Legislative Council,
General Assembly
State of Delaware

Title 30

State Taxes

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Part I
General Provisions; State Tax Agencies; Procedure and Enforcement
Chapter 1
GENERAL PROVISIONS

§ 101 Definitions.

As used in this title:

(1) "Board" means the Tax Appeal Board.

(2) "Department" means the Department of Finance.

(3) "Notice," "notification" or "receipt," required to be given or provided for by this title, means a written notice, notification or receipt, contained in a sealed envelope, addressed to the taxable at the last known address and deposited in the United States mails unless delivered to the taxable in person or to a representative or agent.

(4) "Secretary" and "Secretary of Finance" mean the Secretary of Finance or a duly authorized designee; provided, that any such delegation of authority is consistent with Chapter 83 of Title 29.

(5) "Taxable" means any person, fiduciary, association of persons, syndicate, joint venture or copartnership subject to making return or to payment of tax imposed by this title.

(36 Del. Laws, c. 8, § 8; Code 1935, § 151; 30 Del. C. 1953, § 101; 57 Del. Laws, c. 741, §§ 2A-2C; 70 Del. Laws, c. 186, § 1.)

§ 102 Limitation upon tax levy; personal property.

(a) No tax shall be levied, assessed or collected by this State upon personal property whether tangible or intangible.

(b) Subsection (a) of this section shall not be construed as having any effect upon any:

(1) Estate, income or other excise tax law of this State;

(2) Lands held under lease or demise;

(3) Buildings, improvements, equipment or structures of any nature made or erected upon lands so held under lease or demise; or

(4) Poles or wires maintained thereon other than for enclosing lands.

(42 Del. Laws, c. 109; 42 Del. Laws, c. 110; 30 Del. C. 1953, § 102; 71 Del. Laws, c. 353, § 11.)

§ 103 Bonds of City of Wilmington exempt.

All bonds of the City of Wilmington are exempt from taxation under any law of this State.

(Code 1852, §§ 184, 185; 17 Del. Laws, c. 207, § 101; Code 1915, § 1098; Code 1935, § 1258; 30 Del. C. 1953, § 103.)

§ 104 Reciprocal collection of taxes; recognition of laws of other states; official to bring action; meaning of taxes.

(a) The courts of this State shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state or the District of Columbia which extends a like comity in respect of the liability for taxes lawfully imposed by the laws of this State.

(b) The officials of such other states or the District of Columbia are authorized to bring action in the courts of this State for the collection of such taxes and the certification of the secretary of state of such other state or comparable official in the District of Columbia that such officials have the authority to collect the taxes so to be collected by such action shall be conclusive proof of that authority.

(c) The term "taxes" as herein referred to shall mean taxes similar to those imposed under this article, together with all lawful interest charges and penalties added thereto.

(30 Del. C. 1953, § 104; 54 Del. Laws, c. 180.)

§ 105 Sunset repeal of tax preferences [Repealed].

Repealed by 68 Del. Laws, c. 201, § 1, effective Feb. 5, 1992.

Part I
General Provisions; State Tax Agencies; Procedure and Enforcement
Chapter 3
DEPARTMENT OF FINANCE
Subchapter I
General Provisions

§ 301 General powers of Department.

The Department of Finance shall administer and enforce all state tax laws and collect the taxes thereby imposed, unless such duties are expressly conferred upon another agency.

(Code 1915, § 226A; 40 Del. Laws, c. 30, § 1; 38 Del. Laws, c. 8, § 8; Code 1935, §§ 151, 206; 30 Del. C. 1953, § 302; 57 Del. Laws, c. 741, §§ 3B, 3C.)

§ 302 Preparation of blanks and forms.

The Department of Finance shall prepare all necessary forms and blanks required in the administration and enforcement of any law which it is the duty of the Department to administer and enforce.

(25 Del. Laws, c. 225, § 3; Code 1915, §§ 152B, 226A; 36 Del. Laws, c. 8, § 10; 37 Del. Laws, c. 8; 40 Del. Laws, c. 9, § 1; 40 Del. Laws, c. 10; 40 Del. Laws, c. 30; Code 1935, §§ 137, 143, 153, 206; 30 Del. C. 1953, § 303; 57 Del. Laws, c. 741, §§ 3B, 3C.)

§ 303 Payment of receipts.

The Department of Finance shall pay daily to the Secretary of Finance, for the use of the State, all sums collected by the Department.

(25 Del. Laws, c. 225, § 3; Code 1915, §§ 152B, 226A; 36 Del. Laws, c. 8, § 10; 37 Del. Laws, c. 8; 40 Del. Laws, c. 9, § 1; 40 Del. Laws, c. 10; 40 Del. Laws, c. 30; Code 1935, §§ 137, 143, 153, 206; 30 Del. C. 1953, § 304; 57 Del. Laws, c. 741, §§ 3B, 3C.)

§ 304 Expenses of Department personnel.

The Tax Appeal Board and the officers and employees of the Department of Finance shall be entitled to receive from the State their actual and necessary expenses while engaged in the performance of their duties. All expense accounts shall be made in detail and shall be approved by the Secretary of Finance. The total shall in no case exceed the sums appropriated therefor.

(36 Del. Laws, c. 8, § 21; 40 Del. Laws, c. 11, § 20; Code 1935, § 164; 30 Del. C. 1953, § 305; 57 Del. Laws, c. 718, § 3; 57 Del. Laws, c. 741, §§ 3B, 3D, 3E.)

§ 305 Notice by Division of Accounting of payments to business associations.

For purposes of tax compliance the Division of Accounting shall give notice to the Division of Revenue of payments made to any corporation or other business association when the aggregate payments during the fiscal year exceed $2,000.

(30 Del. C. 1953, § 307; 57 Del. Laws, c. 201; 58 Del. Laws, c. 435.)

§ 306 Taxpayer identification number.

The Department of Finance may require taxpayers to use and to furnish tax identification numbers. In the case of individuals, this shall be the Federal Social Security Number, and, in the case of businesses, this shall be the Federal Employer Identification Number.

(30 Del. C. 1953, § 308; 57 Del. Laws, c. 559.)

Subchapter II
Tax Appeal Board

§ 321 Composition; appointment; term; qualifications.

(a) The Tax Appeal Board shall consist of 5 members who shall be appointed by the Governor for terms of 3 years. The term of each member shall terminate at the end of said 3-year period, or until such member's successor has been appointed and qualified. If any member of the Tax Appeal Board shall cease to serve for any reason prior to the end of the term, the Governor shall appoint a successor to serve for the remainder of the unexpired term. At least 1 member of the Board shall be a member of 1 of the major political parties, and at least 1 member of the Board shall be a member of the other major political party; provided, however, there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person not registered with a political party shall also be eligible for appointment as a member of the Board.

(b) At least 2 of the members of the Board shall be attorneys-at-law, 1 of whom shall be appointed chairperson by the Governor. The other attorney shall be vice-chairperson to act in the absence or disability of the chairperson. The remainder of the Board shall be composed of 1 accountant and 2 members of the general public.

(30 Del. C. 1953, § 321; 57 Del. Laws, c. 718, § 1; 60 Del. Laws, c. 173, § 1; 70 Del. Laws, c. 186, § 1.)

§ 322 Salary.

Each member of the Tax Appeal Board shall be paid a salary of $5,500 per year. The chairperson shall be paid an additional $500 per year.

(30 Del. C. 1953, § 322; 57 Del. Laws, c. 718, § 1; 60 Del. Laws, c. 173, § 2; 65 Del. Laws, c. 348, § 107; 70 Del. Laws, c. 186, § 1.)

§ 323 Secretary; quorum.

(a) The Tax Appeal Board shall appoint a secretary who need not be a member of the Tax Appeal Board. The secretary shall maintain a record of all proceedings before the Tax Appeal Board.

(b) A quorum for the transaction of business of the Tax Appeal Board shall be any 3 members, one of whom shall be an attorney.

(30 Del. C. 1953, § 323; 57 Del. Laws, c. 718, § 1.)

§ 324 Alternate attorney member.

(a) Whenever a request in writing shall be addressed to the Governor by any attorney member of the Tax Appeal Board stating that the attorney has disqualified himself or herself from participating in a particular matter or matters coming before the Tax Appeal Board, or that the attorney is unable because of illness, disability or other good reason to take part in such matter or matters, the Governor shall designate an attorney-at-law as a special attorney member of the Tax Appeal Board for such matter or matters only and such designee shall be deemed to be an attorney member of the Tax Appeal Board for all purposes concerning such matter or matters.

(b) Any attorney so designated who renders service as such special member of the Tax Appeal Board shall be paid at the rate of $100 per diem for services.

(c) This section shall be applicable to any matters over which the Tax Appeal Board has jurisdiction, whether pending at or prior to September 15, 1970, or at any time subsequent thereto.

(30 Del. C. 1953, § 324; 57 Del. Laws, c. 718, § 1; 70 Del. Laws, c. 186, § 1.)

§ 325 Annual report; rules.

(a) The Board shall submit an annual report to the Governor, as soon as practicable at the end of the fiscal year. The report shall be a public record, and be available to the public. The report shall summarize in detail the Board's activities since the date of the last report.

(b) The Board may, by proper rules, prescribe the procedures to be followed in hearings and appeals before it.

(30 Del. C. 1953, § 325; 57 Del. Laws, c. 718, § 1; 60 Del. Laws, c. 173, § 3.)

§ 326 Facilities and services.

The Secretary of Finance shall provide office space, supplies, services and such other assistance as the Tax Appeal Board may require.

(30 Del. C. 1953, § 326; 57 Del. Laws, c. 718, § 1; 69 Del. Laws, c. 64, § 115.)

§ 327 Record of decisions; rules and rulings of the Tax Appeal Board.

The Secretary of Finance shall maintain at the main office of the Department of Finance, and open to the inspection of the public, all decisions, rules and rulings of the Tax Appeal Board. These records shall be deemed published as required by this title. The record for good cause shown may be sealed by the Tax Appeal Board so as not to disclose the identity of the taxable.

(30 Del. C. 1953, § 327; 57 Del. Laws, c. 718, § 1; 69 Del. Laws, c. 64, § 115.)

§ 328 Reimbursement of expenses.

Members of the Tax Appeal Board shall be entitled to receive their actual and necessary expenses while engaged in the performance of their duties.

(30 Del. C. 1953, § 328; 57 Del. Laws, c. 718, § 1.)

§ 329 Hearings and appeals.

The Tax Appeal Board shall hear all appeals from determinations of the Director of all administrative protests including, but not necessarily limited to, determinations under §§ 525, 544 and 561 of this title, and such other statutes granting jurisdiction to the Board as may be hereafter enacted, and the Board may affirm, modify or reverse any such determination.

(30 Del. C. 1953, § 329; 57 Del. Laws, c. 718, § 1; 66 Del. Laws, c. 120, § 1; 68 Del. Laws, c. 187, § 26.)

§ 330 Subpoenas and attendance of witnesses.

The Tax Appeal Board, for the purpose of its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of pertinent books, payrolls, accounts, papers, records and documents, and in case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Tax Appeal Board may certify the fact of any such refusal to the Superior Court of the county in which such hearing is held and such Superior Court may proceed

against the person so refusing for contempt and may punish such person, if found guilty, in such manner as persons are punished for contempt of court.

(30 Del. C. 1953, § 330; 57 Del. Laws, c. 718, § 1.)

§ 331 Appeals from Tax Appeal Board decisions.

(a) From any decision of the Tax Appeal Board, the taxable shall have the right of appeal to the Superior Court of the State in the county in which the hearing has been held; provided, however, that no appeal from such decision shall be received or entertained in the Superior Court unless notice of appeal is duly filed in the office of the Prothonotary thereof within 30 days after the date of the order entered upon such decision. The Tax Appeal Board may, upon good cause shown, extend the foregoing time (1) for an additional 30 days or (2) until disposition of any motion for a rehearing or to revise its decision.

(b) Whenever, at any time prior to the Board's issuance of a final order, the parties (including the Director of Revenue) to any appeal so stipulate, the Board's order shall not be subject to appeal to the Superior Court, notwithstanding subsection (a) of this section.

(30 Del. C. 1953, § 331; 57 Del. Laws, c. 718, § 1; 69 Del. Laws, c. 400, § 2.)

§ 332 Frivolous or dilatory proceedings.

Whenever it appears to the Tax Appeal Board that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or without reasonable basis, damages in an amount not in excess of $5,000 shall be awarded to the State by the Board as part of the Board's decision. Damages so awarded shall be paid upon notice and demand from the Secretary of Finance and shall be collected as part of tax.

(66 Del. Laws, c. 101, § 1.)

§ 333 Removal of tax appeals to the Superior Court.

(a) Any appeal brought under § 329 of this title may be removed by the taxpayer or the Division of Revenue from the Tax Appeal Board to the Superior Court of this State as provided by this section.

(b) No action may be removed by either party unless:

(1) The total amount in controversy for all taxable periods which are the subject of the appeal exceeds $50,000 and a notice of removal has been filed by either party; or

(2) The Tax Appeal Board (hereinafter "the Board"), on motion by 1 or more parties, in its discretion grants leave to remove the action. The Board's determination grants leave to remove the action.

(c) In the case of taxes determined under Chapter 11 of this title (other than taxes due under subchapter VII of said chapter), if the taxpayer is a resident of this State, the action being removed shall be removed to the Superior Court in and for the county of the taxpayer's residence. In all other cases, the action being removed shall be removed to the Superior Court in and for New Castle County.

(d) The person desiring to remove an action to the Superior Court shall file with the Tax Appeal Board a notice of such removal or a motion for leave to remove. A notice of removal must be filed within 60 days after the appeal is commenced and shall state the grounds for removal. A motion for leave to remove may be filed at any time prior to the matter being submitted to the Board for decision.

(e) Upon the filing of a notice of removal or granting of a motion for leave to remove, the Board shall transmit all records in the appeal to the Superior Court in and for the county to which the action is removed. Except as otherwise provided in this section or as provided by Rule of the Superior Court, following the filing of such notice or the granting of such motion, the action shall continue as though it had commenced in Superior Court.

(f) Trials of appeals removed under this section shall be to the Superior Court without a jury.

(g) The taxpayer removing a case to the Superior Court pursuant to this section shall pay fees to the Superior Court as if the taxpayer had commenced the action in Superior Court. In the case of a motion for leave to remove, fees shall be paid as if the petitioner or petitioners had commenced the action in the Superior Court.

(h) For purposes of this section:

(1) "Amount in controversy" means:

a. The portion of tax as reflected on a notice of proposed assessment or notice of disallowance of refund issued under § 521 or § 542 of this title which a taxpayer contests; plus

b. Any interest reflected on said notice to the extent such interest is computed on the amount of tax which is contested; plus

c. The amount of penalty as reflected on such notice which the taxpayer contests.

(2) "Person" includes any natural person and any entity, including the Division of Revenue.

(3) "Tax" includes any tax or fee governed by § 501 of this title, but shall not include any interest or penalty.

(4) "Taxpayer" includes any person who is or may be liable for any tax.

(69 Del. Laws, c. 400, § 1.)

§ 334 Admission to practice before the Tax Appeal Board.

The rules of any court of this State to the contrary notwithstanding, the Tax Appeal Board shall admit to practice before the Board the following individuals:

(1) All attorneys admitted to practice by the Supreme Court of the State;

(2) All accountants who have received a certificate as a certified public accountant granted by the Delaware State Board of Accountancy or its successor and all other accountants practicing within the State who are entitled to practice as enrolled agents before the Internal Revenue Service;

(3) Attorneys-at-law and certified public accountants duly admitted to practice their respective professions by the appropriate authorities in other states, or the District of Columbia, or other accountants practicing outside the State who are entitled to practice as enrolled agents before the Internal Revenue Service upon application wherein good cause is shown (in the case of attorneys, in accordance with the Rules of the Delaware Supreme Court) upon admission by the Board pro hac vice for the purpose of representing parties appearing before the Board;

(4) Any employee (including an attorney admitted to practice by the appropriate authority of another state or the District of Columbia) of a corporation that is a party to proceedings before the Board provided such employee is duly appointed by the corporation to undertake such representation and such representation is within the scope of the employee's employment. (In the case of an attorney seeking admission to practice under this paragraph, the provisions of paragraph (3) of this section shall not apply);

(5) Any other person who establishes, to the satisfaction of the Board, that the person is a citizen of the United States and of the State of Delaware, of good moral character and repute and possessed of the requisite qualifications to represent others in the preparation and trial of matters before this Board may be admitted to practice before the Board subject to such uniform requirements, interviews or examinations which the Board, by supplemental rule, may adopt; and

(6) Any natural person appearing on that person's own behalf.

(69 Del. Laws, c. 400, § 3; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Secretary of Finance; General Provisions

§ 341 Bond [Repealed].

30 Del. C. 1953, § 343; 57 Del. Laws, c. 741, §§ 3B, 3D; 70 Del. Laws, c. 186, § 1; repealed by 82 Del. Laws, c. 226, § 6, effective Feb. 10, 2020.

Subchapter IV

Secretary of Finance; Powers and Duties

§ 351 Preservation of returns and destruction of records.

All tax returns or reports received by the Division of Revenue after January 1, 1989, shall be preserved for not less than 3 years, after which time the Secretary of Finance may establish guidelines and standards for retention and, upon the recommendation of the Director of Revenue, may authorize and direct their disposal or destruction.

(30 Del. C. 1953, § 351; 59 Del. Laws, c. 147, § 1; 68 Del. Laws, c. 187, § 24; 69 Del. Laws, c. 188, § 3.)

§ 352 Accounts receivable.

The Secretary of Finance may authorize the Director of Revenue to write off and remove from active collection any account receivable arising from the assessment of any tax or addition to tax if it is determined that the account is uncollectible. An account is uncollectible if the Director finds after reasonable investigation that the potential recovery or administrative costs of collection would not warrant further collection efforts and:

(1) The debtor has received a discharge in bankruptcy with respect to the taxable periods in question;

(2) The debtor is deceased and reasonable additional collection measures will not cause the debt to be collected from the assets of the debtor or the debtor's estate;

(3) The taxes are debts of a business that is no longer in business and the Director is unable to find that either the business or any other person responsible for the debts has assets from which the debt may be paid; or

(4) The debt has been outstanding on the records of the Division of Revenue for more than 6 years.

(30 Del. C. 1953, § 352; 59 Del. Laws, c. 147, § 1; 74 Del. Laws, c. 159, § 1.)

§ 353 Record of decisions, rules and rulings of Department.

The Secretary of Finance shall maintain a permanent public record of all decisions, rules and rulings of the Department of Finance.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 353; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 354 Rules, regulations and enforcement.

The Secretary of Finance shall make rules, regulations and decisions not inconsistent with this title and require such facts and information to be reported as the Secretary deems necessary to enforce any state tax. No rule or regulation adopted pursuant to the authority

granted by this section shall extend, modify or conflict with any law of this State, or the reasonable implications thereof.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 355; 57 Del. Laws, c. 741, § 3D; 67 Del. Laws, c. 344, § 9; 70 Del. Laws, c. 186, § 1.)

§ 355 Tax return forms.

The Secretary of Finance shall prepare and cause to have printed in sufficient numbers all blanks necessary for the making of all returns required by any tax law that is administered by the Department of Finance.

(36 Del. Laws, c. 9, § 12; Code 1935, § 155; 30 Del. C. 1953, § 356; 57 Del. Laws, c. 47, § 1; 57 Del. Laws, c. 741, §§ 3B, 3D, 3F; 67 Del. Laws, c. 292, § 2.)

§ 356 Mailing tax return forms.

(a) The Director of Revenue shall, on or before January 15 of each year, make available on an internet site the blank, downloadable returns required to be filed under Chapter 11 or 16 of this title that may be used by each person, fiduciary, partnership, or other entity for the purpose of filing such tax returns as may be due for that tax year.

(b) The Director of Revenue shall mail a blank return to any individual taxpayer who filed a tax return under Chapter 11 of this title in the preceding year, unless 1 of the following applies to the tax return:

(1) It was prepared by a paid tax preparer.

(2) It was prepared with a 2-D bar code or other electronic preparation media.

(3) It was filed in a manner other than by submission of a paper return.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 357; 57 Del. Laws, c. 47, § 2; 57 Del. Laws, c. 741, § 3D; 67 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 113, § 1; 74 Del. Laws, c. 158, § 1; 75 Del. Laws, c. 386, § 1; 81 Del. Laws, c. 292, § 1.)

§ 357 Reports to Governor and General Assembly.

(a) The Secretary of Finance shall submit to the Governor and to the General Assembly an annual report covering the fiscal year ending June 30, including such recommendations concerning state taxes as are deemed necessary.

(b) The Secretary of Finance shall submit annually to the Governor, on or before September 1, an estimate of revenues to be received during the current fiscal year from the income tax and the franchise tax and shall submit biennially to the Governor, on or before September 1, an itemized estimate of the sums required for the maintenance of the Department of Finance.

(36 Del. Laws, c. 8, § 12; 37 Del. Laws, c. 9, § 2; Code 1935, § 155; 45 Del. Laws, c. 10, § 9; 30 Del. C. 1953, § 360; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 358 Bonds of Department employees.

The Secretary of Finance shall require such of the officers, agents or employees of the Department of Revenue as the Secretary designates to give bond for the faithful performance of their duties, in such sum and with such security as the Secretary determines. All premiums on such bonds shall be paid by the Department of Revenue out of moneys appropriated for that purpose.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 361; 57 Del. Laws, c. 741, §§ 3B, 3D; 70 Del. Laws, c. 186, § 1.)

§ 359 Publication of tax information.

(a) The Secretary of Finance shall prepare and publish annual statistics, reasonably available with respect to the operation of the state tax laws, including amounts collected, classification of the incomes and exemptions of taxables and such other facts as are deemed pertinent and desirable.

(b) (1) *General.* — Except as provided herein, and notwithstanding the provisions of § 368 of this title, the Secretary of Finance shall prepare, maintain, and publish on the Division of Revenue Internet Website, 2 lists of taxpayers owing unpaid tax and additions to tax finally determined to be due under Title 30 for:

a. Personal income tax; and

b. Business taxes administered by the Department of Finance, including employee withholding tax.

(2) *Contents of lists.* — Each list shall consist of the 100 taxpayers owing to this State the greatest amount of unpaid tax and additions to tax, as modified by paragraph (b)(6) of this section, and shall contain the name and address of each such taxpayer, the total by type and amount of tax and additions to tax due and the date the amount was finally determined to be due. In the case of entities other than natural persons, the list may also name any persons who were at least 25% owners or beneficial owners or who were responsible officers of such entity at or after the time the liability was created.

(3) *Administration.* — a. Each list shall be updated on a quarterly basis; and

b. Notwithstanding paragraph (b)(7)a. of this section, each newly updated list shall not include the names of taxpayers that have appeared on previous versions of the same list unless:

1. A separate instance of unpaid tax or additions to tax, which ranks the taxpayer's new liability, subsequent to the publishing of the prior quarter's list, among the 100 largest; or

2. At least 1 year has elapsed since the taxpayer appeared on the list and, in the Director's judgment, returning the taxpayer to the list will significantly increase the likelihood of payment.

(4) *Limitations.* — No taxpayer shall be included on the aforesaid list until:

a. The overdue liability has been reduced to a judgment under § 554 of this title; and

b. Sixty days have elapsed following the date of mailing a notice by certified mail to the taxpayer, taxpayer's owners, beneficial owners or officers, as the case may be, of the Secretary's intent to include that taxpayer's name and other required information on the list to be published.

(5) *Exceptions.* — No taxpayer shall be included in the published list if:

a. The taxpayer has since the mailing of the notice, paid the liability in full, or entered into a written agreement with the Division for payment of the delinquency; or

b. The total liability for all taxes and additions to tax is less than $1,000.

(6) Calculating the amount of tax and additions to tax to be listed. For the exclusive purpose of ascertaining a taxpayer's inclusion on the published list, in calculating the amount of tax and additions to tax, there shall be excluded any amount of tax or addition to tax which:

a. Has been determined to be uncollectible pursuant to § 352 of this title; or

b. Is the subject of an agreement between the Secretary and the taxpayer for installment payment of the amount due and which is not in default by a period of 31 days; or

c. Is subject to stay of collection pursuant to the Bankruptcy Code of the United States [11 U.S.C. § 101 et seq.]; or

d. Has, in the discretion of the Secretary or the Secretary's delegate and in the interests of justice, been deferred from collection for no more than 90 days for the purpose of researching whether or not an error has occurred in calculating the amount due; or

e. The Director, in the Director's discretion, and after receipt of a taxpayer's written request and statement of reasonable cause, and with the written approval of the Secretary of Finance, has deemed to result from extraordinary circumstances.

(7) *Compliance adjustment.* — a. Taxpayers appearing on the above list shall be removed therefrom within 30 days of the receipt of full payment of the delinquent liability or entering into a written agreement with the Division for payment of the delinquency.

b. Any issuance of bad check or breach of said agreement may result in the taxpayer's name being immediately returned to the published list.

(8) *Regulations.* — The Department may promulgate rules and regulations necessary to implement 75 Del. Laws, c. 406.

(9) Any disclosure made by the Secretary under paragraphs (b)(1) and (b)(2) of this section, in a good faith effort to comply with paragraphs (b)(3)-(7) of this section, shall not be considered a violation of any statute prohibiting disclosure of taxpayer information.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 362; 57 Del. Laws, c. 741, §§ 3B, 3D; 75 Del. Laws, c. 406, § 1.)

§ 360 List of income tax taxables [Repealed].

Repealed by 50 Del. Laws, c. 443, § 1, effective July 14, 1955.

§ 361 Enforcement of penalties.

The Secretary of Finance shall take all necessary steps to enforce the penalties provided by any state tax law administered by the Department of Finance.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 364; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 362 Advisory board.

The Secretary of Finance may appoint an unpaid advisory board of not more than 10 lawyers and tax experts to make recommendations concerning the rules, regulations and decisions of the Department and concerning changes in the state tax laws.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 365; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 363 Escheator.

The Secretary of Finance shall act as Escheator of the State under the provisions of Chapter 11 of Title 12.

(Code 1852, § 1588; Code 1915, § 124; Code 1935, § 113; 42 Del. Laws, c. 57; 30 Del. C. 1953, § 366; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 364 Examinations to ascertain correctness of tax returns or taxable income.

For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any taxable, the Secretary of Finance may examine or cause to be examined, by any agent or designated representative, any books, papers, records or memoranda bearing upon the matters required to be included in a return and may by summons require the attendance of the taxable or of any other person having knowledge in the premises and may take testimony and require proof material for the investigation, with power to administer oaths to such person or persons. All banks, trust companies and brokers, when required by the Secretary, shall allow a representative of the Department of Finance to verify all accounts and records pertaining to the income of any taxable.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 368; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 365 Agents as special constables.

The Secretary of Finance may constitute agents, field agents or other appointees special constables and as such they shall have and

possess all the powers that are possessed by county constables under the laws of this State.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 369; 57 Del. Laws, c. 741, §§ 3B, 3D; 70 Del. Laws, c. 186, § 1.)

§ 366 Appeals.

The Secretary of Finance shall have all rights of appeal to the Superior Court as are granted to any taxable under this title.

(36 Del. Laws, c. 8, § 12; Code 1935, § 155; 30 Del. C. 1953, § 370; 57 Del. Laws, c. 741, §§ 3B, 3D.)

§ 367 False statements [Repealed].

Repealed by 69 Del. Laws, c. 369, § 2, effective July 12, 1994.

§ 368 Secrecy of returns and information; penalty.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the Department of Finance, or for any other officer or employee of this State who has access to tax returns or information from tax returns under this title (other than Chapters 30 [except §§ 3004 and 3005], 51 and 52) to disclose or make known to any person in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this title (other than Chapters 30 [except §§ 3004 and 3005], 51 and 52) including any copy of any portion of a federal income or estate tax return or report, or any information on a federal return or report which is required to be attached to or included in a state tax return.

(b) Nothing in this section shall be construed to prohibit the publication of statistics classified so as to avoid identification of specific taxpayers, or to prohibit the disclosure of the tax return or return information of any taxpayer to such person or persons as the taxpayer may designate in a written request or consent to such disclosure.

(c) For purposes of this section, the term "officer or employee" shall include present and former officers and employees, and any person or persons employed or retained by the State on an independent contractor basis, or any subcontractors thereof. The term "return" or "report" shall include reports of the Internal Revenue Service or other competent federal authority containing tax return information.

(d) Any violation of this section shall be a misdemeanor, punishable upon conviction by a fine not to exceed $1,000, or imprisonment not to exceed 6 months, or both. The Superior Court shall have exclusive original jurisdiction over such misdemeanor.

(e) For purposes of this section, the terms "return" and "return information" shall not be construed to include any information appearing on or to appear on the face of a license required to be displayed under § 2109 of this title or the name or mailing address of the licensee of said license.

(f) *Refunds.* — The Director may disclose taxpayer identity information to the press and other media for the purpose of notifying persons entitled to tax refunds when the Director, after reasonable effort and lapse of time, has been unable to locate such persons.

(67 Del. Laws, c. 40, § 1; 73 Del. Laws, c. 123, § 1; 81 Del. Laws, c. 103, § 1.)

§ 369 Required employee background checks.

(a) All prospective employees, contractors, and any subcontractors thereof, of the Department who will have access to federal tax information shall obtain a background check as provided in subsection (c) of this section in order to be considered for employment to ensure compliance by the Department with § 6103(p)(4) of the Internal Revenue Code of 1986 (26 U.S.C. § 6103(p)(4)) and IRS Publication 1075 and any successor statutory provisions or IRS publications.

(b) All current employees, contractors, and any subcontractors thereof, of the Department who have access to federal tax information shall be required to submit to subsequent background checks as provided in subsection (c) of this section not less frequently than once every 5 years to ensure compliance by the Department with IRS Publication 1075.

(c) A person required to obtain a background check under this chapter shall submit fingerprints and other necessary information to the State Bureau of Identification in order to obtain all of the following:

(1) A report of the person's entire criminal history record from the State Bureau of Identification or a statement that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the person's entire federal criminal history record from the Federal Bureau of Investigation pursuant to Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) or a statement that the Federal Bureau of Investigation's records contain no such information relating to that person.

(d) The State Bureau of Identification shall be the intermediary for the purpose of subsection (c) of this section and shall forward all information required by subsections (a) and (b) of this section to the Department.

(e) The Department may adopt such standards for screening the background checks required by this section as the Department shall determine appropriate.

(81 Del. Laws, c. 103, § 2; 83 Del. Laws, c. 323, § 3.)

Subchapter V

General Regulations

§ 375 Furnishing of bonds by foreign persons or firms.

(a) Any nonresident person or firm, whether incorporated or not, either doing business in this State, so as to be subject to Delaware income tax or state occupational or business licenses, or having employees or agents performing labor or services in this State, so as to subject such employees or agents to Delaware income tax and such employer to Delaware income tax withholdings and to the Delaware Unemployment Compensation Law, shall file a surety bond with the Department of Finance, payable to the State, to guarantee the payment of state income taxes, state occupational or business licenses, unemployment compensation contributions and income taxes withheld from wages of employees, together with any penalties and interest thereon, the form and contents of such bond and the amount thereof to be approved and fixed by the Department of Finance in such amount as shall be sufficient to protect the tax revenues of the State, except as otherwise provided in this section.

(1) The amount of the surety bond to be required of any nonresident contractor or subcontractor required to be licensed under Chapter 25 of this title shall be as follows: 6% of the contract or subcontract price on all contracts of $20,000 or more, or 6% of contractor's or subcontractor's estimated cost-and-profit under a cost-plus contract of $20,000 or more. When the aggregate of 2 or more contracts in 1 calendar year is $20,000 or more, the amount of the bond or bonds shall be 6% of the aggregate amount of such contracts. The Division of Revenue may by regulation prescribe cash bonds in lieu of the foregoing and shall deposit such cash bonds in a special fund of the State to be established for this purpose.

(2) The surety bond shall be filed before construction is begun in this State by the nonresident contractor or subcontractor on any contract the price of which is $20,000 or more, or the estimated cost and profit of which is $20,000 or more, and before construction is begun in this State by such nonresident contractor or subcontractor on any contract for less than $20,000 when the amount of the contract when aggregated with any other contracts on which construction was begun by such nonresident contractor or subcontractor in the same calendar year equals or exceeds $20,000.

(3) If the Department concludes that no bond is necessary to protect the tax revenue of this State, the requirements of this section may be waived in whole or in part by the Secretary of Finance or the Secretary's designated departmental representative. Any bond issued pursuant to this section shall remain in force until the liability thereunder is released by the Secretary or the Secretary's designated departmental representative.

(b) Any person or firm subject to this section shall notify the Department of the termination of business within this State within 20 days after such termination or, as to a construction contractor or subcontractor, within 20 days after the completion of every such construction project in this State.

(c) In the case of any person or firm failing or refusing to comply with this section, there shall be assessed by the Secretary of Finance a civil penalty of not more than $10,000 for each such occurrence.

(d) Any person or firm who wilfully or knowingly fails or refuses to comply with this section shall be guilty of a misdemeanor and shall upon conviction be punishable by a fine not to exceed $3,000, or imprisonment not to exceed 6 months, or both.

(e) The definition of the terms "nonresident contractor" or "subcontractor" as used in paragraphs (a)(1) and (2) of this section is the same as defined at § 2501 of this title.

(f) As to each specific construction project in this State, upon the request of the nonresident engaged as a contractor or subcontractor within the meaning of subsection (e) of this section who establishes to the satisfaction of the Department that such nonresident is in compliance with all the provisions of this section applicable to such nonresident, the Department shall issue to such nonresident a certificate of compliance on a form prescribed by the Department.

(g) In lieu of the surety bond required under subsection (a) of this section, the Director of Revenue may accept bank letters of credit in the amount specified by and subject to the same conditions as contained in that subsection; provided, however, that any such letter is in a form approved by the Director, is issued or confirmed by a bank meeting whatever requirements the Director may by regulation prescribe, and the Director is satisfied that the letter is sufficient to protect the tax revenue of the State.

(30 Del. C. 1953, § 375; 55 Del. Laws, c. 244, § 1; 57 Del. Laws, c. 194; 57 Del. Laws, c. 741, §§ 3B-3D; 65 Del. Laws, c. 476, §§ 1-5; 67 Del. Laws, c. 40, §§ 10, 13, 14; 70 Del. Laws, c. 186, § 1.)

§ 376 Time for performing certain acts postponed by reason of service in combat zone.

(a) In the case of an individual serving in the armed forces of the United States, or serving in support of such armed forces, in an area designated by the President of the United States by Executive Order as a "combat zone" for purposes of § 112 of the Internal Revenue Code [26 U.S.C. § 112], at any time during the period designated by the President by Executive Order as the period of combatant activities in such zone for purposes of such section, or hospitalized as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization attributable to such injury, and the next 195 days thereafter, shall be disregarded in determining under this title (other than Chapters 30, 51 and 52), in respect of any tax liability (including any interest, penalty, additional amount or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

a. Filing any return of income or estate tax (except income tax withheld at source);

b. Payment or any income or estate tax (except income tax withheld at source) and/or any installment thereof or any other liability to the State in respect thereof;

c. Filing a protest with the Director of Revenue or filing a petition with the Tax Appeal Board to appeal a determination of the

Director or filing an appeal of a decision rendered by the Tax Appeal Board;

d. Allowance of a credit or refund of any tax;

e. Filing a claim for credit or refund of any tax;

f. Assessment of any tax;

g. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the State in respect of any tax;

h. Collection of the amount of any liability in respect of any tax;

i. Bringing suit or commencing any action, including the filing of any certificate or warrant, by the State or any officer on its behalf, in respect of any liability in respect of any tax; and

j. Any other act required or permitted under this title (other than Chapters 30, 51 and 52) specified in regulations prescribed under this section by the Director of Revenue;

(2) The amount of any credit or refund (including interest).

(b) The provisions of this section shall also apply to the spouse of any individual entitled to the benefits of subsection (a) of this section. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after the date designated under the Internal Revenue Code as the date of termination of combatant activities in a combat zone.

(c) The period of service in the area referred to in subsection (a) of this section shall include the period during which an individual entitled to benefits under subsection (a) of this section is in a missing status, within the meaning of § 6013(f)(3) of the Internal Revenue Code [26 U.S.C. § 6013(f)(3)], or a successor provision.

(d) Exceptions:

(1) Notwithstanding the provisions of subsection (a) of this section, any action or proceeding authorized by §§ 1220 and 1221 [repealed] of this title, or successor provisions (regardless of the taxable year for which the tax arose), as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun or prosecuted. In any other case in which the Director of Revenue determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) of this section shall not operate to stay collection of such amount as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount and addition to tax, if any, in respect of the period disregarded under subsection (a) of this section. In any case to which this paragraph relates, if the Director of Revenue is required to give any notice to, or make any demand upon, any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Director is in any area for which United States post offices, under instructions of the Postmaster General are not, by reason of combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) The assessment or collection of any tax or of any liability to the State in respect of any tax, or any action or proceeding by or on behalf of the State in connection therewith, may be made, taken, begun or prosecuted in accordance with law, without regard to the provisions of subsection (a) of this section, unless prior to such assessment, collection, action or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a) of this section.

(68 Del. Laws, c. 22, § 1; 71 Del. Laws, c. 353, § 12; 71 Del. Laws, c. 385, § 2.)

Part I
General Provisions; State Tax Agencies; Procedure and Enforcement
Chapter 5
PROCEDURE, ADMINISTRATION AND ENFORCEMENT
Subchapter I
General Provisions

§ 501 Application of this chapter.

For tax periods beginning on or after January 1, 1992, except where in conflict with a specific provision within another chapter of this title or, where applicable, a specific provision of Title 4 or Title 16 or a rule of the Delaware Alcoholic Beverage Control Commission, this chapter shall govern the administration, procedures and enforcement of the State revenue laws provided for under Parts II, III, IV (except Chapters 51 and 52), V, and VI of this title; subchapter VII of Chapter 5 of Title 4; and Chapter 101 of Title 16.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 385, § 3; 74 Del. Laws, c. 137, § 5; 79 Del. Laws, c. 142, § 1.)

§ 502 Definitions.

(a) *Meaning of terms, in general.* — Any term used in this chapter shall have the same meaning as when used in a comparable context in the internal revenue laws of the United States, unless a different meaning is clearly required or unless subsection (b) of this section ascribes a different meaning to such term. Any reference in this chapter to the internal revenue laws of the United States shall mean the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.) and amendments thereto and other laws of the United States relating to federal taxes, as the same are or may become effective for the taxable year.

(b) *Specific definitions.* — Whenever used in this title, the following terms shall have the meanings ascribed to them in this subsection:

(1) "Applicable thresholds" means any dollar figure listed within this title that is used to determine notification requirements, filing frequencies, tax or tax credit calculations that shall be subject to annual adjustment through the application of the threshold adjustment factor, including, without limitation, those specifically set forth in § 515(c)(1) of this title.

(2) "Deficiency" means, in the case of any tax imposed by this title or, where applicable, Title 4, the amount by which such tax so imposed exceeds the excess of:

a. The sum of the amount shown as the tax by the taxpayer upon the return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus the amounts previously assessed (or collected without assessment) as a deficiency, over

b. The amount of any abatements, credits or refunds made.

(3) "Director" means the Director of the Division of Revenue or the Secretary of Finance of the State.

(4) "Division of Revenue" means the Division of Revenue of the Department of Finance of the State.

(5) "Internal Revenue Service" means the Internal Revenue Service of the Department of Treasury of the United States.

(6) a. "Last known address," except as provided in paragraph (b)(6)b. of this section, shall mean:

1. The address for the receipt of mail last made known by the taxpayer to the Division of Revenue on a tax return or written notice; or

2. A mailing address with respect to such taxpayer provided by a service provider to the Division of Revenue.

Whichever address shall have been provided later to the Division of Revenue.

b. Notwithstanding the provisions of paragraph (b)(6)a. of this section, "last known address" shall mean the address determined under paragraph (b)(6)a.1. of this section whenever the taxpayer shows that the address determined under paragraph (b)(6)a.1. of this section is the taxpayer's actual address and that the address determined under paragraph (b)(6)a.2. of this section is not the taxpayer's actual address, or that mail sent to the address determined under paragraph (b)(6)a.1. of this section is more likely to reach the taxpayer than mail sent to the address under paragraph (b)(6)a.2. of this section.

(7) "Notice of proposed assessment" means a notice sent to a taxpayer by the Director or the Director's delegate pursuant to § 521(c) of this title that tax, interest, penalty, additional amount or addition to the tax is proposed for assessment and is due.

(8) "Paid tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or claim for refund, or a substantial portion of any return or claim for refund under this Title. "Paid tax preparer" does not include anyone regulated under Chapter 1 of Title 24.

(9) "Person" means and includes an individual, a trust, estate, partnership, association, company or corporation.

(10) "State" means a state of the United States, the District of Columbia, Puerto Rico, The United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(11) "State Tax Commissioner" means the Director of the Division of Revenue.

(12) "State Tax Department" means the Division of Revenue.

(13) "Tax" shall be deemed also to refer to license fees imposed under Part III of this title.

(14) "This title," except when used in reference to specific chapters, sections or other provisions of Title 30, shall mean Title 30 of the Delaware Code, except § 3003 and Chapters 51 and 52.

(15) "Threshold adjustment factor" means an amount equal to the Consumer Price Index prepared by the Bureau of Labor Statistics, U.S. Department of Labor for urban consumers, U.S. city average, all items, for the month of June during the year in which an applicable threshold is adjusted, divided by the equivalent Consumer Price Index figure for June 2016.

(16) "Title 4," for purposes of this chapter, shall be deemed to refer only to subchapter VII of Chapter 5 of Title 4.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 314, § 6; 80 Del. Laws, c. 195, § 1; 81 Del. Laws, c. 386, § 1.)

Subchapter II

Returns and Payment of Tax

§ 510 Due date of the return.

A return prepared in compliance with the provisions of any chapter of this title or, where applicable, Title 4 shall be due on the last day provided for under such provision, or upon such later date as the Director may permit pursuant to any extension of the time to file the return granted in accordance with this chapter.

(68 Del. Laws, c. 187, § 1.)

§ 511 Extension of time for filing and payment.

(a) The Director may grant a reasonable extension of time for the payment of any tax or estimated tax imposed by this title or by Title 4, or any installment thereof, or for filing any return, declaration, statement or other document required, on such terms and conditions as the Director may require.

(b) If any extension of time is granted for the payment of any amount of tax, the Director may require the taxpayer to furnish a bond, or other security, in an amount not exceeding twice the amount of the tax for which the extension of time for payment is granted, on such terms and conditions as the Director may require.

(c) In the case of any return required under Chapter 15 of this title, if a federal extension of time for the filing of a return is granted for federal estate tax purposes, then the time for filing such return required under Chapter 15 of this title shall be automatically extended for a like period; provided, that a copy of the federal extension is furnished to the Director before or with the filing of such return.

(d) This section shall not preclude or be administered so as to be in conflict with deferred payments under § 5316(b) of this title.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 353, § 14; 71 Del. Laws, c. 385, § 4.)

§ 512 Signing of returns and other documents.

(a) Any return, declaration, statement or other document required to be made pursuant to this title or Title 4 shall be signed in accordance with rules or instructions prescribed by the Director. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that such return, declaration, statement or other document was actually signed by such individual and that the individual signed the return with authority to do so on behalf of the taxpayer.

(b) The making or filing of any return, declaration, statement or other document, or copy thereof, required to be made or filed pursuant to this title or Title 4, including a copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document, or copy thereof, that the statements contained therein are true and that any copy filed is a true copy.

(c) The Director may require that any return or other writing required to be filed with respect to any tax imposed under authority of this title or Title 4 be signed by the maker of such return or writing under oath or affirmation, subject to the penalties of perjury.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 513 General requirements concerning returns; records and statements.

(a) The Director may prescribe rules or regulations with respect to the keeping of records, and may prescribe the content and form of returns and statements and the filing of copies of federal returns and determinations. The Director may require any person, by regulation or notice served on such person, to make such returns, render such statements or keep such records as the Director may deem sufficient to show whether or not such person is liable under this title or Title 4 for the payment of any tax or for the collection of any tax. The Director may permit or require the filing of returns by electronic means or by magnetic media and, in either case, may specify the form and content of such filing.

(b) Notwithstanding any other provision of law, any return, declaration, statement or other document submitted by means of a digital or electronic form stating that the submission is subject to the penalties of perjury shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed.

(68 Del. Laws, c. 187, § 1; 68 Del. Laws, c. 344, § 1; 73 Del. Laws, c. 131, § 1; 81 Del. Laws, c. 103, § 3.)

§ 514 Report of change in federal tax liability.

If the amount of the taxpayer's federal income or estate tax liability reported on the federal tax return for any taxable period is changed or corrected by the Internal Revenue Service, or other competent authority, the taxpayer shall report to the Director such change or correction in federal tax liability within 90 days after the final determination of such change or correction and shall concede the accuracy of such determination, or state wherein it is erroneous. Any taxpayer filing an amended federal income, estate or gift tax return shall also file, within 90 days thereafter, the appropriate amended tax return under this title and shall provide to the Director such additional information as the Director may require.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 385, § 5.)

§ 515 Filing frequency and tax computation thresholds.

(a) *Annual adjustment.* — Each year, the Department of Finance shall calculate the threshold adjustment factor no later than October 25 of that year and shall present the adjustment to the Delaware Economic and Financial Advisory Council at its October meeting.

(b) *Calculation.* — (1) The applicable thresholds for notification requirements, filing frequencies, tax and tax credit calculations shall be recomputed after the annual adjustment described in subsection (a) of this section by multiplying each applicable threshold by the threshold adjustment factor calculated as set forth in § 502(b)(15) of this title.

(2) For any applicable threshold less than $1,000,000, the resulting product of the calculation in paragraph (b)(1) of this section shall be rounded to the nearest $10. For any applicable threshold of $1,000,000 or more, the resulting product of the calculation in paragraph (b)(1) of this section shall be rounded to the nearest $1,000.

(c) *Applicability.* — (1) The applicable thresholds subject to annual adjustment shall include:

a. The figure "$1,000" as it appears in § 521(c) of this title;
b. The figure "$1,000" as it appears in § 552(b) of this title;
c. The figures "$4,500" and "$25,000" wherever they appear in § 1154(a) of this title;
d. The figure "$20,000,000" as it appears in § 1905(5) of this title;
e. The figure "$20,000,000" as it appears in § 2070(a)(2) of this title;
f. The figure "$112,200" as it appears in § 2081(21) of this title;
g. The figure "$1,500,000" as it appears in § 2301(d)(2) of this title;
h. The figure "$1,500,000" as it appears in § 2502(c)(2) of this title;
i. The figure "$1,500,000" as it appears in § 2702(b)(3) of this title;
j. The figure "$1,500,000" as it appears in § 2703(c)(2) of this title;
k. The figure "$1,500,000" as it appears in § 2902(c)(2) of this title;
l. The figure "$1,500,000" as it appears in § 2903(c)(2) of this title;
m. The figure "$3,000,000" as it appears in § 2904(c)(2) of this title;
n. The figure "$1,500,000" as it appears in § 2905(b)(2) of this title;
o. The figure "$1,500,000" as it appears in § 2906(c)(2) of this title;
p. The figure "$3,000,000" as it appears in § 2907(c)(2) of this title; and
q. The figure "$1,500,000" as it appears in § 2908(c)(2) of this title.

(2) The annual adjustment of the applicable thresholds for notification requirements, filing frequencies, tax and tax credit calculations occurring each October as required under subsection (a) of this section is effective for determining the applicable thresholds for notification requirements, filing frequencies, tax and tax credit calculations for tax periods beginning after December 31 of the year in which the applicable thresholds were adjusted.

(d) *Publication.* —

No later than November 15 each year, the Department of Finance shall publish the annual adjustments to all applicable thresholds on the Division of Revenue Internet Website and engage in public outreach notifying businesses, employers, payroll processors, tax professionals, and the general public of the adjustments.

(80 Del. Laws, c. 195, § 2; 80 Del. Laws, c. 207, § 1; 81 Del. Laws, c. 386, § 1; 82 Del. Laws, c. 101, § 4; 82 Del. Laws, c. 226, § 7.)

Subchapter III

Procedure and Administration

§ 521 Examination of return.

(a) *Deficiency or overpayment.* — As soon as practicable after any return is filed, the Director shall examine it to determine the correct amount of tax. If the Director finds that the amount of tax shown on the return is less than the correct amount, the Director shall notify the taxpayer in writing of the amount of the deficiency proposed to be assessed. If the Director finds that the tax that has been paid by the taxpayer is more than the correct amount, the Director shall credit the overpayment against any taxes to which this chapter applies and

which are due to this State by the taxpayer and shall refund the difference to the taxpayer.

(b) *No return filed.* — If the taxpayer fails to file any return of tax required to be filed, the Director shall estimate from any available information the taxpayer's taxable amount, and the tax thereon, and shall notify the taxpayer in writing of the amount proposed to be assessed against the taxpayer as a deficiency.

(c) *Notice of proposed assessment.* — A notice of proposed assessment shall:

(1) Be in writing,

(2) State that tax, interest, penalty, additional amount, or addition to tax is proposed for assessment and is due, and

(3) Set forth the amount and the reason for the proposed assessment.

Such notice shall be sent by mail to the taxpayer at the taxpayer's last known address within the time limit provided by § 531 of this title. If the amount of the proposed assessment exceeds the applicable threshold of $1,000, such notice shall be sent by certified or registered mail. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of a joint return of personal income tax, a notice of proposed assessment shall be a single joint notice, except that if the Director is notified by either spouse in writing that separate addresses have been established, the Director shall mail a joint notice to each spouse at each such address. In the case of a combined separate return of personal income tax, a single notice of proposed assessment shall be sent by the Director to the taxpayers' last known address except that, if the Director is notified by either spouse in writing that separate addresses have been established, the Director shall mail separate notices to each spouse, using reasonable means to allocate the proposed assessment between the spouses. If the taxpayer is deceased, under a legal disability or is a corporation which has terminated its existence, a notice of proposed assessment shall be mailed to such taxpayer's last known address, except that if the Director has received notice of the existence of a fiduciary relationship with respect to such taxpayer, such notice shall be mailed to the last known address of such fiduciary. Except where the Director determines that collection would be jeopardized by delay, no notice of proposed assessment of any tax shall be mailed prior to the last date, including any date fixed by extension, prescribed for the payment of such tax.

(d) *Supplemental notice of proposed assessment.* — The Director may, at any time within the period prescribed for issuance of a notice of proposed assessment, issue a supplemental notice of proposed assessment, subject to the other provisions of this section, whenever it is found that any notice is imperfect or incomplete in any material respect. Any reference in this title to a notice of proposed assessment shall be deemed to include a reference to a supplemental notice of proposed assessment issued under the authority of this subsection.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 195, § 3.)

§ 522 Assessment final if no protest.

Sixty days after the date on which it was mailed (30 days in the case of a proposed assessment of withholding taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States), a notice of proposed assessment under § 521(c) of this title shall constitute a final assessment of the amount of tax, interest, penalties, additional amounts and additions to the tax specified in such notice, excepting only those amounts as to which the taxpayer has filed a timely protest with the Director under § 523 of this title.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 523 Protest by taxpayer.

Within 60 days (30 days in the case of withholding taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States) after the date of the mailing of a notice of proposed assessment under § 521(c) of this title or the date of the mailing of a notice of the disallowance of a claim for credit or refund under § 542 of this title, the taxpayer may file with the Director a written protest against the proposed assessment or disallowance in which the taxpayer shall set forth the grounds upon which the protest is based. If such a protest is filed, the Director shall reconsider the proposed assessment or disallowance of claim for credit or refund and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative an oral hearing.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 524 Notice of determination after protest.

Written notice of the Director's determination under § 523 of this title shall be mailed to the taxpayer by certified or registered mail, and such notice shall set forth the Director's findings of fact and the basis of any determination which is adverse, in whole or in part, to the taxpayer.

(68 Del. Laws, c. 187, § 1.)

§ 525 Determination of Director final.

The determination of the Director under § 524 of this title on the taxpayer's protest shall be final (and such determination shall constitute a final assessment of any amount determined by the Director to be due) upon the expiration of 60 days (30 days in the case of withholding taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States) from the date when the Director mails notice of the determination to the taxpayer, unless within such period the taxpayer seeks review of the Director's determination pursuant to § 544 of this title.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 526 Burden of proof.

(a) In any proceeding before the Director under this chapter, the burden of proof shall be on the taxpayer, except with respect to the following issues, as to which the burden of proof shall be on the Director:

(1) Whether the taxpayer has been guilty of fraud;

(2) Whether the petitioner is liable as the transferee (within the meaning of § 560 of this title) of property of a taxpayer (but not to show that the taxpayer was liable for the tax); and

(3) Whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of proposed assessment under § 521(c) of this title was mailed and a protest under § 523 of this title was filed, unless such increase in deficiency is the result of a change or correction of federal tax liability required to be reported under § 514 of this title and of which change or correction the Director had no notice at the time the Director mailed the notice of proposed assessment.

(b) In any proceeding before the Tax Appeal Board under this chapter, the burden of proof shall be upon the taxpayer, except with respect to the issues described in paragraphs (a)(1) and (2) of this section, as to which the burden of proof shall be on the Director.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 527 Evidence of related federal determination.

A federal administrative determination of issues raised in a proceeding under § 523 or § 544 of this title shall be admissible as presumptive evidence in such proceeding, but such determination shall not be conclusive.

(68 Del. Laws, c. 187, § 1.)

§ 528 Mathematical error.

(a) If the amount of tax shown on the taxpayer's return is understated due to a mathematical or clerical error, the Director shall notify the taxpayer in writing that an amount of tax in excess of that shown on the return is due and has been assessed. Each notice under this subsection shall expressly state the error alleged. Such additional tax and any interest thereon shall, subject to the right of protest under subsection (b) of this section, be deemed assessed on the date of filing or the due date of the return, whichever is later.

(b) Notwithstanding the provision for immediate assessment under subsection (a) of this section, a taxpayer may file with the Director, within 60 days after notice of the assessment is sent, a written protest of the assessment under the provisions of § 523 of this title. In the taxpayer's protest, the taxpayer shall set forth the reasons the taxpayer believes there was no mathematical or clerical error made in the preparation of the return or calculation of the tax due.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 529 Time for performing certain acts postponed by reason of service in combat zone.

(a) In the case of an individual serving in the armed forces of the United States, or serving in support of such armed forces, in an area designated by the President of the United States by Executive Order as a "combat zone" for purposes of § 112 of the Internal Revenue Code (26 U.S.C. § 112), at any time during the period designated by the President by Executive Order as the period of combatant activities in such zone for purposes of such section, or hospitalized as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous qualified hospitalization attributable to such injury, and the next 195 days thereafter, shall be disregarded in determining under this title (other than Chapters 30, 51 and 52), in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

a. Filing any return of income or estate (except income tax withheld at source);

b. Payment of any income or estate (except income tax withheld at source) or any installment thereof or any other liability to this State in respect thereof;

c. Filing a protest with the Director under § 523 of this title, filing a petition with the Tax Appeal Board under § 544 of this title or filing an appeal of a decision rendered by the Tax Appeal Board under § 331 of this title;

d. Allowance of a credit or refund of any tax;

e. Filing a claim for credit or refund of any tax;

f. Assessment of any tax;

g. Giving or making any notice or demand for the payment of any tax, or with respect to any liability to this State in respect of any tax;

h. Collection of the amount of any liability in respect of any tax;

i. Bringing suit or commencing any action, including the filing of any certificate or warrant, by this State or any officer on its behalf, in respect of any liability in respect of any tax; and

j. Any other act required or permitted under this title (other than Chapters 30, 51 and 52) specified in regulations prescribed under this section by the Director;

(2) The amount of any credit or refund (including interest).

(b) (1) Except to the extent provided in paragraph (a)(2) of this section shall not apply for purposes of determining the amount of interest on any overpayment of tax.

(2) If an individual is entitled to the benefits of subsection (a) of this section with respect to any return and such return is timely filed

(determined after the application of subsection (a) of this section), interest shall be allowed on any overpayment commencing with the forty-sixth day after the due date for the return (determined after the application of subsection (a) of this section).

(c) The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a) of this section. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after the date designated under § 112 of the Internal Revenue Code (26 U.S.C. § 112) as the date of termination of combatant activities in a combat zone.

(d) The period of service in the area referred to in subsection (a) of this section shall include the period during which an individual entitled to benefits under said subsection (a) of this section is in a missing status, within the meaning of § 6013(f)(3) of the Internal Revenue Code (26 U.S.C. § 6013(f)(3)).

(e) (1) Notwithstanding the provisions of subsection (a) of this section, any action or proceeding authorized by § 560, § 561 or § 1221 [repealed] of this title (regardless of the taxable period for which the tax arose), as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun or prosecuted. In any other case in which the Director determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) of this section shall not operate to stay collection of such amount as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount and addition to the tax, if any, in respect of the period disregarded under subsection (a) of this section. In any case to which this paragraph relates, if the Director is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of such person last known to the Director is in any area for which United States post offices under instructions of the Postmaster General of the United States are not, by reason of combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) The assessment or collection of any tax or of any liability to this State in respect of any tax, or any action or proceeding by or on behalf of this State in connection therewith, may be made, taken, begun or prosecuted in accordance with law, without regard to the provisions of subsection (a) of this section, unless prior to such assessment, collection, action or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a) of this section.

(f) (1) Any individual who performed Desert Shield services (and the spouse of such individual) shall be entitled to the benefits of this section in the same manner as if such services were referred to in subsection (a) of this section.

(2) For purposes of this subsection, the term "Desert Shield services" means any services in the armed forces of the United States or in support of such armed forces if:

a. Such services are performed in the area designated by the President pursuant to this subparagraph as the "Persian Gulf Desert Shield Area"; and

b. Such services are performed during the period beginning on August 2, 1990, and ending on the date on which any portion of the area referred to in subparagraph a is designated by the President as a combat zone pursuant to § 112 of the Internal Revenue Code (26 U.S.C. § 112).

(g) For purposes of subsection (a) of this section, the term "qualified hospitalization" means:

(1) Any hospitalization outside the United States; and

(2) Any hospitalization inside the United States, except that not more than 5 years of hospitalization may be taken into account under this paragraph.

Paragraph (2) of this subsection shall not apply for purposes of applying this section with respect to the spouse of any individual entitled to the benefits of subsection (a) of this section.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 353, § 13; 71 Del. Laws, c. 385, § 6.)

§ 530 Assessment of tax.

(a) The amount of tax which is shown to be due on any return (including any additional amount subject to notice under § 528(a) of this title as a result of a mathematical or clerical error) shall be deemed to be assessed on the date of filing such return, and an increase in such tax which is shown on an amended return shall be deemed to be assessed on the date of filing such amended return. In the case of a return filed without the computation of the tax, the tax computed by the Director shall be deemed to be assessed on the date when payment of such tax is due. If a notice of proposed assessment has been mailed pursuant to § 521(c) of this title, the amount of the proposed assessment shall be deemed to be assessed, if no protest under § 523 of this title is timely filed, on the date provided in § 522 of this title, or, if such a protest is timely filed, on the date when the determination of the Director becomes final pursuant to § 525 of this title; provided, however, that, if the taxpayer seeks review of the Director's determination pursuant to § 544 of this title, the amount of the proposed assessment shall not be deemed to be assessed until the expiration of 60 days (30 days in the case of withholding taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States) from the first date when (i) the determination of the Tax Appeal Board under § 544 of this title becomes final and not subject to judicial review under § 331 of this title, or (ii) if the taxpayer appeals from the Tax Appeal Board determination pursuant to § 331 of this title, an order of the Superior Court of the State or the Supreme Court of the State entered upon the decision on such appeal becomes final and not subject to appeal. If an amended return or report filed pursuant to § 514 of this title concedes the accuracy of a federal change or correction, any deficiency in tax under this title resulting therefrom shall be deemed to be assessed on the date of filing such amended return or report, and such assessment shall be

deemed timely notwithstanding any other provisions of this chapter. Any amount paid as a tax, or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of the Director's receipt of payment, notwithstanding any other provision of this title.

(b) If the mode or time for the assessment of any tax under this title or Title 4, including interest, penalties, additional amounts and additions to the tax, is not otherwise provided for, the Director may establish the same by regulations.

(c) The Director may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of § 521 of this title where applicable, whenever it is found that any assessment is imperfect or incomplete in any material respect.

(68 Del. Laws, c. 187, § 1.)

§ 531 Limitations on assessment.

(a) Except as otherwise provided in this section, a notice of proposed assessment under § 521(c) of this title shall be mailed to the taxpayer within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed). No deficiency shall be assessed or collected with respect to the taxable period for which a return was filed unless such notice is mailed within such 3-year period, or within the period otherwise prescribed in this section.

(b) In the case of a deficiency in any license fee or tax under Part III of this title, a notice of proposed assessment under § 521(c) of this title shall be mailed to the taxpayer within 3 years after the expiration date of the license to which the proposed assessment relates.

(c) If no return is filed, or if a false and fraudulent return is filed with intent to evade any tax imposed by this title or Title 4, a notice of proposed assessment under § 521(c) of this title may be mailed to the taxpayer at any time.

(d) If the taxpayer fails to comply with the requirement of § 514 of this title by not reporting a change or correction to the federal income or estate tax return, or by not filing an amended return under this title, a notice of proposed assessment under § 521(c) of this title may be mailed to the taxpayer at any time.

(e) If the taxpayer shall, pursuant to § 514 of this title, report a change or correction or file an amended federal income or estate tax return increasing the federal tax liability, a notice of proposed assessment under § 521(c) of this title with respect to such change or correction (if not otherwise deemed to have been assessed under § 530(a) of this title upon the filing of such report or amended return) may be mailed to the taxpayer at any time within 2 years after such report or amended return was filed.

(f) Where, before the expiration of the time prescribed in this section for the mailing of a notice of proposed assessment under § 521(c) of this title, both the Director and the taxpayer shall have consented in writing to such assessment after such time, the proposed assessment may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for assessment of federal income taxes shall constitute an agreement with the Director to extend the period for assessment of income taxes under this title. A copy of any such agreement between the taxpayer and the Internal Revenue Service shall be filed by the taxpayer with the Director within 30 days after its execution.

(g) For purposes of this section, a return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(h) The running of the period of limitations provided for in this section on the making of assessments shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Director is prohibited by reason of such case from making the assessment plus 60 days thereafter.

(i) If a taxpayer omits from a return any amount of income, gross gifts or gross estate properly includible therein which exceeds 25% of the amount stated on the return, the tax may be assessed at any time within 6 years after the return was filed. If a taxpayer omits from a return any amount of license fee or tax under Part III of this title includible therein which exceeds 25% of the amount stated on the return, the tax may be assessed at any time within 6 years after the expiration date of the license to which the proposed assessment relates.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 144, § 1; 71 Del. Laws, c. 385, §§ 7, 8; 72 Del. Laws, c. 112, § 3; 81 Del. Laws, c. 19, § 1.)

§ 532 Recovery of erroneous refund.

(a) An erroneous refund shall be considered an underpayment of tax on the date such refund was made, and a notice of proposed assessment under § 521(c) of this title with respect to such refund may be mailed to the taxpayer at any time within the later of:

(1) Two years from the making of such refund; or

(2) The limitation period provided by § 531 of this title.

(b) As to any part of an erroneous refund that was induced by fraud or by the intentional misrepresentation of a material fact, a notice of proposed assessment under § 521(c) of this title with respect to such refund may be mailed to the taxpayer at any time.

(68 Del. Laws, c. 187, § 1.)

§ 533 Interest on underpayment.

(a) If any amount of tax, including tax required to be withheld by an employer, and including penalties, additional amounts and additions to the tax, imposed by this title or Title 4 is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 0.5% per month, or fraction thereof, shall be payable for the period from such last date to the date such amount is paid, and from and after the date the assessment of such interest becomes final under § 522 or § 530 of this title to the date such amount is paid, such interest shall

compound monthly. No interest shall be imposed if the amount due is less than $1.00, nor shall this section apply to any failure to pay estimated income tax under § 1170 or § 1904 of this title.

(b) For purposes of this section, the last date prescribed for payment of any tax shall be determined without regard to any extension of time.

(c) Interest prescribed under this section on any tax, including tax required to be withheld by an employer, and including penalties, additional amounts and additions to the tax, shall be assessed, collected and paid in the same manner as taxes. After an initial assessment of interest upon any amount of tax, penalty, additional amount or addition to the tax, interest shall continue to accrue on the unpaid balance of such amount until such amount has been paid in full, except as otherwise provided in subsection (e) of this section, and no further assessment of such interest shall be made.

(d) Interest shall be imposed under this section in respect of any penalty, additional amount or addition to the tax from the date of the notice of proposed assessment under § 521(c) of this title of such penalty, additional amount or addition to the tax to the date of payment thereof.

(e) If a proposed assessment is made with respect to any amount, and if such amount is paid within 10 days after the date of the notice of proposed assessment thereof under § 521(c) of this title, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice.

(f) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(g) Any portion of any tax imposed, or any interest, penalty, additional amount or addition to the tax, which has been erroneously refunded and which is recoverable by the Director, shall bear interest at the rate of 0.5% per month, or fraction thereof, from the date of payment of such refund to the date of its recovery by the Director, and from and after the date the assessment of such interest becomes final under § 522 or § 530 of this title to the date of such recovery, such interest shall compound monthly.

(h) Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax, penalty, additional amount or addition to the tax to which such interest relates may be collected.

(i) If the Secretary of the Treasury of the United States extends the time for filing income tax returns under § 6081 of the Internal Revenue Code (26 U.S.C. § 6081) and the time for paying income tax with respect to such returns under § 6161 of the Internal Revenue Code (26 U.S.C. § 6161) for any taxpayer located in a Presidentially-declared disaster area, the Director shall abate for such period the assessment of any interest prescribed under this section and penalties for failure to file a return under § 534(a) of this title or to pay the tax under § 534(b) of this title on such taxpayer's income and business license tax. For purposes of this subsection, the term "Presidentially-declared disaster area" means, with respect to any taxpayer, any area which the President of the United States has determined warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.

(68 Del. Laws, c. 187, § 1; 72 Del. Laws, c. 112, § 2; 75 Del. Laws, c. 411, §§ 1, 2.)

§ 534 Failure to file tax return or to pay tax.

(a) In case of failure to file any return required under authority of this title or Title 4 on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is for not more than 1 month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 50% in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall 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 any credit against the tax which may be claimed on the return.

(b) (1) In case of failure to pay the amount shown as tax on any return specified in subsection (a) of this section on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount shown as tax on such return 1% of the amount of such tax if the failure is for not more than 1 month, with an additional 1% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of computing such addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return. If the amount required to be shown as tax on the return is less than the amount shown as tax on the return, this paragraph shall be applied by substituting such lower amount.

(2) In the case of failure to pay any amount in respect of any tax required to be shown on a return specified in subsection (a) of this section which is not so shown (including an assessment made pursuant to § 528(a) of this title) within 10 days after any assessment thereof becoming final, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount of tax stated in the notice of proposed assessment 1% of the amount of such tax if the failure is for not more than 1 month, with an additional 1% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of computing such addition for any month, the amount of tax stated in the notice of proposed assessment shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) (1) For tax periods beginning after December 31, 1999, if any pass-through entity required to file a return under § 1605(a)(1) of this

title for any taxable year fails to file such return by the date prescribed therefor (determined with regard to any extension of time for filing) or files a return which fails to show the information required under § 1605(a)(1) of this title, such pass-through entity shall be liable for a penalty determined under paragraph (c)(2) of this section for each month, or fraction thereof, during which such failure continues (but not to exceed 5 months), unless it is shown that such failure was due to reasonable cause.

(2) For purposes of paragraph (c)(1) of this section, the amount of penalty for any month is the product of $25, multiplied by the number of persons who were members in the pass-through entity during any part of the taxable year; provided, however, that the maximum penalty for any taxable year shall not exceed $10,000.

(3) The penalty prescribed by this subsection shall be assessed against and shall be payable by the pass-through entity, and the deficiency and appeal procedures provided in §§ 521-526 of this title shall not apply; provided, however, that the Director shall mail written notice of such penalty to the pass-through entity, which may, within 60 days from the date of the mailing of such notice, institute a protest of such penalty to the Director, whose determination shall be final.

(d) (1) For tax periods beginning after December 31, 1999, if any pass-through entity fails to comply with the provisions of § 1605(a)(2) of this title, such pass-through entity shall be liable for a penalty determined under paragraph (d)(2) of this section for each month, or fraction thereof, during which such failure continues (but not to exceed 5 months), unless it is shown that such failure was due to reasonable cause.

(2) For purposes of paragraph (d)(1) of this section, the amount of penalty for any month is $25, multiplied by the number of persons who were members of the pass-through entity at any time during the tax year, provided, however, that the maximum penalty for any taxable year shall not exceed $10,000.

(3) The penalty prescribed by this subsection shall be assessed against and shall be payable by the pass-through entity and the deficiency and appeal procedures provided in §§ 521-526 of this title shall not apply; provided, however, that the Director shall mail written notice of such penalty to the pass-through entity, which may, within 60 days from the date of the mailing of such notice, institute a protest of such penalty to the Director, whose determination shall be final.

(e) This section shall not apply to any failure to file a declaration of estimated tax or to pay any estimated tax.

(f) (1) In case of each failure to file a statement of payment to another person required under the authority of this title, including the duplicate statement of tax withheld on wages, by the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be paid by the person so failing to file such statement, in the same manner as tax, a penalty of $2.00 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $2,000.

(2) Any person required to file an information return pursuant to § 1154(i) of this title who fails to file such return on or before the date prescribed for its filing or who fails to include all the information required to be shown on the return or who includes incorrect information on the return or who fails to file in the required manner, shall unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, pay a penalty in an amount equal to one half the amount specified in the Internal Revenue Code, as it may be amended from time to time, for such failure.

(g) The Director shall assess a penalty of $500 against any individual who files what purports to be a return of any tax imposed by this title or Title 4 but which:

(1) Does not contain information on which the substantial correctness of the self-assessment may be judged or contains information that on its face indicates that the self-assessment is substantially incorrect; and

(2) Evidences a position that is frivolous or a desire to delay or impede the administration of the revenue laws of this State.

(h) In the case of failure of an employer required to deposit taxes by electronic funds transfer under the provisions of § 1154(g) of this title to make transfer by such means, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount shown as tax required to have been electronically transferred 5% of the amount or $500 per required payment, whichever is less.

(i) For tax periods beginning after December 31, 1994, with respect to any return, the amount of the addition to the tax under subsection (a) of this section shall be reduced by the amount of the addition to the tax under subsection (b) of this section for any month (or fraction thereof) to which an addition to the tax is applied under both subsections (a) and (b) of this section.

(j) If any failure to file any return is fraudulent, subsection (a) of this section shall be applied by substituting “15” for “5%” each place it appears and by substituting “75%” for “50%.”

(k) For purposes of subsection (a) of this section, reasonable cause shall be deemed established in the case of failure to file a return in the time prescribed by Part III of this title, where the taxpayer filed within the time prescribed in a written notification by the Director that the taxpayer is eligible to file returns on a basis less frequent than is actually the case.

(*l*) In the case of failure of any person to obtain or renew a business license required under the provisions of Part III of this title, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount of the business license fee required to be paid a penalty in the amount of $200. Whenever a penalty has been proposed for assessment under this subsection, the Director shall not be required to issue a business license to the taxpayer to whom such assessment has been proposed unless and until the taxpayer has paid any license fee necessary for issuance of such license and has either:

(1) Paid the assessment provided under this subsection (subject to any claim for refund); or

(2) Filed a written protest regarding such assessment of penalty pursuant to § 523 of this title.

The penalty described in this subsection shall not be assessed in the instance of self-disclosure by a taxpayer of delinquency in meeting the licensing requirements of Part III. The penalty described in this subsection shall, only with respect to the same failure to obtain or renew a license and not with respect to failure to pay taxes on gross receipts or any other acts or omissions, be in lieu of the penalty described in subsection (a) of this section, except where such penalty determined under subsection (a) of this section shall exceed the penalty determined under this subsection, in which event subsection (a) of this section shall apply, and this subsection shall not apply.

(m) Any person who fails to file any return in the manner prescribed by law and required under authority of this title or Title 4 on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, shall be liable for a penalty of not more than $50, in addition to any other amounts prescribed under this title that shall be assessed and collected by the Director.

(68 Del. Laws, c. 187, § 1; 69 Del. Laws, c. 289, § 13; 70 Del. Laws, c. 117, § 3; 71 Del. Laws, c. 314, § 7; 72 Del. Laws, c. 220, § 1; 73 Del. Laws, c. 131, § 3; 75 Del. Laws, c. 411, § 3; 77 Del. Laws, c. 79, §§ 2, 3; 79 Del. Laws, c. 120, §§ 1, 2; 79 Del. Laws, c. 142, §§ 2-4; 81 Del. Laws, c. 103, § 4; 83 Del. Laws, c. 107, § 2.)

§ 535 Fraud and other penalties.

(a) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75% of the portion of the underpayment which is attributable to fraud. If the Director establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud. In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse. For purposes of this subsection, "underpayment" shall have the meaning ascribed to such term in § 6664(a) of the Internal Revenue Code (26 U.S.C. § 6664(a)), or successor provisions. The penalty prescribed by this subsection shall apply only in cases where a return of tax is filed.

(b) If an individual subject to tax under Chapter 11 of this title fails to file a declaration of estimated tax, or fails to pay all or any part of an installment of tax imposed under Chapter 11 of this title, such individual shall be deemed to have made an underpayment of estimated tax, and there shall be added to the tax an amount equal to 1 1/2% per month, or fraction thereof, of the amount of such underpayment for the period of the underpayment. The Director shall determine the amount of an underpayment of estimated tax by an individual in a manner consistent with the internal revenue laws of the United States.

(c) (1) In the case of any underpayment of tentative tax or installment of estimated tax required by Chapter 19 of this title, there shall be added to the tax for the taxable year an amount equal to 1 1/2% per month, or fraction thereof, of the amount of such underpayment for the period of the underpayment.

(2) For purposes of paragraph (1) of this subsection, the amount of the underpayment shall be the excess of:

a. The amount of the tentative tax or installment payment which would be required to be made if the estimated tax were equal to 80% of the tax shown on the final return for the taxable year, or, if no such return was filed, 80% of the tax for such taxable year, over

b. The amount, if any, of the tentative tax or the installment paid on or before the last date prescribed for payment.

(3) For purposes of paragraph (c)(1) of this section, the period of the underpayment shall run from the date the tentative tax or installment was required to be paid to the first day of the fourth month following the close of the taxable year, or to the date on which paid, whichever is earlier.

(4) Notwithstanding the foregoing provisions of this subsection, no addition to tax shall be imposed under this subsection if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the taxpayer for the preceding taxable year.

(5) Paragraph (c)(4) of this section shall apply only in the case of a small corporation. For purposes of this paragraph, the term "small corporation" shall have the meaning set forth in § 1905(5) of this title.

(d) If any employer fails to pay the amount shown as tax on any withholding return filed pursuant to § 1154 of this title, there shall be added to the tax an amount equal to 1% of the tax required to be shown on such return for each month, or fraction thereof, during which such failure continues, not exceeding 25% in the aggregate. Such employer shall be liable for the payment of such additions to tax, and it shall not be collected from the employee.

(e) For tax periods beginning after December 31, 1999, any person required under this title to collect, account for and pay over any tax imposed by this title, other than § 3002 and Chapters 51 and 52 of this title, who wilfully fails to collect or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded, or not collected or not accounted for and paid over. No addition to tax under subsection (a) of this section shall be imposed for any action or failure to act to which this subsection applies. The term "person" as used in this subsection, includes an officer or employee of a corporation, or a member, officer or employee of a pass-through entity, as defined in § 1601 of this title, who, as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(f) In addition to any criminal penalty provided by law, any person who wilfully fails to pay, or to deduct or withhold and pay, any tax

imposed under authority of this title or Title 4, or to make tender, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this title or Title 4, shall be liable for a penalty of not more than $3,000, in addition to any other amounts prescribed under this title, that shall be assessed and collected by the Director.

(g) (1) In addition to any criminal penalty provided by law, the Director shall assess a penalty of $500 whenever:

a. Any individual makes a false statement under § 1151 of this title which results in a decrease in the amounts deducted and withheld under subchapter VII of Chapter 11 of this title; and

b. As of the time such statement was made, there was no reasonable basis for such statement.

(2) The Director may waive in whole or in part the penalty imposed under paragraph (g)(1) of this section if the taxes imposed with respect to the individual under subchapter VII of Chapter 11 of this title for the taxable year are equal to or less than the sum of:

a. The credits against such taxes allowed by said subchapter; and

b. The payments of estimated tax on account of such taxes.

(h) Penalties prescribed under the provisions of this chapter shall be additions to tax and shall be assessed, collected and paid in the same manner as taxes.

(i) For purposes of subsection (a) of this section (relating to underpayments due to fraud), the amount shown as the tax by the taxpayer upon the return shall be taken into account in determining the amount of the underpayment only if such return was filed on or before the due date of such return, determined with regard to any extension of time for such filing.

(j) If any check or money order in payment of any amount receivable under this title or Title 4 is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check or money order an amount equal to 2% of the amount of such check or money order, except that if the amount of such check or money order is less than $750, the penalty under this subsection shall be $15 or the amount of such check or money order, whichever is the lesser. This subsection shall not apply if the person tendered such check or money order in good faith and with reasonable cause to believe it would be duly paid. For purposes of this subsection, any other method of payment, including but not limited to payment by electronic funds transfer, payment by means of the automated clearing house, or payment by credit card, debit card or charge card shall be considered a payment by check or money order.

(k) (1) If:

a. Any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits;

b. Any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position; and

c. The relevant facts affecting the tax treatment of the item affected by such position were not adequately disclosed in such return or claim or in a statement attached to such return or claim (or in a federal return or a statement attached thereto, a copy of which was filed with such return or claim) or indicate such position was frivolous;

such person shall pay a penalty of $250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith.

(2) If any part of any understatement of liability with respect to any return or claim for refund is due:

a. To a wilful attempt in any manner to understate the liability for tax by a person who is an income tax return preparer with respect to such return or claim; or

b. To any reckless or intentional disregard of rules or regulations by any such person;

such person shall pay a penalty of $1,000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this paragraph shall be reduced by the amount of any penalty paid by such person by reason of paragraph (k)(1) of this section.

(3) a. If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of any return or claim for refund with respect to which a penalty under paragraph (k)(1) or (2) of this section has been assessed, such assessment shall be abated, and if any portion of such penalty has been paid the amount so paid shall be refunded to the person who made such payment as an overpayment of tax without regard to any period of limitations which, but for this subparagraph, would apply to the making of such refund.

b. For purposes of this subsection, the term "understatement of liability" means any understatement of the net amount payable with respect to the tax imposed under Chapter 11 or Chapter 19 of this title or any overpayment of the net amount creditable or refundable with respect to any such tax. Except as otherwise provided in paragraph (k)(3)a. of this section, the determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

(*l*) Any person who:

(1) Aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document;

(2) Knows or has reason to believe that such portion will be used in connection with any material matter arising under this title or Title 4; and

(3) Knows that such portion (if so used) would result in an understatement of the liability for tax of another person;

shall pay a penalty with respect to each such document in the amount determined in accordance with, and subject to the limitations

contained in, § 6701 of the Internal Revenue Code (26 U.S.C. § 6701), or successor provisions. Except as provided in subsection (m) of this section, the penalty imposed by this subsection shall be in addition to any other penalty provided by law.

(m) No penalty shall be assessed under subsection (k) of this section on any person with respect to any document for which a penalty is assessed on such person under subsection (*l*) of this section.

(n) In addition to any other penalty provided by law, any person who is a paid tax preparer with respect to any return or claim for refund who fails to sign the return or claim for refund and to provide their preparer tax identification number as required by § 548 of this title, shall pay a civil penalty of $50 for each such failure, unless it can be shown that the failure was due to reasonable cause. The civil penalty imposed on any paid tax preparer with respect to returns or claims for refund filed during any calendar year shall not exceed $25,000. The Division of Revenue may use an amount equal to the total penalties collected under this section to regulate paid tax preparers, including, without limitation, commencing actions permitted under § 549 of this title.

(68 Del. Laws, c. 187, § 1; 69 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 142, § 10; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 131, § 4; 75 Del. Laws, c. 411, § 5; 79 Del. Laws, c. 142, § 5; 80 Del. Laws, c. 195, § 5; 81 Del. Laws, c. 386, § 2.)

§ 536 Accuracy-related penalty.

(a) If this section applies to any portion of an underpayment of any tax imposed by this title or Title 4 required to be shown on a return, there shall be added to the tax an amount equal to 20% (40% in the case of gross valuation misstatements) of the portion of the underpayment to which this section applies.

(b) This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1) Negligence or disregard of rules and regulations.

(2) Any substantial understatement of tax.

(3) Any substantial valuation misstatement with regard to any tax imposed by Chapter 11 or Chapter 19 of this title.

(4) Any substantial estate or gift tax valuation understatement with respect to any tax imposed by Chapter 15 of this title.

(c) For purposes of subsection (b) of this section, the following terms shall have the meanings ascribed to such terms in § 6662 of the Internal Revenue Code (26 U.S.C. § 6662), or successor provisions, except that "$1,500" shall be substituted for "$5,000" and "$3,000" shall be substituted for "$10,000" each place such dollar amounts appear in the said § 6662:

(1) "Negligence";

(2) "Disregard";

(3) "Substantial understatement of income tax";

(4) "Substantial valuation misstatement";

(5) "Substantial estate or gift tax valuation understatement"; and

(6) "Gross valuation misstatement."

(d) For purposes of determining under subsection (b) of this section whether a portion of any underpayment is attributable to 1 or more of the items specified in paragraphs (b)(1)-(4) of this section, the provisions of § 6662 of the Internal Revenue Code (26 U.S.C. § 6662), or successor provisions, shall be applied in the same manner as if such provisions were applicable to the taxes imposed by this title or Title 4.

(e) For purposes of this section, "underpayment" shall have the meaning ascribed to such term in § 6664(a) of the Internal Revenue Code (26 U.S.C. § 6664(a)), or successor provisions. The penalty prescribed by this section shall apply only in cases where a return of tax is filed.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 353, § 15; 71 Del. Laws, c. 385, § 9.)

§ 537 Authority to make credits or refunds.

(a) In the case of any overpayment, the Director, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of any tax imposed by the tax laws of this State on the person who made the overpayment, and the balance shall be refunded by the Director to such person.

(b) If the amount allowable as a credit for tax withheld from the taxpayer exceeds the tax to which the credit relates, the excess shall be considered an overpayment by the taxpayer for purposes of subsection (a) of this section.

(c) (1) If more than the correct amount of tax required to be paid under the provisions of § 1154 of this title is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Director may by regulations prescribe.

(2) If more than the correct amount of tax required to be paid under the provisions of § 1154 of this title is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under paragraph (c)(1) of this section, the amount of the overpayment shall be refunded to the employer, subject to the limitations of paragraph (c)(3) of this section, with interest calculated from the forty-sixth day following the date of the claim for the refund, and in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Director may by regulations prescribe.

(3) In the case of an overpayment of tax required to be deducted and withheld under § 1151 of this title, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld by the employer.

(d) If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment for purposes of subsection (a) of this section.

(68 Del. Laws, c. 187, § 1; 69 Del. Laws, c. 188, § 2.)

§ 538 Abatements.

(a) The Director is authorized to abate the unpaid portion of the assessment of any tax, interest, penalty, additional amount or addition to the tax, or any liability in respect thereof, which is:

(1) Excessive in amount;

(2) Assessed after the expiration of the period of limitations properly applicable thereto; or

(3) Erroneously or illegally assessed.

(b) The Director is authorized to abate any portion (whether or not theretofore paid) of the assessment of any tax, interest, penalty, additional amount or additions to the tax, or any liability in respect thereof, if the Director determines under uniform rules prescribed by the Director that the administration and collection costs involved would not warrant collection of the amount due.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 539 Limitations on credit or refund.

(a) Claim for credit or refund of an overpayment of any tax imposed by this title or Title 4 shall be filed by the taxpayer within 3 years from the last date prescribed for filing the return (or in the case of license fees or taxes under Part III of this title, 3 years from the expiration date of the license to which such overpayment relates) or within 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in the preceding sentence for the filing of a claim for credit or refund, unless a claim for credit or refund is filed with the Director by the taxpayer within such period.

(b) (1) If the claim for credit or refund was filed by the taxpayer during the 3-year period prescribed in subsection (a) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(3) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under either paragraph (b)(1) or (2) of this section, as the case may be, if claim was filed on the date the credit or refund is allowed.

(c) If an agreement under the provisions of § 531(f) of this title extending the period for assessment of a tax imposed by this title or Title 4 is made within the period prescribed in subsection (a) of this section for the filing of a claim for credit or refund:

(1) The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsection (a) of this section, shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under § 531(f) of this title; and

(2) If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b) of this section if a claim had been filed on the date the agreement was executed.

(d) If the taxpayer is required by § 514 of this title to report a change or correction in federal income or estate liability reported on the federal tax return for any taxable period, or to file an amended tax return under this title with the Director, a claim for credit or refund of any resulting overpayment of tax under this title shall be filed by the taxpayer within 2 years from the time such report or amended return was required to be filed with the Director. If such a report or amended return required by § 514 of this title is not filed within the 90-day period specified in that section, interest on any resulting credit or refund shall not accrue for the period after such ninetieth day and prior to the forty-fifth day after the date of filing the claim for credit or refund. The amount of any such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change or correction or attributable to the items amended on the taxpayer's amended federal tax return. This subsection shall not affect the time within which a claim for credit or refund may be filed, or the amount for which a credit or refund may be made, without regard to this subsection.

(e) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry back or a capital loss carry back, in lieu of the 3-year period of limitation prescribed in subsection (a) of this section, the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carry back, or the period prescribed in subsection (c) of this section in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c) of this section, whichever is applicable, to the extent of the amount of the overpayment attributable to such carry back.

(f) For purposes of this section, tax shall be deemed to have been paid on the date determined in accordance with § 540(c) of this title.

(g) In the case of an individual:

(1) The running of the periods specified in this section with respect to individuals shall be suspended during any period of such individual's life that such individual is financially disabled.

