adequate information concerning the checkoff for breast and cervical cancer research in the instructions which accompany State income tax return forms, which shall include the listing of an address furnished to it by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds. The Pennsylvania Breast Cancer Coalition shall conduct a public information campaign on the opportunity to contribute to breast and cervical cancer research to Pennsylvania taxpayers.

(e) Report.--The Pennsylvania Breast Cancer Coalition shall report annually to the chairperson and minority chairperson of the Health and Human Services Committee of the Senate and the chairperson and minority chairperson of the Health Committee of the House of Representatives the amount received from the checkoff plan and how the money was utilized.

(f) Appropriation.--The General Assembly may appropriate funds for breast and cervical cancer research.

§ 2412. Contributions for wild resource conservation.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to the Wild Resource Conservation Fund established under section 5 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) Deduction from refund.--The amount designated by an individual on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Wild Resource Conservation Fund for use as provided in the Wild Resource Conservation Act. The department shall be reimbursed from the fund for administrative costs incurred above and beyond the cost savings the department realizes as a result of individual total refund designations.

(d) Instructions for contributions.--The department shall provide adequate information concerning the Wild Resource Conservation Fund in the instructions which accompany State income tax return forms, which shall include the listing of an address furnished to it by the Wild Resource Conservation Board to which contributions may be sent by taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.--This section shall apply to taxable years beginning on or after January 1, 1997.

§ 2413. Contributions for organ and tissue donation awareness.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund established under 20 Pa.C.S. § 8622 (relating to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

(b) Deduction from refund.--The amount designated by an individual on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall annually determine the total amount designated under this section and shall report the amount to the State Treasurer who shall transfer the amount to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(d) Instructions for contributions.--The department shall provide on its forms or in the instructions which accompany Pennsylvania individual income tax return forms adequate information concerning the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund, which shall include the listing of an address furnished to it by the Organ Donation Advisory Committee to which contributions may be sent by taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.--This section shall apply to taxable years beginning on or after January 1, 1997.

§ 2414. Contributions for juvenile diabetes cure research.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount for juvenile diabetes cure research related to:

(1) Restoring normal blood sugar levels.

(2) Preventing and reversing complications.

(3) Preventing juvenile diabetes.

(b) Deduction from refund.--The amount designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--

(1) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Health for aiding juvenile diabetes cure research.

(2) The Department of Health shall distribute the amounts to institutions of higher education and independent research institutes of this Commonwealth to support projects that have been subject to an established peer and scientific review process identical or similar to the National Institutes of Health review system.

(d) Instructions for contributions.--The department shall provide adequate information concerning the checkoff for juvenile diabetes cure research in the instructions which accompany the Pennsylvania income tax return forms, which shall include the listing of an address furnished to it by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) Report.--The Department of Health shall report annually to the chairperson and minority chairperson of the Health and Human Services Committee of the Senate and the chairperson and minority chairperson of the Health Committee of the House of Representatives the amount received from the checkoff plan and how the money was utilized.

§ 2415. Contributions for military family relief assistance.

(a) Contribution.--Beginning with taxable years ending after December 31, 2004, the department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to a fund for military family relief assistance.

(b) Deduction from refund.--The amount designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Military and Veterans Affairs for contributions to military family relief assistance as provided by statute.

(d) Instructions for contributions.--The department shall provide adequate information concerning the checkoff for military family relief assistance in the instructions which accompany the Pennsylvania income tax return forms, which shall include the listing of an address furnished to it by the Department of Military and Veterans Affairs to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) Report.--The Department of Military and Veterans Affairs shall report annually to the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the Senate and the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives the amount received from the checkoff plan and how the money was utilized.

§ 2416. Contributions for Children's Trust Fund.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to the Children's Trust Fund established in section 8 of the act of December 15, 1988 (P.L.1235, No.151), known as the Children's Trust Fund Act.

(b) Deduction from refund.--The amount designated under subsection (a) by an individual on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount from the General Fund to the Children's Trust Fund.

§ 2417. Contributions for American Red Cross.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to the American Red Cross established under 36 U.S.C. Ch. 3001 (relating to the American National Red Cross).

(b) Deduction from refund.--The amount designated under subsection (a) by an individual on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount from the General Fund to the American Red Cross.

§ 2418. Contributions for tuition account programs.

(a) Contribution.--Beginning with the 2016 Pennsylvania individual income tax return, the department shall provide a space on the income tax return form by which a taxpayer who is an account owner may voluntarily designate a contribution to a beneficiary's Tuition Account Guaranteed Savings Program or the Tuition Account Investment Program established under the act of April 3, 1992 (P.L.28, No.11), known as the Tuition Account Programs and College Savings Bond Act.

(b) Deduction from refund.--The amount designated under subsection (a) by a taxpayer on the income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the amount designated under this section and shall report the amount to the State Treasurer, who shall transfer the amount from the General Fund to the appropriate account within the Tuition Account Guaranteed Savings Program or the Tuition Account Investment Program.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Account owner." As defined in section 302 of the Tuition Account Programs and College Savings Bond Act.

"Beneficiary." As defined in section 302 of the Tuition Account Programs and College Savings Bond Act.

§ 2419. Contributions for pediatric cancer research.

(a) Contribution.--The department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution of any amount to be utilized for pediatric cancer research. On or before December 1 of each year, the Secretary of Health shall designate hospitals within this Commonwealth conducting pediatric cancer research that are eligible to receive funding under this section for the following calendar year.

(b) Deduction from refund.--The amount designated on the individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the

Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount from the General Fund to the Pennsylvania Cancer Control, Prevention and Research Advisory Board within the Department of Health.

(d) Instructions for contributions.--The department shall provide adequate information concerning the checkoff for pediatric cancer research in the instructions that accompany State income tax return forms, which shall include the listing of an address furnished to it by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds. The Department of Health shall conduct a public information campaign on the availability of this opportunity to Pennsylvania taxpayers.

(e) Report.--The Department of Health shall report annually to the chairperson and minority chairperson of the Health and Human Services Committee of the Senate and the chairperson and minority chairperson of the Health Committee of the House of Representatives the amount received from the checkoff plan and how the money was utilized.

§ 2420. Contributions for Veterans' Trust Fund.

(a) Contribution.--For taxable years beginning after December 31, 2019, the department shall provide a space on the Pennsylvania individual income tax return form where an individual may voluntarily designate a contribution, in any amount, to the Veterans' Trust Fund.

(b) Deduction from refund.--The amount designated on the individual income tax return shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) Total designation.--The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount to the Veterans' Trust Fund.

(d) Instructions for contributions.--The department shall provide adequate information concerning the checkoff for the Veterans' Trust Fund in its instructions that accompany the State income tax return forms, which shall include the listing of an address furnished by the Department of Military and Veterans Affairs to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) Report.--The Department of Military and Veterans Affairs shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over military and veterans affairs on the amount received from the checkoff plan and how the funds were utilized.

CHAPTER 25

WITHHOLDING OF TAX

Subchapter

A. Withholding Tax Generally

B. Withholding Tax on Income from Sources Within Commonwealth

SUBCHAPTER A

WITHHOLDING TAX GENERALLY

Sec.
2501. Definitions.
2502. Requirement of withholding tax.
2503. Withholding tax requirement for nonemployer payors.
2504. Information statement.
2505. Information statement for nonemployer payors.
2506. Information statement for payees.
2507. Time for filing withholding returns.
2508. Time for filing payors' returns.
2509. Payment of taxes withheld.
2510. Payment of taxes withheld for nonemployer payors.
2511. Liability for withheld taxes.
2512. Payor's liability for withheld taxes.
2513. Failure to withhold.
2514. Bulk and auction sales and transfers and notice.
2515. Payor's failure to withhold.
2516. Designation of third parties to perform acts required of employers.
2517. When withholding not required.

§ 2501. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Payee." The person receiving the payments subject to withholding under this subchapter.

"Payments." The term shall not include a partner or shareholder's distributive share of income from a partnership or Pennsylvania S corporation.

"Payor." The person required to withhold under this subchapter.

§ 2502. Requirement of withholding tax.

(a) General rule.--An employer maintaining an office or transacting business within this Commonwealth and making payment of compensation to a resident individual or a nonresident individual taxpayer performing services on behalf of the employer within this Commonwealth shall deduct and withhold from the employee's compensation for each payroll period a tax computed in a manner as to result in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for the year with respect to the compensation. The method of determining the amount to be withheld shall be prescribed by regulations of the department.

(b) Lottery winnings.--If the Pennsylvania State Lottery or a person making a Pennsylvania State Lottery prize payment in the form of an annuity is required to withhold Federal income tax under section 3402 of the Internal Revenue Code of 1986 or backup withholding under section 3406 of the Internal Revenue Code of 1986 from a gambling or lottery prize payment awarded by the Pennsylvania State Lottery that is taxable under this chapter, the Pennsylvania State Lottery or the person making the annuity payment shall deduct and withhold from the prize payment an amount equal to the amount of the prize payment subject to withholding under section 3402 or 3406 of the Internal Revenue Code of 1986 multiplied by the tax rate in effect under this subpart at the time the prize payment is made.

§ 2503. Withholding tax requirement for nonemployer payors.

(a) General requirements.--Notwithstanding the provisions of section 2502 (relating to requirement of withholding tax), a person shall deduct and withhold from the payments an amount equal to the net amount of the payments multiplied by the tax rate specified under section 2201(b) (relating to imposition of tax) if the person:

(1) makes payments of income from sources within this Commonwealth described in section 2203(a)(1) or (2) (relating to classes of income) to either a nonresident individual or an entity that is disregarded under section 2251 (relating to treatment of unincorporated entities with single owners) that has a nonresident member; and

(2) is required under section 2707(f)(1) (relating to requirements concerning returns, notices, records and statements) to file a copy of form 1099-MISC or 1099-NEC with the department regarding the payments.

(b) Optional withholding.--Withholding of tax by payors is optional and at the discretion of the payor with respect to payees who receive payments of less than $5,000 annually from the payor.