(2) For purposes of paragraph (g)(1) of this section, an individual is financially disabled if such individual is unable to manage that individual's own financial affairs by reason of a medically determinable physical or mental disability (excluding disability caused by

voluntary use of alcohol or unlawful use of a controlled substance defined in Chapter 47 of Title 16) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(3) An individual shall not be treated as financially disabled during any period that such individual's spouse, guardian or any other person is authorized to act on behalf of such individual in financial matters.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 385, § 10; 72 Del. Laws, c. 112, § 1; 78 Del. Laws, c. 179, § 319.)

§ 540 Interest on overpayments.

(a) *General.* — Subject to the limitations specified in subsection (b) of this section, interest shall be allowed and paid upon any overpayment in respect of any tax imposed by this title or Title 4 at the rate of 0.5% per month, or fraction thereof.

(b) *Limitations.* — (1) No interest shall be allowed or paid on any overpayment of less than $1.00.

(2) Interest shall be allowed and paid on any overpayment in respect of any tax from the forty-sixth day (ninety-first day in the case of the tax imposed under Chapter 19 of this title) after the date on which a claim for credit or refund (or an amended return claiming a credit or refund) is filed, to (i) in the case of a refund, the date of the refund, or (ii) in the case of a credit, the due date of the amount against which the credit is taken.

(3) [Repealed.]

(c) *Early returns and advance payments.* — For purposes of this section and § 539 of this title:

(1) Any return filed before its due date shall be considered as filed on such due date.

(2) Any tax paid by the taxpayer before its due date shall be considered as paid on such due date.

(3) For purposes of paragraphs (c)(1) and (2) of this section, the due date for filing a return or paying the tax shall be determined without regard to any extension of time granted the taxpayer.

(4) Any income tax actually deducted and withheld from the taxpayer, and any amount paid by the taxpayer as estimated or tentative income tax shall be deemed to have been paid by the taxpayer on the due date of the taxpayer's income tax return (determined without regard to any extension of time for filing) for the taxable year with respect to which such tax constitutes a credit or payment.

(d) *Refund of income tax caused by carry back.* — For purposes of subsection (a) of this section, if any overpayment of tax imposed by Chapter 11 or Chapter 19 of this title results from a carry back of a net operating loss or net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 411, § 4; 77 Del. Laws, c. 79, §§ 4-6.)

§ 541 Form of claims for credit or refund; amendments.

A claim for credit or refund shall be filed with the Director in writing and shall state the specific grounds upon which it is founded. The Director may by regulations prescribe the information to be included in a claim. A claim may not be amended after the last date prescribed by § 539 of this title for filing a claim for credit or refund if the net effect of the amendment would be an increase in the amount of the overpayment.

(68 Del. Laws, c. 187, § 1.)

§ 542 Notice of disallowance; finality.

If the Director disallows a claim for credit or refund, in whole or in part, the Director shall mail written notice of the disallowance to the taxpayer, and such notice shall set forth the reason for the disallowance. The action of the Director in disallowing all or any part of a claim for credit or refund shall become final upon the expiration of 60 days (30 days in the case of withholding taxes, or, in the case of other taxes imposed by Chapter 11 of this title, 120 days if the taxpayer is outside the United States) from the date on which the Director mailed the notice of disallowance to the taxpayer, unless within such period the taxpayer protests the Director's disallowance pursuant to the provisions of § 523 of this title.

(68 Del. Laws, c. 187, § 1.)

§ 543 Claim for credit or refund or protest deemed disallowed.

If the Director fails to mail written notice of the Director's action on any claim for credit or refund, or on any protest under § 523 of this title of a disallowance of a claim for credit or refund, within 6 months after such claim or protest was filed, the taxpayer may thereafter, and prior to notice of action by the Director, consider such claim or protest to have been disallowed by the Director, and the taxpayer may, at any time prior to the expiration of 3 years from the date on which such claim or protest was filed, proceed pursuant to § 542 or § 544 of this title, as the case may be.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 544 Review of determinations of Director on protests.

A determination by the Director on a taxpayer's protest pursuant to § 523 of this title shall be subject to review by the taxpayer's filing a petition with the Tax Appeal Board, in such form as the Tax Appeal Board may prescribe, within the time limits specified in § 525 or § 543 of this title, as the case may be. The determination of the Tax Appeal Board shall be subject to judicial review as provided in § 331 of this title.

(68 Del. Laws, c. 187, § 1.)

§ 545 Collection of debts owed to certain State agencies.

(a) *General.* — Upon receiving notice from any claimant agency that a taxpayer owes a debt to such agency, the Director shall:

(1) Reduce the amount of any overpayment of tax payable to the taxpayer, during a period not to exceed 12 months from the date of the receipt of said notice, by the amount of such debt or unpaid portion thereof;

(2) Notify the taxpayer that such overpayment has been reduced by the amount of such reduction;

(3) Pay the amount by which such overpayment is reduced under paragraph (a)(1) of this section to such agency in an order of priority as determined by the Director of Revenue;

(4) Pay to the taxpayer the remainder of such overpayment, if any; and

(5) Notify the Director of the Lottery to pay to the Director of Revenue any prize payable where prizes exceed a threshold established by the Director of the Lottery to a taxpayer who is also a lottery winner, and the Director of the Lottery shall:

a. Reduce the prize payable to the winner by the amount of such debt or unpaid portion thereof;

b. Notify the winner that such prize has been reduced by the amount of such reduction;

c. Pay the amount by which such prize is reduced under paragraph (a)(5)a. of this section to the claimant agency; and

d. Pay to the winner the remainder of such prize, if any.

(b) *Definitions.* — For purposes of this section:

(1) "Claimant agency" means:

a. Any department or agency of the State, including the University of Delaware, Delaware State University and Delaware Technical and Community College, with respect to any debt owed to it and any political subdivision or school district of this State, with respect to property taxes owed to it; and

b. Any court, office of the court clerk, prothonotary, or Register in Chancery of this State with respect to fines, court costs, assessments and/or restitution.

(2) "Debt" means any liquidated sum which is past due, is legally enforceable and has accrued through contract, subrogation, tort, court assessment or operation of law, whether or not there is an outstanding judgment of such sum, plus, if so agreed between the Director and the claimant agency, the amount of the reimbursement provided in subparagraph (c)(1)e. of this section.

(3) "Lottery winner" means any person who is entitled to a payment on account of winning a prize in a lottery conducted pursuant to the provisions of Chapter 48 of Title 29.

(4) "Taxpayer" means any person or entity identified by a claimant agency for action by the Director of Revenue under this section.

(c) *Regulations.* — (1) The Director shall promulgate regulations providing for:

a. Procedures and methods to be employed by a claimant agency with respect to the operation of this section;

b. Due notice to the taxpayer (and, in the case of an overpayment of the tax imposed by Chapter 11 of this title, any spouse with whom the taxpayer files a joint return) of the reduction in the overpayment and of the opportunity, upon request, for a hearing before the claimant agency prior to such reduction;

c. Safeguards against the disclosure or inappropriate use of any personally identifiable information regarding the taxpayer obtained or maintained pursuant to this chapter;

d. A minimum debt, amounts below which, in light of administrative expenses and efficiency, shall, in the Director's discretion, not be subject to the collection procedures set forth in this section; and

e. Reimbursement by the claimant agency to the Director of (or reduction in the amount payable to the claimant agency by the Director under subsection (a) of this section by an amount equal to) all costs, direct and indirect, determined on a statistical or actual basis, of effectuating the collection procedures set forth in this section.

(2) Regulations promulgated under the authority of this subsection shall have the force and effect of law.

(d) *Remedy not exclusive.* — The collection procedures prescribed by this section are in addition to, and not in substitution for, any other remedy available by law.

(e) *Joint and combined income tax returns.* — (1) If a refund from which the reduction described in paragraph (a)(1) of this section would be made is based upon a joint return of the tax imposed by Chapter 11 of this title, the Director shall:

a. Notify each taxpayer filing such return that the reduction is being made from a refund based upon such return;

b. Include in such notification a description of the right of the nondebtor taxpayer to file a written protest with the Director, within 30 days of the date of mailing such notification, for the purpose of showing the nondebtor taxpayer's proper share of such refund; and

c. If such a showing is made, promptly remit to the nondebtor taxpayer the nondebtor taxpayer's proper share of such refund, and apply the balance of such refund in the manner prescribed in subsection (a) of this section.

(2) In the event the debtor shall be due a refund in combination with a nondebtor by virtue of having filed separately but combined on 1 return of the tax imposed by Chapter 11 of this title, the Director shall regard each spouse as entitled to separate refunds based upon the taxes due and prior payments of each spouse individually. In such a case, the reduction described in paragraph (a)(1) of this section shall not be applicable to such separate refund due to the nondebtor spouse, but such reduction shall be applicable to such separate refund due to the debtor spouse.

(f) *Review of reductions.* — No court of this State shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (a) of this section. Except as otherwise provided in subsection (e) of this section, no

such reduction shall be subject to review by the Director in any administrative proceeding. No action brought against this State to recover the amount of any such reduction shall be considered to be a suit for a refund of tax. This subsection shall not be deemed to preclude:

(1) A prior hearing, upon request of the taxpayer, before the claimant agency as set forth in paragraph (c)(1)b. of this section; or

(2) Any legal, equitable or administrative action against the claimant agency after payment to it of such reduction.

(g) *Director of Lottery.* — When the Director of Revenue shall notify the Director of Lottery pursuant to the provisions of subsection (a) of a debt owed by a taxpayer, and said taxpayer is also a lottery winner, the Director of Lottery shall pay over to the Director of Revenue any prize then payable or becoming payable to said taxpayer, until such time as the Director of Revenue notifies the Director of Lottery that the debt of said taxpayer has been discharged. The Director of Lottery shall maintain a current log of the names and other identification provided by the Director of Revenue of persons owing a debt to a claimant agency.

(h) In addition to the authority set forth in other subsections of this section, the Director may, in the Director's discretion, enter into an agreement with claimant agencies under which the Director shall be authorized to use the Division's agents and employees to collect debts owed to the claimant agency under the same laws, regulations and provisions applicable to the claimant agency and in the same manner as the claimant agency less the amount of reimbursement for the Division of Revenue's cost as may be agreed between the Director and the claimant agency.

(68 Del. Laws, c. 187, § 1; 68 Del. Laws, c. 342, § 1; 69 Del. Laws, c. 402, §§ 1-4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 425, § 115; 71 Del. Laws, c. 330, § 1; 80 Del. Laws, c. 208, § 1.)

§ 546 Voluntary Tax Compliance Initiative.

(a) *Voluntary Tax Compliance Initiative.* — For the purpose of encouraging the voluntary disclosure and payment of taxes owed to this State, the Division of Revenue is hereby authorized and directed to establish a Voluntary Tax Compliance Initiative (the "Initiative") for eligible taxes, as provided in this section.

(b) *Waiver of penalty and interest; limitation.* — If, during the term of the Initiative, a taxpayer

(1) Files a voluntary tax return or returns and pays the eligible taxes reported due, or enters an installment arrangement acceptable to the Director for payment of the eligible taxes reported due, or

(2) Pays eligible taxes the assessment of which is final before the date of commencement of the Initiative, then:

a. The Director shall waive penalty, interest and other collection fees that may otherwise be assessed on such eligible taxes, and

b. The Director shall not assess any tax, interest or penalty for any voluntary tax return reporting eligible taxes under the Initiative for tax periods before January 1, 2004.

(c) *Limitation on Initiative.* — The Initiative shall be limited to taxpayers who, between September 1, 2009, and October 30, 2009:

(1) File voluntary tax returns and

a. Pay eligible taxes reported on those returns or

b. Enter into payment plans to pay eligible taxes reported on those returns before June 30, 2010, or

(2) Pay eligible taxes the assessment of which is final before September 1, 2009, or enter into payment plans to pay such eligible taxes before June 30, 2010.

(d) *Definitions.* — As used in this section,

(1) "Eligible taxes" shall include the following taxes (and additions to tax) that were due for any tax period ending before January 1, 2009, and unpaid as of September 1, 2009:

a. Personal income tax levied pursuant to Chapter 11 of this title;

b. Gift tax levied pursuant to Chapter 14 of this title [repealed];

c. Estate tax levied pursuant to Chapter 15 of this title;

d. Income tax on estates and trusts levied pursuant to Chapter 16 of this title;

e. Corporation income tax levied pursuant to Chapter 19 of this title;

f. Occupational license fees and tax levied pursuant to Chapter 23 of this title;

g. Contractors' license fees and tax levied pursuant to Chapter 25 of this title;

h. Manufacturers' license fees and tax levied pursuant to Chapter 27 of this title;

i. Retail and wholesale merchants' license fees and tax levied pursuant to Chapter 29 of this title;

j. Use tax and gross receipts tax on leases of tangible personal property levied pursuant to Chapter 43 of this title;

k. Tobacco product license fees and tax levied pursuant to Chapter 53 of this title;

l. Realty transfer tax levied pursuant to Chapter 54 of this title;

m. Public utilities tax levied pursuant to Chapter 55 of this title; and

n. Lodging tax levied pursuant to Chapter 61 of this title.

o. The above-listed taxes due from partners, shareholders or members of pass-through-entities filing a voluntary tax return.

(2) "Initiative" means the Voluntary Tax Compliance Initiative enacted by this section.

(3) "Pay", "paid", or "payment of the eligible taxes" shall include an installment payment arrangement for payment of eligible taxes acceptable to the Director of Revenue without default by the taxpayer.

(4) "Voluntary tax return" means a complete and accurate tax return that is required to have been filed pursuant to this title but where:

a. The taxpayer did not file a timely return for the same tax type and tax period; and

b. The Division of Revenue has not notified taxpayer that it cannot verify that the taxpayer filed a return for the same tax type and tax period.

A voluntary tax return filed pursuant to the Initiative shall constitute an admission by the taxpayer that it was not filed on or before its due date and that there exists no reasonable cause therefore.

(e) *Taxpayer default.* — If any eligible tax, or any part thereof, is not paid during the term of the Initiative or if any installment arrangement for payment of eligible taxes acceptable to the Director of Revenue is not executed during the term of the Initiative and paid on or before June 30, 2010, penalty and interest equal to the amount of delinquent penalty and interest imposed by the applicable sections of this title for nonpayment of the tax shall be added thereto and deemed payable without protest.

(f) The Division of Revenue is authorized, notwithstanding the provisions of any other Delaware statute, to

(1) Expend for the purpose of funding the agreements described in the next paragraph, the necessary available funds from the special fund established under the Finance section of the Epilogue of 77 Del. Laws, c. 84, §§ 141 and 142, which constitutes the Fiscal Year 2010 Operating Budget, for purposes of contracting and/or employing personnel for the collection of delinquent state taxes and other debts that the Division of Revenue has undertaken to collect; and

(2) Enter into agreements with third parties to publicly advertise, assist in the collection of eligible taxes, and administer the Voluntary Tax Compliance Initiative under which contingency and other fees may be payable to such third parties.

(g) Ten percent of the funds collected, after expenditures attributable to subsection (f) of this section, shall be transferred into the fund defined in paragraph (f)(1) of this section to provide for personnel costs for the audit of businesses or persons taxable under the supervision of the Division.

(h) *Regulations.* — (1) The General Assembly finds that there is a need to implement the Initiative on September 1, 2009, and recognizes that this timetable does not allow the Director to observe the normal rule-making procedures in the Administrative Procedures Act, 29 Del. C. §§ 10101 et seq. Accordingly, the General Assembly has determined to waive the rule-making procedures in the Administrative Procedures Act with respect to regulations governing the Initiative and to allow publication of regulations governing the Initiative in final form in the initial instance in the Register of Regulations.

(2) The Director is authorized:

a. To make all regulations consistent with the provisions of 77 Del. Laws, c. 79, that the Director deems necessary to implement the provisions of 77 Del. Laws, c. 79, without complying with the provisions of subchapter II of Chapter 101 of Title 29, but subject to § 10141 of Title 29 governing judicial review of such regulations and,

b. To publish in the Register of Regulations all regulations made in accordance with paragraph (h)(2)a. of this section as final official regulations without having first published such regulations in proposed form, notwithstanding the provisions of subchapter III of Chapter 11 of Title 29 or any rules or regulations promulgated pursuant to that subchapter.

(77 Del. Laws, c. 79, § 1; 70 Del. Laws, c. 186, § 1.)

§ 547 Professional and occupational licenses; denial or suspension.

(a) Definitions, as used in this section:

(1) "Debt" means any amount owed for tax (including any interest, additional amounts, additions to tax, and assessable penalties) payable under this title and subchapter VII of Chapter 5 of Title 4 that exceeds, in aggregate, $1,000 and that has been reduced to a judgment pursuant to § 554 of this title.

(2) "Debtor" means a person liable for a debt.

(3) "Director of the Division of Professional Regulation" means the Director of the Division of Professional Regulation of the Department of State or the designee of the Director of the Division of Professional Regulation.

(4) "Director of Revenue" means the Director of the Division of Revenue of the Department of Finance, or the designee of the Director of Revenue.

(5) "License" means a license, permit, certificate, approval, registration or other similar form of permission or authorization to practice or engage in any profession, occupation, calling or business issued or renewed by any commission, board or agency under the authority of the Division of Professional Regulation of the Department of State which is named in § 8735 of Title 29.

(b) *Cooperative agreements for tax enforcement.* — In order to provide for enforcement of the revenue laws of this State by means of the denial or suspension of licenses issued to or applied for by debtors, the Director of the Division of Professional Regulation shall enter into a cooperative agreement with the Director of Revenue to exchange information about any debtor who owes a debt to this State and who applies for or holds a license issued or renewed by any commission, board or agency under the authority of the Division of Professional Regulation which is named in § 8735 of Title 29. The specific information and the manner and frequency with which it is made available or otherwise exchanged between the Division of Revenue and the Division of Professional Regulation shall be as determined by each cooperative agreement, but such information shall be made available or otherwise provided at least once each calendar year. Each cooperative agreement shall be revised as necessary to effectuate the provisions and purposes of this section. From such information provided by the Division of Professional Regulation, the Division of Revenue, at such intervals as it determines, may identify such applicants or licensees who are debtors, and undertake enforcement action pursuant to this section.

(c) *Notice of intent to deny or suspend license.* — Subject to the provisions for notice and the right to a hearing provided for by this section, the Director of Revenue shall give written notice to a debtor that a license issued or renewed by any commission, board or agency

under the authority of the Division of Professional Regulation which is named in § 8735 of Title 29 may be denied, suspended, or shall not be issued or renewed.

(d) *Contents of notice.* — The notice provided for in this section shall be sent by registered or certified mail to the debtor's last address known to the Division of Revenue and shall inform the debtor:

(1) Of the nature and amount of the debt;

(2) That the debt has been reduced to judgment in the Superior Court of the State of Delaware pursuant to § 554 of this title (a copy of which judgment shall have been provided to the taxpayer on or before the date of the notice); and

(3) That, pursuant to this section and § 8735 of Title 29, this information will be sent to the Delaware Division of Professional Regulation for the purposes of suspending or denying the issue or renewal of debtor's license unless, within 60 days of the notice, the debtor shall have:

a. Paid the debt in full; or

b. Entered into a written agreement with the Director of Revenue or the Director's designee for payment of the debt with such terms as the Director of Revenue may require; or

c. Requested a hearing pursuant to subsection (e) of this section, at which the debtor may present evidence, be represented by counsel of debtor's choice and at debtor's expense, and appear personally or by other representative and at which the Director of Revenue or the Director's delegate will reach a decision based on the evidence received.

(e) *Request for hearing on proposed suspension or denial of license.* — Upon written request by the debtor to the Director of Revenue mailed or delivered within 20 days from the date of mailing the notice of intent to deny or suspend a license, the Director of Revenue or the Director's delegate shall conduct a hearing pursuant to the provisions of Chapter 101 of Title 29 for the limited purpose of determining that the debt exceeds $1,000 and that it was reduced to judgment pursuant to § 554 of this title. No evidence may be received at the hearing regarding the appropriateness or validity of the final assessment of the tax (including any interest, additional amounts, additions to tax, and assessable penalties) that has been reduced to judgment pursuant to § 554 of this title. The Director of Revenue shall give written notice of the hearing to the debtor in accordance with Chapter 101 of Title 29.

(f) *Denial or suspension of professional or occupation license.* — Upon certification by the Director of Revenue to the Director of the Division of Professional Regulation of compliance with the provisions of this section, the latter shall immediately suspend all licenses issued to the debtor by any commission, board or agency under the authority of the Division of Professional Regulation which is named in § 8735 of Title 29; shall deny any applications to issue or renew any such license or licenses by the debtor; and shall give written notice of the suspension or denial to the debtor. The debtor shall remain ineligible for the issuance, renewal or reinstatement of any license until the Director of the Delaware Division of Professional Regulation obtains from the Director of Revenue written certification that the grounds for denial or suspension of a license under this section no longer exist. The Director shall provide such written certification to the Director of the Division of Professional Regulation within 30 days from the time at which the grounds for denial or suspension of a license under this section no longer exist. Whenever the Director provides such written certification to the Director of the Division of Professional Regulation, the debtor shall also be notified by the Director of Revenue that the basis for the denial or suspension of debtor's license no longer exists.

(g) *Regulations.* — The Director of Revenue may promulgate rules and regulations necessary to implement the provisions of this section.

(h) *Disclosures permitted by this statute.* — No disclosures or exchanges of information made by the Director of Revenue in a good faith effort to comply with this section shall be a violation of any statute prohibiting disclosure of taxpayer information.

(i) *Remedies not exclusive.* — The remedies provided in this section shall be in addition to any other remedies for the enforcement of tax obligations.

(78 Del. Laws, c. 265, § 3; 81 Del. Laws, c. 19, § 2.)

§ 548 Paid tax preparers; required information on returns and claims for refund.

Any return or claim for refund prepared by a paid tax preparer, as that term is defined under § 502(b) in this title, shall be signed by the paid tax preparer and shall bear the paid tax preparer's tax identification number.

(81 Del. Laws, c. 386, § 3.)

§ 549 Suit to enjoin certain paid tax preparers.

(a) In a court of competent jurisdiction, the Director of Revenue may commence suit to enjoin any paid tax preparer, as that term is defined under § 502(b) of this title, from further engaging in any conduct described in subsection (b) of this section or from further acting as a paid tax preparer. If the court issues an injunction under this section, the paid tax preparer shall reimburse the Division of Revenue for all costs and fees incurred in prosecuting such case.

(b) In any action under subsection (a) of this section, the court may enjoin the tax preparer from further engaging in any conduct specified in this subsection if the court finds that injunctive relief is appropriate to prevent the recurrence of this conduct. The court may issue an injunction when the paid tax preparer has done any of the following:

(1) Prepared any return or claim for refund that includes an understatement of a taxpayer's liability due to an unreasonable position.

(2) Prepared any return or claim for refund that includes an understatement of a taxpayer's liability due to wilful or reckless conduct.

(3) Where required, failed to do any of the following:

a. Furnish a copy of a return or claim for refund.
b. Sign a return or claim for refund.
c. Furnish an identifying number.
d. Retain a copy of records.
e. File correct information returns.
f. Determine eligibility for tax benefits.

(4) Negotiated a check issued to a taxpayer by the Division of Revenue without the permission of the taxpayer.

(5) Engaged in any conduct subject to any criminal penalty provided in this title.

(6) Misrepresented the paid tax preparer's eligibility to practice before the Division of Revenue or otherwise misrepresented the paid tax preparer's experience or education.

(7) Guaranteed the payment of any tax refund or the allowance of any tax credit.

(8) Engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of this State.

(c) If the court finds that a paid tax preparer has continually or repeatedly engaged in any conduct prohibited in subsection (b) of this section and that an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of the tax laws of Delaware, the court may enjoin the person from acting as a paid tax preparer in Delaware. The fact that a person has been enjoined from preparing tax returns or claims for refund for the United States or any other state, in the 5 years preceding the petition for an injunction shall establish a prima facie case for an injunction to be issued pursuant to this section.

(81 Del. Laws, c. 386, § 3.)

Subchapter IV

Enforcement

§ 551 Timely mailing.

(a) If any return, declaration of estimated tax, claim, statement, notice, protest or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under the authority of any provision of the revenue laws of this State, other than § 331 of this title, is, after such period or such date, delivered by United States mail to the agency, officer or office with which such document is required to be filed, the date of the United States postmark stamped on the cover in which such document is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(b) This section shall apply only if the postmark date falls within the prescribed period, or on or before the prescribed date for the filing of the return, declaration, claim, statement, notice, protest or other document (determined with regard to any extension granted for such filing), or for making the payment (determined with regard to any extension granted for making such payment), and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the agency, officer or office with which such document is required to be filed or to which such payment is required to be made.

(c) If any return, declaration of estimated tax, claim, statement, notice, protest or other document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the agency, officer or office to which addressed. To the extent that the Director shall prescribe, certified mail may be used in lieu of registered mail under this subsection.

(d) When the last day prescribed under the authority of the revenue laws of this State, including any extension of time, for performing any act falls on Saturday, Sunday or a legal holiday in this State, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday in this State.

(68 Del. Laws, c. 187, § 1.)

§ 552 Collection procedures.

(a) Any tax imposed by this title or Title 4 shall be collected by the Director, and the Director may establish the mode or time for the collection of any amount due under this title or Title 4 including setoff of such amount as a debt owed to a claimant agency pursuant to § 545(a) of this title, if not otherwise specified. The Director shall, on request, give a receipt for any amount collected under this title or Title 4. The Director may authorize incorporated banks or trust companies to receive any tax imposed under this title or Title 4, in such manner, at such times and under such conditions as the Director may prescribe, and the Director shall prescribe the manner, times and conditions under which the receipt of tax by any such bank or trust company is to be treated as a payment of tax to the Director.

(b) The Director shall, as soon as practicable after an assessment of tax, interest, penalty, additional amount or addition to the tax becomes final pursuant to § 522 or § 530 of this title, give written notice to each person liable for the payment of the assessed amount, stating the amount so assessed and demanding payment thereof within 10 days of the date of such notice. Such notice shall be sent by mail to such person at the last known address. If the amount assessed exceeds the applicable threshold of $1,000, such notice shall be sent by certified or registered mail. (The applicable threshold in this subsection is subject to annual adjustment as more fully set forth in § 515 of

this title.) Except where the Director determines that collection would be jeopardized by delay, if any amount is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such amount, payment of such amount shall not be demanded under this subsection until after such date.

(68 Del. Laws, c. 187, § 1; 69 Del. Laws, c. 402, § 5; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 195, § 4.)

§ 553 Period of collection after assessment; agreement for extension.

(a) Where the assessment of any amount of tax, interest, penalty, additional amount or addition to the tax imposed by this title or Title 4 has been made within the period of limitation properly applicable thereto, such amount may be collected by a proceeding in court under § 554 of this title, but only if such proceeding is begun:

(1) Within 10 years after the assessment of such amount has become final; or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Director and the taxpayer before the expiration of such 10-year period.

(b) The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) The provisions of subsection (a) of this section shall not affect collection by setoff against tax refunds due to the taxpayer, which setoff may occur whenever there exists an unpaid assessment of tax, interest, penalties, additional amounts or additions to the tax.

(d) The provisions of subsection (a) of this section shall not shorten the period during which a judgment for any amount entered in a court may be collected by execution upon such judgment.

(e) The running of the period of limitations on collections provided for in this section shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Director is prohibited from collecting by reason of such case plus 6 months thereafter.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 144, § 2.)

§ 554 Obtaining court judgment by filing certificate.

(a) If any amount of tax, interest, penalties, additional amounts or additions to the tax payable under this title or Title 4 has been assessed and was not paid when due, the Director may file in the office of the prothonotary of any county a certificate by paper or electronic transaction specifying the amount of such tax, interest, penalties, additional amounts and additions to the tax due, the name and last known address of the taxpayer liable for such amount and the fact that the Director has complied with all of the provisions of this title or predecessor provisions in the assessment of such amount. From the time of such filing, the amount set forth in the certificate shall thereupon be and constitute a judgment of record in such court with like force and effect as any other judgment of the court, except that the renewal provisions of § 4711 of Title 10 shall not be applicable, and a judgment lien obtained under this subsection shall automatically continue for a period of 20 years from the date of its entry. The prothonotary in each county shall enter all such certificates in the regular judgment docket and index them as soon as they are filed regardless of the county of the taxpayer's residence.

(b) No property, legal or equitable, wages, salaries, deposits or moneys in banks (notwithstanding the provisions of § 3502 of Title 10), savings institutions or loan associations, or other property or income of any taxpayer shall be exempt from execution or attachment process issued upon, or from collection of, any judgment obtained under subsection (a) of this section. This section shall not apply to liens created under § 1345 of this title [repealed].

(c) Any judgment obtained under subsection (a) of this section on or after January 1, 1992, shall automatically continue for a period of 20 years from the date of its entry. Any judgment obtained under predecessor provisions of this section by virtue of a certificate filed prior to January 1, 1992, for tax, interest, penalties, additional amounts or additions to the tax shall continue for a period of 20 years from the original date of its entry even though, when such certificate was filed, such predecessor provision may have provided for a period of continuation of less than 20 years.

(d) Notwithstanding any contrary provision of § 4711 of Title 10, within the term of 20 years contemplated by subsection (a) of this section, the Director may renew the lien of such judgment for an additional term of 20 years by filing in the office of the prothonotary of any county a certificate by paper or electronic transaction specifying the amount of such tax, interest, penalties, additional amounts and additions to the tax due, the name and last known address of the taxpayer liable for such amount and the fact that the Director has complied with all of the provisions of this title in preparing such renewal. The prothonotary in each county shall enter all such certificates in the regular judgment docket and index them as soon as they are filed regardless of the county of the taxpayer's residence.

(68 Del. Laws, c. 187, § 1; 74 Del. Laws, c. 159, § 2; 81 Del. Laws, c. 131, § 1; 81 Del. Laws, c. 292, § 2.)

§ 555 Release of lien.

The Director may at any time release all, or any portion of, the property subject to any lien arising under this chapter or subordinate such lien to other judgments, liens or security interests if the Director determines that the amount secured by such lien is sufficiently secured by an encumbrance on other property of the taxpayer or that the release or subordination of such lien will not endanger or jeopardize the collection of such amount.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 16.)

§ 556 Execution of judgments.

(a) *In general.* — If any person liable to pay any assessed amount of tax, interest, penalty, additional amount or addition to the tax

imposed under this title or other titles subject to this chapter neglects or refuses to pay such amount after a judgment has been obtained pursuant to § 554 of this title, or otherwise, the Director may execute upon such judgment as provided herein.

(b) *Warrants for levy and sale of property.* — The Director may issue a warrant directed to the sheriff of any county of this state commanding such sheriff to levy upon and sell the personal or real property of such person for the payment of the amount of the judgment and the cost of executing the warrant. The sheriff shall return such warrant to the Director and pay to the Director the money collected by virtue thereof within 60 days after receipt of the warrant. A copy of the warrant shall be filed with the Prothonotary and noticed on the regular judgment docket. All sales of real and personal property under authority of this section shall be made pursuant to the provisions of Title 10.

(c) *Garnishment of bank accounts.* — The Director may issue a notice of garnishment directed to any bank, commanding said garnishee, notwithstanding the provisions of § 3502 or § 4913(b) of Title 10, to set aside, account for, and pay over to the Division of Revenue on account of the debt any property owed to or held for the debtor by said bank. A copy of the notice of garnishment or an abstract thereof shall be filed with the Prothonotary and the fact of the garnishment noticed on the regular judgment docket.

(d) *Garnishment of wages, salaries, and other amounts due.* — The Director may issue a notice of garnishment directed to any person (other than a bank) owing to or holding for a judgment debtor any wages, salaries, money, credits and effects, contract rights or securities. The notice of garnishment shall command said garnishee to set aside, account for, and pay over to the Division of Revenue on account of the judgment all such property then in its possession or which may become due the judgment debtor by such person from time to time, until the judgment and costs of execution are paid. A copy of the notice of garnishment or an abstract thereof shall be filed with the Prothonotary and the fact of the garnishment noticed on the regular judgment docket. The Director shall notify the garnishee in writing when the judgment and costs have been satisfied.

(e) *Duties of garnishee.* — A person receiving a notice of garnishment pursuant to subsection (c) or (d) of this section shall respond to the Director or Revenue within 20 days after service of the notice, not counting the date of service. A garnishee who fails to comply with a notice of garnishment may, after notice and assessment pursuant to this chapter, be liable for a penalty equal to the amount the garnishee was instructed to set aside, account for, and pay over to the Division of Revenue. Thirty days after the mailing of the notice of proposed assessment of such penalty, it shall become final, excepting only those amounts for which the garnishee has filed a timely written protest with the Director under § 523 of this title.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 159, § 3.)

§ 557 Nonresident taxpayer.

When notice and demand for the payment of any assessed amount of tax, interest, penalty, additional amount or addition to the tax imposed under this title or Title 4 is given to a nonresident taxpayer, and the Director determines that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount assessed, the Director shall send a copy of the certificate provided for in § 554 of this title to the taxpayer at the taxpayer's last known address, together with a notice that such certificate has been filed with the Prothonotary of New Castle County. Thereafter, the Director may authorize the institution of any action or proceeding to collect or enforce such judgment in any place and by any procedure that a civil judgment of a court of record of this State could be collected or enforced. The Director may also, at the Director's discretion, designate agents or retain counsel outside this State, for the purpose of collecting outside this State any assessed amounts due under this title or Title 4 from taxpayers who are not residents of this State. The Director may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for the payment thereof, and the Director may require of such agents and counsel bonds or other security for the faithful performance of their duties. The Director is authorized to enter into agreements with the tax agencies or departments of other states and the District of Columbia for the collection of taxes from persons found in this State who are delinquent in the payment of taxes imposed by such other states or the District of Columbia, on condition that such other states and the District of Columbia afford similar assistance in the collection of taxes from persons found in their jurisdictions who are delinquent in the payment of taxes imposed under this title or Title 4. The Director is authorized to enter into similar agreements with the Internal Revenue Service with respect to the collection of taxes imposed under this title and Title 4 and the taxes imposed under the internal revenue laws of the United States.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 558 Tax claims of other states.

(a) *General.* — The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state which extends a like comity to this State, and the duly authorized officers of any such other state may sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State of any such other state that an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, the word "taxes" shall include interest, penalties, additional amounts and additions to the tax. Liability for interest, penalties, additional amounts and additions to the tax shall be recognized and enforced by the courts of this State to the same extent that the laws of such other state permit the enforcement in its courts of liability for interest, penalties, additional amounts and additions to the tax due this State under this title or Title 4. Nothing in this section shall be construed as giving the courts of this State jurisdiction to enforce liability for the taxes of any other state, except by an action against an individual who is a resident of this State or by an action against a corporation which is maintaining its principal office in this State at the time of the commencement of such action.

(b) *Collection of tax debts of certain other governments.* — (1) *Definitions.* — For purposes of this section:

a. "Claimant government" means any other state or agency of the United States that, in either case, extends a like comity for the collection of a tax debt owed to this State.

b. "Refund" means any taxpayer's claim to repayment of an overpayment of a tax determined to be owed by this State.

c. "Tax debt" means any amount of tax imposed under the laws of the claimant government, including additions to tax for penalties and interest, which is finally due and payable to the claimant government, with respect to which any administrative remedies and appeals have been exhausted or have lapsed and which is legally enforceable, whether or not there is an outstanding judgment of such sum.

d. "Taxing Official" means a unit or official of a claimant government charged with the imposition, assessment or collection of taxes of that government.

e. "Taxpayer" means any person or entity identified by a claimant government for action by the Director of Revenue under this section, and, in the case of an intercept of a refund of personal income tax arising from the filing of a joint return, the taxpayer's spouse.

(2) *Request for intercept.* — a. Except as provided in this subsection, a taxing official may:

1. Certify to the Director of Revenue the existence of a tax debt to a claimant government, and

2. Request the Director of Revenue to withhold any refund to which the taxpayer is entitled.

b. A taxing official may not certify or request the Director of Revenue to withhold a refund unless the laws of the claimant government allow the Director of Revenue to:

1. Certify a tax debt due,

2. Request the taxing official to withhold the taxpayer's refund, and

3. Provide for the payment of the refund to Delaware.

(3) *Certification to Director of Revenue.* — Certification of a tax debt by the taxing official to the Director of Revenue shall include:

a. The full name of the taxpayer and, if in the sound discretion of the Director it will aid in identifying and locating the taxpayer, the taxpayer's address;

b. The taxpayer's Social Security number or federal tax identification number;

c. The amount of the tax debt, including a detailed statement for each taxable year showing tax, interest and penalty or data that, in the sound discretion of the Director of Revenue, sufficiently describes the tax debt; and

d. A statement that all rights to administrative remedies and appeals have been exhausted or lapsed and that the assessment of tax, interest and penalty is final and enforceable.

(4) *Notice to taxpayer.* — Upon receipt of a request for intercept and certification from a taxing official, the Director shall notify the taxpayer (and, in the case of a refund of any tax imposed upon the income of individuals, any spouse with whom the taxpayer filed a joint return) thereof and of the right to protest the intercept. The notice shall include a copy of the certification by the taxing official.

(5) *Protest of intercept.* — A taxpayer may protest an intercept of a refund pursuant to § 523 of this title (except that the time to protest shall be 30 days from the date of the Director's notice of intercept pursuant to paragraph (b)(4) of this section and not 60 days). If a taxpayer shall file a timely protest, the Director shall:

a. Suspend the proposed intercept and impound the claimed amount of the taxpayer's refund,

b. Pay to the taxpayer the unclaimed amount of the refund, if any,

c. Send a copy of the protest to the claimant government for determination of the protest on its merits in accordance with the laws of that state, and

d. Pay over to the taxpayer the impounded amount if the claimant government shall fail within 45 days of the date of the protest to re-certify to the Director of Revenue that the claimant government has reviewed the issues raised by taxpayer, that all administrative and judicial remedies provided under the laws of that state have been exhausted, and the amount of the tax debt finally determined to be due.

(6) *Rights of spouses to refunds from joint returns.* — If a proposed intercept is based upon the tax debt of only 1 individual and if the refund is based upon a joint personal income tax return, the nondebtor spouse shall have the right to protest the intercept of that spouse's share of the refund in accordance with paragraph (b)(5) of this section, showing the nondebtor spouse's proper share of such refund.

(7) *Intercept and payment of refund.* — Subject to the taxpayer's rights of notice and protest, upon receipt of a request for intercept in accordance with paragraph (b)(2) of this section, the Director of Revenue shall:

a. Pay to the claimant government the entire refund or the amount certified, whichever is less;

b. Pay any refund in excess of the certified amount to the taxpayer; and

c. If a refund is less than the certified amount, withhold amounts from subsequent refunds due to the taxpayer provided the claimant government shall withhold subsequent refunds of taxpayers certified to the claimant government by the Director of Revenue.

(8) *Director's authority.* — The Director of Revenue shall have the authority to enter into agreements with the taxing officials of claimant governments relating to:

a. Procedures and methods to be employed by a claimant government with respect to the operation of this section;

b. Safeguards against the disclosure or inappropriate use of any personally identifiable information regarding the taxpayer obtained or maintained pursuant to this chapter; and

c. A minimum tax debt, amounts below which, in light of administrative expenses and efficiency, shall, in the Director's discretion, not be subject to the intercept procedures set forth in this section.

(9) *Remedy not exclusive.* — The collection procedures prescribed by this subsection are in addition to, and not in substitution for, any other remedy available by law.

(10) *United States as claimant government.* — Notwithstanding any other provision of this section, the Director may deem the government of the United States a claimant government provided the Director finds, based on specific action of the United States or House of Representatives or a Committee thereof, reason to believe the United States may extend a like comity for the collection of a tax debt owed to this State no later than January 1, 2001.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 386, § 1.)

§ 559 Order to compel compliance.

(a) If any person wilfully refuses to file a tax return required by this title or Title 4, the Director may apply to a judge of the Superior Court for the county in which the taxpayer (or other person required to file such return on behalf of the taxpayer) resides, or, in the case of a corporate taxpayer or a taxpayer that is a partnership, estate or trust, for the county in which such taxpayer maintains its principal office in this State, for an order directing such taxpayer or other person to file the required return. If a person fails or refuses to obey such an order, such person shall be guilty of contempt of court.

(b) If any person wilfully refuses to make available any books, papers, records or memoranda for examination by the Director, or the Director's representative, or wilfully refuses to attend and testify, pursuant to the powers conferred on the Director by § 563(c) of this title, the Director may apply to a judge of the Superior Court for the county in which such person resides for an order directing such person to comply with the Director's request for books, papers, records or memoranda, or for the person's attendance and testimony. If the books, papers, records or memoranda required by the Director are in the custody of a corporation, the order of the Court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such an order, such person shall be guilty of contempt of court.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 560 Transferees.

(a) The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, interest, penalty, additional amount or addition to the tax due under this title or due under Title 4 shall be assessed, paid and collected in the same manner, and subject to the same provisions and limitations, as in the case of the tax, interest, penalty, additional amount or addition to the tax with respect to which the liability was incurred, except as provided in this section. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) In the case of the liability of an initial transferee, the period of limitation for assessment of any liability is within 1 year after the expiration of the period of limitation for assessment against the transferor; in the case of the liability of a transferee of a transferee, within 1 year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor; except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a proceeding for the collection of the liability has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the proceeding is terminated.

(c) If, before the expiration of the time provided in subsection (b) of this section for the assessment of the liability, the Director and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previous period. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee, or of overpayments of tax made by the transferor of which the transferee is legally entitled to credit or refund, such agreement, and any extension thereof, shall be deemed an agreement and extension thereof referred to in § 539(c) of this title. If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee arises, then in applying the limitations under § 539(b) of this title on the amount of the credit or refund, the periods specified in § 539(a) of this title shall be increased by the period from the date of such expiration to the date of the agreement.

(d) For purposes of this section, if any person is deceased or is a corporation which has terminated its existence, the period of limitation for assessment against such person shall be the period that would be in effect had death or termination of existence not occurred.

(68 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 353, § 17.)

§ 561 Jeopardy assessments.

(a) If the Director finds that the collection of a tax, whether or not the time otherwise prescribed by law for making a return and paying such tax has expired, or the assessment or collection of a deficiency for any year, current or past, will be jeopardized by delay, the Director shall immediately assess such tax or such deficiency and shall mail or issue notice of the finding to the taxpayer together with a demand for immediate payment of such tax or such deficiency declared to be in jeopardy, together with all interest, penalties, additional amounts and additions to the tax provided by law.

(b) In the case of a jeopardy assessment of a tax for a current taxable year or other taxable period, the Director shall determine such tax

for the period beginning on the first day of such current taxable year or other taxable period and ending on the date of the Director's finding under subsection (a) of this section as though such period were a taxable year or other taxable period of the taxpayer.

(c) A jeopardy assessment shall be immediately due and payable, and proceedings for the collection of such assessment may be commenced at once, subject to §§ 554 and 556 of this title. The taxpayer, however, may stay the collection of the whole or any amount of such assessment and prevent such assessment from becoming final by filing with the Director, within 10 days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or, in the discretion of the Director, other adequate security in an amount equal to the amount as to which the stay of collection is sought, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed. If a request for reassessment, accompanied by a bond or, in the discretion of the Director, other adequate security in the appropriate amount, is not filed within such 10-day period, the assessment shall become final upon the expiration of such 10-day period.

(d) If a request for reassessment, accompanied by a bond or other adequate security, is filed within the 10-day period provided by subsection (c) of this section, the collection of so much of the amount assessed as is covered by the bond or other security shall be stayed, the Director shall reconsider the assessment and, if the taxpayer has so requested in the request for reassessment, the Director shall grant the taxpayer, or the taxpayer's authorized representative, an oral hearing. The Director's determination on the request for reassessment shall become final upon the expiration of 30 days from the date when the Director mails notice of the determination to the taxpayer, unless, within such 30-day period, the taxpayer files with the Tax Appeal Board an application for review of the Director's determination.

(e) In any proceeding relating to the collection of a jeopardy assessment, the finding of the Director under subsection (a) of this section shall for all purposes be presumptive evidence that the collection of the tax or the assessment or collection of the deficiency was in jeopardy.

(f) The Director may abate the jeopardy assessment if the Director finds that jeopardy does not exist.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 562 Bankruptcy or receivership.

(a) Upon the adjudication of bankruptcy of the taxpayer in any bankruptcy proceeding, or upon the appointment of a receiver for the taxpayer in any receivership proceeding, before any court of the United States or any state or territory or of the District of Columbia, any deficiency (together with all interest, penalties, additional amounts and additions to the tax provided by law) determined by the Director in respect of any tax may be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

(b) Claims for the deficiency and for interest, penalties, additional amounts and additions to the tax may be presented for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the Director under § 523 of this title or the pendency of proceedings before the Tax Appeal Board under § 544 of this title with respect to such deficiency. No protest shall be filed with the Director under § 523 of this title and no petition shall be filed with the Tax Appeal Board under § 544 of this title with respect to a deficiency after the adjudication of bankruptcy or appointment of the receiver.

(c) Every receiver, personal representative, trustee in bankruptcy, assignee for the benefit of creditors or other like fiduciary shall give such notice of qualification as such to the Director as may be required by the Director.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 563 General powers of Director of Revenue.

(a) Except as otherwise expressly provided by law, the administration and enforcement of this title and Title 4 shall be performed by or under supervision of the Director of Revenue, who is authorized to make such rules and regulations and to require such facts and information to be reported as the Director may deem necessary to enforce this title and Title 4. Such authority shall include, without limitation, the authority to require the rounding, according to conventional rules, of cents to whole dollars with regard to any line or set of lines on any return issued under this title or Title 4.

(b) The Director may prescribe the form and contents of any return or other document required to be filed under this title or Title 4. In addition to the general power of the Director under this subsection (b) to prescribe the form and contents of any return or other document required to be filed under this title of the Delaware Code, the Director of Revenue shall have the authority to prescribe the form and contents of any return or other document deemed necessary to enforce or monitor the effect of amendments made by 78 Del. Laws, c. 1, including, without limitation, information returns or other reports to be made by persons engaging in transactions, the gross receipts from which are excluded from gross receipts subject to tax under Chapter 29 of this title.

(c) The Director, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax payable by any person, shall have power to examine, or to cause to have examined by any agent or representative designated by the Director for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the Director's information with power to administer oaths to such person or persons.

(d) The Director of the Division of Revenue shall enforce the administration of taxes provided for in Chapters 100 and 101 of Title 3.

(e) The Director may mail, on behalf of the Delaware Diabetes Education Fund upon the written request of the Delaware Chapter of the American Diabetes Association, communications to taxpayers who have donated to the Fund. The Director shall charge the Fund for the

full cost of any such mailing. Such mailed communications shall make clear that said mailing does not constitute solicitation on behalf of the State and shall be done in a manner designed to protect the address and names of taxpayers.

(68 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 14, § 1; 71 Del. Laws, c. 414, § 7; 72 Del. Laws, c. 330, § 2; 78 Del. Laws, c. 1, § 12.)

§ 564 Closing agreements.

The Director, or any person authorized in writing by the Director, is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of another person for whom such person acts) with respect to any tax imposed by this title or Title 4 for any taxable period. Such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this State; and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

(68 Del. Laws, c. 187, § 1.)

§ 565 Priorities among requests to intercept or reduce refunds.

The Director of Revenue shall honor the claims for collection of debts owed to certain state agencies pursuant to § 545 of this title and requests to intercept refunds by other claimant governments pursuant to § 558(b) of this title in the following order:

(1) A refund intercept to collect unpaid taxes and additions to tax of this State,

(2) A claim pursuant to a notice of a claimant agency of this State pursuant to § 545 if this title, and

(3) A request by a claimant government for intercept of a refund pursuant to § 558(b) of this title.

(71 Del. Laws, c. 386, § 2.)

Subchapter V

Criminal Offenses

§ 571 Attempt to evade or defeat tax; class E felony.

Any person who wilfully attempts in any manner to evade or defeat any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, or the payment thereof, shall, in addition to the penalties imposed by law, be guilty of a Class E felony as defined in Title 11.

(69 Del. Laws, c. 369, § 1.)

§ 572 Failure to collect or pay over tax; class E felony.

Any person required under this title to collect, account for and pay over any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, who wilfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a Class E felony as defined in Title 11.

(69 Del. Laws, c. 369, § 1.)

§ 573 Failure to file return, supply information or pay tax; class A misdemeanor.

Any person required under Title 4, or by this title, other than § 3002 and Chapter 51 and 52 of this title, to pay any estimated tax or tax required by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, or by regulations made under authority thereof, to make a return (other than a return of estimated tax), keep any records or supply any information, who wilfully fails to pay such estimated tax or tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a Class A misdemeanor as defined in Title 11. In the case of any individual with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such individual with respect to such failure if there is no addition to the tax under § 535(b) of this title with respect to such failure.

(69 Del. Laws, c. 369, § 1.)

§ 574 Fraud and false statements; class E felony.

A person who commits one of the following acts shall be guilty of a Class E felony as defined in Title 11 if that person:

(1) Wilfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which the person does not believe to be true and correct as to every material matter; or

(2) Wilfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with any matter arising under Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document; or

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry or other document required by the provisions of Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in or connives at such execution thereof; or

(4) Removes, deposits or conceals, or is concerned in removing, depositing or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property which is subject to attachment or garnishment for payment of taxes, with intent to evade or defeat the assessment or collection of any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title.

(69 Del. Laws, c. 369, § 1; 70 Del. Laws, c. 186, § 1.)

§ 575 Period of limitations on criminal prosecutions: jurisdiction.

No person shall be prosecuted, tried or punished for any of the various offenses arising under this subchapter unless the prosecution of such person is instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years for offenses arising under §§ 571, 572 and 574 of this title. If an offense is the failure to do an act required by or under this title or Title 4 to be done before a certain date, the period of limitation for such offense shall commence on such date for purposes of this subchapter, the failure to do any act required by or under this title or Title 4 shall be deemed an act committed in part at the principal office of the Division of Revenue in New Castle County. The Superior Court in and for any county where the person to whose liability the proceeding relates resides or has a place of business or in any county in which the offense is alleged to have been committed shall have original jurisdiction, exclusive of any inferior court or any court of special jurisdiction, over any prosecution under this subchapter.

(69 Del. Laws, c. 369, § 1.)

§ 576 Misdemeanors.

Notwithstanding the classifications of offenses otherwise specified in this subchapter, whenever an offense under this subchapter involves during any single tax year:

(1) Understatement by an amount of less than $7,500 of taxable income under § 1105, § 1121, or § 1903 of this title or taxable gross receipts under Part III of this title; or

(2) Evasion or wilful failure to pay any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, in an amount of less than $1,000;

any person convicted of any such offense shall be guilty of an unclassified misdemeanor and shall be fined not more than $3,000 but shall not be subject to a sentence of imprisonment.

(69 Del. Laws, c. 369, § 1.)

Subchapter VI

Miscellaneous

§ 581 Inspection of returns by federal, state and local officials.

(a) Notwithstanding the provisions of § 368 of this title, the Director may permit the Commissioner of Internal Revenue of the United States, the proper officer of any state, the District of Columbia, or any possession or territory of the United States imposing a tax upon the incomes of individuals or corporations, or a financial officer designated by any municipality of this State which imposes an income tax or wage tax, or the authorized representative of any of such officers, to inspect the tax return of any taxpayer, and the Director may furnish to any such officer, or such officer's authorized representative, an abstract of the tax return of any taxpayer or supply such officer or such officer's authorized representative with information contained in any return of such taxpayer or disclosed by the report of any examination or investigation of the income or return of such taxpayer, but only for the purpose of, and only to the extent necessary in, the administration of the tax laws of such other jurisdiction; provided, however, that no such permission shall be granted, and no such information shall be furnished, to any such officer or the officer's representative unless the statutes of such other jurisdiction grant substantially similar privileges to the Director or the Director's legal representative. No such municipality of this State, or its representative, shall be permitted to examine a taxpayer's return unless such taxpayer shall have a place of residence, business or employment in such municipality, and no municipality or its representative shall be permitted to review any portion of a tax return filed under the authority of this title or Title 4 unless the governing body of such municipality shall have adopted an ordinance requiring:

(1) That any information obtained from, or as a result of the examination or investigation of, such tax return be kept confidential and used only for collection purposes;

(2) That the municipality reimburse to the Director the Division of Revenue's cost, if any, of acquiring such information.

(b) Notwithstanding any other provision of this section or § 368 of this title, the Director is specifically authorized to enter into an agreement with the Department of Labor, the Office of the State Bank Commissioner, the Department of Natural Resources and Environmental Control, the Division of Motor Vehicles, the Division of Alcohol and Tobacco Enforcement, the Division of Medicaid and Medical Assistance, the Enhanced 911 Emergency Service Board, or the Alcoholic Beverage Control Commissioner to provide for the inspection of any tax return filed under this title (other than Chapters 30, 51, and 52) or under Title 4; provided, however, that such

inspection shall be pursuant to the Department of Labor's duties under Title 19, the Office of the State Bank Commissioner's duties under Title 5, the Department of Natural Resources and Environmental Control's duties under Title 7, the Division of Motor Vehicles' duties under Title 21, the Division of Alcohol and Tobacco Enforcement's duties under Titles 4 and 11, the Division of Medicaid and Medical Assistance's duties under Title 16, the Enhanced 911 Emergency Service Board's duties under Title 16, or the Alcoholic Beverage Control Commissioner's duties under Title 4, and may be subject to such additional requirements as may be imposed by the Director.

(c) The Director is authorized to provide the Division of Gaming Enforcement with copies of all books, papers, records and other documents related to or provided by "interactive fantasy sports registrants" as defined in § 4862 of Title 29, provided, however, that such information shall be provided to enable the Division of Gaming Enforcement to fulfill its duties under Chapter 48 of Title 29.

(d) The Director is specifically authorized to enter into an agreement with a county to share tax return information filed under this title, other than Chapters 30, 51, and 52 of this title. However, the sharing of information is limited to information pertinent to the county's duties to administer realty transfer, mobile home, and lodging taxes imposed under Chapter 81 of Title 9.

(68 Del. Laws, c. 187, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 314, § 1; 81 Del. Laws, c. 292, § 3; 81 Del. Laws, c. 371, § 4; 82 Del. Laws, c. 226, § 8.)

Part II
Income, Inheritance and Estate Taxes
Chapter 11
PERSONAL INCOME TAX
Subchapter I
General Provisions

§ 1101 Meaning of terms.

Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States referring to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States shall mean the Internal Revenue Code of 1986 [26 U.S.C. § 1 et seq.] and amendments thereto and other laws of the United States relating to federal income taxes, as the same may have been or shall become effective, for any taxable year.

(30 Del. C. 1953, § 1101; 57 Del. Laws, c. 737, § 1; 67 Del. Laws, c. 408, § 1; 71 Del. Laws, c. 347, § 7.)

§ 1102 Imposition and rate of tax; separate tax on lump-sum distributions.

(a) (1) For taxable years beginning before January 1, 1985, the amount of tax shall be determined as follows:

1.4% of the amount of taxable income not in excess of $1,000;
2.0% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;
3.0% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;
4.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;
5.2% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;
6.2% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;
7.2% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;
8.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;
8.2% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;
8.4% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;
8.8% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;
9.4% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;
11.0% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;
12.2% of the amount of taxable income in excess of $40,000, but not in excess of $50,000;
13.5% of the amount of taxable income in excess of $50,000.

(2) For taxable years beginning after December 31, 1984, and before January 1, 1986, the amount of tax shall be determined as follows:

1.3% of the amount of taxable income not in excess of $1,000;
1.8% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;
2.7% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;
3.8% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;
4.7% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;
5.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;
6.5% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;
7.2% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;
7.4% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;
7.6% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;
7.9% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;
8.5% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;
9.9% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;
10.7% of the amount of taxable income in excess of $40,000.

(3) For taxable years beginning after December 31, 1985, and before January 1, 1987, the amount of tax shall be determined as follows:

1.2% of the amount of taxable income not in excess of $1,000;
1.6% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;
2.5% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;

3.5% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;
4.3% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;
5.1% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;
5.9% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;
6.6% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;
6.7% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;
6.9% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;
7.2% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;
7.7% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;
9.0% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;
9.7% of the amount of taxable income in excess of $40,000.

(4) For taxable years beginning after December 31, 1986, and before January 1, 1988, the amount of tax shall be determined as follows:

1.0% of the amount of taxable income not in excess of $1,000;
1.4% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;
2.3% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;
3.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;
3.9% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;
4.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;
5.4% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;
6.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;
6.1% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;
6.3% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;
6.5% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;
7.0% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;
8.2% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;
8.8% of the amount of taxable income in excess of $40,000.

(5) For taxable years beginning after December 31, 1987, and before January 1, 1996, the amount of tax shall be determined as follows:

3.2% of taxable income in excess of $2,000, but not in excess of $5,000;
5.0% of taxable income in excess of $5,000, but not in excess of $10,000;
6.0% of taxable income in excess of $10,000, but not in excess of $20,000;
6.6% of taxable income in excess of $20,000, but not in excess of $25,000;
7.0% of taxable income in excess of $25,000, but not in excess of $30,000;
7.6% of taxable income in excess of $30,000, but not in excess of $40,000;
7.7% of taxable income in excess of $40,000.

(6) For taxable years beginning after December 31, 1995, and before January 1, 1997, the amount of tax shall be determined as follows:

3.2% of taxable income in excess of $2,000 but not in excess of $5,000;
5.0% of taxable income in excess of $5,000 but not in excess of $10,000;
6.0% of taxable income in excess of $10,000 but not in excess of $20,000;
6.35% of taxable income in excess of $20,000 but not in excess of $25,000;
6.65% of taxable income in excess of $25,000 but not in excess of $30,000;
7.1% of taxable income in excess of $30,000.

(7) For taxable years beginning after December 31, 1996, and before January 1, 1999, the amount of tax shall be determined as follows:

3.1% of taxable income in excess of $2,000 but not in excess of $5,000;
4.85% of taxable income in excess of $5,000 but not in excess of $10,000;
5.8% of taxable income in excess of $10,000 but not in excess of $20,000;
6.15% of taxable income in excess of $20,000 but not in excess of $25,000;
6.45% of taxable income in excess of $25,000 but not in excess of $30,000;
6.9% of taxable income in excess of $30,000.

(8) For taxable years beginning after December 31, 1998, and before January 1, 2000, the amount of tax shall be determined as follows:

2.60% of taxable income in excess of $2,000 but not in excess of $5,000;
4.30% of taxable income in excess of $5,000 but not in excess of $10,000;

5.20% of taxable income in excess of $10,000 but not in excess of $20,000; and
5.60% of taxable income in excess of $20,000 but not in excess of $25,000.

(9) For taxable years beginning after December 31, 1998, and before January 1, 2000, the amount of tax shall be determined by reference to paragraph (a)(8) of this section and 5.95% of taxable income in excess of $25,000 but not in excess of $60,000; and 6.40% of taxable income in excess of $60,000.

(10) For taxable years beginning after December 31, 1999, and before January 1, 2010, the amount of tax shall be determined as follows:

2.2% of taxable income in excess of $2,000 but not in excess of $5,000;
3.9% of taxable income in excess of $5,000 but not in excess of $10,000;
4.8% of taxable income in excess of $10,000 but not in excess of $20,000;
5.2% of taxable income in excess of $20,000 but not in excess of $25,000; and
5.55% of taxable income in excess of $25,000 but not in excess of $60,000.

(11) For taxable years beginning after December 31, 1999, and before January 1, 2010, the amount of tax shall be determined by reference to paragraph (a)(10) of this section and 5.95% of taxable income in excess of $60,000.

(12) For taxable years beginning after December 31, 2009, and before January 1, 2012, the amount of tax shall be determined as follows:

2.2% of taxable income in excess of $2,000 but not in excess of $5,000;
3.9% of taxable income in excess of $5,000 but not in excess of $10,000;
4.8% of taxable income in excess of $10,000 but not in excess of $20,000;
5.2% of taxable income in excess of $20,000 but not in excess of $25,000;
5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and
6.95% of taxable income in excess of $60,000.

(13) For taxable years beginning after December 31, 2011, and before January 1, 2014, the amount of tax shall be determined as follows:

2.2% of taxable income in excess of $2,000 but not in excess of $5,000;
3.9% of taxable income in excess of $5,000 but not in excess of $10,000;
4.8% of taxable income in excess of $10,000 but not in excess of $20,000;
5.2% of taxable income in excess of $20,000 but not in excess of $25,000;
5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and
6.75% of taxable income in excess of $60,000.

(14) For taxable years beginning after December 31, 2013, the amount of tax shall be determined as follows:

2.2% of taxable income in excess of $2,000 but not in excess of $5,000;
3.9% of taxable income in excess of $5,000 but not in excess of $10,000;
4.8% of taxable income in excess of $10,000 but not in excess of $20,000;
5.2% of taxable income in excess of $20,000 but not in excess of $25,000;
5.55% of taxable income in excess of $25,000 but not in excess of $60,000; and
6.6% of taxable income in excess of $60,000.

(b) (1) In addition to the tax imposed under subsection (a) of this section, there is hereby imposed a separate tax in the amount determined in paragraph (b)(2) of this section, on the ordinary income portion of a lump sum distribution received by every resident individual, estate or trust.

(2) The amount of the tax imposed by this subsection for any taxable year shall be an amount equal to the amount of the initial separate tax for such year, multiplied by a fraction, the numerator of which is the ordinary income portion of a lump sum distribution for the taxable year, and the denominator of which is the total taxable amount of such distribution for such year.

(3) The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (a) of this section if the taxable income referred to were equal to one tenth of the total taxable amount of the lump sum distributed for the taxable year.

(4) The recipient of a lump-sum distribution shall be liable for the tax imposed by this subsection.

(5) For purposes of this subsection, the rules concerning multiple distributions and distributions of annuity contracts as specified in § 402(e)(2) of the Internal Revenue Code [26 U.S.C. § 402(e)(2)] shall be applicable.

(6) For purposes of this subsection, the definition and special rules applying to the tax on lump-sum distributions as specified in § 402(e)(4) of the Internal Revenue Code [26 U.S.C. § 402(e)(4)] shall be applicable.

(7) For purposes of this subsection, the rules relating to rollover as specified in § 402(c) and (e)(1)(B) of the Internal Revenue Code [26 U.S.C. § 402(c) and (e)(1)(B)] shall be applicable.

(c) The tax rates established by paragraph (a)(4) of this section shall be revoked effective January 1, 1988, unless the Secretary of Labor has, on or before June 10, 1987, made a written determination, submitted to the Governor, Speaker of the House and President Pro Tempore of the Senate, that the total full-time equivalent employment in the State, as regularly reported by the State Department of Labor,

has averaged an annual increase of 6,000 full-time equivalent jobs in nonagricultural wage and salary employment as reported by the Delaware Department of Labor during the period from June 1, 1984, through May 31, 1987. Once the condition of this subsection has been satisfied, there shall be no revocation of the paragraph (a)(4) of this section rates by reason of this subsection. In the event of any revocation of the tax rates established by paragraph (a)(4) of this section, the following rates shall become effective:

1.0% of the amount of taxable income not in excess of $1,000;
1.4% of the amount of taxable income in excess of $1,000, but not in excess of $2,000;
2.3% of the amount of taxable income in excess of $2,000, but not in excess of $3,000;
3.2% of the amount of taxable income in excess of $3,000, but not in excess of $4,000;
3.9% of the amount of taxable income in excess of $4,000, but not in excess of $5,000;
4.6% of the amount of taxable income in excess of $5,000, but not in excess of $6,000;
5.4% of the amount of taxable income in excess of $6,000, but not in excess of $8,000;
6.0% of the amount of taxable income in excess of $8,000, but not in excess of $10,000;
6.1% of the amount of taxable income in excess of $10,000, but not in excess of $15,000;
6.3% of the amount of taxable income in excess of $15,000, but not in excess of $20,000;
6.5% of the amount of taxable income in excess of $20,000, but not in excess of $25,000;
7.0% of the amount of taxable income in excess of $25,000, but not in excess of $30,000;
8.2% of the amount of taxable income in excess of $30,000, but not in excess of $40,000;
9.2% of the amount of taxable income in excess of $40,000, but not in excess of $50,000;
10.1% of the amount of taxable income in excess of $50,000.

(d) (1) In lieu of the tax imposed by subsection (a) of this section there is imposed for each taxable year on the tax table income of every individual whose tax table income for the taxable year does not exceed $60,000, or such lesser amount as the Director may determine but in any event not less than $20,000, a tax determined under tables, applicable to such taxable years, which shall be prescribed by the Director of Revenue. The amounts of tax prescribed in such tables shall be computed on the basis of the rates prescribed by subsection (a) of this section.

(2) For purposes of this subsection, the term "tax table income" means Delaware taxable income as defined in § 1105 (residents) and § 1121 (nonresidents) of this title.

(3) This subsection shall not apply to an estate or trust.

(e) Where the rates of tax prescribed in subsection (a) of this section are changed during a taxable year, the Secretary of Finance shall prescribe such rules and regulations as are necessary to compute the increase in rates of tax on the proportion of income earned subsequent to the effective date of change in rate.

(30 Del. C. 1953, § 1102; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 300, §§ 1, 2, 4; 59 Del. Laws, c. 152, § 1; 62 Del. Laws, c. 23, § 1; 62 Del. Laws, c. 56, § 1; 64 Del. Laws, c. 317, § 1; 64 Del. Laws, c. 325, §§ 2-4; 64 Del. Laws, c. 376, §§ 1, 2; 65 Del. Laws, c. 204, §§ 1-4; 65 Del. Laws, c. 394, §§ 1-4; 66 Del. Laws, c. 86, §§ 1, 2; 67 Del. Laws, c. 407, § 1; 68 Del. Laws, c. 82, § 1; 70 Del. Laws, c. 117, §§ 1, 2; 70 Del. Laws, c. 454, §§ 1-3; 70 Del. Laws, c. 455, § 1; 71 Del. Laws, c. 347, §§ 1, 2; 71 Del. Laws, c. 350, § 1; 72 Del. Laws, 1st Sp. Sess., c. 242,, § 1; 72 Del. Laws, 1st Sp. Sess., c. 248,, §§ 1, 2; 77 Del. Laws, c. 77, §§ 1, 2; 77 Del. Laws, c. 77, §§ 1, 2, 4; 78 Del. Laws, c. 74, §§ 1, 2[1], 2[2]; 79 Del. Laws, c. 10, § 1.)

§ 1103 Resident individual defined.

A resident individual of this State means an individual:

(1) Who is domiciled in this State to the extent of the period of such domicile; provided, however, an individual who is present in a foreign country or countries for at least 495 full days in any consecutive 18-month period, and during such period of 18 consecutive months is not present in this State for more than 45 days, and does not maintain a permanent place of abode in this State at which the individual's spouse, children or parents are present for more than 45 days, and is not an employee of the United States, its agencies or instrumentalities (including members of the Armed Forces) shall not be considered a resident of this State during such period; or

(2) Who maintains a place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State.

(30 Del. C. 1953, § 1103; 57 Del. Laws, c. 737, § 1; 63 Del. Laws, c. 122, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1104 Nonresident individual defined.

A nonresident individual of this State means an individual who is not a resident individual of this State.

(30 Del. C. 1953, § 1104; 57 Del. Laws, c. 737, § 1.)

Subchapter II

Resident Individuals

§ 1105 Taxable income.

The entire taxable income of a resident of this State shall be the federal adjusted gross income as defined in the laws of the United States as the same are or shall become effective for any taxable year with the modifications and less the deductions and personal exemptions

provided in this subchapter.

(30 Del. C. 1953, § 1105; 57 Del. Laws, c. 737, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 347, § 8.)

§ 1106 Modifications [For application of this section, see 83 Del. Laws, c. 338, §?2][Paragraph (b)(11) effective upon meeting the contingency in 83 Del. Laws, c. 339, §?22].

(a) *Additions.* — There shall be added to federal adjusted gross income:

(1) a. Interest qualifying under § 103 of the United States Internal Revenue Code of 1986 [26 U.S.C. § 103] or any similar statute, other than interest on obligations and securities of this State and its political subdivisions and authorities; and

b. Dividends paid by a regulated investment company (sometimes referred to as a mutual fund) qualifying under § 852(b)(5) of the United States Internal Revenue Code of 1986 [26 U.S.C. § 852(b)(5)] or any similar statute;

provided, that dividends attributable to interest on obligations and securities of this State and its political subdivisions and authorities may be excluded from such addition if the amount of interest attributable thereto is reported in writing to the holder or owner of the shares or units of the regulated investment company by or on behalf of the manager of the regulated investment company, and such report states the dollar amount or percentage of Delaware and non-Delaware dividends pertaining to the taxpayer;

(2) The amount of any deduction for depletion of oil and gas wells allowed under § 611 of the Federal Internal Revenue Code of 1986 [26 U.S.C. § 611] to the extent such deduction is determined by reference to § 613 of the Federal Internal Revenue Code [26 U.S.C. § 613] (relating to percentage depletion);

(3) Any deduction, to the extent such deduction exceeds $30,000, for a net operating loss carryback as provided for in § 172 of the Internal Revenue Code or successor provisions.

(b) *Subtractions.* — There shall be subtracted from federal adjusted gross income:

(1) a. Interest on obligations of the United States and its territories and possessions, or of any authority, commission or instrumentality of the United States, to the extent includable in gross income for federal income tax purposes, but exempt from state income taxes under the laws of the United States; and

b. Dividends paid by a regulated investment company (as defined in § 851 of the United States Internal Revenue Code of 1986 [26 U.S.C. § 851], or any similar statute, sometimes referred to as a mutual fund) to the extent such dividends are attributable to interest paid on obligations of the United States and its territories and possessions, or of any authority, commission or instrumentality of the United States, which interest would be subject to subtraction from federal adjusted gross income under paragraph (b)(1)a. of this section if such obligations were owned directly by an individual and the interest on them were paid to such individual. The portion of the dividends of a regulated investment company which represents United States government interest which is exempt from state income taxes under this subparagraph shall be as reported in writing to the holder or owner of the share or units of the regulated investment company by or on behalf of the manager of the regulated investment company, and such report shall state the dollar amount or percentage of exempt and nonexempt dividends pertaining to the taxpayer;

(2) The amount of $2,000 by any person who has a total and permanent disability or by a person who is over 60 years of age, and (i) whose earned income in the taxable year is less than $2,500 and (ii) whose adjusted gross income (without reduction by this exclusion) does not exceed $10,000.

For purposes of this paragraph, in the case of spouses filing a joint return, the amount of the exclusion shall be $4,000 if (i) both are either over 60 years of age or have total and permanent disabilities or 1 is over 60 years of age and the other has a total and permanent disability and (ii) their total earned income in the taxable year is less than $5,000 and their adjusted gross income does not exceed $20,000;

(3) a. For taxable years beginning before January 1, 2022:

1. Amounts received, not to exceed $2,000, by persons under age 60 as pensions from employers, the United States, this State, or any subdivision of this State; or

2. Amounts received, not to exceed $12,500, by persons age 60 or older as pensions from employers, the United States, this State, or any subdivision of this State, or as eligible retirement income.

b. For taxable years beginning on or after January 1, 2022:

1. For persons under age 60, the greater of:

A. Amounts received, not to exceed $2,000, as pensions from employers, the United States, this State, or any subdivision of this State; or

B. Amounts received, not to exceed $12,500, as a United States military pension.

2. For persons age 60 or older, amounts received, not to exceed $12,500, as pensions from employers, the United States, this State, or any subdivision of this State, or as eligible retirement income.

c. For the purposes of this paragraph (b)(3), "eligible retirement income" includes distributions received from qualified retirement plans defined in § 4974 of the federal Internal Revenue Code ("IRC") (26 U.S.C. § 4974) or a successor provision, cash or deferred arrangements described in IRC § 401(k) (26 U.S.C. § 401(k)) or a successor provision, government deferred compensation plans described in IRC § 457 (26 U.S.C. § 457) or a successor provision, dividends, capital gains, interest, and rental income from real property less deductible rental expenses. For purposes of this paragraph (b)(3)c., eligible retirement income received by spouses as joint tenants with right of survivorship or as tenants by the entirety is deemed to have been received ½ by each;

(4) Social Security benefits paid by the United States and all payments received under the Railroad Retirement Act of 1974 [45 U.S.C. §§ 231-231[v] to the extent included in federal adjusted gross income;

(5) An amount equal to the portion of the wages paid or incurred for the taxable year which is disallowed as a deduction for federal tax purposes under § 280C, Internal Revenue Code [26 U.S.C. § 280C], relating to portion of wages for which the new jobs tax credit is claimed;

(6) Benefits received by a resident individual through participation in a travelink program certified by the Delaware Department of Transportation to the extent such benefits are included in the federal adjusted gross income of the taxpayer;

(7) Any deduction, consistent with the operation of § 172 of the Internal Revenue Code [26 U.S.C. § 172] or successor provision, to carry forward losses which were carried back in calculating federal taxable income but which were prevented from being carried back under paragraph (a)(3) of this section;

(8) a. Distributions received from qualified retirement plans as defined in § 4974 of the Internal Revenue Code (I.R.C.) [26 U.S.C. § 4974], cash or deferred arrangements described in § 401(k) of the I.R.C. [26 U.S.C. § 401(k)], and governmental deferred compensation plans described in § 457 of the I.R.C. [26 U.S.C. § 457], to the extent such distributions are applied within the tax year of the distributions for books, tuition or fees at an institution of higher education attended by the person or by any of the person's dependents who have not attained the age of 26, so long as such amounts received have been included in the person's federal adjusted gross income.

b. For the purposes of this section, an institution of higher education is a school which:

1. Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

2. Is legally authorized in this or another state to provide a program of education beyond high school; and

3. Provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies or a program of training to prepare students for gainful employment in a recognized occupation.

(9) The amount of any refund of Delaware State income taxes imposed under this chapter, to the extent included in federal adjusted gross income for the tax period.

(10) The amount of any unemployment benefits received in calendar years 2020 and 2021, to the extent included in federal adjusted gross income.

(11) [Effective upon meeting the contingency in 83 Del. Laws, c. 339, § 22.] Any amount, up to a limit of $1,000, contributed by an individual during the taxable year to 1 or more accounts established and maintained pursuant to the DE529 Education Savings Plan as set forth in subchapter XII of Chapter 34 of Title 14, provided, however, that no deduction shall be permitted under this subsection for any amount contributed through:

a. A change in the designated beneficiary of; or

b. A transfer or rollover from

an account established and maintained pursuant to the DE529 Education Savings Plan as set forth in subchapter XII of Chapter 34 of Title 14; and provided further, that no deduction shall be permitted under this section for any amount contributed during the taxable year to an account in a Delaware sponsored tuition program for expenses intended or used for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school; and provided further, that no deduction shall be permitted under this subsection for any amount contributed during the taxable year for an individual, head of household, married filing separate combined, or married filing separate filer with a federal adjusted gross income greater than $100,000 or for joint filers, with a federal adjusted gross income greater than $200,000. For spouses filing a joint return with federal adjusted gross income not greater than $200,000, the amount of the subtraction shall be the amount contributed by the spouses, up to a limit of $2,000.

(12) Any amount, up to a limit of $5,000, contributed by an individual during the taxable year to 1 or more accounts established and maintained pursuant to the Delaware Achieving a Better Life Experience (ABLE) Program as set forth in Chapter 96A of Title 16; provided, however, that no deduction shall be permitted under this subsection for any amount contributed through:

a. A change in the designated beneficiary of; or

b. A transfer or rollover from

an account established and maintained pursuant to the Delaware Achieving a Better Life Experience Program as set forth in Chapter 96A of Title 16. For spouses filing a joint return, the amount of the subtraction shall be the amount contributed by the spouses, up to a limit of $10,000.

(c) *Fiduciary adjustment.* — There shall be added to, or subtracted from, federal adjusted gross income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under § 1634 of this title.

(30 Del. C. 1953, § 1106; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 318; 58 Del. Laws, c. 342, § 1; 58 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 151, § 1; 60 Del. Laws, c. 18, § 1; 60 Del. Laws, c. 269, § 1; 60 Del. Laws, c. 270, § 1; 60 Del. Laws, c. 639, § 1; 61 Del. Laws, c. 202, § 1; 61 Del. Laws, c. 298, § 1; 62 Del. Laws, c. 353, § 2; 64 Del. Laws, c. 224, § 1; 64 Del. Laws, c. 470, § 1; 65 Del. Laws, c. 203, § 1; 67 Del. Laws, c. 160, § 2; 67 Del. Laws, c. 263, §§ 3, 4; 67 Del. Laws, c. 399, §§ 1, 2; 67 Del. Laws, c. 408, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 495, § 1; 71 Del. Laws, c. 131, § 1; 71 Del. Laws, c. 352, §§ 1, 2; 72 Del. Laws, 1st Sp. Sess., c. 243,, § 1; 72 Del. Laws, 1st Sp. Sess., c. 246,, § 1; 74 Del. Laws, c. 138, § 1; 78 Del. Laws, c. 179, §§ 320-322; 83 Del. Laws, c. 2, § 4; 83 Del. Laws, c. 268, § 1; 83 Del. Laws, c. 283, § 47; 83 Del. Laws, c. 338, § 1; 83 Del. Laws, c. 339, § 22; 83 Del. Laws, c. 352, § 1; 83 Del. Laws, c. 413, § 1.)

§ 1107 Deductions.

The deduction of a resident individual shall be the standard deduction, unless the individual elects to itemize deductions as provided in § 1109 of this title.

(30 Del. C. 1953, § 1107; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 342, § 2; 66 Del. Laws, c. 86, § 3; 70 Del. Laws, c. 186, § 1.)

§ 1108 Standard deduction.

(a) Except as otherwise provided in subsections (b) and (c) of this section:

(1) For taxable periods ending before January 1, 1999, the standard deduction of a resident individual shall be $1,300, and the standard deduction of resident spouses shall be $1,600 if they file a joint return and $800 each if they file separate returns;

(2) For taxable periods beginning after December 31, 1998, and before January 1, 2000, the standard deduction of a resident individual shall be $3,250, and the standard deduction of resident spouses shall be $4,000 if they file a joint return and $2,000 each if they file separate returns; and

(3) For taxable periods beginning after December 31, 1999, the standard deduction of a resident individual shall be $3,250, and the standard deduction of resident spouses shall be $6,500 if they file a joint return and $3,250 each if they file separate returns.

(b) The sum of $2,500 shall be added to the standard deduction determined under subsection (a) of this section in each of the following circumstances:

(1) For the taxpayer who has attained the age of 65 before the close of the taxable year;

(2) For the spouse of the taxpayer if a joint return is not made by the taxpayer and the spouse, if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer;

(3) For the taxpayer who is blind at the close of the taxable year; and

(4) For the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(c) For purposes of this section, an individual is blind only if the individual's central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if the individual's visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(30 Del. C. 1953, § 1108; 57 Del. Laws, c. 737, § 1; 66 Del. Laws, c. 93, § 1; 66 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 347, §§ 3, 4; 72 Del. Laws, 1st Sp. Sess., c. 241,, §§ 1-3.)

§ 1109 Itemized deductions [For application of this section, see 66 Del. Laws, c. 86, § 8].

(a) *General.* — In determining taxable income under this chapter, in lieu of the standard deduction provided by § 1108 of this title, a resident individual may elect to deduct the sum of the itemized deductions claimed on the federal income tax return as shall be permitted under the laws of the United States as the same are or shall become effective for any taxable year in determining the federal taxable income, or, if the person does not itemize deductions or elects the credit for foreign taxes paid on the federal return, the person may deduct the sum of the itemized deductions to which the person would have been entitled had the person itemized the deductions (including the deduction for foreign taxes paid) on the federal return:

(1) Reduced by:

a. The amount thereof representing income taxes imposed by this State;

b. The amount of any income tax imposed on the person for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein if the person elected to take such amount as a credit in accordance with § 1111(a) of this title; and

(2) Increased by:

a. An amount equal to the excess of the state employee automobile mileage reimbursement allowance over the standard mileage rate allowed as a charitable deduction for federal income tax purposes for unreimbursed automobile transportation expense incurred by an individual while serving as a volunteer for a charitable organization as defined in § 170(c), Internal Revenue Code [26 U.S.C. § 170(c)]; and

b. In the case of a self-employed individual, the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, the taxpayer's spouse and dependents, less the amount allowed the taxpayer as a deduction pursuant to § 162(*l*) (26 U.S.C. § 162(*l*)) or successor provision of the Internal Revenue Code. For purposes of this subparagraph, "self-employed taxpayer" shall mean a resident individual whose gross income is more than one-half derived from a trade, business or profession and not derived as an employee. Income in the nature of interest, dividends or other investment income shall not constitute self-employment income. No self-employed taxpayer whose total cost of insurance for health care for the taxpayer, spouse and dependents exceeds the gross income from the trade, business or profession shall be entitled to the deduction under this subparagraph;

c. For taxable years beginning after December 31, 1986, and before January 1, 1988, an amount equal to 12% of itemized

deductions determined under this section without regard to this subparagraph.

(b) *Spouses.* — Spouses, both of whom are required to file returns under this chapter, shall be allowed to itemize their deductions only if both elect to do so.

(c) For purposes of subsection (a) of this section, the amount of itemized deductions representing income taxes imposed by: (i) this State, or (ii) another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein if a resident elected to take such amount as a credit in accordance with § 1111(a) of this title shall be deemed to equal the amount of such taxes reduced by the amount of such taxes multiplied by the percentage determined under § 68(a) of the Internal Revenue Code [26 U.S.C. § 68(a)] or successor provision thereof.

(30 Del. C. 1953, § 1109; 57 Del. Laws, c. 737, § 1; 59 Del. Laws, c. 19, § 1; 63 Del. Laws, c. 122, § 2; 64 Del. Laws, c. 410, § 1; 65 Del. Laws, c. 403, § 1; 65 Del. Laws, c. 461, § 1; 66 Del. Laws, c. 86, §§ 4, 8; 70 Del. Laws, c. 117, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 483, § 1; 71 Del. Laws, c. 347, § 9; 81 Del. Laws, c. 425, § 23.)

§ 1110 Personal exemptions and credits.

(a) For tax years ending before January 1, 1996, a resident shall be allowed an exemption of $1,250 for each exemption to which that resident is entitled for the taxable year for federal income tax purposes. Resident persons age 60 or over shall be allowed one additional personal exemption.

(b) For tax years beginning after December 31, 1995, resident individuals shall be allowed a personal credit against the individual's tax otherwise due under this chapter in the amount of:

(1) $110 for each personal exemption to which such individual is entitled for the taxable year for federal income tax purposes; plus

(2) An additional $110 in the case of each resident person age 60 or over.

(c) In no event shall the credit allowed under subsection (b) of this section exceed the tax otherwise due under this chapter.

(30 Del. C. 1953, § 1110; 57 Del. Laws, c. 737, § 1; 64 Del. Laws, c. 330, § 1; 65 Del. Laws, c. 147, § 1; 66 Del. Laws, c. 95, § 3; 66 Del. Laws, c. 362, § 1; 70 Del. Laws, c. 116, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, 1st Sp. Sess., c. 247,, § 2.)

§ 1111 Credit for income tax paid to another state.

(a) *Allowance of credit.* — A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed for the taxable year by another state of the United States, or the District of Columbia, on income derived from sources therein which is also subject to tax under this chapter.

(b) *Limitation on credit.* — The credit allowable under this section, with respect to the income tax imposed upon the taxpayer for the taxable year by each other taxing jurisdiction, shall not exceed the amount computed by multiplying the tax otherwise due under this chapter by a fraction, the numerator of which is the amount of the taxpayer's taxable income derived from sources in the other taxing jurisdiction (applying the rules of § 1122 of this title) and the denominator of which is the entire taxable income.

(30 Del. C. 1953, § 1111; 57 Del. Laws, c. 737, § 1; 59 Del. Laws, c. 64, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1112 Historic rehabilitation.

A resident individual shall be allowed a credit against such individual's tax otherwise due under this chapter in accordance with the provisions of the Historic Preservation Tax Credit Act (Chapter 18 of this title), which credits shall be against any taxes imposed under this chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that act.

(73 Del. Laws, c. 6, § 6.)

§ 1113 Credit for active members of volunteer firefighting, ambulance and rescue service companies and their auxiliaries.

A resident individual who is an active member, as defined by the rules and bylaws of the company, during the tax year of a Delaware volunteer fire, ambulance, or rescue service company or its auxiliary shall be allowed a nonrefundable credit against the tax imposed by this chapter in the amount of $1,000. The Secretary may prescribe such rules and regulations as the Secretary deems necessary to carry out the purpose of this statute.

(62 Del. Laws, c. 353, § 1; 64 Del. Laws, c. 406, § 1; 65 Del. Laws, c. 397, §§ 1, 2; 65 Del. Laws, c. 518, §§ 1, 2; 69 Del. Laws, c. 388, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, 1st Sp. Sess., c. 244,, § 1; 74 Del. Laws, c. 338, § 1; 75 Del. Laws, c. 79, § 1; 82 Del. Laws, c. 289, § 1; 83 Del. Laws, c. 311, § 1.)

§ 1114 Child care and dependent care expense credit.

(a) A resident individual shall be entitled to a credit against that individual's tax otherwise due under this chapter in the amount of 50 percent of the child and dependent care expense credit allowable for federal income tax purposes for the same tax year. In no event shall the allowable credit under this subsection exceed the tax otherwise due under this chapter.

(b) In the case of spouses who file a joint federal return but who elect to determine their Delaware taxes separately, the credit allowed pursuant to this subsection may only be applied against the tax imposed on the spouse with the lower taxable income, computed without regard to such credit, and shall not exceed such tax.

(65 Del. Laws, c. 202, § 1; 66 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1115 Subchapter S — Business tax credits [Repealed].

Repealed by 72 Del. Laws, c. 467, § 7, effective July 18, 2000.

§ 1116 Delaware investment credit [For application of this section, see 81 Del. Laws, c. 244, §§? 4, 5].

A resident and nonresident individual shall be allowed a credit against that individual's tax otherwise due under this chapter in an amount equal to 15% of the individual's investment that is qualified under subchapter X of Chapter 87A of Title 29 ("Delaware Investment Tax Credit Program") [repealed] and certified as such by the Director of the Division of Small Business to the Director of Revenue. Notwithstanding § 329 of this title to the contrary, determinations by the Delaware Economic Development Authority as to the qualification of any investment under the Delaware Investment Tax Credit Program [repealed] shall not be appealable to the Tax Appeal Board. In no event shall the credit allowable under this section exceed the tax otherwise due under this chapter. Unused credits under this section may be carried forward 4 years from the tax year in which they are certified under the Delaware Investment Tax Credit Program [repealed].