(c) Nonapplicability.--This section shall not apply to payments made by a payor to a payee if the payor is any of the following:

(1) The United States or an agency or instrumentality of the United States.

(2) The Commonwealth or an agency, instrumentality or political subdivision of the Commonwealth.

(d) Regulations.--The department may prescribe regulations to implement and clarify the withholding requirement specified in this section.

§ 2504. Information statement.

(a) Statement.--

(1) An employer required to deduct and withhold tax

under section 2502(a) (relating to requirement of withholding tax) shall furnish to each employee paid compensation during the calendar year a written statement in the manner and form prescribed by the department showing:

(i) The amount of compensation paid by the employer to the employee.

(ii) The amount deducted and withheld as tax under section 2502(a).

(iii) Other information as the department shall prescribe.

(2) Each statement required by this section for a calendar year shall be furnished to the employee on or before January 31 of the year succeeding the calendar year.

(3) If the employee's employment is terminated before the close of the calendar year, the employer shall furnish the statement to the employee at any time after the termination but no later than January 31 of the year succeeding the calendar year.

(4) If an employee who is terminated before the close of the calendar year requests the employer in writing to furnish the employee the statement at an earlier time and, if there is no reasonable expectation on the part of the employer and employee of further employment during the calendar year, the employer shall furnish the statement to the employee on or before the 30th day after the day of the request or the 30th day after the day on which the last payment of wages is made, whichever occurs later.

(b) Lottery winnings.--A person required to deduct and withhold tax under section 2502(b) shall report the prize and the amount of withholding to the taxpayer on Internal Revenue

Service Form W-2G or similar form used for reporting Federal income tax withholding from the prize.

§ 2505. Information statement for nonemployer payors.

(a) Form to be furnished.--A payor required to deduct and withhold tax under section 2503 (relating to withholding tax requirement for nonemployer payors) shall furnish to a payee to whom the payor has paid income from sources within this Commonwealth during the calendar year a copy of form 1099-MISC or 1099-NEC required under section 2707(f)(1) (relating to requirements concerning returns, notices, records and statements).

(b) Time frame.--The copy of form 1099-MISC or 1099-NEC required by this section for each calendar year shall be forwarded to the payee on or before March 1 of the year succeeding the calendar year.

§ 2506. Information statement for payees.

A payee receiving a copy of form 1099-MISC or 1099-NEC from a payor under section 2505 (relating to information statement for nonemployer payors) shall file a duplicate of the form with the payee's State income tax return.

§ 2507. Time for filing withholding returns.

(a) Quarterly filing.--

(1) An employer required to deduct and withhold tax under section 2502(a) (relating to requirement of withholding tax) shall file a quarterly withholding return on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) Quarterly returns shall be filed with the department at the department's main office or at any branch office that

the department designates for filing returns.

(b) Time frame for filing.--A person required to deduct and withhold tax under section 2502(b) shall file a withholding tax return at the same time the person is required to file the person's annual return of withheld Federal income tax, designated as IRS Form 945, from nonpayroll payments. The return shall be filed with the department.

§ 2508. Time for filing payors' returns.

(a) Quarterly filing.--A payor required to deduct and withhold tax under section 2503 (relating to withholding tax requirement for nonemployer payors) shall file a quarterly withholding return on or before the last day of April, July, October and January for each three-month period ending the last day of March, June, September and December.

(b) Manner of filing.--The quarterly returns shall be filed with the department in the manner prescribed by regulation.

§ 2509. Payment of taxes withheld.

(a) Payment of tax by employer.--

(1) An employer withholding tax under section 2502(a) (relating to requirement of withholding tax) shall pay over to the department or to a depository designated by the department the tax required to be deducted and withheld under section 2502(a). The following shall apply:

(i) If the aggregated amount required to be deducted and withheld by an employer for a calendar year is expected to be less than $1,200, the employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 2507 (relating to time for filing withholding returns).

(ii) If the aggregated amount required to be deducted and withheld by an employer for a calendar year is expected to be $1,200 or more but less than $4,000, the employer shall pay the tax monthly on or before the 15th day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(iii) If the aggregated amount required to be deducted and withheld by an employer for a calendar year is expected to be $4,000 or more but less than $20,000, the employer shall pay the tax semimonthly within three banking days after the close of the semimonthly period.

(iv) If the aggregated amount required to be deducted and withheld by an employer for a calendar year is expected to be $20,000 or more, the employer shall pay the tax on the Wednesday after payday if the payday falls on a Wednesday, Thursday or Friday and on the Friday after payday if the payday falls on a Saturday, Sunday, Monday or Tuesday.

(2) (i) If an employer fails to deduct, truthfully account for or pay the tax withheld or file returns as prescribed by this chapter, the department may serve a notice on the employer requiring the employer to:

(A) withhold taxes which are required to be deducted under section 2502(a);

(B) deposit the taxes in a bank approved by the department in a separate account in trust for and payable to the department; and

(C) keep the amount of the tax in the account until payment is made to the department.

(ii) The notice under subparagraph (i) shall remain in effect until the department serves a notice of cancellation on the employer.

(b) Frequency of remittance.--A person deducting and withholding tax under section 2502(b) shall remit the tax to the department on the same frequency that the person is required to remit Federal income tax withheld from nonpayroll payments.

§ 2510. Payment of taxes withheld for nonemployer payors.

A payor withholding tax under section 2503 (relating to withholding tax requirement for nonemployer payors) shall pay over to the department or a depository designated by the department the tax required to be deducted and withheld under section 2503. The time for paying over the withheld tax shall be as specified in section 2509(a)(1)(i), (ii), (iii) and (iv) (relating to payment of taxes withheld).

§ 2511. Liability for withheld taxes.

(a) Liability.--A person required to deduct and withhold tax under section 2502 (relating to requirement of withholding tax) is liable for the tax.

(b) Enforcement.--

(1) For purposes of assessment and collection, an amount required to be withheld and paid to the department and additions to tax penalties and interest shall be considered the tax of the person.

(2) Taxes deducted and withheld under section 2502 or under color of section 2502 shall constitute a trust fund for the Commonwealth and shall be enforceable against the person, the person's representative or any other person receiving a part of the fund.

§ 2512. Payor's liability for withheld taxes.

(a) Liability.--A payor required to deduct and withhold tax under section 2503 (relating to withholding tax requirement for nonemployer payors) is liable for the tax.

(b) Enforcement.--

(1) For purposes of assessment and collection, an amount required to be withheld and paid to the department and additions to tax, penalties and interest shall be considered the tax of the payor.

(2) Taxes deducted and withheld from payees under section 2503 or under color of section 2503 shall constitute a trust fund for the Commonwealth and shall be enforceable against the payor, the payor's representative or any other person receiving a part of the fund.

§ 2513. Failure to withhold.

If a person fails to deduct and withhold tax as prescribed in this subchapter but subsequently pays the tax, the tax which was required to be deducted and withheld shall not be collected from the person, but the person shall be liable for penalties, interest or additions imposed for failure to deduct and withhold the tax.

§ 2514. Bulk and auction sales and transfers and notice.

An employer liable for filing returns in accordance with this subpart who sells, causes to be sold at auction or sells or transfers in bulk 51% or more of the employer's stock of goods, wares, merchandise, fixtures, machinery, equipment, buildings or real estate held by or on behalf of the employer shall be subject to section 1403 of the Fiscal Code.

§ 2515. Payor's failure to withhold.

If a payor fails to deduct and withhold tax as prescribed under section 2503 (relating to withholding tax requirement for nonemployer payors) but subsequently pays the tax, the tax which was required to be deducted and withheld shall not be collected from the payor, but the payor shall be liable for penalties, interest or additions imposed for failure to deduct and withhold.

§ 2516. Designation of third parties to perform acts required of employers.

If a fiduciary, agent or other person has the control, receipt, custody or disposal of or pays the compensation of an employee or a group of employees employed by one or more employers, the department may designate the fiduciary, agent or other person to perform acts required of employers under this subpart as the department may by regulation prescribe. Except as otherwise prescribed by the department, all provisions of this subpart which are applicable to an employer shall be applicable to a fiduciary, agent or other person.

§ 2517. When withholding not required.

On and after January 1, 1975, an employer shall not be required to withhold tax upon payment of wages to an employee if the employee can certify that the employee:

(1) incurred no personal income tax liability for the preceding tax year; and

(2) anticipates no liability for personal income tax for the current taxable year.

SUBCHAPTER B

WITHHOLDING TAX ON INCOME FROM SOURCES WITHIN COMMONWEALTH shareholders.

2524. Liability for tax, interest, penalties and additions.

2525. Withholding on income.

2526. Annual withholding statement.

§ 2521. General rule.

(a) Time for payment.--

(1) If a partnership, estate, trust or Pennsylvania S corporation receives income from sources within this Commonwealth for a taxable year and a portion of the income is allocable to a nonresident partner, beneficiary, member or shareholder of the partnership, estate, trust or Pennsylvania S corporation, the partnership, estate, trust or Pennsylvania S corporation shall pay a withholding tax under this section at the time and in the manner prescribed by the department.

(2) Notwithstanding any other provision of this subpart, all withholding tax shall be paid on or before the 15th day of the fourth month following the end of the taxable year.

(b) Applicability.--This section shall not apply to a publicly traded partnership as defined under section 7704 of the Internal Revenue Code of 1986 with equity securities registered with the Securities and Exchange Commission under 15 U.S.C. § 781 (relating to registration requirements for securities).

§ 2522. Amount of withholding tax.

(a) Calculation.--The amount of tax withheld from nonresidents and the amount of withholding tax payable under section 2521 (relating to general rule) shall be equal to the income from sources within this Commonwealth of the partnership, association or Pennsylvania S corporation which is allocable to nonresident partners, members or shareholders multiplied by the tax rate specified in section 2201(b) (relating to imposition of tax).

(b) Income, gain, loss or deduction.--There shall not be taken into account items of income, gain, loss or deduction to the extent allocable to a partner, member or shareholder who is not a nonresident.

(c) Share of income.--There shall not be taken into account a share of income of a nonresident partner, member or shareholder from sources within this Commonwealth to the extent that the amount was subject to withholding under section 2526 (relating to annual withholding statement) and to the extent withholding actually occurred under section 2525 (relating to withholding on income) by the time withholding is required to be made by the partnership, association or Pennsylvania S corporation under section 2521.

§ 2523. Treatment of nonresident partners, members or shareholders.

(a) Credit for partner, member, shareholder or holder of beneficial interest.--

(1) A nonresident partner, member, shareholder or holder of a beneficial interest shall be allowed a credit for the partner's, member's, shareholder's or holder of a beneficial interest's share of the withholding tax paid by the partnership, association or Pennsylvania S corporation.

(2) The credit shall be allowed for the partner's, member's, shareholder's or holder of a beneficial interest's taxable year in which the partnership's, association's or Pennsylvania S corporation's taxable year for which the tax was paid ends.

(b) Nonresident lessor credit.--

(1) A nonresident lessor shall be allowed a credit for

the nonresident lessor's share of the withholding tax paid by the lessee under section 2525 (relating to withholding on income).

(2) The credit under this subsection shall be allowed for the nonresident lessor's taxable year in which the lessee withheld tax.

§ 2524. Liability for tax, interest, penalties and additions.

If a partnership, association or Pennsylvania S corporation fails to pay withholding tax as prescribed in this subchapter but subsequently pays the tax, the partnership, association or Pennsylvania S corporation shall be liable for penalties, interest or additions imposed for failure to properly withhold the tax.

§ 2525. Withholding on income.

(a) Income tax on lease payments.--A lessee of real estate in this Commonwealth who makes a lease payment in the course of a trade or business to a nonresident lessor shall withhold Pennsylvania personal income tax on lease payments to the nonresident lessor.

(b) Amount of tax.--A lessee shall withhold from each payment made to a lessor an amount equal to the net amount payable to the lessor multiplied by the tax rate specified under section 2201(b) (relating to imposition of tax).

(c) Optional withholding.--The withholding of tax under this section is optional and at the discretion of the lessee if the lessee pays the lessor less than $5,000 annually on a lease.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"In the course of a trade or business." Includes a person, other than a tenant of residential property, making lease payments to a nonresident or agent of a nonresident who collects rent or lease payments on behalf of a nonresident owner.

"Lease payment." The following shall apply:

(1) The term includes rents, royalties, bonus payments, damage payments, delay rents and other payments made under a lease, other than compensation derived from intangible property having a taxable or business situs in this Commonwealth.

(2) Classification as a "lease payment" under this section is solely for the purposes of establishing withholding requirements and is not relevant for a determination as to the proper income classification of a lease payment.

"Lessor." Includes an individual, estate or trust.

§ 2526. Annual withholding statement.

(a) Annual statement to lessor.--A lessee shall furnish to a lessor an annual statement at the time and in the manner prescribed by the department showing the total payments made by the lessee to the lessor during the preceding taxable year and showing the amount of the tax deducted and withheld from the payments under section 2525 (relating to withholding on income).

(b) Annual statement to department.--A lessee shall file with the department an annual statement at the time and in the manner prescribed by the department showing the total payments made to each lessor subject to withholding during the preceding taxable year or any portion of the preceding taxable year and the total amount of tax deducted and withheld under section 2525.

(c) Duplicate.--A lessor shall file a duplicate of the annual statement furnished by the lessee under this section with the lessor's State income tax return.

CHAPTER 26

ESTIMATED TAX

Sec.

2601. Definitions.

2602. Declarations of estimated tax.

2603. Payments of estimated tax.

§ 2601. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Estimated tax." The amount that an individual, trust or estate estimates to be the tax due under this subpart for the taxable year, less the amount estimated to be the sum of credits allowable against the tax under this subpart.

§ 2602. Declarations of estimated tax.

(a) Declaration.--A resident or nonresident individual, trust or estate shall, at the time specified under this section, make a declaration of the estimated tax for the taxable year containing information as the department may prescribe by regulation, if the individual's, trust's or estate's income, other than from income on which tax is withheld under this subchapter, is expected to exceed $8,000.

(b) Joint declaration.--

(1) Spouses may make a joint declaration of estimated tax under this section as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several.

(2) If a joint declaration is made but the spouses elect

to determine each spouse's taxes separately, the spouses may choose to treat the estimated tax for the year as the estimated tax of either spouse or to divide the estimated tax between them.

(c) Date for filing.--Except as otherwise provided in this section, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual, trust or estate determines that the income on which no tax has been withheld under this subchapter is expected to exceed $8,000 in the taxable year. The following shall apply:

(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 the taxable 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 the taxable 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.

(d) Income from farming.--

(1) Notwithstanding subsection (c), a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least two-thirds of the individual's total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year.

(2) If a farmer files a final return and pays the entire

tax by March 1, the return may be considered the declaration due on or before January 15.

(e) Estimated tax less than $100.--A declaration of estimated tax of an individual, trust or estate having a total estimated tax for the taxable year of $100 or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(f) Amendment of declaration.--An individual, trust or estate may amend a declaration under regulations of the department.

(g) Filing and paying for full year.--If, on or before January 31 of the year succeeding a taxable year, an individual, trust or estate files a return for the entire taxable year for which a declaration was required to be filed within the time prescribed under subsection (c)(4) and pays the full amount of the tax due on the return:

(1) The return shall be considered the declaration which was required to be filed no later than January 15.

(2) The return shall be considered as the amendment permitted under subsection (f) to be filed on or before January 15, if the amount of tax shown on the return is greater than the amount of estimated tax shown in a declaration previously made.

(h) Noncalendar taxable year.--This subpart shall apply to a taxable year other than a calendar year by the substitution of the months of the fiscal year for the corresponding months specified in this section.

(i) Short taxable year.--This subpart shall apply to an individual, trust or estate having a taxable year of less than 12 months in accordance with regulations of the department.

§ 2603. Payments of estimated tax.

(a) Payments generally.--Subject to the provisions of section 2602(i) (relating to declarations of estimated tax), the estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments as follows:

(i) The first installment shall be paid at the time the declaration is filed.

(ii) The second installment shall be paid on or before the succeeding June 15.

(iii) The third installment shall be paid on or before the succeeding September 15.

(iv) The fourth installment shall be paid on or before the succeeding January 15.

(2) If the declaration is not required to be filed on or before April 15 of the taxable year and is filed after April 15 but before June 16 of the taxable year, the estimated tax shall be paid in three equal installments as follows:

(i) The first installment shall be paid at the time the declaration is filed.

(ii) The second installment shall be paid on the succeeding September 15.

(iii) The third installment shall be paid on the succeeding January 15.

(3) If the declaration is not required to be filed on or before June 15 of the taxable year and is filed after June 15 but before September 16 of the taxable year, the estimated tax shall be paid in two equal installments as follows:

(i) The first installment shall be paid at the time the declaration is filed.

(ii) The second installment shall be paid on the succeeding January 15.

(4) If the declaration is not required to be filed on or before September 15 of the taxable year and is filed after September 15 of the taxable year, the estimated tax shall be paid in full at the time the declaration is filed.

(5) If the declaration is not filed within the time prescribed in this section or after the expiration of an extension of time, paragraphs (2), (3) and (4) shall not apply, and all installments of estimated tax which were due and payable on or before the date the declaration was filed shall be paid at the time the declaration is filed. Remaining installments shall be paid at the times and in the amounts as if the declaration had been filed when due.

(b) Farming.--If an individual described in section 2602(d) (relating to declarations of estimated tax) makes a declaration of estimated tax after September 15 of the taxable year but before the following March 1, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) Amendment of declaration.--

(1) If an amendment of a declaration is filed, the remaining unpaid installments, if any, shall be ratably increased or decreased to reflect an increase or decrease in the estimated tax by reason of the amendment.

(2) If an amendment is made after September 15 of the taxable year, an increase in the estimated tax by reason of the amendment shall be paid at the time the amendment is made.

CHAPTER 27

RETURNS AND PAYMENT OF TAX

§ 2701. Returns and liability.

(a) Tax return.--On or before the date when the taxpayer's Federal income tax return is due or would be due if the taxpayer were required to file a Federal income tax return under the Internal Revenue Code of 1954, a tax return under this subpart shall be made and filed by or for every taxpayer having income for the taxable year.

(b) Special provisions for members of armed forces.--

(1) This subsection shall apply to an individual:

(i) serving in the armed forces of the United States in an area designated by the President of the United States by Executive order as a "combat zone" as described in section 7508 of the Internal Revenue Code of 1986, as amended, at any time during a period designated by the President by Executive order as the period of combatant activities in the combat zone;

(ii) hospitalized within or outside the United States as a result of injury received while serving in the combat zone during that time specified in subparagraph (i); or

(iii) serving in a military capacity as a result of a Federal callup to active duty or civilian capacity outside this Commonwealth in support of the armed forces.

(2) The period of service in the area specified in paragraph (1), plus the period of hospitalization within or outside the United States attributable to injury, and the next 180 days shall be disregarded, with respect to tax liability under this subpart, including interest, penalty, additional amount or addition to the tax of the individual, in determining any of the following:

(i) Whether any of the following acts were performed within the time prescribed in this paragraph:

(A) Filing a return of income tax, except income tax withheld at source.

(B) Payment of income tax, except income tax withheld at source, an installment of income tax withheld at source or any other tax liability to the Commonwealth.

(C) Filing a petition for redetermination of a deficiency or review of a decision rendered by the department.

(D) Allowance of a credit or refund of a tax.

(E) Filing a claim for credit or refund of a tax.

(F) Bringing suit upon a claim for credit.

(G) Assessment of a tax.

(H) Giving or making a notice or demand for the payment of a tax or a tax liability to the Commonwealth.

(I) Collection by the department of a tax liability.

(J) Bringing suit by the Commonwealth, or any officer on its behalf, in respect of any liability in respect of any tax.