(68 Del. Laws, c. 203, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 19; 81 Del. Laws, c. 244, §§ ? 2, 5, 5; 81 Del. Laws, c. 374, § 49.)

§ 1117 Earned income tax credit [Effective until fulfillment of 83 Del. Laws, c. 118, § 2].

(a) An individual who is a resident of this State shall be entitled to a nonrefundable credit against the individual's tax otherwise due under this chapter in the amount of 20% of the corresponding federal earned income credit allowed pursuant to § 32 or successor provision of the Internal Revenue Code [26 U.S.C. § 32].

(b) In the case of spouses who file a joint federal return but who elect to determine their Delaware taxes separately, the credit allowed under subsection (a) of this section may only be used by the spouse with the greater tax otherwise due, computed without regard to this credit.

(c) In no event shall the credit allowed under subsection (a) of this section exceed the tax otherwise due under this chapter.

(75 Del. Laws, c. 221, § 1.)

§ 1117 Earned income tax credit [Effective upon fulfillment of 83 Del. Laws, c. 118, § 2].

(a) (1) For any tax year beginning before January 1, [of the year in which the contingency under 83 Del. Laws, c. 118, § 2, is fulfilled] an individual who is a resident of this State may receive a nonrefundable credit against the individual's tax otherwise due under this chapter in the amount of 20% of the corresponding federal earned income credit allowed under § 32 or successor provision of the Internal Revenue Code (26 U.S.C. § 32).

(2) For any tax year beginning on or after January 1, [of the year in which the contingency under 83 Del. Laws, c. 118, § 2, is fulfilled], an individual who is a resident of this State may receive a credit against the individual's tax under this chapter in an amount based on a percentage of the corresponding federal earned income credit allowed under § 32 or successor provision of the Internal Revenue Code (26 U.S.C. § 32). The individual may claim either of the following amounts:

a. 20% of the corresponding federal earned income tax credit, not to exceed the tax otherwise due under this chapter.

b. 4.5% of the corresponding federal earned income tax credit, of which the amount that exceeds the tax otherwise due under this chapter is refundable.

(b) In the case of spouses who file a joint federal return but who elect to determine their Delaware taxes separately, the credit allowed under subsection (a) of this section may only be used by the spouse with the greater tax otherwise due, computed without regard to this credit.

(c) The credit allowed under paragraph (a)(1) of this section may not exceed the tax otherwise due under this chapter.

(75 Del. Laws, c. 221, § 1; 83 Del. Laws, c. 118, § 1.)

Subchapter III

Nonresident Individuals

§ 1121 Imposition of tax upon nonresidents.

A tax is hereby imposed for each taxable year on the taxable income of every nonresident individual of this State equal to the tax determined under § 1102 of this title as if such individual were a resident, reduced by the credit allowed under § 1110(b) of this title, and the difference, multiplied by a fraction, the numerator of which is such individual's modified Delaware source income and the denominator of which is such individual's Delaware adjusted gross income.

(30 Del. C. 1953, § 1121; 57 Del. Laws, c. 737, § 1; 68 Del. Laws, c. 82, § 2; 70 Del. Laws, c. 297, § 1.)

§ 1122 Modified Delaware source income.

The modified Delaware source income of a nonresident individual means that part of such individual's federal adjusted gross income and modifications provided for under § 1106 of this title derived from sources within this State determined under § 1124 of this title.

(30 Del. C. 1953, § 1122; 57 Del. Laws, c. 737, § 1; 68 Del. Laws, c. 82, § 3.)

§ 1123 Delaware adjusted gross income.

The Delaware adjusted gross income of an individual means such individual's federal adjusted gross income with the modifications provided for under § 1106 of this title.

(30 Del. C. 1953, § 1123; 57 Del. Laws, c. 737, § 1; 66 Del. Laws, c. 86, § 5; 66 Del. Laws, c. 93, § 2; 68 Del. Laws, c. 82, § 4.)

§ 1124 Income derived from sources in Delaware.

(a) *General.* — That part of a nonresident individual's federal adjusted gross income derived from sources within this State shall be the sum of the following:

(1) The amount of items of income, gain, loss and deduction entering into the federal adjusted gross income which is derived from sources in this State, including:

a. The individual's distributive share of partnership income and deductions determined under § 1623 of this title,

b. The individual's share of estate or trust income and deductions determined under § 1640 of this title, and

c. The individual's distributive share of the income and deductions of an S corporation; and

(2) The portion of the modifications described in § 1106(a)-(c) of this title which relate to income derived from sources in this State, including any modifications attributable to the individual as a partner or as a shareholder of an S corporation.

(b) *Income and deductions having source within this State.* — Items of income, gain, loss and deduction derived from, or connected with, sources within this State are those items attributable to:

(1) Compensation, other than pensions, as an employee in the conduct of the business of an employer, for personal services:

a. Rendered in this State, or

b. Attributable to employment in this State and not required to be performed elsewhere;

(2) The ownership or disposition of any interest in real or tangible personal property in this State (including that percentage of ordinary and capital gain dividends received from a real estate investment trust, as defined in § 856 of the Internal Revenue Code (26 U.S.C § 856), that is attributable to rents from real property located in Delaware or gain from the disposition of real property located in Delaware);

(3) A business, trade, commerce, profession or vocation carried on in this State; or

(4) Winnings from pari-mutuel wagering derived from the conduct of pari-mutuel activities within this State.

(c) *Intangibles.* — Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from sources within this State only to the extent that such income is from property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State.

For purposes of this subsection, intangible assets of the taxpayer which are treated as held for investment for federal income tax purposes (or would be so treated if such assets were held by an individual) shall not be considered as property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State. Notwithstanding the foregoing and for purposes of this subsection, assets whose acquisition, management and disposition constitute integral parts of the taxpayer's regular trade or business operations (other than the operations of a taxpayer whose trade or business is that of investing) shall not be considered held for investment.

(d) *Deduction for losses.* — Deductions for capital losses, net capital gains and net operating losses shall be based solely on income, gains, losses and deductions derived from, or connected with, sources in this State, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) *Nonresident shareholders of S corporation.* — For purposes of subsection (a) of this section, in the case of a nonresident individual who is a shareholder of an S corporation, the rules provided in subsections (a) and (c) of § 1145 [repealed] of this title shall apply in the same manner as if such S corporation were a partnership and such nonresident individual were a nonresident partner.

(f) *Apportionment and allocation.* — If a business, trade, commerce, profession or vocation is carried on partly within this State and partly without this State, the items of income and deduction derived from, or connected with, sources within this State shall be determined by apportionment and allocation under rules prescribed by the Director of the Division of Revenue.

(g) *Service in armed forces.* — Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident shall not constitute income derived from sources within this State.

(30 Del. C. 1953, § 1124; 57 Del. Laws, c. 737, § 1; 59 Del. Laws, c. 19, § 2; 65 Del. Laws, c. 461, § 2; 68 Del. Laws, c. 82, § 5; 68 Del. Laws, c. 423, §§ 2-4; 69 Del. Laws, c. 188, §§ 5, 8; 70 Del. Laws, c. 142, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 467, § 3.)

§ 1125 Individual who is Delaware resident for part of year; computation of tax.

An individual who is a resident of this State for only part of a taxable year shall have the election to either:

(1) Report and compute the tax as payable by such individual under this chapter as if the individual were a resident for the entire taxable year and be allowed the applicable credit as provided in § 1111 of this title; or

(2) Report and compute the tax as if the individual were a nonresident of this State for the entire year, except, however, that for purposes of such computation: (i) Such individual's modified Delaware source income (as otherwise determined under § 1122 of this title) for that period during which such individual was a resident of this State shall include all items of income, gain, loss and deduction whether or not derived from, or connected with, sources within this State; and (ii) the credit provided by § 1111 of this title shall be

allowed; provided that, however, for purposes of computing such credit, the amount of income taxes paid to another state shall be deemed to be limited by an amount which bears the same ratio to the total income taxes actually paid by such individual to such other state for such taxable year as the amount of Delaware adjusted gross income derived from sources within such other state (applying the rules of § 1124 of this title) while such individual was a resident of this State bears to the total Delaware adjusted gross income derived from sources within such other state (applying the rules of § 1124 of this title) for such taxable year.

(68 Del. Laws, c. 82, § 6; 70 Del. Laws, c. 186, § 1.)

§ 1126 Withholding of income tax on sale or exchange of real estate by nonresident individuals.

(a) *Definitions.* — (1) "Director" means the Director of the Division of Revenue or the Secretary of Finance of the State.

(2) "Nonresident individual" means, for purposes of this section, an individual who is not a resident individual of this State for the individual's entire tax year.

(3) "Recorder" means the official with the duty to record deeds and similar instruments.

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to 1 of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to 1 of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* —

Every nonresident individual who sells or exchanges Delaware real estate shall file with the Recorder 1 of the following:

(1) A "Declaration of Estimated Income Tax" for the quarter in which the sale or exchange is settled, applying the highest marginal rate under § 1102 of this title to an estimate of the gain recognized on the sale or exchange.

(2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under § 1102 of this title, applied to the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real estate.

(3) a. An alternative form prepared by the Director to declare under penalties of perjury 1 of the following:

1. That the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or exchange.

2. That all or a part of the gain realized that may be excluded from income with respect to the tax year of the sale or exchange.

3. That the sale or exchange of real estate is 1 of the following:

A. A transfer under a foreclosure of a mortgage or other lien instrument.

B. A transfer under a deed in lieu of foreclosure.

b. With respect to a claim of exemption or exclusion under paragraph (b)(3)a.1. or (b)(3)a.2. of this section, a statement of the facts and a citation to the provision of the Internal Revenue Code (Title 26, U.S.C.) relied upon for such exemption or exclusion must also be included in the declaration.

(c) *Due date of estimated tax return, payment.* —

The return or form provided for in subsection (b) of this section, and the estimated tax reported due on such return or form, shall be remitted with the deed to the Recorder before the deed shall be recorded. Such payment shall be withheld from the net proceeds of the sale. To the extent that the sale does not result in net proceeds being available for the payment of the estimated tax, the Recorder may accept the form without payment, upon receipt of confirmation from the closing attorney that no funds are available for payment of the tax and that no funds were distributed to the seller.

(d) *Payment credited to transferor.* —

The estimated tax remitted under subsection (c) of this section shall be deemed to have been paid to the Director on behalf of the nonresident transferor and the nonresident transferor shall be credited for purposes of §§ 1169 and 1170 of this title as a payment made on the date remitted to the Recorder.

(e) *Persons or entities not liable for payments.* —

Neither the transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, nor the real estate agent or broker in a transaction subject to this section shall be liable for any amounts required to be collected and paid over to the Recorder or Director under this section.

(f) *Tax not imposed; lawful collection of taxes not prohibited.* —

This section does not:

(1) Impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) Prohibit the Director from collecting any taxes due from a transferor in any other manner authorized by law.

(77 Del. Laws, c. 291, § 1; 81 Del. Laws, c. 363, § 1; 83 Del. Laws, c. 107, § 1.)

§ 1127 Deduction for federal income taxes [Repealed].

Repealed by 66 Del. Laws, c. 86, § 7, effective Dec. 31, 1987.

Subchapter IV

Estates, Trusts and Beneficiaries

§ 1131-1142 Imposition of tax; Computation and payment; Tax not applicable; Fiduciary adjustment; Resident and nonresident estate defined; Resident and nonresident trust defined; Taxable income of resident estate or trust; Nonresident beneficiary deduction for resident estates or trusts; Credit for income tax of another state; Accumulation distribution credit for resident beneficiary of trust; Taxable income of a nonresident estate or trust; Share of a nonresident estate, trust or its beneficiaries in income from sources within this State [Repealed].

Repealed by 72 Del. Laws, c. 467, § 7, effective July 18, 2000.

Subchapter V

Partners and Partnerships

§ 1143-1145 Partnership entity not taxable; Character of items; Special rules for nonresident partners [Repealed].

Repealed by 72 Del. Laws, c. 467, § 7, effective July 18, 2000.

Subchapter VI

Accounting Periods and Methods of Accounting

§ 1146-1148 Taxable year; Method of accounting; Adjustments [Repealed].

Repealed by 72 Del. Laws, c. 467, § 7, effective July 18, 2000.

§ 1149 Basis of adjustments [Repealed].

Repealed by 71 Del. Laws, c. 217, § 2.

Subchapter VII

Withholding of Tax

§ 1151 Employer to withhold tax from wages or other remuneration.

(a) *General.* — Every employer maintaining an office, or transacting business, within this State and making payment of any wages or

other remuneration taxable under this chapter to a resident or nonresident individual whose wages or other remuneration are subject to withholding under the Internal Revenue Code shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, insofar as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter with respect to the amount of such wages included in the taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules or forms of the State Tax Department. The State Tax Department is authorized to promulgate withholding tables for this purpose.

(b) *Withholding exemptions.* — For purposes of this section, an employee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which the employee is entitled for federal income tax withholding purposes. An employer may rely upon the number of federal withholding exemptions claimed by the employee.

(c) *Withholding agreements.* — The State Tax Commissioner may enter into agreements with the tax departments of other states (which require income tax to be withheld from the payment of wages or other remuneration and salaries) so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this chapter. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules prescribed by the State Tax Commissioner, may relieve employers in this State from withholding income tax on wages or other remuneration and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this State.

(30 Del. C. 1953, § 1151; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 257, §§ 3, 4; 61 Del. Laws, c. 136, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1152 Information statement for employee.

Every employer required to deduct and withhold tax under this chapter from the wages or other remuneration of an employee shall furnish to each such employee, in respect to the wages or other remuneration paid by such employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if such employee's employment is terminated before the close of such calendar year, within 30 days from the date on which the last payment of wages or other remuneration is made, a written statement, as prescribed by the Director of the Division of Revenue, showing:

(1) The amount of wages or other remuneration paid by the employer to the employee;

(2) The amount deducted and withheld as tax;

(3) All information required by the Internal Revenue Service regarding the employee's eligibility for the federal earned income tax credit; and

(4) Such other information as the Director of the Division of Revenue shall prescribe.

(30 Del. C. 1953, § 1152; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 257, § 5; 69 Del. Laws, c. 443, § 2.)

§ 1153 Credit for tax withheld.

Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid to the State Tax Department on behalf of the person from whom withheld and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(30 Del. C. 1953, § 1153; 57 Del. Laws, c. 737, § 1.)

§ 1154 Information returns and payment of tax withheld.

(a) Every employer required to deduct and withhold tax under this chapter shall file a withholding return as prescribed by the Division of Revenue and pay over such tax to the Division of Revenue, or to a depository designated by the Division of Revenue, at a frequency to be determined as follows:

(1) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period did not exceed the applicable threshold of $4,500 shall be a quarterly filer;

(2) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period exceeded the applicable threshold of $4,500 but did not exceed the applicable threshold of $25,000 or which had no employees within Delaware during the lookback period shall be a monthly filer; and

(3) An employer whose aggregate amount of taxes required by this subchapter to be deducted and withheld during the lookback period exceeded the applicable threshold of $25,000 shall be an eighth-monthly filer.

The levels of the applicable thresholds in this subsection are subject to annual adjustment as more fully set forth in § 515 of this title.

(b) The Division of Revenue may modify the filing frequency defined in paragraphs (a)(1)-(3) of this section for any taxpayer, in response to a request from the taxpayer, upon a showing by the taxpayer that they would suffer a hardship if required to comply with the statutory filing frequency.

(c) A quarterly filer shall file a return and pay over taxes required to be deducted and withheld under this chapter not later than the last day of the month following the close of each calendar quarter.

(d) A monthly filer shall, for each month, file a return and pay over taxes required to be deducted and withheld during such month on or before the fifteenth day of the month following the end of such month.

(e) An eighth-monthly filer shall file a return and pay over taxes required to be deducted and withheld under this chapter not later than 3

working days following the end of any deposit or return period during which an employer made any payment subject to a requirement to withhold tax under this chapter. For purposes of this subsection, each month shall be divided into 8 deposit or return periods. These deposit or return periods end on the third, seventh, eleventh, fifteenth, nineteenth, twenty-second, twenty-fifth and last day of every month.

(f) For purposes of this subchapter, the term "lookback period" shall refer to the 12-month period between July 1 and June 30 immediately preceding the calendar year for which the filing frequency is determined by reference to the lookback period.

(g) Any employer required under the provisions of § 6302 (or successor provision) of the Internal Revenue Code [26 U.S.C. § 6302] to deposit federal employment taxes by electronic funds transfer shall be required to deposit taxes withheld under this subchapter by electronic funds transfer, except that, for purposes of this subsection, 1 year shall be added to the "applicable effective date" on which deposit by electronic funds transfer is required of a particular employer under regulations promulgated pursuant to the provisions of § 6302 (or successor provision) of the Internal Revenue Code [26 U.S.C. § 6302]. The Director of Revenue shall prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer system which is required to be used for the collection of taxes withheld under this chapter. Such system shall be designed in such manner as may be necessary to ensure that such taxes will be credited to an account maintained by the State Treasurer on the date on which the return and taxes would otherwise have been required to be filed under this subchapter.

(h) Any employer that demonstrates it filed and paid over withholding taxes under this chapter on or before the date on which it was required to deposit federal employment taxes shall be deemed to have established reasonable cause for late filing and payment of withheld taxes for purposes of Chapter 5 of this title.

(i) *Information returns*. — Any person:

(1) Required to withhold, account for, and pay over taxes under this chapter for which federal information return form W-2 is required;

(2) Making any payment of salary, fee, commission or other compensation for services to any Delaware resident individual or to any individual nonresident for work done or services performed or rendered within Delaware for which federal information returns form 1099 MISC or successor form is required;

(3) Otherwise withholding Delaware taxes from payment of any wage, pension, distribution or other remuneration; or

(4) Making any payment of any other remuneration to any Delaware resident individual for which any other federal information return is required,

shall also file with the Division of Revenue information returns with respect to each such individual to whom such federal forms are required to be issued. If a person is required to make and return such information reports to the Internal Revenue Service on magnetic media or in other machine-readable form under Internal Revenue Code § 6011 (26 U.S.C. § 6011) and regulations thereunder or successor provision, then the information returns required to be made under this section shall, unless excepted by the Director, also be made on magnetic media or in other machine-readable form. All returns required to be filed under this section shall be filed with the Division of Revenue on or before the date on which such returns are required to be filed with the Internal Revenue Service.

(30 Del. C. 1953, § 1154; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 56, § 1; 60 Del. Laws, c. 17, § 1; 60 Del. Laws, c. 276, §§ 1, 2; 62 Del. Laws, c. 56, § 2; 64 Del. Laws, c. 6, §§ 1-3; 65 Del. Laws, c. 402, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 371, §§ 1, 2; 73 Del. Laws, c. 131, § 2; 80 Del. Laws, c. 195, § 6; 81 Del. Laws, c. 19, § 3; 83 Del. Laws, c. 107, § 2.)

§ 1155 Employer's liability for withheld taxes.

Every employer required to deduct and withhold tax under this chapter is made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the State Tax Department, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this chapter shall be held to be a special fund in trust for the State Tax Department. No employee shall have any right of action against an employer in respect to any money deducted and withheld from wages and paid over to the State Tax Commissioner in compliance, or in intended compliance, with this chapter.

(30 Del. C. 1953, § 1155; 57 Del. Laws, c. 737, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1156 Employer's failure to withhold.

If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any additions to tax, penalties or interest otherwise applicable in respect to such failure to deduct and withhold.

(30 Del. C. 1953, § 1156; 57 Del. Laws, c. 737, § 1.)

§ 1156A Employer to report new hires.

(a) Every employer required to deduct and withhold tax under this chapter shall, within 20 days after the date the employer hires the employee, notify the State Directory of New Hires established pursuant to § 2208 of Title 13 of the hiring of the employee; provided, however, that:

(1) An employer that transmits reports magnetically or electronically shall so notify the State Directory by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart; and

(2) An employer that has employees in this State and at least 1 other State and that transmits reports magnetically or electronically

may comply with the requirements of this subsection by designating either this State or another state in which the employer has employees, as the state to which the employer will transmit the report required under this section, providing written notification to the Secretary of the federal Department of Health and Human Services of such designation and transmitting the report to such state.

(b) Such report shall include the name, address and social security number of the newly hired employee, the date services for remuneration were first performed by the employee, and the name and address of, and identifying number assigned under § 6109 of the Internal Revenue Code of 1986 (26 U.S.C. § 6109) to, the employer.

(c) Each report shall be made on a W-4 form or, at the option of the employer, an equivalent form, and may be transmitted to the State Directory of New Hires by first-class mail, magnetically, or electronically.

(d) An employer who fails or refuses to report the hiring of a new employee as required by this section shall be punished by a fine of $25 for each such failure or refusal. An employer or employee who conspires not to report the hiring of an employee as required by this section, or to supply a false or incomplete report as required by this section, shall be punished by a fine of $500 for each offense. A fine under this section may not be suspended. If the employer is a corporation, criminal liability shall be established pursuant to §§ 281-284 of Title 11. Family Court shall have jurisdiction over violations of this section.

(e) For purposes of this section, the following terms shall have the following meanings:

(1) "Business day" means a day on which state offices are open for regular business.

(2) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986 (26 U.S.C. § 3401 et seq.), and does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to the federal law with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(3) "Employer" has the meaning given such term in § 3401(d) of the Internal Revenue Code of 1986 (26 U.S.C. § 3401(d)), and includes any entity and any labor organization. The term "labor organization" has the meaning given such term in § 2(5) of the National Labor Relations Act (29 U.S.C. § 152(5)), and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in § 8(f)(3) (29 U.S.C. § 158(f)(3)) of such act of an agreement between the organization and the employer.

(4) "Newly hired employee" means an employee who has not previously been employed by the employer, or who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days.

(71 Del. Laws, c. 216, § 7; 78 Del. Laws, c. 311, § 2; 79 Del. Laws, c. 114, § 1.)

§ 1157 U.S. Olympics account [Repealed].

Repealed by 73 Del. Laws, c. 179, § 6, effective July 12, 2001.

§ 1158 Payment of tax on behalf of nonresident shareholders by S corporation.

(a) Every corporation that is an S corporation for federal income tax purposes for any taxable year beginning on or after January 1, 1992, in which it has any shareholder who is a nonresident individual, shall pay, at the times and in the percentages set forth in § 1905 of this title, on behalf of each such nonresident, tax in an amount equal to the highest rate of tax set forth in § 1102(a) of this title multiplied by such nonresident's distributive share of the income of such corporation determined in accordance with § 1124 of this title.

(b) Any payment of tax under subsection (a) of this section by a corporation shall be considered to have been distributed or advanced by such corporation to the nonresident individual on whose behalf such tax was paid on the date such payment was made by such corporation. Such nonresident shall be credited for purposes of §§ 1169 and 1170 of this title with having made a declaration and payment of estimated tax on the date such payment under subsection (a) of this section was made by such corporation, but such deemed payment of estimated tax shall be taken into account for the taxable year of such nonresident in which such nonresident is required to include in taxable income the distributive share of the income of such corporation for which such payment under subsection (a) of this section was made.

(c) If an S corporation fails to pay any tax required to be paid by such corporation under subsection (a) of this section, such corporation shall be liable for any penalties, interest and additions to tax applicable to such failure in the same manner as if such tax were required to be paid by the corporation on its own behalf. Notwithstanding any other provision of this title, a nonresident individual who is a shareholder of an S corporation shall not be liable for any penalties, interest or additions to tax as a result of such nonresident's failure to make any payment of estimated tax otherwise required by § 1170 of this title with respect to such nonresident's distributive share of such corporation's income.

(d) Any payment of tax made by a corporation under § 1905 of this title with respect to any taxable year of such corporation ending on or before March 31, 1993, for which any payment is required to be made by such corporation under subsection (a) of this section shall be treated as a payment that was made under subsection (a) of this section for all purposes of this section, and no refund of any part of such payment shall be allowable solely on the basis that such payment was not required by § 1905 of this title.

(68 Del. Laws, c. 423, § 5.)

§ 1159, 1160 Delaware Breast Cancer Education and Early Detection Fund; Delaware Diabetes Education Fund [Repealed].

Repealed by 73 Del. Laws, c. 179, § 6, effective July 12, 2001. For present law, see §§ 1185 and 1187 of this title.

Subchapter VIII
Returns and Payments of Tax

§ 1161 Persons required to make returns of income.

An income tax return with respect to the tax imposed by this chapter shall be made by the following:

(1) Every resident individual who

a. Is required to file a federal income tax return for the taxable year, or

b. Is a single person and has for the taxable year adjusted gross income as modified by § 1106 of this title of more than $9,378, or

c. Is a married individual who is entitled to file a joint federal income tax return for the taxable year, and whose adjusted gross income for the taxable year as modified by § 1106 of this title, when combined with the adjusted gross income of the individual's spouse, is more than $15,449.

(2) Every nonresident individual who has income from sources in this State.

(3), (4) [Repealed.]

(30 Del. C. 1953, § 1161; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 257, § 6; 64 Del. Laws, c. 330, §§ 2, 3; 65 Del. Laws, c. 147, §§ 2, 3; 65 Del. Laws, c. 204, §§ 5, 6; 66 Del. Laws, c. 95, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 347, § 5; 72 Del. Laws, 1st Sp. Sess., c. 247,, § 1; 72 Del. Laws, c. 467, § 7.)

§ 1162 Joint or separate returns of spouses.

(a) If for any taxable year:

(1) The federal income tax liability of spouses, either both residents of this State or both nonresidents of this State, is determined on separate federal income tax returns, then their tax liabilities under this chapter for such taxable year shall be separately determined and they shall file separate returns;

(2) The federal income tax liability of spouses, either both residents of this State or both nonresidents of this State, is determined on a joint federal income tax return, then they may file either a joint return or separate returns under this chapter, whichever they elect;

(3) Neither spouse is required to file a federal income tax return and either or both are required to file a return under this chapter, then they may elect to file separate or joint returns, and, pursuant to such election, their tax liabilities under this chapter for such taxable year shall be either separately or jointly determined, as the case may be;

(4) Either spouse is a nonresident and the other a resident, then they shall file separate returns, on such forms as the State Tax Commissioner shall prescribe, and their tax liabilities under this chapter shall be separately determined, unless both elect to file a joint tax return in this State as if both were residents.

(b) (1) Whenever the federal income tax liability of a husband and wife is determined on a joint federal income tax return and they file separate Delaware income tax returns pursuant to this chapter, then the items of federal deduction shall be determined for purposes of §§ 1105 and 1109 of this title by reference to the amounts allowed on the husband and wife's joint federal return and not by reference to amounts that would have been allowed had they filed separate federal returns.

(2) In accordance with regulations issued in the sound discretion of the Director, paragraph (b)(1) of this section shall not apply to federal deductions enacted after January 1, 1998, which are intended to reduce or eliminate disparities in federal taxation between married and single persons.

(30 Del. C. 1953, § 1162; 57 Del. Laws, c. 737, § 1; 66 Del. Laws, c. 377, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 347, § 6.)

§ 1163 Returns by fiduciaries.

An income tax return for:

(1) Any deceased individual shall be made and filed by an executor, administrator or other person charged with the care of the decedent's property. A joint or separate final return of a decedent shall be due when it would have been due if the decedent had not died;

(2) An individual who is unable to make a return by reason of minority, or other disability, shall be made and filed by a duly authorized agent, guardian, fiduciary or other person charged with the care of the individual's person or property, other than a receiver in possession of only a part of the individual's property;

(3) An estate or trust shall be made and filed by the fiduciary thereof;

(4) Two or more fiduciaries acting jointly, may be made by any 1 of them.

(30 Del. C. 1953, § 1163; 57 Del. Laws, c. 737, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1164 Notice of qualification as receiver [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Aug. 9, 1991.

§ 1165 Change of status as resident or nonresident during the year.

If an individual changes status during the taxable year from resident to nonresident or from nonresident to resident, the individual shall file a return for that portion of the year during which the individual is a resident and the State Tax Commissioner may, by forms or

instructions, require the individual to file a return for that portion of the year during which the individual is a nonresident.

(30 Del. C. 1953, § 1165; 57 Del. Laws, c. 737, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1166 Computation of tax as resident and nonresident [Repealed].

Repealed by 68 Del. Laws, c. 82, § 8, effective July 1, 1991.

§ 1167 Minimum tax and prorating of exemptions.

If an individual for any taxable year is required to file returns both as a resident and/or as a nonresident under § 1165 of this title:

(1) Personal exemptions and the standard deduction shall be prorated between the 2 returns, to reflect the proportions of the taxable year during which the individual was a resident and a nonresident; and

(2) Notwithstanding the provisions of § 1166 of this title, the total of the taxes due thereon shall not be less than would be due if the total of the taxable incomes reported on the 2 returns were includable in 1 return.

(30 Del. C. 1953, § 1167; 57 Del. Laws, c. 737, § 1.)

§ 1168 Time and place for filing returns and paying tax.

The income tax returns required by this chapter shall be filed on or before the thirtieth day of the fourth month following the close of the taxpayer's taxable year. A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the Department of Finance on or before the date fixed for filing such return. The Secretary of Finance shall prescribe the place for filing any return, declaration, statement or other document required pursuant to this chapter and for the payment of any tax.

(30 Del. C. 1953, § 1168; 57 Del. Laws, c. 737, § 1; 58 Del. Laws, c. 358, § 1.)

§ 1169 Declarations of estimated tax.

(a) Every resident and nonresident individual or trust shall make a declaration of estimated tax for the taxable year in such form as the Director of Revenue may prescribe, if the estimated tax can reasonably be expected to exceed $800. For the purposes of this section, the term "trust" shall mean any trust the fair market value of whose assets at the end of the tax year next preceding the tax year for which estimated taxes are otherwise required by this section equal or exceed $1,000,000.

(b) The term "estimated tax" means the amount which the individual or trust estimates to be the individual's or trust's income tax under this chapter for the taxable year, less the amount which the individual or trust estimates to be the sum of any credits allowable for tax withheld.

(c) If they are eligible to do so for federal tax purposes, spouses may make a joint declaration of estimated tax as if they were 1 taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but spouses determine their taxes under the chapter separately, the estimated tax for such year may be treated as the estimated tax of either spouse, or may be divided between them, as they may elect.

(d) An individual or trust may amend a declaration as prescribed by the State Tax Commissioner.

(30 Del. C. 1953, § 1169; 57 Del. Laws, c. 737, § 1; 64 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 399, §§ 3-6; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 445, § 1; 81 Del. Laws, c. 292, § 4.)

§ 1170 Filing of estimated tax returns and payment of estimated tax.

(a) The declaration and payment of estimated tax shall be filed or paid, as the case may be, on or before the dates prescribed by the laws of the United States for filing declarations and payment of estimated federal income tax, except that the State Tax Commissioner may establish other dates for filing declarations and payment of estimated tax.

(b) The application of this section to taxable years of less than 12 months shall be in accordance with rules prescribed by the State Tax Commissioner.

(c) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax imposed under the provisions of this chapter for the taxable year.

(30 Del. C. 1953, § 1170; 57 Del. Laws, c. 737, § 1.)

§ 1171 Income taxes of members of armed forces on death.

(a) In the case of any individual who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone (as determined under this section) or as a result of wounds, disease or injury incurred while so serving:

(1) Any tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of death, or with respect to any prior taxable year ending on or after the first day the individual so served in a combat zone after January 1, 1960; and

(2) Any tax under this chapter and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (a)(1) of this section which is unpaid at the date of death (including interest, additions to the tax and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) *Definitions.* — (1) Service is performed in a combat zone only if performed on or after the date designated by the President by

Executive Order as the date of the commencing of combatant activities in such zone and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone.

(2) The term "combat zone" means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which armed forces of the United States are or have (after January 1, 1960) engaged in combat.

(c) In the case of any individual who dies while a member of the armed forces of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a member of the armed forces of the United States and which was incurred outside the United States in a terroristic or military action, any tax imposed by this chapter shall not apply:

(1) With respect to the taxable year in which falls the date of death; and

(2) With respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(d) For purposes of subsection (c) of this section, the term "terroristic or military action" means any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies (or threat thereof). For purposes of the preceding sentence, the term "military action" does not include training exercises. For purposes of this section, any multinational force in which the United States is participating shall be treated as an ally of the United States.

(30 Del. C. 1953, § 1204; 59 Del. Laws, c. 146, § 1; 66 Del. Laws, c. 215, §§ 1-3; 68 Del. Laws, c. 187, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1172 Procedures for contributions to the DE529 Education Savings Plan.

(a) The Secretary of Finance shall provide on the Delaware income tax return a means by which an individual claiming and entitled to a refund on such return may elect to have the amount of such refund deposited into an existing DE529 Education Savings Plan account established pursuant to subchapter XII of Chapter 34 of Title 14.

(b) The Plans Management Board shall assist the Secretary of Finance with the implementation and administration of this section.

(77 Del. Laws, c. 242, § 1; 80 Del. Laws, c. 295, § 1; 83 Del. Laws, c. 413, § 10.)

§ 1173 General requirements concerning returns; notices; records and statements [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Aug. 9, 1991.

§ 1174, 1175 Partnership return; Information returns [Repealed].

Repealed by 72 Del. Laws, c. 467, § 7, effective July 18, 2000.

§ 1176 Report of change in federal tax liability [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Aug. 9, 1991.

Subchapter IX

Miscellaneous

§ 1180 Administration of charitable donations through the personal income tax return.

No more than 21 charitable organizations or funds may be included on the personal income tax return for purposes of donations by taxpayers.

(81 Del. Laws, c. 446, § 3.)

§ 1181 Procedures for contributions to the Delaware Nongame Fish and Wildlife, Habitat and Natural Areas Preservation Fund.

(a) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of any amount to the Delaware Nongame Fish and Wildlife, Nongame Habitat and Natural Areas Preservation Fund established in § 204 of Title 7.

(b) The amount so designated by an individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled; or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(c) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Delaware Nongame Fish and Wildlife, Nongame Habitat and Natural Areas Preservation Fund.

(d) To accomplish the purpose of the Fund, the Department of Natural Resources and Environmental Control, with the cooperation of the Division of Revenue, shall use the Fund to provide adequate educational information, including instructions which accompany state income tax return form or schedules.

(73 Del. Laws, c. 179, § 1.)

§ 1182 Organ and Tissue Donor Awareness Trust Fund.

(a) The Division of Revenue shall provide a space on the state individual income tax form or schedule whereby an individual may voluntarily designate a contribution of any amount desired to the Organ and Tissue Donor Awareness Trust Fund created by § 2729 of Title 16. The amount so designated by an individual on the state income tax return form or schedule shall be deducted from the tax refund to which the individual is entitled or added to the individual's payment and shall not constitute a charge against the income tax revenues due the State.

(b) All contributions to the Organ and Tissue Donor Awareness Trust Fund shall be deposited into the Fund within 20 days after receipt of such funds.

(73 Del. Laws, c. 179, § 1; 75 Del. Laws, c. 431, § 1.)

§ 1182A Beau Biden Foundation.

(a) There is hereby established, within the Office of the State Treasurer, an account for the benefit of the Beau Biden Foundation for the Protection of Children, for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Beau Biden Foundation for the Protection of Children Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Beau Biden Foundation for the Protection of Children Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Beau Biden Foundation for the Protection of Children Fund.

(e) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Beau Biden Foundation for the Protection of Children.

(81 Del. Laws, c. 446, § 1.)

§ 1183 Emergency Housing Assistance Fund.

(a) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of any amount to the Delaware Emergency Housing Assistance Fund established in § 7953 of Title 29.

(b) The amount so designated by an individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(c) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Emergency Housing Assistance Fund.

(d) To accomplish the purpose of this program, the Department of Health and Social Services, with the cooperation of the Division of Revenue, shall use the Fund to provide adequate educational information, including instructions which accompany state income tax return form or schedules.

(73 Del. Laws, c. 179, § 1.)

§ 1184 U.S. Olympics account [Repealed].

73 Del. Laws, c. 179, § 1; repealed by 81 Del. Laws, c. 446, § 2, effective Oct. 1, 2018.

§ 1185 Delaware Breast Cancer Education and Early Detection Fund.

(a) There is hereby established a Breast Cancer Education and Early Detection Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate a contribution to be deducted from the refund that would otherwise be payable to the individual and paid to the Breast Cancer Education and Early Detection Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Breast Cancer Coalition, Inc., to be used for breast cancer education and early detection.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation to be paid to the Breast Cancer Education and Early Detection Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Breast Cancer Coalition, Inc., to be used for breast cancer education and early detection.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution to the Breast Cancer Education and Early Detection Fund.

(e) The amount so designated by the individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled, or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(f) From time to time, as determined by the Delaware State Clearinghouse Committee, the Delaware Breast Cancer Coalition, Inc., shall

submit a detailed report to the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause the Delaware Breast Cancer Coalition, Inc., to appear before the Committee and to answer such questions as the Committee may require.

(73 Del. Laws, c. 179, § 1; 74 Del. Laws, c. 243, §§ 1, 2.)

§ 1186 Delaware Combined Campaign for Justice Fund.

(a) There is hereby established a Delaware Combined Campaign for Justice Fund for individuals who claim an overpayment of taxes to designate a portion of the overpayment to be paid to the Fund, or individuals who have an income tax liability to designate an amount to be paid to the Fund, according to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Delaware Combined Campaign for Justice Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Delaware Combined Campaign for Justice Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule by which an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Delaware Combined Campaign for Justice Fund.

(e) The Division of Revenue shall determine the total amount designated under to this section and shall transfer the amount designated to the Delaware Combined Campaign for Justice to advance its efforts to fund civil legal services for disadvantaged Delawareans.

(f) On a schedule to be determined by the Delaware State Clearinghouse Committee, the Delaware Combined Campaign for Justice shall submit a detailed report to members of the Committee of revenues, expenditures, and program measures for the fiscal period in question. The report must be descriptive, but concise and informative. The Committee may require any person employed by or associated with the Delaware Combined Campaign for Justice to appear before the Committee and to answer questions as the Committee may raise.

(83 Del. Laws, c. 109, § 1.)

§ 1187 Delaware Diabetes Education Fund.

(a) There is hereby established a Delaware Diabetes Education Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account for individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate a contribution to be deducted from the refund that would otherwise be payable to the individual and paid to the Delaware Diabetes Education Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Chapter of the American Diabetes Association to be used for diabetes education in the State.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation to be paid to the Delaware Diabetes Education Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Chapter of the American Diabetes Association to be used for diabetes education in the State.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution to the Delaware Diabetes Education Fund.

(e) The amount so designated by the individual on the income tax form shall be deducted from the tax refund to which such individual is entitled or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(f) From time to time, as determined by the Delaware State Clearinghouse Committee, the Delaware Chapter of the American Diabetes Association shall submit a detailed report to the members of the Committee detailing revenues, expenditures and program measures for the fiscal period in question. The Committee may cause any person employed by or associated with the Delaware Chapter of the American Diabetes Association to appear before the Committee and to answer such questions as the Committee may require.

(73 Del. Laws, c. 179, § 1.)

§ 1188 Delaware Veterans' Home Fund.

(a) There is hereby established a Delaware Veterans' Home Fund within the Secretary of State's office for:

(1) Individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account for individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section; and

(2) Deposits pursuant to subsection (g) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate a contribution to be deducted from the refund that would otherwise be payable to the individual and be paid to the Delaware Veterans' Home Fund. The Division of Revenue shall forward the amount so designated to the Secretary of State, to be held in escrow to be used for the construction as defined in Application for Federal Assistance Form 424C, Land, Operations and Maintenance of a Veterans' Home in the State.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation to be paid to the Delaware Veterans' Home Fund. The Division of Revenue shall forward the amount so designated to the Secretary of State, to be held in escrow to be used for the construction as defined in Application for Federal Assistance Form 424C, Land, Operations and Maintenance of a Veterans' Home in the State.

(d) The Division of Revenue shall provide a space on the Delaware State Income Tax Return Form or schedule whereby an individual may voluntarily designate a contribution to the Delaware Veterans' Home Fund.

(e) The amount so designated by the individual on the income tax form shall be deducted from the tax refund to which such individual is entitled, or the amount so designated may be added to the individual's payment of taxes and shall not be included in the general revenue of the State.

(f) From time to time, as determined by the Delaware State Clearing House, the Secretary of State shall submit a detailed report to the members of the Committee detailing revenues, expenditures and program measures for the fiscal period in question.

(g) All other moneys, including gifts, bequests, grants or other funds from private or public sources specifically designated for the Delaware Veterans' Home Fund shall be deposited or transferred to the Delaware Veterans' Home Fund. The Delaware Veterans' Home Fund shall not lapse or revert to the General Fund.

(73 Del. Laws, c. 433, § 1; 75 Del. Laws, c. 431, § 2.)

§ 1189 Delaware National Guard and Reserve Emergency Assistance Fund.

(a) Any individual or married couple filing a joint tax return, who claims an overpayment of taxes on an income tax return may designate a contribution to be deducted from the refund that would otherwise be payable to the individual or married couple and be paid to the Delaware National Guard and Reserve Emergency Assistance Fund as established by Governor's Executive Order No. 35 on June 1, 2012, or any successor fund that shall be lawfully created for the purposes of alleviating financial hardship for Delaware service persons (the "Fund"). The Division of Revenue shall forward the amount so designated to the Adjutant General of the State, and the Adjutant General shall use all amounts received for the purpose of the Fund.

(b) Any individual or married couple filing a joint return, in addition to the obligation, may include a donation to be paid to the Fund. The Division of Revenue shall forward the amount so designated to the Adjutant General of the State, and the Adjutant General shall use all amounts received for the purpose of the Fund.

(c) The Division of Revenue shall provide a space on the Delaware State Income Tax Return Form or schedule whereby an individual or married couple filing a joint return may voluntarily designate a contribution to the Fund.

(d) The amount so designated by the individual or married couple filing a joint return on the income tax form shall be deducted from the tax refund to which such individual or couple is entitled, or the amount so designated may be added to the individual's or couple's payment of taxes and shall not be included in the general revenue of the State.

(74 Del. Laws, c. 422, § 1; 75 Del. Laws, c. 431, § 3; 78 Del. Laws, c. 299, § 1.)

§ 1190 Delaware Juvenile Diabetes Fund.

(a) There is hereby established a Delaware Juvenile Diabetes Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Delaware Juvenile Diabetes Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Juvenile Diabetes Foundation who shall deposit them to the credit of the Delaware Juvenile Diabetes Fund to be used for diabetes education and early detection.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Delaware Juvenile Diabetes Fund. The Division of Revenue shall forward the amounts so designated to the Delaware Juvenile Diabetes Foundation who shall deposit them to the credit of the Delaware Juvenile Diabetes Fund to be used for diabetes education and early detection.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Delaware Juvenile Diabetes Fund.

(e) The amount so designated by the individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled, or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the Delaware Juvenile Diabetes Foundation shall submit a detailed report to members of the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause any person employed by or associated with the Delaware Juvenile Diabetes Foundation to appear before the Committee and to answer such questions as the Committee may require.

(75 Del. Laws, c. 151, § 1.)

§ 1191 Delaware Children's Fund.

(a) There is hereby established a Delaware Children's Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from

the refund that would otherwise be payable to the individual and paid to the Delaware Children's Fund. The Division of Revenue shall forward the amounts so designated to the 21st Century Fund for Delaware's Children, Inc. who shall deposit those amounts to the credit of the Delaware Children's Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Delaware Children's Fund. The Division of Revenue shall forward the amounts so designated to the 21st Century Fund for Delaware's Children, Inc.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Delaware Children's Fund.

(e) The amount so designated by the individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled, or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the 21st Century Fund for Delaware's Children, Inc. shall submit a detailed report to members of the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause any person employed by or associated with the 21st Century Fund for Delaware's Children, Inc. to appear before the Committee and to answer such questions as the Committee may require.

(77 Del. Laws, c. 145, § 1.)

§ 1192 The Delaware Ovarian Cancer Foundation.

(a) To honor and memorialize the lives of Cynthia Waterman and Sidney DeSmyter and all other women who have fought valiantly against the ravages of ovarian cancer, but lost, the Delaware Ovarian Cancer Foundation is hereby established. Individuals who claim an overpayment of taxes may designate an amount to be deposited in the Delaware Ovarian Cancer Foundation, and individuals who have an income tax liability may designate an amount to be paid to the Delaware Ovarian Cancer Foundation, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more be deducted from the refund that would otherwise be payable to the individual, and, instead, be paid to the Delaware Ovarian Cancer Foundation. The Division of Revenue shall forward the designated amounts to the Delaware Ovarian Cancer Foundation to be used for ovarian cancer research, with emphasis on early detection, education, and awareness.

(c) An individual who has an income tax liability may, in addition to the liability, include a donation of $1.00 or more to be paid to the Delaware Ovarian Cancer Foundation. The Division of Revenue shall forward the designated amounts to the Delaware Ovarian Cancer Foundation to be used for ovarian cancer research, with emphasis on early detection, education and awareness.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule where an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Delaware Ovarian Cancer Foundation.

(e) An amount designated for the Delaware Ovarian Cancer Foundation on the income tax return form must be deducted from the tax refund to which the individual is entitled, or an amount designated may be added to the individual's payment of taxes due. In neither case may those amounts be included in the general revenue of the State.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the custodians of the Delaware Ovarian Cancer Foundation shall submit a detailed report to members of the Committee of revenues, expenditures, and program measures for the fiscal period in question. The report must be descriptive in nature, as well as concise and informative. The Committee may cause any person employed by or associated with the Delaware Ovarian Cancer Foundation to appear before the Committee and answer questions that the Committee may require.

(77 Del. Laws, c. 209, § 1; 83 Del. Laws, c. 107, § 3.)

§ 1193 The Delaware Chapter of the National Multiple Sclerosis Society Fund.

(a) The Delaware Chapter of the National Multiple Sclerosis Society Fund (Fund) is hereby established for use by individuals who claim an overpayment of taxes to designate an amount to be deposited in an account for the Fund, or for use by individuals who have an income tax liability to designate an amount to be paid to the Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more be deducted from the refund that would otherwise be payable to the individual and, instead, be paid to the Fund. The Division of Revenue shall forward the amounts designated for the Fund to the Delaware Chapter of the National Multiple Sclerosis Society to be used exclusively by the Delaware Chapter for the benefit of Delawareans who have been diagnosed with multiple sclerosis, and of those Delawareans who may be diagnosed in the future.

(c) An individual who has an income tax liability may, in addition to the liability, include a donation of $1.00 or more to be paid to the Fund. The Division of Revenue shall forward the amounts designated for the Fund to the Delaware Chapter of the National Multiple Sclerosis Society to be used exclusively by the Delaware Chapter for the benefit of Delawareans who have been diagnosed with multiple sclerosis, and of those Delawareans who may be diagnosed in the future.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form whereby an individual may voluntarily

designate a contribution of an amount of $1.00 or more to the Delaware Chapter of the National Multiple Sclerosis Society Fund.

(e) 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, or the amount designated may be added to the individual's payment of taxes due, but the amount may not be included in the general revenue of the State.

(f) A contribution to the Fund must be forwarded by the Division of Revenue to the Delaware Chapter of the National Multiple Sclerosis Society within 20 days after the receipt of the contribution.

(g) From time to time as determined by the Delaware State Clearinghouse Committee, the Delaware Chapter of the National Multiple Sclerosis Society shall submit a report to members of the Committee detailing revenues, expenditures, and program measures for the fiscal period requested. The report must be descriptive in nature, as well as concise and informative. The Committee may summon any person employed by or associated with the Delaware Chapter of the National Multiple Sclerosis Society to appear before the Committee to answer questions as the Committee may require.

(77 Del. Laws, c. 210, § 1.)

§ 1194 White Clay Creek Wild and Scenic River Restoration Fund.

(a) There is hereby established a White Clay Creek Wild and Scenic River Restoration Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or for individuals who have an income tax liability to designate an amount to be paid to such Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate a contribution to be deducted from the refund that would otherwise be payable to the individual and paid to the White Clay Creek Wild and Scenic River Restoration Fund. The Division of Revenue shall forward the amounts so designated to the White Clay Watershed Association to be used for resource restoration and management within the White Clay Creek watershed within or affecting the State of Delaware.

(c) An individual or entity having an income tax liability may, in addition to the obligation, include a donation to be paid to the White Clay Creek Wild and Scenic River Preservation Fund. The Division of Revenue shall forward the amounts so designated to the White Clay Watershed Association to be used for resource restoration and management within the White Clay Creek watershed within or affecting the State of Delaware.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution to the White Clay Creek Wild and Scenic River Restoration Fund.

(e) The amount so designated by the individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(f) From time to time, as determined by the Delaware State Clearinghouse Committee, the White Clay Watershed Association shall submit a detailed report to the members of the State Clearinghouse Committee detailing revenues, expenditures and program measures for the fiscal period in question. The State Clearinghouse Committee may cause any person employed by or associated with the White Clay Watershed Association to appear before the State Clearinghouse Committee and to answer such questions as the State Clearinghouse Committee may require.

(78 Del. Laws, c. 38, § 1.)

§ 1195 Senior Trust Fund.

(a) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more be deducted from the refund that would otherwise be payable to the individual and, instead be paid to the Senior Trust Fund as established pursuant to § 4101(i) of Title 11. The Division of Revenue shall determine the total amount designated pursuant to this subsection and shall transfer such amount to the Senior Trust Fund.

(b) An individual who has an income tax liability may, in addition to the liability, include a donation of $1.00 or more to be paid to the Senior Trust Fund as established pursuant to § 4101(i) of Title 11. The Division of Revenue shall determine the total amount designated pursuant to this subsection and shall transfer such amount to the Senior Trust Fund.

(c) The Division of Revenue shall provide a space on the Delaware income tax return form whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Senior Trust Fund.

(d) 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, or the amount designated may be added to the individual's payment of taxes due, but the amount may not be included in the general revenue of the State.

(78 Del. Laws, c. 370, § 1.)

§ 1196 Home Of The Brave Foundation Fund.

(a) There is hereby established a Home Of The Brave Foundation Fund for use by individuals who claim an overpayment of taxes to designate an amount to be deposited in an account for the Fund, or for use by individuals who have an income tax liability to designate an amount to be paid to the Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more be deducted from the refund that would otherwise be payable to the individual and, instead, be paid to the Fund. The Division of Revenue shall forward the

amounts designated for the Fund to the Home Of The Brave Foundation who shall deposit those amounts to the credit of the Home Of The Brave Foundation Fund.

(c) An individual who has an income tax liability may, in addition to the liability, include a donation of $1.00 or more to be paid to the Fund. The Division of Revenue shall forward the amounts designated for the Fund to the Home Of The Brave Foundation who shall deposit those amounts to the credit of the Home Of The Brave Foundation Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Home Of The Brave Foundation Fund.

(e) 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, or the amount designated may be added to the individual's payment of taxes due, but the amount may not be included in the general revenue of the State.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the Home Of The Brave Foundation shall submit a report to members of the Committee detailing revenues, expenditures, and program measures for the fiscal period requested. The report must be descriptive in nature, as well as concise and informative. The Committee may summon any person employed by or associated with the Home Of The Brave Foundation to appear before the Committee to answer questions as the Committee may require.

(78 Del. Laws, c. 380, § 1.)

§ 1197 Delaware Veterans Trust Fund.

(a) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of any amount to the Delaware Veterans Trust Fund established pursuant to § 8721 of Title 29.

(b) The amount so designated by an individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled or the amount so designated may be added to the individual's payment of taxes due and shall not be included in the general revenue of the State.

(c) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Delaware Veterans Trust Fund.

(79 Del. Laws, c. 184, § 1.)

§ 1198 Protecting Delaware's Children Fund.

(a) There is hereby established a Protecting Delaware's Children Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Protecting Delaware's Children Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Protecting Delaware's Children Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Protecting Delaware's Children Fund.

(e) The amount so designated by the individual on the income tax return form or schedule shall be deducted from the tax refund to which such individual is entitled, or the amount so designated may be added to the individual's payment of taxes due. In neither case may those amounts be included in the general revenue of the State, but shall be forwarded by the Division of Revenue to the Delaware Community Foundation who, in turn, shall deposit them to the credit of the Protecting Delaware's Children Fund to be used for promoting public awareness of child abuse and child abuse reporting.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the custodians of the Protecting Delaware's Children Fund at the Delaware Community Foundation shall submit a detailed report to members of the Committee of revenues, expenditures, and program measures for the fiscal period in question. The report must be descriptive in nature, as well as concise and informative. The Committee may cause any person employed by or associated with the Protecting Delaware's Children Fund at the Delaware Community Foundation to appear before the Committee and answer questions that the Committee may require.

(79 Del. Laws, c. 313, § 1.)

§ 1199 Habitat for Humanity of Delaware Fund.

(a) There is hereby established a Habitat for Humanity of Delaware Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Habitat for Humanity of Delaware Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to the Habitat for Humanity of Delaware Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Habitat for Humanity of Delaware Fund.

(e) The Division of Revenue shall determine the total amount designated pursuant to this section and shall allocate and transfer such amounts based on the residency as listed on the tax return of the individuals who have designated an amount to be paid to the Fund as follows: for residents of New Castle County, to the Habitat for Humanity of New Castle County; for residents of Kent County, to Central Delaware Habitat for Humanity; and for residents of Sussex County, to Sussex County Habitat for Humanity.

(f) For amounts designated pursuant to this section by nonresidents, the Division of Revenue shall, at the same time and in the same proportion that residents' contributions are allocated, allocate and transfer such amounts among the 3 Habitat for Humanity organizations identified in subsection (e) of this section.

(81 Del. Laws, c. 176, § 1; 82 Del. Laws, c. 34, § 1.)

§ 1200 Central Delaware Habitat for Humanity Fund [Repealed].

81 Del. Laws, c. 176, § 1; repealed by 82 Del. Laws, c. 34, § 2, effective June 5, 2019.

§ 1201 Sussex County Habitat for Humanity Fund [Repealed].

81 Del. Laws, c. 176, § 1; repealed by 82 Del. Laws, c. 34, § 3, effective June 5, 2019.

§ 1202 Food Bank of Delaware Fund.

(a) There is hereby established a Food Bank of Delaware Fund for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund, pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to Food Bank of Delaware Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to Food Bank of Delaware Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Food Bank of Delaware Fund.

(e) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Food Bank of Delaware.

(81 Del. Laws, c. 176, § 1.)

§ 1203 Pediatric Cancer Research Fund.

(a) There is hereby established a Pediatric Cancer Research Fund account for the benefit of the Andrew McDonough B+ Foundation, for individuals who claim an overpayment of taxes to designate an amount to be deposited in such an account or individuals who have an income tax liability to designate an amount to be paid to that Fund pursuant to subsections (b) and (c) of this section.

(b) An individual who claims an overpayment of taxes on an income tax return may designate that $1.00 or more shall be deducted from the refund that would otherwise be payable to the individual and paid to the Pediatric Cancer Research Fund.

(c) An individual who has an income tax liability may, in addition to the obligation, include a donation of $1.00 or more to be paid to Pediatric Cancer Research Fund.

(d) The Division of Revenue shall provide a space on the Delaware income tax return form or schedule whereby an individual may voluntarily designate a contribution of an amount of $1.00 or more to the Pediatric Cancer Research Fund.

(e) The Division of Revenue shall determine the total amount designated pursuant to this section and shall transfer such amount to the Andrew McDonough B+ Foundation to advance their efforts to fund pediatric cancer research.

(f) From time to time as determined by the Delaware State Clearinghouse Committee, the Andrew McDonough B+ Foundation shall submit a detailed report to members of the Committee of revenues, expenditures, and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause any person employed by or associated with the Andrew McDonough B+ Foundation to appear before the Committee and to answer such questions as the Committee may require.

(82 Del. Laws, c. 34, § 4.)

§ 1204 Income taxes of members of armed forces on death [Transferred].

Transferred.

§ 1205-1209 Setoff between refund and debt to claimant agency — Authorized; definitions; regulations; remedy not exclusive; joint and combined returns [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Jan. 1, 1992.

Subchapter X

Enforcement

§ 1211-1224 Timely mailing; collection procedures; issuance of warrant; lien of tax; extension; release of lien; nonresident taxpayer; action for recovery of taxes; income tax claims of other states; order to compel compliance; transferees; jeopardy assessments; bankruptcy or receivership; general powers of State Tax Commissioner; closing agreements [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Jan. 1, 1992.

Subchapter XI

Criminal Offenses

§ 1231-1233 Attempt to evade or defeat tax; penalty; failure to collect or pay over; penalty; failure to file return, supply information or pay tax; penalty [Repealed].

Repealed by 69 Del. Laws, c. 369, § 2, effective July 12, 1994.

§ 1234 False statements [Repealed].

Repealed by 66 Del. Laws, c. 161, § 2, effective July 13, 1987.

§ 1235 Limitations [Repealed].

Repealed by 69 Del. Laws, c. 369, § 2, effective July 12, 1994.

Subchapter XII

Miscellaneous

§ 1241 Secrecy of returns and information; penalty [Repealed].

Repealed by 67 Del. Laws, c. 40, § 2, effective June 27, 1989.

§ 1242 Inspection of returns by federal, state and local officials [Repealed].

Repealed by 68 Del. Laws, c. 187, § 25, effective Aug. 9, 1991.

§ 1243 Short title [Repealed].

Repealed by 68 Del. Laws, c. 187, § 5, effective Jan. 1, 1992.

Part II

Income, Inheritance and Estate Taxes

Chapter 13

Inheritance [Repealed].

Subchapter I

Property Subject to Tax

§ 1301-1314 Definitions; property included in gross estate — resident decedent; property included in gross estate — nonresident decedent; powers of appointment and certain income interests; jointly owned property; transfers in contemplation of death; transfers taking effect at or after death; revocable transfers; annuities; proceeds of life insurance; transfers for insufficient consideration; prior interests; charitable, educational, religious, etc., bequests; valuation of farm and small business real property [Repealed].

Repealed by 71 Del. Laws, c. 353, § 10, effective Jan. 1, 1999.

Subchapter II

Rates and Determination of Tax

§ 1321-1327 Basis of computation of tax; definition of beneficiary's net taxable share of the gross estate; tax imposed; deductions allowable in determining value of each beneficiary's taxable share of gross estate; credit for gift tax; regulations governing valuation of estates; credit for previously taxed property; special deduction for closely held business property [Repealed].

Repealed by 71 Del. Laws, c. 353, § 10, effective Jan. 1, 1999.

Subchapter III

Returns and Payment of Tax

§ 1341-1346 Inheritance tax returns; filing returns and payments — time and place; filing returns and payments — extension of time; allocation of inheritance tax and liability for payment; special lien for inheritance taxes; release of lien as to specific property [Repealed].

Repealed by 71 Del. Laws, c. 353, § 10, effective Jan. 1, 1999.

Subchapter IV

Procedure, Administration and Enforcement

§ 1351-1353 Incorporation of certain personal income tax provisions — procedure and administration; enforcement; rules and regulations [Repealed].

Repealed by 68 Del. Laws, c. 353, § 10, effective Jan. 1, 1999.

Part II
Income, Inheritance and Estate Taxes
Chapter 14
Gift Tax [Repealed].

§ 1401-1409 Definitions; imposition; computation of tax; rates; filing returns; payment; incorporation of certain criminal penalties [Repealed].

Repealed by 71 Del. Laws, c. 130, § 1.

Part II
Income, Inheritance and Estate Taxes
Chapter 15
Estate Tax [Repealed].

§ 1501 Definitions relating to this chapter [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 18; 77 Del. Laws, c. 85, § 1; 79 Del. Laws, c. 11, § 1; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1502 Tax on transfers of resident estates [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 19; 77 Del. Laws, c. 85, §§ 2, 3; 79 Del. Laws, c. 11, § 1; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1503 Credit for taxes paid to another state; limitation [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 20; 72 Del. Laws, c. 104, § 6; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1504 Tax on transfers of nonresident estates [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 21; 77 Del. Laws, c. 85, § 4; 79 Del. Laws, c. 11, § 1; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1505 Returns; time to file return and pay tax [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 22; 75 Del. Laws, c. 198, § 1; 77 Del. Laws, c. 85, § 5; 79 Del. Laws, c. 11, § 1; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1506 Collection and payment of tax out of estate; liability of the personal representative [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 23; 70 Del. Laws, c. 186, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1507 Assessment of tax; special lien for estate taxes [For application of this section, see 81 Del. Laws, c. 52, § 2] [Repealed].

71 Del. Laws, c. 353, § 25; 75 Del. Laws, c. 198, § 2; 77 Del. Laws, c. 85, § 6; 79 Del. Laws, c. 11, § 1; 79 Del. Laws, c. 162, § 1; repealed by 81 Del. Laws, c. 52, § 1, effective Jan. 1, 2018.

§ 1508 Final settlement of executor's or administrator's accounts [Repealed].

Repealed by 71 Del. Laws, c. 353, § 24, effective Jan. 1, 1999.

§ 1509, 1510 Refund of taxes erroneously paid; procedure and administration [Repealed].

Repealed by 68 Del. Laws, c. 187, § 11, effective Aug. 9, 1991.

Part II
Income, Inheritance and Estate Taxes
Chapter 16
PASS-THROUGH ENTITIES, ESTATES AND TRUSTS
Subchapter I
In General

§ 1601 Definitions.

Whenever used in this chapter, the following terms shall have the meanings ascribed to them in this section:

(1) "Beneficiary" has the meaning ascribed to it by common law, including, without limitation, any heir, devisee or legatee of an estate or beneficiary of a trust.

(2) "Distributive share" means, with respect to any member and with respect to any taxable year of such member:

In the case of a pass-through entity that is classified as a partnership under the Internal Revenue Code, the distributive share of such member for such taxable year of the pass-through entity's income, gain, loss or deduction, or items thereof, as appropriate, determined under § 704 of the Internal Revenue Code [26 U.S.C. § 704]; or

In the case of a pass-through entity that is an S corporation for federal income tax purposes, the pro rata share of such member for such taxable year of the pass-through entity's income, gain, loss or deduction, or items thereof, as appropriate, determined under § 1377(a) of the Internal Revenue Code [26 U.S.C. § 1377(a)].

(3) "Member of a pass-through entity" or "member" means a person treated for federal income tax purposes as either a partner in a partnership or a shareholder of an S corporation, but does not include a beneficiary of an estate or trust.

(4) "Nonresident estate" means an estate which is not a resident estate.

(5) "Nonresident trust" means a trust that is not a resident trust of this State.

(6) "Pass-through entity" means any person:

a. Which is classified as a partnership under the Internal Revenue Code [26 U.S.C. § 1, et seq.]; or

b. Which is classified as an "S corporation" for federal income tax purposes within the meaning of § 1361 of the Internal Revenue Code [26 U.S.C. § 1361].

(7) "Resident estate" means the estate of a decedent who at death was domiciled in this State.

(8) "Resident trust" means a trust:

a. Created by the will of a decedent who at death was domiciled in this State;

b. Created by, or consisting of property of, a person domiciled in this State; or

c. With respect to which the conditions of 1 of the following paragraphs are met during more than 1/2 of any taxable year:

1. The trust has only 1 trustee who or which is:

A. A resident individual of this State, or

B. A corporation, partnership or other entity having an office for the conduct of trust business in this State;

2. The trust has more than 1 trustee, and 1 of such trustees is a corporation, partnership or other entity having an office for the conduct of trust business in this State; or

3. The trust has more than 1 trustee, all of whom are individuals and 1/2 or more of whom are resident individuals of this State.

(9) "Trust" means an entity classified as a trust for federal income tax purposes, other than a trust of which the grantor or another person is treated as the owner of the entire trust under §§ 672 through 679 of the Internal Revenue Code [26 U.S.C. §§ 672-679].

(72 Del. Laws, c. 467, § 1.)

§ 1602 Taxable year.

The taxable year of a pass-through entity, estate or trust for purposes of this title shall be the same as its taxable year determined under the Internal Revenue Code. A change in the taxable year of a pass-through entity, estate or trust under the provisions of the Internal Revenue Code shall effect a change of its taxable year under this title.

(72 Del. Laws, c. 467, § 1.)

§ 1603 Accounting method.

The accounting method of a pass-through entity, estate or trust for purposes of this title shall be the same as its accounting method determined under the Internal Revenue Code. A change in the accounting method of a pass-through entity, estate or trust under the provisions of the Internal Revenue Code shall effect a change of its accounting method under this title.

(72 Del. Laws, c. 467, § 1.)

§ 1604 Adjustments.

An adjustment made to any item of income, gain, loss or deduction reported on the federal information or tax return of a pass-through entity shall effect an adjustment to such item of income, gain, loss or deduction under this title to the extent necessary to prevent such item from being duplicated or omitted.

(72 Del. Laws, c. 467, § 1.)

§ 1605 Returns.

(a) *Pass-through entities.* — (1) *Returns.* — Every pass-through entity having any income from sources within this State shall make a return to this State for the taxable year setting forth the information required by § 6031 or § 6037 of the Internal Revenue Code [26 U.S.C. § 6031 or § 6037] and such other information as the Director may prescribe pursuant to § 513 of this title. Such return may, to the extent prescribed by the Director, require the separate statement of any item of the pass-through entity's income, gain, loss or deduction if the separate treatment of such item could affect the liability for tax under this title of any member.

(2) *Copies to members.* — A pass-through entity required to file a return pursuant to paragraph (a)(1) of this section shall provide to each member a copy of such information shown on such return as the Director may prescribe pursuant to § 513 of this title.

(3) *Time to file return.* — A return required to be filed pursuant to paragraph (a)(1) of this section shall be filed on the date on which such pass-through entity's federal tax return is due.

(b) *Estates and trusts.* — (1) An income tax return with respect to the tax imposed by Chapter 11 of this title shall be made to this State by:

a. Every resident estate or resident trust which:

1. Is required to file a federal income tax return for the taxable year or would be required to file a federal income tax return for the taxable year if the additions provided under § 1106 of this title were included in its federal gross income, and

2. Which has not distributed, or set aside for distribution, to nonresident beneficiaries its entire federal taxable income as modified by § 1106 of this title; and

b. Every nonresident estate or nonresident trust which:

1. Is required to file a federal income tax return for the taxable year or would be required to file a federal income tax return for the taxable year if the additions provided under § 1106 of this title were included in its federal gross income, and

2. Which has any income from sources within this State.

(2) *Copies to members.* — An estate or trust required to file a return pursuant to paragraph (b)(1) of this section shall provide to each beneficiary of such estate or trust a copy of such information shown on such return as the Director may prescribe pursuant to § 513 of this title.

(3) *Time to file return.* — A return required to be filed pursuant to paragraph (b)(1) of this section shall be filed on the thirtieth day of the fourth month following the end of the estate's or trust's taxable year.

(72 Del. Laws, c. 467, § 1; 81 Del. Laws, c. 19, § 4.)

§ 1606 Withholding of income tax on sale or exchange of real estate by nonresident pass-through entities.

(a) *Definitions.* — (1) "Director" means the Director of the Division of Revenue or the Secretary of Finance of the State.

(2) "Nonresident pass-through entity" means, for purposes of this section, a pass-through entity having 1 or more members who are nonresident individuals or nonresident corporations.

(3) "Recorder" means the official with duty to record deeds and similar instruments.

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to 1 of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to 1 of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* — Every nonresident pass-through entity that sells or exchanges Delaware real estate shall file with the Recorder for and on behalf of each of its nonresident members 1 of the following:

(1) A "Declaration of Estimated Income Tax" or a "Delaware Corporate Tentative Tax Return" for the quarter in which the sale or exchange is settled, applying the highest marginal rate of each of its nonresident members under § 1102 or § 1902 of this title, as the case may be, to an estimate of the nonresident member's distributive share of the gain recognized on the sale or exchange.

(2) An alternative form prepared by the Director to calculate income tax at the highest marginal rate under § 1102 or § 1902 of this title, applied to the nonresident member's distributive share of the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real estate.

(3) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or exchange, with a statement of the facts and a citation to the provision or provisions of the Internal Revenue Code (Title 26, U.S.C.) relied upon.

(4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is 1 of the following:

a. A transfer under a foreclosure of a mortgage or other lien instrument.

b. A transfer under a deed in lieu of foreclosure.

(5) An alternative form prepared by the Director to declare under penalties of perjury that the nonresident pass-through entity that is selling or exchanging Delaware real estate is exempt from the requirements of subsection (d) of this section and is not required to remit any tax due with the deed to the Recorder before the deed shall be recorded.

(c) *Exemption.* — (1) The Director will create an application process through which a nonresident pass-through entity involved in the sale or exchange of an average of 5 or more residential homes or residential lots in Delaware per quarter can apply for an exemption from the requirements of subsection (d) of this section.

(2) Subject to paragraph (c)(3) of this section, if an exemption is granted in accordance with paragraph (c)(1) of this section, such nonresident pass-through entity will be exempt from the requirements of subsection (d) of this section and will not be required to remit any tax due with the deed to the Recorder before the deed shall be recorded.

(3) If an exemption is granted in accordance with paragraph (c)(1) of this section and the Director subsequently determines that such nonresident pass-through entity or any member of such nonresident pass-through entity has failed to comply with its tax filing and payment obligations, the Director may revoke the exemption granted to such nonresident pass-through entity in accordance with paragraph (c)(1) of this section by providing written notice of such revocation to such nonresident pass-through entity.

(4) Within 60 days after the date of the mailing of a notice of revocation under paragraph (c)(3) of this section, the nonresident pass-through entity may file with the Director a written protest challenging the proposed revocation, in which the nonresident pass-through entity shall set forth the grounds upon which the protest is based. If such protest is filed, the Director will reconsider the proposed revocation and, if requested, may grant the taxpayer or the taxpayer's authorized representative an oral hearing.

(5) Except to the extent inconsistent with the specific provisions of this section, the provisions of Chapter 5 of this title shall govern the review and appeal of such proposed revocation.

(d) *Due date of estimated tax return, payment.* — The return or form provided for in subsection (b) of this section and, unless the taxpayer is exempt as provided in subsection (c) of this section, the estimated tax reported due on such return or form, shall be remitted with the deed to the Recorder before the deed shall be recorded. Such payment shall be withheld from the net proceeds of the sale. To the extent that the sale does not result in net proceeds being available for the payment of the estimated tax, the Recorder may accept the form without payment, upon receipt of confirmation from the closing attorney that no funds are available for payment of the tax and that no funds were distributed to the seller.

(e) *Payment credited to transferor.* — The estimated tax remitted under subsection (d) of this section shall be deemed to have been paid to the Director on behalf of the nonresident members of the pass-through entity and the nonresident members shall be credited for purposes of §§ 1169 and 1170 or § 1905 of this title as a payment made on the date remitted to the Recorder.

(f) *Persons or entities not liable for payments.* — Neither the transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, nor the real estate agent or broker in a transaction subject to this section shall be liable for any amounts required to be collected and paid over to the Recorder or Director under this section.

(g) *Tax not imposed; lawful collection of taxes not prohibited.* — This section does not:

(1) Impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) Prohibit the Director from collecting any taxes due from a transferor in any other manner authorized by law.

(77 Del. Laws, c. 291, § 2; 81 Del. Laws, c. 363, § 2; 82 Del. Laws, c. 194, § 1; 83 Del. Laws, c. 37, § 38; 83 Del. Laws, c. 107, § 4.)

Subchapter II

Taxation of Pass-Through Entities and Their Members

§ 1621 Taxation of pass-through entities; in general.

(a) *Income tax.* — A pass-through entity as such shall not be subject to the income tax imposed by Chapter 11 or Chapter 19 of this title. Members of a pass-through entity shall be liable for the tax imposed by Chapter 11 or Chapter 19 of this title only in their separate or individual capacities.

(b) *Incidence of business license and excise taxes.* — The incidence of the taxes imposed by Parts III through VI of this title and by Title 4 with respect to the activities of a pass-through entity engaged in business in this State shall fall upon the pass-through entity and not its members.

(72 Del. Laws, c. 467, § 1.)

§ 1622 Character of items.

Each item of the income, gain, loss or deduction of a pass-through entity shall have the same character for a member of such pass-through entity under this title as it has for federal income tax purposes. Where federal income tax rules and principles are not determinative of the character or of the source of an item of income, gain, loss or deduction for purposes of this title, such item shall have the same character or source for a member of the pass-through entity as if the item were realized directly by such member from the source from which realized by the pass-through entity or incurred in the same manner as incurred by the pass-through entity. A member's distributive share of any item of the income, gain, loss or deduction of a pass-through entity shall, solely for purposes of the immediately preceding sentence, be determined by application of the principles of § 704(b) of the Internal Revenue Code [26 U.S.C. § 704(b)], including, without limitation, the principles for determining whether an allocation of such item among the members of such pass-through entity has substantial economic effect.

(72 Del. Laws, c. 467, § 1.)

§ 1623 Special rules for nonresident individual members and corporate members of pass-through entities.

(a) *Nonresident individual members of pass-through entities.* — In determining the tax liability under Chapter 11 of this title of a nonresident individual member of a pass-through entity, there shall be included in such member's modified Delaware source income such member's distributive share of the items of income, gain, loss and deduction of such pass-through entity entering into such member's federal adjusted gross income, as modified by § 1106 of this title, as is derived from sources within this State as determined by the application of § 1124 of this title to such member in the same manner as if such items had been realized directly by such member.

(b) *Nonresident individual members' modifications.* — Any modification described in subsection (a), (b) or (c) of § 1106 of this title which relates to an item of pass-through entity income, gain, loss or deduction shall be made in accordance with a nonresident individual member's distributive share, for federal income tax purposes, of the item to which the modification relates, but limited to that portion of such item as is derived from or connected with sources in this State.

(c) *Corporate members of pass-through entities.* — A corporation that is a member of a pass-through entity doing business or having real or tangible personal property in this State shall be subject to the provisions of Chapter 19 of this title; provided, however, that this subsection shall not be interpreted as precluding a corporation that is a member of a pass-through entity from qualifying for exemption from taxation under Chapter 19 pursuant to § 1902(b)(8) of this title.

(d) *Allocation and apportionment of income.* — In determining the tax liability under Chapter 19 of this title of a corporation that is a member of a pass-through entity doing business or having real or tangible personal property in this State:

Such corporation's federal taxable income shall be increased or decreased, as the case may be, by its distributive share of such pass-through entity's items, if any, described in § 1903(a) of this title;

Such corporation's distributive share of any item of such pass-through entity that is described in any of § 1903(b)(1) through (5) of this title shall be included in the entire net income of such corporation only if such item is properly allocable to this State under such § 1903(b) of this title; and

In applying § 1903(b)(6) of this title to such corporation,

(1) The entire business of such corporation shall not be treated as having been transacted or conducted within this State if any part of the business of such pass-through entity was transacted or conducted outside this State, and

(2) The 3 ratios described in such § 1903(b)(6) of this title of such corporation shall be determined by including in each such ratio such corporation's distributive share of each relevant item of such pass-through entity.

In applying § 1903(b)(7) of this title to such corporation, the ratio described in such § 1903(b)(7) of this title of such corporation shall be determined by including in such ratio the corporation's distributive share of each relevant item of such pass-through entity.

(72 Del. Laws, c. 467, § 1; 76 Del. Laws, c. 234, § 3.)

§ 1624 Special rules for certain tax credits of pass-through entities.

(a) *In general.* — The credits allowed by Chapters 18 and 20 of this title against the taxes imposed by Chapters 11 and 19 of this title on account of activities and investments of a pass-through entity shall be passed through to its members in proportion to their respective distributive shares of such entity's taxable income on the last day of such entity's taxable year.

(b) *Qualifications for credits.* — The qualification of a pass-through entity for any credit allowed by Chapter 18 or Chapter 20 of this title shall be determined by treating such entity as the taxpayer for purposes of Chapter 18 or Chapter 20, as the case may be.

(c) *Limitations on credits.* — In the case of any credit allowed to a pass-through entity by Chapter 18 or Chapter 20 of this title, the limitations imposed by Chapter 18 or Chapter 20, as the case may be, shall be applied:

(1) At the level of the pass-through entity in the case of a limitation based on:

a. The value of property contributed or money invested,

b. The total allowable credit per taxpayer per year, or

c. The number of persons employed; and

(2) At the level of each member of the pass-through entity in the case of a limitation on the total amount of tax against which such credit may be applied.

(d) *Multiple pass-through entities.* — Whenever 2 or more pass-through entities together undertake any qualified activity at the same qualified facility as those terms are used in subchapter II or subchapter III of Chapter 20 of this title, and such combination of pass-through entities is not itself a pass-through entity under this chapter, the qualified employees, qualified investment and number of Delaware resident employees of such pass-through entities shall be aggregated to determine eligibility for, and computation of, credits or reductions of tax under those subchapters. Participation of the pass-through entities in the aggregate credits shall be determined by the share of each pass-through entity based upon the following:

(1) In the case of credits calculated with respect to an increase in qualified employees, upon the ratio of new qualified employees in such pass-through entity to all new qualified employees in all the pass-through entities comprising the aggregate, such ratio not to exceed 1 or be less than zero; and

(2) In the case of credits calculated with respect to the amount of a qualified investment, upon the ratio of qualified investment in such pass-through entity to all qualified investment in all the pass-through entities comprising the aggregate. In order to claim credits resulting from such aggregation under this subsection, the entities must first file a "Request for Aggregation" with the Director and obtain the Director's approval to aggregate. The Request shall identify the entities to be aggregated, the qualified activity to be engaged in, the location of the qualified facility, the amount of qualified investment, the number of qualified employees, the proposed participation of each pass-through entity in credits determined under this subsection, and other information required by the Director to determine the aggregated entity and its eligibility for credits.

(72 Del. Laws, c. 467, § 2.)

Subchapter III

Taxation of Estates, Trusts and Their Beneficiaries

§ 1631 Imposition of tax.

The tax imposed by Chapter 11 of this title on individuals shall apply to the taxable income of estates and trusts.

(72 Del. Laws, c. 467, § 1.)

§ 1632 Computation and payment.

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual pursuant to Chapter 11 of this title, except as otherwise provided by this subchapter. The tax shall be computed on such taxable income and shall be paid by the fiduciary.

(72 Del. Laws, c. 467, § 1.)

§ 1633 Tax not applicable.

The following persons shall not be subject to tax under Chapter 11 of this title:

(1) *Associations taxable as corporations.* — An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes.

(2) *Exempt associations, trusts and organizations.* — An association, trust or other unincorporated organization which by reason of its purpose or activities is exempt from tax on its income under the laws of the United States or this State.

(3) *Real estate mortgage investment conduits.* — An entity that is a real estate mortgage investment conduit (as defined in § 860D of the Internal Revenue Code of 1986 [26 U.S.C. § 860D], as amended).

(4) *Designated and qualified settlement funds.* — A trust that is a designated or qualified settlement fund (as defined in § 468B of the Internal Revenue Code of 1986 [26 U.S.C. § 468B], as amended, or Treas. Reg. § 1.468B-1 [26 C.F.R. § 1.468B-1]) shall be characterized as a trust for all purposes of this title and shall not be subject to tax under this chapter.

(5) *Real estate investment trusts.* — An entity that is a real estate investment trust, as defined in § 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856), as amended.

(6) *Pass-through entities.* — An association or other unincorporated organization that is a pass-through entity.

(72 Del. Laws, c. 467, § 1.)

§ 1634 Fiduciary adjustment.

(a) *Fiduciary adjustment defined.* — The fiduciary adjustment shall be the net amount of the modifications described in § 1106 of this title (including subsection (c) of § 1106 of this title if the estate or trust is a beneficiary of another estate or trust) which relate to items of income or deduction of an estate or trust.

(b) *Shares of fiduciary adjustment.* — The respective shares of an estate or trust and its beneficiaries (including solely for the purpose of this allocation, nonresident beneficiaries) in the fiduciary adjustment shall be in proportion to their respective shares of the federal distributable net income of the estate or trust. If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the fiduciary adjustment shall be in proportion to the beneficiary's share of the estate or trust income for such year, under local law or the terms of the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such taxable year. Any balance of the fiduciary adjustment shall be allocated to the estate or trust.

(72 Del. Laws, c. 467, § 1.)

§ 1635 Taxable income of resident estate or resident trust.

(a) The taxable income of a resident estate or resident trust means its federal taxable income modified by the addition or subtraction, as the case may be, of its share of the fiduciary adjustment determined under § 1634 of this title.

(b) In the case of an electing small business trust as defined in § 1361(e) of the Internal Revenue Code [26 U.S.C. § 1361(e)] there shall be added to the amount calculated pursuant to subsection (a) of this section, to the extent not otherwise included in such amount, the taxable income of the portion of the trust consisting of S corporation stock that is treated as a separate trust pursuant to § 641(c) of the Internal Revenue Code [26 U.S.C. § 641(c)].

(72 Del. Laws, c. 467, § 1; 74 Del. Laws, c. 138, § 2.)

§ 1636 Nonresident beneficiary deduction for resident estates or resident trusts [For application of this section, see 81 Del. Laws, c. 149, § 6].

(a) *Allowance of deduction.* — A resident estate or resident trust shall be allowed a deduction against the taxable income otherwise computed under Chapter 11 of this title for any taxable year for the amount of its federal taxable income, as modified by § 1106 of this title which is, under the terms of the governing instrument, set aside for future distribution to nonresident beneficiaries.

(b) *Rules of application.* — The following rules shall apply in determining whether or to what extent income is set aside for future distribution to nonresident individual beneficiaries:

(1) If all or part of the federal taxable income of the estate or trust, as modified by § 1106 of this title, is distributable in future taxable years (whether or not added in the meantime to estate or trust corpus for estate or trust accounting purposes), to or for the benefit of a named individual beneficiary or beneficiaries, or a class of individual beneficiaries, and if on the last day of the taxable year of the estate or trust, 1 or more of such named individual beneficiaries, or 1 or more members of the first-named class of individual beneficiaries, is living, then the portion of the federal taxable income of the estate or trust, as modified by § 1106 of this title, considered set aside for future distribution to nonresident beneficiaries shall be computed:

a. In the case of a named individual beneficiary or beneficiaries, by first determining the share or shares of each such beneficiary as if the estate or trust had terminated on the last day of the taxable year and then determining the portion of such income realized by the estate or trust during the taxable year while the beneficiary was a nonresident of this State; and

b. In the case of the first-named class of beneficiaries, by first determining who the members of the class would be and the share of each such member if the estate or trust had terminated on the last day of the taxable year and then determining the portion of such income of each such share realized by the estate or trust while such member was a nonresident of this State.

(2) If all or part of the federal taxable income of the estate or trust, as modified by § 1106 of this title, is distributable in future taxable years (whether or not added in the meantime to estate or trust corpus for estate or trust accounting purposes) to or for the benefit of a named individual beneficiary or a class of individual beneficiaries, and if on the last day of the taxable year of the estate or trust no named individual beneficiary or none of the members of the first-named class of individual beneficiaries is then living, then the portion of the federal taxable income of the estate or trust, as modified by § 1106 of this title, considered as set aside for future distribution to nonresident beneficiaries, shall be determined in the manner provided in paragraph (b)(1) section, except that it will be presumed:

a. In the case of a named individual beneficiary or beneficiaries, that each such beneficiary was living and residing in the state where the putative parents resided during the taxable year; and

b. In the case of the first-named class of beneficiaries, that members of the class were living and residing with the person the relationship to whom determines or defines the membership in the class.

(3) For purposes of determining under paragraphs (b)(1) and (2) of this section the share of each beneficiary of an estate or trust in the federal taxable income, as modified by § 1106 of this title, the discretion in any person over the distribution of such income (whether or not acting in a fiduciary capacity and whether or not subject to a standard) shall be presumed not to have been exercised unless such discretion was irrevocably exercised as of the last day of the taxable year and all of the federal taxable income of an electing small business trust described in § 1635(b) of this title, attributable to the trust's ownership of S corporation stock, shall be treated as having been set aside for distribution in future taxable years.

(4) For purposes of determining under paragraphs (b)(1) and (2) of this section when federal taxable income, as modified by § 1106 of this title, was realized, the following rules shall apply:

a. Interest income shall be considered realized when payable;

b. Dividend income shall be considered realized on the day the dividend is payable;

c. Gains and losses from the sale or exchange of property shall be considered realized or deductible, as the case may be, on the settlement date of the sale or the effective date of the exchange; and

d. Commissions on income or principal shall be deemed deductible on the date charged.

(5) The Director is authorized to establish more detailed rules to apply paragraphs (b)(1) through (4) of this section in any manner not inconsistent with the provisions of such paragraphs.

(72 Del. Laws, c. 467, § 1; 81 Del. Laws, c. 149, § 5.)

§ 1637 Credit for income tax of another state.

A resident estate or resident trust shall be allowed the credit provided under § 1111 of this title for resident individuals, except that references in that section to resident individuals shall for purposes of this section be deemed to refer to a resident estate or resident trust.

(72 Del. Laws, c. 467, § 1.)

§ 1638 Accumulation distribution credit for resident beneficiary of trust.

(a) *Allowance of credit.* — A resident beneficiary of a trust whose taxable income includes all or part of an accumulation distribution by such trust as defined in § 665 of the Internal Revenue Code [26 U.S.C. § 665] shall be allowed a credit, against the tax otherwise due under Chapter 11 of this title, for all or a proportionate part of any tax paid by the trust for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in § 666 of the Internal Revenue Code [26 U.S.C. § 666].

(b) *Limitation on credit.* — The credit under this section shall not reduce the tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution, or the beneficiary's part thereof, were excluded from the beneficiary's taxable income, as modified by § 1106 of this title.

(c) *Transition rule.* — The credit under this section shall apply to accumulation distributions defined by § 665 of the Internal Revenue Code [26 U.S.C. § 665] in effect for the applicable taxable period.

(72 Del. Laws, c. 467, § 1.)

§ 1639 Taxable income of a nonresident estate or nonresident trust.

(a) *General rules.* — For purposes of Chapter 11 of this title, in the case of a nonresident estate or nonresident trust:

(1) Items of income, gain, loss and deduction mean those derived from, or connected with, sources in this State.

(2) Items of income, gain, loss and deduction entering into the definition of federal distributable net income include such items from another estate or trust of which the first estate or trust is a beneficiary.

(3) The source of items of income, gain, loss or deduction shall be determined under rules or regulations prescribed by the Director in accordance with the rules of § 1124 of this title, as if the estate or trust were a nonresident individual.