(K) Any other act required or permitted under this subpart specified in regulations prescribed by the department.

(ii) The amount of a credit or refund, including interest.

(3) This subsection shall apply to the spouse of an individual entitled to the benefits under this subsection. This paragraph shall not cause this subsection to apply for a spouse for a taxable year beginning more than one year after the date of termination of combatant activities in a combat zone.

(4) The period of service in the area referred to in this subsection shall include the period during which an individual entitled to benefits under this subsection is in a missing status.

(5) If a qualified individual under paragraph (1) is killed while serving in a combat zone, the tax liability of the decedent for the year of death and the immediately prior

year shall be waived by the Commonwealth.

§ 2702. Return of Pennsylvania S corporation.

(a) Annual return.--Each Pennsylvania S corporation shall make a return for each taxable year stating all of the following:

(1) All items of gross income and deductions.

(2) The names and addresses of all persons owning stock in the corporation at any time during the taxable year.

(3) The number of shares of stock owned by each shareholder at all times during the taxable year.

(4) The amount of money and other property distributed by the corporation during the taxable year to each shareholder.

(5) The date of each distribution.

(6) Each shareholder's pro rata share of each item of the corporation for the taxable year.

(7) Other information as the department may require.

(b) Time for filing.--The return shall be filed on or before 30 days after the date the corporation's Federal income tax return is due.

(c) Copy of income tax return required.--Each Pennsylvania S corporation shall also submit to the department a true copy of the income tax return filed with the Federal Government at the time the return required under subsection (a) is filed.

(d) Statement to shareholders.--Each Pennsylvania S corporation required to file a return under subsection (a) for a taxable year shall, on or before the day on which the return for the taxable year was filed, furnish to each person who is a shareholder at any time during the taxable year a written statement of the shareholder's pro rata share of each item on the corporate return on a form required by the department.

§ 2703. Returns of married, deceased or disabled individuals and fiduciaries.

(a) Separate liabilities.--If the income tax liability of a spouse is determined on a separate return, each spouse's tax liabilities under this subpart shall be separate.

(b) Joint liabilities.--If the income tax liabilities of each spouse are determined on a joint return, the spouses' tax liabilities under this subpart shall be joint and several.

(c) Nonresident spouse.--

(1) Subject to paragraph (2), if either spouse is a resident and the other is a nonresident, the spouses shall file separate returns under this subpart on a single form or separate forms as required by the department, in which event the spouses' tax liabilities under this subpart shall be separate, except as provided in subsection (d).

(2) Notwithstanding paragraph (1), spouses may determine their joint taxable income as if both were residents, in which event the spouses' tax liabilities under this subpart shall be joint and several.

(d) Excess credited to spouse.--

(1) Subject to paragraph (2), if spouses file separate tax returns under this subpart on a single form under subsection (a) or (c), the following shall apply:

(i) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which the spouse is separately liable, the excess may be applied by the department to the credit of the other spouse if the sum of the payments by the other spouse, including withheld and estimated taxes, is less than the amount of the tax for which the other spouse is separately liable.

(ii) If the sum of the payments made by both spouses with respect to the taxes for which the spouses are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, a refund of the excess may be made payable to both spouses or, if either is deceased, to the survivor spouse.

(2) Paragraph (1) shall not apply if the return of either spouse includes a demand that an overpayment made by either spouse shall be applied only on account of the separate liability.

(e) Return of deceased individual.--Except as provided under subsections (f) and (g), the final return for a deceased individual shall be made, signed and filed by the executor, administrator or other personal representative charged with the deceased individual's property.

(f) Return of surviving spouse.--

(1) (i) During the year in which a spouse dies, a surviving spouse may file a return for the year jointly with the final return of the deceased spouse if the joint return could have been filed if both spouses were living for the entire taxable year.

(ii) If a personal representative, executor, administrator or other fiduciary is appointed on behalf of the deceased spouse before the deceased spouse's tax return is filed, the surviving spouse may not file a joint return without the consent of the fiduciary.

(iii) If a joint return is filed, both the fiduciary of the deceased spouse's estate and the surviving spouse must sign the joint return.

(2) (i) A surviving spouse may make, sign and file the final tax return of the deceased spouse if the deceased spouse did not previously file a return for that taxable year and if a personal representative, executor or administrator has not been appointed by the time the return is made, signed and filed.

(ii) If the surviving spouse properly files a final return for the deceased spouse under this paragraph, a fiduciary who is later appointed for the deceased spouse may supersede the final return filed by the surviving spouse by filing a separate return for the deceased spouse.

(iii) A joint return improperly filed by the surviving spouse or superseded by the fiduciary shall be treated as void.

(iv) If the surviving spouse files a return jointly with the deceased spouse's return under this paragraph and the return is superseded by the filing of a return by the deceased spouse's fiduciary, the surviving spouse shall be required to file a separate return within 90 days of the filing of the fiduciary's return.

(v) The surviving spouse's separate return shall be deemed to be filed on:

(A) the day the joint return was filed if the joint return is filed on time; or

(B) the date the department receives it.

(g) Joint return for deceased spouses.--

(1) If both taxpayers die during the same tax year, a final return for each deceased spouse may be jointly filed if

a joint return could have been filed had both spouses lived for the entire taxable year and with the consent of the personal representatives, executors or administrators of both deceased spouses under subsection (f) by the due date, including extensions, of the joint tax return.

(2) Both fiduciaries must sign the joint return under paragraph (1).

(h) Individual unable to complete return.--The return for an individual who is unable to make a return by reason of age or disability shall be made and filed by a guardian, committee, fiduciary or other person charged with the care of the individual and the individual's property or by a duly authorized agent.

(i) Estates and trusts.--The return for an estate or trust shall be made and filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them. If the executor of the estate and trustee of the trust make an election under section 645 of the Internal Revenue Code of 1986, as amended, to treat the income of the trust as part of the estate, the fiduciary may make and file a joint tax return for the estate and trust under this subsection for the taxable years when the trust income is reported as part of the estate income in accordance with section 645 of the Internal Revenue Code of 1986, as amended. If the income tax liabilities of the estate and trust are filed on a joint tax return under this subsection, the tax liabilities of the estate and trust shall be joint and several. The provisions of subsection (d) shall be applicable to a joint tax return filed under this subsection.

§ 2704. Time and place for filing returns and paying tax.

(a) Payment.--A person required to make and file a return under this subpart shall, without assessment, notice or demand, pay a tax due to the department on or before the date fixed for filing the return, as determined without regard to an extension of time for filing the return.

(b) Place and documents for filing.--The department shall prescribe by regulation the following:

(1) The place for filing a return.

(2) Forms for returns, declarations, statements or other documents required under this subpart.

(3) Payment of a tax.

§ 2704.1. Electronic payment.

A payment in the amount of $15,000 or more remitted to the department for the tax imposed under this subpart shall be remitted electronically as prescribed by the department. This section shall not apply to employer withholding payments under Chapter 25 (relating to withholding of tax) and section 9 of the Fiscal Code.

§ 2705. Signing of returns and other documents.

(a) Return to be signed.--A return other than an estimated return under section 2602 (relating to declarations of estimated tax), statement or other document required to be made under this subpart shall be signed in accordance with regulations or instructions prescribed by the department.

(b) Partnerships.--A return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the partner is authorized to sign on behalf of the partnership.

(c) Certification of return, declaration, statement or other document.--The making or filing of a return, declaration, statement or other document or copy of a return, declaration, statement or other document required to be made or filed under this subpart shall constitute a certification by the person making or filing the return, declaration, statement or other document or copy of a return, declaration, statement or other document that the statements contained in the return, declaration, statement or other document are true and that a copy filed is a true copy.

§ 2706. Extension of time.

(a) Authorization.--The department may, upon application, grant a reasonable extension of time for filing a return, declaration, statement, or other document required under this subpart on terms and conditions as the department may require.

(b) Limitation.--Except for a taxpayer who is outside the United States, an extension for filing a return, declaration, statement or other document shall not exceed six months.

§ 2707. Requirements concerning returns, notices, records and statements.

(a) Regulations.--

(1) The department may prescribe by regulation for the following:

(i) The keeping of records.

(ii) The content and form of returns, declarations, statements and other documents.

(iii) The filing of copies of Federal income tax returns and determinations.

(2) The department may require a person, by regulation or notice served upon the person, to make returns, render

statements or keep records as the department deems sufficient to show whether or not the person is liable for tax under this subpart.

(b) Identifying information.--

(1) When required by regulation prescribed by the department:

(i) A person required under this subpart to make a return, declaration, statement or other document shall include in the return, declaration, statement or other document an identifying number as may be prescribed for securing proper identification of the person.

(ii) A person with respect to whom a return, declaration, statement or other document is required under this subpart to make a return, declaration, statement or other document with respect to another person shall request from the other person, and shall include in a return, declaration, statement or other document, an identifying number as may be prescribed for securing proper identification of the other person.

(2) For purposes of this section, the department may require information necessary to assign an identifying number to a person.

(c) Partnerships, estates and trusts.--

(1) (i) Each partnership, estate or trust having a resident partner or resident beneficiary or each partnership, estate or trust having income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction and other pertinent information as the department may require.

(ii) The return shall be filed on or before the 15th day of the fourth month following the close of each taxable year.

(iii) For purposes of this subsection, "taxable year" means the year or period which would be a taxable year of the partnership if the partnership is subject to tax under this subpart.

(2) Each partnership, estate or trust required to file a return under paragraph (1) shall also file with the department a true copy of the income tax return filed with the Federal Government at the time the return required under paragraph (1) is filed.

(3) Each partnership, estate or trust required to file a return under paragraph (1) for any taxable year shall, on or before the day the return is filed, furnish to each partner or nominee for another person or to each beneficiary to whom the income or gains of the estate or trust is taxable a written statement of the partner's pro rata share of each item on the partnership return or the beneficiary's pro rata share of income on the estate or trust return in a form required by the department.

(4) (i) A partnership required to file a return under paragraph (1) for a taxable year shall, on or before the day the return is filed, furnish to each partner classified as a corporation, partnership or disregarded entity for Federal income tax purposes a copy of the Pennsylvania income tax form reporting corporate partner apportioned business income or loss.

(ii) A reporting partnership shall not be required to provide a partner who is either a partnership or disregarded entity a copy of the form if the reporting partnership is able to determine that an entity classified as a corporation for Federal income tax purposes is not an indirect owner of the reporting partnership.

(d) Returns of information.--

(1) The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or credit in any calendar year of amounts of $10 or more to a taxpayer.

(2) Returns may be required of:

(i) A person, including a lessee or mortgagor of real or personal property, a fiduciary and an employer.

(ii) All officers and employees of this Commonwealth.

(iii) A municipal corporation or political subdivision of this Commonwealth having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(3) A duplicate of the statement of tax withheld on compensation required to be furnished by an employer to an employee shall constitute the return of information required to be made under this section with respect to compensation.

(e) Gambling and lottery winnings.--A person who is required to make a form W-2G return to the United States Secretary of the Treasury in regard to taxable gambling or lottery winnings from sources within this Commonwealth shall file a copy of the form with the department by March 1 of each year or, if filed electronically, by March 31 of each year.

(f) Form 1099-MISC.--

(1) A person shall file a copy of form 1099-MISC with the department and send a copy of the form to a payee by March 1 of each year or, if filed electronically, by March 31 of each year if the person:

(i) makes payments of Pennsylvania source income that fall within any of the classes of income enumerated in section 2203(a) (relating to classes of income);

(ii) makes payments to an individual, an entity treated as a partnership for tax purposes or a single member limited liability company; and

(iii) is required to make a form 1099-MISC or 1099-NEC return to the United States Secretary of the Treasury with respect to the payments.

(2) If the form 1099-MISC or 1099-NEC filed by a payor with the United States Secretary of the Treasury does not include the State income and State tax withheld as required under section 2503 (relating to withholding tax requirement for nonemployer payors), the payor shall update the copies of form 1099-MISC or 1099-NEC to be provided under this section to reflect the information prior to filing the form 1099-MISC with the department and sending the form 1099-MISC to the payee.

(3) If the payor is required to perform electronic filing for Pennsylvania employer withholding purposes, the form 1099-MISC or 1099-NEC shall be filed electronically with the department.

(4) As used in this subsection, the following words and

phrases shall have the meanings given to them in this paragraph unless the context clearly indicates otherwise:

"Payee." The person receiving the payments subject to withholding under this subsection.

"Payments." The term does not include a partner or shareholder's distributive share of income from a partnership or Pennsylvania S corporation.

"Payor." The person required to withhold under this subsection.

(g) List of partners, members, beneficiaries or shareholders.--

(1) (i) Each estate, trust, Pennsylvania S corporation or partnership, other than a publicly traded partnership, shall maintain at the end of the entity's taxable year an accurate list of partners, members, beneficiaries and shareholders.

(ii) The list shall include the name, current address and tax identification number of all existing partners, members, beneficiaries and shareholders and of all partners, members, beneficiaries and shareholders who were admitted or who withdrew during the taxable year, including the date of admittance or withdrawal.

(2) If the entity under paragraph (1) does not maintain an accurate list as required, the tax, penalty and interest with respect to the entity shall be considered the tax, penalty and interest of the partnership, estate, trust or Pennsylvania S corporation and of the general partner, tax matters partner, corporate officer or trustee.

§ 2708. Timely mailing treated as timely filing and payment.

(a) Timely mailing.--Notwithstanding the provisions of any

State tax law, when a report or payment of all or a portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with the law if the letter transmitting the report or payment of the tax received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is due.

(b) Receipt as evidence.--For the purposes of this subpart, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

§ 2709. Procedure for claiming special tax provisions.

The following procedures shall be employed for claiming special tax provisions:

(1) A claimant may claim the special tax provisions upon the expiration of the taxable year in which the claimant filed an annual return under this subpart. Notwithstanding any other provisions of this subpart, the department shall promulgate rules or regulations as it deems necessary to implement the provisions of this section.

(2) If a claimant receives income as defined in this subpart, other than compensation from an employer, the claimant may claim the special tax provisions in connection with the filing of estimated tax returns.

§ 2710. Proof of eligibility.

(a) Establishment of eligibility procedures.--The department shall establish rules, regulations, schedules and other procedures necessary for the submission and establishment of proof of eligibility of persons for special tax provisions or other matters relating to the provisions of this subpart.

(b) Procedures.--Procedures may include the submission of requisite information and certifications upon forms provided by the department, including special tax return or report forms as necessary.

§ 2711. Paid tax return preparers and required information on personal income tax returns.

(a) Signature and tax identification number.--For taxable years beginning on or after January 1, 2020, a personal income tax return prepared by a paid tax return preparer shall be signed by the paid tax return preparer and shall bear the paid tax return preparer's Internal Revenue Service preparer tax identification number.

(b) Administrative penalty.--

(1) The department may impose an administrative penalty of $50 on a paid tax return preparer each time the paid tax return preparer fails to sign the return or fails to provide the preparer's tax identification number.

(2) The maximum amount imposed on any individual paid tax return preparer under paragraph (1) shall not exceed $25,000 per paid tax return preparer in a calendar year.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Paid tax return preparer." A person who prepares for compensation, or employs one or more persons to prepare for compensation, a personal income tax return required to be filed under this title. Preparation of a substantial portion of a personal income tax return shall be treated as if it were the preparation of the personal income tax return.

CHAPTER 28

PROCEDURE AND ADMINISTRATION

§ 2801. Payment on notice and demand.

Upon receipt of notice and demand from the department, the amount of a tax due under the provisions of this subpart stated in the notice and demand shall be paid.

§ 2802. Assessment.

(a) Duty of department.--The department shall make the inquiries, determinations and assessments of all taxes imposed by this subpart.

(b) Procedure or time for assessment.--If the procedure or time for the assessment of a tax is not otherwise provided for, the department may establish the procedure or time for the assessment of a tax by regulations.

(c) Estimated assessment.--

(1) If a taxpayer fails to file a return required by this subpart, the department may make an estimated assessment of the proper amount of tax owed by the taxpayer based on available information.

(2) A notice of assessment in the estimated amount shall be sent to the taxpayer.

(3) The tax shall be paid within 90 days after a notice of the estimated assessment has been mailed to the taxpayer, unless the taxpayer has filed a petition for reassessment in the manner prescribed by Article XXVII of the Tax Reform Code of 1971 within the 90-day period.

(d) Notice.--A notice of assessment issued by the department under this subpart shall be mailed to the taxpayer. The notice shall specify the basis of the assessment.

§ 2803. Jeopardy assessments.

(a) Jeopardy assessments, filing and notice.--If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, the department may mail or issue notice of the department's finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including interest, penalties and additions.

(b) Closing of taxable year.--The department shall declare the taxable period for a taxpayer immediately terminated and shall cause notice of the finding and declaration to be given to a taxpayer, together with a demand for immediate payment of the tax for the taxable period declared terminated and the tax for the preceding taxable year or as much of the tax as is unpaid if the department believes that a taxpayer is planning to do any of the following:

(1) Leave this Commonwealth to escape tax collection proceedings.

(2) Remove the taxpayer's property from this Commonwealth to escape tax collection proceedings.

(3) Conceal the taxpayer or the taxpayer's property in this Commonwealth to escape tax collection proceedings.

(4) Commit any other act which would prejudice or render ineffectual proceedings to collect the tax for the current or previous taxable year unless the proceedings are brought without delay.

(c) Jeopardy assessments and collection.--

(1) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced immediately after notice is issued to the taxpayer.

(2) (i) The taxpayer may stay collection and prevent the jeopardy assessment from becoming final by filing, within 10 days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section 2702 of the Tax Reform Code of 1971.

(ii) The petition shall be accompanied by a bond or other security in an amount the department deems necessary.

(iii) The amount of the bond or security may not exceed double the amount, including interest, penalties and additions, of tax for which the stay is desired.

(d) Final jeopardy assessment.--If a petition for reassessment, accompanied by bond or other security, is not filed within the 10-day period, the assessment shall become final.

(e) Hearing on jeopardy assessment.--If a taxpayer requests a hearing on the petition for reassessment, the department shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

(f) Action on petition for reassessment.--

(1) The department shall consider the petition for reassessment and notify the taxpayer of the department's decision.

(2) The department's decision as to the validity of the jeopardy assessment shall be final unless the taxpayer, within 90 days after notification of the department's decision, files a petition for review authorized under section 2704 of the Tax Reform Code of 1971.

(g) Presumptive evidence of jeopardy.--

(1) In a proceeding brought to enforce payment of taxes made due and payable under this section, the belief of the department under subsection (a), whether made after notice to the taxpayer or not, is presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy.

(2) A certification by the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

§ 2804. Procedure for reassessment.

A taxpayer against whom an assessment is made may petition the department for a reassessment under Article XXVII of the Tax Reform Code of 1971.

§ 2805. Collection of tax.

The department shall collect taxes imposed under this subpart in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

§ 2806. Collection upon failure to request reassessment, review or appeal.

(a) Time frames.--The department may collect a tax:

(1) Ninety days after the date a copy of the notice of assessment was mailed, if no petition for reassessment has been filed.

(2) Ninety days after the date of mailing of the notice of the department's action on the reassessment, if no petition for review has been filed.

(3) Thirty days after the date of mailing of the notice of the decision of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon the petition, if no decision has been made.

(4) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(b) Administrative remedies to be exhausted.--In a proceeding for the collection of the tax imposed under this subpart, the person against whom the assessment was made shall not be permitted to present a ground of defense that might have been presented to the department, the Board of Finance and Revenue or the Commonwealth Court if the person had properly pursued the administrative remedies under this subpart.

§ 2807. Lien for tax.

(a) Lien.--

(1) If a person liable to pay a tax neglects or refuses to pay the tax on the date the tax becomes collectible, the amount of the tax, together with costs which may accrue in addition to the tax, shall be a lien in favor of the Commonwealth against the real and personal property of the person after the lien has been duly entered and docketed of record by the prothonotary of the county where the property is situated.