(b) *Determination of taxable income.* — For purposes of Chapter 11 of this title, the taxable income of a nonresident estate or nonresident trust consists of:

(1) Its share of items of income, gain, loss and deduction which enter into the federal definition of distributable net income;

(2) Increased or reduced by the amount of any items of income, gain, loss or deduction which are recognized for federal income tax purposes but excluded from the federal definition of the distributable net income of the estate or trust; and

(3) Less the amount of the deduction for its federal exemption.

(72 Del. Laws, c. 467, § 1.)

§ 1640 Share of a nonresident estate, nonresident trust or its beneficiaries in income from sources within this State.

The share of a nonresident estate or nonresident trust, and the share of a nonresident beneficiary of any estate or trust, of items of estate or trust income, gain, loss and deduction for purposes of § 1124 of this title shall be determined as follows:

(1) To the amount of items of income, gain, loss and deduction which enter into the definition of distributable net income, there shall be added or subtracted, as the case may be, the modifications described in § 1106 of this title to the extent they relate to items of income, gain, loss and deduction which also enter into the definition of distributable net income. No modification shall be made under this section which has the effect of duplicating an item already reflected in the definition of distributable net income.

(2) The amount determined under paragraph (1) of this section shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of federal distributable net income. The amounts so allocated shall have the same character as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust or incurred in the same manner as if incurred by the estate or trust.

(3) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the net amount determined under paragraph (1) of this section shall be in proportion to such beneficiary's share of the estate or trust income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(72 Del. Laws, c. 467, § 1.)

Part II
Income, Inheritance and Estate Taxes
Chapter 17
INTERSTATE COMPROMISE OR ARBITRATION OF DEATH TAXES

§ 1701 Definitions.

As used in this chapter:

(1) "Death tax" means any tax levied by a state on account of the transfer of or shifting of economic benefits in property at death or in contemplation thereof or intended to take effect in possession or enjoyment at or after death, whether denominated an "inheritance tax," "transfer tax," "succession tax," "estate tax," "death duty," "death dues," or otherwise.

(2) "Executor" means any executor of the will or administrator of the estate of a decedent except an ancillary administrator.

(3) "Interested person" means any person who may be entitled to receive or who has received any property or interest which may be required to be considered in computing the death tax of any state involved.

(4) "State" means any state, territory or possession of the United States and the District of Columbia.

(5) "Taxing official" means the Secretary of Finance in this State and the officer or body in any other reciprocal state designated in the statute of such state substantially similar to this chapter.

(43 Del. Laws, c. 5, § 1; 30 Del. C. 1953, § 1701; 57 Del. Laws, c. 741, § 7A.)

§ 1702 Election to invoke chapter.

Where this State and 1 or more other states each claims that it was the domicile of a decedent at the time of death and where no judicial determination of domicile for death tax purposes has been made in any of such states, any executor or the taxing official of any such state may elect to invoke this chapter. Such election shall be evidenced by the sending of a notice by registered mail, receipt requested, to the taxing officials of each such state and to each executor, ancillary administrator and interested person. Any executor may reject such election by sending a notice by registered mail, receipt requested, to the taxing officials involved and to all other executors within 40 days after the receipt of such notice of election. If such election is rejected, no further proceedings shall be had under this chapter. If such election is not rejected, the dispute as to the death taxes shall be determined solely as provided in this chapter, and any proceedings that may have been theretofore taken in this State to determine or assess such death taxes in the courts or otherwise shall be annulled and of no effect.

(43 Del. Laws, c. 5, § 2; 30 Del. C. 1953, § 1702; 70 Del. Laws, c. 186, § 1.)

§ 1703 Compromise of death taxes due this State.

In any case in which an election is made as provided in § 1702 of this title and not rejected, the Secretary of Finance may enter into a written agreement with the other taxing officials involved and with the executors to accept a certain sum in full payment of any death tax, together with interest and penalties, that may be due this State. Such agreement shall not be effective unless approved by the State Tax Appeal Board. If an agreement cannot be reached and the arbitration proceeding specified in § 1704 of this title is commenced and thereafter an agreement is arrived at, a written agreement may be entered into at any time before the arbitration proceeding is concluded. Upon the filing of such agreement or duplicate thereof with the authority which would have jurisdiction to assess the death tax of this State if the decedent died domiciled in this State, an assessment of the amount of tax agreed upon shall be made, and such assessment shall finally and conclusively fix and determine the amount of death tax due this State.

(43 Del. Laws, c. 5, § 3; 30 Del. C. 1953, § 1703; 57 Del. Laws, c. 741, §§ 7A, 7B.)

§ 1704 Arbitration of domicile of decedent.

If it shall appear that an agreement cannot be reached as provided in § 1703 of this title, or if 1 year shall have elapsed from the date of the election, the domicile of the decedent at the time of death solely for death tax purposes shall be determined as follows:

(1) Where only this State and 1 other state are involved, the Secretary of Finance and the taxing official of such other state shall each appoint a member of a board of arbitration, and the members so appointed shall select the third member of the board. If this State and more than 1 other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering death tax laws in 3 states not involved, each of which shall appoint a member of the board. The members of the board shall elect a chairperson.

(2) Such board shall hold hearings at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all interested persons and the taxing officials of the states involved, all of whom shall be entitled to be heard.

(3) Such board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be issued by any member of the board. Failure to obey a subpoena may be punished by a judge or justice of any court of record in the same manner as if the subpoena

had been issued by such judge or justice or by the court in which such judge or justice functions.

(4) Such board shall apply, whenever practicable, the rules of evidence which prevail in federal courts under the Federal Rules of Civil Procedure at the time of the hearing.

(5) Such board shall, by majority vote, determine the domicile of the decedent at the time of death. Such determination shall be final and conclusive and shall bind this State and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for death tax purposes.

(6) The reasonable compensation and expenses of the members of the board and employees thereof shall be agreed upon among such members, the taxing officials of the states involved and the executors. In the event an agreement cannot be reached, such compensation and expenses shall be determined by such taxing officials and, if they cannot agree, by the appropriate probate court of the state determined to be the domicile. Such amount shall be borne by the estate and shall be deemed an administration expense.

(7) The determination of such board and the record of its proceeding shall be filed with the authority having jurisdiction to assess the death tax in the state determined to be the domicile of the decedent and with the authorities which would have had jurisdiction to assess the death tax in each of the other states involved if the decedent had been found to be domiciled therein.

(43 Del. Laws, c. 5, § 4; 30 Del. C. 1953, § 1704; 57 Del. Laws, c. 718, § 14; 57 Del. Laws, c. 741, §§ 7A, 7B; 70 Del. Laws, c. 186, § 1.)

§ 1705 Penalty and interest for nonpayment of tax.

In any case where it is determined by the board of arbitration that the decedent died domiciled in this State, penalties and interest for nonpayment of the tax, between the date of the election and the final determination of the board, shall not exceed 1% per month, or fraction thereof.

(43 Del. Laws, c. 5, § 5; 30 Del. C. 1953, § 1705; 57 Del. Laws, c. 707, § 6.)

§ 1706 Reciprocal application.

This chapter shall apply only to cases in which each of the states involved has a law substantially similar to this chapter.

(43 Del. Laws, c. 5, § 6; 30 Del. C. 1953, § 1706.)

Part II
Income, Inheritance and Estate Taxes
Chapter 18
LAND AND HISTORIC RESOURCE TAX CREDIT
Subchapter I
Land Donated for Conservation or Preservation

§ 1801 Short title.

This subchapter shall be known as the "Delaware Land and Historic Resources Protection Incentives Act of 1999."
(72 Del. Laws, c. 254, § 1; 73 Del. Laws, c. 6, § 1.)

§ 1802 Findings and purpose.

(a) The General Assembly finds:

(1) That the State of Delaware's unique natural resources, wildlife habitats, historic resources and resources of outdoor recreation are a significant benefit to the State and the public;

(2) That the State of Delaware's unique natural resources and distinctive natural heritage, including habitat for plants, animals and natural communities and historic resources, are being lost at an alarming rate; and

(3) That much of the State's unique natural resources and habitats and historic resources are found on lands that are privately owned.

(b) The General Assembly desires:

(1) To encourage private landowners to be stewards of lands that are important habitats or designated natural areas, or that contain significant historic resources;

(2) To complement existing land conservation acquisition programs under the Delaware Land Protection Act, as set forth in Chapter 75 of Title 7, and historic preservation programs, and not duplicate them and thereby preserve public financial resources and leverage public expenditures; and

(3) To provide private landowners with incentives to encourage protection of private lands for open space, natural resources, biodiversity conservation, outdoor recreation and historic preservation purposes.

(72 Del. Laws, c. 254, § 1.)

§ 1803 Definitions.

The following definitions shall apply to this subchapter:

(1) "Delaware Heritage program" means the program within the Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, that is responsible for inventory, research, data collection, information management and consultation about Delaware's unique or rare plant and animal species and natural communities and for the maintenance of computerized and manual records of the status and trends of such species and natural communities and habitat location information.

(2) "Department" means the Department of Natural Resources and Environmental Control.

(3) "Historic resources" means those structures, improvements, sites or lands that are listed as significant in or eligible for listing in the National Register of Historic Places, either as individual listings or as contribution elements in listed or eligible historic districts.

(4) "Interest in real property" means any perpetual right in real property, or improvements thereto, or water, including but not limited to a fee simple, easement, partial interest, mineral right, remainder, future interest, or other interest or right concerning the use of property.

(5) "Land" or "lands" means real property, with or without improvements thereon; right-of-way, water and riparian rights; easements; privileges and all other rights or interests of any kind or description in, relating to or connected with real property.

(6) "Natural habitat" means those land areas in Delaware that are or may be documented as areas of ecological importance and significance for the protection of unique or rare plants, animals and natural communities. Such areas are or may be comprised of lands that due to their physical or biological features, provide important elements for the protection, maintenance and survival of plants, animals and/or natural communities such as, for example, food, shelter, or living space, and may include, without limitation, breeding, feeding, resting, migratory and overwintering areas. Physical and biological features include, but are not limited to: structure and composition of the vegetation; faunal community; soils; water chemistry and quality; and geologic, hydrologic and microclimatic factors and other ecological processes.

(7) "Open space" means any open lands characterized by (i) natural and/or scenic beauty, or (ii) whose existing openness, natural condition or present state of use, if retained, would maintain important outdoor recreational areas and wildlife habitat, or would maintain or enhance the conservation of Delaware's natural, historic, or scenic resources.

(8) "Public or private conservation agency" means any Delaware governmental body or any private not-for-profit charitable corporation or trust authorized to do business in the State and organized and operated for natural resources, land conservation or historic preservation purposes, and having tax-exempt status as a public charity under the U.S. Internal Revenue Code of 1986, as amended, and having the power to acquire, hold and maintain land and/or interests in land for such purposes.

(72 Del. Laws, 1st Sp. Sess., c. 254,, § 1; 73 Del. Laws, c. 6, § 1.)

§ 1804 Tax credit available; land conveyed for conservation and preservation purposes.

(a) There shall be allowed as a credit against the tax imposed by Chapters 11 and 19 of this title, an amount equal to 40% of the fair market value of any land or interest in land located in Delaware that is conveyed for the purpose of open space, natural resource and/or biodiversity conservation or historic preservation as an unconditional donation in perpetuity by the landowner/taxpayer to a public or private conservation agency eligible to hold such land and interests therein for conservation or preservation purposes. The fair market value of qualified donations made under this chapter shall be substantiated by a "qualified appraisal" prepared by a "qualified appraiser," as those terms are defined under applicable federal law and regulations governing charitable contributions.

(b) The amount of the credit that may be claimed by a taxpayer shall not exceed $50,000. In addition, in any 1 tax year the credit used may not exceed the amount of individual or corporate income tax otherwise due. Any portion of the credit that is unused in any 1 tax year may be carried over for a maximum of 5 consecutive tax years following the tax year in which the credit originated, subject to the limitations provided herein, until fully expended.

(c) Qualified donations shall include the conveyance in perpetuity of a fee interest in real property or a less-than-fee interest in real property, such as a conservation easement, pursuant to Chapter 69 of Title 7. Dedications of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered as qualified donations under this chapter.

(d) Qualified donations shall be eligible for the tax credit herein described if such donations are made to the State, an instrumentality thereof or a charitable organization described in § 501(c) of the U.S. Internal Revenue Code of 1986 [26 U.S.C. § 501] and meet the requirements of 26 U.S.C. § 170(h)(3)(A) or (B).

(e) To be eligible for treatment as qualified donations under this section, land or interests in lands must meet the requirements for land protection of the Delaware Land Protection Act as set forth in § 7503 of Title 7; or consist of lands that are natural habitat for the protection of Delaware's unique and rare biological and natural features as determined by the Department, relying on information supplied and maintained by the Delaware Natural Heritage Program; or meet the requirements for Delaware's important historic resources as determined by the Delaware Department of State, Division of Historical and Cultural Affairs. The use and protection of such lands or interests therein for open space, natural area protection, biodiversity habitat conservation, historic preservation or similar use and purpose shall be assured in perpetuity.

(f) Any qualified donation made in a tax year for which the tax credit herein described is claimed by a taxpayer shall not also be eligible for treatment in the same tax year as a charitable contribution for state income tax deduction purposes in calculating Delaware income tax liability.

(72 Del. Laws, c. 254, § 1.)

§ 1805 Administration.

(a) The Department, in consultation with the Department of State, Division of Historical and Cultural Affairs, shall promulgate such rules and regulations as may be deemed necessary to certify eligible projects for treatment in fulfillment of the purposes of this subchapter by February 5, 2000. The Department and the Division of Historical and Cultural Affairs, in cooperation with the Open Space Council, upon each 5-year anniversary of the enactment of this subchapter or of any renewals thereof, shall prepare a report to the General Assembly showing the lands protected during such period pursuant to this subchapter.

(b) The Division of Revenue of the Department of Finance for the State of Delaware, in consultation with the Department, shall promulgate such rules and regulations by February 5, 2000, as may be necessary to administer the tax incentives provided for in this subchapter and shall coordinate with the agencies referenced in subsection (a) of this section in the preparation of the report or reports to the General Assembly showing the fiscal impact on the Delaware Treasury of the credits claimed pursuant to this subchapter.

(72 Del. Laws, c. 254, § 1; 73 Del. Laws, c. 6, § 1.)

§ 1806 Applicability, fiscal limitation and renewal.

(a) The tax credits provided by this subchapter shall apply to transfers of land or interests therein in taxable years beginning on or after January 1, 2000.

(b) Any taxpayer claiming a tax credit under this subchapter may not claim a credit under any similar Delaware law for costs related to the same project. A taxpayer may not claim a tax credit under this subchapter for lands or interests in land a portion of which constitutes the taxpayer's entire holdings and where the taxpayer has sold or has contracted to sell to the State the balance of such lands or interests in land for open space, biodiversity, land conservation or historic preservation purposes.

(c) Any tax credits which arise under this subchapter from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability corporation or partnership, limited partnership, Subchapter S corporation or other fiduciary shall be used either by such entity, in the event it is the taxpayer, on behalf of such entity, or by the member, manager, partner, shareholder and/or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax

liability passes through such entity to such member, manager, partner, shareholder and/or beneficiary. Such tax credits may not be claimed by both the entity and the member, manager, partner, shareholder and/or beneficiary for the same donation.

(d) The total amount of tax credits to be made available under this subchapter shall not exceed $10,000,000. The aggregate amount of such tax credits available in any 1 tax year shall not exceed $1,000,000 and shall be allocated to taxpayers for eligible projects in accordance with the rules and regulations to be established as set forth in § 1805 of this title.

(e) [Repealed.]

(72 Del. Laws, c. 254, § 1; 73 Del. Laws, c. 6, § 1; 77 Del. Laws, c. 135, §§ 1-3.)

§ 1807 Construction.

No part or segment of this subchapter shall be interpreted to in any way alter or amend any permit requirements, reporting requirements, allocation procedures or other requirements set forth in any other provision of state law.

(72 Del. Laws, c. 254, § 1; 73 Del. Laws, c. 6, § 1.)

Subchapter II

Historic Preservation And Repair

§ 1811 Statement of purpose; short title.

(a) The General Assembly finds and declares that many properties and structures associated with Delaware's history, and in some cases the history of this nation, have been steadily disappearing over the past 50 years, or longer. Once gone, they are gone forever, and can never be replaced. Each year, it seems, there are less and less. The General Assembly firmly believes that the private sector is uniquely able to be a major factor in the preservation of many of Delaware's historic structures. The General Assembly finds that historic preservation tax credits have proven to be economic drivers that result in significant job creation and growth while successfully preserving historic buildings across the state.

(b) This subchapter shall be known as the "Historic Preservation Tax Credit Act."

(73 Del. Laws, c. 6, § 3; 77 Del. Laws, c. 413, § 1.)

§ 1812 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning (singular includes plural):

(1) "Certification of Completion," "Completion Certificate" or "Certificate" shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation or, if applicable, phase thereof has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credit under § 47 of the Internal Revenue Code (26 U.S.C. § 47) (whether or not such project would be eligible for such federal tax credit) has been obtained.

(2) "Certified historic property" shall mean property located within the State that is:

a. Individually listed in the National Register of Historic Places;

b. Located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district;

c. Individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

d. Located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

(3) "Certified rehabilitation" shall mean that rehabilitation of a certified historic property or portion thereof which has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 C.F.R., part 67) or such other standards as the State Historic Preservation Office shall from time to time adopt.

(4) "Credit award" shall mean the amount of qualified expenditures as determined by the State Office as part of the Stage II Approval multiplied by the appropriate amount as determined in § 1813 of this title.

(5) "Delaware State Historic Preservation Officer" shall mean the person designated and appointed in accordance with 16 U.S.C. § 470a(b)(1)(a), as amended.

(6) "Downtown Development District" means an area of a city or town that has been designated by the Governor as a Downtown Development District in accordance with Chapter 19 of Title 22.

(7) "Fiscal year" shall mean the State's fiscal year.

(8) "Lending institution" shall mean any bank, trust company, savings and loan association, building and loan association or licensed lender that is taxable under Title 5 or taxable under Chapter 19 of this title.

(9) "Office" or "State Office" shall mean the Delaware State Historic Preservation Office.

(10) "Owner-occupied historic property" shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used (or within a reasonable period as may be determined by the Delaware Historic Preservation Office on a case-by-case basis will be used) by such taxpayer as the taxpayer's principal residence. Such property may consist of part of a multiple-dwelling or multiple-purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

(11) "Person" shall include any individual; any form of company or corporation which is lawful within the State (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State (including limited liability partnerships); whether or not for profit; any trust or estate; and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity or person under a lease contract for 5 years or longer.

(12) "Phased rehabilitation" shall mean any certified rehabilitation of a certified historic property reasonably expected to be completed in 2 or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any successor provision.

(13) "Property" shall mean real estate, and shall include any building or structure, including multiple-unit structures.

(14) "Qualified expenditure" shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

a. Acquisition of real property, or acquiring an interest in real property;

b. Any addition to an existing structure, except where the combined square footage of all additions is 20 percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

1. Preserving the character-defining features of the certified historic property;

2. Adequately differentiating the new construction from the existing structure; and

3. Complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

c. Paving or landscaping costs which exceed 10 percent of the total qualified expenditures;

d. Sales and marketing costs; or

e. Expenditures not properly charged to a capital account, including, in the case of owner-occupied property, expenditures that would not properly be charged to a capital account where the owner is using such property in a trade or business.

(15) "Resident curator" shall mean a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner's qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

(16) "Residential property" shall include cooperatives and condominiums.

(17) "Substantial rehabilitation" shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the 24-month period or 60-month period, as applicable, selected by the taxpayer and ending with or within the taxable year exceed:

a. For income-producing property and non-income producing property other than owner-occupied historic property, the current standard required by § 47(c)(1)(C) of the Internal Revenue Code [26 U.S.C. § 47(c)(1)(C)]; and

b. For owner-occupied historic property or property under contract with a resident curator, $5,000.

(18) "Taxpayer" shall include any "person," as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of this title.

(73 Del. Laws, c. 6, § 3; 73 Del. Laws, c. 240, § 1; 74 Del. Laws, c. 68, §§ 107(C), 107(B); 74 Del. Laws, c. 388, §§ 1-4; 79 Del. Laws, c. 240, § 5.)

§ 1813 Preservation and repair of historic structures; tax credits; sunset.

(a) Any person incurring qualified expenditures pursuant to this subchapter in the substantial rehabilitation of any certified historic property shall be entitled to a credit against bank franchise or income taxes imposed under Title 5, or under Chapter 11 or Chapter 19 of this title, respectively, subject to limitations set forth in this section and up to a maximum of:

(1) Twenty percent of qualified expenditures made in the rehabilitation of any certified historic property which is eligible for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47];

(2) Thirty percent of the qualified expenditures made in the rehabilitation of any certified historic property which is not eligible for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47];

(3) One hundred percent of the qualified expenditures made in the rehabilitation of a certified historic property qualifying for credit award as a resident curatorship property regardless of eligibility for a federal tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47].

(4) In no event shall the credit claimed pursuant to this section exceed the credit award.

(b) Any person, in order to receive a Certificate of Completion from the Delaware State Historic Preservation Officer that would entitle said person to a tax credit under this section, shall submit documentation of those qualified expenditures and project plans that would be required in order to qualify for tax credit under § 47 of the Internal Revenue Code [26 U.S.C. § 47], whether or not such project would be

eligible for such federal tax credit.

(c) Any person eligible for credits under this chapter may transfer, sell or assign any or all unused credits. If a certified historic property for which a certified rehabilitation has been completed is sold or transferred, the amount of any credit not used by the time of such sale or transfer may be transferred to the person to which the structure is sold or transferred.

(d) Except as otherwise provided, if the amount of credit allowed pursuant to this subchapter exceeds that total tax liability of the taxpayer for the tax year for which the credit is claimed, the amount of the credit not used as an offset against income or franchise taxes in said tax year shall not be refunded, but may be carried forward as a credit against subsequent years' income or franchise tax liability for a period not exceeding 10 years, and shall be applied first to the earliest tax years possible.

(e) With respect to the tax credits awarded under paragraph (a)(2) of this section, no single certified rehabilitation of owner-occupied historic property may receive a tax credit in excess of $30,000. Owner-occupied historic properties may be eligible for multiple certified rehabilitations representing separate phases of rehabilitation of a certified historic property; provided, however, that following an initial credit award, any subsequent credit award shall be made not less than 24 months after any preceding credit award. With respect to tax credits awarded for qualifying expenditures by a resident curator, no single certified rehabilitation may receive a tax credit in excess of $5,000.

(f) Whenever any part of the certified rehabilitation of a residential property is determined under regulations promulgated by the State Office to be committed to low-income housing, subsection (a) of this section shall be applied with respect to such part by substituting "30%" for "20%" and "40%" for "30%" in said subsection.

(g) The Historic Preservation Tax Credit Act [73 Del. Laws, c. 6] is effective for an approval granted in a fiscal year that ends before June 30, 2030.

(73 Del. Laws, c. 6, § 3; 73 Del. Laws, c. 240, §§ 2, 3; 74 Del. Laws, c. 68, §§ 107(D), 107(E); 81 Del. Laws, c. 390, § 1; 83 Del. Laws, c. 154, § 2.)

§ 1814 Preservation tax credits; distribution, transfer and assignment.

(a) Any person eligible for credit under this subchapter, except a person engaged in a resident curator relationship, may transfer, sell or assign any unused credits. Any person that transfers, sells or assigns any unused portion of a tax credit shall obtain and produce to the transferee, purchaser or assignee a certificate from the Division of Revenue or the Office of the State Bank Commissioner setting forth the amount of unused credit.

(b) Credits granted to or acquired by a pass-through entity created or recognized under Delaware law, or by multiple owners of property, if not transferred, sold or assigned, may be divided among the partners, members, shareholders or owners either according to the distributive shares of income of such entity or pursuant to an executed agreement among such partners, members, shareholders or owners if such agreement documents an alternate method of distribution.

(c) Any transferee, purchaser or assignee of tax credits under this subchapter may use such acquired credits to offset state income or franchise tax liabilities imposed upon such transferee, purchaser or assignee. To claim the state tax credit, the transferee, purchaser or assignee shall attach the certificate obtained by the transferor, seller or assignor in accordance with subsection (a) of this section to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes, respectively.

(d) If the credit allowed under this section exceeds the transferee, purchaser or assignee's tax due for the current tax year, the transferee, purchaser or assignee of the tax credit may carry forward such excess in accordance with § 1813 of this title.

(e) Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, shall be subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date demonstrates that the applicant for the credit award for the project is unable or unwilling to complete it or, in the event that the project does not meet the certification requirements previously agreed to with the State Office.

(73 Del. Laws, c. 6, § 3; 74 Del. Laws, c. 68, § 107(F); 74 Del. Laws, c. 388, § 5.)

§ 1815 Preservation tax credits; procedures and administration.

(a) The Delaware State Historic Preservation Office is hereby established within the Division of Historical and Cultural Affairs, and shall be administered by the Delaware State Historic Preservation Officer.

(b) Except where otherwise provided, the Division of Historical and Cultural Affairs may establish by regulation all requirements for implementation of the provisions of this subchapter (except tax matters), including but not limited to the following:

(1) Fees to be charged by the State Office for inspections and other expenses; and

(2) Standards for rehabilitation of historic property where those standards set forth in 36 C.F.R. part 67 are not applicable.

(c) The Division of Historical and Cultural Affairs shall have the authority to promulgate the application and forms governing participation in the certification program.

(d) The Division of Revenue and the State Bank Commissioner may establish regulations and develop all appropriate procedures and applications or other forms for the implementation of all provisions of this subchapter which are directly tax-related or related to certifying the value of the tax credits issued under this title and Title 5, respectively. The Division of Revenue shall also by January 1, 2004, establish

regulations and develop appropriate procedures specific to taxpayers who qualify as resident curators. The Division of Historical and Cultural Affairs shall have the same authority granted in section (b) of this subchapter relative to resident curators.

(e) Any person or entity seeking the historic preservation tax credit set forth in this subchapter shall apply to the Delaware State Historic Preservation Office. Each applicant shall complete the application, and all other information requested, in whole, and shall include such sketches, renderings, charts or photographs as may be requested by the State Office.

(f) The State Office shall, upon consideration of the application and such other matters as it deems appropriate, determine whether or not the property constitutes a certified historic property. If the application is for a certified historic property, the State Office shall review, approve, disapprove or suggest modifications to any proposed rehabilitation plan to insure that the rehabilitation, when completed, can be considered a certified rehabilitation. Projects requesting credits upon phase completion must present and receive approval of completion dates for all project phases, including the completion date for the entire project, from the State Office. All repairs and rehabilitation shall be consistent with those standards set forth in 36 C.F.R. § 67.7 for federal certification, and otherwise shall comply with regulations promulgated by the State Office. This approval by the State Office of the proposed rehabilitation plan shall be known as a "Stage II approval," and the amount of the qualified expenditures as determined by the State Office as part of the Stage II approval and in accordance with § 1813 of this title shall represent the "credit award."

(g) Upon completion of the rehabilitation or, if applicable, phase thereof, the person or entity shall notify the Delaware State Historic Preservation Officer. Upon determination by the Preservation Officer that the property is a certified historic property, that the rehabilitation or, if applicable, phase thereof of the certified historic property has been completed, and that the rehabilitation or, if applicable, phase thereof is in conformance with the requirements of this subchapter and the regulations of the State Office, and upon determination by the Division of Revenue or the State Bank Commissioner as to the value of the tax credit associated with the Certificate of Completion, the Delaware State Historic Preservation Officer shall certify such rehabilitation or, if applicable, phase thereof and shall issue a Certificate of Completion to the applicant.

(h) In the alternative, the Delaware State Historic Preservation Officer may certify such rehabilitation and issue a Stage II Approval to any applicant who has obtained a Part I and Part II certification from the federal government issued pursuant to 36 C.F.R. part 67, where applicable.

(i) To claim the state tax credit allowed by this subchapter the applicant, any assignee, any purchaser or any transferee of the credit shall attach the Certificate of Completion to the Delaware tax return against which the credit is claimed and submit such tax return to the Division of Revenue or to the Office of the State Bank Commissioner with respect to income taxes in this title and Title 5 franchise taxes, respectively.

(j) Credits subject to revocation and repayment under § 1814(e) of this title, such shall be treated as an unpaid tax assessment, and, in pursuing the repayment of such credits, the Division of Revenue and the Office of the State Bank Commissioner shall have at their disposal all means of collection and enforcement permitted under Titles 30 and 5, respectively.

(73 Del. Laws, c. 6, § 3; 73 Del. Laws, c. 240, §§ 4, 5; 74 Del. Laws, c. 68, § 107(G); 74 Del. Laws, c. 388, §§ 6-8.)

§ 1816 Total amount of credits permitted in each fiscal year; allocation of such credits.

(a) The maximum amount of credit awards under this chapter in any fiscal year shall not exceed $5,000,000. One hundred thousand dollars of the credit awards in a fiscal year must be reserved for distribution to qualified resident curators. If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to persons qualifying under § 1813(a)(1) or (2) of this title. In any 1 year, $1,500,000 of tax credits shall be reserved for projects receiving a credit of not more than $300,000. In addition, in any 1 year, $1,500,000 of tax credits shall be reserved for projects located in Downtown Development Districts, of which $500,000 shall be reserved for projects in such districts receiving a credit of not more than $300,000. On April 1 of each year, any unused balance of the foregoing pools of tax credits shall be available to any eligible project. However, should a credit award exceed the actual credit claimed, the amount of the excess credit award shall not be available for a subsequent award.

(b) The State Office shall ensure that the date and time of Stage II approval is noted on the first page of the application. Credits will be awarded in chronological order based upon the date and time on which each application receives Stage II approval from the State Office. If a credit award would result in an excedence of the $5,000,000 limitation for the fiscal year in which it is awarded, the amount by which such credit award exceeds $5,000,000 shall carry over to the succeeding fiscal year and shall receive priority for that year.

(c) All applicants must begin construction on the approved Stage II rehabilitation plan within 1 year of receiving the Stage II approval. If construction on the rehabilitation plan is not substantially commenced and diligently pursued within this time period, the applicant will forfeit the awarded credits, and the credits awarded to such applicant will become available for award to other applicants.

(d) Upon completion of the rehabilitation or, if applicable, phase thereof, the applicant shall obtain a Certificate of Completion from the Delaware State Historic Preservation Officer in accordance with § 1815 of this title. The applicant shall then take the necessary procedures to claim the state tax credit in accordance with this chapter. However, no such claim for state tax credit shall be made prior to the 1-year anniversary of receipt of the Stage II approval from the State Office.

(e) The Secretary of Finance shall report to the Governor and the General Assembly on the second Tuesday of every January concerning the amount of tax credits awarded pursuant to this subchapter for the previous fiscal year.

(f) On or before January 31 of every year, the Division of Historical and Cultural Affairs of the Department of State shall issue an annual report on the restoration and rehabilitation status of all tax credit projects approved during the previous calendar year. The annual report

will also include a list of all tax credit projects issued in previous years which have a balance of credits which have not been claimed. The annual report shall be distributed to the Governor and the General Assembly.

(73 Del. Laws, c. 6, § 3; 73 Del. Laws, c. 240, § 6; 74 Del. Laws, c. 68, § 107(A); 74 Del. Laws, c. 388, § 9; 75 Del. Laws, c. 152, §§ 1, 2; 77 Del. Laws, c. 413, §§ 3, 4; 79 Del. Laws, c. 240, § 6.)

§ 1817 Appeals.

(a) Where any taxpayer or other person who has applied for state approval or certification that a property is a certified historic property or that any repairs or improvements are certified rehabilitation, in accordance with this subchapter objects to a noncertification decision by the Delaware State Historic Preservation Officer, such person shall be entitled to appeal such decision to the Delaware Secretary of State or the Secretary's designee. Such appeal shall be filed with the Delaware Secretary of State within 60 days from the issuance of such noncertification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C. § 10101 et seq. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [§ 10141 et seq. of Title 29].

(b) Where a taxpayer or other person who is or was engaged in qualified repairs in accordance with this subchapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department of Finance as set forth in this title or regulations promulgated thereunder or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act.

(73 Del. Laws, c. 6, § 3.)

Part II
Income, Inheritance and Estate Taxes
Chapter 19
CORPORATION INCOME TAX

§ 1901 Definitions.

As used in this chapter:

(1) "Administration services" means, in each case with respect to intangible investments (as such term is defined in § 1902(b)(8) of this title):

a. Clerical;

b. Accounting;

c. Bookkeeping;

d. Data processing;

e. Internal auditing;

f. Tax services;

g. Regulatory compliance, operations and related services;

h. Risk analytics; and

i. Trade processing, clearing and execution services.

(2) "Asset management corporation" means a corporation:

a. Ninety percent or more of the gross receipts of which are derived from the performance of asset management services;

b. That is not exempt from taxation under this chapter pursuant to § 1902(b)(8) of this title; and

c. That makes an election for each taxable year to be treated as an asset management corporation by filing the appropriate form of return prescribed by the Director to make such election.

For purposes of this paragraph, "gross receipts" shall mean gross receipts reported by the corporation for its taxable year for purposes of the federal income tax.

(3) "Asset management services" means, in each case with respect to intangible investments (as such term is defined in § 1902(b)(8) of this title):

a. Rendering investment advice, including investment analysis;

b. Making determinations as to when sales and purchases are to be made;

c. Selling or purchasing of intangible investments;

d. Rendering administration services;

e. Rendering distribution services; or

f. Managing contracts for sub-advisory services.

(4) "Board" means the Tax Appeal Board.

(5) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(6) "Corporation" includes a joint stock company or any association which is taxable as a corporation under the federal income tax law.

(7) "Distribution services" means, in each case with respect to intangible investments (as such term is defined in § 1902(b)(8) of this title):

a. Advertising;

b. Servicing investor accounts (including redemptions);

c. Marketing shares or selling shares of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); and

d. Marketing asset management services (including selling interests in a pool of intangible investments, such as a fund).

(8) "Domestic corporation" means any corporation organized under the laws of this State.

(9) "Domicile" means:

a. In the case of an individual, the State of the individual's domicile under the law of Delaware;

b. In the case of an estate, this State, if the estate is a resident estate under § 1601 of this title, and outside of this State, if the estate is a nonresident estate under § 1601 of this title;

c. In the case of a trust (as defined in § 1601(9) of this title), this State, if the trust is a resident trust under § 1601 of this title, and outside of this State, if the trust is a nonresident trust under § 1601 of this title;

d. In the case of a corporation or a pass-through entity (as defined under § 1601(6)a. of this title), its commercial domicile;

provided, however, domicile shall be presumed to be the mailing address of the beneficiary of a pension plan, or the owner of an

account or interest in a pool of intangible investments based on the records of the sponsor of such pension plan, account or pool of intangible investments or the shareholder's mailing address on the records of an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).

(10) "Federal income tax" means the tax imposed on corporations by the federal Internal Revenue Code of 1986 and amendments thereto.

(11) "Foreign corporation" means any corporation other than a domestic corporation.

(12) "Income year" means the taxable year for which the taxpayer computes its net income for purposes of the federal income tax.

(13) "Non-U.S. corporation" means a foreign corporation organized under the laws of a state other than the United States of America (or any of the states, territories or possessions of the United States of America) that is engaged in a trade or business in the United States.

(14) "Risk analytics" means performing risk analysis of intangible investments (as such term is defined in § 1902(b)(8) of this title), providing reports of such analyses and providing interactive, software-based risk analytical tools to users of such tools.

(15) "Secretary" and "Secretary of Finance" mean the Secretary of Finance or the Secretary's duly authorized designee; provided, that any such delegation of authority is consistent with the provisions of Chapter 83 of Title 29.

(16) "Sponsor" means the person that has contracted directly with the beneficiaries of a pension plan or retirement account or the owner of any account or interest in a pool of intangible investments to administer and manage the pension plan or retirement account, other account or pool of intangible investments.

(17) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

(18) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

(19) "Telecommunications corporation" means a corporation that is a member of a group of corporate and noncorporate entities, which group:

a. Consists of corporate and noncorporate entities that are affiliated through relationships described in § 267(b) of the Internal Revenue Code [26 U.S.C. § 267(b)];

b. Provides both intrastate mobile telecommunications services and other intrastate telephone services, as such terms are used in § 5501(8)a.3. of this title; and

c. In the aggregate earns annual gross receipts in the United States from providing intrastate and interstate telephone and telecommunications services, and from providing Internet access, as such term is defined in § 5501(6) of this title, in excess of $50 billion.

(20) "Treasury Department" means the Treasury Department of the United States.

(21) "Worldwide headquarters corporation" means a corporation that:

a. In its form 10-Q filing with the Securities and Exchange Commission for the quarterly period immediately preceding the calendar quarter in which 80 Del. Laws, c. 195, is effective, records as the site of its principal executive offices an address that is located within this State;

b. As of January 1, 2016, employed at least 400 full-time employees within the structure or structures housing the corporation's headquarters located within this State; and

c. Between July 1, 2014, and June 30, 2018, makes, or contracts with a real estate developer that makes, a capital investment of not less than $25 million to renovate and improve the structure or structures housing the corporation's headquarters located within this State.

(30 Del. C. 1953, § 1901; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 1; 57 Del. Laws, c. 741, § 8A; 67 Del. Laws, c. 408, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 234, § 4; 80 Del. Laws, c. 195, § 7.)

§ 1902 Imposition of tax on corporations; exemptions.

(a) Every domestic or foreign corporation that is not exempt under subsection (b) of this section shall annually pay a tax of 8.7 percent on its taxable income, computed in accordance with § 1903 of this title, which shall be deemed to be its net income derived from business activities carried on and property located within the State during the income year. Any receiver, referee, trustee, assignee or other fiduciary or any officer or agent appointed by any court who conducts the business of any corporation shall be subject to the tax imposed by this chapter in the same manner and to the same extent as if the business were conducted by the corporation.

(b) The following corporations shall be exempt from taxation under this chapter:

(1) Fraternal beneficiary societies, orders or associations:

a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and

b. Providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(2) Cemetery corporations and corporations organized or trusts created for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(3) Business leagues, chambers of commerce, fire companies, merchants' associations or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual;

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare;

(5) Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member;

(6) A corporation maintaining a statutory corporate office in the State but not doing business within the State;

(7) Insurance companies paying taxes upon gross premiums to the Insurance Commissioner;

(8) Corporations whose activities within this State are confined to the maintenance and management of their intangible investments or of the intangible investments of corporations or statutory trusts or business trusts registered as investment companies under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State. For purposes of this paragraph, "intangible investments" shall include, without limitation, investments in stocks, bonds, notes and other debt obligations (including debt obligations of affiliated corporations), patents, patent applications, trademarks, trade names and similar types of intangible assets;

(9) A corporation that is an S corporation for federal income tax purposes for any taxable year beginning on or after January 1, 1961;

(10) A corporation which qualifies as a domestic international sales corporation (DISC) under the provisions of subchapter N of Chapter 1 of the federal Internal Revenue Code [26 U.S.C. § 861 et seq.] and which has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of such corporation shall be subject to taxation under Chapter 11 or Chapter 19 of this title on the earnings and profits or taxable income of this DISC in the same manner as provided by federal law for all periods for which the election is effective;

(11) An entity that is a real estate mortgage investment conduit as defined in § 860D of the Internal Revenue Code of 1986 [26 U.S.C. § 860D], as amended;

(12) An entity that is registered as an investment company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.); and

(13) An entity that is a real estate investment trust as defined in § 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856) as amended;

(14) An entity that is a homeowners association as defined in § 528 of the Internal Revenue Code (26 U.S.C. § 528) or successor provision.

(30 Del. C. 1953, § 1902; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, §§ 2, 3; 57 Del. Laws, c. 136, § 1; 57 Del. Laws, c. 737, § 2; 58 Del. Laws, c. 293, § 1; 58 Del. Laws, c. 396, § 1; 59 Del. Laws, c. 150, § 1; 61 Del. Laws, c. 76, § 1; 64 Del. Laws, c. 461, § 10; 65 Del. Laws, c. 155, § 2; 65 Del. Laws, c. 160, § 4; 66 Del. Laws, c. 267, § 2; 67 Del. Laws, c. 295, § 1; 67 Del. Laws, c. 408, §§ 4, 5; 68 Del. Laws, c. 423, § 1; 69 Del. Laws, c. 188, §§ 6, 7; 71 Del. Laws, c. 314, § 4; 73 Del. Laws, c. 329, § 72; 75 Del. Laws, c. 412, § 1.)

§ 1903 Computation of taxable income.

(a) The "entire net income" of a corporation for any income year means the amount of its federal taxable income for such year as computed for purposes of the federal income tax increased by:

(1) Any interest income (including discount) on obligations issued by states of the United States or political subdivisions thereof other than this State and its subdivisions, and

(2) The amount of any deduction allowed for purposes of the federal income tax pursuant to § 164 of the Internal Revenue Code (26 U.S.C. § 164) for taxes paid on, or according to or measured by, in whole or in part, such corporation's net income or profits, to any state (including this State), territory, county or political subdivision thereof, or any tax paid in lieu of such income tax, and its federal taxable income shall be further adjusted by eliminating:

a. Dividends received on shares of stock or voting trust certificates of foreign corporations or interest income or royalty income, on which a foreign tax is paid, deemed paid or accrued under the applicable provisions of the United States Internal Revenue Code [26 U.S.C. § 1 et seq.];

b. Interest income (including discount) from securities issued by the United States or agencies or instrumentalities thereof and interest income (including discount) arising from obligations representing advances, loans or contractual transactions between corporations which are eligible to file a consolidated return for federal income tax purposes and which are subject to taxation under this chapter, if the paying corporation eliminates such interest (including discount) in determining its entire net income; provided, however, that the expenses allocable to interest income from securities issued by the United States or agencies or instrumentalities thereof shall not be allowed as a deduction;

c. Gains and losses from the sale or other disposition of securities issued by the United States or agencies or instrumentalities thereof or by this State or political subdivisions thereof. Expenses incurred in connection with such gains and losses shall not be considered in computing the entire net income of the corporation;

d. Any deduction allowed for depletion of oil and gas wells under § 611 of the federal Internal Revenue Code [26 U.S.C. § 611] to the extent such deduction is determined by reference to § 613 of the federal Internal Revenue Code [26 U.S.C. § 613] (relating to percentage depletion);

e. An amount equal to the portion of the wages paid or incurred for the taxable year which is disallowed as a deduction for federal

purposes under § 280C, Internal Revenue Code [26 U.S.C. § 280C], relating to the portion of wages for which the new jobs tax credit is claimed;

f. The cost, not to exceed $5,000, of a renovation project to remove physical design features in a building that restrict the full use of the building by physically handicapped persons. The modification shall be allowed for the taxable year in which the renovation project is completed and is in addition to any depreciation or amortization of the cost of the renovation project. "Building" means a building or structure or that part of a building or structure and its related sidewalks, curbing, driveways and entrances that are located in Delaware and open to the general public;

g. The "eligible net income" of an Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq. The eligible net income of an Edge Act corporation shall be the net income from any international banking facility of such corporation each computed as described in § 1101(a)(1)d. and e. of Title 5;

h. Any deduction, to the extent such deduction exceeds $30,000, for a net operating loss carryback as provided for in Internal Revenue Code § 172 [26 U.S.C. § 172] or successor provisions; provided, however, that the taxpayer may increase deductions in any year, consistent with the operation of § 172, to carry forward losses which were carried back in calculating federal taxable income but which were prevented from being carried back under this paragraph;

i. Any deduction for a net operating loss carryforward calculated in accordance with the provisions of the Internal Revenue Code, provided however that the deduction may not exceed the amount claimed on the federal return filed for the taxable year in which the taxpayer was included as a party.

(b) "Taxable income" subject to taxation under this chapter means the portion of the entire net income of a corporation which is allocated and apportioned to this State in accordance with the following provisions:

(1) Rents and royalties (less applicable or related expenses) from tangible property shall be allocated to the state in which the property is physically located;

(2) Patent and copyright royalties (less applicable or related expenses) shall be allocated proportionately to the states in which the product or process protected by the patent is manufactured or used or in which the publication protected by the copyright is produced or printed;

(3) Gains and losses from the sale or other disposition of real property shall be allocated to the state in which the property, and expenses incurred in connection with dispositions resulting in such gains and losses, is physically located;

(4) Gains and losses from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes, and expenses incurred in connection with dispositions resulting in such gains and losses, shall be allocated to the state where the property is physically located or is normally used in the taxpayer's business;

(5) Interest (including discount) to the extent included in determining entire net income under subsection (a) of this section, less related or applicable expenses, shall be allocated to the state where the transaction took place which resulted in the creation of the obligation with respect to which the interest was earned;

(6) a. If the entire business of the corporation is transacted or conducted within this State, the remainder of its entire net income shall be allocated to this State. If the business of the corporation is transacted or conducted in part without this State, such remainder, whether income or loss, shall be apportioned to this State:

1. For taxable periods beginning before January 1, 2017, by multiplying such remainder by the arithmetical average of the 3 factors set forth in paragraphs (b)(6)b.1.,2., and 3. of this section;

2. For taxable periods beginning after December 31, 2016, and before January 1, 2018, by multiplying such remainder by a fraction, the numerator of which is the sum of the property factor set forth in paragraph (b)(6)b.1. of this section plus the payroll factor set forth in paragraph (b)(6)b.2. of this section plus double the sales factor set forth in paragraph (b)(6)b.3. of this section, and the denominator of which is 4;

3. For taxable periods beginning after December 31, 2017, and before January 1, 2019, by multiplying such remainder by a fraction, the numerator of which is the sum of the property factor set forth in paragraph (b)(6)b.1. of this section plus the payroll factor set forth in paragraph (b)(6)b.2. of this section plus triple the sales factor set forth in paragraph (b)(6)b.3. of this section, and the denominator of which is 5;

4. For taxable periods beginning after December 31, 2018, and before January 1, 2020, by multiplying such remainder by a fraction, the numerator of which is the sum of the property factor set forth in paragraph (b)(6)b.1. of this section plus the payroll factor set forth in paragraph (b)(6)b.2. of this section plus 6 times the sales factor set forth in paragraph (b)(6)b.3. of this section, and the denominator of which is 8; and

5. For taxable periods beginning after December 31, 2019, by multiplying such remainder by the sales factor set forth in paragraph (b)(6)b.3. of this section.

b. The factors shall be calculated as follows:

1. The property factor shall equal the average of the value, at the beginning and end of the income year, of all the real and tangible personal property, owned or rented, in this State by the taxpayer, expressed as a percentage of the average of the value at the beginning and end of the income year of all such property of the taxpayer both within and without this State; provided, that any property, the income from which is separately allocated under paragraph (b)(1) of this section or which is not used in the

taxpayer's business, shall be disregarded, and provided further, that in the case of a non-U.S. corporation, property without this State shall include only property located without this State, but also within the United States. For the purposes of this paragraph, property owned by the taxpayer shall be valued at its original cost to the taxpayer, and property rented by the taxpayer shall be valued at 8 times the annual rental;

2. The payroll factor shall equal the wages, salaries and other compensation paid by the taxpayer to employees within this State, except general executive officers, during the income year expressed as a percentage of all such wages, salaries and other compensation paid within and without this State during the income year to all employees of the taxpayer, except general executive officers; provided, that in the case of a non-U.S. corporation, wages, salaries and other compensation paid without this State during the income year shall include only wages, salaries and other compensation paid during the income year to employees of the taxpayer, except general executive officers, that are deductible under § 882 of the Internal Revenue Code of 1986 (26 U.S.C. § 882), as amended, in determining federal taxable income which is effectively connected with the conduct of a trade or business within the United States;

3. The sales factor shall equal the gross receipts from sales of tangible personal property physically delivered within this State to the purchaser or the purchaser's agent (but not including delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State) and gross income from other sources within this State for the income year expressed as a percentage of all such gross receipts from sales of tangible personal property and gross income from other sources both within and without the State for the income year; provided, that any receipts or items of income that are excluded in determining the taxpayer's entire net income or are directly allocated under paragraphs (b)(1) to (5) of this section shall be disregarded.

c. This paragraph (b)(6) shall not apply in the case of:

1. An asset management corporation;

2. A telecommunications corporation; or

3. A worldwide headquarters corporation.

(7) The remainder of the entire net income of an asset management corporation shall be apportioned to this State on the basis of the ratio of gross receipts from asset management services from sources within this State for the income year expressed as a percentage of all such gross receipts from asset management services both within and without the State for the income year; provided, that any receipts or items of income that are excluded in determining the taxpayer's entire net income or are directly allocated under paragraphs (b)(1) to (5) of this section shall be disregarded. The source of gross receipts from asset management services shall be determined as follows:

a. In the case of asset management services provided directly or indirectly to an individual, gross receipts with respect to such services shall be sourced to the State of the individual's domicile.

b. In the case of asset management services provided directly or indirectly to an institutional investor holding investments for the benefit of others, such as a pension plan, retirement account or pool of intangible investments, including a fund (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.)), or to an institutional investor organized as a pass-through entity (as defined in § 1601(6)a. of this title), gross receipts with respect to such services shall be sourced according to the following rules in the following order:

1. If information regarding domicile of beneficiaries, owners or members is available to the asset management corporation providing asset management services to a pension plan, retirement account or pool of intangible investments, including a fund (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.)), or to an institutional investor organized as a pass-through entity (as defined in § 1601(6)a. of this title) through the exercise of reasonable diligence in ascertaining such information, gross receipts with respect to such services shall be sourced to the domicile of such beneficiaries, owners or members;

2. If information regarding domicile of beneficiaries, owners or members is not available to the asset management corporation providing asset management services to a pension plan, retirement account or pool of intangible investments, including a fund (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.)), or to an institutional investor organized as a pass-through entity (as defined in § 1601(6)a. of this title) through the exercise of reasonable diligence in ascertaining such information, a reasonable alternative method based on information readily available to the asset management corporation may be used to determine the source of gross receipts with respect to such services, and such reasonable alternative method shall be disclosed and explained in the return in which the method is used. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on facts and circumstances in specific cases, reasonable alternative methods used to determine the source of gross receipts from asset management services may take into account the latest population census data available from the United States Census Bureau, the domicile of the sponsor of a pension plan or retirement account or an account or pool of intangible investments (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.)) or the domicile of an institutional investor organized as a pass-through entity (as defined in § 1601(6)a. of this title); or,

3. If

A. The domicile of beneficiaries, owners or members is not ascertained under paragraph (b)(7)b.1. of this section; or,

B. No reasonable alternative sourcing method exists under paragraph (b)(7)b.2. of this section, gross receipts with respect to

such services shall be sourced to the domicile of the institutional investor or the domicile of the sponsor of a pension plan or retirement account or an account or pool of intangible investments, including a fund (other than an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.)), to which asset management services are provided.

c. In the case of asset management services provided directly or indirectly to an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), gross receipts with respect to such services shall be sourced to the domicile of the shareholders of such investment company in accordance with the following procedure: the portion of the gross receipts with respect to such services that are sourced to this State shall be determined by multiplying the total of such gross receipts by a fraction, the numerator of which is the average of the sum of the beginning of year and the end of year balance of shares owned by the investment company shareholders domiciled in this State for the investment company's taxable year for federal income tax purposes and the denominator of which is the average of the sum of the beginning of year and the end of year balance of shares owned by all investment company shareholders. A separate computation shall be made with respect to gross receipts for asset management services provided directly or indirectly to each investment company.

d. In the case of asset management services provided directly or indirectly to a person other than those persons described in paragraph (b)(7)a. through c. of this section, to the domicile of such person.

(8) If the entire business of a telecommunications corporation or a worldwide headquarters corporation is transacted or conducted within this State, the remainder of its entire net income shall be allocated to this State. If the business of a telecommunications corporation or a worldwide headquarters corporation is transacted or conducted in part without this State, such remainder, whether income or loss, shall be apportioned to this State:

a. For taxable periods beginning before January 1, 2017, by multiplying such remainder by the arithmetical average of the 3 factors set forth in paragraphs (b)(6)b.1., 2., and 3.of this section; and

b. For taxable periods beginning after December 31, 2016, by electing, on an annual basis, either to:

1. Multiply such remainder by the sales factor set forth in paragraph (b)(6)b.3. of this section; or

2. Multiply such remainder by the arithmetical average of the 3 factors set forth in paragraphs (b)(6)b.1., 2., and 3. of this section.

(c) If, in the discretion of the Secretary of Finance, the application of the allocation or apportionment provisions of this section result in an unfair or inequitable proportion of the taxpayer's entire net income being assigned to this State, then the Secretary of Finance or the Secretary's delegate may permit or require the exclusion or alteration of the weight to be given to 1 or more of the factors in the formula specified above or the use of separate accounting or other method to produce a fair and equitable result.

(d) In determining the taxable income of a fiscal year taxpayer for that portion of its fiscal year ending within 1977 which falls within the calendar year 1977, the taxpayer may, at its election, treat such period as though it were the entire fiscal year, or it may compute its taxable income for the entire fiscal year and pay the tax herein imposed on that portion of the taxable income so determined which the number of days from January 1, 1977, to the close of the fiscal year in 1977 bears to 365.

(30 Del. C. 1953, § 1903; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 4; 57 Del. Laws, c. 136, §§ 2, 3; 57 Del. Laws, c. 188, §§ 19, 41; 57 Del. Laws, c. 533; 57 Del. Laws, c. 741, § 8B; 58 Del. Laws, c. 320; 59 Del. Laws, c. 113, §§ 1, 2; 60 Del. Laws, c. 18, § 3; 61 Del. Laws, c. 76, § 2; 61 Del. Laws, c. 297, § 1; 62 Del. Laws, c. 56, § 3; 63 Del. Laws, c. 295, § 2; 64 Del. Laws, c. 43, § 8; 67 Del. Laws, c. 263, §§ 1, 2; 68 Del. Laws, c. 82, §§ 9, 10; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 19, § 80; 71 Del. Laws, c. 217, §§ 3-6; 76 Del. Laws, c. 234, §§ 5, 6; 80 Del. Laws, c. 195, §§ 8, 9; 83 Del. Laws, c. 107, § 5.)

§ 1904 Returns.

(a) A tentative return, covering estimated income tax liability for the current income year, to be in such form and containing such information as the Secretary of Finance shall prescribe, shall be filed with the Secretary of Finance as follows: In the case of a calendar year taxpayer, on or before April 15 of the current income year; and, in the case of a fiscal year taxpayer, on or before the fifteenth day of the fourth month of the current income year.

(b) A final return in such form and containing such information as the Secretary of Finance shall prescribe shall be filed with the Secretary of Finance on the date on which the taxpayer's federal return is due.

(c) [Repealed.]

(d) Every return shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true to the best of the officer's knowledge and belief.

(e) Every domestic or foreign corporation not exempt under § 1902 of this title shall file an annual tentative return and an annual final return regardless of the amount of its estimated tax liability, its gross income or its taxable income.

(f) The Secretary may require every corporation exempt from taxation under § 1902(b) of this title to file an information return for each taxable year setting forth the items of gross income and deductions and such other information as the Secretary, by forms or regulation, may prescribe.

(30 Del. C. 1953, § 1904; 51 Del. Laws, c. 298; 57 Del. Laws, c. 67, § 1; 57 Del. Laws, c. 172; 57 Del. Laws, c. 707, § 7; 57 Del. Laws, c. 741, § 8B; 64 Del. Laws, c. 461, § 9; 68 Del. Laws, c. 187, § 13; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 19, § 5.)

§ 1905 Payment of tax.

The tax imposed by this chapter shall be payable as follows:

(1) *Calendar year corporations.* — a. Except as provided in paragraph (1)b. of this section, 50% of the estimated tax liability for the current taxable year shall be paid with the tentative return filed on April 15 of the current taxable year, and the balance of the estimated tax shall be paid in 3 installments as follows: 20% on June 15 of the current taxable year; 20% on September 15 of the current taxable year; and 10% on December 15 of the current taxable year.

b. For small corporations, 25% of the estimated tax liability for the current taxable year shall be paid with the tentative return filed on April 15 of the current taxable year, and the balance of the estimated tax shall be paid in 3 equal installments of 25% on each of June 15, September 15, and December 15 of the current taxable year.

(2) *Fiscal year corporations.* — a. Except as provided in paragraph (2)b. of this section, 50% of the estimated tax liability for the current taxable year shall be paid with the tentative return filed on the fifteenth day of the fourth month of the current taxable year, and the balance of the estimated tax shall be paid in 3 installments as follows: 20% on the fifteenth day of the sixth month of the current taxable year; 20% on the fifteenth day of the ninth month of the current taxable year; and 10% on the fifteenth day of the twelfth month of the current taxable year.

b. For small corporations, 25% of the estimated tax liability for the current taxable year shall be paid with the tentative return filed on the fifteenth day of the fourth month of the current taxable year, and the balance of the estimated tax shall be paid in 3 equal installments of 25% on each of the fifteenth day of the sixth month of the current taxable year; the fifteenth day of the ninth month of the current taxable year; and the fifteenth day of the twelfth month of the current taxable year.

(3) *Additional taxes due on final return.* —

Any additional tax due as computed in the final return required to be filed pursuant to § 1904 of this title shall be paid with such final return.

(4) Tentative tax declarations and payments are not required for returns for taxable periods of less than 92 calendar days.

(5) For purposes of this section, the term "small corporation" means any corporation, including, without limitation, an S corporation subject to § 1158 of this title, if such corporation (or any predecessor corporation) had aggregate gross receipts from sales of tangible personal property and gross income from other sources both within and without the State for purposes of computing the ratio described in § 1903(b)(6)b.3. of this title that do not exceed the applicable threshold of $20,000,000 for any 2 of the 3 taxable years immediately preceding the taxable year for which estimated tax is being computed. (The applicable threshold in this subsection is subject to annual adjustment as more fully set forth in § 515 of this title.)

(30 Del. C. 1953, § 1905; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 5; 60 Del. Laws, c. 15, § 1; 60 Del. Laws, c. 193, § 1; 71 Del. Laws, c. 217, § 7; 80 Del. Laws, c. 195, § 10; 81 Del. Laws, c. 19, § 6.)

§ 1906 Short title.

This chapter shall be entitled "Delaware Corporate Income Tax Law of 1958."

(30 Del. C. 1953, § 1918; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 14; 68 Del. Laws, c. 187, §§ 12, 14.)

§ 1907 Time of taking effect of tax.

The tax shall be first effective with respect to income earned subsequent to December 31, 1957.

(30 Del. C. 1953, § 1920; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 16; 68 Del. Laws, c. 187, §§ 12, 14.)

§ 1908 Historic rehabilitation.

Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Chapter 18 of this title), which credits shall be against taxes imposed under this chapter; provided, however, that all claimed credits are accompanied by a Certificate of Completion issued by the State Historic Preservation Office certifying that such credits have been earned in compliance with that act.

(73 Del. Laws, c. 6, § 7.)

§ 1909 Withholding of income tax on sale or exchange of real estate by nonresident corporations.

(a) *Definitions.* — (1) "Director" means the Director of the Division of Revenue or the Secretary of Finance of the State.

(2) "Nonresident corporation" means, for purposes of this section, a corporation that:

a. Is not organized under the laws of this State, and

b. Is not qualified or registered with the Secretary of State to do business in this State.

(3) "Recorder" means the official with the duty to record deeds and similar instruments.

(4) "Transfer under a deed in lieu of foreclosure" includes all of the following:

a. A transfer by the owner of the property to the following:

1. With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage.

2. With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

b. A transfer by any of the persons described in paragraph (a)(4)a. of this section to a subsequent purchaser for value.

(5) "Transfer under a foreclosure of a mortgage or other lien instrument" includes the following:

a. With respect to the foreclosure of a mortgage, all of the following:

1. A transfer by the sheriff or other party authorized to conduct the foreclosure sale under the mortgage to 1 of the following:

A. The mortgagee or the assignee of the mortgage.

B. Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)a.1.A. and (a)(5)a.1.B. of this section to a subsequent purchaser for value.

b. With respect to the foreclosure of any other lien instrument, all of the following:

1. A transfer by the party authorized to make the sale to 1 of the following:

A. The holder of the debt or other obligation secured by the lien instrument.

B. Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument.

C. Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property.

2. A transfer by any of the persons described in paragraphs (a)(5)b.1.A. and (a)(5)b.1.B. of this section to a subsequent purchaser for value.

(b) *Estimated tax return; alternative forms.* — Every nonresident corporation that sells or exchanges Delaware real estate shall file with the Recorder 1 of the following:

(1) A "Delaware Corporate Tentative Tax Return" due for the quarter in which the sale or exchange is settled, applying the tax rate provided under § 1902 of this title to an estimate of the gain recognized on the sale or exchange.

(2) An alternative form prepared by the Director to calculate income tax at the tax rate provided under § 1902 of this title, applied to the difference between the total amount realized by the transferor and the net balance due at the time of settlement of all recorded liens encumbering the real estate.

(3) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is exempt from recognition of capital gain with respect to the tax year of the sale or exchange, with a statement of the facts and a citation to the provision or provisions of the Internal Revenue Code (Title 26, U.S.C.) relied upon.

(4) An alternative form prepared by the Director to declare under penalties of perjury that the sale or exchange of real estate is 1 of the following:

a. A transfer under a foreclosure of a mortgage or other lien instrument.

b. A transfer under a deed in lieu of foreclosure.

(c) *Due date of estimated tax return; payment.* — The return or form provided for in subsection (b) of this section, and the estimated tax reported due on such return or form, shall be remitted with the deed to the Recorder before the deed shall be recorded. Such payment shall be withheld from the net proceeds of the sale. To the extent that the sale does not result in net proceeds being available for the payment of the estimated tax, the Recorder may accept the form without payment, upon receipt of confirmation from the closing attorney that no funds are available for payment of the tax and that no funds were distributed to the seller.

(d) *Payment credited to transferor.* — The estimated tax remitted under subsection (c) of this section shall be deemed to have been paid to the Director on behalf of the nonresident transferor and the nonresident transferor shall be credited for purposes of § 1905 of this title as a payment made on the date remitted to the Recorder.

(e) *Persons or entities not liable for payments.* — Neither the transferee, title insurance producer, title insurer, settlement agent, closing attorney, lending institution, nor the real estate agent or broker in a transaction subject to this section shall be liable for any amounts required to be collected and paid over to the Recorder or Director under this section.

(f) *Tax not imposed; lawful collection of taxes not prohibited.* — This section does not:

(1) Impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) Prohibit the Director from collecting any taxes due from a transferor in any other manner authorized by law.

(77 Del. Laws, c. 291, § 3; 81 Del. Laws, c. 363, § 3; 83 Del. Laws, c. 107, § 6.)

§ 1910, 1911 Interests and additions to the tax in case of deficiencies; addition to the tax in case of nonpayment; refunds [Repealed].

Repealed by 68 Del. Laws, c. 187, § 12, effective Jan. 1, 1992.

§ 1912 Penalties — Late filing; failure to file returns; false and fraudulent return; failure to maintain records.

(a) Any person who wilfully fails, neglects or refuses to make a return or to pay the tax as prescribed in this chapter or who shall refuse to permit the Secretary of Finance to examine the books, papers and records of any corporation liable to pay tax under this chapter shall be fined not more than $3,000, or imprisoned not more than 6 months, or both. Such penalty shall be in addition to any other penalties imposed by this chapter.

(b) Any person who wilfully makes a false and fraudulent return of net income, made taxable by this chapter, shall be fined not more than $3,000, or imprisoned not more than 6 months, or both. Such penalty shall be in addition to any other penalties imposed by this

chapter.

(c) Any corporation which fails to maintain and keep, for a period of 3 years after any return is filed under this chapter, such record or records of its business within this State for the period covered by such return, as may be required by the Secretary of Finance, shall be fined $3,000. Such penalty shall be in addition to any other penalties imposed by this chapter.

(d) [Deleted.]

(e) The Superior Court shall have exclusive jurisdiction over all offenses under this chapter.

(f) [Deleted.]

(30 Del. C. 1953, § 1913; 51 Del. Laws, c. 298; 51 Del. Laws, c. 315, § 11; 57 Del. Laws, c. 66; 57 Del. Laws, c. 741, § 8B; 59 Del. Laws, c. 113, § 5; 61 Del. Laws, c. 425, §§ 1-4; 63 Del. Laws, c. 293, §§ 3, 4; 67 Del. Laws, c. 40, § 15; 68 Del. Laws, c. 187, § 12.)

§ 1913-1916 Court action to compel furnishing of information; lien of tax; collection of tax; administration by Secretary of Finance [Repealed].

Repealed by 68 Del. Laws, c. 187, § 12, effective Jan. 1, 1992.

§ 1917, 1918 Short title; time of taking effect of tax [Transferred].

Transferred.

Part II
Income, Inheritance and Estate Taxes
Chapter 20
BUSINESS TAX CREDITS AND DEDUCTIONS
Subchapter I
Neighborhood Assistance Tax Credit

§ 2001 Short title.

This subchapter shall be known and may be cited as the "Neighborhood Assistance Act."

(30 Del. C. 1953, § 2001; 56 Del. Laws, c. 405, § 1; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2.)

§ 2002 Definitions.

As used in this subchapter:

(1) "Community development corporation" and "community-based development organization" means any locally-based, resident-controlled, nonprofit organization that plans and implements Community Economic Development projects in impoverished areas or for low- and moderate-income people and that holds a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of the Internal Revenue Code.

(2) "Community services" means any type of counseling and advice, emergency assistance or medical care furnished to individuals or groups in an impoverished area or for low and moderate income families.

(3) "Crime prevention" means any activity that aids in the reduction of crime in an impoverished area or to assist low and moderate income families.

(4) "Economic development" means any activity that aids in business development and ownership in impoverished areas.

(5) "Education" means any type of scholastic instruction to an individual who resides in an impoverished area or for low and moderate income families that enables that individual to meet educational requirements for known job vacancies.

(6) "Housing" means any activity that aids in substantial renovation or new construction of rental or owner-occupied residences for low and moderate income families in impoverished areas or for low and moderate income families.

(7) "Impoverished area" means any clearly-defined, economically-distressed urban or rural area in this State that is certified as such by the Delaware State Housing Authority. Such certification shall be made on the basis of federal census studies and current indices of social and economic conditions.

(8) "Job training" means any type of instruction to an individual who resides in an impoverished area or for low and moderate income families that enables an individual to acquire vocational skills so that the individual can become employable or be able to seek a higher grade of employment.

(9) "Low and moderate income family" means an individual or family whose total household income is at or below 80% of the Area Median Income as established by the federal Department of Housing and Urban Development.

(10) "Neighborhood assistance" means the furnishing of financial assistance, labor, material and technical advice to aid in the physical, economic and community improvement of any part or all of an impoverished area or to assist low and moderate income families through the provision of community services, crime prevention, economic development, education, housing, and job training.

(11) "Neighborhood organization" means any organization performing neighborhood assistance in an impoverished area or for low and moderate income families and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of the Internal Revenue Code, or any community development corporation or community-based development organization as defined in this section.

(12) "Person" or "persons" shall include any individual; any form of company or corporation which is lawful within the State (including limited liability companies and S corporations), any form of partnership which is lawful within the State (including limited liability partnerships); and any trust or estate.

(30 Del. C. 1953, § 2002; 56 Del. Laws, c. 405, § 1; 57 Del. Laws, c. 741, § 9A; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 172, §§ 1-8.)

§ 2003 Declaration of policy.

It is declared to be public policy of this State to encourage the investment by persons in offering neighborhood assistance both directly and by contributing to neighborhood organizations, to benefit individuals living in impoverished areas or low and moderate income families. This public policy further encourages the creation of significant partnerships among community-based development organizations, the private sector and the government.

(30 Del. C. 1953, § 2003; 56 Del. Laws, c. 405, § 1; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 172, § 9.)

§ 2004 Qualification for tax credit.

For each taxable period beginning on or after July 1, 2007, a person that contributes to a neighborhood organization or that provides neighborhood assistance in an impoverished area or for low and moderate income families shall receive a tax credit as provided in § 2005 of this title if the Director of the Delaware State Housing Authority annually approves the proposal of the taxpaying investor. The Director of the Delaware State Housing Authority shall promulgate rules and regulations for the approval or disapproval of such proposals by taxpaying investors.

A Neighborhood Assistance Act Advisory Council, whose members shall be appointed every 2 years by the Director of the Delaware State Housing Authority and comprising community development practitioners and representatives of the private and public sectors shall be established. The Neighborhood Assistance Act Advisory Council shall provide guidance and recommendations to the Director of the Delaware State Housing Authority in establishing program priorities and mechanisms for the program to be conducted and determining the impoverished area or areas selected and the estimated amount to be invested in the program or neighborhood organization. The Neighborhood Assistance Act Advisory Council shall assist the Delaware State Housing Authority in establishing and promulgating rules and regulations for the approval or disapproval of proposals by taxpaying investors and neighborhood organizations.

(30 Del. C. 1953, § 2004; 56 Del. Laws, c. 405, § 1; 57 Del. Laws, c. 741, § 9A; 58 Del. Laws, c. 492, § 2; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 80, § 111(c); 76 Del. Laws, c. 172, § 10; 79 Del. Laws, c. 95, § 1.)

§ 2005 State income tax credit; amount.

(a) For purposes of computing taxable income under Chapter 11 or Chapter 19 of this title, relating to the personal income tax and the corporation income tax, the Secretary of Finance shall allow a credit equal to 50% of the amount invested by a person in a program or in a neighborhood organization the proposal for which was approved under § 2004 of this title. Such tax credit, however, shall not exceed $50,000 per person per year. No person may receive more than $100,000 in tax credits during any 3-year period.

(b) Any investment made for which the tax credit herein described is claimed by a taxpayer shall not also be eligible for treatment as a charitable contribution deduction for state income tax purposes in calculating Delaware income tax liability.

(30 Del. C. 1953, § 2005; 56 Del. Laws, c. 405, § 1; 57 Del. Laws, c. 741, § 9B; 58 Del. Laws, c. 492, § 3; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 172, §§ 11, 12; 79 Del. Laws, c. 95, § 1.)

§ 2006 Limitations on credits.

(a) The aggregate amount of such tax credits approved for all persons may not exceed $1,000,000 in any 1 fiscal year.

(b) The Director of the Delaware State Housing Authority shall ensure that each application has the date and time of submission recorded. Credits must be awarded in chronological order based upon the date and time upon which each complete application is received by the Delaware State Housing Authority. If a credit award results in exceeding the $1,000,000 limitation for the fiscal year in which it is awarded, the amount by which such credit award exceeds $1,000,000 must carry over to the succeeding fiscal year and must receive priority for that year.

(72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 80, § 111(c); 76 Del. Laws, c. 172, § 13; 81 Del. Laws, c. 351, § 1.)

§ 2007 Unused tax credit.

(a) Any person making contributions after July 1, 2007, that produce credits under § 2005 of this title, in amounts in excess of the maximum allowable credit permitted under § 2005 of this title shall be permitted to carry forward the excess contribution as a credit in any of the next 5 years subsequent to the date of the initial grant, subject to the limitation imposed by subsection (b) of this section.

(b) Excess contributions are those contributions that are not available as a credit in the year of the grant because of the limitation imposed by § 2005 of this title. The excess contributions carried over from prior years shall be allowable only after contributions for the current year have been credited, and in no event shall the total credit under this subchapter for any 1 year exceed the limitation imposed by § 2005 of this title.

(30 Del. C. 1953, § 2006; 56 Del. Laws, c. 405, § 1; 58 Del. Laws, c. 492, § 4; 72 Del. Laws, 1st Sp. Sess., c. 250,, § 2; 76 Del. Laws, c. 172, § 14.)

§ 2008 Administrative costs.

The Delaware State Housing Authority is authorized to use up to $50,000 of the interest income from the Housing Development Fund created under § 4030 of Title 31 for the support of administrative functions associated with this subchapter.

(81 Del. Laws, c. 351, § 2.)

Subchapter II

Tax Credit and License Fee Reduction for Creation of Employment and Qualified Investment in Business Facilities

§ 2010 Definitions.

As used in this subchapter and in subchapters III, V and VIII of this chapter:

(1) "Qualified facility" is any qualified property located within this State that constitutes a new facility or an expanded facility and that is used by the taxpayer in or in connection with a qualified activity.

(2) "Qualified property" is:

a. Any building and its structural components and any other improvement to real property;

b. The land on which such building or other improvement is located; and

c. Any machinery, equipment and other tangible personal property (other than inventory and property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business) located in such building or other improvement or located on such land.

If any property is owned, leased or subleased by the taxpayer in common with any other person or persons, such property may constitute "qualified property" only to the extent of the taxpayer's proportionate interest.

(3) "Qualified activity" is:

a. Any activity constituting manufacturing within the meaning of § 2701(2) of this title (other than any repair, refurbishing, retooling (such as retooling by an automobile manufacturer), recycling or other similar process or procedure that merely preserves or restores the value of a product or that does not change the inherent nature of a product or material);

b. Engaging in business as a wholesaler, as defined in § 2901(21) of this title, or as a drayperson, as defined in § 2301(a)(7) of this title;

c. The operation of any laboratory or other similar facility for the purpose of scientific, agricultural or industrial research, development or testing;

d. The administration, management or support operations, including marketing, of any activity described in paragraphs (3)a. through j. of this section;

e. Any activity more than 50% of whose annual gross receipts are derived from computer processing or data preparation or processing services, including data entry (but not word processing) and making data processing equipment available on an hourly or time-sharing basis;

f. Any activity more than 50% of whose annual gross receipts are derived from engineering services, including providing and supervising the taxpayer's engineering staff on temporary contract to other firms. The term "engineering services" does not include businesses providing engineering personnel but not general supervision; nor does it include businesses primarily engaged in architectural or photogrammetric engineering;

g. Any activity more than 50% of whose annual gross receipts are derived from consumer credit reporting services, including adjustment and collection services and credit reporting services. "Adjustment and collection services" are establishments primarily engaged in the collection or adjustment of claims, other than insurance. "Credit reporting services" are establishments primarily engaged in providing mercantile and consumer credit reporting services;

h. Any activity more than 50% of whose annual gross receipts are derived from the sale at wholesale of computer software other than custom software by the developer of such software;

i. Telecommunications services which, for purposes of this chapter, shall mean the administration, supervision, maintenance, repair and deployment of the physical infrastructure associated with the provision of telecommunications services, including, but not limited to, the receipt of requests for service and the dispatch of repair and maintenance personnel; the coordination, installation and record activity for the initiation of telecommunication services, including the installation of equipment; the maintenance of records and operations information regarding a telecommunications system or network; and engineering and construction services related to the deployment of infrastructure for a telecommunications system or network;

j. Any activity more than 50% of whose annual gross receipts are derived from aviation services. The term "aviation services" means a business conducted by an employer in Delaware:

1. At an airport owned or operated by:

A. The State,

B. Any political subdivision of the State,

C. Any agency or instrumentality of the State or of its political subdivisions, or

D. A bi-state authority created by a compact between states and approved by the Congress of the United States,

2. Employing at least 100 qualified employees,

3. Constituting the inspection, maintenance, repair, overhaul or remanufacture of aircraft, aircraft engines and other aircraft components or parts; the performance of retrofits of aircraft engines and other components to aircraft and the performance of other modifications to aircraft (including interior and exterior modifications, whether to new or used aircraft, and the design, engineering, installation and certification of such modifications); the sale of aircraft components or parts and lubricants or other consumable goods in connection with the foregoing activities; or any combination of the foregoing activities; or

k. Any combination of the activities described in paragraphs (3)a. through (3)j. of this section.

(4) "New facility" is any qualified property (other than an expanded facility or a replacement facility) placed in service by the taxpayer as owner, lessee or sublessee after December 31, 1984; provided, however, that such phrase shall not include any property the

original use of which commenced prior to the time the taxpayer placed such property in service if:

a. At any time within 1 year after the date the taxpayer placed such property in service, the taxpayer or a related person uses such property in or in connection with any qualified activity; and

b. Such property was used by any person, at any time within the 1-year period ending on the date the taxpayer placed such property in service, in the same or substantially the same qualified activity.

(5) "Expanded facility" is any qualified property (other than a replacement facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property (not including any improvement or addition resulting from a repair, refurbishing, retooling (such as retooling by an automobile manufacturer), recycling or other similar process or procedure that merely preserves or restores the value of an existing facility, and not including any improvement or addition that, in the determination of the Secretary, does not constitute an integral part of a qualified activity), if such improvements or additions are placed in service by the taxpayer as owner, lessee or sublessee after December 31, 1984, but only to the extent of the taxpayer's qualified investment in such improvements or additions. For property placed in service after July 1, 1992, a facility which constitutes a replacement facility, as defined in paragraph (6) of this section, shall be deemed an expanded facility, and the investment shall be deemed a qualified investment, to the extent the taxpayer's investment in the replacement facility exceeds the greater of:

a. One hundred and fifty percent of the unadjusted cost basis of the facility which is being replaced; or

b. One hundred percent of the market value of the facility which is being replaced.

(6) "Replacement facility" is any property (other than an expanded facility) that replaces or supersedes any other property located within this State that:

a. The taxpayer or a related person used in or in connection with any activity for more than 2 years during the period of the 5 consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; and

b. Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of 1 year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(7) "Placed in service" and "original use" shall have the meanings ascribed to such phrases under § 167 of the Internal Revenue Code (26 U.S.C. § 167), and regulations promulgated thereunder.

(8) "Qualified employee" is a person employed within this State on a regular and full-time basis.

(9) "Qualified investment" for any taxable year is the value of a qualified facility as of the last business day of such taxable year. Such value during any taxable year of the taxpayer shall be:

a. If the qualified facility is owned by the taxpayer, the original cost of such facility to the taxpayer; or

b. If the qualified facility is leased or subleased by the taxpayer, 8 times the net annual rent paid or incurred by the taxpayer for such facility. The net annual rent shall be the gross rent paid or incurred by the taxpayer for such facility during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of such facility during such taxable year.

(10) "Related person" means:

a. A corporation, partnership, association or trust controlled by the taxpayer;

b. An individual, corporation, partnership, association or trust that is in control of the taxpayer; or

c. A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer.

For purposes of this paragraph, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote and 50 percent or more of the total number of shares of all other classes of such corporation's stock; "control," with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in § 267(c) of the Internal Revenue Code (26 U.S.C. § 267(c)) other than paragraph (c)(3) of such section.

(11) "Qualified facility gross receipts" means the total Delaware gross receipts (as defined and computed under those provisions of Chapter 23, 27 or 29 of this title that apply to the qualified activity in question) attributable to and derived by the taxpayer from the operation of the qualified facility in question.

(12) "Secretary" means the Secretary of Finance or the Secretary's delegate.

(13) "Taxpayer" means an individual pass-through entity, as defined in § 1601 of this title, or corporation.

(14) "Full-time employment" means employment of 1 individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

(15) "Health care benefits" means financial protection against the medical care cost arising from disease and accidental bodily injury for which cost the employer pays at least 50% for employees employed by the employer for a continuous period of 6 months or more.

(16) "Brownfield" shall have the meaning set forth in § 9103 of Title 7.

(17) "Gross receipts" shall have the same definition as that contained in the denominator described in § 1903(b)(6)b.3. of this title plus the amount of federal taxable income of the taxpayer attributable to patent and copyright royalties.

(18) "Delaware base amount" shall mean the base amount as defined in § 41(c) of the Internal Revenue Code of 1986, except that

references to "qualified research expenses" shall mean "Delaware qualified research and development expenses" and references to "qualified research" shall mean "Delaware qualified research and development." References to "fixed base percentage" shall mean the percentage which the aggregate Delaware qualified research and development expenses for the 4 taxable years immediately preceding the taxable year in which the expenses are taken into account for purposes of Delaware income taxation bear to the aggregate gross receipts for such years. The fixed base percentage for a taxpayer who has fewer than 4 but at least 1 taxable year with gross receipts and Delaware qualified research and development expenses shall be determined in the same manner using only the number of immediately preceding taxable years in which both existed to arrive at the percentage. In the event the taxpayer has in such 4 immediately preceding taxable years no year in which it had both gross receipts and Delaware qualified research and development expenses, the fixed base percentage shall be deemed to be zero.

(19) "Delaware qualified research and development" shall mean qualified research as defined in § 41(d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 41(d)) that is conducted in this State. The funding of research and development by any person or entity under common control with the ultimate parent corporation of the taxpayer shall not constitute "funded research" as described in § 41(d)(4)(H) of the Internal Revenue Code of 1986 for the purpose of determining Delaware qualified research and development hereunder.

(20) "Delaware qualified research and development expenses" shall mean qualified research expenses as defined in § 41(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 41(b)) taken into account for purposes of Delaware income taxation for Delaware qualified research and development.

(21) "Qualified tax liability" shall mean the liability for taxes imposed under Chapters 19 and 11 of this title on corporations, shareholders of an S corporation, sole proprietors, partners or members of any other pass-through entity eligible to apply for credits under this subchapter remaining after application of all other credits allowed under this chapter.

(22) "Research and development tax credit" shall mean the credit provided under § 2070 of this title.

(23) "Clean energy technology device" shall mean:

a. Solar power devices, which shall mean devices or systems that use photovoltaic solar cells to produce electricity or that use solar energy to heat water;

b. Fuel cells, which shall mean devices or systems that use an electrochemical generator that converts the chemical energy of a fuel and an oxidant directly to electricity;

c. Wind power devices, which shall mean devices or systems that convert the motion of wind into electric power; or,

d. Geothermal power devices, which shall mean devices or systems that use the temperature differentials between the atmosphere and subterranean areas to heat or cool buildings or to heat water.

(24) "Clean energy technology device manufacturing" shall mean any activity constituting manufacturing within the meaning of § 2701(2) of this title (other than any repair, refurbishing, retooling, recycling or other similar process or procedure that merely preserves or restores the value of a product or that does not change the inherent nature of a product or material) of clean energy technology devices.

(62 Del. Laws, c. 155, § 3; 62 Del. Laws, c. 328, § 1; 64 Del. Laws, c. 460, §§ 1, 2; 67 Del. Laws, c. 120, § 1; 68 Del. Laws, c. 6, § 1; 68 Del. Laws, c. 202, §§ 1, 4-6, 8, 13, 18; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 219, § 1; 70 Del. Laws, c. 487, §§ 1, 12-14, 22; 72 Del. Laws, c. 23, §§ 1-3; 72 Del. Laws, c. 442, § 1; 72 Del. Laws, c. 467, § 4; 73 Del. Laws, c. 183, § 7; 75 Del. Laws, c. 352, § 33; 76 Del. Laws, c. 78, § 2; 77 Del. Laws, c. 86, § 30; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 1; 78 Del. Laws, c. 47, §§ 2-6; 78 Del. Laws, c. 100, § 1; 80 Del. Laws, c. 195, § 8.)

§ 2011 Investment and employment credit against corporation income tax.

(a) Any taxpayer (other than a public utility as defined in Chapter 1 of Title 26, unless such public utility is a provider of telecommunications services as described in § 2010(3)i. of this title) that:

(1) During any consecutive 12-month period has placed in service a qualified facility in which such taxpayer has during such period made a qualified investment in an amount equal to or exceeding $200,000;

(2) During the consecutive 12-month period referred to in paragraph (a)(1) of this section employs 5 or more qualified employees;

(3) Within 36 months after the date on which a qualified facility is placed in service (which 36-month period shall include the month in which the qualified facility is placed in service) applies for written approval from the Secretary or the Secretary's designee confirming the taxpayer's qualification for the tax credits and license reductions set forth in this subchapter;

shall (except as otherwise provided in subsection (e) of this section) be allowed a credit against the tax imposed by Chapter 19 of this title for the taxable year in which all conditions set forth in this subsection shall be met and for any of the 9 following taxable years in which such facility is a qualified facility with respect to the taxpayer on the last business day thereof. The amount of such credit for any such year shall be the amount determined under subsection (b) of this section.

(b) Subject to the limitations contained in subsections (c) and (d) of this section, the amount of the credit allowable under subsection (a) of this section with respect to any qualified facility for each of the taxable years falling within the 10-year life of such credit shall be the sum of:

(1) Five hundred dollars multiplied by that number that is the greater of:

a. The difference between:

1. The number of qualified employees employed by the taxpayer on a date 1 year after the date on which the qualified facility is

placed in service; and

2. The sum of the number of qualified employees, if any, that were employed by the taxpayer and by any related person on the day immediately preceding the date on which such qualified facility is placed in service by the taxpayer; and

b. The difference between:

1. The number of qualified employees employed by the taxpayer on a date 1 year after the date on which occurs the event described in paragraph (a)(2) of this section; and

2. The sum of the number of qualified employees, if any, that were employed by the taxpayer and by any related person on the day immediately preceding the date on which occurs the event described in paragraph (a)(2) of this section;

provided, in either case, that no credit shall be allowable under this paragraph with respect to any qualified employee, except to the extent that the qualified investment in such qualified facility equals or exceeds $40,000 per qualified employee; and provided further, that no credit shall be allowable under this paragraph with respect to any qualified employee to the extent a credit was claimed by the taxpayer or any related person under this paragraph for such qualified employee with respect to any other qualified facility placed in service in the same or a prior taxable year; plus

(2) Five hundred dollars multiplied by each $100,000 (or major fraction thereof) of qualified investment in such qualified facility.

(3) In the case of a qualified facility used in connection with the qualified activity described in § 2010(3)i. of this title, the amount of the credit allowable under subsection (a) of this section with respect to such a facility for each of the taxable years falling within the 10-year life of such credit shall be determined by the application of paragraphs (b)(1) and (2) of this section, except that:

a. The amount of investment required per qualified employee for purposes of credits determined under paragraph (b)(1) of this section shall be $15,000 rather than $40,000, and the amount of minimum required investment determined under subsection (a) of this section shall be $750,000 rather than $200,000;

b. No amount of investment may be included in any of the calculations required under paragraph (b)(2) or (3) of this section unless the taxpayer has elected that any such amount of investment shall not be also considered in determining the extent to which the taxpayer has satisfied any obligation it might have under § 711 of Title 26 [repealed]; and

c. The minimum number of qualified employees required for purposes of credits determined under paragraph (b)(1) of this section shall be 50 rather than 5, provided further, that such 50 qualified employees shall be in addition to the number of qualified employees employed by the taxpayer within this State as of December 31, 1996, and no credit shall be allowed under paragraph (b)(2) of this section until the taxpayer shall have employed at least 50 qualified employees in addition to the number of qualified employees employed within this State as of December 31, 1996.