(2) A prothonotary may not require, as a condition precedent to the entry of the lien, the payment of costs for entry and docketing of the lien.

(b) Record and priority of lien.--

(1) The department may transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed under this subpart.

(2) A prothonotary receiving a lien from the department shall enter and docket the lien of record in the prothonotary's office. Each lien shall be indexed in the same manner as a judgment.

(3) A lien shall have priority to, and be fully paid before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of real and personal property with which the property may subsequently become charged, or for which the property may subsequently become liable, subject to mortgage or other liens existing and duly recorded at the time the tax lien is recorded, except the cost of sale, the writ upon which the sale is made

and real estate taxes imposed or assessed upon the property.

(4) A writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias if, not less than 10 days before issuance of an execution on the lien, notice of the filing and effect of the lien is sent by certified mail to the taxpayer at the taxpayer's last known mailing address.

(5) The lien shall have no effect upon a stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom the lien has been entered, unless a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

(c) Violation and penalties.--A prothonotary who willfully fails to carry out a duty imposed upon the prothonotary by this section commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $1,000 and costs of prosecution or to imprisonment for not more than one year, or both.

§ 2808. Refund or credit of overpayment.

(a) Overpayment.--In the case of a payment of tax not due under this subpart, the department may credit the amount of the overpayment against any liability of the tax imposed by this subpart to the person who made the overpayment and shall refund any balance to the person.

(b) Credit regulations.--The department shall prescribe regulations providing for the crediting against the estimated tax for a taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

(c) Overpayment of installment.--If a taxpayer has paid as an installment of estimated tax more than the correct amount of the installment, the overpayment shall be credited against the unpaid installments, if any. If the amount paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in subsection (a) or (b).

§ 2809. Restrictions on refunds.

A credit or refund may be made under section 2808 (relating to refund or credit of overpayment):

(1) By reason of the overpayment of an installment of estimated tax.

(2) Upon reassessment.

(3) Upon the filing of a final return or amended final return showing an overpayment of tax.

§ 2810. Limitations on assessment and collection.

(a) Time period for assessment.--The amount of a tax imposed by this subpart shall be assessed within three years after the return is filed. For the purposes of this subsection and subsection (b), a return filed before the last day prescribed for the filing of the return, or before the last day of an extension of time for the filing of the return, shall be considered filed on the last day.

(b) Incorrect income filed.--If a taxpayer omits from income an amount includable in the person's income in excess of 25% of the amount of income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(c) No return or amended return filed.--If no return is filed, or if a taxpayer fails to file an amended return when required, the amount of the tax due may be assessed at any time.

(d) False or fraudulent return.--If a taxpayer files a false or fraudulent return with intent to evade the tax imposed by this subpart, the amount of tax due may be assessed at any time.

(e) Assessment for erroneous credit or refund.--The department may file an assessment to recover a refund, part of a refund, credit or part of a credit which was erroneously made or allowed within three years of the granting of the refund or credit or within the period in which an assessment or reassessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period occurs later.

§ 2811. Extension of limitation period.

(a) Consent for extension.--Notwithstanding section 2810 (relating to limitations on assessment and collection), if a taxpayer consents in writing to an extension of the time period for assessment, the amount of tax due may be assessed at any time within the extended period.

(b) Further extensions.--The extension period may be further extended by subsequent consents in writing made before the expiration of the extended period.

§ 2812. Limitations on refund or credit.

An application for refund must be filed with the department under Article XXVII of the Tax Reform Code of 1971 within the time limits of section 3003.1 of the Tax Reform Code of 1971.

§ 2813. Interest.

(a) Applicability.--This section shall not apply to a failure to pay estimated tax.

(b) Interest generally.--

(1) If an amount of tax imposed by Subchapter A of Chapter 22 (relating to imposition of tax) is not paid on or before the last date prescribed for payment, interest on the

amount at the rate established under section 806 of the Fiscal Code shall be paid for the period from the last date to the date paid.

(2) The last date prescribed for payment shall be determined without regard to any extension of time for filing the return.

(c) Interest on underpayment.--If an amount of tax required to be withheld by an employer and paid to the department under Subchapter A of Chapter 25 (relating to withholding tax generally) is not paid by the due date prescribed under section 2509 (relating to payment of taxes withheld), interest on the amount at the rate established under section 806 of the Fiscal Code shall be paid from that date for the period of underpayment.

§ 2814. Additions, penalties and fees.

(a) Addition for failure to file.--

(1) In the case of failure to file a return required under this subpart on the date prescribed for filing, determined with regard to any extension of time for filing, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5% shall be added to the amount required to be shown as tax on the return if the failure is for not more than one month, with an additional 5% for each additional month or fraction of a month during which the failure continues, not to exceed 25% in the aggregate. The amount added shall not be less than $5.

(2) The amount of tax required to be shown on the return shall, for purposes of computing the additions for the first month, be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the

tax and by the amount of a credit against the tax which may be claimed on the return.

(3) The amount of tax required to be shown on the return shall, for purposes of computing the addition for any subsequent month, be reduced by the amount of any part of the tax which is paid by the beginning of the subsequent month and by the amount of a credit against the tax which may be claimed on the return.

(b) Addition for underpayment.--

(1) If an underpayment of a tax imposed by Chapter 22 (relating to taxation generally) is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, 5% of the amount of the underpayment shall be added to the tax.

(2) If an underpayment of a tax imposed by Chapter 22 is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, and the taxpayer omits from income an amount includable in the taxpayer's income in excess of 25% of the amount of income stated in the return, 25% of the amount of the underpayment shall be added to the tax.

(c) Underpayment due to fraud.--If an underpayment of tax required under this subpart to be shown on a return is due to fraud, 50% of the amount of the underpayment shall be added to the tax. This amount shall be in lieu of any amount determined under subsection (b) or (h).

(d) Underpayment of installments.--

(1) (i) If a taxpayer fails to pay all or part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax.

(ii) An amount shall be added to the tax for the taxable year at the rate established under section 806 of the Fiscal Code for the period of the underpayment but not beyond the 15th day of the fourth month following the close of the taxable year.

(iii) The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax, or two-thirds in the case of an individual described in section 2602(e) (relating to declarations of estimated tax), shown on the return for the taxable year or, if no return was filed, of the tax for the year, over the amount, if any, of the installments paid on or before the last day prescribed for payment.

(iv) No underpayment shall be deemed to exist with respect to an installment otherwise due on or after the taxpayer's death or, in the case of a decedent's estate or a trust created by the decedent to receive the residue of the decedent's estate, for a period of two years after the decedent's death.

(2) No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the lesser of the following:

(i) The amount required to be paid on or before the date if the estimated tax were an amount equal to the tax computed after consideration of the special tax provisions for poverty at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to, the preceding taxable year.

(ii) An amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid, or, in the case of a trust or estate, an amount equal to 90% of the applicable percentage of the tax for the taxable year as determined under section 6654(d)(2)(C)(ii) of the Internal Revenue Code of 1986, as amended, at rates applicable to the taxable year computed on an annualized basis in accordance with United States Treasury regulations, based upon the actual income for the months of the taxable year ending with the last day of the second preceding month prior to the month in which the installment is required to be paid.

(e) Penalties.--

(1) In addition to other penalties provided by law, a person required to collect, account for and pay over a tax imposed by this subpart who willfully fails to collect the tax or truthfully account for and pay over the tax, or attempts to evade or defeat a tax or the payment of a tax, shall be liable to a penalty equal to the total amount of the tax evaded, not collected or not accounted for and paid over.

(2) No penalty shall be imposed under subsection (b), (c) or (h) for an offense to which this subsection is applicable.

(3) As used in this subsection, the term "person" includes an officer or employee of a corporation or a member

or employee of a partnership who, as an officer, employee or member, has a duty to collect, account for and pay over a tax imposed by this subpart for which the violation occurs.

(f) Penalties.--

(1) A person required under the provisions of section 2504 (relating to information statement) to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time and showing the information required under section 2504 and the regulations prescribed under section 2504, shall for each failure be subject to a penalty of $50 for each employee.

(2) A person required to furnish an information return who furnishes a false or fraudulent return or who fails to file or provide an information return shall be subject to a penalty of $250.

(3) Each partnership, estate, trust or Pennsylvania S corporation required to file a return with the department under section 2702 (relating to return of Pennsylvania S corporation) or 2707(c) (relating to requirements concerning returns, notices, records and statements) who furnishes a false or fraudulent return or who fails to file the return in the manner and at the time required under section 2702 or 2707(c) shall, for each failure, be subject to a penalty of $250.

(4) A person required to file a copy of form 1099-MISC or 1099-NEC with the department under section 2707(f) who willfully furnishes a false or fraudulent form or who willfully fails to file the form in the manner, at the time and showing the information required under section 2707(f),

shall for each failure be subject to a penalty of $50.

(5) A person required under section 2707(f) to furnish a copy of form 1099-MISC or 1099-NEC to a payee who willfully furnishes a false or fraudulent form or who willfully fails to furnish a form in the manner, at the time and showing the information required by section 2707(f), shall for each failure be subject to a penalty of $50.

(6) A person required to file an annual statement with the department under section 2526 (relating to annual withholding statement) who willfully furnishes a false or fraudulent statement or who willfully fails to file the statement in the manner, at the time and showing the information required under section 2526 and the regulations prescribed under section 2526, shall for each failure be subject to a penalty of $50.

(7) A person required under the provisions of section 2526 to furnish an annual statement to a lessor who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time and showing the information required by section 2526 and the regulations prescribed under section 2526, shall for each failure be subject to a penalty of $50.

(g) Penalty for underpayment.--

(1) If an amount of tax required to be withheld by an employer and paid over to the department under section 2509 (relating to payment of taxes withheld) or 2510 (relating to payment of taxes withheld for nonemployer payors) is not paid on or before the due date prescribed for filing the quarterly return under section 2507 (relating to time for filing withholding returns) or 2508 (relating to time for filing

payors' returns), determined without regard to an extension of time for filing, 5% of the amount of the underpayment shall be added to the tax and paid to the department for each month or fraction of a month from the due date for the period from the due date to the date paid.