(c) If the number of qualified employees employed by the taxpayer during any taxable year of the taxpayer later than the taxable year in which such qualified facility was placed in service by the taxpayer shall be less than 90 percent of the number of qualified employees that were taken into account under subsection (b) of this section, the amount of the credit otherwise allowable under subsection (b) of this section for such later taxable year shall be reduced by 1 percent for each full percentage point that the number of such qualified employees in such later taxable year is less than the number of qualified employees that were taken into account under subsection (b) of this section.

(d) The amount of the credit allowable under this section for any taxable year shall not exceed 50 percent of the amount of tax imposed upon the taxpayer by Chapter 19 of this title for such taxable year (computed without regard to this section).

(e) No credit shall be allowable under subsection (a) of this section unless at least 25 percent of all qualified employees employed by the taxpayer on the date a qualified facility is placed in service by the taxpayer are residents of this State on such date.

(f) The amount of the credit determined under subsections (b) and (c) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in subsection (d) of this section shall be a credit carryover to each of the following taxable years that fall within the 10-year life of the credit specified in subsection (a) of this section. The entire amount of the credit that is not so allowable shall be carried to the earliest of the taxable years to which such credit may be carried, and the portion of such credit that shall be carried to each of the other taxable years to which such credit may be carried shall be the excess, if any, of such credit over the sum of the credits allowable under this section (including subsection (d) of this section) for each of the prior taxable years to which such credit may be carried. In applying the limitation contained in subsection (d) of this section to any taxable year to which a credit may be carried under this subsection, any credit carryovers to such taxable year shall be considered to be applied in reduction of the tax imposed by Chapter 19 of this title for such taxable year in the order of the taxable years from which such credits are carried over, beginning with the credit carryover from the earliest taxable year, and only after all such credit carryovers to such taxable year have been allowed in full shall any credit that would be allowable in such taxable year without regard to this subsection be allowed.

(g) If any facility for which a credit was allowable to the taxpayer under subsection (a) of this section is not a qualified facility with respect to the taxpayer on the last business day of any taxable year during the 10-year life of the credit specified in subsection (a) of this section and if on the last business day of any later taxable year ending after the expiration of such 10-year life such facility again constitutes a qualified facility with respect to the taxpayer (whether as a result of the same qualified activity or a different qualified activity), the Secretary may, upon application of the taxpayer filed on or before the first day of the fourth month following the close of such later taxable year (and filed in such form and manner as may be prescribed in regulations by the Secretary), allow a credit for such later taxable year and for each of that number of the following taxable years as shall be equal to the difference between 9 and the number of prior taxable years for which a credit was allowable to the taxpayer for such qualified facility. The amount of the credit, for such later

taxable year and for each such following taxable year, shall be the amount of the credit determined under subsection (b) of this section for the taxable year such qualified facility was first placed in service by the taxpayer, but subject in such later taxable year and in each such following taxable year to the limitations contained in subsections (c) and (d) of this section. The Secretary shall allow such credit if the Secretary determines that the resumption of a qualified activity with respect to such qualified facility will provide increased opportunities for employment in this State and will result in a meaningful contribution to the economy of this State.

(h)-(j) [Repealed.]

(k) Any taxpayer (other than a public utility as defined in Chapter 1 of Title 26) that for any taxable year has a qualified investment in a qualified facility that is placed in service by the taxpayer during such taxable year shall be allowed a credit under this section irrespective of the limitations contained in subsection (a)(2), (b) or (c) of this section; provided, however, as follows:

(1) Such investment must equal or exceed the greater of:

a. $1 million; or

b. 15% of the unadjusted basis in such facility at the close of the taxable year preceding the date on which installation or construction of the investment described in this paragraph commenced;

(2) Substantially all the use of the qualified facility by the taxpayer occurs in the activity of aviation services, manufacturing or wholesaling as defined respectively in § 2010(3)j., § 2701(2) or § 2901(21)a. of this title;

(3) The amount of the credit allowed under this subsection shall be 75% of the credit allowable if the taxpayer were eligible for credit under subsection (a) of this section, subject, however, to limitation and carryover provisions under subsections (d) and (f) of this section. Credits claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between $500,000 and the amount of credits claimed under § 2012 of this title for the 12 months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused credits arose by virtue of § 2011(d) of this title;

(4) No facility may be eligible for credits under both this subsection and subsection (a) of this section;

(5) Should the qualified facility be an expanded facility, total wages paid during the taxable year by the taxpayer to qualified employees employed at the qualified facility must equal or exceed 85% of the wages paid by the taxpayer to qualified employees at the same facility during the 12 months preceding the date on which the qualified facility was placed in service; and

(6) Construction of the qualified facility was commenced after February 6, 1992. For purposes of this paragraph, construction of a facility shall commence on the date on which site alteration first occurs.

(*l*) Except as otherwise provided in § 2021(d) of this title, in the case of a qualified facility located on a brownfield, this section shall be applied with respect to such qualified facility by:

(1) Treating as a qualified activity any business, trade, commerce, profession or vocation carried on in or in connection with such qualified facility,

(2) Treating as additional qualified investment all amounts expended by the taxpayer for environmental investigation and remediation of the brownfield, and

(3) Substituting "$650" for "$500" in each of subsections (b)(1) and (b)(2) of this section.

The total incremental credits allowable to the taxpayer under this subsection (*l*) shall not exceed the aggregate amount expended by the taxpayer for environmental investigation and remediation of the brownfield.

(62 Del. Laws, c. 155, § 3; 64 Del. Laws, c. 460, § 2; 68 Del. Laws, c. 202, §§ 3, 14; 70 Del. Laws, c. 142, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 219, § 2; 70 Del. Laws, c. 487, §§ 3, 5, 15-17; 71 Del. Laws, c. 217, §§ 14, 15; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 2; 78 Del. Laws, c. 47, §§ 7-10; 78 Del. Laws, c. 76, § 67; 78 Del. Laws, c. 100, § 2.)

§ 2012 Reduction in license fees for investment and employment.

(a) Any taxpayer that satisfies the requirements contained in § 2011(a) or § 2011(l) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax), for the taxable year of the taxpayer in which a qualified facility is placed in service by the taxpayer, shall also be allowed a reduction in any license fee, other than those set forth in §§ 2902(c)(4) and 2905(h) of this title, imposed upon the taxpayer's gross receipts by Chapter 27 of this title or by §§ 2301(d), 2902, 2903, 2904 of this title or, in the case of an activity described in §§ 2010(3)j., 2905 of this title for each taxable period used in computing the amount of such license fee that ends within or with such taxable year of the taxpayer, and for each such taxable period that ends within or with any of the 9 following taxable years in which such facility is a qualified facility with respect to the taxpayer on the last business day thereof. The amount of each such reduction in such license fee shall be determined under subsection (b) of this section.

(b) The reduction in the license fee allowable by subsection (a) of this section shall be that percentage of such license fee (computed without regard to this section) imposed upon the taxpayer's qualified facility gross receipts attributable to the operation of such qualified facility (as determined under § 2010(11) of this title) as shall be determined in accordance with the following table:

If the number of full calendar months elapsed since such qualified facility was placed in service by the taxpayer is:	The license fee (computed without regard to this section) shall be reduced by the following percentage:

1	through 12	90%
13	through 24	80%
25	through 36	70%
37	through 48	60%
49	through 60	50%
61	through 72	40%
73	through 84	30%
85	through 96	20%
97	through 108	10%
109	through 120	5%
	Over 120	0%

(c) Any taxpayer placing in service a facility meeting the conditions set forth in § 2011(k) of this title shall be allowed a reduction in license fees other than those set forth in §§ 2902(c)(4) and 2905(h) of this title equal to 75% of the reduction allowable to taxpayers qualifying under subsection (a) of this section; provided, however, that such credits may not exceed $500,000 over their 10-year life. No taxpayer may be eligible for reductions under both this subsection and subsection (a) of this section for the same facility.

(62 Del. Laws, c. 155, § 3; 64 Del. Laws, c. 460, § 2; 68 Del. Laws, c. 202, § 15; 70 Del. Laws, c. 219, § 3; 70 Del. Laws, c. 487, §§ 18, 19; 71 Del. Laws, c. 217, § 8.)

§ 2013 Rules and regulations.

The Secretary shall prescribe such rules and regulations as the Secretary may deem necessary to carry out the purposes of this subchapter and subchapter III of Chapter 20 of this title.

(62 Del. Laws, c. 155, § 3; 64 Del. Laws, c. 460, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2014 Report on effect of subchapters II and III of this chapter [Repealed].

64 Del. Laws, c. 460, § 2; 69 Del. Laws, c. 458, § 1; repealed by 78 Del. Laws, c. 47, § 11, eff. July 1, 2011.

§ 2015 Successors in title.

Notwithstanding any other provision of this subchapter, §§ 2011 and 2012 of this title shall also apply to a successor in title who acquires a facility through purchase or a transaction described in § 368(a)(1) of the Internal Revenue Code [26 U.S.C. § 368(a)(1)] (or successor provision) for so long as such qualified facility continues to be a qualified facility with respect to such successor, but such qualification shall cease at the same time it would have ceased had the property remained under the same ownership as was the case on the date the qualified facility was placed in service.

(71 Del. Laws, c. 314, § 9.)

Subchapter III

Tax Credit and License Fee Reduction for Creation of Employment and Qualified Investment in Targeted Areas

§ 2020 Definitions.

As used in this subchapter:

(1) "Commercial activity" is an activity constituting a business licensable under § 2301 of this title, other than any of the following business: Amusement conductor, amusement park operator, auctioneer, automobile race operator, bowling alley operator, circus exhibitor, entertainment agent, finance or small loan agency, floor show operator, health spa or health club, junk dealer, motion picture theater, outdoor music festival promoter, pawnbroker, pool table operator, public bath keeper, salvage yard operator and self-service laundry or dry cleaner.

(2) "Retail activity" is engaging in business as a retailer, as defined in § 2901(18) of this title, other than by providing retail food and beverage services (including eating and drinking places, but excluding grocery and convenience stores), engaging in automobile sales or providing recreation or entertainment.

(3) "Targeted area" means any of the following:

a. Any real property located within this State that is owned by the State, any political subdivision of the State, or any agency or instrumentality of the State or its political subdivisions.

b. Any real property located within this State that is owned by an organization described in § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) which is organized and operated, and which holds such real property, solely for the purpose of fostering economic development within this State.

c. Any area located within this State that has been approved by the United States Department of Commerce as a general purpose foreign trade zone.

d. [Repealed.]

e. 1. Following each decennial census, any census tract designated by the Director of the Division of Small Business, in conjunction with the Secretary of Finance, based on all of the following criteria:

A. Percent of persons below poverty level.

B. Percent of households receiving public assistance.

C. Unemployment rate.

D. Median household income.

E. A significant presence of vacant property within the census tract.

F. The character of the community.

G. Population.

2. Based on the criteria under paragraph (3)e.1. of this section, the Director of the Division of Small Business, in conjunction with the Secretary of Finance, shall allocate targeted area status on the following basis:

A. Ten in the City of Wilmington.

B. Ten in New Castle County outside of the City of Wilmington.

C. Five in Kent County.

D. Five in Sussex County.

3. On request, the Director of the Division of Small Business, in conjunction with the Secretary of Finance, may consider extending the geographic boundary lines of a targeted area if an adjacent community otherwise satisfies the criteria under paragraph (3)e.1. of this section.

(4) Any term or phrase defined in § 2010 of this title shall have the meaning ascribed to it therein.

(64 Del. Laws, c. 460, § 3; 65 Del. Laws, c. 233, § 1; 67 Del. Laws, c. 40, § 25; 67 Del. Laws, c. 261, § 5; 68 Del. Laws, c. 202, § 9; 69 Del. Laws, c. 458, § 1; 74 Del. Laws, c. 162, §§ 1-3; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 3; 78 Del. Laws, c. 100, § 3; 81 Del. Laws, c. 49, § 19; 81 Del. Laws, c. 374, § 50; 83 Del. Laws, c. 323, § 4.)

§ 2021 Credit against corporation income tax for investment and employment in targeted areas.

(a) In the case of any taxpayer that:

(1) Places in service, within any targeted area, as defined by § 2020(3)a. through c. of this title and § 2020(3)d. of this title [repealed], a qualified facility in which the taxpayer is engaged in a qualified activity described in § 2010(3) of this title, and

(2) Thereby satisfies the requirements contained in § 2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax) for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer,

§ 2011 of this title shall be applied with respect to such qualified facility by substituting "$750" for "$500" in § 2011(b)(1) and (2) of this title.

(b) In the case of any taxpayer that:

(1) Places in service, only within any of the targeted areas as defined by § 2020(3)d. [repealed] of this title, a facility in which the taxpayer is engaged in a commercial activity or retail activity, and

(2) Would thereby satisfy the requirements contained in § 2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax) for the taxable year of the taxpayer in which such facility is placed in service by the taxpayer if such facility were a qualified facility by virtue of its use by the taxpayer in or in connection with such commercial activity or retail activity,

§ 2011 of this title shall be applied with respect to such facility by treating it as a qualified facility.

(c) In the case of any taxpayer that:

(1) Places in service, within any targeted area, as defined by § 2020(3) of this title, a qualified facility in which the taxpayer is engaged in a qualified activity described in § 2010(3) of this title, and

(2) Satisfies the requirements contained in § 2011(k) of this title, such taxpayer shall be allowed a credit equal to 75% of the credit allowable under subsection (a) of this section, subject, however, to limitation and carryover provisions under § 2011(d) and (f) of this title.

The credit claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between $500,000 and the amount of credits claimed under § 2022 of this title for the 12 months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused credits arose by virtue of § 2011(f) of this title. No taxpayer may be eligible for credit under both this subsection and subsection (a) of this section for the same facility.

(d) In the case of a qualified facility located on a brownfield within any targeted area:

(1) "$900" shall be substituted for "$750" in subsection (a) of this section with respect to such qualified facility; and

(2) In applying this section, there shall be treated as a qualified activity any business, trade, commerce, profession or vocation carried on or in connection with such qualified facility, and there shall be treated as additional qualified investment all amounts expended by the taxpayer for environmental investigation and remediation of the brownfield.

The total incremental credits allowable to the taxpayer under this subsection shall not exceed the appropriate amount expended by the

taxpayer for environmental investigation and remediation of the brownfield. If the provisions of this subsection apply with respect to any qualified facility, the provisions of § 2011(*l*) of this title shall not apply with respect to such qualified facility.

(64 Del. Laws, c. 460, § 3; 68 Del. Laws, c. 202, § 16; 70 Del. Laws, c. 219, § 4; 70 Del. Laws, c. 487, §§ 4, 6; 78 Del. Laws, c. 47, §§ 12, 13; 83 Del. Laws, c. 323, § 4.)

§ 2022 Reduction in license fees for investment and employment in targeted areas.

(a) Any taxpayer that:

(1) Places in service, within any targeted area as defined by § 2020(3)a. through c. of this title and § 2020(3)d. of this title [repealed], a qualified facility in which the taxpayer is engaged in a qualified activity described in § 2010(3) of this title, and

(2) Thereby satisfies the requirements contained in § 2012(a) of this title for the allowance of a reduction in any license fee imposed upon the taxpayer's gross receipts by any provision of Chapter 27 of this title or by §§ 2301(d), 2902, 2903, 2904 of this title or, in the case of an activity described in §§ 2010(3)j., 2905 of this title for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer,

shall be allowed, in lieu of the reduction in such license fee provided by § 2012 of this title, a reduction in such license fee for each taxable period used in computing the amount of such license fee that ends within or with such taxable year of the taxpayer and for each such taxable period that ends within or with any of the 14 following taxable years in which such facility is a qualified facility with respect to the taxpayer on the last business day thereof. The amount of each such reduction in such license fee shall be determined in the manner provided in § 2012(b) of this title, but by employing the following table in lieu of the table contained in § 2012(b) of this title:

If the number of full calendar months elapsed since such qualified facility was placed in service by the taxpayer is:	The license fee (computed without regard to this section) shall be reduced by the following percentage:	
1	through 60	100%
61	through 72	90%
73	through 84	80%
85	through 96	70%
97	through 108	60%
109	through 120	50%
121	through 132	40%
133	through 144	30%
145	through 156	20%
157	through 168	10%
169	through 180	5%
	Over 180	0%

(b) In the case of any taxpayer that:

(1) Places in service, only within any of the targeted areas as defined by § 2020(3)d. [repealed] of this title, a facility in which the taxpayer is engaged in a commercial activity or retail activity, and

(2) Would thereby satisfy the requirements contained in § 2012(a) of this title for the allowance of a reduction in any license fee imposed upon the taxpayer's gross receipts by any provision of Chapter 27 of this title or by § 2301(d), 2902, 2903 or 2904 of this title for any taxable period used in computing the amount of such license fee that ends within or with the taxable year of the taxpayer in which such facility is placed in service by the taxpayer if such facility were a qualified facility by virtue of its use by the taxpayer in or in connection with such commercial activity or retail activity,

§ 2012 of this title shall be applied with respect to such facility by treating it as a qualified facility.

(c) In the case of any taxpayer that:

(1) Places in service, within any targeted area, as defined by § 2020(3) of this title, a qualified facility in which the taxpayer is engaged in a qualified activity described in § 2010(3) of this title, and

(2) Satisfies the requirements contained in § 2011(k) of this title, such taxpayer shall be allowed a reduction in license fees equal to 75% of the reduction allowable under subsection (a) of this section;

provided, however, that said reduction shall be allowed against only those license fees imposed by §§ 2902(c)(1), (3) and (5) [repealed]; 2702(b)(1) and (3) [repealed] of this title; and, in the case of an activity described in §§ 2010(3)j., 2905(b)(1) and (3) of this title; and that no facility shall be eligible for reduction under both this subsection and subsection (a) of this section, and that credits under this subsection shall not exceed $500,000 over the 180-month life of the credits.

(64 Del. Laws, c. 460, § 3; 68 Del. Laws, c. 202, § 17; 70 Del. Laws, c. 487, §§ 20, 21; 83 Del. Laws, c. 323, § 4.)

§ 2023 Subchapter S corporations [Repealed].

Repealed by 72 Del. Laws, c. 467, § 5, effective July 18, 2000.

§ 2024 Credit against personal income tax.

Notwithstanding any reference in this chapter to Chapter 19 of this title, any taxpayer not subject to taxation under Chapter 19 of this title may claim the credits allowable under § 2011, § 2021, § 2040 or § 2070 of this title against the tax imposed by Chapter 11 of this title; provided, however, that the amount of credit claimed by an individual under Chapter 11 of this title shall not exceed 50% of the amount of tax imposed upon such individual by Chapter 11 of this title for such taxable year.

(68 Del. Laws, c. 202, § 12; 72 Del. Laws, c. 23, § 5; 72 Del. Laws, c. 467, § 6; 78 Del. Laws, c. 47, § 14.)

Subchapter IV

Tax Credit and License Fee Reduction for Mitigation of Commuter Traffic During Peak Travel Periods [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6]

§ 2030 Short title [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

This subchapter shall be known and may be cited as "The Travelink Traffic Mitigation Act."

(67 Del. Laws, c. 160, § 1.)

§ 2031 Declaration of purpose [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

The purpose of this subchapter shall be to mitigate traffic congestion associated with commuting to and from the work site during peak travel periods and to accomplish traffic mitigation through the provision of a tax incentive to employers. Employer programs which specifically target "welfare to work" employees are exempt from the peak period limitation. An additional purpose shall be to decrease the number of single occupant vehicles and increase the use of alternative modes of travel during the commute to and from work.

(67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 1; 72 Del. Laws, c. 188, §§ 1-3.)

§ 2032 Definitions [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

(a) "The Department" shall mean the Department of Transportation and its several divisions, agencies, authorities, and administrations as appropriate.

(b) "Department-approved travelink program" shall mean an employer's program, approved by the Department, to reduce commute trip traffic congestion during peak travel periods and also nonpeak travel periods for welfare-to-work programs by supporting the use of alternative modes of employees commuting from their homes or within the proximity of their homes to their places of employment.

(c) "Direct costs" shall mean those unreimbursed costs incurred by employers associated with a Department-approved travelink program, limited to the following:

(1) Any employer-provided vehicle, acquired or leased, and used as part of a travelink program;

(2) Maintenance of an employer-provided vehicle used in the program;

(3) Subsidization of employee commuting costs or incentives in the form of direct payments to employees or third party providers of transportation, including public transit;

(4) Administrative costs, such as personnel costs (salary, benefits and training, but not overhead) and payments to third parties, excluding the Department, for general administration including development, implementation and maintenance costs directly related to the Travelink program. Administrative costs are limited to no more than 4 billable hours per week per 50 employees per week thereafter. The maximum billable hourly rate is $20; and

(5) Capital costs incurred as part of a Department-approved travelink program.

(d) "Employee" shall mean an individual employed by an employer, and also shall mean an individual participating in programs relating to the Job Training Partnership Act, Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322 [29 U.S.C. § 1501 et seq.], as amended.

(e) "Employer-provided vehicles" shall mean any automobile, van, or bus, either owned, leased, chartered or subsidized by an employer, used in a ride-sharing arrangement during peak travel periods and also non-peak travel periods for welfare-to-work programs, provided, however, that a minimum of 3 employees must commute in the vehicle during said periods so as to make such vehicles eligible for the benefits provided in this subchapter.

(f) "Employer" shall mean any person, partnership, association, bank, trust company, national bank, corporation, company, mutual company, joint-stock company, society, trust, trust company, unincorporated organization, trustee, trustee in bankruptcy, receiver, or other natural or artificial legal entity authorized to do business in this State, or any group, cooperative or association thereof having no less than 100 employees reporting to a specific work-site during the peak periods. Employer programs which specifically target "welfare-to-work" employees are exempt from the peak period limitation.

(g) "Peak travel periods" shall mean between the hours of 6:30 a.m. and 9:30 a.m. and between the hours of 3:30 p.m. and 6:30 p.m.

(h) "Ride-sharing arrangement" shall mean any voluntary association of employees who, with the assistance, contribution, or promotion of their employers, participate in a Department-approved travelink program.

(i) "The Secretary" shall mean the Secretary of the Department of Transportation or the Secretary's duly appointed delegate.

(67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, §§ 2, 7; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 188, §§ 4-10.)

§ 2033 Reduction in business taxes and/or license fees for mitigation of commuter traffic [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

(a) Employers who participate in a Department-approved travelink program shall be eligible for a credit against the taxes and/or fees imposed by the following statutory provisions and such credit shall be taken annually at the conclusion of the tax year, subject to such return requirements as may be imposed by the State Bank Commissioner, Insurance Commissioner, Secretary of Labor or Secretary of Finance:

(1) Chapter 11 of Title 5;
(2) Sections 702 and 703 of Title 18;
(3) Chapter 19 of this title;
(4) Section 2702(b) of this title;
(5) Chapter 33 of this title;
(6) Section 2301(d) of this title;
(7) Section 2902(c) of this title;
(8) Section 2903(c) of this title;
(9) Section 2904(c) of this title;
(10) Section 2905(b)(1) of this title;
(11) Section 2906(c) of this title; or
(12) Section 2907(c) of this title.

The amount of the credit shall be determined under subsection (b) of this section. Credits under this section shall be taken by the employer against taxes in the order specified in this subsection.

(b) Subject to the limitations contained in subsections (c) and (d) of this section, the credit granted under subsection (a) of this section shall be 10% of the direct cost (DC) of developing, implementing and maintaining the Travelink plan/program, or the product of either equation described below, whichever product of the equations below is less:

(1) TC = (CTR/CTG) x DC; or
(2) TC = CTR x $250.

As used in this subsection, TC is the amount of the tax credit; CTG is the number of commuter trips generated, defined herein as the annualized number of employees reporting and departing from the place of employment during the peak travel periods and also nonpeak travel periods for welfare-to-work programs; CTR is the number of commuter trip reductions, defined herein as the number of employees participating in a Department-approved travelink program for at least 100 days of the applicable taxable year or a pro rata share thereof for a program encompassing less than a full taxable year; and DC is the employer's allowable direct costs.

(c) The amount of the credit allowable under this section for any taxable year shall not exceed 100 percent of the amount of taxes and/or fees imposed upon the employer by the statutes referred to in subsection (a) of this section, for such taxable year (computed without regard to this section).

(d) The amount of the credit determined under subsection (b) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in subsection (c) of this section shall be a credit carryover for up to 3 subsequent taxable years. In applying the limitation contained in subsection (c) of this section to any taxable year to which a credit may be carried under this subsection, any credit carryovers to such taxable year shall be considered to be applied in reduction of the taxes and/or fees imposed upon employers referred to in subsection (a) of this section for such taxable year in the order of the taxable years from which such taxable years are carried over, beginning with the credit carryover from the earliest taxable year, and only after all such credit carryovers to such taxable year have been allowed in full shall any credit that would be allowable in such taxable year without regard to this subsection be allowed.

(67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 5; 72 Del. Laws, c. 188, §§ 11-13.)

§ 2034 Rules and regulations [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

The Secretary shall prescribe such rules and regulations as the Secretary may deem necessary to carry out the purposes of this subchapter, including but not limited to the following:

(1) Procedures for approval of Travelink Programs, including:

a. A provision giving approval priority to those employers whose place of employment is adjacent to, or for which the predominant commuting routes to the place of employment are, those roads and highways that are at Level of Service D, as defined by the Department, or at lower levels of service, during the peak travel periods;

b. A provision giving approval priority to those employers who develop a mitigation plan which delineates goals and congestion

relief techniques extending beyond any plans or programs of the employer existing prior to February 6, 1990;

c. A provision giving approval authority to those employers who develop a mitigation plan targeted to welfare-to-work clients;

d. A provision giving approval priority to those employers who develop an ongoing marketing program directed towards and capable of increasing and sustaining employee participation over time;

e. Development of a Department-administered monitoring plan; and

(2) Coordination of the provisions of this subchapter with the Division of Revenue, the State Bank Commissioner, the Insurance Commissioner, or other state agencies, divisions or departments affected by this subchapter.

(67 Del. Laws, c. 160, § 1; 68 Del. Laws, c. 425, § 3; 69 Del. Laws, c. 161, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 188, §§ 14, 15.)

§ 2035 Confidentiality [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

Written or recorded information, provided by employers as part of their application for or participation in a Department-approved travelink program, shall be treated as confidential, and to the extent used for that purpose shall not be considered as a public record under the provisions of Chapter l00 of Title 29.

(67 Del. Laws, c. 160, § 1; 72 Del. Laws, c. 188, § 16.)

§ 2036 Department responsibilities [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

The Department is responsible for reviewing and approving any public or private traffic mitigation plan or program including, but not limited to, clean air compliance programs, Travelink programs, commuter benefit programs, Department-approved incentives contained in any zoning, subdivision or any other land use or development project designed to enhance traffic mitigations, programs approved by county or local government, and any and all other public or private plans designed either in whole or in part to reduce traffic through the use of incentives or disincentives such as, but not limited to, parking charges, parking preferences and financial penalties proposed by employers for single occupant vehicles commuting to the work site.

(68 Del. Laws, c. 425, § 4.)

§ 2037 Limitation on credits [For application of this subchapter, see 67 Del. Laws, c. 160, § 8 and 68 Del. Laws, c. 425, § 6].

(a) The total amount of eligible credits allowed under this subchapter ("Travelink credits") shall not exceed $100,000 in any State fiscal year.

(b) If the total amount of Travelink credits for which all taxpayers apply in any State fiscal year exceeds the amount set forth in subsection (a) of this section, then the Travelink credit to be received by each applicant for that year shall be the product of the amount set forth in subsection (a) of this section multiplied by a fraction, the numerator of which is the eligible Travelink credits applied for by the applicant and the denominator of which is the total of all eligible Travelink credits applied for by the applicants.

(72 Del. Laws, c. 188, § 17.)

Subchapter V

Clean Energy Technology Device Manufacturers' Credits

§ 2040 Credit against corporation income tax for clean energy technology device manufacturers.

(a) In the case of any taxpayer that:

(1) Places in service a qualified facility in which the taxpayer is engaged in clean energy technology device manufacturing, as defined in § 2010(24) of this title; and

(2) Otherwise satisfies the requirements contained in § 2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax) for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer,

§ 2011 of this title shall be applied with respect to such qualified facility by substituting "$750" for "$500" in § 2011(b)(1) and (2) of this title.

(b) In the case of any taxpayer that:

(1) Places in service a qualified facility in which the taxpayer is engaged in clean energy technology device manufacturing, as defined in § 2010(24) of this title; and

(2) Otherwise satisfies the requirements contained in § 2011(k) of this title,

such taxpayer shall be allowed a credit equal to 75% of the credit allowable under subsection (a) of this section, subject, however, to limitation and carryover provisions under § 2011(d) and (f) of this title. The credit claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between $500,000 and the amount of credits claimed under § 2012 of this title for

the 12 months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused credits arose by virtue of § 2011(f) of this title. No taxpayer may be eligible for credit under both this subsection and subsection (a) of this section for the same facility.

(78 Del. Laws, c. 47, § 15.)

Subchapter VI

Commuter Benefits for State Employees [Suspended beginning Fiscal Year 2013; see 83 Del. Laws, c. 325, § 271].

§ 2051 Declaration of purpose [Suspended beginning in Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

The purpose of this subchapter shall be to mitigate traffic congestion associated with state employees' commuting to and from the work place, and to facilitate compliance with the requirements of the Clean Air Act [42 U.S.C. § 7401 et seq.] as amended in 1990.

(68 Del. Laws, c. 426, § 2; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; ; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2052 Definitions [Suspended beginning Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

(a) "Commuter benefits" means incentives including monetary incentives, provided by the employer to the employee in conjunction with an approved traffic plan.

(b) "Department" shall mean the Department of Transportation and its several divisions, agencies, authorities and administrations as appropriate.

(c) "Employee" shall mean an individual employed by a state agency.

(d) "Employer" shall mean a state agency.

(e) "Secretary" shall mean the Secretary of the Department of Transportation or the Secretary's delegate.

(f) "State" means the State of Delaware.

(g) "State agency" shall mean any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition and which exist by virtue of state law and whose jurisdiction:

(1) Is limited to a political subdivision of the State or to a portion thereof; or

(2) Extends beyond the ordinance of the State.

(68 Del. Laws, c. 426, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2053 Agency plans [Suspended beginning Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

Each state agency shall develop and submit for review by the Department a plan to reduce work-related vehicle trips and miles traveled by employees. If submitting an individual plan is not practical because of the state agency's location or number of employees, a state agency may join with another state agency in submitting a plan for review.

(68 Del. Laws, c. 426, § 2; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2054 Department review of plans [Suspended beginning in Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

The Department shall review plans required by § 2053 of this title and submitted by state agencies for conformity with the rules and regulations promulgated by the Secretary pursuant to § 2055 of this title and any plan required to be submitted by the State to the federal government for purposes of the Clean Air Act [42 U.S.C. § 7401 et seq.] as amended in 1990.

(68 Del. Laws, c. 426, § 2; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2055 Rules and regulations [Suspended beginning in Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

The Secretary shall prescribe such rules and regulations as the Secretary may deem necessary to carry out the purpose of this subchapter including but not limited to regulations concerning the submittal of plans, guidelines for reviewing plans by the Department and the amount and nature of commuter benefits not to exceed the amount established in the Internal Revenue Code or Internal Revenue Service Regulations and which qualifies as a tax free benefit to employees.

(68 Del. Laws, c. 426, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, §

268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2056 Agency provision of commuter benefits [Suspended beginning in Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

A state agency is authorized to grant commuter benefits to agency employees in conjunction with any plan submitted and approved by the Department pursuant to §§ 2053 and 2054 of this title. The state agency shall request each year as part of the budget process, a specific appropriation request sufficient to fund the commuter benefits included in the plan submitted to the Department for review.

(68 Del. Laws, c. 426, § 2; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

§ 2057 Preemption [Suspended beginning in Fiscal Year 2013; see 83 Del. Laws, c. 351, §?271].

Any other provision of the Code notwithstanding, a Department-approved traffic reduction plan may provide commuter benefits to state employees.

(68 Del. Laws, c. 426, § 2; 78 Del. Laws, c. 290, § 262; 79 Del. Laws, c. 78, § 259; 79 Del. Laws, c. 290, § 268; 80 Del. Laws, c. 79, § 263; 80 Del. Laws, c. 298, § 261; 81 Del. Laws, c. 58, § 268; 81 Del. Laws, c. 280, § 263; 82 Del. Laws, c. 64, § 262; 82 Del. Laws, c. 242, § 253; 83 Del. Laws, c. 54, § 264; 83 Del. Laws, c. 351, § 271.)

Subchapter VII

Alternative Tax Calculation, Credit and License Fee Reduction for Headquarters Management Corporations

§ 2061 Alternative calculation of Headquarters Management Corporation tax.

(a) Except in the case of a Headquarters Management Corporation described in subsection (b) of this section (but only to the extent that paragraph (1) of such subsection does not apply), during each of the 10 taxable years commencing with the first taxable year following the effective date of a Headquarters Management Corporation's original license under Chapter 23 of this title (but contingent upon the subsequent certification by the Director of Revenue as a Headquarters Management Corporation within 12 months of the effective date of such original license), the tax determined under § 6402 of this title shall be credited during such taxable year, but not below the tax payable under § 6402(2) of this title, in the amount of:

(1) Twenty percent for each qualified employee of the taxpayer within this State during such taxable year, to a maximum reduction of 99%; or

(2) Two percent for each expenditure during the taxable year (not including any payment of wages, salaries or benefits to or for the benefit of qualified employees) by the taxpayer in this State of $7,500 in excess of 100% of its operating expenses, if any, allocated to this State in the most recent taxable year of the taxpayer ending before the effective date of its original license, to a maximum reduction of 99%; or

(3) Any combination of the reduction for new employment under paragraph (a)(1) of this section and the reduction for new expenditures under paragraph (a)(2) of this section, to a maximum reduction of 99%.

(b) In the case of a Headquarters Management Corporation that conducted any business in this State (or any member of whose affiliated group conducted any business in this State) before the effective date of its original license under Chapter 23 of this title, during each of the 10 years commencing with the first taxable year beginning on the effective date of such original license (but contingent upon the subsequent certification by the Director of Revenue as a Headquarters Management Corporation within 12 months of the effective date of such original license), the tax determined under § 6402 of this title shall be credited during such taxable year, but not below the tax payable under § 6402(2) of this title, in the amount of:

(1) To the extent set forth in subsection (a) of this section with respect to Headquarters Management Corporation taxable income derived solely from investment activities; and

(2) With respect to Headquarters Management Corporation taxable income derived from headquarters services, by:

a. 20% for each qualified employee of the taxpayer within this State during such taxable year, conditioned upon the employment by the taxpayer within this State during such taxable year of a total number of qualified employees that is 25% or more greater than the total number of individuals employed within this State before the effective date of such original license (except that, for purposes of counting the total number of individuals employed within this State before the effective date of such original license, individuals employed solely by corporations whose activities within this State were confined to investment activities as defined in § 6401(8) of this title shall not be counted) by (i) itself and all members of its affiliated group, and (ii) entities that become members of its affiliated group by merger or acquisition on or after the effective date of such original license, to a maximum reduction of 99%; or

b. 2% for each expenditure during the taxable year (not including any payment of wages, salaries or benefits to or for the benefit of qualified employees) by the taxpayer in this State of $7,500 certified to be in excess of 125% of its operating expenses allocated to

this State in the most recent taxable year of the taxpayer ending before the effective date of such original license (except that, for purposes of counting operating expenses allocated to this State before the effective date of such original license, operating expenses incurred solely by corporations whose activities within this State were confined to investment activities as defined in § 6401(8) of this title shall not be counted) by (i) itself and all members of its affiliated group, and (ii) entities that become members of its affiliated group by merger or acquisition on or after the effective date of such original license, to a maximum reduction of 99%; or

c. Any combination of the reduction for new employment under paragraph (b)(2)a. of this section and the reduction for new expenditures under paragraph (b)(2)b. of this section, to a maximum reduction of 99%.

(c) For purposes of calculating the credit under subsection (a) or (b) of this section, Headquarters Management Corporations electing to file consolidated income tax returns may elect to combine the calculations of employment and expenditures of all Headquarters Management Corporation members of the affiliated group.

(74 Del. Laws, c. 256, § 2[1]; 75 Del. Laws, c. 123, §§ 3-7.)

§ 2062 Credit against income tax for new Headquarters Management Corporation employment.

(a) Except in the case of a Headquarters Management Corporation subject to the tax payable under § 6402(2) of this title, any Headquarters Management Corporation that at all times during any taxable year consisting of 12 full months employs 5 or more qualified employees shall be allowed a credit against the income tax otherwise imposed by Chapter 64 of this title that is in excess of $5,000 for such taxable year and for each of the 4 immediately following taxable years in which all conditions set forth in this section shall be met, in the amount determined under subsection (b) of this section.

(b) Subject to the limitation contained in subsection (c) of this section, the amount of the credit allowable under subsection (a) of this section with respect to the qualified employees employed during each taxable year falling within the 5-year life of such credit shall be the sum of $400 multiplied by that number that is the difference between:

(1) The number of qualified employees employed by the taxpayer on the last day of such taxable year, and

(2) The number of individuals, if any, that were employed by the taxpayer in this State on the day immediately preceding the effective date of its original license as a Headquarters Management Corporation under Chapter 64 of this title.

(c) The amount of the credit allowable under this section for any taxable year shall not:

(1) Exceed 50% of the amount of tax imposed upon the taxpayer by § 6402(1) of this title for such taxable year (computed without regard to this section) that is in excess of the minimum tax required by § 6402(2) of this title, nor

(2) Reduce the tax imposed upon the taxpayer below the minimum tax required by § 6402(2) of this title.

(d) The amount of the credit determined under this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in subsection (c) of this section shall be a credit carryover to each of the following taxable years that fall within the 5-year life of the credit. The entire amount of the credit that is not so allowable shall be carried to the earliest of such following taxable years.

(74 Del. Laws, c. 256, § 2[1].)

§ 2063 Occupational license; exemption from occupational gross receipts license fees.

(a) A Headquarters Management Corporation shall obtain a license pursuant to the provisions of Chapter 21 and § 2301(a) of this title.

(b) A Headquarters Management Corporation shall be exempt from payment of fees set forth in subsections (b) and (d) of § 2301 of this title.

(74 Del. Laws, c. 256, § 2[1].)

§ 2064 Regulations.

The Director of Revenue is authorized to promulgate rules, regulations and decisions not inconsistent with this subchapter and require such facts and information to be reported as the Director deems necessary for its administration and enforcement. No rule or regulation adopted pursuant to the authority granted by this section shall extend, modify or conflict with any law of this State, or the reasonable implications thereof.

(74 Del. Laws, c. 256, § 2[1].)

Subchapter VIII

Credit for Research and Development Expenses

§ 2070 Amount of credit and applicable procedures.

(a) *Credit calculation.* — (1) *General rule.* — A taxpayer may elect a Delaware research and development tax credit for the taxable year equal to: (1) 10% of the excess of the taxpayer's total Delaware qualified research and development expenses for the taxable year over the taxpayer's Delaware base amount, or (2) 50% of Delaware's apportioned share of taxpayer's federal research and development tax credit calculated using the alternative simplified credit method under § 41(c) (5) of the Internal Revenue Code of 1986 (26 U.S.C. § 41(c) (5)), using federal definitions and methodology. Delaware's apportioned share of the federal credit shall be the amount of the alternative

simplified credit the taxpayer can claim under § 41(c) (5) (26 U.S.C. § 41(c) (5)), multiplied by a percentage equal to the ratio of the taxpayer's Delaware qualified research and development expenses for the taxable year to the taxpayer's total qualified research and development expenses for the taxable year. A taxpayer's Delaware research and development tax credit determination election shall be an annual election, and shall be independent of taxpayer's federal research and development tax credit determination.

(2) *Alternative calculation for small businesses.* — In the case of a small business, paragraph (a)(1) of this section shall be applied by substituting "20%" for "10%" and by substituting "100%" for "50%." For the purposes of this subsection, "small business" means any taxpayer with average annual gross receipts, as determined by § 41(c)(1)(B) of the Internal Revenue Code of 1986 (26 U.S.C. § 41(c)(1)(B)), not in excess of the applicable threshold of $20,000,000. Taxpayers making use of the alternative calculation provided in this paragraph must conform to the definition of "small business" set forth herein without regard to the method by which the taxpayer calculates its federal research and development tax credit. The level of the applicable threshold in this subsection is subject to annual adjustment as more fully set forth in § 515 of this title.

(b) A research and development tax credit shall be applied against the taxpayer's qualified tax liability for the taxable year in which the qualified research and development expenses were taken into account for purposes of Delaware income taxation. In the case of partnerships, the credit shall be allocated among partners as provided in § 41(f)(2)(B) of the Internal Revenue Code of 1986 (26 U.S.C. § 41(f)(2)(B)).

(c) If the taxpayer cannot use the entire amount of the approved research and development tax credit, such unused credit shall be paid to it in the nature of a tax refund.

(72 Del. Laws, c. 23, § 4; 77 Del. Laws, c. 329, § 64(c); 79 Del. Laws, c. 298, § 1; 80 Del. Laws, c. 207, § 2.)

§ 2071 Application of Internal Revenue Code.

Any term used in this subchapter shall have the same meaning as when used in a comparable context in the Internal Revenue laws of the United States, unless a different meaning is clearly required or unless any provision of this subchapter ascribes a different meaning to such term. References to the Internal Revenue Code shall mean the sections of the Internal Revenue Code as existing on any date on which any expenses subject to credit under this subchapter are taken into account for purposes of Delaware income taxation. However, if those sections of the Internal Revenue Code referenced in this chapter are repealed or terminated, references to the Internal Revenue Code shall mean those sections last having full force and effect. If, after repeal or termination, the Internal Revenue Code sections are revised or reenacted, references herein to Internal Revenue Code sections shall mean those revised or reenacted sections.

(72 Del. Laws, c. 23, § 4.)

§ 2072 Determination of qualified research and development expenses.

In prescribing standards for determining which qualified research and development expenses are considered Delaware qualified research and development expenses for purposes of computing the credit provided by this chapter, the Director may consider the location where the services are performed and other factors that the Director within the Director's sound discretion reasonably determines are relevant for the determination.

(72 Del. Laws, c. 23, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2073 Time limitations.

A taxpayer who is eligible for the Research and Development Tax Credit under this chapter for the taxable year in which the Delaware qualified research and development expenses are taken into account for purposes of Delaware income taxation shall continue to be eligible for the credit permitted under this chapter, even if the federal research and development tax credit provided by § 41 of the Internal Revenue Code [26 U.S.C. § 41] has been terminated or revoked.

(72 Del. Laws, c. 23, § 4; 75 Del. Laws, c. 140, § 2; 77 Del. Laws, c. 329, § 64(d); 78 Del. Laws, c. 76, § 66; 78 Del. Laws, c. 292, § 55; 79 Del. Laws, c. 81, § 1; 80 Del. Laws, c. 207, § 2.)

§ 2074 Transitional rule [Repealed].

72 Del. Laws, c. 23, § 4; repealed by 80 Del. Laws, c. 207, § 2, effective Jan. 1, 2017.

§ 2075 Limitation on credits [Repealed].

72 Del. Laws, c. 23, § 4; repealed by 80 Del. Laws, c. 207, § 2, effective Jan. 1, 2017.

Subchapter IX

New Economy Jobs Program Credits

§ 2080 Declaration of purpose.

The purpose of this subchapter shall be to create incentives to attract and retain Delaware employers which employ the most qualified individuals working in the forefront of traditional and emerging business competition.

(76 Del. Laws, c. 78, § 1; 80 Del. Laws, c. 207, § 3.)

§ 2081 Definitions.

As used in this subchapter:

(1) "Affiliated group" has the meaning provided by § 1504 of the Internal Revenue Code (26 U.S.C. § 1504), but including for this purpose pass-through entities, as defined in § 1601 of this title that would be includible if they were classified as corporations, the equity interests in which would be treated as stock, and the ownership of such interests would satisfy the stock ownership requirements of the said 26 U.S.C. § 1504.

(2) "Base year" shall mean the calendar year immediately preceding a qualified employer's first certified year.

(3) "Brownfield" shall have the meaning set forth in § 9103 of Title 7.

(4) "Certified," "certification," or "recertification" mean or refer in their context to the first written determination of the Secretary issued to an employer that it is a qualified employer pursuant to the provisions of this subchapter, or the Secretary's annual review of that written determination.

(5) "Certified year" shall mean a calendar year for which an employer is certified to be eligible for New Economy Jobs Program credits under this subchapter.

(6) "Compensation" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(7) "Corporate restructuring" means a transaction that meets both of the following:

a. Qualifies under § 355 or § 368 of the Internal Revenue Code (26 U.S.C. § 355 or § 368).

b. Occurs on or before December 31, 2021.

(8) "Credit" means a reduction of the final balance for tax or fees reported due by a qualified employer on a tax or information return pursuant to the New Economy Jobs Program.

(9) "Director" means the Director of the Division of Small Business.

(10) "Eligible job" means any single position held by a common-law employee in this State for which the compensation equals or exceeds the salary threshold. More than 1 consecutive employee may perform an eligible job during a single calendar year so long as the total compensation of all consecutive employees performing such eligible jobs during such calendar year equals or exceeds the salary threshold.

(11) "Incorporated municipality" means and includes the area within the January 1, 2007, boundaries of cities, towns and villages created under any general or special law of this State for general governmental purposes which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of elected and other officials.

(12) [Repealed.]

(13) "New Economy Jobs Program" means the Program authorized pursuant to this subchapter to encourage the creation of high wage, knowledge-based jobs in this State.

(14) "Principal executive office" shall mean the address identified as the corporation's principal executive office in a 10-Q or 10-K filing with the Securities and Exchange Commission.

(15) "Qualified employee" means a common-law employee employed in an eligible job in this State.

(16) "Qualified employer" means an employer certified to be eligible for New Economy Jobs Program credits under this subchapter.

(17) "Qualified retained employer" means an employer certified to be eligible for New Economy Jobs Program credits under this subchapter and within the 3-year period prior to certification:

a. The employer has gone through a corporate restructuring; and

b. The employer, a predecessor of the employer or a member of the employer's affiliated group had its principal executive office located within this State, and at the time of certification:

1. A. Is a publicly-traded company with its business focused on agricultural seed and crop protection products; and

B. Identifies the address of its principal executive offices as being located within this State; or

2. A. Is a publicly-traded company with its business focused on nutrition and health, industrial biosciences, safety and protection and/or electronics and communications; and

B. Identifies the address of its principal executive offices as being located within this State.

(18) "Qualified withholding payments" means (subject to the limitations of § 2084 of this title) the total amount of tax withheld, accounted for, and paid to the Secretary pursuant to subchapter VII of Chapter 11 of this title by a qualified employer or qualified retained employer on account of the compensation paid so many of the qualified employees, vital employees or retained employees as are counted in determining New Economy Jobs Program credits.

(19) "Retained eligible job" means any single position held by a retained employee in this State. More than 1 retained employee may perform a retained eligible job during a single calendar year.

(20) "Retained employee" means a common-law employee employed by a qualified retained employer in a retained eligible job in this State.

(21) "Salary threshold" means $112,200 of Delaware sourced compensation paid to a common law employee. The level of the

applicable threshold in this subsection is subject to annual adjustment as more fully set forth in § 515 of this title.

(22) "Secretary" means the individual appointed as administrator and head of the Delaware Department of Finance pursuant to § 8302 of Title 29.

(23) "Targeted growth area" means a geographic area designated as "investment level 1" or "investment level 2" on the strategy maps of the most recent executive order approving the strategies for state policies and spending, originally approved in December, 1999.

(24) "Targeted growth county" means a county in this State having, on June 30, 2007, fewer than 250,000 inhabitants as reported in the most recent County Population Estimate of the United States Department of Commerce, Bureau of Census.

(25) "Vital employee" means a common-law employee employed in a vital job in this State.

(26) "Vital job" means any single position held by a vital employee in this State.

(76 Del. Laws, c. 78, § 1; 78 Del. Laws, c. 396, § 1; 80 Del. Laws, c. 207, § 3; 81 Del. Laws, c. 49, § 19; 81 Del. Laws, c. 374, § 51; 82 Del. Laws, c. 101, § 1; 83 Del. Laws, c. 323, § 5.)

§ 2082 Certification as a qualified employer; recertification.

(a) Application for certification as a qualified employer or qualified retained employer will be made to the Secretary with a copy to the Director.

(b) The Secretary shall annually review the certification of qualified employers and qualified retained employers for eligibility for New Economy Jobs Program credits before credits are allowed.

(c) [Repealed.]

(d) For any single calendar year subsequent to its first certified year in which a qualified employer hires and employs no fewer than 50 additional qualified employees in new eligible jobs or no fewer than 200 additional vital employees in new vital jobs, the qualified employer may:

(1) Elect to treat such additional qualified employees either as an addition to its existing number of qualified employees under its existing certification; or

(2) Make a separate application pursuant to this section and § 2083 of this title for certification and credits with respect to such additional qualified employees.

(76 Del. Laws, c. 78, § 1; 78 Del. Laws, c. 396, § 2; 80 Del. Laws, c. 207, § 3; 82 Del. Laws, c. 101, § 1.)

§ 2083 Credits for New Economy Jobs Program employment.

(a) Subject to the limitations contained in § 2084 of this title and to such return requirements as may be imposed by the Delaware Bank Commissioner, Delaware Insurance Commissioner, or the Secretary, qualified employers shall be eligible during their first certified year and for the 10 taxable years thereafter, and qualified retained employers shall be eligible during their first certified year and for the 9 taxable years thereafter, for credits against the taxes and/or fees imposed by the following statutory provisions:

(1) Chapter 11 of Title 5;

(2) Sections 702 and 703 of Title 18;

(3) Chapter 19 of this title;

(4) Chapter 11 of this title.

The amount of credit shall be determined under subsections (b) through (e) of this section.

(b) *Credits based on minimum additional employment in eligible jobs.* — (1) Subject to the limitations herein and in § 2084 of this title, in the case of a qualified employer which on December 31 of a certified year has no fewer than 50 qualified employees in excess of the number of its qualified employees on December 31 of its base year, the credit granted under subsection (a) of this section shall be that product determined by multiplying:

a. X, where "X" equals the total of its qualified withholding payments on the compensation of its qualified employees hired and employed after the base year in new eligible jobs, by

b. The credit percentage, which shall consist of the sum of the following:

1. 25%, plus

2. 0.075% for each qualified employee (in excess of 50 more than the number of qualified employees employed during its base year) hired and employed in new eligible jobs.

(2) In no case shall the total credit available under this subsection exceed 40% times X.

(3) In no case shall qualified employees counted for purposes of claiming New Economy Jobs Program credits under this subsection be included in the calculation of employment under subsection (c) or (d) of this section.

(4) If, on December 31 of a qualified employer's first certified year, the qualified employer does not meet the requirements of paragraph (b)(1) of this section but the number of qualified employees in excess of the number of qualified employees on December 31 of its base year is at least 50 multiplied by a fraction, the numerator of which is the number of months during which the qualified employer has employed qualified employees in new eligible jobs, and the denominator of which is 12, a qualified employer is eligible for the minimum credit percentage of 25 percent of qualified withholding payments on the compensation of the additional qualified employees and for the additional credits as determined in subsection (e) of this section.

(5) In the eleventh certified year, the calculated credit is multiplied by 1 minus the fraction computed pursuant to paragraph (b)(4) of

this section.

(6) If, on December 31 of any 2 consecutive certified years after the first certified year, the qualified employer does not employ at least 50 qualified employees in excess of the number of its qualified employees on December 31 of its base year, the qualified employer is disqualified and shall not be permitted to claim any further credit based upon the original application.

a. A disqualification under this provision may be reversed by the Secretary, in the Secretary's discretion, after receipt of a taxpayer's written request and statement of reasonable cause, if the Secretary has determined the disqualification is the result of extraordinary circumstances.

b. A disqualification under this provision will not preclude the formerly qualified employer from submitting a new application to the Secretary pursuant to § 2082 of this title, provided that such subsequent application shall require the establishment of a new base year.

(c) *Credits based on minimum additional employment in vital jobs.* — (1) Subject to the limitations herein and in § 2084 of this title, in the case of a qualified employer which: (i) employs on December 31 of a certified year no fewer than 200 vital employees in excess of the number of its vital employees on December 31 of its base year and (ii) provides an average compensation to such vital employees of at least $70,000, the credit granted under subsection (a) of this section shall be that product determined by multiplying:

a. X, where "X" equals the total of its qualified withholding payments on the compensation of its vital employees hired and employed after the base year in new vital jobs, by

b. The credit percentage, which shall consist of the sum of the following:

1. 25%, plus

2. 0.05% for each vital employee (in excess of 200 more than the number of vital employees employed during its base year) hired and employed in new vital jobs.

(2) In no case shall the total credit available under this subsection exceed 40% times X.

(3) In no case shall vital employees counted for purposes of claiming New Economy Jobs Program credits under this subsection be included in the calculation of employment under subsection (b) or (d) of this section.

(4) If, on December 31 of a qualified employer's first certified year, the employer does not meet the requirements of paragraph (c)(1) of this section but the number of vital employees in excess of the number of vital employees on December 31 of its base year is at least 200 multiplied by a fraction, the numerator of which is the number of months during which the qualified employer has employed vital employees in new vital jobs, and the denominator of which is 12, a qualified employer is eligible for the minimum credit percentage of 25 percent of qualified withholding payments on the compensation of the additional vital employees and for the additional credits as determined in subsection (e) of this section.

(5) In the eleventh certified year, the calculated credit is multiplied by 1 minus the fraction computed pursuant to paragraph (c)(4) of this section.

(6) If, on December 31 of any 2 consecutive certified years after the first certified year, the qualified employer does not employ at least 200 vital employees in excess of the number of its vital employees on December 31 of its base year, the qualified employer is disqualified and shall not be permitted to claim any further credit based upon the original application.

a. A disqualification under this provision may be reversed by the Secretary, in the Secretary's discretion, after receipt of a taxpayer's written request and statement of reasonable cause, if the Secretary has determined the disqualification is the result of extraordinary circumstances.

b. A disqualification under this provision will not preclude the formerly qualified employer from submitting a new application to the Secretary pursuant to § 2082 of this title, provided that such subsequent application shall require the establishment of a new base year.

(d) *Credits based on minimum employment in retained eligible jobs.* —

(1) Subject to the limitations herein and in § 2084 of this title, in the case of a qualified retained employer which: (i) maintains in a certified year no fewer than 200 retained eligible jobs and (ii) provides an average annual compensation of at least $70,000 to the retained employees in such retained eligible jobs, the credit granted under subsection (a) of this section shall be the product determined by multiplying:

a. X, where "X" equals the total of its qualified withholding payments on the compensation of its retained employees employed in retained eligible jobs, by

b. The credit percentage, which shall consist of the sum of the following:

1. 25%, plus

2. 0.05% for each retained employee in excess of 200 retained employees employed in retained eligible jobs.

(2) In no case shall the total credit available under this subsection exceed 40% times X.

(3) In no case shall retained employees counted for purposes of claiming New Economy Jobs Program credits under this subsection be included in the calculation of employment under subsection (b) or (c) of this section.

(e) *Additional credit based on geographic employment.* —

In addition to the credits determined on the qualified withholding payments for qualified employees, vital employees or retained employees identified under subsections (b) through (d) of this section, a qualified employer or qualified retained employer may claim

additional credits determined by:

(1) Multiplying Y-1 times 10%, where "Y-1" equals the total of the qualified withholding payments on the compensation of such qualified employees, vital employees or retained employees identified to be employed in new eligible jobs, vital jobs or retained eligible jobs in an incorporated municipality or a targeted growth area,

(2) Multiplying Y-2 times 5%, where "Y-2" equals the total of the qualified withholding payments on the compensation of such qualified employees, vital employees or retained employees identified to be employed in new eligible jobs, vital jobs or retained eligible jobs in a reclaimed Brownfield in which the qualified employer is the first tenant, and

(3) Multiplying Y-3 times 10%, where "Y3" equals the total of the qualified withholding payments on the compensation of such qualified employees, vital employees or retained employees identified to be employed in new eligible jobs, vital jobs or retained eligible jobs in a targeted growth county.

(76 Del. Laws, c. 78, § 1; 78 Del. Laws, c. 396, § 3; 80 Del. Laws, c. 207, § 3; 82 Del. Laws, c. 101, § 2.)

§ 2084 Limitation on credits and qualified withholding payments.

Notwithstanding § 2083 of this title,

(1) The total amount of New Economy Jobs Program credit allowable under this subchapter for any qualified employer or qualified retained employer during any calendar year shall not exceed 65% percent of its qualified withholding payments;

(2) If the Secretary finds that a qualified employer's or a qualified retained employer's qualified withholding payments unreasonably exceed the amount of tax required to be withheld, accounted for, and paid by a taxpayer to the Secretary pursuant to subchapter VII of Chapter 11 of this title the Secretary may limit such qualified withholding payments to an amount which is reasonable. The Secretary or the Secretary's delegate shall mail written notice of such determination to the taxpayer. The taxpayer may, within 30 days of the date of mailing such notice, institute a written protest of such finding to the Secretary in the manner provided under § 523 of this title for protests of assessments. The Secretary's determination of the protest shall be final;

(3) No qualified employees, vital employees or retained employees counted for purposes of claiming New Economy Jobs Program credits under this subchapter may be included in the calculation of employment for purposes of claiming tax credits provided by subchapters II, III, VII and X of this chapter or as provided by § 1105(h) of Title 5;

(4) No qualified employee or vital employee in any certified year who was employed in Delaware in the base year by a member of an affiliated group which conducted or conducts business in this State during the base year or any year thereafter shall be counted as newly hired or employed qualified employees or vital employees or qualified employees in new eligible jobs for purposes of calculating the New Economy Jobs Program credits under this subchapter; and

(5) No more than 10% of the total number of qualified employees or vital employees counted for purposes of claiming New Economy Jobs Program credits under this subchapter may be individuals who were required by the provisions of Chapter 11 of this title to file a personal income tax return for the base year.

(6) The Secretary shall review all applications for the tax credit and all returns filed by each applicant. If in the Secretary's sole discretion, the Secretary determines that an applicant did not have a good faith basis for claiming the New Economy Jobs Credit, the Secretary may reverse the grant of the credit and issue an assessment to the applicant for the entire amount of unpaid tax, together with penalties and interest, arising out of the improper tax credit application.

(76 Del. Laws, c. 78, § 1; 78 Del. Laws, c. 396, § 4; 80 Del. Laws, c. 207, § 3; 82 Del. Laws, c. 101, § 3.)

§ 2085 Disposition of unused credits.

To the extent a qualified employer's or a qualified retained employer's New Economy Jobs Program credits exceed any amounts otherwise due for the taxes and fees listed under § 2083(a) of this title but do not exceed the limitation of § 2084 of this title, such unused credits shall be paid to it in the nature of tax refunds.

(76 Del. Laws, c. 78, § 1; 80 Del. Laws, c. 207, § 3.)

§ 2086 Sunset date [Repealed].

76 Del. Laws, c. 78, § 1; repealed by 80 Del. Laws, c. 207, § 3, effective Jan. 1, 2017.

Subchapter X

Business Finder's Fee Tax Credit

§ 2090 Legislative findings and purpose; creation of the business finder's fee tax credit.

The General Assembly finds and declares that the State should partner with the Delaware business community to create and develop new employment opportunities for the citizens of the State. The General Assembly further finds that existing Delaware businesses are ideally situated to encourage new businesses to relocate and bring new jobs to the State. The purpose of this subchapter shall be to create incentives for existing Delaware business firms to develop new Delaware employment opportunities by encouraging out-of-state business firms to relocate to Delaware. It is the General Assembly's intent to achieve such a result through the implementation of the business

finder's fee tax credit, which is designed to foster the recruitment efforts by Delaware businesses to relocate their suppliers, customers or other associated businesses to Delaware. The business finder's fee tax credit is also designed to increase tax revenues for the State, and add value to the State's economy as a result of expanding Delaware's employment base.

(77 Del. Laws, c. 300, § 1.)

§ 2091 Definitions.

As used in this subchapter:

(1) "Affiliate" means any business organization or person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person or business entity specified, or person who is an officer, director, partner, or trustee of the person specified.

(2) "Bank" means a banking organization or other financial institution engaged in the business of banking, chartered under federal or any state law, and regulated by any federal or any state banking regulatory authority. "Bank" shall include but not be limited to a commercial bank, savings bank, savings and loan association, and trust company, as well as an affiliate of such a bank.

(3) "Business Finder's Fee Program" means the Program authorized pursuant to this subchapter and designed to incentivize Delaware businesses to encourage their suppliers, customers, and other businesses to relocate to Delaware, resulting in job creation, increased tax revenues, and strengthened supply networks.

(4) "Certified new business firm" means a new business firm that has been certified by the Director pursuant to the provisions of § 2093 of this title.

(5) "Certified sponsor firm" means a sponsor firm that has been approved by the Director pursuant to the provisions of § 2093 of this title.

(6) "Credit" means a reduction of the final balance for tax reported due by a certified sponsor firm or a certified new business firm on a tax or information return pursuant to the Business Finder's Fee Program.

(7) "Director" means the Director of the Division of Small Business.

(8) "Division" means the Division of Small Business within the Department of State.

(9) "Full-time Delaware employee" means any employee of a new business firm whose compensation is based on a work week of at least 35 hours and who spends at least 90 percent of that employee's working hours in the State of Delaware.

(10) "New business certification date" means the date the Division officially certifies the joint application of the sponsor firm and the new business firm.

(11) "New business firm" means a business organization that certifies in a joint application pursuant to § 2093 of this title that it:

a. Is a validly organized and existing corporation, limited liability company, limited partnership, general partnership, limited liability partnership, statutory trust or sole proprietorship;

b. Has been doing business for at least 3 years at the time it applies for the credit;

c. Has a place of business outside of the State of Delaware;

d. Has a current business license issued by an out-of-state agency;

e. Does not have a place of business within the State of Delaware, and has not had a place of business within the State of Delaware for at least 3 years at the time it applies for the credit;

f. Is not a tenant of a sponsor firm, and has not entered into a rental agreement for a commercial rental unit, as defined in § 5141 of Title 25, with a sponsor firm; and

g. Is not an affiliate of a sponsor firm.

(12) "Real estate agency" means a person licensed as a real estate broker or salesperson under Chapter 29 of Title 24 and acting within the course and scope of that license, or a partnership, association or corporation engaged in the business of buying or selling real estate.

(13) "Real estate developer" means a person in the business of:

a. Acquiring land (raw or improved);

b. Improving raw land or building structures (residential or commercial) on land so acquired (or both); and

c. Selling land, where applicable with the structure, to customers.

A person shall be treated as a real estate developer or as a contractor who is not a real estate developer depending, in each case, upon the business in which the person is engaged with respect to a specific parcel of real estate.

(14) "Sponsor firm" means a business organization that certifies in a joint application pursuant to § 2093 of this title that it:

a. Is a validly organized and existing corporation, limited liability company, limited partnership, general partnership, limited liability partnership, statutory trust or sole proprietorship;

b. Has been doing business in Delaware for at least 3 years at the time it applies for the credit;

c. Has a place of business in Delaware, has a current Delaware business license issued by the Delaware Division of Revenue or other Delaware licensing agency;

d. Has not entered into a rental agreement for a commercial rental unit, as defined by § 5141 of Title 25, with the new business firm;

e. Is not a real estate agency, real estate developer, or landlord, as defined by § 5141 of Title 25, for the new business firm, or a

bank or other lender who provides financing for the new business firm to establish a Delaware business location; and

f. Is not an affiliate of a new business firm.

(77 Del. Laws, c. 300, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 19; 81 Del. Laws, c. 374, § 52.)

§ 2092 Business finder's fee credit.

(a) Subject to the limitations of this subchapter, a certified sponsor firm and a certified new business firm shall each be eligible for a tax credit equal to $500 times the total number of full-time Delaware employees of the certified new business firm each tax year for 3 tax years from the new business certification date.

(b) The Division shall develop rules and regulations consistent with this subchapter to implement the provisions herein.

(77 Del. Laws, c. 300, § 1; 81 Del. Laws, c. 49, § 19.)

§ 2093 New business certification process.

(a) To qualify for a business finder's fee credit, a proposed sponsor firm and proposed new business firm shall submit a joint application to the Division, which shall consider whether the application meets the following criteria:

(1) The proposed sponsor firm and proposed new business firm each meet the requirements of this subchapter to be a sponsor firm and new business firm, respectively;

(2) The new business firm intends to relocate to the State of Delaware as a result of recruitment efforts by the sponsor firm, including, but not limited to, written solicitations, inducements, or other incentives, and intends to establish a Delaware business location, and to obtain a Delaware business license within 8 months of the date of application;

(3) The new business firm intends to employ 3 or more full-time Delaware employees within 8 months of the date of application; and

(4) The new business firm is not receiving a tax credit pursuant to the New Economy Jobs Program set forth in subchapter IX of Chapter 20 of this title.

(b) The Division shall review the joint application, and the Director shall, within the exercise of the Director's discretion, certify those applications that meet the standards of subsection (a) of this section.

(77 Del. Laws, c. 300, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 19.)

§ 2094 Tax credit application process.

(a) In order to obtain a credit, certified sponsor firms and certified new business firms shall submit a joint tax credit application to the Division for the business finder's fee tax credit on or after the anniversary of the new business certification date, which certifies the number of full-time Delaware employees that have been continuously employed by the new business firm for a period of at least 3 months prior to the date of the tax credit application.

(b) The certified sponsor firm and the new business firm shall identify on the joint application the tax against which each seeks to apply a credit, should said joint application be approved by the Director. Credits may be claimed against any 1 of the taxes imposed by the following provisions:

(1) Chapter 11 of Title 5;

(2) Sections 702 and 703 of Title 18; or

(3) Chapter 11, 19, 23, 25, 27, 29, 43 or 61 of this title.

(c) The Division shall review and conduct due diligence to verify the employment as reported in the credit application. After such review the Director shall, within the exercise of the Director's discretion, approve qualifying applications for a credit of $500 for each full-time Delaware employee of the certified new business firm. The Director shall submit a written authorization for each such approved application to the certified sponsor firm, certified new business firm, the Division of Revenue, and, if applicable, the Bank Commissioner and the Insurance Commissioner, indicating the amount of business finder's fee tax credit approved for each certified sponsor firm and certified new business firm.

(d) To claim the credit allowed by this subchapter, certified sponsor firms and certified new business firms shall attach the Director's written authorization for each approved application to the Delaware tax return against which the credit is claimed, and submit such tax return to the appropriate state tax authority. To the extent that the business finder's fee tax credit exceeds the amount of the tax otherwise due, unused credits shall be paid to the certified sponsor firm or certified new business firm in the nature of a tax refund. Certified sponsor firms and certified new business firms shall also attach an executed nondisclosure form provided by the Division of Revenue or other taxing agency.

(e) Certified sponsor firms and new business firms are eligible for a tax credit for each of the 3 tax years from the anniversary of the new business certification date, and are not eligible for the tax credit thereafter.

(77 Del. Laws, c. 300, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 19.)

§ 2095 Reports.

The Division shall report annually to the General Assembly, on or before March 1, the names of all certified sponsor and new business firms, the total amount of tax credits awarded pursuant to this Program, and the number of jobs created.

(77 Del. Laws, c. 300, § 1; 81 Del. Laws, c. 49, § 19.)

§ 2096 Reconsideration.

Where any applicant for a new business finder's fee tax credit pursuant to this subchapter objects to any determination by the Director, such applicant shall be entitled to a reconsideration of such decision by the Director or the Director's designee. Such request shall be filed with the Director within 60 days from the issuance of such denial of certification decision. The Director shall, within 30 days of a request for such reconsideration, issue a written decision.

(77 Del. Laws, c. 300, § 1.)

§ 2097 Limitations on credits.

(a) The aggregate amount of such tax credits approved for all sponsor and new business firms shall not exceed $3,000,000 in any state fiscal year.

(b) The Director shall ensure that each application has the date and time of submission recorded. Credits will be awarded in chronological order based upon the date and time upon which each complete application is received by the Division. If a credit award results in exceeding the $3,000,000 limitation for the fiscal year in which it is awarded, the amount by which such credit award exceeds $3,000,000 shall carry over to the succeeding fiscal year and shall receive priority for that year.

(77 Del. Laws, c. 300, § 1; 81 Del. Laws, c. 49, § 19.)

Part II
Income, Inheritance and Estate Taxes
Chapter 20A
Veterans' Opportunity Credit

§ 20A-100 Declaration of purpose.

The purpose of this chapter shall be to provide Delaware's employers with an incentive to hire veterans who have served in overseas conflicts since 2001. Upon their return home, these veterans face a difficult job market and have experienced relatively high rates of unemployment. The tax credit created by this chapter is designed to work in conjunction with the combined efforts of the Departments of Labor and Finance, the Division of Small Business, and veterans' organizations throughout the State to develop and implement comprehensive and coordinated measures designed to assist these veterans as they transition to civilian life.

(78 Del. Laws, c. 381, § 1; 81 Del. Laws, c. 49, § 19; 81 Del. Laws, c. 374, § 53.)

§ 20A-101 Definitions.

For purposes of this chapter:

(1) "Gross wages" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(2) "Qualified employer" means an employer located in Delaware which hires and employs 1 or more qualified veterans.

(3) "Qualified military service" means military service for which a veteran received:

a. The Afghanistan Campaign Medal;

b. The Iraq Campaign Medal; or

c. The Global War on Terrorism Expeditionary Medal.

(4) "Qualified veteran" means either a Delaware resident who engaged in qualified military service, or a nonresident who, as member of the Delaware National Guard, engaged in qualified military service, and who:

a. Has provided to the qualified employer documentation showing that he or she was honorably discharged or is a current member of a National Guard or Reserve unit; and

b. Was initially hired by the qualified employer on or after January 1, 2012, and prior to January 1, 2016.

(5) "Secretary" means the Secretary of the Department of Finance described in § 8302 of Title 29.

(6) "Sustained employment" means a period of employment that is not less than 185 days during the taxable year.

(78 Del. Laws, c. 381, § 1; 70 Del. Laws, c. 186, § 1.)

§ 20A-102 Credit for wages paid to qualified veterans.

(a) Subject to the limitations contained in § 20A-103 of this title and to such return requirements as may be imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary, qualified employers shall be eligible during the year in which a qualified veteran is hired and for the 2 taxable years thereafter for credits against the taxes imposed by the following statutory provisions:

(1) Chapter 11 of Title 5;

(2) Chapter 19 of this title;

(3) Chapter 11 of this title;

(4) Sections 702 and 703 of Title 18.

(b) The amount of the credit against the tax shall equal 10%, but in no event to exceed $1,500, of the gross wages paid by the qualified employer to a qualified veteran in the course of that veteran's sustained employment during the taxable year.

(c) To the extent a qualified employer's credits exceed any amounts otherwise due for the taxes and fees listed under subsection (a) of this section, such unused credits shall be paid to it in the nature of tax refunds.

(78 Del. Laws, c. 381, § 1.)

§ 20A-103 Limitations.

Notwithstanding § 20A-102 of this title, no qualified veterans counted for purposes of veterans' opportunity credits under this chapter may be included in the calculation of employment for purposes of claiming tax credits provided by subchapters II, III, IX and X of Chapter 20 of this title.

(78 Del. Laws, c. 381, § 1.)

§ 20A-104 Rules and regulations.

The Director of Revenue is authorized to promulgate rules and regulations not inconsistent with this chapter and require such facts and information to be reported as the Director deems necessary for administration and enforcement of this chapter. No rule or regulation adopted pursuant to the authority granted by this section shall extend, modify or conflict with any law of this State or the reasonable

implications thereof.

(78 Del. Laws, c. 381, § 1.)

Part II
Income, Inheritance and Estate Taxes
Chapter 20B
EMPLOYER TAX CREDIT FOR HIRING INDIVIDUALS WITH DISABILITIES

§ 20B-100 Declaration of purpose.

The purpose of this chapter is to provide Delaware's employers an incentive to hire referrals from vocational rehabilitation. Provision of a hiring incentive is intended to implement public policy established by § 3302 of Title 14, § 5503 of Title 16, and § 7909A of Title 29 which promote meaningful employment in integrated work settings for individuals with disabilities.

(80 Del. Laws, c. 400, § 1.)

§ 20B-101 Definitions.

For purposes of this chapter:

(1) "Designated state agencies" means the Division of Vocational Rehabilitation and the Division for the Visually Impaired.

(2) "Gross wages" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(3) "Qualified employer" means an employer located in Delaware which hires and employs 1 or more vocational rehabilitation referrals.

(4) "Secretary" means the Secretary of the Department of Finance as described in § 8302 of Title 29.

(5) "Sustained employment" means a period of employment that is not less than 185 days during the taxable year.

(6) "Vocational rehabilitation referral" means any individual who is certified by the designated state agencies as:

a. Having a physical or mental disability which, for such individual, constitutes or results in a substantial impediment to employment; and

b. Having been referred to the employer upon completion of, or while receiving, rehabilitative services pursuant to:

1. An individualized plan for employment under a state plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.];

2. A program of vocational rehabilitation carried out under Chapter 31 of Title 38 of the United States Code [38 U.S.C. § 3100 et seq.].

(80 Del. Laws, c. 400, § 1.)

§ 20B-102. Credit for wages paid to qualified employee.

(a) Subject to the limitations contained in § 20B-103 of this title and to such return requirements as may be imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary, qualified employers shall be eligible during the year in which a qualified employee is hired and for the 2 taxable years thereafter for credits against the taxes imposed by the following statutory provisions:

(1) Chapter 11 of Title 5;

(2) Chapter 19 of this title;

(3) Chapter 11 of this title;

(4) Sections 702 and 703 of Title 18.

(b) The amount of the credit against the tax shall equal 10%, but in no event exceed $1,500, of the gross wages paid by the qualified employer to a vocational rehabilitation referral in the course of that employee's sustained employment during the taxable year.

(c) To the extent a qualified employer's credits exceed the amounts otherwise due for the taxes and fees listed under subsection (a) of this section, such unused credits shall be paid to it in the nature of tax refunds.

(80 Del. Laws, c. 400, § 1.)

§ 20B-103. Limitations.

Notwithstanding § 20B-102 of this title, no vocational rehabilitation referral counted for purposes of the tax credits under this chapter may be included in the calculation of employment for purposes of claiming tax credits by subchapters II, III, IX and X of Chapter 20 of this title.

(80 Del. Laws, c. 400, § 1.)

§ 20B-104 Rules and regulations.

The Director of Revenue is authorized to promulgate rules and regulations consistent with this chapter and require such facts and information be reported as the Director deems necessary for administration and enforcement of this chapter. No rule or regulation adopted pursuant to the authority granted in this section shall extend, modify or conflict with any law of this State or the reasonable implication thereof.

(80 Del. Laws, c. 400, § 1.)

Part II
Income, Inheritance and Estate Taxes
Chapter 20C
Tax Credit for Automatic External Defibrillators

§ 20C-100 Declaration of policy.

The purpose of this chapter is to create incentives for businesses with locations in Delaware to purchase and place automatic external defibrillators into service in this State.

(81 Del. Laws, c. 236, § 1.)

§ 20C-101 Tax credit for automatic external defibrillator placed in service.

Any business that places an automatic external defibrillator in service at a business location within the State is entitled to a credit equal to $100 per unit for a tax year beginning after December 31, 2017. This credit is a 1-time credit for the tax year in which the automatic external defibrillator is placed in service.

(81 Del. Laws, c. 236, § 1.)

Part II
Income, Inheritance and Estate Taxes
Chapter 20D
Angel Investor Job Creation and Innovation Act

§ 20D-101 Definitions [Repealed].

81 Del. Laws, c. 244, § 3; 81 Del. Laws, c. 374, § 53; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-102 Certification of qualified small businesses [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-103 Certification of qualified investors [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-104 Certification of qualified funds [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-105 Tax credit allowed [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-106 Issuance of tentative and final tax credit certificates [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-107 Required reports [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-108 Revocation of tax credits [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-109 Data privacy [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

§ 20D-110 Angel Investor Job Creation and Innovation Act Administration Fund [Repealed].

81 Del. Laws, c. 244, § 3; repealed by 81 Del. Laws, c. 244, § 5, effective Jan. 1, 2022.

Part II
Income, Inheritance and Estate Taxes
Chapter 20E
Organ and Bone Marrow Transplantation Tax Credit [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 440, § 2]

§ 20E-101 Declaration of purpose [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 440, § 2].

The purpose of this chapter is to provide incentives for resident individuals of Delaware to donate organs and bone marrow for transplantation and for Delaware employers to grant paid time off to such individuals who donate organs and bone marrow for transplantation.

(83 Del. Laws, c. 440, § 1.)

§ 20E-102 Definitions [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 440, § 2].

For purposes of this chapter:

(1) "Donor" means a resident of Delaware donating 1 or more human organs, or a part thereof, or bone marrow, to another human for human organ transplantation.

(2) "Gross wages" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(3) "Qualified employer" means an employer located in Delaware which employs a donor and who granted that employee paid time off for the purpose of the transplantation, in addition to traditional paid time off granted to the person.

(4) "Traditional paid time off" means amounts paid to a donor as employee sick time, vacation time, workers' compensation benefits, disability benefits, or pursuant to Chapter 37 of Title 19.

(83 Del. Laws, c. 440, § 1.)

§ 20E-103 Tax credit for expenses associated with human organ or bone marrow donation [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 440, § 2].

(a) A donor is allowed as a credit against the tax imposed by Chapter 11 of this title an amount not to exceed $10,000 of unreimbursed expenses specified in subsection (b) of this section if, while living, the taxpayer or a dependent of the taxpayer donates 1 or more human organs, or a part thereof, or bone marrow, to another human for human organ transplantation. Notwithstanding anything in Chapter 11 of this title to the contrary, unreimbursed expenses claimed by a donor as a credit against tax as allowed in this chapter may not be included as itemized deductions for the donor as otherwise allowable under Chapter 11 of this title.

(b) The tax credit allowed under this section may be claimed for:

(1) Medical, travel, and lodging expenses paid by the donor to the extent such expenses are reasonable in amount, related to the donation, and not reimbursable by the donor.

(2) The donor's lost wages related to the donation, net of any amounts paid or payable to the donor relating to the transplantation including amounts paid by the employer for traditional paid time off, paid by the employer for other than traditional paid time off, and under Chapters 23 and 37 of Title 19 or any policy of insurance.

(c) The tax credit allowed under this section must be claimed in the taxable year in which the human organ transplantation occurs. Notwithstanding anything to the contrary under this title, to the extent that expenses specified in subsection (b) of this section are incurred in the previous taxable year, such expenses must be claimed in the taxable year in which the human organ transplantation occurred. In circumstances where expenses specified in subsection (b) of this section are incurred within 12 months after the human organ transplantation occurred, such expenses may be taken in the taxable year incurred, provided that the aggregate credit allowable under this chapter for any 1 human organ transplantation does not exceed $10,000.

(d) Notwithstanding anything in this section to the contrary, for any taxable year, the total credit allowable for a donor under this section may not exceed $10,000.

(e) To the extent a taxpayer's tax credits pursuant to this section exceed any amounts otherwise due for the taxes listed under subsection (a) of this section, such unused credits shall be paid to the taxpayer in the nature of tax refunds.

(83 Del. Laws, c. 440, § 1.)

§ 20E-104 Tax credit for wages paid by qualified employer [Effective upon fulfillment of the contingency in 83 Del. Laws, c. 440, § 2].

(a) Subject to such return requirements as may be imposed by the State Bank Commissioner, the Insurance Commissioner, or the Secretary of the Department of Finance, qualified employers shall be eligible during the year the organ transplantation occurred for credits against the taxes imposed by the following statutory provisions:

(1) Chapter 11 of Title 5.
(2) Sections 702 and 703 of Title 18.
(3) Chapter 11 of this title.
(4) Chapter 19 of this title.

(b) The amounts of the credit against the tax shall equal 25% of the gross wages paid to the donor for a period of up to 30 days of missed work for each donation, but the gross wages paid to the donor during the time missed from work for purposes of calculating this credit may not include wages paid to the donor for traditional paid time off. Notwithstanding anything in this title to the contrary, no deduction will be allowed for that portion of the wages or salaries paid or incurred for the taxable year that is equal to the credits determined by a qualified employer for the taxable year under this chapter.

(c) To the extent a qualified employer's credits exceed any amounts otherwise due for the taxes and fees listed under subsection (a) of this section, such unused credits shall be paid to it in the nature of tax refunds.

(83 Del. Laws, c. 440, § 1.)

Part III
Occupational and Business Licenses and Taxes
Chapter 21
GENERAL PROVISIONS CONCERNING LICENSES

§ 2101 General license requirement for occupations.

No person shall engage in or carry on any trade or business for which a license is required by this part without first having obtained a license therefor from the Department of Finance and paid therefor the fee or tax prescribed in this part. The provisions of § 516(g) and § 2216 of Title 13 shall apply and supersede any license requirements of this part with respect to matters involving any applicant or licensee under § 516(g) or § 2216 of Title 13. The Department shall forthwith deny the issuance or renewal of any license under this part, or suspend the same, upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13 or notice from the Director of the Division of Child Support Services pursuant to § 2216 of Title 13 regarding an applicant or licensee. The Social Security number of the applicant shall be included on the application for issuance or renewal of any license under this part.

(27 Del. Laws, c. 139; Code 1915, § 180; 40 Del. Laws, c. 27, § 1; Code 1935, § 192; 41 Del. Laws, c. 14, § 2; 30 Del. C. 1953, § 2101; 57 Del. Laws, c. 741, § 10A; 70 Del. Laws, c. 452, § 12; 71 Del. Laws, c. 216, §§ 56, 90; 80 Del. Laws, c. 234, § 30.)

§ 2102 Term of licenses.

(a) *In general.* — All licenses issued under this title shall be for a term of 1 year, expiring on December 31, or on the date prescribed pursuant to the provision of the Delaware Code under which it was issued. Lost or stolen license certificates may be replaced for their unexpired terms upon payment of a $15 fee to the Department of Finance.

(b) *Optional 3-year renewal.* — Persons licensed under this section may, but are not required to, renew their licenses for a term of 3 years upon payment of a license fee equal to 3 times the fee in effect for said license at the time of renewal. Holders of 3-year licenses which add locations or units separately licensable under this section shall pro-rate the license fee for additional units or locations to the expiration date of their current licenses.

(c) [Repealed.]

(Code 1852, § 1226; 25 Del. Laws, c. 14, § 3; 27 Del. Laws, c. 30; Code 1915, §§ 187, 212; 28 Del. Laws, c. 13; 40 Del. Laws, c. 27, § 1; Code 1935, §§ 198, 240; 41 Del. Laws, c. 14, §§ 8, 9; 30 Del. C. 1953, § 2102; 57 Del. Laws, c. 136, § 4; 60 Del. Laws, c. 24, § 20; 71 Del. Laws, c. 314, § 2; 74 Del. Laws, c. 108, § 1; 83 Del. Laws, c. 107, § 7.)

§ 2103 Duties of the Department of Finance; adoption of rules and regulations; penalty.

(a) The Department of Finance shall keep a record of all licenses. All provisions of law relative to the duties and powers of the Auditor of Accounts in auditing and adjusting accounts shall apply with equal force and effect to the Department of Finance relative to the licenses mentioned in this title.

(b) [Repealed.]

(c) Whenever any section of Part III of this title is amended to affect taxes or licenses or rules or regulations are promulgated by the Division of Revenue which affect taxes or licenses, it shall be the duty of the Division of Revenue to give public notice of such changes. Such notification, where appropriate, shall be made when new forms are mailed to businesses and merchants.

(d) Notwithstanding the requirements set forth in subsection (c) of this section, a claimed lack of notification of any changes in Part III of this title or in rules or regulations affecting taxes or licenses by a business or merchant shall not give rise to a cause of action against the Division of Revenue, nor shall it eliminate or reduce any fines or penalties incurred because of the failure of the business or merchant to comply with a new statute, rule or regulation.

(Code 1915, § 226A; 40 Del. Laws, c. 30, § 1; Code 1935, § 206; 42 Del. Laws, c. 77, §§ 1, 2; 30 Del. C. 1953, § 2103; 50 Del. Laws, c. 442, § 1; 57 Del. Laws, c. 136, § 5; 57 Del. Laws, c. 188, §§ 1, 34; 57 Del. Laws, c. 741, §§ 10A-10C; 60 Del. Laws, c. 562, § 1; 64 Del. Laws, c. 120, § 1; 66 Del. Laws, c. 103, § 1; 66 Del. Laws, c. 120, § 6; 68 Del. Laws, c. 187, § 15; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 226, § 9.)

§ 2104 Notice of date for procuring licenses.

The Department of Finance shall cause public notice of the time when the licenses required in this part shall be procured. The public notice required shall be in such form and to such extent as the Secretary of Finance deems necessary.

(14 Del. Laws, c. 418, §§ 8, 10; 25 Del. Laws, c. 14, § 4; Code 1915, §§ 159, 161, 188, 226A; 40 Del. Laws, c. 25, § 1; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 27, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 171, 173, 201; 57 Del. Laws, c. 741, § 10A; 58 Del. Laws, c. 205.)

§ 2105 Exemption for certain persons 65 years of age or older and certain licensed direct care workers.

An individual, 65 years of age or older or licensed as a direct care worker under § 2301(a) of this title, and whose gross receipts for the 12 months, beginning July 1 and ending June 30, preceding the year of application or renewal are less than $10,000 shall pay one fourth of

the annual occupational or business license fee specified in §§ 2301(a), 2301(b), 2502(a), 2702(a), 2902(b), 2903(b), 2904(b), 2905(a), 2906(b), 2907(b), 2908(b) and 4305(a) of this title.

(75 Del. Laws, c. 171, § 1; 78 Del. Laws, c. 104, § 1.)

§ 2106 Transferability of license; succession on death.

Each license granted under this part shall be for the sole use and benefit of the licensee to whom it is issued and shall not be transferable. In case of the death of any licensee, the licensee's personal representative shall succeed to all rights thereunder until the date of expiration of the license issued.