(2) The underpayment shall, for purposes of computing the addition for a month, be reduced by the amount of the tax that is paid by the beginning of that month.

(3) The total of the additions shall not exceed 50% of the amount of tax required to be shown on the return reduced by the amount of any part of the tax which is paid by the return due date and by the amount of any credit against the tax which may be claimed on the return.

(h) Penalty for incorrect self-assessment.--If an individual, estate or trust files a return required under section 2701 (relating to returns and liability) which does not contain information on which the substantial correctness of the self-assessment may be judged or which contains information that on its face indicates that the self-assessment is substantially incorrect and the self-assessment is due to a position that is frivolous or a desire which appears on the purported return to delay or impede the administration of Pennsylvania income tax laws, the individual, estate or trust shall pay a penalty of $500. The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(i) Penalty for underpayment by partnership, association, Pennsylvania S corporation or lessee.--

(1) If an amount of tax required to be withheld by a partnership, association, Pennsylvania S corporation or lessee and paid over to the department under section 2521

(relating to general rule) or 2525 (relating to withholding on income) is not paid on or before the date prescribed, 5% of the amount of the underpayment shall be added to the tax and paid to the department for each month or fraction of a month from the due date, for the period from the due date to the date paid.

(2) The underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month.

(3) The total of the additions shall not exceed 50% of the amount of the tax.

(j) Penalty for noncompliance.--If a tax payment is made and the payment does not comply with section 2704.1 (relating to electronic payment) when required, the taxpayer that is liable for the tax shall, in addition to any other penalty, interest or addition provided by law, be liable for a penalty of 3% of the payment remitted, not to exceed $500.

§ 2815. Abatement of additions or penalties.

Upon the filing of a petition for reassessment or petition for review by a taxpayer, other than an employer, as provided under this subpart, the department may waive or abate, in whole or in part, additions or penalties of $300 or less imposed upon the taxpayer for a taxable year if the taxpayer has established that the taxpayer acted in good faith with no negligence or intent to defraud.

§ 2816. Citation authority.

(a) Penalties.--Notwithstanding any other provision of this part, a person who does any of the following commits a summary offense and shall, upon conviction, be subject to the fines and penalties imposed under section 1335(a) (relating to penalties):

(1) Does not pay withholding tax, interest or penalties within 90 days after the due date, and the tax liability due has not been timely appealed or subject to a duly authorized deferred payment plan.

(2) Underpays a withholding tax, interest or penalty within 90 days after the due date, and the tax liability due has not been timely appealed or subject to a duly authorized deferred payment plan.

(3) Fails to file a tax withholding return, report or other reporting document within 90 days after the due date of the applicable payment or return, report or other reporting document.

(b) Additional penalties.--The penalties imposed under this section shall be in addition to other penalties imposed under this subpart.

(c) Enforcement.--The secretary may designate employees of the department to enforce this section. Employees shall exhibit proof of and be within the scope of the designation when instituting proceedings as provided under the Pennsylvania Rules of Criminal Procedure.

§ 2817. Crimes.

(a) Evasion, defeat or nonpayment of tax.--A person who willfully attempts in any manner to evade or defeat a tax imposed by this subpart or the payment of a tax, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $25,000 or to imprisonment not exceeding two years, or both.

(b) Failure to collect tax.--A person required under this subpart to collect, account for and pay over a tax imposed by this subpart who willfully fails to collect or truthfully account for and pay over the tax, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $25,000 or to imprisonment not exceeding two years, or both.

(c) Failure to supply records or information.--A person required under this subpart to pay a tax, make a return, keep records or supply information who willfully fails to pay the tax, make the return, keep records or supply information at the time required by law or regulations, in addition to other penalties provided by law, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $5,000 or to imprisonment not exceeding two years, or both.

(d) False statements or claims.--A person who willfully makes and subscribes a return, statement or other document that is verified by a written declaration to be made under the penalties of perjury and which the person does not believe to be true and correct as to every material matter, or willfully aids or assists in, procures, counsels or advises the preparation or presentation of a return, affidavit, claim or other document which is fraudulent or is false as to a material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document, commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $5,000 or to imprisonment not exceeding two years, or both.

(e) Fraudulent information.--A person who willfully delivers or discloses to the department a list, return, account, statement or other document known by the person to be fraudulent or false as to a material matter commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding

$5,000 or to imprisonment not exceeding two years, or both.

(f) Disclosure of information.--

(1) It shall be unlawful for an officer, agent or employee of the Commonwealth to divulge or make known in any manner not provided by law, except for official purposes, to any person the amount or source of income, profits, losses, expenditures or other information disclosed in a return, or to permit a return or copy of a return or a book containing an abstract or other information to be seen or examined by a person except as provided by law.

(2) It shall be unlawful for a person to print or publish in any manner not provided by law, a return, part of a return, source of income, profits, losses or expenditures appearing in a return.

(3) A person who violates paragraph (1) or (2) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding $1,000 or to imprisonment not exceeding one year, or both, together with the costs of prosecution. If the offender is an officer or employee of the Commonwealth, the offender shall be dismissed from office or discharged from employment.

(g) Disclosure of information to court.--

(1) Notwithstanding subsection (f), it shall be lawful for an officer or employee of the Commonwealth having custody of returns to produce the returns or evidence of information contained in the returns in an action or proceeding in any court on behalf of the department under the provisions of this subpart to which the department is a party, or on behalf of a party to an action or proceeding under the provisions of this subpart when the returns or facts shown are directly

involved in the action or proceeding where the court requires the production of and may admit into evidence the returns or the facts shown by the returns as are pertinent to the action or proceeding and no more.

(2) Nothing in this section shall be construed to prohibit any of the following:

(i) The delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of a return filed in connection with the taxpayer's tax.

(ii) The publication of statistics classified to prevent the identification of particular returns and the items of the returns.

(iii) The inspection by the Attorney General or other legal representatives of the Commonwealth of the return of a taxpayer who shall bring action to review the tax based on the return or against whom an action or proceeding has been instituted for the collection or recovery of the tax imposed by this subpart.

(iv) The delivery to the Pennsylvania Higher Education Assistance Agency of a certified copy or extract of a State income tax return requested by the agency for use in determining the eligibility of applicants for State grants, if the executive director of the agency certifies that the agency has in the agency's possession a statement signed by the applicant and the applicant's parent, parents, guardian or guardians authorizing the agency to obtain a certified copy or extract of a State income tax return from the director of the State Income Tax Bureau.

§ 2818. Rules and regulations.

The department shall enforce the provisions of this subpart and shall prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this subpart and the collection of taxes imposed by this subpart.

§ 2819. Examination.

(a) Examination of records.--The department, or an agent authorized in writing by the department, may examine the books, papers and records of a taxpayer or supposed taxpayer and require the production of a copy of the taxpayer's return as made to and filed with the Federal Government, if one was made and filed, in order to verify the accuracy of a return made or, if no return was made, to ascertain and assess the tax imposed by this subpart.

(b) Taxpayer to provide access.--Each taxpayer or supposed taxpayer is directed and required to give to the department or the department's duly authorized agent the means, facilities and opportunity for examinations and investigations as are provided and authorized.

(c) Inquisitorial powers.--The department shall examine a person under oath concerning income which was or should have been returned for taxation, and may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom the department believes have knowledge of the income. The procedure for the hearing or examination shall be the same as that provided by the Fiscal Code relating to inquisitorial powers of fiscal officers.

§ 2820. Cooperation with other governmental agencies.

(a) Inspection of returns.--

(1) Notwithstanding the provisions of section 2817(f)

(relating to crimes), the department may:

(i) permit the United States Commissioner of Internal Revenue, the proper officer of a political subdivision of this Commonwealth or any other state imposing tax based upon the incomes of individuals or the authorized representative of an officer to inspect the tax returns of a taxpayer; or

(ii) furnish to the officer or the officer's authorized representative an abstract of the return of income of a taxpayer or supply to the officer or the officer's authorized representative information concerning an item of income contained in a return of a taxpayer.

(2) (i) Permission shall be granted or information furnished to an officer or the officer's representative only if the statutes of the United States or another state grant substantially similar privileges to the proper officer of this Commonwealth charged with the administration of the personal income tax law of this Commonwealth.

(ii) An officer or authorized agent of a county imposing a personal property tax shall be furnished the following information from the returns upon payment to the department of the cost of collecting and reproducing the requested information:

(A) The name, address and Social Security number of the taxpayer.

(B) If the taxpayer has reported dividends or interest.

(b) Reciprocal agreements.--

(1) The department may enter into an agreement with the taxing authorities of a state which imposes a tax on or measured by income to provide that compensation paid in the state to residents of this Commonwealth shall be exempt from the tax.

(2) Compensation paid in this Commonwealth to residents of another state shall be exempt from Pennsylvania personal income tax.

(3) The department, in the agreements, may provide for reciprocal withholding, employer liability, exchange of information and all other matters relating to cooperation between the states.

§ 2821. Appropriation for refunds.

As much of the proceeds of the tax imposed by this subpart as shall be necessary for the payment of refunds, enforcement or administration under this subpart is appropriated for those purposes.

CHAPTER 29

MISCELLANEOUS PROVISIONS

Sec.

2901. Constitutional construction.

2902. Saving clause and limitations.

2903. Transfer to Clean Streams Fund.

2904. Applicability.

§ 2901. Constitutional construction.

In addition to the provisions relating to legislative intent under section 2203(i) (relating to classes of income), if a word, phrase, clause, sentence, section or provision of this subpart is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this subpart. It is declared as the legislative intent that this subpart would have been adopted had the unconstitutional word, phrase, clause, sentence, section or provision of this subpart not been included in this subpart.

§ 2902. Saving clause and limitations.