(14 Del. Laws, c. 418, §§ 8, 10; 20 Del. Laws, c. 71, § 2; 25 Del. Laws, c. 14, § 4; Code 1915, §§ 159, 161, 188, 200, 226A; 40 Del. Laws, c. 25, § 1; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 27, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 171, 173, 176, 201; 30 Del. C. 1953, § 2106; 70 Del. Laws, c. 186, § 1.)

§ 2107 Place of business specified in license; change of location.

A license granted for an occupation and which specifies the place of business thereby licensed shall not authorize the licensee to carry on any trade, business, pursuit or occupation specified in such license in any other place than the place of business set forth in such license. If a licensee changes the location of the licensee's place of business during the period for which the license is issued, the license may be transferred to such new location.

(25 Del. Laws, c. 14, § 3; Code 1915, § 187; 40 Del. Laws, c. 27, § 1; Code 1935, § 198; 41 Del. Laws, c. 14, §§ 8, 9; 30 Del. C. 1953, § 2107; 70 Del. Laws, c. 186, § 1.)

§ 2108 No license refunds.

No refund of license fees shall be payable for any unexpired term of a license.

(74 Del. Laws, c. 108, § 2.)

§ 2109 Display of license; penalty.

(a) Every person holding any state license authorizing the conduct of any business, trade or vocation shall expose such license in a conspicuous manner in the principal office or place of business of such person.

(b) Every individual, every member of a firm or association of persons and every director and officer of a corporation holding a license under this part and failing to comply with this section shall be fined not more than $100.

(c) None of the provisions of this section shall be deemed or taken to repeal the penalties imposed by any statute of the State for the failure of any particular class of licensees.

(25 Del. Laws, c. 145, §§ 1-3; Code 1915, § 270; Code 1935, § 242; 30 Del. C. 1953, § 2109.)

§ 2110 Contract to pay another's license tax.

No person shall agree or contract directly or indirectly to pay or assume or bear the burden of any license tax payable by any person, firm or corporation under the provisions of this Part. Any such agreement shall be null and void and shall not be enforced or given effect by any court. This section shall not apply to the surcharge described in § 2902(c)(4) of this title.

(Code 1935, § 198A; 43 Del. Laws, c. 10; 30 Del. C. 1953, § 2110; 67 Del. Laws, c. 326, § 4; 78 Del. Laws, c. 94, §§ 1, 2.)

§ 2111 Form and signature of licenses.

The Secretary of Finance, or the Secretary's delegate, each year, shall prepare blank licenses for each business, trade, pursuit or corporation mentioned and enumerated in this part in such form as the Secretary of Finance deems proper. The licenses shall be signed by the signature or by the facsimile signature of the Secretary of Finance and shall each bear the date of issue.

(14 Del. Laws, c. 418, § 8; Code 1915, §§ 159, 226A; 40 Del. Laws, c. 25; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 171, 206; 30 Del. C. 1953, § 2111; 57 Del. Laws, c. 741, §§ 10A, 10B; 60 Del. Laws, c. 562, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2112 Contents of licenses.

Every license issued under this part shall state:

(1) The name and address of the licensee;

(2) The trade, business or occupation for which the license is granted;

(3) The amount of the license fee paid to the State; and

(4) The date of issuance of the license.

(25 Del. Laws, c. 14, § 3; Code 1915, § 187; 40 Del. Laws, c. 27, § 1; Code 1935, § 198; 41 Del. Laws, c. 14, §§ 8, 9; 30 Del. C. 1953, § 2112.)

§ 2113 Right to carry on business under license.

(a) Every person, other than a circus exhibitor, who shall procure an occupation license may, during the term for which such license is granted, carry on such occupation in any county of this State, subject, however, to the provisions and restrictions contained in this part.

(b) Every circus exhibitor who shall procure a license to conduct a circus shall be authorized and empowered during the term for which such license was granted to exercise and carry on such occupation in every county of this State, subject, however, to the provisions and

restrictions contained in said license.

(25 Del. Laws, c. 14, § 3; Code 1915, § 187; 40 Del. Laws, c. 27, § 1; Code 1935, § 198; 41 Del. Laws, c. 14, §§ 8, 9; 30 Del. C. 1953, § 2113.)

§ 2114 Additional licenses for more than 1 occupation or business [Repealed].

Repealed by 65 Del. Laws, c. 184, § 4, effective July 1, 1985.

§ 2115 Exemption of amusement places for religious or philanthropic purposes.

Any person conducting or exhibiting any place of amusement which is required to be licensed, where all of the profits derived from such place of amusement are devoted to charitable, religious or philanthropic purposes, shall not be required to take out any license.

(26 Del. Laws, c. 16, § 25; Code 1915, § 226; Code 1935, § 202; 30 Del. C. 1953, § 2115.)

§ 2116 Auctioneer and book agent exemption for veterans.

No honorably discharged soldier or sailor shall be required to procure any license to follow the occupation of canvassing for the sale of books or for the occupation commonly known as that of "book agent" or for the occupation of auctioneer. The certificate of honorable discharge of any such soldier or sailor shall be conclusive evidence of the right of such soldier or sailor to follow the occupations hereinbefore mentioned without having procured a license therefor.

(22 Del. Laws, c. 389, §§ 1, 2; 26 Del. Laws, c. 180, § 8; Code 1915, §§ 213, 215; 32 Del. Laws, c. 7; Code 1935, §§ 188, 190; 42 Del. Laws, c. 66; 47 Del. Laws, c. 75; 30 Del. C. 1953, § 2116.)

§ 2117 Agent violating this chapter may be proceeded against as principal.

In case of the violation of this chapter by any person, association of persons, firm or corporation, any person or persons acting as agent or agents of such person, association of persons, firm or corporation may be proceeded against as principals and, if found guilty, shall be punished in accordance with the provisions thereof.

(26 Del. Laws, c. 179, § 2; Code 1915, § 202; Code 1935, § 178; 30 Del. C. 1953, § 2117.)

§ 2118 Officers to enforce license laws; penalties.

(a) Every justice of the peace and constable, within such officer's respective county, whenever such officer has knowledge that any individual, copartnership, firm or corporation or any other association of persons acting as a unit is or are engaged in prosecuting, following or carrying on or practicing or conducting any business, trade, pursuit or occupation mentioned and enumerated in this part without having first obtained a license therefor as required in this part, shall make complaint or cause complaint to be made thereof to the Department of Finance, which shall thereupon proceed according to the provisions of this chapter relative thereto, and the jurisdiction of justices of the peace and constables relative to misdemeanors and offenses shall extend and apply to misdemeanors and offenses created by this part. Every individual, copartnership, firm or corporation or any other association of persons acting as a unit engaged in prosecuting, following or carrying on or practicing or conducting any business, trade, pursuit or occupation mentioned and enumerated in this part, shall, on demand of any officer of the Department of Finance or of any justice of the peace or constable or on demand of any citizen of this State, produce the license therefor; and unless he, she or they shall so do, it shall be presumptive evidence that he, she or they, as the case may be, has or have no license.

(b) Whoever, being a justice of the peace, sheriff, deputy sheriff or constable, neglects or refuses to perform the duty required of such officer, as in this section provided, shall be fined in such amount as the court may determine.

(c) Whoever, being a public officer and having made an arrest under this section, accepts or receives any money or reward of any kind, as a condition of releasing the person arrested without prosecution, shall be fined not more than $100, or imprisoned not more than 20 days, or both.

(d) Justices of the peace shall have jurisdiction of offenses under this part.

(Code 1915, § 226A; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 206, 206B; 41 Del. Laws, c. 18, § 2; 30 Del. C. 1953, § 2118; 57 Del. Laws, c. 741, §§ 10A, 10D; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 266, § 22.)

§ 2119 Carrying on specified occupations without license; penalties.

If any individual, copartnership, firm or corporation or any association of persons acting as a unit shall engage in, prosecute, follow or carry on any occupation or business for which a license is required by this Part, within the limits of this State, without having first obtained a proper license therefor, that person or persons and the individuals composing such firm or association of persons and each of them and the president and directors of such corporation and each of them, and those persons defined in § 282 of Title 11, for every such offense shall be liable to the payment of the license fees and shall be fined not more than $3,000, or imprisoned not more than 2 years, or both.

(15 Del. Laws, c. 381, § 4; 17 Del. Laws, c. 83, § 2; 18 Del. Laws, c. 555, § 4; 20 Del. Laws, c. 118, § 1; 20 Del. Laws, c. 457, §§ 1, 2; Code 1915, §§ 182, 183; 40 Del. Laws, c. 27, § 1; 40 Del. Laws, c. 29, §§ 1, 2; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 194, 197; 41 Del. Laws, c. 14, §§ 4, 7; 30 Del. C. 1953, § 2119; 57 Del. Laws, c. 136, § 9; 67 Del. Laws, c. 40, §§ 4, 5; 70 Del. Laws, c. 186, § 1.)

§ 2120 Computation of gross receipts.

(a) Wherever this part uses the term "gross receipts," no deduction shall be made therefrom on account of the cost of property sold, the

cost of materials used, labor costs, interest, discount paid, delivery costs, federal or state taxes or any other expense whatsoever paid or accrued or losses, unless otherwise expressly provided in this part.

(b) "Gross receipts" (and, in the case of Chapter 43 of this title, "rent" and "lease rental payments") shall not include amounts received from a related entity. Entities are related whenever: (1) more than 80 percent in value of the stock, partnership interests, beneficial trust interests or other ownership interests of each entity is owned directly, indirectly or beneficially by the same 5 or fewer individuals; or (2) 100 percent of each entity is owned by a member or members of 1 family. "Family" for purposes of this section shall mean those individuals standing in a close family relationship to each other. For purposes of this subsection, a "close family relationship" shall mean the following relationships: A husband or wife; a parent, grandparent, child by birth, spouse or surviving spouse of a child by birth, a child by legal adoption, the lineal descendant of the decedent, a stepchild of the decedent or the lineal descendant of a stepchild; or any person whose relationship is within 5 degrees of consanguinity, whether by the whole or half blood, and whether a blood relative of the decedent or a relative by virtue of legal adoption. For purposes of determining ownership interest of 5 or fewer individuals (and not members of a family), ownership of stock, partnership interests, trust beneficial interests or other ownership interests shall be determined in accordance with the attribution rules set out in § 544(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 544) or successor section.

(30 Del. C. 1953, § 2120; 57 Del. Laws, c. 136, § 10; 60 Del. Laws, c. 24, § 18; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 489, §§ 1, 2; 72 Del. Laws, c. 104, § 7.)

§ 2121 Prorating of license fees for part-year licensees.

In the case of any person making an initial application for a business or occupational license pursuant to Chapter 23, 25, 27, 29 or 43 of this title, the basic annual license fee for such initial year specified therein shall be reduced pro rata by the portion attributable to the number of full calendar months of the license year that have expired prior to the issuance of the license or, otherwise than in the event of any person making an initial application for a license, in the case of license fees under Chapter 23 of this title computed according to numbers of business units prior to such business units being placed in service.

(60 Del. Laws, c. 562, § 5; 67 Del. Laws, c. 40, §§ 18, 19.)

§ 2122 Definitions.

For purposes of this part, the term "lookback period" shall refer to the 12-month period between July l and June 30 immediately preceding the taxable year for which the filing frequency is determined by reference to the lookback period. Persons who were, during the entirety of the lookback period, not required to be licensed under a specific chapter of Part III of this title, shall be deemed to have had no taxable gross receipts during the lookback period with regard to that chapter.

(69 Del. Laws, c. 289, § 12.)

§ 2123 Annual filing requirements.

The Director may, by regulation, to include by means of instructions accompanying returns, waive quarterly filing of returns relative to taxes on gross receipts in the case of taxpayers who have had no taxable gross receipts within the quarter. In no event shall taxpayers required to report gross receipts be permitted to file any less frequently than annually.

(69 Del. Laws, c. 289, § 14.)

§ 2124 Revocation, denial, or nonrenewal of licenses for nonpayment of taxes.

(a) *Revocation, denial or nonrenewal of licenses.* — Whenever there has remained unpaid by a person for a period in excess of 180 days any final assessment of tax and/or penalty or interest due under this title (other than Chapters 51 and 52 and Chapter 30 of this title with the exception of §§ 3004 and 3005 of said chapter) exceeding $2,500, the Director may issue a notice of intent to revoke any license issued to such person (provided such license shall be the license for the business or occupation from which the liability arose and also provided that, in case of delinquent withholding or corporate income taxes, any license issued to such person) or, in the case of an application for a new license or renewal of an existing license, a notice of intent, respectively, to deny or withhold the license.

(b) *Other persons affected.* — The Director may revoke, deny or withhold a license under the preceding subsection when he finds that:

(1) The license is sought by or was issued to a person who is related, as defined in § 2125 of this title, to a revokee;

(2) The chapter of this title under which the previous license was revoked, denied or withheld is the same as the chapter under which the subsequent license is sought or was issued; and

(3) The business being or to be conducted is substantially the same as the revokee's business.

(c) *Notice.* — Notice of proceedings pursuant to subsection (a) or (b) of this section shall set forth the reasons for its issuance (including the amount of such unpaid liability) and shall be sent by certified mail to the last known address of the licensee or applicant.

(d) *Finality of revocation, denial or nonrenewal; right to protest.* —

(1) Thirty days after the issuance of the notice of intent, the revocation, denial or nonrenewal shall become final, unless within that time the taxpayer has done 1 of the following:

a. Paid the debt in full.

b. Entered into a written agreement with the Director of Revenue or the Director's designee for payment of the debt with terms as the Director may require.

c. Filed a written protest with the Director under § 523 of this title.

(2) The sole grounds for protest under subsection (a) of this section are:

a. The absence of any unpaid liability as of the date of the protest.

b. The absence of an unpaid liability exceeding $2,500 as of the date of the notice under subsection (a) of this section.

c. That the assessment creating the liability was contrary to law and the person did not have opportunity to protest the assessment.

(3) In the case of revocation, denial, or withholding of licenses under subsection (b) of this section, a protest may be made on the grounds set forth for instances arising under paragraph (d)(2) of this section and, in addition, on the grounds that:

a. The conditions required under subsection (b) of this section do not exist; or

b. Notwithstanding the conditions required under subsection (b) of this section, the other affected person acquired the business or its assets in an arms' length transaction and neither the revokee nor any owner of 25% or more of the revokee has any interest in the acquired business.

(4) The decision of the Director under this subsection shall be final and shall not be reviewed under § 544 of this title. However, in any matter where the State shall place in issue the nonlicensure of a business, including any action under subsection (e) of this section, any person may raise any defense that may be or may have been raised under this subsection.

(e) *Injunctions.* — The Court of Chancery shall have jurisdiction to enjoin any person who has not first obtained a license under this part, or whose license has been revoked, denied or withheld under subsection (a) or (b) of this section, from transacting any occupation or business in this State. The Director of Revenue may proceed for this purpose by complaint in any county in which such person is doing business.

(f) *Relief from this section.* — The Director may issue, renew or reissue any license which has been revoked, denied or withheld under this section upon full payment of the amount stated in the Notice described in this section plus interest to the date of payment; or upon agreement for full payment plus interest and current tax obligations under such terms and conditions as the Director may deem suitable to preserve the revenues of the State.

(g) *Remedies not exclusive.* — Nothing in this section shall prevent the Director from:

(1) Seeking to enjoin the conduct of business by a subsequent licensee in the case of a business whose license was revoked on the ground that change of identities between the revoked licensee and the subsequent licensee is substantially without substance or a sham.

(2) Invoking remedies related to fraudulent conveyances under Title 6; or

(3) Invoking remedies related to transferee liability under this title.

(67 Del. Laws, c. 40, § 6; 68 Del. Laws, c. 187, § 32; 74 Del. Laws, c. 159, § 4; 82 Del. Laws, c. 226, § 10.)

§ 2125 Definitions applied to § 2124; burden of persuasion.

(a) For purposes of remedies under § 2124 of this title,

(1) *"Related person."* — A related person is any sibling or any natural person identified in § 318(a) of the Internal Revenue Code (26 U.S.C. § 318) or, by applying the constructive ownership rules of 26 U.S.C. § 318(a), any entity in which 25% or more of whose equity is owned by a revokee, or any natural person or entity owning 25% or more of the equity of the revokee;

(2) *"Revokee."* — "Revokee" means a person whose business license has been revoked, denied or withheld under § 2124 of this title;

(3) *"Substantially same business."* — A business is substantially the same as a revokee's business if any of the following conditions exist:

a. The business location is substantially the same as the revokee's;

b. The customers are substantially the same as the revokee's;

c. The employees are substantially the same as the revokee's; or

d. The physical assets of the business are substantially the same as the revokee's.

(b) *"Burden of proof."* — Provided the Director shall show that a license was properly revoked, denied or withheld under § 2124 of this title, in any proceeding initiated under § 2124(e) of this title or in any other proceeding in which the State shall put in issue the nonlicensure of a business, the burden of proof shall be upon the person whose license has been revoked, denied or withheld to prove the defenses specified in § 2124(d) of this title.

(74 Del. Laws, c. 159, § 5.)

§ 2126 Confidential reporting of violators.

The Department of Finance shall provide an anonymous reporting system for the reporting of individuals or businesses who have failed to obtain any license required under Chapter 23, 25, 27, or 29 of this title.

(79 Del. Laws, c. 400, § 1.)

Part III
Occupational and Business Licenses and Taxes
Chapter 23
COST OF OCCUPATIONAL LICENSES AND FEES

§ 2301 Occupations requiring licenses; definitions; fees; exemptions.

(a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of $25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(1) *Advertising agency,* $75. "Advertising agency " includes every person engaged in the business of displaying advertising matter by billboards, posters or circulars, signs or window display, or of undertaking the writing or composition of advertisements for other persons on a commission, rental or flat fee basis.

(2) *Amusement conductor,* $75. "Amusement conductor" includes every person engaged in the business of conducting or maintaining or furnishing on a commission or other basis mechanical or electronic devices for entertainment of the general public, for which a charge is made for the use thereof; provided further than an owner of certain of such mechanical or electrical devices operated automatically by insertion of a coin or token shall pay an additional license fee for the business as defined and at the rates prescribed as follows:

"Amusement machine owner" embracing every person engaged in the business of owning and operating either on the person's own account or by an agent, or by lease to another from such person or the agent, certain of the mechanical or electronic devices referred to in this section for furnishing to the public, music by the playing of records or transcriptions or which constitute a game or other device designed for public amusement, a fee for a license at the rate of $75 for each machine so owned and operated, provided the coin or token necessary to operate such machine is worth 5 cents or more.

(3) *Auctioneer,* $ 75. "Auctioneer" includes every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit, except as otherwise provided by the provisions of this chapter. Any auctioneer not a citizen of this State shall be required to pay $ 225 for each county in which the person acts as auctioneer. No auctioneer shall be authorized by virtue of the license granted to employ any other person to act as auctioneer in the auctioneer's behalf, except in the auctioneer's own store or warehouse or in the auctioneer's presence, nor shall the term "auctioneer" apply or extend to a judicial or executive officer making sales in pursuance of any execution, judgment, or decree of any court nor to public sales made by executors or administrators.

(4) *Broker,* $75. "Broker" includes every person operating a business of buying and selling for the account of other persons for a commission or for profit, stocks, bonds, currency, negotiable paper, securities and any other intangible personal property.

(5) *Circus exhibitor,* $750. "Circus exhibitor" includes every person engaged in the business of exhibiting in a tent, arena, or other open space equestrian stunts, acrobatic stunts, freaks, trained or wild animals, and other forms of entertainment commonly known as a circus. This paragraph shall not be construed to include any circus or carnival for private profit sponsored by or in which any fire company of the State, or any fraternal, veteran's or religious organization shall share in the profits. The license fee for such circus or carnival shall be $300.

(6) *Commercial lessor,* $75. "Commercial lessor" includes every person who, as lessor or sublessor, receives rental income pursuant to any agreement transferring a title interest or possessory interest in real property located in this State under a lease of a commercial unit for any term. For this purpose, "commercial unit " means a structure or that part of a structure which is used for purposes other than a dwelling unit or farm unit.

(7) *Drayperson or mover,* $75. "Drayperson or mover" includes every person operating a business of transporting for profit tangible personal property of other persons.

(8) *Finance or small loan agency,* $450. "Finance or small loan agency" includes every person engaged in the business of lending money, with or without security, to other persons, with repayments of the loans to be made by installments or otherwise, but shall not include, either in reference to future or past transactions, banks or trust companies authorized to do banking business in the State under Title 5.

(9) *Hotel,* $25 for each room and $30 for each suite. "Hotel" includes every person engaged in the business of operating a place where the public may, for a consideration, obtain sleeping accommodations and meals and which, in an incorporated town, has at least 10 and in any other place at least 6 permanent bedrooms for the use of guests.

(10) *Manufacturer's agent or representative,* $75. "Manufacturer's agent" or "representative" includes every independent contractor in the business of representing 1 or more manufacturers for purposes of promoting the sale of the goods, product, or line of goods or products of such manufacturer or manufacturers within the State.

(11) *Mercantile agency or collection agency,* $75. "Mercantile agency" or "collection agency" includes every person operating a

business of investigation of financial ratings and credit and/or the collection of commercial or consumer accounts for other persons, except attorneys-at-law having a license to practice such profession in this State.

(12) *Motel,* $25 for each room. "Motel" includes every person engaged in the business of furnishing for a consideration, transient guests with sleeping accommodations, private bath and toilet facilities, linen service and a place to park an automobile and who is not in the business of operating a hotel or tourist home as defined in this section.

(13) *Outdoor musical festival promoter,* $750. "Outdoor musical festival promoter" includes every person engaged in the business of organizing, operating, producing or staging musical entertainment in open spaces and not in a permanent structure for a gathering of 1,000 or more persons who pay a consideration or admission charge to view or hear such musical entertainment.

(14) *Parking lot or garage operator,* $75 for the first lot or garage facility and $35 for each additional facility. "Parking lot" or "garage operator" includes every person engaged in the business of operating any motor vehicle parking facility, whether open or enclosed, with space for 10 or more vehicles.

(15) *Photographer,* $75. "Photographer" includes every person operating a business of taking, making and/or developing photographs or pictures by action of light for profit or reward. Transient photographers without a regular and established place of business within the State shall pay an additional license tax of $25 for each day of operation within the State.

(16) *Real estate broker,* $75. "Real estate broker" includes every person certified as such by the Delaware Real Estate Commission and engaged in the real estate business. It includes those among such persons who deal exclusively or partly with rental property.

(17) *Sales representative,* $75. "Sales representative" includes every person who works in excess of 80 hours in any calendar month in the year selling goods or merchandise door to door. It includes soliciting orders and home demonstrations.

(18) *Security alarm business,* $115. "Security alarm business" includes every security alarm business defined in § 1201 of Title 24.

(19) *Showperson,* $375. "Showperson" includes every person engaged in the business of conducting or operating for profit a public theater, house or other enclosed place for the exhibition of stage shows or musical presentations, animal shows, carnivals for private profit and all other amusements of like character.

(20) *Taxicab or bus operator,* $45, for the first motor vehicle; $30, for each additional motor vehicle. "Taxicab" or "bus operator" includes every person engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public. A public carrier holding a certificate of public convenience and necessity issued by the Delaware Transportation Authority of the Department of Transportation authorizing it to operate a taxicab business, which actually operates such taxicab business through the leasing of its taxicab vehicles to independent contractor lessee drivers, shall be construed to be a "person" under this paragraph "engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public" and shall pay the above-specified annual fees for its taxicab motor vehicles which are subject to such leasing for the year involved, and none of the independent contractor lessee drivers of such vehicles shall be construed to be a "person engaged in the business of the operation of motor vehicles in transporting persons for hire in the accommodation of the general public" within the meaning of this paragraph. This tax shall not apply however, to the operation of school buses used solely in the transportation of children to and from kindergarten, grade school, vocational school and high school.

(21) *Tourist home,* $15 for each room. "Tourist home" includes every person who operates a place where tourists or transient guests, for a consideration, may obtain sleeping accommodations and which has at least 5 permanent bedrooms for the use of tourists or transient guests and who is not in the hotel or motel business as defined in this section.

(22) *Trailer park,* $10 for each space as specified on a plot plan or as designated by the owner. "Trailer park", which may also be identified as a recreational vehicle park, or a tenting recreation park, includes any person engaged in the business of operating any place where space is furnished for units to park and hook up to or use sanitary and/or electrical facilities. This paragraph shall not apply to mobile home parks.

(23) *Transportation agent,* $75. "Transportation agent" includes every person operating a business of selling tickets on behalf of other persons, for transportation by common carriers on a commission basis or for profit.

(24) *Travel agency,* $225. "Travel agency" includes every person in the business of operating a full service travel bureau or department which assists in the planning and acquisition of tickets for contemplated trips of its customers by land, sea or air and for related accommodations.

(25) *Headquarters Management Corporation,* $5,000; provided, however, that in the case of any affiliated group, as defined in § 6401(1) of this title, only 1 member of such affiliated group that is a Headquarters Management Corporation shall be liable for a $5,000 annual license tax under this paragraph, and each other member of such affiliated group that is a Headquarters Management Corporation shall pay a license tax of $500. For purposes of this paragraph, "Headquarters Management Corporation " has the meaning set forth in § 6401(5) of this title.

(26) *Direct care worker,* $75. "Direct care worker" means, for purposes of this title, an individual (aide, assistant, caregiver, technician or other designation used) under contract to, but not employed by, a personal assistance services agency to provide personal care services, companion services, homemaker services, transportation services and those services as permitted in § 1921(a)(15) of Title 24 to consumers. The direct care worker provides these services to an individual primarily in the individual's place of residence.

(27) *Interactive fantasy sports registrant,*

$50,000. "Interactive fantasy sports registrant" shall have the same meaning as set forth in § 4862 of Title 29.

(b) Upon every person engaging or continuing to engage in any service industry, business, calling or profession not otherwise specifically licensed and taxed under subsection (a) of this section, there is hereby levied and there shall be collected an annual general service license fee of $75.

(c) (1) Any person licensed under subsection (a) or (b) of this section whose business activity or operation is not limited to the rendition of services for other persons but also involves the sale or exchange of goods or personal property shall also be subject to the license fees imposed by Chapter 29 of this title.

(2) Paragraph (c)(1) of this section shall not apply to any case in which the sale or exchange of goods or personal property is incidental to the business activity licensed under subsection (a) or (b) of this section. For the purposes of this subsection, such sales or exchanges shall be deemed to be incidental if the gross receipts from such sales or exchanges do not exceed $8,500. In such case, Chapter 29 of this title shall not apply, but such incidental sales shall be included in gross receipts subject to tax under Chapter 23 of this title.

(3) The purchase of debt obligations of "affiliated corporations" shall not cause a person to be subject to tax under this chapter; provided, that the foregoing provision shall not apply to an "affiliated finance company" as defined in § 6301(2) of this title. For purposes of the foregoing sentence "affiliated corporations" shall have the same meaning as in § 6301(1) of this title.

(d) (1) In addition to the license fee required by subsections (a) and (b) of this section, every person shall also pay a license fee at the rate of 0.3983% of the aggregate gross receipts paid to such person attributable to activities licensable under this chapter, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(2) Notwithstanding paragraph (d)(1) of this section, if the taxable gross receipts prescribed by paragraph (d)(1) of this section during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) a. For persons described in paragraph (a)(27) of this section, for the privilege of conducting interactive fantasy sports contests in the State, interactive fantasy sports registrants shall also pay a license fee at a rate equal to 15.5% of their aggregate interactive fantasy sports gross receipts generated within the State. For purposes of this section, "interactive fantasy sports gross receipts" means an amount equal to the total of all entry fees that the registrant collects from all authorized players, less the total of all sums paid out as winnings to all authorized players, multiplied by the "resident percentage," as defined in § 4862 of Title 29.

b. The fees provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the license fees imposed by paragraphs (a)(27) and (d)(3) of this section on interactive fantasy sports registrants to the credit of the general fund, net of administrative expenses incurred by the Division of Revenue in enforcing this subsection and the Division of Gaming Enforcement in enforcing Chapter 48 of Title 29.

c. [Repealed.]

(4) [Repealed.]

(e) "Gross receipts" is defined as total consideration for services rendered, goods sold, or other-income producing transaction within this State, including fees and commissions.

(1) For persons described in paragraphs (a)(4) and (16) of this section the tax imposed under subsection (d) of this section shall be imposed on the broker. Salespersons operating in the broker's office shall be exempt from the taxes and fees imposed by subsections (b) and (d) of this section with respect to services performed in connection with the broker's business; provided, however, that commissions and fees paid to such salespersons shall be subject to tax under subsection (d) of this section as though such fees or commissions were received by the broker.

(2) Any person functioning in an "employee" relationship as defined in the Federal Insurance Contribution Act [26 U.S.C. § 3101 et seq.] shall be exempt from this chapter with respect to activities as an employee.

(3) In the case of partnerships, professional corporations or associations, the tax imposed under subsection (d) of this section shall be imposed on the aggregate gross receipts of such partnerships, professional corporation or association.

(4) Any person functioning as a "partner" shall be exempt from this chapter with respect to activities solely as a "partner".

(5) Gross receipts for businesses described in paragraphs (a)(1), (3), (4), (10), (11) and (16) of this section shall consist of commissions and fees earned.

(6) Gross receipts for commercial lessors as defined in paragraph (a)(6) of this section shall consist of the rental payment received for

a commercial unit located in this State; provided, however, that:

a. Nothing in this section shall be interpreted to impair a commercial lessor's right under an existing or future lease to require the lessee therein to pay or to reimburse the lessor for the license fees herein imposed as part of the lessee's specified or general obligation to pay or reimburse lessor for gross receipts tax, real estate taxes or other governmental assessments, charges or fees;

b. Every commercial lessor, who is also a sublessor, shall exclude from gross receipts the amount said lessor pays to another lessor as rent for the same commercial unit; and

c. Any rental income received by a commercial lessor who has paid the transfer tax pursuant to § 5402(d) of this title shall not be included as gross receipts received by the commercial lessor.

(7) For licenses covered under subsection (b) of this section, any exception from the gross receipts definition as set forth in this subsection is subject to the rules and regulations as promulgated by the Secretary of Finance.

(f) Paragraphs (a)(5), (8), (9), (12), (13), (17) and (19)-(25) of this section shall be exempt from the additional license fee imposed by subsection (d) of this section.

(g) The additional license fee imposed by subsection (d) of this section shall not apply to those receipts of draypersons or movers if such receipts are derived from interstate transports, nor shall this section be applicable to receipts received during the time in which said section was enacted into law.

(h) – (n) [Repealed.]

(o) Banks, corporations described in § 1902(b)(8) of this title, insurance companies, including, general agents, agents, brokers and employees licensed under Title 18, pension plans and/or profit-sharing plans whether or not regulated under § 401 of the Internal Revenue Code of 1986 [26 U.S.C. § 401], as amended, public utilities as defined in Chapter 1 of Title 26 (but only with respect to gross receipts or the sale price of services and commodities taxable under, or with respect to which taxes are imposed by Chapter 55 of this title), distributors of direct-to-home satellite services (but only with respect to gross receipts or the sale price of services and commodities upon which taxes are imposed by Chapter 55 of this title), public utility holding companies regulated under the Public Utility Holding Company Act of 1935 [former 15 U.S.C. § 79 et seq., now repealed; see Energy Policy Act of 2005 (42 U.S.C. § 15801 et seq.)], savings and loan associations or building and loan associations licensed under Chapter 17 of Title 5, and similar or related financial institutions licensed or otherwise regulated under the Delaware law or the United States Code are exempt from payment of fees as set forth in subsections (b) and (d) of this section; provided, however, this exemption shall not apply to those activities of the foregoing persons which are required to be licensed under paragraph (6) of subsection (a) of this section.

(p) Nonprofit organizations exempted from federal income taxation under § 501 of the Internal Revenue Code of 1986 [26 U.S.C. § 501], as amended, shall be exempt from payment of fees as set forth in subsections (a), (b) and (d) of this section.

(q), (r) [Repealed.]

(s) Real estate mortgage investment conduits (as defined in § 860D of the Internal Revenue Code of 1986 [26 U.S.C. § 860D], as amended), are exempt from payment of fees as set forth in subsections (b) and (d) of this section.

(t) Chapter 12 of Title 24 notwithstanding, the term of new licenses and renewals issued to security alarm businesses shall be governed exclusively by this part; provided, however, that the Division shall not issue a license to a security alarm business without the approval of the Superintendent of the Delaware State Police under Chapter 12 of Title 24. Two-year security business licenses expiring between June 27, 1989, and June 27, 1991, shall be renewed for a period no greater than 1 year at an annual fee of $75, and such license shall expire the following December 31. The fee shall be reduced according to the number of full calendar months remaining in the year.

(u) Statutory trusts formed under the laws of this State which are registered as investment companies under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), are exempt from payment of fees as set forth in subsections (b) and (d) of this section.

(v) Corporations registered as investment advisors under the Investment Advisors Act of 1940, as amended (15 U.S.C. § 80b-1 et seq.), corporations registered as transfer agents under § 17A of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78q-1) and corporations acting as principal underwriters as defined in § 2(a)(29) of the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-2(a)(29)), are exempt from the payment of fees as set forth in subsection (b) of this section and from fees as set forth in subsection (d) of this section upon gross receipts received from statutory trusts described in subsection (u) of this section.

(w) Licensees to conduct horse racing meetings and licensees to conduct pari-mutuel or totalizator wagering or betting licensed under Chapter 101 of Title 3 or Chapter 4 of Title 28 shall be exempt from any license or license fees under this chapter, to the extent activities under this chapter are related to the conduct of horse racing meets.

(x) For tax periods beginning after December 31, 2002, and ending on or before December 31, 2005, individuals who contract with the State Fire Prevention Commission to provide instructional services to the Delaware State Fire School pursuant to § 6619 of Title 16 are exempt from the license requirement and fees imposed by this section, but only to the extent that the license and fees relate to receipts from and services provided to the Delaware State Fire School.

(11 Del. Laws, c. 646, § 1; 12 Del. Laws, c. 123, § 1; 17 Del. Laws, c. 503, §§ 1, 2; 18 Del. Laws, c. 555, §§ 2, 4; 22 Del. Laws, c. 22; 26 Del. Laws, c. 15, §§ 2, 6; 27 Del. Laws, c. 30; 28 Del. Laws, c. 16; Code 1915, §§ 181, 183-185, 214, 226A, 232, 258, 261; 40 Del. Laws, c. 27, § 1; 40 Del. Laws, c. 29, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 189, 193, 195-197, 202, 204, 205, 232; 41 Del. Laws, c. 14, §§ 3, 5; 41 Del. Laws, c. 16; 41 Del. Laws, c. 17, §§ 1, 2; 42 Del. Laws, c. 67, §§ 1-6; 42 Del. Laws, c. 69, §§ 1, 2; 42 Del. Laws, c. 71, § 1; 45 Del. Laws, c. 11, §§ 1, 2; 45 Del. Laws, c. 12; 45 Del. Laws, c. 13, §§ 1, 2; 45 Del. Laws, c. 14, § 1; 47 Del. Laws, c. 341, § 1; 48 Del. Laws, c. 17; 48 Del. Laws, c. 324; 30 Del. C. 1953, § 2301; 49 Del. Laws, c. 346, § 2; 50 Del. Laws, c. 241, § 1; 53 Del. Laws, c. 107, §§ 2, 3; 54 Del. Laws, c. 5; 54 Del. Laws, c. 62; 54 Del. Laws, c. 321; 54 Del. Laws, c. 357, §§ 1-3; 55 Del. Laws, c. 65;

55 Del. Laws, c. 268, §§ 1, 2; 55 Del. Laws, c. 330; 57 Del. Laws, c. 136, §§ 11, 12; 57 Del. Laws, c. 188, §§ 2-4, 6-12, 20-22, 40, 48; 57 Del. Laws, c. 466, § 2; 57 Del. Laws, c. 575, § 1; 58 Del. Laws, c. 37; 58 Del. Laws, c. 71; 58 Del. Laws, c. 155; 60 Del. Laws, c. 24, §§ 1-4, 22; 60 Del. Laws, c. 223, § 1; 60 Del. Laws, c. 296, §§ 1-5; 60 Del. Laws, c. 507, §§ 1, 2; 60 Del. Laws, c. 545, § 1; 60 Del. Laws, c. 546, §§ 1, 2; 61 Del. Laws, c. 117, § 1; 61 Del. Laws, c. 126, § 1; 61 Del. Laws, c. 143, § 1; 61 Del. Laws, c. 442, § 1; 62 Del. Laws, c. 329, §§ 1, 2; 63 Del. Laws, c. 12, § 1; 63 Del. Laws, c. 246, § 1; 63 Del. Laws, c. 314, § 1; 63 Del. Laws, c. 417, §§ 1, 4; 64 Del. Laws, c. 281, § 2; 64 Del. Laws, c. 287, § 1; 64 Del. Laws, c. 461, §§ 11, 12; 65 Del. Laws, c. 29, §§ 1-6; 65 Del. Laws, c. 155, §§ 3-5; 65 Del. Laws, c. 160, § 5; 65 Del. Laws, c. 172, § 4; 65 Del. Laws, c. 392, §§ 1, 2; 65 Del. Laws, c. 402, § 3; 66 Del. Laws, c. 128, § 4; 66 Del. Laws, c. 267, § 3; 66 Del. Laws, c. 381, § 10; 67 Del. Laws, c. 40, §§ 17, 20-24; 67 Del. Laws, c. 261, §§ 1-4, 6; 67 Del. Laws, c. 296, § 1; 67 Del. Laws, c. 408, §§ 7, 8; 68 Del. Laws, c. 80, § 3; 69 Del. Laws, c. 83, § 1; 69 Del. Laws, c. 289, §§ 2, 3; 70 Del. Laws, c. 142, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 484, § 4; 70 Del. Laws, c. 489, §§ 3, 4; 71 Del. Laws, c. 217, §§ 9, 10; 71 Del. Laws, c. 314, § 3; 71 Del. Laws, c. 351, §§ 1, 18; 72 Del. Laws, c. 104, § 1; 73 Del. Laws, c. 329, § 73; 74 Del. Laws, c. 256, § 2[2]; 75 Del. Laws, c. 171, § 2; 75 Del. Laws, c. 199, §§ 4, 14, 23; 75 Del. Laws, c. 311, § 1; 75 Del. Laws, c. 412, §§ 2, 3; 76 Del. Laws, c. 282, §§ 1, 16; 77 Del. Laws, c. 81, §§ 1, 2; 77 Del. Laws, c. 82, § 1; 77 Del. Laws, c. 83, §§ 1-4, 25; 77 Del. Laws, c. 444, § 4; 78 Del. Laws, c. 73, §§ 4-9, 31; 78 Del. Laws, c. 104, § 2; 78 Del. Laws, c. 218, §§ 1, 2; 79 Del. Laws, c. 13, § 1; 80 Del. Laws, c. 83, § 2; 80 Del. Laws, c. 195, § 11; 81 Del. Laws, c. 73, § 1; 81 Del. Laws, c. 371, §§ 2, 3; 81 Del. Laws, c. 425, § 24; 82 Del. Laws, c. 69, § 2; 83 Del. Laws, c. 107, § 8.)

§ 2302 Tax stamps required for amusement machines [Repealed].

17 Del. Laws, c. 503, §§ 1, 2; 18 Del. Laws, c. 555, § 2; Code 1915, §§ 181, 184, 226A; 40 Del. Laws, c. 27, § 1; 40 Del. Laws, c. 29, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, §§ 195, 197; 48 Del. Laws, c. 44, § 1; 48 Del. Laws, c. 45, § 1; 30 Del. C. 1953, § 2302; 57 Del. Laws, c. 136, § 13; 57 Del. Laws, c. 188, § 44; 57 Del. Laws, c. 741, § 11; repealed by 81 Del. Laws, c. 292, § 5, effective July 1, 2018.

§ 2303 Special requirements for nonresident junk dealers; penalty.

(a) Any nonresident junk dealer or person or persons desiring to conduct the business of dealing in junk shall not be permitted to conduct and carry on such business within the State until such person has first secured a license therefor and pays to the Department of Finance the sum of $150. Such license shall not be required when the nonresident junk dealer is buying from and selling to or exchanging goods, wares and merchandise with an established qualified dealer of the State.

(b) Whoever violates this section shall be fined not less than $100, nor more than $500, and, on failure to pay such fine, shall be imprisoned not less than 3 months, nor more than 6 months.

(c) Justices of the peace shall have jurisdiction of offenses under this section.

(Code 1915, § 226A; 40 Del. Laws, c. 29, §§ 1, 2; 40 Del. Laws, c. 30, § 1; Code 1935, § 199; 30 Del. C. 1953, § 2303; 57 Del. Laws, c. 741, § 11; 67 Del. Laws, c. 261, § 7.)

§ 2304 Vending machine license and identifying labels.

(a) Every owner of a coin-operated vending machine in this State, including amusement machines, music machines, cigarette vending machines and all merchandising machines regardless of the product dispensed shall affix thereto a label identifying the owner of the machine and the owner's address, which identifying label shall not be less than 2 square inches in area.

(b) Except as provided in Chapter 53 of this title, whoever being the owner of a vending machine requiring an identifying label pursuant to this section fails to affix to each such machine the identifying label required by this section or who, on written request of the Director of Revenue or the Director's designee, fails to disclose within a reasonable time not to exceed 120 hours the present location of any or all such machines (including amusement machines and music machines but not cigarette vending machines) to the Division of Revenue shall be fined not less than $25 nor more than $50, for each machine not having such identifying label affixed thereto or whose location is not disclosed in accordance with this subsection. A fine of not less than $50 or more than $100 for each machine shall be applicable whenever an owner fails both to affix the identifying label to, and disclose the present location of, a machine in accordance with the requirements of this section. For purposes of this subsection, failure to disclose in response to a subsequent request which is substantially identical to a request issued less than 60 days earlier shall be considered to be a continuation of the earlier failure to disclose and shall not constitute a separate act for purposes of this subsection. The Superior Court in and for the county in which the machine is located or in which the Division of Revenue maintains its principal office shall have exclusive original jurisdiction over offenses described in this subsection.

(c) *Vending machine license.* — Every owner or operator of a coin-operated vending machine in this State, other than amusement machines specified in § 2301(a)(2) of this title, or cigarette machines specified in § 5308(c) of this title, shall apply for a vending machine license and pay a fee of $5.00 for each machine; provided, that the coin required to operate such machine is valued at $.05 or more.

(30 Del. C. 1953, § 2304; 57 Del. Laws, c. 188, § 45; 60 Del. Laws, c. 296, § 6; 67 Del. Laws, c. 40, § 26; 67 Del. Laws, c. 261, § 8; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 292, § 6.)

§ 2305 Special requirements for harness racing meet operators, owners, trainers and drivers.

(a) *Definitions.* — For purposes of this section, the following definitions shall apply:

(1) "Gross receipts" includes the licensee's commissions on pari-mutuel and totalizator pools conducted or made at any racetrack licensed under Chapter 100 of Title 3, as well as all amounts received for admission, parking, catering, sale of programs or any other source at any harness race meet conducted at such racetrack.

(2) "Harness race horse owner, trainer or driver" shall mean those persons who have been licensed as such in accordance with Chapter 100 of Title 3.

(3) "Harness racing meet operator" includes every person conducting a harness racing meet within this State and who has been licensed in accordance with Chapter 100 of Title 3.

(4) "Person" includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(b) *License fee — harness racing meet operators.* — Every harness racing meet operator shall pay to the Secretary of Finance, in lieu of any other license fees under this part, a license fee at the rate of 75/100 of 1 percent of the aggregate gross receipts paid to such operator in connection with any harness racing meet commencing after December 31, 1978, which license fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the license fee due; provided, that gross receipts from all pari-mutuel and totalizator pools conducted or made at any racetrack licensed under Chapter 5 of Title 28 shall not be included if received prior to January 1, 1981.

(c) *Same — harness race horse owners, trainers and drivers.* — Every harness race horse owner, trainer and driver shall be liable, in lieu of any other license fees under this part, for a license fee at the rate of 4/10 of 1 percent of the aggregate gross receipts paid to such person as purse money in connection with any harness racing meet conducted within this State. The harness racing meet operator licensed to conduct any such harness racing meet shall withhold a sum equal to the aggregate liability imposed under the preceding sentence with respect to the aggregate purse money paid to all harness race horse owners collectively during each month, and shall pay the amount thereof on or before the twentieth day of the immediately succeeding month. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the license fee due.

(62 Del. Laws, c. 18, § 4; 65 Del. Laws, c. 121, § 2.)

Part III
Occupational and Business Licenses and Taxes
Chapter 25
Contractors' License Requirements and Taxes

§ 2501 Definitions.

For purposes of this chapter the following definitions shall apply:

(1) "Contractor" includes every person engaged in the business of:

a. Furnishing labor or both labor and materials in connection with all or any part of construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property; a person is a contractor regardless of whether the person is a general contractor or a subcontractor, or whether the person is a resident or a nonresident; in addition "contractor" shall include "construction transportation contractors" which shall include persons engaged in the business of contracting for transporting tangible property of other persons in connection with all or any part of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property but shall not include draypersons as defined in § 2301(a) of this title; or

b. Real estate development.

(2) "Gross receipts" includes:

a. In the case of a contractor other than a real estate developer, all sums received for any work done or materials supplied in connection with any real property located in the State, but does not include sums paid to subcontractors by the contractor; provided, that said subcontractor is licensed and subject to the provisions of this chapter with respect to these sums; and provided, that a written agreement exists between the contractor and subcontractor stating the exact sums payable to said subcontractor; and

b. In the case of a real estate developer, all sums received from the sale of real property with structures (commercial and/or residential) built thereon reduced by:

1. The cost of the land and improvement thereto other than structures. In determining the cost of the land and improvements thereto other than structures, only the following costs may be included and allocated on a per lot basis:

A. Cost of raw land;

B. Site improvement costs, including, but not limited to, site clearing, grading, landscaping, erection/construction of open space/recreational facilities and installation of street, sanitary and storm sewers, water lines, power lines and other utilities;

C. Engineering costs associated with rezoning (if applicable) and subdivision of the site;

D. Legal costs/fees incurred in connection with the rezoning (if applicable) and subdivision of the site;

E. Fees involved in obtaining final site plans and permits; or

F. Interest and other carrying costs associated with the acquisition and development of the site, regardless of whether interest has been expended or capitalized for federal income tax purposes (to be allocated on a per-lot basis);

2. Miscellaneous expenses, so as to equate the gross receipts tax treatment of a real estate developer with that of a non-developer contractor, including:

A. The developer's share of realty transfer taxes;

B. Real estate commissions/fees (maximum of 2 percent of gross proceeds);

C. Sales concessions to buyers (i.e., points, settlement help, etc.);

D. Other costs associated with a specific subdivision (other than general administrative and overhead); and

E. Decorating and space planning costs associated with model homes; and

3. Sums paid to subcontractors, provided said subcontractor is licensed and subject to the provisions of this chapter with respect to these sums; that a written agreement exists between the contractor and subcontractor stating the exact sums payable to said subcontractor; and that the subcontractor payments are not for labor or labor and materials of the type described in paragraph (2)b.1. of this section.

c. 1. In lieu of deducting the actual cost of land and improvements (paragraph (2)b.1. of this section) and miscellaneous expenses (paragraph (2)b.2. of this section), the developer may, at its sole option, elect for a particular tax year to reduce sums received from the sale of real property (including the structure built by a real estate developer) by the assumed cost of land improvements to the land, and miscellaneous expenses equal to 30 percent of the gross proceeds from the sale of the property.

2. In the case of a construction transportation contractor, all sums received for transporting tangible property of other persons as set forth in this section but does not include sums paid to draypersons in connection with such contracts, provided said draypersons are subject to Chapter 23 of this title.

d. The election described in paragraph (2)c. of this section shall be made annually for each tax year and for each piece of real

property or development in such form as the Director of Revenue shall prescribe. Notwithstanding the annual election, an election that applies to a particular piece of real estate or development shall be irrevocable as to that piece of real estate or development unless the Director, upon request, waives the election. Deductions described in paragraphs (2)b. and c. of this section shall be made at the time of sale of the real estate and not before. Deductions for particular amounts paid may not be taken under more than 1 of paragraph (2)a.1, 2. or 3. of this section.

(3) "Nonresident contractor" or "nonresident subcontractor" is a general contractor, prime contractor, construction manager, subcontractor or other type of construction or construction transportation contractor who is not a resident contractor or resident subcontractor.

(4) "Person" includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(5) "Real estate developer," for purposes of this chapter, means a person in the business of:

a. Acquiring land (raw or improved); and

b. Improving raw land or building structures (residential or commercial) on land so acquired (or both); and

c. Selling land, where applicable with the structure, to customers.

"Real estate development" means the activities of a real estate developer as described in this subsection. A person shall be treated as a real estate developer or as a contractor who is not a real estate developer depending, in each case, upon the business in which the person is engaged with respect to a specific parcel of real estate.

(6) "Regularly maintaining a place of business in this State" shall not be established by maintenance of a site facility, such as a site trailer, or any other facility intended for use during construction under 1 contract or a related set of contracts irrespective of the expected duration of such contract or contracts.

(7) "Resident contractor" or "resident subcontractor" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction or construction transportation contractor who regularly maintains a place of business in this State. If any such contractor entity is comprised of more than 1 entity in a partnership, joint venture or some other legal relationship establishing such contractor entity, the contractor entity shall itself be treated as a separate entity which must comply with the provisions of § 375 of this title to the extent they are otherwise applicable. If at least 1 of the constituent entities making up the contractor entity regularly maintains a place of business in this State, such contractor entity shall be construed to be a "resident" or "resident person" or "resident contractor" of this State. If none of such constituent entities regularly maintains a place of business in this State, such contractor entity shall be construed to be a "nonresident person desiring to engage in business in this State as a contractor," or a "nonresident and a nonresident person." If any contractor is not comprised of more than 1 constituent entity in a partnership or joint venture or some other legal relationship establishing such contractor, and if such contractor shall regularly maintain a place of business in this State, such contractor shall be construed to be a "resident contractor".

(8) "Subcontractor" means any person, partnership, firm, corporation or other business association or entity which enters into a contract (oral or written) directly with a prime contractor or directly with another subcontractor, to perform labor or to perform labor and provide materials in connection with such labor, on a site of contract construction located in this State.

(18 Del. Laws, c. 555, § 2; Code 1915, § 184; 40 Del. Laws, c. 27, § 1; Code 1935, § 196; 41 Del. Laws, c. 14, § 6; 42 Del. Laws, c. 68, § 1; 30 Del. C. 1953, § 2501; 57 Del. Laws, c. 136, § 14; 57 Del. Laws, c. 188, § 14; 65 Del. Laws, c. 476, §§ 6, 7; 67 Del. Laws, c. 40, §§ 11, 12; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 401, §§ 1-3; 72 Del. Laws, c. 166, §§ 1-4.)

§ 2502 License requirement; resident and nonresident; additional fee on gross receipts paid; statements required.

(a) Any person desiring to engage in business in this State as a contractor shall obtain a license upon making application to the Division of Revenue and paying a fee of $75. This license must be obtained and proof of license compliance must be made prior to, or in conjunction with, the execution of a contract to such person. In the case of contracts in excess of $50,000 which are competitively bid, such person shall have initiated the license application procedure required by this subsection with the Division of Revenue prior to, or in conjunction with, the submission of a bid on a contract, or, in the case of a subcontractor, prior to the submission of a bid by the general contractor. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the contractor makes application therefor and payment of $75 plus the license fee required in subsection (c) of this section.

(b) The Division of Revenue shall not issue any license to any person until and unless such person:

(1) Is in compliance with all the provisions of § 375 of this title applicable to such person;

(2) Has filed a certificate of notice issued by the Delaware Department of Labor certifying that such person has notified the Department of Labor that such person has entered into or will be entering into contracts to perform labor on or to perform labor on and furnish material for a construction project located in Delaware; and

(3) Has filed a certificate of insurance showing that such person has insured liability in the amount and manner, and when due, and as required, under the workers' compensation laws of this State, or a certificate on a form prescribed by the Department of Labor of this State that such person has been declared to be a qualified self-insurer by the Department of Labor of this State pursuant to the workers' compensation laws of this State.

(c) (1) In addition to the license fee required by subsection (a) of this section, every contractor shall pay a license fee of 0.6472% of the

aggregate gross receipts paid to such contractor which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(18 Del. Laws, c. 555, § 2; Code 1915, § 184; 40 Del. Laws, c. 27, § 1; Code 1935, § 196; 41 Del. Laws, c. 14, § 6; 42 Del. Laws, c. 68, § 1; 30 Del. C. 1953, § 2502; 57 Del. Laws, c. 136, § 14; 57 Del. Laws, c. 188, § 35; 57 Del. Laws, c. 741, §§ 12A, 12B; 60 Del. Laws, c. 21, §§ 1-3; 60 Del. Laws, c. 24, §§ 5, 6; 61 Del. Laws, c. 117, § 2; 63 Del. Laws, c. 314, § 2; 65 Del. Laws, c. 392, § 3; 65 Del. Laws, c. 402, § 4; 65 Del. Laws, c. 476, §§ 8-10; 66 Del. Laws, c. 381, § 1; 67 Del. Laws, c. 261, § 9; 68 Del. Laws, c. 80, §§ 4, 14; 68 Del. Laws, c. 151, § 1; 69 Del. Laws, c. 289, §§ 1, 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 484, § 1; 70 Del. Laws, c. 489, §§ 5, 6; 71 Del. Laws, c. 84, § 30; 71 Del. Laws, c. 351, §§ 2, 19; 75 Del. Laws, c. 199, §§ 1, 15, 24; 76 Del. Laws, c. 282, §§ 2, 16; 77 Del. Laws, c. 83, §§ 5, 25; 78 Del. Laws, c. 73, §§ 10, 11, 32; 79 Del. Laws, c. 13, § 2; 80 Del. Laws, c. 195, § 12.)

§ 2503 Duties of architects, professional engineers, contractors and construction managers as to nonresident contractor licenses.

(a) Every architect or professional engineer or contractor or construction manager engaging in the practice of such profession shall furnish the Department of Finance within 10 days after entering into any contract with a contractor or subcontractor not a resident of this State, a statement of the total value of such contract or contracts together with the names and addresses of the contracting parties.

(b) In the case of any person or firm failing or refusing to comply with this section, there shall be assessed by the Secretary of Finance a civil penalty of not more than $10,000 for each occurrence.

(c) Any person or firm who wilfully or knowingly fails or refuses to comply with this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than $3,000, or imprisoned not more than 6 months, or both.

(18 Del. Laws, c. 555, § 2; Code 1915, § 184; 40 Del. Laws, c. 27, § 1; Code 1935, § 196; 42 Del. Laws, c. 68, § 1; 43 Del. Laws, c. 9; 30 Del. C. 1953, § 2503; 57 Del. Laws, c. 136, § 14; 57 Del. Laws, c. 741, § 12A; 65 Del. Laws, c. 476, § 11.)

Part III
Occupational and Business Licenses and Taxes
Chapter 27
Manufacturers' License Requirements and Taxes

§ 2701 Definitions.

As used in this chapter the following definitions shall apply:

(1) "Gross receipts" includes all proceeds received by any person engaged in manufacturing within this State for products manufactured in whole or in part within this State where such products are sold to another person, or the fair market value of any such products consumed by the manufacturer or any person affiliated with it, where the fair market value of such products is not received; provided, however, if a product is partially manufactured within this State and partially manufactured elsewhere by the same manufacturer, the gross receipts realized on the ultimate sale, transfer or consumption of said product to be included for purposes of this chapter shall be apportioned to this State in the proportion that the cost of manufacturing thereof in Delaware bears to the full cost of manufacturing the product expended by the same manufacturer, such apportionment to be computed in accordance with regulations of the Secretary of Finance. Notwithstanding the foregoing, however, gross receipts shall not include:

a. Proceeds received by a petroleum product refiner (as defined in § 2901(13) of this title) from sales of intermediate petroleum products (as defined in § 2901(9) of this title) to an intermediate petroleum products wholesaler (as defined in § 2901(10) of this title); or

b. Proceeds received by any person for products sold to a buyer licensed under this chapter; provided, that such products are purchased for the purpose of their inclusion as a part of a product manufactured by the buyer within this State.

The product shall be considered to be included in the subsequent product manufactured by the buyer irrespective of whether it is included in an altered or unaltered form. The Secretary of Finance shall prescribe such rules, regulations and forms as the Secretary may deem necessary to carry out the purposes of this chapter.

(2) "Manufacturing," except as provided in the definition of "wholesaler" in § 2901 of this title, includes any processing, working, development, change, conditioning or reconditioning of raw materials or products into products of a different character, finished or unfinished, or effecting any combination or composition of materials the inherent nature of which is changed, including clean energy technology device manufacturing (as defined in § 2010(24) of this title) and automobile manufacturing, but does not include the making, crafting, or painting of art or craft objects by individual artists or craftpersons.

(3) "Person" includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(4) "Product" includes any goods, materials, wares, merchandise, machinery, vehicles, solids, liquids or gases or any other item, object or thing which is produced as part of a manufacturing process.

(5) Whenever a person:

a. Is engaged in the activity of manufacturing within this State as described in paragraph (2) of this section;

b. Performs such activity exclusively on raw materials or products provided under bailment by another person engaged in manufacturing; and

c. The product produced by such person is intended for inclusion as a part of a product manufactured by the other manufacturer, then such person shall himself or herself be licensable as a manufacturer and such person's gross receipts shall include all proceeds paid to such person for services rendered in this State as described in this subdivision, including the fair market value of any products produced as the result of such services and consumed by such person, where the fair market value of such products is not received.

In all other cases where a person is engaged in, and receives consideration for, manufacturing as a service apart from or in addition to the sale of a product, then such person shall be licensed under Chapter 23 of this title, and shall not to that extent be considered subject to license under this chapter.

(14 Del. Laws, c. 24, § 1; 18 Del. Laws, c. 247, § 1; 22 Del. Laws, c. 17; 26 Del. Laws, c. 13, § 1; 27 Del. Laws, c. 28; 27 Del. Laws, c. 29; 27 Del. Laws, c. 30, §§ 1-3; Code 1915, §§ 196, 226A; 40 Del. Laws, c. 25; 40 Del. Laws, c. 30, § 1; Code 1935, § 171; 47 Del. Laws, c. 385, § 1; 30 Del. C. 1953, § 2701; 57 Del. Laws, c. 136, § 15; 57 Del. Laws, c. 741, § 13A; 65 Del. Laws, c. 481, § 1; 66 Del. Laws, c. 149, § 1; 70 Del. Laws, c. 142, § 5; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 202, § 1; 75 Del. Laws, c. 199, § 37; 78 Del. Laws, c. 1, § 4; 78 Del. Laws, c. 47, § 16; 78 Del. Laws, c. 100, §§ 4-6.)

§ 2702 License requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) Any person desiring to engage in business in this State as a manufacturer shall first obtain a license from the Division of Revenue and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the manufacturer makes application therefor and payment of $75 for each place of business, plus the license fee required by subsection (b) of this section.

(b) (1) In addition to the license fee required by subsection (a) of this section, every manufacturer, except those subject to paragraph (b)(2) of this section, shall pay a license fee of 0.126% of the aggregate gross receipts of such manufacturer, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $1,250,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) In addition to the license fee required by subsection (a) of this section, every clean energy technology device manufacturer shall pay a license fee of 0.0945% of the aggregate gross receipts of such clean energy technology device manufacturer, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $1,250,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(3) Notwithstanding paragraph (b)(1) or (b)(2) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $3,750,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(c) [Repealed.]

(14 Del. Laws, c. 24, § 1; 26 Del. Laws, c. 13, § 1; 27 Del. Laws, c. 29; 27 Del. Laws, c. 30, §§ 1-3; Code 1915, §§ 196, 226A; 40 Del. Laws, c. 25; 40 Del. Laws, c. 30, § 1; Code 1935, § 171; 41 Del. Laws, c. 12, § 1; 30 Del. C. 1953, § 2702; 57 Del. Laws, c. 136, § 15; 57 Del. Laws, c. 188, § 46; 57 Del. Laws, c. 741, § 13B; 58 Del. Laws, c. 290; 60 Del. Laws, c. 21, §§ 4, 5; 60 Del. Laws, c. 22, §§ 1-3; 60 Del. Laws, c. 548, § 1; 61 Del. Laws, c. 117, § 3; 63 Del. Laws, c. 314, § 3; 65 Del. Laws, c. 184, § 2; 65 Del. Laws, c. 388, § 1; 65 Del. Laws, c. 402, §§ 5, 6; 66 Del. Laws, c. 381, § 9; 67 Del. Laws, c. 261, § 10; 68 Del. Laws, c. 80, § 5; 69 Del. Laws, c. 289, § 5; 70 Del. Laws, c. 484, § 5; 70 Del. Laws, c. 489, §§ 7, 8; 71 Del. Laws, c. 351, §§ 3, 13, 20; 72 Del. Laws, 1st Sp. Sess., c. 245,, § 1; 75 Del. Laws, c. 199, § 5; 76 Del. Laws, c. 282, §§ 3, 16; 77 Del. Laws, c. 83, §§ 6, 25; 78 Del. Laws, c. 47, §§ 17-19; 78 Del. Laws, c. 73, §§ 12, 13, 33, 34; 79 Del. Laws, c. 13, §§ 3, 4; 80 Del. Laws, c. 195, § 13.)

§ 2703 Automobile manufacturers.

(a) Every person engaged in the business of automobile manufacturing shall be exempt from the provisions of § 2702 of this title and shall be subject to the provisions of this section. For purposes of this section, "automobile manufacturing" shall mean the manufacturing operations of an automobile assembly plant and shall not include the manufacture of component parts of an automobile outside an automobile assembly plant.

(b) Any person desiring to engage in business in this State as an automobile manufacturer shall first obtain a license from the Division of Revenue and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the automobile manufacturer makes application therefor and payment of $75 for each place of business, plus the license fee required by subsection (c) of this section.

(c) (1) In addition to the license fee required by subsection (b) of this section, every automobile manufacturer shall pay a license fee of 0.0945% of the aggregate gross receipts of such automobile manufacturer, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $1,250,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $3,750,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(75 Del. Laws, c. 199, § 38; 77 Del. Laws, c. 83, §§ 7, 25; 78 Del. Laws, c. 73, §§ 14, 15, 35; 79 Del. Laws, c. 13, § 5; 80 Del. Laws, c. 195, § 14.)

§ 2704 Exemptions.

This chapter shall not apply to the production or manufacture of steam, gas or electricity for heat, light or power or to the production of the usual farm products for home consumption or market purposes.

(14 Del. Laws, c. 24, § 1; 27 Del. Laws, c. 29; Code 1915, §§ 196, 226A; 40 Del. Laws, c. 25, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, § 171; 30 Del. C. 1953, § 2703; 57 Del. Laws, c. 136, § 15; 75 Del. Laws, c. 199, § 36.)

§ 2705 Exemption of gross receipts attributable to intermediate products.

(a) Notwithstanding any other provision of this chapter, for purposes of this chapter "gross receipts" shall not include that portion of the receipts realized by a manufacturer on the sale, transfer or consumption of an ultimate product that is attributable to the manufacturer's cost of manufacturing an intermediate product in a new or expanded facility. The portion of such receipts attributable to the cost of manufacturing the intermediate product shall be that proportion of such receipts allocated to this State pursuant to § 2701(1) of this title that the manufacturer's cost of manufacturing the intermediate product in the new or expanded facility bears to the manufacturer's total cost in Delaware of manufacturing the ultimate product.

(b) As used in this section:

(1) "Existing facility" is any property placed in service by the manufacturer as owner, lessee or sublessee before July 1, 1985.

(2) "Intermediate product" is any product manufactured by the manufacturer and used by the manufacturer in connection with any subsequent manufacturing process or procedure that results in an ultimate product.

(3) "New or expanded facility" is any qualified property within the meaning of § 2010(2) of this title that is located within this State and that:

a. Is placed in service by the manufacturer as owner, lessee or sublessee after June 30, 1985;

b. Is used by the manufacturer in or in connection with a manufacturing process or procedure not engaged in by the manufacturer within this State prior to the date such property was placed in service by the manufacturer; and

c. Is employed by the manufacturer in the manufacture of an intermediate product that, in or in connection with the subsequent manufacture by the manufacturer of an ultimate product in an existing facility, is consumed or becomes an integral part of the ultimate product.

"New or expanded facility" shall not include any existing facility but shall include any improvements or additions to an existing facility other than any improvement or addition resulting from a repair, refurbishing, retooling (such as retooling by an automobile manufacturer), recycling or other similar process or procedure that merely preserves or restores the value of an existing facility.

(4) "Placed in service" shall have the meaning ascribed to such phrase under § 167 of the Internal Revenue Code (26 U.S.C. § 167) and regulations promulgated thereunder.

(5) "Ultimate product" is any product:

a. The manufacture of which involves the consumption of an intermediate product; or

b. That contains an intermediate product as an integral part.

(6) The manufacturer and each related person with respect to the manufacturer within the meaning of § 2010(10) of this title shall be treated as 1 person.

(c) Subsection (a) of this section shall not apply to any gross receipts realized by the manufacturer prior to the date upon which the manufacturer's aggregate investment in the new or expanded facility first equals or exceeds $200,000. In the case of a facility owned by the manufacturer, investment by the manufacturer shall equal the original cost of such facility to the manufacturer. In the case of a facility leased or subleased by the manufacturer, investment by the manufacturer shall equal 8 times the net annual rent paid by the manufacturer for the use of such facility, less any gross rental income received by the manufacturer from sublessees of any portion of such facility during the period of time to which such net rent paid by the manufacturer relates.

(d) Subsection (a) of this section shall not apply to any gross receipts realized by the manufacturer prior to the date on which the manufacturer first employs in or in connection with the new or expanded facility 5 or more employees on a regular and full-time basis, at least 25 percent of whom are residents of this State on such date.

(e) The Secretary shall prescribe such rules and regulations as the Secretary may deem necessary to carry out the purposes of this section.

(65 Del. Laws, c. 169, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 199, § 36.)

Part III
Occupational and Business Licenses and Taxes
Chapter 29
Retail and Wholesale Merchants' License Requirements and Taxes

§ 2901 Definitions.

As used in this chapter:

(1) "Certified takeoff weight" means the maximum weight contained in the type certificate or airworthiness certificate.

(2) "Exemption certificates," for purposes of this chapter, are documents created by regulations adopted or to be adopted by the Director of Revenue which are provided to a wholesaler by a purchaser to document a wholesale sale where the property is immediately taken outside of Delaware and the sale thus does not result in taxable gross receipts.

(3) "Feedstock petroleum products" means 1 or more petroleum products that have been partially refined that are used as raw materials at the beginning of a refining process operated by a petroleum product refiner.

(4) "Feedstock wholesaler" means every person engaged, as owner or agent, in the business of selling or exchanging for cash or barter or any consideration (i) crude oil to or with a petroleum product refiner or another feedstock wholesaler, or (ii) feedstock petroleum products to or with a petroleum product refiner or another feedstock wholesaler for the purpose of refining and resale by a petroleum product refiner, and includes without limitation crude oil and feedstock petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside of the State.

(5) "Finished petroleum products" means 1 or more petroleum products that have been refined by a petroleum product refiner and that are of a type offered for sale by a petroleum product refiner to its customers in the ordinary course of business, including, but not limited to asphalt, distillate fuel oil (including all grades of diesel fuel and fuel oils), finished aviation gasoline, finished motor gasoline, kerosene, jet fuel (both kerosene-type and naphtha-type jet fuel), naphthas of all boiling ranges, other oils with boiling range equal to or greater than 401 degrees Fahrenheit, petrochemical feed stocks, petroleum coke, residual fuel oils, road oils, still gas, wax and other miscellaneous petroleum products, including, but not limited to petrolatum, lube refining by products, absorption oils, ram-jet fuel, petroleum rocket fuels, synthetic natural gas feed stocks and specialty oils.

(6) "Finished petroleum products wholesaler" means every person engaged, as owner or agent, in the business of buying from a petroleum product refiner finished petroleum products for cash or barter or any consideration for the purpose of further resale by the finished petroleum products wholesaler to a wholesaler or to a petroleum product refiner, and includes without limitation finished petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside this State.

(7) "Goods" includes produce, merchandise, goods, wares, items, products, crops, livestock, animals, metals, gems or any tangible personal property of whatever description, whether new or used, and includes alcoholic beverages of every nature.

(8) "Gross receipts":

a. In the case of a retailer, "gross receipts" includes total consideration received for all goods sold or services rendered within this State, but shall not include tobacco products taxes or motor fuel taxes paid or payable to the State under Part IV of this title or gasoline and special fuel taxes paid or payable to the federal government under Internal Revenue Code § 4041 [26 U.S.C. § 4041] or § 4081 [26 U.S.C. § 4081]; or receipts derived from the sale of petroleum products provided such products were sold to the retailer by a person who is licensed under this chapter and such sale is described in the definition of "gross receipts" with regard to such person.

b. In the case of a wholesaler, "gross receipts" includes total consideration received from sales of tangible personal property physically delivered within this State to the purchaser or the purchaser's agent, but shall not include:

1. Delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State;

2. Tobacco products taxes or motor fuel taxes paid or payable to the State under Part IV of this title or gasoline and special fuel taxes paid or payable to the federal government under Internal Revenue Code § 4041 [26 U.S.C. § 4041] or § 4081 [26 U.S.C. § 4081];

3. Consideration for the sale of alcoholic liquor subject to tax under § 581 of Title 4;

4. Receipts derived from the sale of any form of combustible petroleum product for heating of ambient space or cooking of foodstuffs which is sold for ultimate consumption;

5. Receipts derived from the sale of materiel or equipment other than petroleum products to the State (not including local jurisdictions or school districts) through the system of central contracting managed by the Office of Management and Budget pursuant to the provisions of § 6307A(b)(1) of Title 29;

6. Delivery to the purchaser where the purchaser's vehicle or vessel is not headquartered or dispatched from within Delaware,

the property is immediately taken outside of Delaware and the purchaser provides the wholesaler with an exemption certificate documenting the sale in accordance with regulations adopted or to be adopted by the Director of Revenue;

7. Receipts derived from printing contracts awarded by the Office of Management and Budget, Government Support Services;

8. Receipts derived by a feedstock wholesaler from the sale of crude oil to a petroleum product refiner or another feedstock wholesaler if:

A. The feedstock wholesaler that first owned the crude oil in this State took delivery of the crude oil outside of the State; or

B. The wholesaler of the crude oil that such wholesaler sold to or exchanged with the feedstock wholesaler paid the tax imposed by § 2902(b) and (c) of this title on the gross receipts from the sale to or exchange with the feedstock wholesaler of such crude oil;

9. Receipts derived by a feedstock wholesaler from the sale of feedstock petroleum products to a petroleum product refiner or another feedstock wholesaler if:

A. The feedstock wholesaler that first owned the feedstock petroleum products in this State took delivery of the feedstock petroleum products outside of the State; or

B. The wholesaler of the feedstock petroleum products that such wholesaler sold to or exchanged with the feedstock wholesaler paid the tax imposed by § 2902(b) and (c) of this title on the gross receipts from the sale to or exchange with the feedstock wholesaler of such feedstock petroleum products;

10. Receipts derived by a petroleum product refiner from the sale of intermediate petroleum products to an intermediate petroleum products wholesaler;

11. Receipts derived by an intermediate petroleum products wholesaler from the sale of intermediate petroleum products to a petroleum product refiner;

12. Receipts derived by a petroleum product refiner from the sale of finished petroleum products to a finished petroleum products wholesaler;

13. Receipts derived by a finished petroleum products wholesaler from the sale of finished petroleum products to a petroleum product refiner or a wholesaler; provided that the finished petroleum products wholesaler and the wholesaler stand in a control relationship. For purposes of the proceeding sentence a “control relationship” means that the finished petroleum products wholesaler directly or indirectly controls the wholesaler, the wholesaler directly or indirectly controls the finished petroleum products wholesaler or the finished petroleum products wholesaler and the wholesaler are directly or indirectly controlled by the same person. For purposes of the preceding sentence “controls” shall mean the direct or indirect ownership by 1 person of 100% of the stock or ownership interest in another person;

14. Receipts received by a non-U.S. person from a person commercially domiciled in Delaware that is related within the meaning of § 2010(10) of this title:

A. For the sale of active ingredient or formulated active ingredient which is formulated or packed into a finished ethical pharmaceutical product within the State by a Delaware commercially domiciled entity related within the meaning of § 2010(10) of this title, or

B. For the sale of finished ethical pharmaceutical product which has been formulated or packed into a finished ethical pharmaceutical product within the State by a commercially domiciled entity related within the meaning of § 2010(10) of this title; or

15. Receipts derived by a pharmaceutical wholesaler from the sale of pharmaceutical drugs that are physically delivered to a pharmaceutical distribution wholesaler within this State.

(9) “Intermediate petroleum products” means 1 or more petroleum products that have been partially refined by a petroleum product refiner.

(10) “Intermediate petroleum products wholesaler” means every person engaged, as owner or agent, in the business of selling to or exchanging with a petroleum product refiner intermediate petroleum products for cash or barter or any consideration for the purpose of further refining or resale by the petroleum product refiner, and includes without limitation intermediate petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside this State.

(11) “Person” includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(12) “Petroleum product” means crude oil, or any portion thereof, that is liquid at 70° Fahrenheit and at standard atmospheric pressures, and includes motor fuel, gasohol, other alcohol blended fuels, diesel fuel, aviation fuel, jet fuel, heating oil, motor oil and other petroleum based lubricants.

(13) “Petroleum product refiner” means any person engaged in the operation of a petroleum product refinery in this State, the principal raw material for which, measured by volume, consists of crude oil.

(14) “Pharmaceutical distribution wholesaler”, for purposes of this chapter, is an person within this State who engages solely in the business of retail sales of pharmaceutical drugs by mail, common, or contract carrier.

(15) “Pharmaceutical drug”, for purposes of this chapter, is a substance recognized as a drug in the Official United States

Pharmacopoeia/National Formulary.

(16) "Pharmaceutical wholesaler", for purposes of this chapter, is any person engaged, as owner or agent, in the business of selling to another person pharmaceutical drugs for any consideration for the purpose of resale by the person acquiring the pharmaceutical drugs, and includes, without limitation, pharmaceutical drugs sold by the pharmaceutical wholesaler through outlets, warehouses, and distribution depots inside or outside of this State.

(17) For purposes of this chapter, the term "physically delivered within this State" includes delivery to the United States mail or to a common or contract carrier for shipment to a place within this State irrespective of F.O.B. or other terms of payment for delivery.

(18) "Retailer," for purposes of this chapter, except as provided in the definition of "wholesaler," includes every person engaged as owner or agent in the business of selling or exchanging goods for cash or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate consumption or use and not resale and, where engaged in the foregoing business, includes automatic merchandising machine operators regardless of the product dispensed or vended, retail plant nurseries and florists, hucksters, peddlers, trading stamp redemption stores and catalog stores (except such stores described in paragraph (21)a.6. of this section) and branch stores.

"Retailer," for purposes of this chapter, shall not include, however, an individual under the age of 18 who engages in: (a) The delivery or distribution of newspapers or shopping news (not including delivery or distribution to any point for subsequent delivery or distribution); or (b) the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are sold by the individual at a fixed price, the individuals' compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back.

(19) "Transient nursery retailer," for purposes of this chapter, is any retailer of nursery products as defined in § 1301(27) of Title 3, that does not otherwise sell nursery products from a permanent structure within the State. It does not include any charitable organization as defined by § 501(c) of the Internal Revenue Code [26 U.S.C. § 501(c)].

(20) "Transient retailer," for purposes of this chapter, includes any retailer who for 10 days or less during any year locates within the State without any intention of becoming a permanent retailer.

(21) a. "Wholesaler," for purposes of this chapter, includes:

1. Every person engaged, as owner or agent, in the business of selling to or exchanging with another person goods for cash or barter or any consideration for the purpose of resale by the person acquiring the goods sold or exchanged, and includes without limitation goods sold or exchanged through outlets, warehouses and distribution depots of persons whose principal place of business is located inside or outside this State and also includes the sale of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity, which business or activity is subject to the tax imposed by this part; provided, nevertheless, that sales to the United States or any agency or instrumentality thereof, or sales to this State, or any agency or political subdivision thereof, shall be deemed to be sales at wholesale;

2. Every person engaged in the processing of food or foodstuffs, which food or foodstuffs are to be resold by the person acquiring the food or foodstuffs from the person engaged in the processing. For purposes of this chapter, every person engaged in the bakery, poultry processing or cannery business shall be considered engaged in the processing of food or foodstuffs and a wholesaler;

3. Persons engaged in the business of buying, selling or shipping of commercial feeds;

4. Persons engaged in the business of selling any form of combustible fuel for heating or cooking, regardless of whether purchased for resale or ultimate consumption;

5. Persons other than owners or operators of nurseries or farms engaged in the business of operating a place where trees, shrubs, plants, flowers and the like are purchased from another person for cash or barter or any consideration for the purpose of resale by the person acquiring such goods; and

6. Every person engaged in the business of catalog or mail-order distribution of manufactured goods, when such persons do not own, operate or engage in any retail business within the State other than that described in this paragraph.

b. For purposes of this chapter, the word "wholesaler" shall not apply to a person who is licensed to catch, take, and sell eels, food fish or shellfish by the Delaware Department of Natural Resources and Environmental Control pursuant to Chapters 9 and 18 and Part II of Title 7 of the Delaware Code.

(14 Del. Laws, c. 76, §§ 1, 2; 27 Del. Laws, c. 27; 27 Del. Laws, c. 30, §§ 1-3; Code 1915, §§ 198, 226A; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, § 173; 46 Del. Laws, c. 177; 47 Del. Laws, c. 385, § 2; 30 Del. C. 1953, § 2901; 49 Del. Laws, c. 343, § 1; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 188, §§ 15, 16; 59 Del. Laws, c. 126, § 1; 60 Del. Laws, c. 24, §§ 13-17; 60 Del. Laws, c. 273, § 1; 60 Del. Laws, c. 274, § 1; 60 Del. Laws, c. 505, § 1; 63 Del. Laws, c. 417, §§ 2, 3; 64 Del. Laws, c. 374, § 1; 65 Del. Laws, c. 389, § 1; 65 Del. Laws, c. 406, § 2; 65 Del. Laws, c. 478, §§ 1-3; 66 Del. Laws, c. 104, § 1; 67 Del. Laws, c. 258, § 2; 67 Del. Laws, c. 287, § 2; 67 Del. Laws, c. 290, §§ 1, 2, 4; 68 Del. Laws, c. 80, §§ 1, 2; 69 Del. Laws, c. 447, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 230, § 1; 71 Del. Laws, c. 39, §§ 1, 2; 71 Del. Laws, c. 211, § 6; 71 Del. Laws, c. 225, § 1; 71 Del. Laws, c. 440, § 1; 72 Del. Laws, c. 104, §§ 2, 4, 5; 72 Del. Laws, c. 464, § 1; 73 Del. Laws, c. 143, § 13; 74 Del. Laws, c. 3, § 2; 74 Del. Laws, c. 375, § 1; 75 Del. Laws, c. 88, §§ 16(6), 22(5); 77 Del. Laws, c. 412, §§ 1, 2; 78 Del. Laws, c. 1, § 5; 78 Del. Laws, c. 100, §§ 7-11; 78 Del. Laws, c. 275, §§ 1-3.)

§ 2902 Wholesaler license requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) For the purposes of this section, "wholesaler" shall not include those wholesalers included in § 2901(21)a.2. and 3. of this title.

(b) Any person desiring to engage in business in this State as a wholesaler shall first obtain a license from the Department of Finance and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the wholesaler pays the fees required by subsection (c) of this section, makes application therefor and payment of $75 for each place of business.

(c) (1) In addition to the license fee required by subsection (b) of this section, every wholesaler shall also pay a license fee at the rate of 0.3983% of the aggregate gross receipts attributable to sales of tangible personal property physically delivered within this State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) There shall be added to the tax provided in paragraph (c)(1) of this section an additional tax of 0.2489% on all taxable gross receipts determined under this section which are derived from the sale of petroleum products defined in § 2901(12) of this title.

(4) There shall be added to the taxes provided in paragraphs (c)(1) and (3) of this section an additional tax as provided in § 9114 of Title 7.

(5) [Repealed.]

(6) The Director of Revenue is authorized to issue regulations providing for exemption certificates to be given by purchasers to wholesalers to document wholesale sales which, pursuant to § 2901(8)b.6. of this title, do not result in taxable gross receipts. A wholesaler is entitled to rely upon an exemption certificate valid on its face and in compliance with the regulations for purposes of computing the tax due under this section and shall not be liable for any tax attributable to sales covered by exemption certificates that are invalid. Any person providing an exemption certificate that is invalid shall, in addition to any prosecution under subchapter V of Chapter 5 of this title, be liable for the tax due (calculated without reference to the monthly exclusion in paragraph (c)(1) of this section), plus interest and a penalty under § 535(a) of this title equal to 75% of the underpayment of tax attributable to sales covered by the invalid exemption certificates.

(14 Del. Laws, c. 76, §§ 1, 2; 27 Del. Laws, c. 27; Code 1915, §§ 198, 226A; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, § 173; 41 Del. Laws, c. 13, § 1; 30 Del. C. 1953, § 2902; 49 Del. Laws, c. 343, § 2; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 6, 7; 60 Del. Laws, c. 25, §§ 1, 2; 61 Del. Laws, c. 117, § 4; 63 Del. Laws, c. 314, § 4; 64 Del. Laws, c. 374, § 2; 65 Del. Laws, c. 184, § 3; 65 Del. Laws, c. 402, §§ 7, 8; 66 Del. Laws, c. 381, § 8; 67 Del. Laws, c. 261, § 11; 67 Del. Laws, c. 290, § 3; 67 Del. Laws, c. 326, § 3; 68 Del. Laws, c. 80, § 6; 69 Del. Laws, c. 289, § 6; 70 Del. Laws, c. 484, §§ 6, 12; 70 Del. Laws, c. 489, §§ 9, 10; 71 Del. Laws, c. 39, § 3; 71 Del. Laws, c. 351, §§ 4, 14, 21; 75 Del. Laws, c. 199, §§ 6, 11, 16, 25; 76 Del. Laws, c. 282, §§ 4, 5, 16; 77 Del. Laws, c. 83, §§ 8, 9, 25; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 6; 78 Del. Laws, c. 73, §§ 16, 17, 36, 37; 78 Del. Laws, c. 94, §§ 1, 2; 78 Del. Laws, c. 100, §§ 12-14; 79 Del. Laws, c. 13, §§ 6, 7; 80 Del. Laws, c. 195, § 15.)

§ 2903 Food processor license requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) Every person described in § 2901(21)a.2. of this title engaged in the business of food processor shall be exempt from the provisions of § 2902 of this title and shall be subject to the provisions of this section.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall first obtain a license from the Department of Finance and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the food processor pays the fees required by subsection (c) of this section, makes application therefor and payment of $75 for each place of business.

(c) (1) In addition to the license fee required by subsection (b) of this section, every food processor shall also pay a license fee at the rate of 0.1991% of the aggregate gross receipts attributable to all goods sold by the food processor within this State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(14 Del. Laws, c. 76, §§ 1, 2; Code 1915, §§ 198, 226A; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, § 173; 30 Del. C. 1953, § 2903; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 8, 9; 60 Del. Laws, c. 23, §§ 1, 2; 61 Del. Laws, c. 117, § 5; 63 Del. Laws, c. 314, § 5; 65 Del. Laws, c. 392, §§ 6, 7; 65 Del. Laws, c. 402, §§ 9, 10; 66 Del. Laws, c. 381, § 2; 67 Del. Laws, c. 261, § 11; 68 Del. Laws, c. 80, §§ 7, 14; 69 Del. Laws, c. 289, §§ 1, 7; 70 Del. Laws, c. 484, § 3; 70 Del. Laws, c. 489, §§ 11, 12; 71 Del. Laws, c. 314, § 5; 71 Del. Laws, c. 351, §§ 5, 15, 22; 75 Del. Laws, c. 199, §§ 3, 17, 26; 76 Del. Laws, c. 282, §§ 6, 16; 77 Del. Laws, c. 83, §§ 10, 25; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 7; 78 Del. Laws, c. 73, §§ 18, 19, 38; 78 Del. Laws, c. 100, § 15; 79 Del. Laws, c. 13, § 8; 80 Del. Laws, c. 195, § 16.)

§ 2904 Commercial feed dealer license requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) Every person described in § 2901(21)a.3. of this title engaged in the business of buying, selling and shipping commercial feeds shall be exempt from § 2902 of this chapter and shall be subject to this section.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall first obtain a license from the Department of Finance and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the commercial feed dealer pays the fees required by subsection (c) of this section, makes application therefor and makes payment of $75 for each place of business.

(c) (1) In addition to the license fee required by subsection (b) of this section, every commercial feed dealer shall also pay a license fee at the rate of 0.0996% percent of the aggregate gross receipts attributable to all goods delivered by the commercial dealer within this State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $3,000,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(14 Del. Laws, c. 76, §§ 1, 2; Code 1915, §§ 198, 226A; 40 Del. Laws, c. 26, § 1; 40 Del. Laws, c. 30, § 1; Code 1935, § 173; 30 Del. C. 1953, § 2904; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 10, 11; 60 Del. Laws, c. 23, §§ 3, 4; 61 Del. Laws, c. 117, § 6; 63 Del. Laws, c. 314, § 6; 65 Del. Laws, c. 392, §§ 8, 9; 65 Del. Laws, c. 402, §§ 11, 12; 65 Del. Laws, c. 406, § 1; 66 Del. Laws, c. 381, § 3; 67 Del. Laws, c. 261, § 11; 68 Del. Laws, c. 80, §§ 8, 14; 69 Del. Laws, c. 289, §§ 1, 8; 70 Del. Laws, c. 484, § 7; 70 Del. Laws, c. 489, §§ 13, 14; 71 Del. Laws, c. 351, §§ 6, 16, 23; 75 Del. Laws, c. 199, §§ 7, 18, 27; 76 Del. Laws, c. 282, §§ 7, 16; 77 Del. Laws, c. 83, §§ 11, 25; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 8; 78 Del. Laws, c. 73, §§ 20, 21, 39; 78 Del. Laws, c. 100, § 16; 79 Del. Laws, c. 13, § 9; 80 Del. Laws, c. 195, § 17.)

§ 2905 Retailer license requirements; license fee; additional fee on aggregate purchase price; statements required; transient retailer license requirements; license fee.

(a) Any person desiring to engage in business in this State as a retailer shall obtain a license upon making application to the Division of Revenue and paying a fee of $75, plus a fee of $25 for each separate branch or business location. If the monthly payments thereafter are made in accordance with subsection (b) of this section, such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the retailer makes application therefor and payment of $75 plus $25 for each separate branch or business location.

(b) (1) In addition to the license fee required by subsection (a) of this section, every retailer shall pay a license fee at the rate of 0.7468% of the aggregate gross receipts attributable to all goods sold or services rendered by the retailer within the State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In

computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (b)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(c)-(e) [Repealed.]

(f) Any person desiring to engage in business in this State as a transient retailer shall obtain a license upon making application to the Division of Revenue and paying a fee of $25.

(g) In addition to the license fee required by subsection (f) of this section, every transient retailer shall pay a license fee at the rate of 0.7468% of the aggregate gross receipts attributable to all goods sold or services rendered by the transient retailer within the State which exceed $3,000. Unless a transient retailer exceeds $3,000 of aggregate gross receipts attributable to all goods sold or services rendered by the transient retailer within the State during any year, said transient retailer shall not be required to file any return or certified statement with the Department of Finance; provided, however, that every transient retailer who exceeds $3,000 of aggregate gross receipts attributable to all goods sold or services rendered by the transient retailer within the State during any year shall file a return accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(h) There shall be added to the tax provided in subsection (b) of this section an additional tax as provided in § 9114 of Title 7.

(i) (1) In lieu of the license fee required by subsection (f) of this section, any person desiring to engage in business in this State as a transient nursery retailer shall obtain a license upon making application to the Division of Revenue and paying a fee of $75 for each location at which the applicant seeks to do business. Such license shall be valid for 30 consecutive days.

(2) Any person desiring to engage in business in this State as a transient nursery retailer must first present an original, or copy of, a valid nursery industry license obtained from the Department of Agriculture.

(3) Prior to issuance of a license, the Division of Revenue shall also ensure that the applicant provides proof that the applicant has obtained all other necessary State, county and municipal licenses, permits, and waivers regarding the sale of their products, and operation at a particular location. The application must specify the specific location of the transient activity.

(4) If the license is not posted by the transient nursery retailer at the site of business, then the Division of Revenue shall order such retailer to cease and desist all retail activity.

(Code 1915, §§ 198A, 226A; 30 Del. Laws, c. 23; 40 Del. Laws, c. 30, § 1; Code 1935, § 174; 42 Del. Laws, c. 65; 44 Del. Laws, c. 6; 48 Del. Laws, c. 379; 30 Del. C. 1953, § 2905; 49 Del. Laws, c. 99; 49 Del. Laws, c. 343, § 3; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 188, § 33; 57 Del. Laws, c. 389, §§ 1, 6; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 12-14; 60 Del. Laws, c. 24, §§ 7-9; 60 Del. Laws, c. 505, §§ 2-4; 61 Del. Laws, c. 117, § 7; 61 Del. Laws, c. 184, § 1; 63 Del. Laws, c. 314, § 7; 65 Del. Laws, c. 390, § 1; 65 Del. Laws, c. 402, § 13; 66 Del. Laws, c. 381, § 4; 67 Del. Laws, c. 261, §§ 11, 12; 67 Del. Laws, c. 326, § 7; 68 Del. Laws, c. 80, § 9; 69 Del. Laws, c. 289, § 9; 70 Del. Laws, c. 142, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 484, §§ 8, 13; 70 Del. Laws, c. 489, §§ 15, 16; 71 Del. Laws, c. 351, §§ 7, 24; 74 Del. Laws, c. 375, § 2; 75 Del. Laws, c. 199, §§ 8, 12, 19, 28; 76 Del. Laws, c. 282, §§ 8, 9, 16; 77 Del. Laws, c. 83, §§ 12, 13, 25; 78 Del. Laws, c. 73, §§ 22, 23, 40, 41; 78 Del. Laws, c. 94, §§ 1, 2; 79 Del. Laws, c. 13, §§ 10, 11; 80 Del. Laws, c. 195, § 18.)

§ 2906 Restaurant retailer license requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) Every person engaged in the business of operating a restaurant, snack bar, soda fountain, take-out food service, catering service, private eating or drinking club, or other eating establishment or service shall be exempt from the provisions of § 2905 of this title and shall be subject to the provisions of this section.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall obtain a license upon making application to the Division of Revenue and paying a fee of $75 plus $25 for each separate branch or location. If monthly payments thereafter are made in accordance with subsection (c) of this section, such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the restaurant retailer makes application therefor and payment of $75 plus $25 for each separate branch or location.

(c) (1) In addition to the license fee required by subsection (b) of this section every restaurant retailer shall pay a license fee at the rate of 0.6472% of the aggregate gross receipts attributable to all goods sold within the State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts of the immediately preceding month period. In computing the fee due on the aggregate gross receipts for any month, there shall be allowed a deduction of $100,000. For purposes of this subsection, all

branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(d) Persons licensed as a retailer or grocery supermarket retailer pursuant to § 2905 or § 2908 of this title and who derive at least 90 percent of their sales of food suitable for human consumption from food that is not "immediately consumable," as that term is defined by § 2908(a) of this title, shall be exempt from this section, provided that the retailer or grocery supermarket retailer reports the gross receipts derived from activities otherwise subject to this chapter as retail or grocery supermarket retail sales, as the case may be.

(Code 1915, §§ 198A, 226A; 30 Del. Laws, c. 23; 40 Del. Laws, c. 30, § 1; Code 1935, § 174; 42 Del. Laws, c. 65; 30 Del. C. 1953, § 2906; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 188, §§ 33A, 42; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 15, 16, 19; 60 Del. Laws, c. 24, §§ 10, 11, 19; 61 Del. Laws, c. 117, § 8; 63 Del. Laws, c. 314, § 8; 65 Del. Laws, c. 390, § 2; 65 Del. Laws, c. 402, § 14; 66 Del. Laws, c. 381, § 5; 67 Del. Laws, c. 261, §§ 11, 12; 68 Del. Laws, c. 80, §§ 10, 14; 69 Del. Laws, c. 289, §§ 1, 10; 70 Del. Laws, c. 484, § 9; 70 Del. Laws, c. 489, §§ 17, 18; 71 Del. Laws, c. 351, §§ 8, 25; 72 Del. Laws, c. 104, § 3; 75 Del. Laws, c. 199, §§ 9, 20, 29; 76 Del. Laws, c. 282, §§ 10, 16; 77 Del. Laws, c. 83, §§ 14, 25; 78 Del. Laws, c. 73, §§ 24, 25, 42; 79 Del. Laws, c. 13, § 12; 80 Del. Laws, c. 195, § 19.)

§ 2907 Farm machinery retailer license requirements; license fee; additional fee on aggregate gross receipts; statements required.

(a) To the extent that any person is engaged in the business of selling farm machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business, such person shall be exempt from § 2905 of this title and shall be subject to the provisions of this section. All other sales by farm machinery retailers shall be governed by § 2905 of this title.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall first obtain a license from the Department of Finance and pay therefor a fee of $75 for each place of business. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter; provided, that the farm machinery retailer pays the fees required by subsection (c) of this section, makes application therefor and payment of $75 for each place of business.

(c) (1) In addition to the license fee required by subsection (b) of this section, every farm machinery retailer shall also pay a license fee at the rate of 0.0996% of the aggregate gross receipts attributable to all goods sold by the farm machinery retailer within this State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of $100,000. For purposes of this subsection all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $3,000,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(3) [Repealed.]

(30 Del. C. 1953, § 2907; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 741, § 14; 60 Del. Laws, c. 21, §§ 17, 18; 60 Del. Laws, c. 23, §§ 5, 6; 61 Del. Laws, c. 117, § 9; 63 Del. Laws, c. 314, § 9; 65 Del. Laws, c. 392, §§ 4, 5; 65 Del. Laws, c. 402, §§ 15, 16; 66 Del. Laws, c. 381, § 6; 67 Del. Laws, c. 261, § 11; 68 Del. Laws, c. 80, §§ 11, 14; 69 Del. Laws, c. 289, §§ 1, 11; 70 Del. Laws, c. 484, § 2; 70 Del. Laws, c. 489, §§ 19, 20; 71 Del. Laws, c. 351, §§ 9, 17, 26; 75 Del. Laws, c. 199, §§ 2, 21, 31; 76 Del. Laws, c. 282, §§ 11, 16; 77 Del. Laws, c. 83, §§ 15, 25; 78 Del. Laws, c. 73, §§ 26, 27, 43; 79 Del. Laws, c. 13, § 13; 80 Del. Laws, c. 195, § 20.)

§ 2908 Grocery supermarket retailers.

(a) Every person engaged in the business of operating a retail grocery supermarket shall be exempt from the provisions of § 2905 of this title and shall be subject to the provisions of this section with regard to the retail sales of such store. For purposes of this section, a grocery supermarket shall mean a retail store with an area of more than 6,000 square feet and whose primary business is selling food for human

consumption, having on stock available for retail sale and purchase at least 12,000 different food stock units (SKU's) at least 90 percent of whose sales of food suitable for human consumption consists of food that is not immediately consumable. For purposes of this section, "not immediately consumable" shall be defined as any product purchased at the grocery store that is intended for consumption at home in which some preparation or cooking is necessary. Notwithstanding and in addition to this definition, the following products shall be considered not immediately consumable: frozen ice cream, frozen or refrigerated yogurt, all fresh fruits and vegetables, deli products sold by the pound or packaged on the shelf, cooked shrimp or other seafood sold by the pound, bottled or canned sodas including bottled waters, all snack foods such as, but not limited to, potato chips, cookies and packaged candies, refrigerated dairy products, bakery goods, dry foods sold in bulk by the pound and any other food item that is generally consumed at home.

(b) All persons defined in subsection (a) of this section desiring to engage in business in this State shall obtain a license upon making application to the Division of Revenue and paying a fee of $75 plus $25 for each separate branch or location. If monthly payments thereafter are made in accordance with subsection (c) of this section, such license shall be valid through December 31, at which time it may be renewed for a full year and every year thereafter; provided, that the grocery store retailer makes application therefor and payment of $75 plus $25 for each separate branch or location.

(c) (1) In addition to the license fee required by subsection (b) of this section, every grocery store retailer shall pay a license fee at the rate of 0.3267% of the aggregate gross receipts attributed to all goods sold within the State, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts of the immediately preceding month. In computing the fee due on the aggregate gross receipts for any month, there shall be allowed a deduction of $100,000. Solely for purposes of determining the rate of taxation and the monthly exclusion under this subsection, but not for determining the applicability of the definition of "grocery supermarket," all branches or entities comprising an enterprise with common ownership or common direction and control shall be considered as one. The monthly returns shall be accompanied by a certified statement on such forms as the Division of Revenue shall require in computing the fee due.

(2) Notwithstanding paragraph (c)(1) of this section, if the taxable gross receipts prescribed therein during the lookback period as defined in § 2122 of this title do not exceed the applicable threshold of $1,500,000, the return and payment of the additional license fee imposed for such month shall be due on or before the last day of the first month following the close of the quarter. (The applicable threshold in this paragraph is subject to annual adjustment as more fully set forth in § 515 of this title.) In the case of such return, in computing the fee due on such aggregate gross receipts for each quarter, there shall be allowed a deduction of $300,000. For purposes of this paragraph, all branches or entities comprising an enterprise with common ownership or common direction and control shall be treated as one, and shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. The quarterly return shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing this fee due.

(70 Del. Laws, c. 484, § 15; 71 Del. Laws, c. 351, §§ 10, 11; 75 Del. Laws, c. 199, §§ 13, 22, 33; 76 Del. Laws, c. 282, §§ 12, 16; 77 Del. Laws, c. 83, §§ 16, 25; 78 Del. Laws, c. 73, §§ 28, 29, 44, 45; 79 Del. Laws, c. 13, § 14; 80 Del. Laws, c. 195, § 21.)

§ 2909 Exemptions.

(a) (1) This chapter shall not apply to the sale of unprocessed agricultural products, including nursery or floral products by:

a. The owner or operator of a farm or nursery which produced the products; provided, however, that no business described in this subparagraph shall be required to obtain a license under this chapter if its gross receipts from the sale of unprocessed agricultural products not produced on the taxpayer's farm or nursery do not exceed the amount excluded from tax under § 2905(b) or § 2902(c) of this title; or

b. The owner or operator of any enterprise whose principal business in this State is the purchase and resale, at wholesale, of unprocessed and unpackaged agricultural plant products; provided such products are purchased from a person described in this paragraph and further provided said purchase occurs within this State.

(2) This chapter shall not apply to the incidental sale by the owner or operator of a farm or nursery of processed agricultural products on the assumption that the purchaser of such products has acquired the same for consumption or use and not for resale. Growers of nursery products shall be treated under this chapter as retailers to the extent of sales at retail.

(b) This chapter shall not apply to any transaction subject to the motor vehicle dealer handling fee as set forth in § 3004 of this title.

(c) The tax imposed by § 2905(b) or § 2906(c) of this title shall not apply to gross receipts from the retail sale for off premises consumption of alcoholic liquor, beer, cider or wine under license pursuant to Title 4.

(d) Section 2905 of this title shall not apply to goods which are delivered by the retailer outside this State, and for which the retailer can provide proof satisfactory to the State Tax Department that an out-of-state retail sales tax has been paid to such state with respect to said goods.

(e) Notwithstanding any provisions of this chapter to the contrary, no handicapped peddler who has reached the age of 62 years shall be required to pay any fee for a license pursuant to this chapter. For the purposes of this subsection, the term "peddler" shall include every person who sells, or offers to sell, at retail, any goods, wares or other commodities by travelling from place to place, on the street or through different parts of this State. The term "handicapped," as used in this subsection, includes, but is not limited to, the following diagnosis: Mental retardation, impairment of hearing or deafness, speech impairments, substantial loss of sight, loss of limb or limbs or paralysis in any substantial degree, which handicaps require special services or impair or impede other employment.

(f) This chapter shall not apply to casual sales by any individual artist or craftsperson who sells or offers for sale the craftperson's own

handmade, painted or crafted art or craft objects and whose gross income from the sale of said objects is less than $1,000 per year.

(g) The provisions of § 2902 of this title shall not apply to any person who catches crabs for sale or who holds a crabbing license, or holds any other state occupational license which is required for a person to engage in commercial crabbing.

(h) [Repealed.]

(i) This chapter shall not apply to any person holding a license for the conduct of horse racing meetings or a license to conduct pari-mutuel or totalizator wagering or betting under Chapter 101 of Title 3 or Chapter 4 of Title 28, to the extent activities under this chapter are related to the conduct of horse racing meets.

(j) Sections 2905, 2906 and 2912 of this title shall not apply to non-profit organizations exempt from federal income tax under § 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)) as amended.

(k) This chapter shall not apply to the exchange between or among wholesalers of fungible goods when the goods received by such wholesaler are received by it for the purpose of resale. For purposes of this subsection, the term "fungible" shall refer to goods of which any unit is, by nature or usage of trade, the equivalent of any other like unit. This provision shall not be construed so as to exclude from tax under this chapter the sale, whether at retail or wholesale, of goods received for resale as a result of the exchange. The exemption provided in this section is not applicable to a sale occurring upon the delivery by 1 exchange partner directly to the customer of the other exchange partner and such delivery shall be treated as made to such customer directly by the other exchange partner and subject to tax, even though such other exchange partner may never have obtained physical possession of such fungible good.

(*l*) This chapter shall not apply to the sale of aircraft having a certified takeoff weight of 12,500 pounds or more.

(30 Del. C. 1953, § 2908; 57 Del. Laws, c. 136, § 16; 57 Del. Laws, c. 188, §§ 17, 32, 47; 60 Del. Laws, c. 24, § 12; 60 Del. Laws, c. 637, § 1; 61 Del. Laws, c. 139, § 1; 61 Del. Laws, c. 312, § 1; 63 Del. Laws, c. 417, § 5; 65 Del. Laws, c. 184, § 1; 65 Del. Laws, c. 406, § 3; 67 Del. Laws, c. 287, § 1; 69 Del. Laws, c. 83, § 2; 70 Del. Laws, c. 142, § 9; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 230, §§ 2, 3; 70 Del. Laws, c. 484, § 14; 71 Del. Laws, c. 39, § 4; 71 Del. Laws, c. 211, § 7; 74 Del. Laws, c. 3, § 1; 75 Del. Laws, c. 171, § 3; 77 Del. Laws, c. 275, § 6.)

§ 2910 Tire retailer license requirements; license fee; additional fee on new tires.

(a) In addition to any license required under § 2905 of this title, any person desiring to engage in business in this State as a retailer of tires for vehicles shall obtain a registration upon making application to the Division of Revenue at no additional cost.

(b) In addition to the registration required by subsection (a) of this section, every retailer of tires for vehicles shall pay a fee at the rate of $2.00 per tire sold at retail during any month. Such fee shall be due on the twentieth of the following month. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due. Each retailer of tires may list, as a separate line item on an invoice, the amount of the fees due under this subsection.

(c) The term "retailer" shall have the meaning ascribed to that term in § 2901(18) of this title. The term "tire" shall have the meaning ascribed to that term in § 6040 of Title 7. The term "vehicle" shall have the meaning ascribed to that term in § 101 of Title 21, except that such term shall not include farm tractors.

(d) The fees provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the additional fee provided in this section to the credit of the special fund described in § 6041 of Title 7. The Division of Revenue shall enter into an agreement with the Department of Natural Resources and Environment Control authorizing the Division of Revenue to charge such fund an amount reasonably determined by the Division of Revenue to be the cost of administering the fees described in this section.

(75 Del. Laws, c. 346, § 8; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 9; 78 Del. Laws, c. 100, § 17.)

§ 2911 Retail Crime Unit; Retail Crime Fund and fee.

(a) There is hereby established within the Department of Justice a unit, "The Retail Crime Unit", dedicated to the prosecution of retail crime.

(b) There shall be a Deputy Attorney General assigned to the Retail Crime Unit and charged with the prosecution of retail crime.

(c) In addition to any fees that may be applicable under this chapter, a $15 fee shall be applied annually to each license holder under §§ 2905 and 2908 of this title.

(d) Funds generated by this fee shall be deposited in the State Treasury to the credit of the "Retail Crime Fund".

(e) All funds collected pursuant to this section, and all funds allocated to the Retail Crime Fund shall be used to pay for all necessary expenses and operational costs including but not limited to salary associated with implementing the provisions of this section as such expenditures are authorized by the General Assembly in the annual operating budget.

(76 Del. Laws, c. 390, § 1.)

§ 2912 Beverage container retailer license requirement; license fee; recycling fee on beverage container sales.

This section expired on December 1, 2014, under the terms of subsection (e) of the statute as enacted in 77 Del. Laws, c. 275, § 7.

Part III
Occupational and Business Licenses and Taxes
Chapter 30
MOTOR VEHICLE DOCUMENT FEE AND AUTOMOBILE DEALER HANDLING FEE AND LICENSE FEE

§ 3001 Definitions.

As used in this chapter:

(1) "Motorcycle" — the definition of motorcycle shall be the same as that found in § 101 of Title 21.

(2) "Motor vehicle" — the definition of motor vehicle shall be the same as that found in § 101 of Title 21.

(3) "Motor vehicle dealer" includes every person in the business of buying, selling or trading new or used motor vehicles, trailers, truck trailers or motorcycles.

(4) "Owner" — the definition of owner shall be the same as that found in § 101 of Title 21.

(5) "Purchase price" means the value or any other consideration given by the owner to the seller for a motor vehicle; where trade-ins or allowances are given in conjunction with the purchase of any motor vehicle, the purchase price shall be the gross purchase price less any trade-in or allowance given by the seller of the motor vehicle to the owner of the motor vehicle; except that where a motor vehicle having been bought and registered outside the State and not subject to the limitation of § 3002(a)(4) of this title is first registered and titled in this State, "purchase price" shall mean the fair market value as of the date of such titling and registration. If the owner made no trade-in in conjunction with the purchase of any motor vehicle or trailer but 60 days prior to or subsequent to the date on which a certificate of title was issued in Delaware on such vehicle such owner sold privately the previously owned vehicle, credit shall be given in the same amount on the document fee as if the owner had made a trade-in of such previously owned vehicle in connection with the purchase of another vehicle. Credit shall be given for only 1 motor vehicle or trailer per application. Application for such credit in event of a prior sale shall be made at the time application is made for title of the purchased vehicle. In the event of a subsequent sale, application for such credit shall be made not later than 15 calendar days after such sale in person or by registered mail to the Division of Motor Vehicles. Proof of prior ownership and the amount of sale shall be furnished at the time the owner claims credit pursuant to rules and regulations promulgated by the Division of Motor Vehicles.

(6) "Trailers" — the definition of trailers shall be the same as that found in § 101 of Title 21.

(7) "Truck tractor" — the definition of truck tractor shall be the same as that found in § 101 of Title 21.

(8) "Used vehicle" — the definition of used vehicle shall be the same as that found in § 101 of Title 21.

(30 Del. C. 1953, § 3001; 57 Del. Laws, c. 136, § 17; 57 Del. Laws, c. 188, §§ 28, 29; 58 Del. Laws, c. 296, § 1; 58 Del. Laws, c. 442; 62 Del. Laws, c. 355, § 1; 74 Del. Laws, c. 110, § 135.)

§ 3002 Motor vehicle document fee; claims for refunds [For applicability of this section, see 80 Del. Laws, c. 77, § 2].

(a) There is imposed upon the sale, transfer or registration of any new or used motor vehicle, truck tractor, trailer or motorcycle in this State a motor vehicle document fee, which fee is to be paid by the owner and shall be collected by the Division of Motor Vehicles for deposit to the credit of the Transportation Trust Fund pursuant to Chapter 14 of Title 2, as amended, and any resolution or agreement of the Delaware Transportation Authority, authorizing the issuance of bonds to finance the costs of transportation facilities described in said title, to be used to finance the costs of roads, highways and other transportation facilities and not to defray the expenses and obligations of the general government of the State. This motor vehicle document fee shall not be imposed on the sale, transfer or registration of motor vehicles, truck tractors, trailers or motorcycles in the following circumstances:

(1) Renewal registration in the name of the same owner;

(2) Motor vehicles, truck tractors, trailers or motorcycles which are transferred or sold for the purpose of resale;

(3) Trailers where the vendor thereof delivers the trailer outside the State to a nonresident of this State and where there is imposed upon the retail sales price of said trailer a sales tax; provided, however, that the vendor provides satisfactory evidence to the Division of Motor Vehicles that the trailer was so delivered and that the sales tax was in fact paid;

(4) Motor vehicles, truck tractors, trailers or motorcycles which are bought by the owner and registered outside the State and then are subsequently registered or titled within the State pursuant to § 2102 of Title 21; provided, such owner had paid to such other state a sales tax, transfer tax or some similar levy on the purchase of such motor vehicles, truck tractors, trailers or motorcycles within 90 days prior to registration or titling in this State;

(5) Truck tractors with truck trailers where the owner thereof has obtained a title in another state in the same name as applied for in this State, and where application for fleet registration and inspection is obtained pursuant to § 2143 of Title 21, and where registration fees are paid pursuant to the fee provisions of § 2152 of Title 21;

(6) All motor vehicles, trailers or motorcycles purchased, transferred, registered, owned, operated or used by: This State, its agencies

and departments; any political subdivision of the State; the American Legion; Veterans of Foreign Wars; any volunteer fire company and the Delaware Civil Air Patrol; the American Red Cross; and the Salvation Army; or

(7) Any vehicle meeting the requirements of a school bus and specified in a contract with a public school district or the State Board of Education to transport public school pupils on a daily basis from home to school and return and for which the owner is reimbursed on the basis of a return of capital allowance provided in the transportation formula for school bus contracts. Any such vehicle that is older than the age specified in the capital allowance schedule at the time it is purchased shall be subject to the full document fee which shall not be reimbursable.

(b) The amount of the purchase price shall be evidenced by a notarized bill of sale.

(c) The document fee imposed herein shall be computed as follows:

(1) Where the purchase price is less than $400, there shall be a uniform rate of $8.00;

(2) Where the purchase price is $400 or more, up to and including $500, the document fee shall be $13.75;

(3) The document fee payable thereafter shall increase in increments of $4.25 per each additional $100 of purchase price or any fraction thereof, rounded to the nearest dollar; except that the document fee thereafter for mobile homes shall increase in increments of $3.75 per each additional $100 of purchase price or any fraction thereof, rounded to the nearest dollar.

(d) No action or claim that is otherwise permitted against the State or an agency or authority of the State to recover any fee, or portion of any fee, erroneously or illegally collected by or paid to the State or agency or authority hereunder, may be commenced or otherwise asserted after expiration of 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

(30 Del. C. 1953, § 3002; 57 Del. Laws, c. 136, § 17; 57 Del. Laws, c. 188, §§ 26, 27, 36, 37; 57 Del. Laws, c. 322; 58 Del. Laws, c. 296, §§ 2, 3; 64 Del. Laws, c. 345, § 1; 65 Del. Laws, c. 262, § 2; 66 Del. Laws, c. 41, § 2; 66 Del. Laws, c. 271, §§ 3, 4; 66 Del. Laws, c. 360, § 49(b); 68 Del. Laws, c. 156, § 55(a); 69 Del. Laws, c. 77, § 57; 74 Del. Laws, c. 110, §§ 136, 139; 76 Del. Laws, c. 76, §§ 1, 2; 80 Del. Laws, c. 77, § 1.)

§ 3003 Enforcement by Secretary of Transportation; rules and regulations.

The Secretary of Transportation shall have the power and authority to make, issue, promulgate and enforce such rules and regulations which shall not be inconsistent with the law as the Secretary of Transportation shall deem necessary for administration and implementation of § 3002 of this title.

(30 Del. C. 1953, § 3003; 57 Del. Laws, c. 136, § 17; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 137.)

§ 3004 Motor vehicle dealer handling fee and payment.

(a) Every motor vehicle dealer shall pay a handling fee of $2 on the sale of every new or used motor vehicle, trailer, truck tractor or motorcycle sold to the owner thereof. The handling fee shall be paid in quarterly installments payable to the Department of Finance on or before November 1, February 1, May 1 and August 1 of each year for the next preceding 3-month period ending on September 30, December 31, March 31 and June 30 of each year. The motor vehicle dealer handling fee shall not be imposed on the sale, transfer or registration of motor vehicles, trailers or motorcycles which are transferred or sold for the purpose of resale.

(b) The Department of Finance shall prescribe the form of the returns necessary for the payment of the handling fee in such manner as it may deem necessary for the proper administration of this chapter.

(c) The Department of Finance shall deposit all payments under this section in the Transportation Trust Fund, as described in Chapter 14 of Title 2.

(30 Del. C. 1953, § 3004; 57 Del. Laws, c. 136, § 17; 57 Del. Laws, c. 188, §§ 30, 38; 58 Del. Laws, c. 173; 71 Del. Laws, c. 150, § 69.)

§ 3005 Motor vehicle dealer license fee.

(a) Every motor vehicle dealer shall pay an annual license fee of $100 to the Department of Finance; provided however, that no dealer license fee shall be applicable for out-of-state new recreational dealers at industry-wide public vehicle shows or exhibitions at enclosed malls in this State when such out-of-state new recreational dealers participate as exhibitors with permission of the licensed manufacturer; and further provided, that:

(1) Reciprocity is granted to such recreational dealers of this State; and

(2) Providing that any participating out-of-state new recreational dealer is duly licensed and authorized by the state of residence to sell new recreational vehicles.

(b) A motor vehicle dealer who is not required to provide a surety bond to the Banking Commissioner pursuant to Chapter 29 of Title 5 and who, as a retail seller, self-finances any sale of a motor vehicle to a retail buyer without charging interest to the buyer shall, as a prerequisite to obtaining an annual license, file with the Department of Finance an original surety bond in the principal sum of $25,000, payable to the State, with surety provided by a corporation authorized to transact business in this State.

(1) The term of the bond shall be continuous or commensurate with the license period, with the expiration date of the bond not earlier than midnight of the date on which the license expires.

(2) The bond is for the benefit of consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the licensed retail seller in the course of activity as a licensed retail seller. Compensation under the bond shall be for amounts that represent actual

losses, including reasonable attorney fees accrued by the consumer in pursuing a claim against the licensee. Compensation shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensed retail seller. A consumer claim may be submitted to the Department of Finance in the form of a final judgment from a court of competent jurisdiction, a written settlement agreement, an admission, a binding arbitration decision or a binding order entered pursuant to any other method of voluntary alternative dispute resolution. Surety claims shall be paid to the Department of Finance by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest that accrues for payments made after 90 days, shall in no event exceed the amount of the bond.

(3) If the licensed retail seller changes the surety company or the bond is otherwise amended, the licensed retail seller shall immediately provide the Secretary of the Department of Finance with an original copy of the new or amended surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Secretary at least 30 days before the date upon which the cancellation is to take effect.

(4) The Secretary of the Department of Finance may require potential claimants to provide documentation and affirmations as the Secretary determines necessary and appropriate. In the event the Secretary determines that multiple consumers have been injured by a licensed retail seller, the Secretary shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensed retail seller, it shall immediately notify the Secretary and shall not pay any claim unless and until it receives notice to do so from the Secretary.

(6) The Secretary shall have a period of 2 calendar years after the effective date of cancellation or termination of a surety bond by the insurer to submit a claim to the insurer.

(c) The Department of Finance shall deposit all payments under this section in the Transportation Trust Fund, as described in Chapter 14 of Title 2.

(30 Del. C. 1953, § 3005; 57 Del. Laws, c. 136, § 17; 57 Del. Laws, c. 188, § 31; 69 Del. Laws, c. 240, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 150, § 70; 72 Del. Laws, c. 218, § 2.)

Part III
Occupational and Business Licenses and Taxes
Chapter 31
DELAWARE INFRASTRUCTURE EMERGENCY RESPONSE ACT

§ 3101 Definitions.

As used in this chapter:

(1) "Declared state of emergency" means a disaster or emergency event:

a. For which a Governor's state of emergency proclamation has been issued; or

b. For which a presidential declaration of a federal major disaster or emergency has been issued.

(2) "Emergency period" means a period that begins within 5 days of the first day of a declared state of emergency and that extends for a period of 60 calendar days after the end of such declared state of emergency, unless a longer period is authorized as provided herein.

(3) "Emergency-related work" means repairing, renovating, installing, building, rendering services or other business activities relating to infrastructure that may be or has been damaged, impaired or destroyed during the emergency period.

(4) "Infrastructure" means property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, and public roads and bridges and related support facilities directly in connection with the provision of services to multiple customers or citizens, including, without limitation, real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment. The term "infrastructure" shall not include any real or personal property that is not directly engaged in providing the applicable services to the citizens of this State, including, without limitation, office buildings or billing or administrative offices.

(5) "Out-of-state business" means a business entity licensed in another state, commonwealth or district that has no registrations, tax filings, nexus or presence in this State and conducted no business in this State prior to a declared state of emergency and whose services are requested by a registered business or by a state or local government for purposes of performing emergency-related work. This includes a business entity that is affiliated with a registered business solely through common ownership.

(6) "Out-of-state employee" means an employee who does not work in this State, except for "emergency-related work" during an "emergency period".

(7) "Registered business in this State" (or "registered business") means a business entity that is or should legally be currently registered to do business in this State prior to a declared state of emergency.

(8) "State licensing or registration requirements" means all state or local business licensing or registration requirements, including, without limitation, registration or licensing by the Public Service Commission, the Secretary of State, the Division of Revenue, and any other state or local agency that requires businesses be licensed to operate within this State or imposes other regulatory requirements.

(9) "State or local taxes" means state and local taxes or fees including, without limitation, unemployment insurance, state or local licensing fees, sales and use tax and ad valorem tax on equipment brought into this State solely to be used or consumed during the emergency period. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity by an out-of-state business conducted in this State pursuant to this chapter shall be disregarded in determining the applicability of any filing requirements for such tax.

(79 Del. Laws, c. 119, § 1.)

§ 3102 Business and employee status during emergency period.

(a) (1) An out-of-state business that conducts emergency-related work within this State related to a declared state of emergency at the request of a Delaware business licensed pursuant to this title shall, during the emergency period, not be considered to have established a level of presence that would require such business or its out-of-state employees to:

a. Register, file or remit state or local taxes; or

b. Be subject to any state licensing or registration requirements.

(2) An out-of-state employee shall not be considered to have established residency or a presence in this State that would require such person to file and pay income taxes or such person's employer to:

a. Be subjected to tax withholdings; or

b. File and pay any other state or local taxes during an emergency period. This includes any related state or local employer withholding and remittance obligations.

(b) Notwithstanding the provisions of subsection (a) of this section, out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees, including without limitation, fuel taxes or sales and use taxes on materials or services subject to sales and use tax, hotel taxes, and car rental taxes or fees that an out-of-state business or out-of-state employee purchases or rents for use or consumption in this State during the emergency period, unless such taxes are otherwise exempted during a declared state of emergency,

and nothing herein shall be deemed to grant an exemption for any of the foregoing taxes to such out-of-state businesses or out-of-state employees.

(79 Del. Laws, c. 119, § 1.)

§ 3103 Business and employee status after emergency period.

An out-of-state business or an out-of-state employee that remains in this State after the emergency period shall be subject to this State's normal standards for establishing presence, residency or for doing business in this State and be responsible for any otherwise applicable business or employee tax requirements.

(79 Del. Laws, c. 119, § 1.)

§ 3104 Administration and notification.

(a) (1) An out-of-state business that enters this State during an emergency period shall, upon request, provide the Delaware Division of Revenue, a written statement that such business is in this State for purposes of performing emergency-related work and which statement shall include the name of the business, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

(2) A registered business shall, upon request, provide the information required in paragraph (a)(1) of this section for any affiliate that enters this State that is an out-of-state business. Such notification shall also include contact information for the registered business in this State.

(b) An out-of-state business or an out-of-state employee that remains in this State after the emergency period shall complete all state and local registration, licensing and filing requirements that apply as a result of establishing the requisite business presence or residency in this State applicable under existing rules.

(79 Del. Laws, c. 119, § 1.)

§ 3105 Regulations.

The Delaware Division of Revenue shall promulgate regulations and develop and maintain forms and records necessary to implement and administer the provisions of this chapter.

(79 Del. Laws, c. 119, § 1.)

Part III
Occupational and Business Licenses and Taxes
Chapter 33
STEAM, GAS AND ELECTRIC COMPANIES

§ 3301 License requirements.

Except as provided in this chapter, no individual, association of persons, firm or corporation shall carry on the business of the manufacture or production of steam, gas or electricity for heat, light or power in this State for sale, unless such individual, association, firm or corporation holds an unexpired license issued by the Secretary of Finance authorizing the conduct of such business. Every such individual, association, firm or corporation engaged in such business, who desires to continue in such business, shall on or before the first Monday in May in each year, file with the Secretary of Finance a statement in writing, verified by the oath or affirmation of such individual, or 1 member of such firm or the treasurer or general manager of such association or corporation, showing the amount of the gross receipts from such business during the 12 months then next preceding. Upon the filing of the statement at the time prescribed, and upon the payment by the individual, firm, association or corporation to the Secretary of Finance for the use of the State of a sum equal to 1 mill on each dollar of the amount of the gross receipts from the business of the individual, firm, association or corporation as shown by the statement, the Secretary of Finance shall issue a license authorizing the conduct of the business by such individual, firm, association or corporation. Such license shall be valid for 1 year only from its date.

Every individual, firm, association or corporation not having been engaged in the business aforesaid, and desiring to obtain a license authorizing the conduct of such business, shall pay to the Secretary of Finance for the use of the State the sum of $50; and, thereupon, the Secretary of Finance shall issue a license authorizing such individual, firm, association or corporation to become engaged in the business until the first Monday in June, thence next ensuing.

(25 Del. Laws, c. 7, §§ 1, 2; Code 1915, § 99; Code 1935, § 93; 30 Del. C. 1953, § 3301; 57 Del. Laws, c. 741, § 19; 80 Del. Laws, c. 285, § 1.)

§ 3302 Exception as to municipalities; rural electric cooperatives.

(a) Nothing in this chapter shall be so construed as to require any incorporated town, city or municipality to pay said tax on account of the production or manufacture of steam, gas or electricity by it.

(b) The requirements of this chapter shall not apply to the manufacture, production or sale of solar photovoltaic electricity generated in this State by a nonprofit rural electric cooperative-owned photovoltaic system which is not sold or distributed to nonmembers of such cooperative.

(25 Del. Laws, c. 7, § 4; Code 1915, § 99; Code 1935, § 93; 30 Del. C. 1953, § 3302; 80 Del. Laws, c. 285, § 1.)

§ 3303 Penalties.

Every individual and every member of an association of persons or firm and every director and officer of a corporation carrying on the business of the manufacture or production of steam, gas or electricity for heat, light or power in this State, for sale or profit, without holding an unexpired license shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

(25 Del. Laws, c. 7, § 3; Code 1915, § 99; Code 1935, § 93; 30 Del. C. 1953, § 3303.)

Part III
Occupational and Business Licenses and Taxes
Chapter 35
Express Companies [Repealed].

§ 3501-3508 License requirement; tax and statement; nonpayment of tax; penalties; reinstatement upon payment of tax; charges; regulation with charges in Pennsylvania and Maryland; free transportation of books, papers and public documents; penalty; deposit with Secretary of Finance in certain cases; penalty; doing business without license; penalty [Repealed].

Repealed by 65 Del. Laws, c. 118, § 1, effective July 1, 1985.

Part III
Occupational and Business Licenses and Taxes
Chapter 37
Carriers of Passengers by Steam Power [Repealed].

§ 3701-3704 Passengers' tax; monthly statements; failure to report or pay; penalties; enforcement of penalties; Secretary of Finance; duties and powers in collection of tax [Repealed].

Repealed by 65 Del. Laws, c. 118, § 2, effective July 1, 1985.

Part III
Occupational and Business Licenses and Taxes
Chapter 39
Railroads and Canal Companies [Repealed].

§ 3901-3909 Tax on net earnings of railroads and canals; annual statement and collection of tax; tax on locomotives, cars and trucks; tax on capital stock; ascertainment and collection of tax upon failure to make report or pay tax; nonpayment of taxes; penalties; warrant of Secretary of Finance to county receiver of taxes to collect taxes; commutation of state taxes of certain railroad companies; railroad and railway corporations organized under Title 26 [Repealed].

Repealed by 70 Del. Laws, c. 142, § 8.

Part III
Occupational and Business Licenses and Taxes
Chapter 41
Telegraph and Telephone Companies [Repealed].

§ 4101 Tax and statement requirements on telegraph lines [Repealed].

18 Del. Laws, c. 460, § 1; 25 Del. Laws, c. 6, § 5; Code 1915, § 52; Code 1935, § 49; 30 Del. C. 1953, § 4101; 57 Del. Laws, c. 741, § 23; 60 Del. Laws, c. 16, § 1; repealed by 79 Del. Laws, c. 294, § 2, eff. Jan. 1, 2015.

§ 4102 Tax and statement requirements on telephone lines and transmitters [Repealed].

25 Del. Laws, c. 6, §§ 1, 2; Code 1915, §§ 53, 54; Code 1935, §§ 50, 51; 30 Del. C. 1953, § 4102; 57 Del. Laws, c. 741, § 23; 60 Del. Laws, c. 16, § 2; 78 Del. Laws, c. 294, § 1; repealed by 79 Del. Laws, c. 294, § 2, eff. Jan. 1, 2015.

§ 4103 Assessment and collection upon failure to make required statement [Repealed].

18 Del. Laws, c. 460, § 1; 25 Del. Laws, c. 6, §§ 3, 5; Code 1915, §§ 52, 55; Code 1935, §§ 49, 52; 30 Del. C. 1953, § 4103; 57 Del. Laws, c. 741, § 23; 70 Del. Laws, c. 186, § 1; repealed by 79 Del. Laws, c. 294, § 2, eff. Jan. 1, 2015.

§ 4104 Collection on failure to pay tax [Repealed].

18 Del. Laws, c. 460, § 1; 25 Del. Laws, c. 6, §§ 4, 5; Code 1915, §§ 52, 56; Code 1935, §§ 49, 53; 30 Del. C. 1953, § 4104; 57 Del. Laws, c. 741, § 23; repealed by 79 Del. Laws, c. 294, § 2, eff. Jan. 1, 2015.

Part III
Occupational and Business Licenses and Taxes
Chapter 43
USE TAX ON LEASES OF TANGIBLE PERSONAL PROPERTY

§ 4301 Definitions.

As used in this chapter:

(1) "Lease" means an agreement (either written or oral) under which a lessor grants to a lessee the right to use property for a specified period or at the will of either the lessor or lessee. An agreement which purports to be a sale but which is in substance a lease shall be considered a lease.

(2) "Lessee" means any person to which a lease is made and any assignee of the person to which a lease is made.

(3) "Lessor" means any person that grants a lease and any assignee of the person that grants a lease other than an assignee for security or financing.

(4) "Person" means and includes an individual, partnership, firm, cooperative, corporation or any association of persons acting individually or as a unit.

(5) "Person required to collect the tax" shall include every lessor of property the use of which is subject to tax under § 4302 of this title, and shall also include any officer or employee of a corporate lessor of such property and any member of a partnership lessor of such property.

(6) "Place of business." Each person leasing tangible personal property in this State shall be considered to have at least 1 "place of business" in this State.

(7) "Motor vehicle lessee" shall mean a lessee, as defined in this chapter, of a motor vehicle as defined in § 101 of Title 21.

(8) "Motor vehicle lessor" shall mean a lessor, as defined in this chapter, of a motor vehicle as defined in § 101 of Title 21.

(30 Del. C. 1953, § 4301; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 523; 71 Del. Laws, c. 150, § 62; 83 Del. Laws, c. 323, § 6.)

§ 4302 Imposition of tax on lessees.

(a) There is imposed by this section on every lessee a use tax, for the use within this State, under a lease of tangible personal property (other than motor vehicles, household furniture, household fixtures or household furnishings, hospital equipment and any and all medical and remedial equipment, aids and devices leased by or to elderly, ill, injured or handicapped persons for their own use, including television sets leased to patients in a health care facility, motion picture films leased by a film society organization that is exempt from federal income tax under the provisions of § 501(c) of the Internal Revenue Code [26 U.S.C. § 506(c)], and manufacturing equipment under leveraged leases in which rental payments are guaranteed, in whole or in part, by the Economic Development Administration of the United States Department of Commerce pursuant to Public Law 89-136 (42 U.S.C. § 3121 et seq.), as amended) equal to 1.9914% of the rent under such lease.

(b) There is imposed by this section on every motor vehicle lessee a use tax, for use within this State under a lease of a motor vehicle, equal to 1.9914% of the rent under such lease.

(c) This section shall not apply to rents on leases of equipment, machinery, fixtures, buildings and/or nonregistered vehicles used in the business of raising crops or animals in agricultural production reusable pallets and containers for use by food processors. For purposes of this subsection, the term "reusable pallet and container" means any pallet or crate which is under an arrangement for the repeated return of such property to its initial purchaser for long-term reuse.

(30 Del. C. 1953, § 4302; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 451; 62 Del. Laws, c. 104, § 1; 68 Del. Laws, c. 80, § 12; 70 Del. Laws, c. 484, § 11; 71 Del. Laws, c. 150, § 63; 71 Del. Laws, c. 439, § 1; 73 Del. Laws, c. 77, § 1; 73 Del. Laws, c. 390, § 1; 75 Del. Laws, c. 199, § 10; 76 Del. Laws, c. 282, §§ 13, 16; 77 Del. Laws, c. 83, §§ 17, 18, 25; 78 Del. Laws, c. 73, §§ 46, 47; 78 Del. Laws, c. 298, § 1; 79 Del. Laws, c. 13, §§ 15, 16.)

§ 4303 Collection of tax.

(a) Every person required to collect the tax under this chapter shall collect the tax from the lessee when collecting the rent under the lease to which the tax applies. The tax shall be paid to the person required to collect it as trustee for and on account of the State.

(b) For the purpose of the proper administration of this chapter and to prevent evasion of the tax imposed by § 4302 of this title, it shall be presumed that all rental payments under leases are subject to the tax until the contrary is established and the burden of proving that any rental payment is not taxable under § 4302 of this title shall be upon the person required to collect the tax or the lessee.

(30 Del. C. 1953, § 4303; 57 Del. Laws, c. 136, § 18.)

§ 4304 Liability for the tax.

(a) Every person required to collect the tax imposed by this chapter shall be personally liable for the tax imposed, collected or required to be collected under this chapter. Any such person shall have the same right in respect to collecting the tax from the lessee or in respect to

nonpayment of the tax by the lessee as if the tax were part of the rent and payable at the same time.

(b) Where a lessee has failed to pay the tax imposed by this chapter to the person required to collect the same, then, in addition to all other rights, obligations and remedies provided, the tax shall be payable by the lessee directly to the Department of Finance and it shall be the duty of the lessee to file a return with the Department of Finance and to pay the tax to it within 20 days of the date the tax was required to be paid.

(c) The Department of Finance may, whenever it deems it necessary for the proper enforcement of this chapter, provide that a lessee shall file returns and pay directly to the Department of Finance any tax imposed under this chapter at such time as returns are required to be filed and payment made by the persons required to collect the tax.

(30 Del. C. 1953, § 4304; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 741, § 46; 70 Del. Laws, c. 186, § 1.)

§ 4305 Lessor's license.

(a) (1) Every person engaged in or desiring to engage in business in this State as a lessor of tangible personal property other than motor vehicles shall obtain a license by making application to the Division of Revenue and paying a fee of $75, plus $25 for each additional place of business or business location within this State. Such license shall be valid until the last day of December following the issuance thereof, at which time it may be renewed annually upon application and payment of the fees and taxes specified in this chapter.

(2) Every person engaged in or desiring to engage in business in this State as a motor vehicle lessor shall obtain a license by making application to the Division of Revenue and:

a. Paying a fee of $75, plus $25 for each additional place of business or business location within this State; or

b. Supplying proof of having obtained with respect to each such location a valid business license under paragraph (a)(1) of this section.

(b) In addition to the license fee required by subsection (a) of this section, every such lessor shall pay an annual license tax in quarterly installments at the rate of 0.2987% of the lease rental payments received, except lease rental payments on manufacturing equipment under leveraged leases on which rental payments are guaranteed, in whole or in part, by the Economic Development Administration of the United States Department of Commerce pursuant to Public Law 89-136 (42 U.S.C. § 312 et seq.), as amended. In computing the fee due on such aggregate gross receipts under this subsection for each quarter, there shall be allowed a deduction of $300,000, to be applied first to receipts from leases of tangible property other than motor vehicles and any remainder applied to receipts from leases of motor vehicles. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 quarterly deduction from the aggregate gross receipts of the entire enterprise. Returns shall be filed quarterly by each lessor on the dates specified in § 4307(b) of this title.

(c) Any person required to be licensed as a retailer under § 2905(a) of this title shall not be required to pay the license fees or taxes imposed by this section; provided, that:

(1) Such person deems gross receipts to which subsection (b) of this section would otherwise apply to be receipts from the sale of goods and thus subject to § 2905(b) of this title; and

(2) Any such person more than 50% of whose gross receipts are derived from the leasing of personal property within this State shall obtain a license under subsection (a) of this section.

Nothing in this subsection shall exempt any person from imposition or collection of tax under § 4302 of this Title.

(d) [Repealed.]

(30 Del. C. 1953, § 4305; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 681; 57 Del. Laws, c. 741, § 46; 60 Del. Laws, c. 163, § 1; 62 Del. Laws, c. 104, § 2; 65 Del. Laws, c. 392, § 10; 66 Del. Laws, c. 381, § 7; 67 Del. Laws, c. 261, § 13; 68 Del. Laws, c. 80, §§ 13, 14; 69 Del. Laws, c. 289, § 1; 70 Del. Laws, c. 230, § 4; 70 Del. Laws, c. 484, § 10; 70 Del. Laws, c. 489, § 21; 71 Del. Laws, c. 150, §§ 65-67; 71 Del. Laws, c. 351, § 12; 75 Del. Laws, c. 199, §§ 34, 35; 76 Del. Laws, c. 282, §§ 14, 16; 77 Del. Laws, c. 83, §§ 19, 25; 78 Del. Laws, c. 73, §§ 30, 48; 79 Del. Laws, c. 13, § 17.)

§ 4306 Records to be kept.

Every person required to collect the tax under this chapter shall keep records of every lease the rent under which is subject to tax under this chapter in such form as the Department of Finance may require. The records shall be available for inspection and examination at any time upon demand by the Department of Finance and shall be preserved for a period of 3 years; except that the Department of Finance may consent to their destruction within that period or may require that they be kept longer.

(30 Del. C. 1953, § 4306; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 741, § 46; 67 Del. Laws, c. 40, § 16.)

§ 4307 Filing returns and payment of tax.

(a) (1) Every person required to register with the Department of Finance under § 4305 of this title shall file a return quarterly with the Department of Finance showing the amount of rental payments received during the period covered by the return which are subject to tax under this chapter and the amount of taxes required to be collected with respect to such use.

(2) Notwithstanding § 4305(c) of this title, every motor vehicle lessor or other person required to collect the tax under this chapter from motor vehicle lessees shall be required to set forth separately from other amounts reported under this chapter the tax imposed under § 4302(b) of this title with regard to motor vehicle lessees.

(b) The returns required by this section shall be filed on or before October 31, January 31, April 30 and July 31 of each year for the next

preceding 3-month period ending on September 30, December 31, March 31 and June 30 of each year.

(c) The form of returns shall be prescribed by the Department of Finance and shall contain such information as it may deem necessary for the proper administration of this chapter.

(d) Every person required to file a return under this section shall, at the time of filing such return, pay to the Department of Finance the tax imposed by this chapter. All the taxes for the period for which the return is filed shall be due and payable to the Department of Finance on the date prescribed for filing the return for such period without regard to whether a return is filed or whether the return which is filed correctly shows the taxes due.

(e) [Repealed.]

(30 Del. C. 1953, § 4307; 57 Del. Laws, c. 136, § 18; 57 Del. Laws, c. 741, § 46; 60 Del. Laws, c. 547, § 2; 71 Del. Laws, c. 150, §§ 64, 68; 71 Del. Laws, c. 351, § 27; 76 Del. Laws, c. 278, § 1; 76 Del. Laws, c. 282, § 15.)

Part IV
Commodity Taxes
Chapter 51
MOTOR FUEL TAX
Subchapter I
Gasoline

§ 5101 Definitions.

As used in this chapter:

(1) "Aviation gasoline" is gasoline manufactured and distributed exclusively for use in internal combustion aircraft engines.

(2) "Department" means Department of Transportation.

(3) "Distributor" includes any person, association of persons, firm or corporation, wherever resident or located, who imports or causes to be imported into the State gasoline, as defined in this section, for use, distribution, storage or sale after the gasoline reaches the State or who, being in the business of selling and or distributing gasoline in bulk quantities, desires to purchase gasoline tax free from another distributor for resale within this State or for export from this State; and also any person, association of persons, firm or corporation who produces, refines, manufactures or compounds, or causes to be produced, refined, manufactured or compounded gasoline as defined in this section within the State.

(4) A product will be considered "gasohol" when it is composed of 1 part anhydrous ethyl alcohol (ethanol) and 9 parts unleaded gasoline.

(5) "Gasoline" includes all products commonly or commercially known or sold as gasoline, including gasohol, casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating spark-ignited internal combustion engines. The term "gasoline" does not include liquefied gases such as propane, butane or pentane, or mixtures of the same, nor any product:

a. Having an ASTM Designation D908 research octane number of less than 70; or

b. Having a Reid vapor pressure at 100° F. of more than 30 pounds.

(6) "Person" includes every natural person, fiduciary, association of persons or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(7) "Retailer" means any person engaged in the sale of gasoline within this State who is not licensed as a distributor.

(30 Del. C. 1953, § 5101; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24A; 62 Del. Laws, c. 380, §§ 1, 2; 65 Del. Laws, c. 297, §§ 1-3; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 575, § 11.)

§ 5102 License for retail sale of gasoline; requirement, issuance, term, fee and display.

Every person engaged in the retail sale of gasoline shall, before engaging in such business, procure from the Department of Transportation a license for each establishment operated by such person. Such license shall be issued by the Department and shall expire on June 30 next following, subject to such reasonable regulations as the Department shall provide. Every person desiring to continue to engage in the retail sale of gasoline shall annually thereafter on July 1 procure from the Department a license for such establishment operated by such person, which shall expire on June 30 next following, subject to such reasonable regulations as the Department shall provide. A license fee of $5.00 shall be paid for the issuing of every such license and the Department shall supply a certificate, which the licensee shall publicly display in a manner to be regulated by the Department. Retailers participating in the Small Retail Gasoline Station Assistance Loan Fund established in Chapter 74 of Title 7, must, as a condition of their license, make their loan payments as prescribed therein; if their fuel supplier is not a distributor licensed under this chapter, then the retailer must file its own fuel tax return with the Department of Transportation for this purpose.

(30 Del. C. 1953, § 5102; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 64 Del. Laws, c. 365, § 4; 64 Del. Laws, c. 368, § 1; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 73.)

§ 5103 License for distributor of gasoline; requirement, application, bond and fee.

(a) No distributor shall receive, use, sell or distribute any gasoline or engage in business within this State unless such distributor is the holder of an uncancelled license issued by the Department of Transportation to engage in such business. To procure such license, a distributor shall file with the Department an application under oath and in such form as the Department may prescribe, setting forth:

(1) The name under which the distributor will transact business within the State;

(2) The location, with street number address of its principal office or place of business within this State; and

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country or the laws of the United States, it shall also file with such application a certified copy of the certificate issued by the Secretary of State of Delaware showing that such corporation is authorized to transact business in the State.

(b) Upon the filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for in § 5107 of this title shall be filed with the Department of Transportation. No license shall be issued upon any application unless accompanied by such bond.

(c) Upon the filing of the application for a license, a filing fee of $10 shall be paid to the Department of Transportation.

(d) As a condition of their license, distributors shall make the required loan payments for themselves or their retailer customers who:

(1) Participate in the Small Retail Gasoline Station Assistance Loan Fund, established in Chapter 74 of Title 7; and

(2) Provide these funds to the distributor.

(30 Del. C. 1953, § 5103; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 64 Del. Laws, c. 365, § 5; 64 Del. Laws, c. 368, § 2; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 74.)

§ 5104 Issuance of distributor's license; term of license.

The application referred to in § 5103 of this title, in proper form having been accepted for filing, the filing fee paid and the bond having been accepted and approved, the Department of Transportation shall, except as provided in this chapter, issue to such distributor a license to transact business as a distributor in this State. Such license shall expire on June 30 next following. Every distributor desiring to continue as a distributor shall apply for and procure a license before July 1 each year. Each distributor shall be assigned a license number upon qualifying for a license under this subchapter.

(30 Del. C. 1953, § 5104; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 473, § 1; 62 Del. Laws, c. 380, § 3; 68 Del. Laws, c. 290, § 184.)

§ 5105 Refusal of distributor's license; grounds.

If any application for a license to transact business as a distributor in this State shall be filed by any person whose license shall at any time theretofore have been cancelled for cause, or in case the Department of Transportation shall be of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall therefore have been cancelled for cause, the Department of Transportation, after a hearing, of which the applicant shall be given 5 days' notice in writing and at which the applicant shall have the right to appear in person or by a counsel and present testimony, may refuse to issue to such person a license to transact business as a distributor in this State.

(30 Del. C. 1953, § 5105; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

§ 5106 Assignability of distributor's license.

The license issued under this subchapter by the Department of Transportation shall not be assignable and is valid only for the distributor in whose name it was issued.

(30 Del. C. 1953, § 5106; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

§ 5107 Bond of licensed distributor.

(a) Every distributor shall file with the Department of Transportation a bond in the approximate sum of 3 times the average monthly gasoline tax due or estimated to be due by such distributor under the existing law of the State. In no case shall such bond be less than $5,000 nor more than $200,000. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the distributor's license is revoked for cause, or otherwise cancelled or surrendered.

(b) The bond shall be in such form as may be approved by the Department, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such distributor to the Department of any and all gasoline taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(c) If liability upon the bond thus filed by the distributor with the Department of Transportation shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Department any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the distributor. If the new bond is furnished by the distributor as above provided, the Department shall cancel and surrender the bond of the distributor for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.

(d) If the Department of Transportation, after a hearing of which the distributor shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the Department

file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The total amount of any such additional bond, as well as the bond required under subsection (a) of this section, shall not exceed the maximum of $200,000, and the Department shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided.

(e) Any surety on any bond furnished by any distributor as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall therein inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge. Simultaneously, the Department shall also notify the distributor who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a date certain. The distributor shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the distributor.

(30 Del. C. 1953, § 5107; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 4; 64 Del. Laws, c. 365, § 1; 65 Del. Laws, c. 339, § 1; 66 Del. Laws, c. 97, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 311, §§ 1, 2.)

§ 5108 Revocation, cancellation and surrender of license and bond.

The Department of Transportation may revoke the license of any distributor for reasonable cause. Before revoking any such license the Department shall notify the distributor to show cause within 60 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to or pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license.

The Department shall cancel any license to act as a distributor immediately upon surrender thereof by the holder. If the license of any distributor shall be cancelled by the Department and if the distributor shall have paid to the State of Delaware all taxes, penalties and interest due and payable by it under the gasoline laws of this State, then the Department shall cancel and surrender the bond or other surety theretofore filed by said distributor. The Department shall promptly notify all licensed distributors of any such cancellation.

The Department of Transportation may suspend or revoke a gasoline retailer's license for reasonable cause in the same manner as a distributor's license.

(30 Del. C. 1953, § 5108; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 5; 68 Del. Laws, c. 290, § 184.)

§ 5109 Records of Department of Transportation.

The Department of Transportation shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed distributors.

(30 Del. C. 1953, § 5109; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

§ 5110 Levy and rate of tax; collection.

(a) There is hereby levied and imposed for the state fiscal year commencing August 1, 1981, a tax of 11 cents per gallon on all gasoline which is sold or used in the State. For each state fiscal year thereafter, the rate of such tax per gallon shall equal the product of: Ten percent and the 12-month average of the "wholesale average price" per gallon of regular unleaded gasoline at self-service stations in the Philadelphia, Pennsylvania area, as reported in the McGraw-Hill Platt's/Lundberg Report (or successor report), such product to be rounded to the nearest whole cent. A calculation producing a rate including a fraction less than one half of 1 cent shall be rounded down to the nearest whole cent, and a calculation producing a rate including a fraction equal to or greater than one-half cent shall be rounded up to the nearest whole cent. The rate of taxation for the fiscal years beginning July 1, 1982, and thereafter shall be calculated on the basis of such wholesale average prices reported for the consecutive 12-month period commencing March 1 and ending on the last day of February of the fiscal year next prior to the fiscal year in which the tax will be imposed. The Secretary of Transportation and the Secretary of Finance shall compute the applicable rate in March, or as soon as practicable thereafter, for the next state fiscal year and shall notify the Governor and the General Assembly of their findings and calculations not later than April 30 of that year. If the Platt's/Lundberg Report fails to contain reports on the wholesale average price per gallon of regular unleaded gasoline at self-service stations in the Philadelphia, Pennsylvania area for any month or if the report is discontinued and no successor report is published, the Secretary of Transportation and the Secretary of Finance shall use available figures reflecting such prices reported in any other nationally recognized publication. Notwithstanding the foregoing:

(1) The tax rate per gallon of gasoline levied pursuant to this section shall not be less than an amount equivalent to 11 cents per gallon;

(2) The tax rate for any fiscal year commencing July 1, 1982, and thereafter shall not be less than the rate for the prior state fiscal year nor more than 1 cent per gallon above the tax rate in effect for the prior state fiscal year; and

(3) The maximum aggregate tax rate shall not exceed an amount equivalent to 11 cents per gallon of gasoline.

(b) The tax shall be collected by and paid to the State but once in respect to any gasoline. Nothing in this section shall be construed to exempt from the tax any distributor of gasoline with respect to gasoline used in making such distribution. The tax shall be collected in the manner hereinafter provided.

(c) Notwithstanding subsection (a) of this section, the tax levied and imposed in subsection (a) of this section shall be 22 cents per gallon through December 31, 1994. Thereafter, the tax shall be 23 cents per gallon. Effective January 1, 1995, the tax shall be no more or no less than 23 cents per gallon until increased or decreased by the State. By virtue of the pledge and assignment of motor fuel tax revenues by the State to the Delaware Transportation Authority, said tax shall not be decreased during the period any bonds of that Authority are outstanding and unpaid.

(30 Del. C. 1953, § 5110; 54 Del. Laws, c. 107; 55 Del. Laws, c. 112, § 1; 58 Del. Laws, c. 289, § 1; 59 Del. Laws, c. 218, §§ 1, 2; 59 Del. Laws, c. 416, § 1; 61 Del. Laws, c. 74, § 1; 63 Del. Laws, c. 179, § 24; 65 Del. Laws, c. 385, § 10; 66 Del. Laws, c. 87, § 2; 67 Del. Laws, c. 285, § 55; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, §§ 49, 50.)

§ 5111 Exempt sales of gasoline.

(a) The tax imposed by this chapter shall not apply to gasoline:

(1) Sold and delivered to and used by the United States or any of the governmental agencies thereof;

(2) Sold or delivered under the protection of the interstate commerce clause of the Constitution of the United States;

(3) Sold by a distributor to another distributor;

(4) Sold and delivered to and used by the State and every political subdivision thereof;

(5) Sold and delivered to and used by volunteer fire companies in any of their official vehicles and veteran or civic organizations in their ambulances when such vehicles are used on a voluntary, nonprofit basis. The fuel supply tanks maintained under this section must be for the exclusive use of said vehicles.

(b) The Department of Transportation may, for purposes of identification of the above agencies or organizations, require that an exemption certificate issued by the Department of Transportation be on file with the Department and the supplier from which the fuel is purchased.

(30 Del. C. 1953, § 5111; 54 Del. Laws, c. 107; 56 Del. Laws, c. 33, § 2; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 81, § 1; 62 Del. Laws, c. 380, § 6; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 65.)

§ 5112 Distributor's taxable sales of gasoline; what is included.

The distributor's taxable sales shall, for the purpose of this chapter, include all gasoline delivered to retail dealers, including gasoline delivered to retail outlets on consignment or to retail outlets owned or operated by the distributor.

(30 Del. C. 1953, § 5112; 54 Del. Laws, c. 107.)

§ 5113 Monthly reports of distributors.

(a) On or before the twenty-fifth day of each calendar month, each distributor of gasoline shall file with the office of the Department of Transportation, a statement on a form prepared by the Department of Transportation, which shall show the quantity of gasoline on hand on the first and last days of the preceding calendar month, the quantity of gasoline received, produced, manufactured, refined or compounded during the preceding calendar month, the quantity of gasoline sold, delivered or used within this State during the preceding calendar month, and such other information as the Department of Transportation may require. Aviation gasoline shall be reported separately from other gasolines.

(b) On or before June 25 each year, distributors having average monthly taxable sales and/or use of 500,000 or more gallons shall file a statement of the estimated sales and/or use anticipated for the same calendar month.

(c) The fact that a distributor's name is signed to such statements shall be prima facie evidence for all purposes that the reports were actually signed by such distributor or a duly authorized agent. Such statements shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification.

(d) The monthly statements or payments of tax, as provided in § 5114 of this title, shall be considered to have been duly and timely filed if such statements or payments are deposited in the United States mail with postage prepaid on or before the twenty-fifth day of a given calendar month; provided, however, that for good cause the Department of Transportation may grant a licensee a reasonable extension of time.

In lieu of depositing tax payments in the United States mail, a licensed motor fuel distributor may hand deliver said payment to the Department of Transportation or the Department may require licensed motor fuel distributors to make electronic transfers of such funds to the appropriate state account.

(e) When the twenty-fifth day of a given month falls on a weekend or state holiday, the due date of the statement and tax shall be the next following business day of the State.

(30 Del. C. 1953, § 5113; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 1; 60 Del. Laws, c. 440, §§ 1-3; 62 Del. Laws, c. 380, § 7; 67 Del. Laws, c. 340, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 12.)

§ 5114 Payment of tax by distributor.

(a) At the time of rendering the statement required by § 5113(a) of this title, the distributor shall pay to the Department of Transportation the tax or taxes levied by this chapter on all gasoline sold and/or used within this State during the preceding calendar month.

(b) Distributors averaging monthly sales and/or use of 500,000 or more gallons over a 12-month period ending April 30 each year shall,

when complying with § 5113(b) of this title, pay to the Department of Transportation in June each year the tax or taxes on 75% of the gallons of gasoline estimated to be sold and/or used during said month of June. The balance of the tax due on the actual sales and/or use in June shall be paid on or before the twenty-fifth day of the next calendar month.

(30 Del. C. 1953, § 5114; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 2; 60 Del. Laws, c. 667, § 1; 62 Del. Laws, c. 380, § 8; 68 Del. Laws, c. 290, § 184.)

§ 5115 Penalties for failure to file reports or pay tax when due.

When any distributor fails to file monthly reports with the Department of Transportation as required by § 5113 of this title or when such distributor fails to pay the Department the amount of taxes due to this State as required by § 5114 of this title, a penalty of $5.75 per business day shall accrue up to a maximum of $28.75 for each report. For each report filed more than 5 business days late, the penalty shall be $28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; however, the Department may waive all or any part of the penalty and interest when it is established to the satisfaction of the Department that failure to file the monthly report or pay the tax by the twenty-fifth day of the month was not with intent to violate the law.

A month, for purposes of calculating interest in this chapter, shall be from the twenty-sixth day of a given month through the twenty-fifth day of the following month.

(30 Del. C. 1953, § 5115; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 76, § 3; 60 Del. Laws, c. 422, § 1; 62 Del. Laws, c. 380, §§ 9, 10; 64 Del. Laws, c. 368, § 3; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. laws, c. 186,, § 1.)

§ 5116 Estimate by Department of Transportation in absence of tax report; redetermination of assessment.

(a) Whenever any distributor neglects or refuses to make and file any report for any calendar month as required by this chapter or files an incorrect or fraudulent report, the Department of Transportation shall determine, from any information obtainable in its office, or elsewhere, the number of gallons of gasoline with respect to which the distributor has incurred liability under the gasoline laws of this State.

(b) In any action or proceeding for the collection of the gasoline tax and/or penalties or interest imposed in connection therewith, an assessment by the Department of the amount of the tax due and/or interest or penalties due to the State shall constitute prima facie evidence of the claim of the State, and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law.

(c) Promptly after the date of such determination, the Department of Transportation shall notify by mail the person against whom the assessment is made. Within 60 days after the date of notification, such person may file with the Department of Transportation a petition for redetermination of such assessment. Every petition for redetermination shall state specifically the reason or reasons which the petitioner believes entitles the petitioner to such redetermination. It shall be the duty of the Secretary of Transportation within 90 days after the receipt of any petition to dispose of such petition for redetermination. Notice of the decision shall be given in writing to the petitioner promptly by the Secretary of Transportation.

(d) Any person shall have the right to appeal within 60 days the decision of the Secretary of Transportation concerning redetermination to the Superior Court of this State.

(30 Del. C. 1953, § 5116; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 11; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5117 Collection by Department of Transportation of delinquent taxes.

If any distributor shall be in default for more than 10 days in payment of any taxes and/or penalties thereon payable under the terms of this chapter, the Department of Transportation may issue a warrant under its official seal, and signed by its Chairperson, directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such distributor, without exemption, found within the sheriff's jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time to be therein specified, which shall not be less than 20 nor more than 60 days from the date of the warrant. The sheriff, to whom any such warrant is directed, shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against the goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for services in executing the warrant, to be collected in the same manner; provided, that nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes by an action upon any bond that may be filed with the Department of Transportation under the provisions of this chapter, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

(30 Del. C. 1953, § 5117; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 12; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5118 Rules and regulations.

The Department of Transportation may prescribe reasonable rules and regulations for the carrying out of this chapter and all forms of

reports required by this chapter.

(30 Del. C. 1953, § 5118; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

§ 5119 Deposit of receipts by Department of Transportation.

All money received by the Department of Transportation under this chapter shall be deposited, not later than the close of the business day next following such receipt, to the credit of the Delaware Transportation Authority pursuant to Chapter 13 of Title 2, as amended, and any resolution or indenture of the Delaware Transportation Authority, authorizing the issuance of bonds to finance the costs of transportation facilities described in said title, is to be used to finance the costs of roads, highways and other transportation facilities and not to defray the expenses and obligations of the general government of the State.

(30 Del. C. 1953, § 5119; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 63 Del. Laws, c. 179, § 25; 68 Del. Laws, c. 290, § 184.)

§ 5120 Refunds of motor fuel taxes.

(a) The Secretary of Transportation shall refund out of the General Fund of this State the tax paid on gasoline upon receipt of written authorization from the Department of Transportation so to do, which written authorization shall be given under the following conditions:

(1) Gasoline used by any person for the purpose of operating stationary gas engines, tractors, motorboats, airplanes or aircrafts, or any other purpose except in motor vehicles licensed, or subject to being licensed, for operation upon any of the public highways of the State.

(2) [Repealed.]

(3) Gasoline sold and delivered to, and used and consumed by, the operators of taxicab businesses in the operation of a taxicab or taxicabs in the normal course of such businesses; provided, however, that the main base of operations of the taxicab business in each case must be in the State, and the application provided for in subsection (b) of this section must certify that all fees and taxes then due from such business to the State or to any local government of the State by the operator and/or owner of such taxicab business shall have been paid in full. For purposes of this paragraph, the definition of "taxicab" shall be as set forth in § 101 of Title 21.

(b) Such application shall be in such form as shall be prescribed by the Department, shall be under the penalties of perjury, and shall state the quantity of gasoline with respect to which refund is claimed, the purpose for which said gasoline was used, date of purchase, from whom purchased, and such other information as the Department shall require.

(c) Such application shall be accompanied by the original invoice showing such purchase, together with evidence of the payment thereof.

(d) All applications for refunds must be filed with the Department of Transportation within 12 calendar months from the date of the purchase or invoice of the gasoline with respect to which a tax refund is claimed.

(e) The conditions of this section having been fully complied with, the Department of Transportation shall determine the amount of the refund due on such application and authorize the Secretary of Transportation in writing to pay such amount within 30 days from the time of filing of the application for refund.

(f) There shall be refunded out of the General Fund of this State any tax, penalty or interest erroneously or illegally collected under this chapter. A refund claim prepared in such manner as the Department may prescribe shall be filed with the Department within 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

The Department shall certify the amount thereof to the State Treasurer who shall thereupon draw a warrant to the claimant forthwith.

(g) If a refund granted under this section shall later be determined to have been erroneously or illegally paid in whole or in part, the Department of Transportation may demand, within 3 years from the date of such payment, that restitution be made to the General Fund of this State. Interest on said moneys assessed shall accrue at the rate of 1% per month, or fraction thereof, from the date of notification by the Department of Transportation until receipt of payment.

(30 Del. C. 1953, § 5120; 54 Del. Laws, c. 107; 56 Del. Laws, c. 33, § 1; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, §§ 2, 3; 60 Del. Laws, c. 81, § 2; 60 Del. Laws, c. 642, § 1; 62 Del. Laws, c. 380, §§ 13, 14; 68 Del. Laws, c. 156, § 55(b); 68 Del. Laws, c. 290, § 184.)

§ 5121 Reports from carriers transporting gasoline; penalty for failure to file report; appeal.

(a) Every railroad company, suburban or interurban railroad company, pipeline company, water transportation company and common carrier transporting gasoline, either in interstate or in intrastate commerce, to points within this State, and every person, except distributors, transporting gasoline by whatever manner to a point in this State from any point outside this State shall report, under penalty of perjury, to the Department of Transportation on forms prescribed by the Department all deliveries of gasoline so made to points within this State.

(b) The reports shall cover monthly periods, shall be postmarked by the United States Postal Service on or before the twenty-fifth day of the calendar month immediately following the month covered by the report, shall show the name and address of the person to whom the deliveries of gasoline have actually and in fact been made, and such other additional information relative to shipments of gasoline as the Department may require.

(c) If any carrier fails to file a report as required by this section, a penalty of $5.00 per business day shall accrue until said report is filed up to a maximum amount of $25 for each report; however, the Department may waive all or part of the penalty if it is established to the

satisfaction of the Department that failure to file the report was not with intent to violate the law.

(30 Del. C. 1953, § 5121; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, §§ 15, 16; 68 Del. Laws, c. 290, § 184.)

§ 5122 Retention of records by distributors or retailers; penalties.

(a) Each distributor or retailer shall maintain and keep, for a period of 3 years, such records of gasoline received, used, sold and/or delivered within this State by such distributor or retailer, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Department of Transportation for the reasonable administration of this chapter.

(b) Whoever violates this section shall be fined not more than $1,000 and the costs of prosecution, or imprisoned not more than 1 year, or both.

(30 Del. C. 1953, § 5122; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 58 Del. Laws, c. 203, § 1; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 17; 68 Del. Laws, c. 290, § 184.)

§ 5123 Inspection of records.

(a) The record of all purchases, receipts, sales, distribution and use of gasoline of every distributor or retailer shall at all times during the business hours of the day be subject to inspection by the Department of Transportation or by any agent or employee duly authorized by it.

(b) The Department shall make an inspection of the records of all purchases, receipts, sales, distribution and use of gasoline of every distributor or retailer to the extent deemed necessary by the Secretary, by or through such agent or employee as may be duly authorized by it, for the purpose of ascertaining whether the distributors or retailers are complying with this chapter. If it is found that the distributors or retailers are not complying with this chapter, the Department shall report to the Attorney General in what respects the distributors or retailers are failing to so comply with this chapter.

(30 Del. C. 1953, § 5123; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 58 Del. Laws, c. 203, § 2; 59 Del. Laws, c. 216, §§ 2, 3; 62 Del. Laws, c. 380, § 18; 68 Del. Laws, c. 290, § 184.)

§ 5124 Discontinuance, sale or transfer of business by distributor or retailer; penalties.

(a) Whenever a person ceases to engage in business as a distributor or retailer within this State by reason of the discontinuance sale or transfer of the business of such distributor or retailer, the distributor or retailer shall notify the Department of Transportation in writing at least 10 days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties and interest under this chapter not yet due and payable under the provisions of this chapter shall, notwithstanding such provisions, become due and payable concurrently with the discontinuance, sale or transfer, and the distributor or retailer shall concurrently with such discontinuance, sale or transfer make a report and pay all such taxes, interest and penalties, and surrender to the Department the license theretofore issued to the distributor or retailer by the Department.

(b) Unless the notice provided for in subsection (a) of this section shall have been given to the Department of Transportation, the purchaser or transferee shall be liable to this State for the amount of all taxes, penalties and interest under this chapter, accrued against any such distributor or retailer so selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor or retailer.

(c) Whoever violates this section shall be fined not less than $50 nor more than $300 and the costs of the prosecution, or imprisoned not more than 1 year, or both.

(30 Del. C. 1953, § 5124; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, § 19; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5125 Delivery from tank truck to motor vehicle; penalty.

The delivery of gasoline from a tank truck to the gasoline tank of a motor vehicle is prohibited except in cases of emergency. Whoever violates this section shall be fined not more than $50, or imprisoned not more than 30 days, or both.

(30 Del. C. 1953, § 5125; 54 Del. Laws, c. 107.)

§ 5126 Exchange of information among the states.

The Department of Transportation shall, upon request duly received from the officials to whom are entrusted the enforcement of the gasoline tax laws of any other state or the federal government, forward to such officials any information which it may have in its possession relative to the manufacture, receipt, sale, use, transportation and/or shipment by any person of gasoline.

(30 Del. C. 1953, § 5126; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 68 Del. Laws, c. 290, § 184.)

§ 5127 Reports of Department to distributors [Repealed].

Repealed by 59 Del. Laws, c. 535, § 1, effective July 26, 1974.

§ 5128 Penalties.

(a) Whoever violates any provision of this chapter, a penalty for which is not otherwise provided, or fails or refuses to pay the tax imposed by this chapter, or engages in business in this State as a distributor or retailer without being the holder of an uncancelled license to

engage in such business, or makes any false statement in any application, report or statement required by this chapter, or refuses to permit the Department of Transportation or any deputy to examine records as provided by this chapter, or fails to keep proper records of quantities of gasoline received, produced, refined, manufactured, compounded, sold, used and/or delivered in this State as required by this chapter, or collects or causes to be repaid to any person any tax not being entitled to the same under the provisions of this chapter shall, for the first offense, be fined not more than $500, or imprisoned not more than 6 months, or both, and for a second and any subsequent offense shall be fined not more than $1,000, or imprisoned not more than 1 year, or both. In addition to the penalty imposed in conformity to the above, the defendant shall be required to pay all taxes and penalties due the State under this chapter and/or pay to the State any other moneys wrongfully withheld or illegally refunded. Each day or part thereof during which any person shall engage in business as a distributor or retailer without being the holder of an uncancelled license shall constitute a separate offense within the meaning of this section.

(b) Whoever refuses or neglects to make any statement, report or return required by this chapter, or knowingly makes, or aids or assists any other person in making a false statement in a report to the Department of Transportation or in connection with an application for refund of any tax, or sells any gasoline purchased by such person from any person other than a duly licensed distributor upon which the tax herein imposed shall not be paid shall, when no other penalty of fine and/or imprisonment is imposed by this chapter, be fined not less than $100 nor more than $1,000, or imprisoned not less than 30 days nor more than 1 year, or both. The Superior Court of this State shall have exclusive jurisdiction over violations of this chapter.

(c) The Delaware State Police are authorized and directed to assist in the enforcement of this section.

(30 Del. C. 1953, § 5128; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24B; 59 Del. Laws, c. 216, § 2; 62 Del. Laws, c. 380, §§ 20, 21; 68 Del. Laws, c. 290, § 184.)

§ 5129 Collection of bad checks; service charge; interest.

If a check received in payment of moneys due the Department under this chapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of $10 and interest at the rate of 1% per month, or fraction thereof, shall accrue on the tax, if any, from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 15 days of the original amount of the check plus the added service charge, interest, if any, and the cost of the postage incurred in mailing the statement. Failure of the maker to respond to the demand within 15 days shall constitute cause for the Department to suspend the maker's motor fuel license and 30 days thereafter, to revoke the maker's motor fuel license.

(62 Del. Laws, c. 380, § 22.)

Subchapter II

Special Fuel

§ 5131 Definitions.

As used in this chapter:

(1) "A program to demonstrate commercial feasibility of alternatively fueled vehicles" means testing programs, pilot programs, demonstration programs and other programs in which data is being collected on fuel economy, performance and air emissions of vehicles primarily propelled by fuels other than gasoline, reformulated gasoline, diesel fuel, reformulated diesel fuel, fuel oil or kerosene and, for any taxpayer, the number of vehicles involved in such programs does not exceed the greater of 10 vehicles or 10 percent of the taxpayer's vehicles propelled primarily by a fuel subject to tax under this chapter.

(2) "Department" means the Department of Transportation.

(3) "Dyed diesel fuel" means any diesel fuel dyed pursuant to federal regulations cited in 26 C.F.R. 48.4082-1, as amended from time to time.

(4) "Highway" means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction.

(5) "Motor vehicle" means any vehicle propelled by an internal combustion engine and licensed or subject to be licensed for operation upon the highways.

(6) "Person" includes every natural person, fiduciary, association or corporation. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to an association, means and includes the partners or members thereof, and, as applied to corporations, the officers thereof.

(7) "Special fuel" means and includes all combustible gasses and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include gasoline as defined in § 5101 of this title and except that it does not include combustible gases and liquids used prior to January 1, 1996, in a program to determine commercial feasibility of alternatively fueled vehicles.

(8) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person.

(9) "Special fuel supplier" means any person in the business of handling or selling special fuel who delivers or places such fuel into a bulk supply tank or tanks of a special fuel user or special fuel dealer.

(10) "Special fuel tax exemption marker" means a marker or sticker supplied by the Department to be affixed to a special fuel bulk storage tank, or to the pump attached thereto, to certify that tax-free fuel may be placed into such tank.

(11) "Special fuel user" means the owner or other person responsible for the operation of a motor vehicle at the time special fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this State.

(12) "Use" means the receipt, delivery or placing of special fuel by a special fuel user into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this State.

(30 Del. C. 1953, § 5131; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, § 24D; 61 Del. Laws, c. 141, § 1; 65 Del. Laws, c. 297, §§ 4-7; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 171, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 459, § 1.)

§ 5132 Tax imposed.

(a) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the sale or delivery of special fuel to any special fuel dealer or special fuel user not the holder of a valid special fuel dealer's or special fuel user's license. Said tax, with respect to all special fuel delivered by a special fuel supplier into the bulk storage tank or tanks of said dealer or user, shall attach at the time of such delivery and shall be collected by the supplier from the dealer or user and shall be paid over to the Department of Transportation as hereinafter provided.

(b) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the use (within the meaning of the word "use" as defined in § 5131 of this title) of special fuel when such special fuel is delivered into the supply tanks of motor vehicles in this State by a licensed special fuel dealer or a licensed special fuel user. Said tax, with respect to all special fuel delivered by a licensed special fuel dealer into supply tanks of motor vehicles in this State, shall attach at the time of such delivery and shall be collected by such dealer from the special fuel user and shall be paid over to the Department of Transportation as hereinafter provided. Said tax, with respect to special fuel acquired by any licensed special fuel user in any manner other than by delivery by a special fuel dealer into the supply tank of a motor vehicle, shall attach at the time of the use (as defined in § 5131 of this title) of such fuel and shall be paid over to the Department of Transportation by said user as herein provided.

(30 Del. C. 1953, § 5132; 54 Del. Laws, c. 107; 55 Del. Laws, c. 112, § 2; 57 Del. Laws, c. 741, § 24B; 58 Del. Laws, c. 289, § 2; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 14, § 1; 60 Del. Laws, c. 423, § 1; 61 Del. Laws, c. 74, § 2; 61 Del. Laws, c. 141, § 2; 63 Del. Laws, c. 179, § 26; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, §§ 52-55.)

§ 5133 Exemptions.

(a) The tax imposed by this chapter shall not apply to special fuel sold and delivered to and used by the following persons:

(1) The United States or any governmental agencies thereof;

(2) The State and every political subdivision thereof;

(3) Volunteer fire companies in any of their official vehicles and veterans' or civic organizations in their ambulances when such ambulances are provided on a voluntary basis.

(b) The Department may, for purposes of identification, require that the above persons apply to the Department for a special fuel tax exemption marker to be affixed to the applicable bulk supply talk or pump thereof. The tax exemption marker may be revoked by the Department for just cause.

(30 Del. C. 1953, § 5133; 54 Del. Laws, c. 107; 61 Del. Laws, c. 141, § 3; 65 Del. Laws, c. 297, §§ 8, 9; 69 Del. Laws, c. 77, § 66.)

§ 5134 Special fuel license; bond.

(a) *Required.* — It shall be unlawful for any person to act as a special fuel dealer in this State unless such person is the holder of a valid special fuel dealer's license issued by the Department. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this State, the use (as defined in this subchapter) of special fuel in this State by any person shall be unlawful unless such person is the holder of a valid special fuel user's license issued by the Department. However, the requirement for a special fuel dealer's or special fuel user's license and bond may be waived by the Department, if said dealer or user has contracted to pay the applicable special fuel tax to a licensed special fuel supplier at the time of purchase. Also, it shall be unlawful for a special fuel supplier to collect the special fuel tax from a special fuel dealer or special fuel user unless the supplier is the holder of a valid special fuel supplier's license. A fee of $10 shall be paid to the Department for the issuance of each special fuel license. As a condition of their license, persons shall make the required loan payments on their own account or for their retailer customers who:

(1) Participate in the Small Retail Gasoline Station Assistance Loan Fund, established in Chapter 74 of Title 7; and

(2) Provide these funds to the person.

(b) *Application.* — Application for a special fuel license shall be made to the Department of Transportation on forms supplied by the Department. A license shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle by a special fuel dealer or special fuel user.

(c) *Form of application.* — The application shall be filed upon a form prepared and furnished by the Department. The application shall contain such information as the Department deems necessary.

(d) *Bond.* — (1) No special fuel license shall be issued to any person or continued in force unless such person has furnished a surety bond in such forms and amount as the Department may require, but not less than $5,000, nor more than $200,000, to secure compliance

with this chapter, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the license is revoked for cause, or otherwise cancelled or surrendered.

(2) The bond shall be in such form as may be approved by the Department of Transportation, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such licensee to the Department of any and all special fuel taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(3) If liability upon the bond thus filed by the licensee with the Department shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or, if in the opinion of the Department, any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the licensee. If the new bond is furnished by the licensee as above provided, the Department shall cancel and surrender the bond of the licensee for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.

(4) If the Department of Transportation, after a hearing of which the licensee shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the licensee is or may at any time become liable, then the licensee shall forthwith upon the written demand of the Department file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The total amount of any such additional bond as well as the bond required under paragraph (d)(1) of this section shall not exceed the maximum of $200,000, and the Department shall forthwith cancel the license certificate of any licensee failing to file an additional bond as herein provided.

(5) Any surety on any bond furnished by any licensee as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall thereafter inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge. Simultaneously, the Department shall also notify the licensee who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a certain date. The licensee shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the licensee.

(e) *Issuance.* — Upon receipt of the application and bond in proper form, the Department of Transportation shall issue to the applicant a license to act as a special fuel dealer or a special fuel user or a special fuel supplier; provided, however, that the Department may refuse to issue a license to any person:

(1) Who formerly held any type of license, which, prior to the time of filing application, has been revoked for cause; or

(2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing application, has been revoked for cause; or

(3) Upon other sufficient cause being shown.

Before such refusal, the Department shall grant the applicant a hearing and shall grant the applicant at least 30 days' written notice of the time and place thereof.

(f) *Term of license.* — Each special fuel license shall expire on June 30. Every person desiring to continue as a special fuel dealer or as a special fuel user or as a special fuel supplier shall annually thereafter on July 1 procure from the Department such a license, which shall expire on June 30 next following.

(g) *Assignment forbidden.* — No special fuel dealer's license or special fuel user's license or special fuel supplier's license shall be transferable.