(a) General rule.--Except as provided in subsection (b), notwithstanding any other provision of law, including any provision of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act, the validity of an ordinance, part of an ordinance, a resolution or part of a resolution, including an amendment or supplement to the ordinance, part of the ordinance, resolution or part of the resolution enacted before, on or after the effective date of this section or adopted by a political subdivision of this Commonwealth for or relating to the imposition, levy or collection of a tax, shall not be affected or impaired by anything contained in this subpart.

(b) Exceptions.--

(1) Notwithstanding subsection (a), a rate of tax imposed by ordinance of a city of the first class under the Sterling Act on salaries, wages, commissions, compensation or other income received or to be received for work done or services performed within the city by persons who are not legal residents of the city, shall not, except as otherwise provided in this section, exceed the tax imposition rate of 4.3125% for the tax year 1977 or for any tax year thereafter.

(2) If a city under paragraph (1) by ordinance imposes a tax rate on residents or nonresidents in excess of the tax rate under paragraph (1) on the income categories enumerated in this subpart:

(i) The provisions of the ordinance imposing the tax rate increase on income of persons who are legal residents of the city shall be deemed valid and legally effective within the meaning and application of subsection (a).

(ii) The provisions of the ordinance imposing a tax rate in excess of 4.3125% with respect to persons who are not legal residents of the city shall be deemed suspended and without validity to the extent that the tax rate exceeds the 4.3125% on income of the nonresidents. The excess tax rate provisions shall remain suspended and without validity until the date on which the city by ordinance imposes a rate of tax on income of both legal residents or nonresidents of the city in excess of the tax rate imposition of 5.75% per year. In that case, the General Assembly declares the suspension to be removed and the tax rate valid as to nonresidents, provided that the suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of the nonresidents does not exceed 75% of the tax rate imposed by ordinance per year on the income of legal residents of the city. It is the intention of the General Assembly by this subsection to impose certain terms and conditions with respect to the validity and legal effectiveness of the Sterling Act or an ordinance of the city of the first class enacted under the Sterling Act which imposes a tax on the income of nonresidents of the city.

(3) Notwithstanding the suspension provisions under this section, each city of the first class which imposes a tax under the Sterling Act shall by ordinance direct every

employer maintaining an office or transacting business within the city and making payment of compensation to a resident individual or nonresident individual taxpayer performing services on behalf of the employer within the city to deduct and withhold from the compensation for each payroll period a tax computed in a manner as to result, so far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for that year with respect to the compensation. The method of determining the amount to be withheld shall be to withhold the highest amount of tax imposed with provision in the ordinance to provide refunds of the excess tax withheld to qualified nonresident taxpayers within four months of the end of each calendar year.

(4) If all or part of the provisions of subsection (b) are declared by a court to be unconstitutional, it shall be the duty of the court to construe the remaining provisions of this subpart in accordance with section 2901 (relating to constitutional construction).

(c) Revenue commissioner, deductions and payments.--

(1) Each employer having a place of business within this Commonwealth who employs one or more persons who are residents of a city of the first class shall:

(i) within 30 days after becoming such an employer, register with the revenue commissioner of a city of the first class the employer's name and address and other information as the revenue commissioner may require; and

(ii) at the time of payment to the employee, deduct from the salary, wages, commissions or compensation due the employee the tax imposed by the city of the first class on any salary, wage, commission or other compensation due the employee.

(2) An employer required to withhold taxes under this subsection shall calculate the amount of salary, wages, commissions and compensation of each employee as determined under the classes of income under section 2203 (relating to classes of income).

(3) Each employer employing one or more persons who are residents of a city of the first class who pay a tax imposed under this subpart shall file a return and pay to the revenue commissioner the amount of taxes deducted as provided under paragraph (2). The following shall apply:

(i) The return shall be on a form furnished by the revenue commissioner.

(ii) The return shall specify the following:

(A) The names and residences of each employee of that employer during all or any part of the period covered by the return.

(B) The amounts of salaries, wages, commissions or other compensation earned during the period by each employee.

(C) Other information as the revenue commissioner may require.

(4) The employer shall remit the return and the total tax deducted in accordance with time frames established under section 2509 (relating to payment of taxes withheld).

(5) Annually, on or before the 28th day of February, each employer who has filed returns of tax withheld and remitted the tax through the year shall be required to file an Employer's Annual Reconciliation of Wage Tax Withheld,

along with a copy of Form W-2 of the Internal Revenue Service for each employee, other listings or electronic data processing tapes, setting forth the following information:

(i) The name and address of the employer.

(ii) The employer's Federal identification number.

(iii) The full name and residence address of each employee.

(iv) The employee's Social Security number.

(v) The total wages paid during the year before any deductions.

(vi) The employer's city account number.

(6) Employers or their designated agents required to file with the revenue commissioner under this subsection shall not be required by the revenue commissioner to be bonded. Employer liability for taxes withheld under this subsection shall be the same as provided in sections 2511 (relating to liability for withheld taxes) and 2513 (relating to failure to withhold).

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

§ 2903. Transfer to Clean Streams Fund.

No later than August 1, 2024, and each August 1 thereafter, the sum of $50,000,000 shall be transferred from the proceeds of the tax imposed under this subpart to the Clean Streams Fund established under section 1712-A.2 of the Fiscal Code.

§ 2904. Applicability.

(a) General rule.--The tax under this subpart shall first apply and be imposed upon income received by or accrued to a taxpayer on and after June 1, 1971.

(b) Exception.--A taxpayer who filed returns on the basis of a fiscal year or who is the beneficiary of an estate or trust or member of a partnership which files its returns under this subpart on the basis of a fiscal year shall be subject to tax for the first taxable period on the portion of the fiscal year or of the fiscal year of the estate, trust or partnership which postdates May 31, 1971, as prescribed by the department by regulations.

(c) Additions or penalties.--Section 2814 (relating to additions, penalties and fees), which provides for additions or penalties to the tax, shall not take effect until March 20, 1972.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the addition of 53 Pa.C.S. Ch. 90.

(2) The following are repealed:

(i) Section 1730-E(a) and (b) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(ii) Section 3171-B(a)(4)(ii) and (iii) and (b)(2) of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code.

(iii) Chapter 13 of the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the addition of 53 Pa.C.S. Ch. 90A Subch. F.

(4) Section 688 of the act of March 10, 1949 (P.L.30,

No.14), known as the Public School Code of 1949, is repealed.

(5) The General Assembly declares that the repeal under paragraph (6) is necessary to effectuate the addition of 72 Pa.C.S. Pt. II Subpt. A.

(6) Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed.

(7) The General Assembly declares that the repeal under paragraph (8) is necessary to effectuate the addition of 72 Pa.C.S. Pt. II Subpt. B.

(8) Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed.

(9) The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

(i) Except as provided under paragraph (4), any provision of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, and of any other law relating to the authority of a school district to levy, assess and collect a tax on real property and the power of a city of the first class to levy, assess and collect a tax on real property.

(ii) Any provision of the act of August 9, 1963 (P.L.643, No.341), known as the First Class City Public Education Home Rule Act, and any home rule school district charter adopted under the First Class City Public Education Home Rule Act.

(iii) Except as provided under paragraph (2)(iii), any provision of the act of June 27, 2006 (1st Sp.Sess., P.L.1873, No.1), known as the Taxpayer Relief Act.

(10) All acts and parts of acts that are inconsistent with this act are repealed to the extent of the

inconsistency.

Section 4. The addition of 72 Pa.C.S. Pt. II Subpt. A is a continuation of Article II of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Pt. II Subpt. A, all activities initiated under Article II of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Pt. II Subpt. A. Orders, regulations, rules and decisions which were made under Article II of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3(6) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Pt. II Subpt. A. Contracts, obligations and collective bargaining agreements entered into under Article II of the Tax Reform Code of 1971 are not affected nor impaired by the repeal of Article II of the Tax Reform Code of 1971.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Pt. II Subpt. A and Article II of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article II of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the addition of 72 Pa.C.S. § 1358.

Section 5. The addition of 72 Pa.C.S. Pt. II Subpt. B is a continuation of Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The following apply:

(1) Except as otherwise provided in 72 Pa.C.S. Pt. II Subpt. B, all activities initiated under Article III of the Tax Reform Code of 1971 shall continue and remain in full force and effect and may be completed under 72 Pa.C.S. Pt. II Subpt. B. Orders, regulations, rules and decisions which were made under Article III of the Tax Reform Code of 1971 and which are in effect on the effective date of section 3(8) of this act shall remain in full force and effect until revoked, vacated or modified under 72 Pa.C.S. Pt. II Subpt. B. Contracts, obligations and collective bargaining agreements entered into under Article III of the Tax Reform Code of 1971 are not affected nor impaired by the repeal of Article III of the Tax Reform Code of 1971.

(2) Except as set forth in paragraph (3), any difference in language between 72 Pa.C.S. Pt. II Subpt. B and Article III of the Tax Reform Code of 1971 is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of Article III of the Tax Reform Code of 1971.

(3) Paragraph (2) does not apply to the following:

(i) The addition of the definition of "compensation," "poverty income" and "Social Security substitute pension" under 72 Pa.C.S. § 2102.

(ii) The addition of 72 Pa.C.S. § 2203(a)(1)(i)(F).

Section 6. Repeals are applicable as follows:

(1) The repeals under section 3 of this act, insofar as they relate to the prohibition on the levy, assessment or

collection of real property taxes under 53 Pa.C.S. § 9011 by school districts which use a January to December fiscal year, shall apply beginning January 1, 2028.

(2) The repeals under section 3 of this act, insofar as they relate to the prohibition on the levy, assessment or collection of real property taxes under 53 Pa.C.S. § 9011 by school districts which use a July to June fiscal year, shall apply beginning July 1, 2028.

Section 7. This act shall take effect as follows:

(1) The following provisions shall take effect October 1, 2027:

The addition of 72 Pa.C.S. Pt. II.

Section 3(6) and (8) of this act.

(2) Except as provided in paragraph (1)(ii), section 3 of this act shall take effect January 1, 2028.

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