(h) *Revocation, cancellation and surrender of license and bond.* — The Department of Transportation may revoke the license of any special fuel dealer or special fuel user or special fuel supplier for reasonable cause. Before revoking any such license the Department shall notify the licensee to show cause within 30 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to and pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license.

The Department shall cancel any license to act as a special fuel dealer or a special fuel user or special fuel supplier immediately upon surrender thereof by the holder.

(30 Del. C. 1953, § 5134; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 141, §§ 4-9; 64 Del. Laws, c. 365, §§ 2, 6; 64 Del. Laws, c. 368, § 4; 65 Del. Laws, c. 297, § 10; 65 Del. Laws, c. 339, § 2; 66 Del. Laws, c. 97, § 2; 68 Del. Laws, c. 290, § 184; 69 Del. Laws, c. 77, § 75; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 311, §§ 3, 4.)

§ 5135 Records.

(a) *Preparation of records.* — For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle by a licensed special fuel dealer or a licensed special fuel user, said dealer or user making such delivery shall prepare and maintain such

records as the Department of Transportation may reasonably require with respect to all such deliveries, and with respect to inventories, receipts, purchases, use and sales or other dispositions of special fuel. Also, each licensed special fuel supplier shall prepare and maintain such records as the Department of Transportation shall reasonably require with respect to all sales and/or deliveries of special fuel to customers.

(b) *Retention of records.* — The records required under this section shall be retained for a minimum of 3 years and shall be available, at all reasonable times, for examination by representatives of the Department.

(30 Del. C. 1953, § 5135; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 477, § 1; 61 Del. Laws, c. 141, § 10; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5136 Monthly reports and payments.

(a) *Reports.* — For the purpose of determining the amount of liability for the tax herein imposed, each licensee shall file with the Department of Transportation, on forms prescribed by the Department, a monthly tax report. Such report shall contain a declaration by the person making same to the effect that the statements contained therein are true and are made under penalties of perjury which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the Department may reasonably require for the proper administration and enforcement of this chapter. A licensed special fuel dealer or a licensed special fuel user shall file a report for each location at which special fuel is delivered or placed by said dealer or user into a fuel supply tank of a motor vehicle; provided, however, that if said dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly report to the Department covering such location need not include inventory control data covering bulk storage from which wholesale distribution is made. A licensed special fuel supplier shall file 1 report regardless of the number of locations at which the supplier's special fuel is stored or handled.

(b) *Due date.* — The special fuel licensee shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. When the twenty-fifth day of the month falls on a weekend or state holiday, the due date of the report shall be the next following business day of the State. Such report and payment shall be considered to have been duly and timely filed if such report or payment is postmarked by the United States Postal Service on or before the due date; provided, however, that for good cause the Secretary of the Department of Transportation may grant a licensee a reasonable extension of time.

In lieu of depositing tax payments in the United States mail, a licensed special fuel dealer, user or supplier may hand deliver said payment to the Department of Transportation or the Department may require licensed special fuel dealers, users or suppliers to make electronic transfers of such funds to the appropriate state account.

(c) *Tax computation.* — The tax imposed by this subchapter shall be computed by each special fuel dealer or special fuel user by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed by the special fuel dealer or special fuel user into the supply tank or tanks of a motor vehicle; provided, however, that if a special fuel dealer or special fuel user has contracted with a licensed special fuel supplier to have the tax included in the price of the fuel, then the tax shall be computed by the supplier by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed into the bulk storage tank or tanks of the dealer or user.

(d) *Payments.* — The monthly tax report shall be accompanied by remittance covering the tax due hereunder on special fuel as computed in subsection (c) of this section.

If a check received in payment of moneys due the Department under this subchapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of $10, and interest at the rate of 1 percent per month, or fraction thereof, shall accrue on the tax from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 10 days of the original amount of the check plus the added service charge, penalty and interest, if any, and the cost of the postage incurred in mailing the statement, such amounts to be set forth in the statement. Failure of the maker to respond to the demand within 10 days shall constitute cause for the Department to suspend the maker's special fuel license, and 30 days after such suspension, if restitution has not been received, to revoke the maker's special fuel license.

(e) *Refusal or failure to file report when due.* — In case any special fuel licensee refuses or fails to file a report required by this chapter within the time prescribed by subsection (b) of this section, there is hereby imposed a penalty of $5.75 per business day of this State up to a maximum of $28.75 for each such report. For each report filed more than 5 business days late, the penalty shall be $28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; provided, however, that if any such licensee shall establish by a fair preponderance of evidence that the failure to file a report within the time prescribed was due to reasonable cause and was not with intent to violate the law, the Department may waive all or any part of the penalty provided by this subsection.

(f) *Failure to pay tax.* — When a licensee files a report but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of 1 percent per month, or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(g) *Deficiency.* — If it be determined by the Department of Transportation that the tax reported by any licensee is deficient, the Department shall proceed to assess the deficiency on the basis of information available to the Department and there shall be added to this deficiency interest at the rate of 1 percent per month, or fraction thereof, from the date such tax was due to the date of payment in full

thereof.

(h) *Determination if no report is made.* — If any person liable for a report under the requirements of this chapter as a special fuel dealer, special fuel user or special fuel supplier, whether or not the person is licensed as such, fails, neglects, or refuses to file a special fuel tax report when due, the Department of Transportation shall, on the basis of information available to it, determine the tax liability of that person for the period during which no report was filed, and to the tax as thus determined the Department shall add the penalty and interest provided in subsection (e) of this section. An assessment made by the Department pursuant to this subsection or to subsection (g) of this section shall be presumed to be correct and in any instance when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive as the case may be.

(i) *Fraudulent report.* — If any licensee shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the Department a penalty equal to 25 percent of the deficiency together with interest at 1 percent per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment thereof in addition to all other penalties prescribed by law.

(j) *Limitation.* — Except in the case of a false or fraudulent report, or of neglect, failure or refusal to make a report, every deficiency shall be assessed under subsection (g) of this section within 3 years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the report is filed, whichever period expires the later.

(k) *Notification; redetermination; appeal.* — Promptly after determination of the amount of moneys due to the State under this subchapter for whatever reason, the Secretary of Transportation shall notify by mail the person against whom the assessment is made. Within 60 days of the date upon which any such determination was mailed, such person may file with the Secretary of Transportation a petition for redetermination of the assessment. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitles the petitioner to such redetermination. It shall be the duty of the Secretary to dispose of a petition for redetermination within 90 days of the Secretary's receipt of it. The petitioner shall be promptly notified by the Secretary of the Secretary's decision. Within 60 days after the date of the Secretary's decision, the petitioner may appeal such decision to the Superior Court of this State.

(l) *Collection of delinquent taxes.* — If any special fuel dealer, special fuel user or special fuel supplier shall, for a period in excess of 10 days, be in default of payment of any taxes, penalties and/or interest thereon, which are payable under the terms of this subchapter, the Department of Transportation may issue a warrant under its official seal, signed by its Secretary, and directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such debtor, without exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time specified in the warrant which shall be not less than 20 or more than 60 days from the date the warrant was issued. The sheriff to whom any such warrant is directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and the sheriff shall be entitled to the same fees for services in executing the warrant to be collected in the same manner. The foregoing notwithstanding, nothing in this subsection shall be construed as forfeiting or waiving any rights of the Department or of this State to collect such taxes by an action upon any bond that may be filed with the Department under any provision of this subchapter where by suit or otherwise; and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

(30 Del. C. 1953, § 5136; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, § 2; 60 Del. Laws, c. 191, §§ 1, 2; 60 Del. Laws, c. 423, §§ 2, 3; 60 Del. Laws, c. 440, §§ 4-6; 61 Del. Laws, c. 141, § 11; 64 Del. Laws, c. 368, §§ 5, 6; 65 Del. Laws, c. 297, §§ 11-13; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 340, § 2; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5137 Refund of taxes erroneously or illegally collected.

In the event that any taxes, penalties or interest imposed by this law have been erroneously or illegally collected from a licensee, the Department of Transportation may permit such licensee to take credit against a subsequent tax report for the amount of the erroneous or illegal overpayment, or shall certify the amount thereof to the Secretary of Transportation who shall thereupon draw a warrant for such certified amount to such licensee. Such refund shall be paid to the licensee forthwith.

No refund of any taxes, fees, penalties or interest imposed under this chapter may be obtained except by filing a written claim with the Department before the expiration of 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

The claim must be in such form as may be prescribed by the Department, and shall specifically set forth the circumstances entitling the claimant to the refund.

(30 Del. C. 1953, § 5137; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 24E; 59 Del. Laws, c. 216, §§ 2, 3; 61 Del. Laws, c. 141, § 12; 65 Del. Laws, c. 297, § 14; 68 Del. Laws, c. 156, § 55(c); 68 Del. Laws, c. 290, § 184.)

§ 5138 Administration.

(a) *Rules and regulations.* — The Department of Transportation shall enforce this chapter, and may prescribe, adopt and enforce

reasonable rules and regulations relating to the administration and enforcement thereof.

(b) *Examination of records.* — The Department of Transportation may examine the records of special fuel dealers, special fuel users, special fuel suppliers and other sellers of distillate fuels and make such other investigations as it may deem necessary in the administration and enforcement of this chapter.

(c) *Presumption.* — For the purpose of enforcing this chapter, it shall be prima facie presumed that all special fuel received by any person into storage having dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by that person into the fuel supply tanks of motor vehicles.

(d) *Reciprocal exchange of data.* — The Department of Transportation shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user; provided such other state or states furnish like information to this State.

(e) *Records open to public.* — Reports required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

(30 Del. C. 1953, § 5138; 54 Del. Laws, c. 107; 57 Del. Laws, c. 741, §§ 24B, 24C, 23E; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 141, §§ 13, 14; 64 Del. Laws, c. 335, § 1; 68 Del. Laws, c. 290, § 184.)

§ 5139 Violations and penalties; enforcement.

(a) *Acts forbidden.* — It shall be unlawful for any person to:

(1) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;

(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, report or affidavit provided for in this chapter;

(3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein, or to withhold or fail to remit moneys due under this chapter;

(4) Assign or attempt to assign a license to act as a special fuel dealer or a special fuel user;

(5) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to receive special fuel in this State into the supply tank or tanks of a motor vehicle from a person not holding a valid license as a special fuel dealer;

(6) Knowingly and with intent to evade or aid in the evasion of the tax imposed herein to deliver or place special fuel into the bulk supply tank or tanks of a person not licensed as a special fuel dealer or special fuel user or not a holder of a valid special fuel tax exemption marker without collecting the lawful tax imposed herein;

(7) Fail to keep and maintain the books and records required by this chapter;

(8) Knowingly and with intent to deceive, defraud or evade the tax imposed herein to permanently remove, replace, alter or render inoperable any volumetric measuring device or "totalizer" of any pump dispensing motor fuel subject to this chapter;

(9) Sign and deliver or cause to be delivered to the Motor Fuel Tax Administration any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.

(b) *Penalties and remedies.* — Any person violating subsection (a) of this section is guilty of a class A misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of special fuel tax amounting to more than $500, then the violation shall constitute a class E felony. Any person who has once been convicted of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection (a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over those violations enumerated in subsection (a) of this section.

(c) *Penalties are cumulative.* — The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.

(d) *Enforcement.* — The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(e) *License required.* — It shall be unlawful for any person to conduct any activities requiring a license under this chapter without a license or after a license has been surrendered, cancelled or revoked. Whoever violates this subsection shall, for the first offense, be fined not less than $100 nor more than $300, and for each subsequent offense, not less than $300 nor more than $500. The Justice of the Peace Courts shall have jurisdiction over this subsection.

(30 Del. C. 1953, § 5139; 54 Del. Laws, c. 107; 61 Del. Laws, c. 141, § 15; 64 Del. Laws, c. 397, §§ 1-4; 66 Del. Laws, c. 273, §§ 1-3; 68 Del. Laws, c. 290, § 185.)

§ 5140 Prohibiting use of dyed diesel fuel on highways; Violations and penalties.

(a) *Notices with respect to dyed diesel fuel.* — (1) A notice, stating: "dyed diesel fuel, nontaxable use only, penalty for taxable use" shall be:

a. Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;

b. Provided by the seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer or terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph (a)(1)c. of this section;

c. Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.

(2) The notice required under paragraph (a)(1)a. or b. of this section shall be provided at the time of the removal or sale and shall appear on shipping papers, bills of lading and invoices accompanying the sale or removal of the fuel.

(3) The Department may designate any federal notice provision which is substantially similar to a provision of this subsection as satisfying any notice requirement of this subsection.

(b) *Dyed diesel fuel not to be used on public highways.* — (1) A person may not operate a motor vehicle on the public highways of this State if the fuel supply tanks of the vehicle contain dyed diesel fuel unless permitted to do so under a federal law or regulation relegating to the use of dyed diesel fuel on the highways.

(2) A person may not sell or deliver any dyed, diesel fuel knowing or having reason to know that the fuel will be consumed in a highway use. A person who dispenses dyed diesel fuel from a retail pump that is not properly labeled with the notice required by subsection (a) of this section or who knowingly delivers dyed diesel fuel into the storage tank of such a pump shall be presumed to know the fuel will be consumed on the highway.

(c) *Enforcement.* — Any certified Diesel Compliance Officer or other person authorized by the Department may enter any place where fuels are used, produced or stored and may physically inspect any tank, reservoir or other container that can be used for the production, storage, use or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. Inspection may also be made of any equipment used for or in connection with the production, storage or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. Books, records and other documents may be inspected to determine tax liability. An agent may detain a vehicle, vessel or railroad tank car placed on a customer's siding for the use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. An agent may take and remove samples of diesel fuel in reasonable quantities necessary to determine the composition of the fuel.

(d) *Penalties.* — Any person who violates any provision of subsections (a) and (b) of this section including refusal to allow an inspection as set forth herein, shall for the first offense by fined not more than $1,000, or imprisoned not more than 90 days, or both. For a second and any subsequent offense the person shall be fined not more than $2,000, or imprisoned not more than 6 months, or both.

(e) *Disposition of fees, fines and forfeitures.* — All fees, fines and penalties collected in the enforcement of this section shall be paid into the Transportation Trust Fund established under Title 2.

(f) *Enforcement.* — The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(g) *Cooperative agreements.* — The Secretary of the Department of Transportation may enter into cooperative agreements with other states and federal agencies for exchange of information and to perform joint investigations of alleged dyed diesel fuel violators.

(71 Del. Laws, c. 459, § 2.)

Subchapter III

State Aid to Municipalities for Streets

§ 5161 Definitions.

As used in this subchapter:

(1) "Municipality" means any incorporated city or town having been in existence for a period of 1 year.

(2) "Municipal Street Aid Fund" means the funds set up under this subchapter from money received under this subchapter.

(3) "Street improvements" means construction, reconstruction, repair and maintenance of streets, including paving, repaving, grading and drainage, repairs, acquisition of rights-of-way, extension and widening of existing streets, elimination of railroad grade crossings, acquisition of trucks and other equipment necessary in the construction and maintenance of streets, removal of snow and ice and the laying of materials for traction, purchase and installation of street identification signs and traffic control signs, construction, reconstruction and repair of sidewalks and underpasses and overpasses necessary for pedestrian safety, relocation of above ground utilities, mowing, trimming and removal of trees impacting a street, administration and other necessary expenses in connection with such street improvements.

(4) "Streets" includes streets, highways, avenues, boulevards, bridges, tunnels, alleys or other public ways dedicated to public use and maintained for general vehicular travel lying within a municipality's corporate boundary, except that this term does not include state or federal highways within municipalities maintained by the Department of Transportation. The Department shall determine which areas are eligible for municipal street aid funds.

(30 Del. C. 1953, § 5161; 51 Del. Laws, c. 55, § 1; 59 Del. Laws, c. 435, § 1; 65 Del. Laws, c. 354, § 1; 79 Del. Laws, c. 79, § 93; 81 Del. Laws, c. 336, § 1.)

§ 5162 Appropriations paid through State Treasurer.

(a) There shall be appropriated annually to municipalities within the State beginning in the State's 1998 fiscal year and each subsequent year thereafter in conjunction with, under, and as a portion of, the Delaware Transportation Trust Fund within the Capital Transportation Program, a sum in the amount as appropriated in the annual Bond and Capital Improvement Act. The sum so appropriated shall be transferred to the Municipal Street Aid Fund by the State Treasurer and distributed to municipalities as provided in this subchapter.

(b) When deemed in full compliance with the provisions of § 5165(b) of this title, including the annual submission of an affidavit that

will certify the municipality's boundary, mileage and population totals, the State Treasurer is authorized to process payments to municipalities in the following manner:

(1) Recipients of municipal street aid whose total fiscal year share is $50,000 or less shall be paid 1 lump-sum in August.

(2) Recipients of municipal street aid whose total fiscal year share is greater than $50,000 but not more than $200,000 shall be paid in 2 equal installments, 1 in August and the other in January.

(3) Recipients of municipal street aid whose total fiscal year share exceeds $200,000 shall be paid in 4 equal installments, 1 each in August, October, January and April of each year.

(c) Disbursements can be accrued for up to 3 years for larger construction projects.

(30 Del. C. 1953, § 5162; 51 Del. Laws, c. 55, § 1; 55 Del. Laws, c. 106; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 414, § 1; 64 Del. Laws, c. 415, § 1; 66 Del. Laws, c. 87, § 3; 66 Del. Laws, c. 360, § 52; 67 Del. Laws, c. 285, § 53(a); 71 Del. Laws, c. 150, § 73; 81 Del. Laws, c. 336, § 1; 83 Del. Laws, c. 37, § 35.)

§ 5163 Time and method of computation.

(a) The Department of Transportation shall compute annually no later than 15 calendar days from the adoption of the Bond and Capital Improvements Act by the General Assembly of each year or at the end of the state fiscal year the moneys due each participating municipality from the state Municipal Street Aid Fund. Such computation shall be based upon the share of the proceeds of the motor fuel tax imposed by this chapter and appropriated by this subchapter.

(b) Each annual computation by the Department shall be made as follows:

(1) Forty percent of the state Municipal Street Aid Fund shall be distributed in the proportion that the population of each municipality bears to the total population of all participating municipalities. Population shall be ascertained in accordance with § 5165(b)(4) of this title.

(2) Sixty percent of the state Municipal Street Aid Fund shall be distributed in the proportion that the mileage of usable streets not maintained by the State in each municipality bears to the total mileage of said streets in all municipalities.

(c) [Repealed.]

(30 Del. C. 1953, § 5163; 51 Del. Laws, c. 55, § 1; 51 Del. Laws, c. 243; 59 Del. Laws, c. 216, § 2; 61 Del. Laws, c. 414, § 2; 81 Del. Laws, c. 336, § 1.)

§ 5164 Certification of Secretary of Transportation; time for payment.

The Department of Transportation shall forward to the Secretary of Transportation within 20 days after each annual computation a certification as to the sum of money due each municipality from the state Municipal Street Aid Fund. Such certification shall be used by the Secretary to advise the State Treasurer as to distribution of the moneys as provided in this subchapter not later than 30 days from the date of receiving the certification.

(30 Del. C. 1953, § 5164; 51 Del. Laws, c. 55, § 1; 59 Del. Laws, c. 216, §§ 2, 3; 61 Del. Laws, c. 414, §§ 2, 3.)

§ 5165 Expenditures of funds by municipalities; records, audits and regulations of municipalities.

(a) Each municipality shall keep an accounting of all funds received from the state municipal aid fund and may expend such funds as follows:

(1) An amount not exceeding 30% of the annual grant may be used for the following purposes:

a. Paving of the street after construction, installation, repair, maintenance or replacement of water and sewer systems associated with a street;

b. Preparation or revision of the mobility element of the comprehensive plans;

c. Payment of principal and interest on any bonds issued for the purpose of paragraph (a)(1)a. of this section, notwithstanding that such indebtedness may have been incurred prior to May 27, 1972.

(2) Any portion of the annual grant not expended pursuant to paragraph (a)(1) of this section may be expended for the following purposes:

a. Street improvements;

b. Lighting of the streets and all expenses related thereto;

c. Payment of principal and interest on any bonds issued for street improvements.

d. Preparation or revision of inventory of all municipal infrastructure.

(b) Each municipality shall:

(1) Furnish evidence annually to the State Treasurer that the municipal employees authorized to expend municipal street aid funds are bonded in an amount as may be required by the charter of the municipality;

(2) In a form prescribed by the State Treasurer, submit an accurate and complete annual report not later than August 15 of each year to the State Treasurer showing expenditures of municipal street aid funds for the preceding fiscal year ended June 30. Such form shall itemize each expenditure as represented on said form as "Other expenditures". Payment for the current fiscal year will not be issued until the report for the preceding fiscal year has been received by the State Treasurer's Office;

(3) Award contracts for street improvements which shall be in accordance with the provisions of Chapter 69 of Title 29, and any applicable specifications of the Department of Transportation;

(4) On or before May 15 of each year, file with the Department of Transportation an affidavit signed by the mayor, city manager or president of the council of the municipality, setting forth:

a. The population of the municipality, based on the latest official estimate prepared by either the United States Bureau of the Census or the Delaware Population Consortium. For purposes of this subchapter, the population of a municipality can be adjusted between the latest decennial census, the latest official estimate prepared by either the United States Census Bureau or the Delaware Population Consortium by providing proof of new dwelling construction through "certificate of occupancy." The population of the municipality which is a summer resort shall be deemed to include all property owners entitled to vote in a municipal election; and

b. A tabulation of streets added during the past fiscal year which are dedicated to public use and maintained by their municipal forces. Said tabulations should include street names, starting and ending points, and length in feet or miles, and be accompanied by a map indicating location of any new streets.

(c) Pending expenditure of funds received pursuant to § 5163 of this title, a municipality may make short-term investments of such funds in United States government securities or may deposit same in any bank or savings and loan association interest-bearing accounts or certificates guaranteed by any agency of the United States government. Any interest earned on such investments or deposits shall be used for the purposes set forth in paragraph (a)(2) of this section. Such investments or deposits shall not be deemed to be "expenditures" of the funds as set forth in subsection (a) of this section.

(30 Del. C. 1953, § 5165; 51 Del. Laws, c. 55, § 1; 57 Del. Laws, c. 343; 57 Del. Laws, c. 741, §§ 24C, 24F, 24G; 58 Del. Laws, c. 150; 58 Del. Laws, c. 409, § 1; 59 Del. Laws, c. 216, § 3; 59 Del. Laws, c. 435, § 2; 60 Del. Laws, c. 113, § 48; 60 Del. Laws, c. 421, § 1; 61 Del. Laws, c. 44, § 1; 67 Del. Laws, c. 285, §§ 53(b)-(d); 73 Del. Laws, c. 95, § 99; 81 Del. Laws, c. 336, § 1.)

§ 5166 Unauthorized expenditures; personal liability.

(a) No municipal official or employee shall authorize, direct or permit the expenditure of money from any Municipal Street Aid Fund for any purpose except those specifically authorized by this subchapter. Any municipal official or employee who violates this section shall be personally liable to the extent of the unauthorized expenditure.

(b) Upon report by the State Auditor of Accounts that expenditures of municipal street aid funds have been made by a municipality for purposes other than as set forth in this subchapter, the State Treasurer shall withhold all further payments of municipal street aid funds to such municipality until:

(1) The Attorney General or the courts of this State shall have found the disputed expenditures to have been proper;

(2) The municipality shall have reimbursed the municipal street aid funds to the extent of the improper expenditures; or

(3) The municipal official or employee responsible has made restitution to the Fund as set forth in subsection (a) of this section.

(30 Del. C. 1953, § 5166; 51 Del. Laws, c. 55, § 1; 59 Del. Laws, c. 435, § 3; 60 Del. Laws, c. 113, § 48.)

Subchapter IV

Aviation Jet Fuel

§ 5171 Definitions.

As used in this subchapter:

(1) "Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

(2) "Licensed aviation jet fuel supplier" means any wholesale seller or distributor of aviation jet fuel that has procured a license from the Department.

(82 Del. Laws, c. 118, § 1.)

§ 5172 Aviation jet fuel tax.

(a) A tax of 5 cents per gallon, computed in the same manner and subject to the same limitations as the tax rate established for gasoline in § 5110 of this title, is levied and imposed on the sale or delivery of aviation jet fuel by a licensed aviation jet fuel supplier. The tax attaches at the time of delivery and must be paid to the Department as provided in this subchapter.

(b) *Exemptions.* —

The tax imposed by this subchapter does not apply to aviation jet fuel sold and delivered to and used by any of the following persons or for any of the following circumstances:

(1) The United States government, or any department, division, or agency of the United States government.

(2) The government of this State, or any political subdivision of this State.

(3) Aerial application uses within this State.

(4) Purpose of economic development and job creation in the aviation industry in this State. A temporary exemption for a period of time not exceeding more than 5 years may be granted under this paragraph (b)(4). An exemption under this paragraph (b)(4) must be approved by the Council on Development Finance and the Director of Small Business under §§ 8705A and 8707A of Title 29 and § 5178 of this title.

(82 Del. Laws, c. 118, § 1.)

§ 5173 Jet fuel supplier's license; bond.

(a) *License required.* —

It is unlawful for any person to act as an aviation jet fuel supplier in this State unless the person holds a valid aviation jet fuel supplier license issued by the Department.

(b) *Application.* —

A person must apply and pay a $10 fee to the Department to obtain an aviation jet fuel supplier license.

(c) *Form of application.* —

The application must be filed upon a form prepared and furnished by the Department. The application may contain such information as the Department deems necessary.

(d) *Bond.* —

(1) a. The Department may not issue an aviation jet fuel supplier license to any person, or continue in force an aviation jet fuel license issued to a person, unless the person has furnished a surety bond in such form and amount as the Department may require to secure compliance with this subchapter.

b. The Department may not require a surety bond of less than $5,000 or more than $200,000.

c. A bond filed with and approved by the Department remains in force and effect, without the necessity of periodic renewal, until such time as the aviation jet fuel supplier's license is revoked for cause, or otherwise cancelled or surrendered.

(2) The bond required under paragraph (d)(1) of this section must meet all of the following:

a. Be in a form approved by the Department.

b. Be executed by a surety company approved by the Department and duly licensed to do business under the laws of this State.

c. Be payable to the State.

d. Be conditioned upon the licensed aviation jet fuel supplier doing all of the following:

1. Promptly filing true reports with the Department.

2. Promptly paying to the Department all aviation jet fuel taxes levied or imposed by this State, together with all penalties or interest on the taxes.

3. Faithfully complying with the provisions of this subchapter.

(3) a. The Department may require the filing of a new bond in a similar amount if either of the following occur:

1. The liability upon the bond previously filed by a licensed aviation jet fuel supplier is discharged or reduced, whether by judgment rendered, payment made, or otherwise.

2. The Department determines that any surety on the bond previously filed becomes unsatisfactory or unacceptable.

b. The Department shall forthwith cancel a licensed aviation jet fuel supplier's license if the supplier does not provide a new bond when required under paragraph (d)(3)a. of this section.

c. If a licensed aviation jet fuel supplier provides a new bond under paragraph (d)(3)a. of this section, the Department shall cancel and surrender the supplier's previous bond and substitute the new bond for it. However, the Department may not cancel the previous bond if any liability that has accrued under the provisions of the previous bond are still outstanding.

(4) a. If the Department decides, after a hearing, that the amount of the existing bond is insufficient to ensure payment to the State of the amount of the tax and any penalties and interest for which a licensed aviation jet fuel supplier is or may become liable, then the supplier shall, forthwith upon the written demand of the Department, file an additional bond in the same manner and form with like security as provided under this subsection.

b. The Department shall provide a licensed aviation jet fuel supplier with 5 days notice in writing of any hearing to be held under paragraph (d)(4)a. of this section.

c. The total amount of an additional bond required under paragraph (d)(4)a. of this section, combined with the bond required under paragraph (d)(1) of this section, may not exceed the maximum of $200,000.

d. The Department shall forthwith cancel a licensed aviation jet fuel supplier's license if the supplier fails to file an additional bond under paragraph (d)(4)a. of this section.

(5) a. The Department shall release and discharge from liability to the State for a bond any surety on a bond furnished by a licensed aviation jet fuel supplier under this subsection if the surety mails a written request to the Department by certified mail, return receipt requested.

b. Upon receipt of a request under paragraph (d)(5)a. of this section, the Department shall forthwith acknowledge in writing the receipt of the request and shall thereafter inform the surety that it is released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge.

c. Simultaneously with the action under paragraph (d)(5)b. of this section, the Department shall notify the licensed aviation jet fuel supplier who furnished the bond of all of the following:

1. That the surety will be released and discharged from any and all liability on a certain date.

2. That unless the supplier, on or before the expiration of the 60 day period under paragraph (d)(5)b. of this section, files with the Department a new bond in the amount and form provided in this subsection, the Department will forthwith cancel the

supplier's license.

(e) *Issuance of license*. —

(1) If a person files an application and bond in proper form, the Department shall issue an aviation jet fuel supplier license to the person unless any of the following apply:

a. The person formerly held any type of license before filing the application that was revoked for cause.

b. The person is filing the application as a subterfuge for the real party in interest who formerly held any type of license before filing the application that was revoked for cause.

c. The Department finds other sufficient cause to deny the license.

(2) Before the Department may refuse to issue a license under paragraph (e)(1) of this section, the Department must provide the person with a hearing. The Department shall grant the person at least 30 days written notice of the time and place of the hearing.

(f) *Term of license.* —

(1) An aviation jet fuel supplier license issued under this section expires on June 30 of each year.

(2) A licensed aviation jet fuel supplier that desires to remain licensed shall annually apply for a license.

(g) *Assignment forbidden*. —

An aviation jet fuel supplier license is not transferable.

(h) *Revocation, cancellation, and surrender of license and bond.* —

(1) The Department may revoke a licensed aviation jet fuel supplier's license for reasonable cause.

(2) Before revoking a license under paragraph (h)(1) of this section, the Department shall notify the licensed aviation jet fuel supplier to show cause within 30 days of the date of the notice why the license should not be revoked.

(3) Notwithstanding paragraph (h)(2) of this section, the Department may, at any time before and pending a hearing under paragraph (h)(2) of this section, in the exercise of reasonable discretion, suspend a licensed aviation jet fuel supplier's license.

(4) The Department shall cancel any license to act as an aviation jet fuel supplier immediately upon the licensed aviation jet fuel supplier's surrender of the license.

(82 Del. Laws, c. 118, § 1.)

§ 5174 Records.

(a) *Preparation of records.* —

Each licensed aviation jet fuel supplier shall prepare and maintain such records as the Department reasonably requires with respect to all sales or deliveries of aviation jet fuel to customers.

(b) *Retention of records.* —

The records required under this section must be retained for a minimum of 3 years and must be available, at all reasonable times, for examination by the Department's representatives.

(82 Del. Laws, c. 118, § 1.)

§ 5175 Monthly reports and payments.

(a) *Reports.* —

(1) For the purpose of determining the amount of liability for the tax imposed under this subchapter, each licensed aviation jet fuel supplier shall file with the Department, on forms prescribed by the Department, a monthly tax report.

(2) The licensed aviation jet fuel supplier shall include in the report required under paragraph (a)(1) of this section a declaration that the statements contained in the report are true and are made under penalties of perjury. This declaration has the same force and effect as a verification of the report and is made in lieu of such verification.

(3) The report must include such information as the Department may reasonably require for the proper administration and enforcement of this subchapter.

(4) A licensed aviation jet fuel supplier shall file 1 report regardless of the number of locations at which the supplier's aviation jet fuel is stored or handled.

(b) *Due date.* —

(1) A licensed aviation jet fuel supplier shall file the report required under subsection (a) of this section and the tax due under subsection (d) of this section on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. If the twenty-fifth day of the month falls on a weekend or state holiday, the report is due on the State's next following business day.

(2) The report required under subsection (a) of this section and the tax due under subsection (d) of this section are considered to have been timely filed if the report or payment is postmarked by the United States Postal Service on or before the due date. The Secretary of the Department may, for good cause shown, grant a licensed aviation jet fuel supplier a reasonable extension of time.

(3) In lieu of depositing the payment covering the tax due under subsection (d) of this section in the United States mail, a licensed aviation jet fuel supplier may hand deliver the payment to the Department or the Department may require a licensed aviation jet fuel supplier to make electronic transfers of the payment to the appropriate state account.

(c) *Tax computation.* —

A licensed aviation jet fuel supplier shall compute the tax imposed by this subchapter and include the tax in the price of the fuel. A licensed aviation jet fuel supplier shall compute the tax by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of aviation jet fuel delivered to the customer.

(d) *Payments.* —

(1) A licensed aviation jet fuel supplier shall include a payment covering the tax due under this subchapter on aviation jet fuel, as computed in subsection (c) of this section, with the monthly tax report required under subsection (a) of this section.

(2) a. If a check received in payment of moneys due to the Department under this subchapter is returned to the Department by a licensed aviation jet fuel supplier's bank because of insufficient funds, a closed account, a stopped payment, or any other reason, the licensed aviation jet fuel supplier shall pay both of the following:

1. A service charge of $10.

2. Interest on the tax due at the rate of 1% per month, or fraction thereof, which accrues from the date the tax was due to be paid.

b. The Department shall send a statement to the licensed aviation jet fuel supplier demanding payment within 10 days of all of the following:

1. The original amount of the check.

2. The amounts required under paragraph (d)(2)a. of this section.

3. The cost of the postage incurred in mailing the statement.

c. A licensed aviation jet fuel supplier's failure to respond to the statement under paragraph (d)(2)b. of this section within 10 days constitutes cause for the Department to suspend the supplier's license. If the supplier does not make the payment required under paragraph (d)(2)b. of this section within 30 days after the Department suspends the supplier's license, the Department may revoke the supplier's license.

(e) *Refusal or failure to file report or pay tax when due.* —

(1) If a licensed aviation fuel supplier refuses or fails to file a report required under subsection (a) of this section within the time prescribed by subsection (b) of this section, the Department shall impose a penalty of $5.75 per business day of this State up to a maximum of $28.75 for each such report. For each report filed more than 5 business days late, the Department shall impose a penalty of $28.75 or 12% of the tax due, whichever is greater, for each such report.

(2) If a licensed aviation fuel supplier refuses or fails to pay the tax due under subsection (d) of this section within the time prescribed by subsection (b) of this section, the tax due bears interest at the rate of 1% per month, or fraction thereof, from the date the tax was due until the tax is paid in full.

(3) The Department may waive all or part of the penalties imposed by this subsection if a licensed aviation fuel supplier establishes by a preponderance of evidence that the supplier's failure to file the report or tax due within the time prescribed was due to reasonable cause and was not with intent to violate the law.

(f) *Deficiency.* —

If the Department determines that the tax reported by a licensed aviation fuel supplier is deficient, the Department shall proceed to assess the deficiency on the basis of information available to the Department. In addition, the Department shall add to the deficiency interest at the rate of 1% per month, or fraction thereof, from the date the tax was due until the tax is paid in full.

(g) *Determination if no report is made.* —

(1) If any person liable for a report under this subchapter as an aviation jet fuel supplier, whether or not the person is a licensed aviation jet fuel supplier, fails, neglects, or refuses to file a report under subsection (a) of this section when the report is due, the Department shall, on the basis of information available to it, determine the tax liability of that person for the period during which no report was filed. In addition, the Department shall add to the tax determined to be due the penalty and interest provided for under subsection (e) of this section.

(2) An assessment made by the Department under this subsection or subsection (f) of this section is presumed to be correct. If a person questions the validity of the assessment, the person bears the burden to establish by a preponderance of evidence that the assessment is erroneous or excessive.

(h) *Fraudulent report.* —

If a licensed aviation fuel supplier files a false or fraudulent report with intent to evade the tax imposed by this subchapter, the Department shall add to the amount of deficiency a penalty equal to 25% of the deficiency together with interest at 1% per month, or fraction thereof, on such deficiency from the date the tax was due until the tax is paid in full. The penalty imposed under this subsection is in addition to any other penalty prescribed by law.

(i) *Limitation.* —

Except in the case of a false or fraudulent report or of neglect, failure, or refusal to make a report, the Department shall assess a deficiency under subsection (f) of this section within 1 of the following periods, whichever expires later:

(1) Three years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined.

(2) Three years after the report is filed.

(j) *Notification; redetermination; appeal.. —*

Except in the case of a false or fraudulent report or of neglect, failure, or refusal to make a report, the Department shall assess a deficiency under subsection (f) of this section within 1 of the following periods, whichever expires later:

(1) The Secretary of the Department shall, after determination of the amount of moneys due to the State under this subchapter for whatever reason, promptly notify by mail the person against whom the determination is made.

(2) A person against whom a determination was made under paragraph (j)(1) of this section may file a petition for redetermination of the assessment. The petition must be filed with the Secretary of the Department within 60 days of the date the determination under paragraph (j)(1) of this section was mailed.

(3) A petition for redetermination under paragraph (j)(2) of this section must state specifically the reasons the person believes the person is entitled to a redetermination.

(4) The Secretary of the Department shall dispose of a petition for redetermination under paragraph (j)(2) of this section within 90 days of the Secretary's receipt of it.

(5) The Secretary of the Department shall promptly notify a person who filed a petition for redetermination under paragraph (j)(2) of this section of the Secretary's decision.

(6) A person who filed a petition for redetermination under paragraph (j)(2) of this section may appeal the decision of the Secretary of the Department to the Superior Court. The person must file the appeal with the Superior Court within 60 days of the date of the Secretary's decision.

(k) *Collection of delinquent taxes*. —

(1) If a licensed aviation jet fuel supplier is, for a period in excess of 10 days, in default of payment of any taxes, penalties, or interest payable under this subchapter, the Department may issue a warrant under its official seal, signed by its Secretary, directed to the sheriff of any county of this State, commanding the sheriff to do all of the following:

a. Levy upon and sell the supplier's goods and chattels, without exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale.

b. Return the warrant to the Department and pay the Department the money collected by virtue of the warrant within the time specified in the warrant, which must be not less than 20 or more than 60 days from the date the warrant was issued.

(2) The sheriff to whom a warrant is directed under paragraph (k)(1) of this section shall proceed upon the warrant in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record. The sheriff is entitled to the same fees for services in executing the warrant to be collected in the same manner.

(3) Nothing in this subsection may be construed as forfeiting or waiving any rights of the Department or of this State to collect any tax payable under this subchapter by an action upon any bond that may be filed with the Department under any provision of this subchapter whether by suit or otherwise. If a suit, action, or other proceeding is instituted for the collection of any tax payable under this subchapter, the suit, action, or other proceeding may not be construed as waiving any other right provided by this subchapter.

(82 Del. Laws, c. 118, § 1.)

§ 5176 Refund of taxes, fees, penalties, or interest erroneously or illegally collected.

(a) If any taxes, fees, penalties, or interest imposed under this subchapter have been erroneously or illegally collected from a licensed aviation jet fuel supplier, the Department may do 1 of the following:

(1) Permit the supplier to take credit against a subsequent tax report for the amount of the erroneous or illegal overpayment.

(2) Certify the amount due to the supplier to the Secretary of the Department, who shall then draw a warrant for the certified amount to the supplier.

(b) A refund due to a licensed aviation jet fuel supplier under paragraph (a)(2) of this section must be paid to the supplier forthwith.

(c) A licensed aviation jet fuel supplier must file a written claim with the Department to receive a refund of any taxes, fees, penalties, or interest imposed under this subchapter. The written claim must be filed with the Department before the expiration of 1 year from the earlier of 1 of the following:

(1) The date of the payment.

(2) The date the payment was required to be made.

(d) The written claim under subsection (c) of this section must be in such form prescribed by the Department and must specifically set forth the circumstances entitling the licensed aviation jet fuel supplier to the refund.

(82 Del. Laws, c. 118, § 1.)

§ 5177 Administration.

(a) *Rules and regulations. —*

The Department shall enforce this subchapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement of this subchapter.

(b) *Examination of records. —*

The Department may examine the records of licensed aviation jet fuel suppliers and make such other investigations as it may deem

necessary in the administration and enforcement of this subchapter.

(c) *Presumption. —*

For the purpose of enforcing this subchapter, it is prima facie presumed that all aviation jet fuel received by any person into storage having dispensing equipment designed to fuel jet or turbo-prop aircraft is to be transferred or delivered by that person into the fuel supply tanks of jet or turbo-prop aircraft.

(d) *Reciprocal exchange of data. —*

The Department shall, upon request from the officials to whom are entrusted the enforcement of aviation jet fuel tax law of any other state; the District of Columbia; the United States, its territories, and possessions; or the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the delivery of aviation jet fuel by a licensed aviation jet fuel supplier, provided such other state; the District of Columbia; the United States, its territories, and possessions; or the provinces of the Dominion of Canada furnish like information to this State.

(e) *Records open to public. —*

Reports required by this subchapter, exclusive of schedules, itemized statements, and other supporting evidence annexed to the report, must at all reasonable times be open to the public.

(82 Del. Laws, c. 118, § 1.)

§ 5178 Procedure for exempt sales of aviation jet fuel.

(a) A sale made to an entity exempt from taxation under § 5172(b) of this title must be documented as part of the reporting and payment procedures in § 5175 of this title.

(b) All of the following must be included in the documentation required under subsection (a) of this title:

(1) The quantity of aviation jet fuel delivered to an entity exempt from taxation under § 5172(b) of this title.

(2) The date the aviation jet fuel was delivered.

(3) To whom the aviation jet fuel was delivered.

(4) Any other information required by the Department.

(c) The information required under subsection (b) of this section must be accompanied by the original invoice showing the purchase, together with evidence that the aviation jet fuel was delivered to an entity exempt from taxation under § 5172(b) of this title.

(82 Del. Laws, c. 118, § 1.)

§ 5179 Violations; penalties; enforcement.

(a) *Acts forbidden. —*

It is unlawful for a person to do any of the following:

(1) Refuse or knowingly and intentionally fail to make and file any statement required by this subchapter in the manner or within the time required.

(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter make any false statement or conceal any material fact in any record, report, or affidavit provided for in this subchapter.

(3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter, or to withhold or fail to remit moneys due under this subchapter.

(4) Assign or attempt to assign a license to act as an aviation jet fuel supplier.

(5) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter receive aviation jet fuel in this State into the supply tank or tanks from a person not holding a valid license as an aviation jet fuel supplier.

(6) Fail to keep and maintain the books and records required by this subchapter.

(7) Knowingly and with intent to deceive, defraud, or evade the tax imposed under this subchapter permanently remove, replace, alter, or render inoperable any volumetric measuring device or "totalizer" of any pump dispensing aviation jet fuel subject to this subchapter.

(8) Sign and deliver or cause to be delivered to the Motor Fuel Tax Administration any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.

(b) *Penalties. —*

(1) Except as provided in paragraph (b)(2) of this section, a violation of subsection (a) of this section is a class A misdemeanor.

(2) a. If a violation of subsection (a) of this section results in an evasion or wrongful withholding of aviation jet fuel tax amounting to more than $500, the violation is a class E felony.

b. If a person has been convicted of a violation of subsection (a) of this section and is subsequently convicted of a violation of subsection (a) of this section, the subsequent violation is a class E felony.

(c) *Penalties are cumulative. —*

The fine and imprisonment provided for in this section are in addition to any other penalty imposed by any other provision of this subchapter.

(d) *Enforcement. —*

The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(e) *License required. —*

(1) It is unlawful for a person to conduct any activities requiring a license under this subchapter without a license or after a license has been surrendered, cancelled, or revoked.

(2) A violation of this subsection is punishable as follows:

a. For a first offense, by a fine not less than $100 nor more than $300.

b. For each subsequent offense, by a fine not less than $300 nor more than $500.

(f) *Jurisdiction.* —

The Superior Court has exclusive jurisdiction over a violation of this section.

(82 Del. Laws, c. 118, § 1.)

§ 5180 Deposit of aviation jet fuel tax proceeds.

(a) The Department shall deposit all aviation jet fuel tax collected under this subchapter to the credit of the Transportation Trust Fund, established in Title 2, for the purpose of supporting the Department's responsibilities concerning aviation in this State.

(b) The Department shall file a report with the Controller General by September 1 of each year detailing the revenue received under this subchapter and the expenditures associated with the Department's responsibilities concerning aviation in this State.

(82 Del. Laws, c. 118, § 1.)

Part IV
Commodity Taxes
Chapter 52
MOTOR CARRIERS FUEL PURCHASE LAW

§ 5201 Short title.

This chapter shall be known and may be cited as the "Motor Carriers Fuel Purchase Law."

(30 Del. C. 1953, § 5201; 57 Del. Laws, c. 496, § 1.)

§ 5202 Definitions.

As used in this chapter:

(1) "Department" means Department of Transportation.

(2) "Highway" means the Delaware Turnpike and every way or place, of whatever nature, open to the use of the public as a matter of right for the purposes of vehicular travel. The term "highway" shall not be deemed to include a roadway or driveway upon grounds owned by private persons, colleges, universities or other public institutions.

(3) "Motor carrier" means every person who operates or causes to be operated any motor vehicle on any highway in this State.

(4) "Motor fuel" means:

a. Any liquid or gaseous substance commonly or commercially known or sold as gasoline regardless of its classification or use or

b. Any liquid or gaseous substance used, offered for sale or sold for use, either alone or when mixed, blended or compounded, for the purpose of generating power for the propulsion of motor vehicles upon the public highways, and shall include:

1. All grades of motor gasoline, natural gasoline, marine gasoline, aviation gasoline, motor fuel blending naphthas, motor grade benzol and motor grade toluol;

2. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the latest revised standard method of test for distillation of gasoline, naphtha kerosene and similar petroleum products (American Society for Testing Materials Method D-86) shows not less than 10% distilled (recovered) below 347° Fahrenheit and not less than 95% distilled (recovered) below 46° Fahrenheit; and

3. All combustible gases which exist in a gaseous state at 60° Fahrenheit and at 14.7 pounds per square inch absolute pressure, industrial naphthas and solvents, aromatic distillates, diesel fuel, additives and all other products not included within the foregoing provisions of this subsection.

(5) "Motor vehicle" means a motor vehicle used, designed or maintained for transportation of persons or property and:

a. Having 2 axles and a gross registered vehicle weight exceeding 26,000 pounds; or

b. Having 3 or more axles regardless of weight; or

c. Used in combination when the weight of such combination exceeds 26,000 pounds gross registered vehicle weight.

Qualified motor vehicle does not include recreational vehicles.

(6) "Operations" means operations of all such motor vehicles whether loaded or empty, whether for compensation or not for compensation and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

(7) "Secretary" means Secretary of Transportation.

(30 Del. C. 1953, § 5202; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 1; 59 Del. Laws, c. 216, §§ 4, 5; 61 Del. Laws, c. 300, § 1; 65 Del. Laws, c. 272, § 1; 67 Del. Laws, c. 405, § 1; 68 Del. Laws, c. 290, § 184.)

§ 5203 Rate of tax.

Every motor carrier shall pay a road tax equivalent to the rate per gallon of the Delaware liquid fuels tax which is currently in effect, calculated on the amount of motor fuel used in its operations on highways within this State.

(30 Del. C. 1953, § 5203; 57 Del. Laws, c. 496, § 1.)

§ 5204 Credit for motor fuel tax payment.

(a) Every motor carrier subject to the tax imposed by this chapter shall be entitled to a credit on such tax equivalent to the rate per gallon of the Delaware tax which is currently in effect on all gasoline or other motor fuel purchased by such carrier within this State for use in its operation either within or without this State and upon which gasoline or other motor fuel the tax imposed by the laws of this State has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department of Transportation shall be furnished by each such carrier claiming the credit allowed under this section. When the amount of the credit to which a motor carrier is entitled for any reporting period exceeds the amount of the tax for which such carrier is liable for that same period, such excess shall, upon application within 1 year from the end of said period and supported by such evidence as the Department may

require, be allowed as a credit against the tax for which such carrier would be otherwise liable or at the carrier's request be refunded.

(b) The Department of Transportation shall allow such refund only upon receipt of a bona fide claim subject to criteria established under promulgated regulations. If the Department of Transportation shall refuse to allow a refund in the amount claimed by the applicant, the applicant may request a formal hearing on the application for a refund. Such hearing shall be held by the Department of Transportation after written notice to the applicant of not less than 10 days. Whenever any refund is ordered, it shall be paid out of the General Fund. So much of the moneys received as payment of the tax, interest and penalties under this chapter as shall be necessary for the payment of the refunds provided for in this section is appropriated by this subsection for payment of such refunds. No tax, interest, penalty or fee received or derived from any other tax imposed by the laws of this State shall be used to pay any refund or credit due and payable under the provisions of this section. Prior to any such refund or credit is paid out of the General Fund, the Delaware Transportation Authority shall reimburse the General Fund from the Transportation Trust Fund, on receipt of a notice from the Treasurer reflecting the pending payment of the refund or credit and the amount by which the General Fund must be reimbursed.

(c) If such refund granted under the provisions of this section shall, within 3 years of the date of payment, be determined by the Department to have been erroneously or illegally refunded in whole or in part, the Department of Transportation shall demand restitution from the motor carrier for deposit to the account of the General Fund. Such a demand by the Department shall constitute an assessment pursuant to the terms of § 5218 of this title. Any deposits received into the General Fund pursuant to this subsection shall be credited and deposited in the same fashion as all other taxes, fees, penalties and interest received by the State under this chapter.

(30 Del. C. 1953, § 5204; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 65 Del. Laws, c. 427, §§ 1-3; 66 Del. Laws, c. 205, §§ 1, 2; 67 Del. Laws, c. 285, §§ 56(b), 56(c); 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 210, § 70.)

§ 5205 Tax due date.

The tax imposed by this chapter shall be paid by each motor carrier quarterly to the Department of Transportation on or before April 30, July 31, October 31 and January 31 of each year and calculated upon the amount of motor fuel used in its operations on highways within this State by each such carrier during the quarter ending with the last day of the preceding month.

(30 Del. C. 1953, § 5205; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 68 Del. Laws, c. 290, § 184.)

§ 5206 Deposits of revenue.

All taxes, fees, penalties and interest received by the State under this chapter, as amended, shall be deposited, not later than the close of the business day next following such receipt, to the credit of the Delaware Transportation Authority pursuant to Chapters 13 and 14 of Title 2, as amended, and any resolution or indenture of the Delaware Transportation Authority, authorizing the issuance of bonds to finance the costs of transportation facilities described in said title, to be used to finance the costs of roads, highways and other transportation facilities and not to defray the expenses and obligations of the general government of the State.

(30 Del. C. 1953, § 5206; 57 Del. Laws, c. 496, § 1; 63 Del. Laws, c. 387, § 42(a); 67 Del. Laws, c. 285, §§ 56(d)-56(f).)

§ 5207 Calculation of amount of fuel used in State.

The amount of gasoline or other motor fuel used in the operation of any motor carrier on highways within this State shall be such proportion of the total amount of such gasoline or other motor fuel used in its entire operations within and without this State, as the total number of miles traveled on highways within this State bears to the total number of miles traveled within and without this State.

(30 Del. C. 1953, § 5207; 57 Del. Laws, c. 496, § 1.)

§ 5208 Report requirements; exemptions.

Every motor carrier subject to the tax imposed by this chapter shall on or before April 30, July 31, October 31 and January 31 of every year make to the Department of Transportation such reports of its operations during the quarter ending the last day of the preceding month as the Department of Transportation may require and such other reports from time to time as the Department of Transportation may deem necessary. The Department of Transportation, by regulation, may exempt from the quarterly reporting requirements of this section those motor carriers operating solely within this State and require in such instance an annual affirmation, if in its discretion the enforcement of this chapter would not be adversely affected by such a regulation. The Department of Transportation is further authorized by regulation to exempt from the quarterly reporting requirements of this section and to require in such instances an annual affirmation of motor carriers licensed in this State who perform substantially all of their travel in this State; provided the Department of Transportation is assured that a sufficient amount of fuel is purchased in this State which is commensurate with the motor carrier's operations on highways within this State.

The Department of Transportation may, by regulation, exempt certain other motor carriers from the quarterly reporting requirements of this section. The Secretary of the Department of Transportation shall promulgate regulations which will set forth and determine the minimum amount of annual net fuel use taxes due the State which, if not exceeded by the estimate of any motor carrier, will exempt that motor carrier from quarterly reporting requirements of this section. The motor carrier who desires to be exempt from the quarterly reporting requirements must, on the motor carrier's first application for registration in a given registration year, attest that the motor carrier's estimated net fuel use tax in said year will be less than the threshold amount established by the Secretary of Transportation's regulation. The Secretary of Transportation is further authorized to allow by regulation in such instances, the filing of an annual report due with remittance on or before January 31 following completion of said registration year.

(30 Del. C. 1953, § 5208; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 65 Del. Laws, c. 328, §§ 1, 2; 68 Del. Laws, c. 156, § 51(a); 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5209 Average consumption.

In the absence of adequate records or other evidence satisfactory to the Department of Transportation showing the number of miles operated by a motor carrier's motor vehicles per gallon of motor fuel, any such motor vehicle shall be deemed to have consumed 1 gallon of motor fuel for each 5 miles operated.

(30 Del. C. 1953, § 5209; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 68 Del. Laws, c. 290, § 184.)

§ 5210 Records.

Every motor carrier shall keep such records, in such form as the Department of Transportation reasonably may prescribe, as will enable the carrier to report and enable the Department of Transportation to determine the total number of over-the-road miles traveled by its entire fleet of motor vehicles, the total number of over-the-road miles traveled in Delaware by the entire fleet, the total number of gallons of motor fuel used by the entire fleet and the total number of gallons of motor fuel purchased in Delaware for the entire fleet. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and availability for inspection by the Department of Transportation or any authorized employee engaged in the administration of this chapter. Upon application in writing stating the reasons therefor, the Department of Transportation may, at its discretion, consent to the destruction of any such records at any time within the period if such records pertain to a period which has been audited by the Department of Transportation.

(30 Del. C. 1953, § 5210; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 66 Del. Laws, c. 244, § 1; 68 Del. Laws, c. 290, § 184.)

§ 5211 Vehicle marker; fee; penalty assessments payable by mail; victims' compensation tax.

(a) The Department of Transportation shall provide an identification marker and registration card to every motor vehicle operated within this State by the motor carrier. The identification marker must be affixed to the vehicle in an easily visible position and the registration card carried in the cab of the vehicle. The identification marker and registration card shall remain the property of this State and may be recalled for any violation of this chapter or of the regulations promulgated under this chapter. The Department of Transportation shall provide by regulation for the registration of every such vehicle for a fee of $5.00 each. Registration cards and identification markers shall be issued on a 12-month basis effective January 1 of each year and shall be valid through the next succeeding December 31 except that any identification marker and registration card issued during a registration year for the subsequent registration year shall constitute valid registration immediately upon proper display of the marker and possession of the registration card in the subject vehicle. The enforcement of this subsection shall not become effective until January 15 of each year; provided the motor carrier has the previous year's identification card in the cab of the vehicle before entry into this State. It shall be illegal to operate or to cause to be operated in this State any motor vehicle defined in § 5202 of this title unless the vehicle bears the identification marker required by this section; provided, however, that the Department of Transportation, by regulation, may exempt from the requirement of displaying the identification marker such vehicles as urban and public transit vehicles or others if in its discretion they are clearly identifiable and the effective enforcement of this chapter will not suffer thereby. In addition and for a period not exceeding 72 hours as to any 1 motor carrier the Department of Transportation, by letter or telegram, may authorize the operation of a vehicle or vehicles without the identification marker required when the enforcement of this section for that period would cause undue delay and hardship in the operation of the vehicle or vehicles. The fee for this authorization shall be $15 for each motor vehicle and conditions for the issuance of such authorization shall be set by regulations promulgated by the Department of Transportation.

(b) (1) Whoever violates this section shall, for the first offense, be fined not less than $115 nor more than $345, and for each subsequent offense, not less than $345 nor more than $575.

(2) Justice of the Peace Courts shall have exclusive jurisdiction over this section.

(c) Any duly authorized police officer of this State or of any political subdivision of this State, who charges any person with any of the specified offenses as set out in this section, may, in addition to issuing a summons for said offenses, provide the offending operator with a form which, when properly executed by the officer and the offender, will allow the offender to dispose of the charge without the necessity of personally appearing in the Court to which the summons is returnable. Such penalty assessments must be paid within 10 days from the date of arrest and shall be paid only by check or money order. This subsection shall be applicable to Delaware residents and to residents of those jurisdictions which reciprocate with Delaware.

(d) In addition to, and at the same time as, any fine is assessed under this chapter, there shall also be levied an additional victims' compensation tax surcharge in the amount of 18% of the fine imposed. This surcharge shall be payable in the same manner as set forth in subsection (c) of this section.

(30 Del. C. 1953, § 5211; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 43; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 59 Del. Laws, c. 508, § 1; 60 Del. Laws, c. 216, § 1; 60 Del. Laws, c. 610, § 1; 63 Del. Laws, c. 387, §§ 28, 29(a), (b), 30(a)-(c); 64 Del. Laws, c. 395, § 1; 65 Del. Laws, c. 36, § 1; 65 Del. Laws, c. 427, § 4; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 9, §§ 12, 14, 71; 68 Del. Laws, c. 165, §§ 51(b)-(d); 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 473, §§ 76, 77.)

§ 5212 Imposition of tax.

The taxes imposed on motor carriers by this chapter are in addition to any taxes of whatever character imposed on such carriers by any

other provision of law.

(30 Del. C. 1953, § 5212; 57 Del. Laws, c. 496, § 1.)

§ 5213 Enforcement.

The Delaware State Police is authorized and directed to assist in the enforcement of this chapter, and the police officers of any political subdivision of this State are hereby authorized to assist in the enforcement of this chapter.

(30 Del. C. 1953, § 5213; 57 Del. Laws, c. 496, § 1; 64 Del. Laws, c. 395, § 2.)

§ 5214 Filing of bond; refund provisions.

The Department of Transportation may require a motor carrier to provide a surety company bond, which at no time shall exceed the amount of $20,000, payable to this State and conditioned that the carrier will pay all taxes due and to become due under this chapter from the date of the bond to the date when either the carrier or the bonding company notifies the Department of Transportation that the bond has been cancelled. The surety shall be a corporation authorized to write surety bonds in Delaware. So long as the bond remains in force the Department of Transportation may order refunds to the motor carrier in the amounts appearing to be due on applications duly filed by the motor carrier under § 5204 of this title without first auditing the records of the carrier including the penalties and interest provided in § 5218 of this title, even though the assessment is made after cancellation of the bond, but only for taxes due and payable while the bond was in force and penalties and interest on these taxes.

(30 Del. C. 1953, § 5214; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 64 Del. Laws, c. 365, § 3; 68 Del. Laws, c. 290, § 184.)

§ 5215 False statements; penalties.

Any person who wilfully and knowingly makes, publishes, delivers or utters a false statement orally, or in writing, or in the form of a receipt for the sale of motor fuel, for the purpose of obtaining or attempting to obtain, or to assist any other person to obtain or attempt to obtain a credit or refund or reduction of liability for taxes under this chapter, upon conviction, shall be sentenced to pay a fine not exceeding $575, undergo imprisonment for a term not exceeding 1 year, or both.

(30 Del. C. 1953, § 5215; 57 Del. Laws, c. 496, § 1; 68 Del. Laws, c. 9, § 13.)

§ 5216 Departure or removal of property from State or discontinuing business; arbitrary assessment.

If the Department of Transportation ascertains that a person decides quickly to depart from this State, or to remove therefrom the person's property, or any property used by the person in operations subject to this chapter, or to discontinue business, or to do any other act tending to prejudice or render wholly or partially ineffectual proceedings to assess or collect such tax, whereby it becomes important that such proceedings be brought without delay, the Department of Transportation may immediately make an arbitrary assessment of the amount of tax due, whether or not any report is then due by law and may proceed under such arbitrary assessment to collect the tax, or compel security for the same, and thereafter shall cause notice of such finding to be given to such motor carrier, together with a demand for an immediate report and immediate payment of such tax.

(30 Del. C. 1953, § 5216; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del. Laws, c. 216, § 4; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5217 Failure to report or pay tax; penalty; interest.

When any motor carrier fails to file a report within the time prescribed by this chapter for the filing thereof, the motor carrier shall pay as a penalty for each day thereafter, Saturdays, Sundays and other legal holidays excluded, until the report is filed, the sum of $5.75, up to a maximum penalty of $28.75 for each such report. For each report filed more than 5 business days late, the penalty shall be $28.75 or 12 percent of the tax due, whichever is greater, for each such report. In addition to the penalty imposed by this section, any unpaid tax shall bear interest at the rate of 1% per month, or fraction thereof, until the same is paid. The penalties and interest charges imposed by this section shall be paid to the Department of Transportation in addition to the tax due. The Department of Transportation, if satisfied that the failure to file the report or pay the tax was excusable, may remit or waive the payment of the whole or part of the penalty or interest charge assessed.

(30 Del. C. 1953, § 5217; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 59 Del Laws, c. 216,, § 4; 64 Del. Laws, c. 368, § 7; 65 Del. Laws, c. 427, § 5; 67 Del. Laws, c. 260, § 1; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5218 Time for payment of taxes, penalties and interest; additional penalty.

All taxes, penalties and interest assessed pursuant to this chapter, unless earlier payment is provided in this chapter, shall be paid within 30 days after notice and demand shall have been mailed to the carrier by the Department of Transportation. If such taxes, penalties, and interest so assessed pursuant to §§ 5216, 5217 and 5218 of this title, shall not be paid within 30 days, there may be added to the amount of assessment in addition to interest as already provided and any other penalties provided by law, a sum equivalent to 5% of the tax.

(30 Del. C. 1953, § 5218; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 2; 65 Del. Laws, c. 427, § 6; 68 Del. Laws, c. 290, § 184.)

§ 5219 Manner of payment and recovery of penalties and interest; debt of motor carrier; lien; preference.

(a) All penalties and interest when imposed under this chapter shall be payable to and recoverable by the Secretary of Transportation in

the same manner as if they were part of the tax imposed.

(b) The taxes, fees, interest and penalties imposed under this chapter from the time the same shall be due shall be a debt of a motor carrier which does not maintain premises for the transaction of business within Delaware, recoverable in the Superior Court of this State in an action in the name of the State. Such debt, whether sued upon or not, shall be a lien on all the property of the debtor, except as against an innocent purchaser for value without notice thereof, and shall have priority both in lien and distribution of the assets of the motor carrier, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment or order obtained under this section shall be paid to the Secretary of Transportation. The service of all papers in the action shall be upon the Secretary of Transportation of the State, with a copy mailed by certified mail, to the last known address of the defendant.

(c) Any tax determined to be due from any person who maintains premises for the conduct of business in Delaware and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the State upon the property, both real and personal, of such person but only after the lien has been entered and docketed of record by the Prothonotary of the county where such property is situated. The Secretary of Transportation may at any time transmit to the Prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest and it shall be the duty of each Prothonotary receiving the lien to enter and docket the same of record in the Prothonotary's office, which lien shall be indexed as judgments are now indexed. A writ of execution may directly issue upon such lien, without the issuance and prosecution to judgment of a writ of scire facias; provided, that no less than 10 days before issuance of any 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 last known post-office address. No Prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(d) The lien imposed hereunder, shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto, before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property subject to a lien imposed hereunder upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid.

(e) The lien imposed hereunder shall continue for 5 years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments.

(30 Del. C. 1953, § 5219; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 3; 59 Del. Laws, c. 216, § 5; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5220 Failure to pay tax; determination; redetermination; review.

(a) If any person shall fail to pay any tax imposed by this chapter for which the person is liable, the Secretary of Transportation is authorized and empowered to make a determination of additional tax and interest due by such person based upon any information within the Secretary's possession or that shall come into the Secretary's possession. All of such determinations shall be made so that notice thereof shall reach the parties against whom made within 3 years after the due date of the tax.

(b) Promptly after the date of such determination, the Secretary of Transportation shall send, by certified mail, a copy thereof to the person against whom it was made. Within 60 days after the date upon which the copy of any such determination was mailed, such person may file with the Secretary of Transportation a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle the petitioner to such redetermination and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth are true and correct. It shall be the duty of the Secretary of Transportation within 90 days after the date of any determination to dispose of any petition for redetermination. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the Secretary of Transportation.

(c) Any person shall have the right to review by the Secretary of Transportation and appeal to the Superior Court of this State.

(30 Del. C. 1953, § 5220; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 3; 59 Del. Laws, c. 216, § 5; 65 Del. Laws, c. 427, § 7; 68 Del. Laws, c. 290, § 184; 70 Del. Laws, c. 186, § 1.)

§ 5221 Penalties.

Any person wilfully violating this chapter and not covered by any other penalty provision contained in this chapter, upon conviction, shall be sentenced to pay a fine not exceeding $500, or undergo imprisonment for a term not exceeding 1 year, or both. If the person convicted is a corporation, any imprisonment imposed shall be served by the responsible corporate officer.

(30 Del. C. 1953, § 5221; 57 Del. Laws, c. 496, § 1.)

§ 5222 Availability of records of other agencies; exchange of information with other jurisdictions.

(a) The records of any other state agency, board or commission, to the extent that the same may be pertinent to the administration and enforcement of this chapter and the determination of liability under this chapter, shall be available to the Secretary of Transportation.

(b) The Department of Transportation shall, upon request from the officials to whom are entrusted the enforcement of the motor carrier fuel use tax laws of any other state, the District of Columbia, the United States, its territories and possessions or the provinces of the Dominion of Canada, forward to any such officials any information which it may have relative to registration, tax reporting, audit findings

and any other information concerning motor carrier operations in this State; provided, that such other governmental jurisdictions furnish like information to this State.

(30 Del. C. 1953, § 5222; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 3; 59 Del. Laws, c. 216, § 5; 66 Del. Laws, c. 111, §§ 1, 2; 68 Del. Laws, c. 290, § 184.)

§ 5223 Regulations; promulgation by Secretary of Transportation.

The Secretary of Transportation shall, from time to time, promulgate such regulations as may be necessary for the effective enforcement of this chapter.

(30 Del. C. 1953, § 5223; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 467, § 3; 59 Del. Laws, c. 216, § 5; 68 Del. Laws, c. 290, § 184.)

§ 5224 Exempt vehicles; carriers.

(a) Nothing in this chapter shall apply to any vehicle operated by or on behalf of any department, board, bureau or commission of this State, or any political subdivision thereof, or any quasi-governmental authority of which this State is a participating member, or any agency of the federal government or the District of Columbia or of any state or any political subdivision thereof which grants similar exemption to publicly owned vehicles registered in this State. Nor shall this chapter apply to any school bus operated by, for or on behalf of this State, any political subdivision thereof or any private or privately operated school.

(b) This chapter shall not apply to any motor vehicle for which the registration and inspection has been exempted pursuant to § 2113(2) of Title 21.

(c) This chapter shall not apply to any vehicle operated by, for or on behalf of any volunteer fire company or any ambulance owned and/or operated by a civic or veterans' organization on a volunteer basis.

(d) This chapter shall not apply to any motor vehicle being road tested for sale or any motor vehicle being delivered to or from a motor vehicle dealer; provided, that said vehicle displays a valid dealer's license plate.

(e) This chapter shall not apply to any farm truck with a gross registered vehicle weight of less than 40,001 pounds providing that said vehicle displays a valid FT license tag or its equivalent.

(30 Del. C. 1953, § 5224; 57 Del. Laws, c. 496, § 1; 60 Del. Laws, c. 488, § 2; 61 Del. Laws, c. 59, § 1; 61 Del. Laws, c. 344, §§ 1, 2; 64 Del. Laws, c. 394, § 1; 65 Del. Laws, c. 205, § 1; 65 Del. Laws, c. 427, § 8; 67 Del. Laws, c. 405, § 2; 70 Del. Laws, c. 435, § 1.)

§ 5225 Exemption; reciprocal agreements.

This chapter shall not apply to motor vehicles bearing the registration plates of any other state which does not impose a tax, license or fee upon motor vehicles bearing valid registration plates of this State. The Secretary of Transportation is authorized to make reciprocal agreements with the proper officials of any other state imposing any such tax, license or fee providing for the reduction or relief from the tax imposed by this chapter, upon motor vehicles bearing valid registration plates of such other state, in exchange for the reduction or relief from the tax, license or fee imposed by such other state upon motor vehicles bearing valid registration plates of this State.

(30 Del. C. 1953, § 5225; 57 Del. Laws, c. 496, § 1; 58 Del. Laws, c. 334; 58 Del. Laws, c. 467, § 3; 59 Del. Laws, c. 216, § 5; 68 Del. Laws, c. 290, § 184.)

§ 5226 Failure to comply with other statutes.

Any motor carrier who fails to comply with the requirements of Chapter 51 of this title, also administered by the Department, shall be subject to withholding, suspension or revocation of motor carrier operating privileges as provided under § 5211(a) of this title until such time as the Secretary determines that such motor carrier is in compliance with Chapter 51 of this title.

(64 Del. Laws, c. 396, § 1.)

§ 5227 Collection of bad checks; service charge; interest.

If a check received in payment of moneys due the Department under this chapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of $10 and interest at the rate of 1% per month, or fraction thereof, shall accrue on the tax, if any, from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 15 days of the original amount of the check plus the added service charge, interest, if any, and the cost of the postage incurred in mailing the statement. Failure of the maker to respond to the demand within 15 days shall constitute cause for the Department to suspend the maker's operating privileges in this State and 30 days thereafter, to revoke the maker's operating privileges in this State.

(65 Del. Laws, c. 302, § 1; 67 Del. Laws, c. 260, § 1.)

§ 5228 Moneys erroneously collected.

In the event that any fees, taxes, penalties or interest imposed by this chapter shall have been erroneously collected from the motor carrier, the Department of Transportation may, upon request of the motor carrier, permit such motor carrier to take credit against a subsequent tax report in the amount of the erroneous overpayment, or, the Department may certify to the State Treasurer the amount of fees, taxes, penalties and/or interest erroneously collected by the Department. The State Treasurer shall thereupon draw a warrant for such certified amount made payable to the motor carrier.

No refund of any taxes, fees, penalties or interest imposed under this chapter may be obtained except by filing a written claim with the

Department before the expiration of 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

The claim must be in such form as may be prescribed by the Department, and shall specifically set forth the circumstances entitling the claimant to the refund.

(65 Del. Laws, c. 427, § 9; 68 Del. Laws, c. 156, § 55(d); 68 Del. Laws, c. 290, § 184.)

§ 5229 Cooperative agreements between states.

(a) The Secretary of the Department of Transportation may enter into cooperative agreements with other states, for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement, arrangement, declaration or amendment thereto is not effective until executed and filed with the Department of Transportation.

(b) An agreement may provide for determining the base state for users, users records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor carrier fuel use taxes and penalties to another jurisdiction and other provisions as will facilitate the administration of the agreement.

(c) The Department of Transportation may, as required by the terms of an agreement, forward to officers of another state any information in the Department's possession relative to the manufacture, receipts, sale, use, transportation or shipment of motor fuels by any person. The Department of Transportation may disclose to officers of another state, the location of officers, motor vehicles and other real and personal property of users of motor fuels.

(d) An agreement may provide for each state to audit the records of persons based in the State, to determine if the motor carrier fuel use taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the State, to each state in which the person has taxable use of motor fuels. For persons not based in this State and who have taxable use of motor fuel in this State, the Department of Transportation may serve the auditing findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the Department of Transportation.

(e) Any agreement entered into pursuant to this section shall not preclude the Department from auditing the records of any person covered by the provisions of this chapter.

(f) The legal remedies for any person served with an order or assessment under this section shall be as prescribed in this chapter.

(g) If the Department enter into any agreement under the authority of this section, and the provisions set forth in the agreement are in conflict with any other rules or regulations by the Department, the agreement's provisions shall prevail notwithstanding.

(68 Del. Laws, c. 156, § 53; 68 Del. Laws, c. 290, §§ 184, 186, 187.)

Part IV
Commodity Taxes
Chapter 53
Tobacco Product Tax
Subchapter I
Definitions

§ 5301 Definitions.

As used in this chapter:

(1) "Affixing agent" means any tobacco products dealer or any other person within or without this State appointed by the Department of Finance as an agent to affix the stamps to be used in paying the excise tax imposed by this chapter. The first vendor who has possession of unstamped tobacco products in this State for sale in this State is deemed an affixing agent.

(2) "Cigar" means any roll for smoking which is not a cigarette and which is made wholly or in part of tobacco or any substitute therefor when the cover of the roll is made chiefly of tobacco.

(3) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) "Consumer" means any person who has possession of tobacco products for any purpose other than transportation or sale.

(5) "Department of Finance" or "Department" means the Department of Finance.

(6) "Distributor" means any of the following:

a. Any person engaged in the business of selling tobacco products in this State who brings or causes to be brought into this State from without the State any tobacco products for sale.

b. Any person who makes, manufactures, or fabricates tobacco products in this State for sale in this State.

c. Any person engaged in the business of selling tobacco products without this State who ships or transports tobacco products to retail dealers in this State to be sold by those retail dealers.

(7) "Electronic smoking device" means a nonlighted, noncombustible device that employs a mechanical heating element, battery, or circuit, regardless of shape or size, to produce aerosolized or vaporized nicotine for inhalation into the body of an individual. "Electronic smoking device" includes a device that is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other similar product with any other product name or descriptor.

(8) "Moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, but does not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

(9) "Package" or "pack" means, as to cigars, the smallest individual container which contains more than 1 cigar in or from which retail sales are normally made or intended to be made, and means, as to other tobacco products, the smallest individual container in or from which retail sales of such products are normally made or intended to be made.

(10) "Place of business" means any place where tobacco products are sold, or where tobacco products are bought or kept for the purpose of sale or consumption, including, so far as applicable, any vessel, airplane, train, or vending machine dispensing tobacco products.

(11) "Retail dealer" means any person who purchases or receives stamped tobacco products from any source whatsoever for the purpose of sale to the ultimate consumer.

(12) "Sale" means in addition to its usual meaning, any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

(13) "Secretary of Finance" or "Secretary" means the Secretary of Finance or the Secretary's duly authorized designee; provided, that any such delegation of authority is consistent with Chapter 83 of Title 29.

(14) "Smokeless tobacco products" means all products, other than moist snuff, made primarily of tobacco for individual consumption, not intended to be smoked.

(15) "Tobacco products" means all products made primarily from tobacco for individual consumption, including cigarettes, cigars, pipe tobacco, and vapor products.

(16) "Tobacco product tax stamps" means any adhesive stamps, tax meter impression, or other stamps, labels, or prints authorized by the Department of Finance to evidence the payment of the tax imposed by this chapter.

(17) "Tobacco product vending machine" means any mechanical device from which tobacco products are dispensed for a consideration.

(18) "Unstamped tobacco products" means any pack or package of tobacco products to which the proper amount of genuine Delaware tobacco product tax stamps has not been affixed.

(19) "Use" means the exercise of any right or power over tobacco products including the retention for any length of time for any purpose other than sale or transportation as allowed under the provisions of this chapter.

(20) "Vapor product" means any nicotine liquid solution or other material containing nicotine that is intended to be used with or in an electronic smoking device.

(21) "Vending machine operator" means any person who places 1 or more vending machines, owned, leased or operated by the person, at locations where tobacco products are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed shall not be considered the operator of the machine, if the owner or lessee does not own or lease the machine and if the sole remuneration therefrom is a flat rental fee or a commission, based upon the number or value of tobacco products sold from the machine, or a combination of both.

(22) "Wholesale dealer" means any person who regularly sells tobacco products within this State to others who buy for the purpose of resale.

(23) "Wholesale price" means the price for which a manufacturer sells a tobacco product to a distributor exclusive of any discount, rebate, or other reduction.

(30 Del. C. 1953, § 5301; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 20; 57 Del. Laws, c. 741, §§ 16A-16C; 65 Del. Laws, c. 350, § 1; 65 Del. Laws, c. 441, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 74, §§ 1, 2; 81 Del. Laws, c. 55, § 2.)

Subchapter II

Levy and Collection of Tax; License, Stamps

§ 5305 Levy of tax, limitation; exemption [For application of this section, see 81 Del. Laws, c. 55, § 28(a)]

(a) An excise tax is imposed and assessed upon the sale or use of cigarettes within this State at the rate of 105 mills per cigarette. This tax applies only once to the same pack of cigarettes. In the event the tax computed according to this subsection results in a tax per pack or other unit of sale to which this tax applies involving a fraction of a cent, the tax applicable to that pack or other unit must be computed by rounding the tax to the next higher whole cent.

(b) A tax is imposed and assessed upon the sale or use of all tobacco products, except those tobacco products taxed under subsection (a) or (c) of this section, within this State at the rate of 30% of the wholesale price on such products.

(c) (1) A tax is imposed and assessed upon the sale or use of moist snuff within this State at the rate of 92 cents per ounce and a proportionate tax at the like rate on any fractional parts of an ounce. The per ounce tax imposed under this subsection must be computed based on the net weight as listed by the manufacturer.

(2) An excise tax is imposed and assessed upon the sale or use of vapor products within this State at the rate of 5 cents per fluid milliliter of vapor product. The tax imposed by this paragraph (c)(2) of this section must be computed based on the amount of vapor product in milliliters as listed by the manufacturer. All invoices for vapor products issued by a manufacturer must state the amount of vapor product in milliliters.

(d) No tax imposed by this chapter may be levied upon the possession or sale of tobacco products which this State is prohibited from taxing under the Constitution or statutes of the United States.

(e) If the seller and purchaser have registered with the Department and obtained exemption certificates, the following sales are exempt:

(1) Sales to veterans ' organizations approved by the Department, if the tobacco products are being purchased by the organization for gratuitous issue to veteran patients in federal, state, or state-aided hospitals;

(2) Sales to patients in Veterans ' Administration Hospitals by retail dealers located in such hospitals.

(f) [Transferred definitions for "cigar" and "wholesale price", appearing in former (f)(1) and (2), to § 5301 of this title.]

(30 Del. C. 1953, § 5305; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 111, § 1; 57 Del. Laws, c. 136, § 21; 58 Del. Laws, c. 291, § 1; 64 Del. Laws, c. 231, § 1; 65 Del. Laws, c. 441, § 1; 66 Del. Laws, c. 3, §§ 1, 2; 67 Del. Laws, c. 280, §§ 1, 5, 6; 74 Del. Laws, c. 54, §§ 1, 2; 76 Del. Laws, c. 74, §§ 3, 4; 76 Del. Laws, c. 75, § 1; 77 Del. Laws, c. 73, § 1; 81 Del. Laws, c. 55, § 3.)

§ 5306 Liability for payment of tax.

The tax must be paid and the stamp must be affixed by the first person who has possession of tobacco products in this State.

(30 Del. C. 1953, § 5306; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 4.)

§ 5307 License for sales of tobacco products.

A person may not engage in or conduct the business of manufacturing, purchasing, selling, consigning, or distributing tobacco products in this State or acting as an affixing agent without having first obtained the appropriate license for that purpose as prescribed by this chapter.

(30 Del. C. 1953, § 5307; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 5.)

§ 5308 License charges.

(a) *Wholesale license.* —

For each wholesale license issued there must be paid to the Department of Finance a fee of $200. If a holder of a wholesale license sells or intends to sell tobacco products at 2 or more places of business, whether established or temporary, a separate license is required for each place of business.

(b) *Retail license.* —

For each retail license there must be paid to the Department of Finance a fee of $50. If a holder of a retail license sells or intends to sell tobacco products at 2 or more places of business, whether established or temporary, or whether in the same building or not, a separate license is required for each place of business.

(c) *Vending machine license.* —

Every vending machine from which tobacco products are offered for sale must have affixed to it an identification stamp issued by the Department of Finance for which a fee of $15 must be paid to the Department. If 2 or more vending machines are fastened together, each set of mechanisms must have a separate vending machine license.

(d) *Affixing agent license.* —

For each affixing agent's license issued there must be paid to the Department of Finance a fee of $200, but only 1 license fee of $200 is required of any person who is both a wholesale dealer and an affixing agent.

(30 Del. C. 1953, § 5308; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, §§ 22, 23; 57 Del. Laws, c. 188, § 43; 57 Del. Laws, c. 741, § 16C; 60 Del. Laws, c. 506, § 1; 81 Del. Laws, c. 55, § 6.)

§ 5309 Application for license.

(a) Every person desiring to engage in the sale of tobacco products at wholesale, retail, or by tobacco product vending machines within this State, except those persons who are exempt under § 5305(d) of this title, and every person desiring to become an affixing agent shall file an application for a license with the Department of Finance.

(1) Every application for a tobacco product license must be made upon a form prescribed, prepared, and furnished by the Department and must set forth the name under which the applicant transacts or intends to transact business; the location of the applicant's place of business, whether within or without the State; whether or not the applicant is the holder of a mercantile or business license in effect when the application is made and, if so, the number of such license and the county for which such license was issued; and such other information as the Department may require.

(2) If the applicant has or intends to have more than 1 place of business within the State, the application must state the location of each place of business.

(3) If the applicant is an association, the application must set forth the names and addresses of the persons constituting the association; and if a corporation, the names and addresses of the principal officers thereof and any other information prescribed by the Department for purposes of identification.

(4) The application must be signed and verified by oath or affirmation by the owner, if a natural person, and, in the case of an association, by a member or partner thereof and, in the case of a corporation, by an executive officer thereof, or some person specifically authorized to sign the application, to which must be attached the written evidence of such person's authority.

(b) A single application may be filed for more than 1 license. The operator of tobacco product vending machines shall list all locations at which the operator has machines at the time of the application. The operator may also request extra licenses for new machines to be placed in new locations up to 10% of the listed locations on file with the Department without submitting actual locations. As the new machines are placed on location for sale of tobacco products, the operator shall immediately notify the Department and the operator shall become eligible to apply for licenses for an additional 10% of the operator's new totals. Failure to notify the Department when and where new machines are placed in operation is cause for suspension and seizure of all licenses and tobacco product vending machines.

(30 Del. C. 1953, § 5309; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16C; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 7.)

§ 5310 Issuance of licenses; display.

Upon approval of the application and payment of the fees, the Department shall issue the proper licenses for each place of business set forth in the application. Every license shall be conspicuously displayed at the place for which issued.

(30 Del. C. 1953, § 5310; 54 Del. Laws, c. 296, § 1.)

§ 5311 Expiration of licenses.

Every license shall expire on December 31 next succeeding the date upon which it was issued, unless sooner suspended, surrendered, revoked or renewed.

(30 Del. C. 1953, § 5311; 54 Del. Laws, c. 296, § 1; 60 Del. Laws, c. 506, § 2.)

§ 5312 Replacement of licenses.

Whenever any license issued under this chapter is defaced, destroyed, or lost, the Department of Finance may issue a duplicate to the holder of the defaced, destroyed, or lost license upon the payment of a fee of $10 by the holder.

(30 Del. C. 1953, § 5312; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 741, §§ 16C, 16D; 81 Del. Laws, c. 55, § 8.)

§ 5313 Suspension or revocation of license.

The Department of Finance, after a hearing before the Secretary of Finance, may suspend or revoke a license issued pursuant to this chapter whenever it finds that the holder thereof has failed to comply with any of the provisions of this chapter or any regulations of the Department adopted pursuant to § 5329 of this title. Whenever the Department intends to suspend a license for any violation under this chapter, it shall immediately notify the holder in writing, stating the violations charged and giving the licensee the right of a hearing before the Secretary of Finance within 5 days after receipt of such written notice. After such hearing, the Department shall either rescind the notice of the suspension, enforce the suspension or revoke the license. Upon the suspension or revocation of any license, the holder thereof shall forthwith surrender all licenses to the Department issued to the holder under this chapter and no refund of fees shall be paid.

(30 Del. C. 1953, § 5313; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 741, §§ 16C, 16D; 70 Del. Laws, c. 186, § 1.)

§ 5314 Transfer of license.

Any licensed dealer may transfer a license from 1 location to another or from 1 tobacco product vending machine to another in accordance with the rules and regulations of the Department.

(30 Del. C. 1953, § 5314; 54 Del. Laws, c. 296, § 1; 81 Del. Laws, c. 55, § 9.)

§ 5315 Tobacco product tax stamps; affixing; amount; cancellation.

(a) Within the time prescribed, every authorized affixing agent shall affix to each pack of tobacco products received by the agent and shall cancel Delaware tobacco product tax stamps to evidence payment of the tax imposed by this chapter, unless such stamps have been affixed to the packs of tobacco products and cancelled before such authorized affixing agent received them.

(b) Stamps in an amount not less than the tax thereon must be affixed to each pack of tobacco products in such manner that they will be visible to the purchaser. The authorized affixing agent, affixing such stamps, shall cancel them immediately in such manner as may be prescribed by the Department.

(30 Del. C. 1953, § 5315; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 10.)

§ 5316 Design and sale of stamps.

(a) Delaware tobacco product tax stamps must be adhesive stamps, tax meter impressions, or other stamps, labels, or prints of such designs and denominations as may be prescribed by the Department.

(b) (1) The Department shall make provisions for the sale of Delaware tobacco product tax stamps in such places and at such times as it deems necessary.

(2) All stamps must be paid for at the time of purchase.

(3) Notwithstanding paragraph (b)(2) of this section, an authorized affixing agent may enter into an agreement with the Department of Finance providing for deferred payment for tobacco product stamps or for amounts added to tobacco product tax meters during a month to a date not later than 30 days from the date of purchase or addition to a tobacco product tax meter if the affixing agent furnishes a bond to assure payment in such amount as required by the Secretary of Finance, and pays all amounts due for the month of June by June 25.

(4) A person may not purchase tobacco product stamps from any person other than the Department of Finance or its authorized agents, except in accordance with the Finance Department's regulations relating to the stamping of floor stock.

(30 Del. C. 1953, § 5316; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16C; 58 Del. Laws, c. 291, § 2; 81 Del. Laws, c. 55, § 11; 82 Del. Laws, c. 226, § 11.)

§ 5317 Time for affixing stamps; reporting requirements; violation.

(a) The authorized affixing agent shall affix the required amount of Delaware tobacco product tax stamps to unstamped tobacco products within 72 hours after receipt of the tobacco products and prior to the sale of the tobacco products, unless the tobacco products are exempt by other provisions of this chapter. Whenever any tobacco products are found in the place of business of the authorized affixing agent without the stamps affixed as provided by this subsection, or not segregated or marked as having been received within the preceding 72 hours, or not segregated or marked as exempt from requirement of Delaware tobacco product tax stamp under other provisions of this chapter, a prima facie presumption arises that such tobacco products are possessed in violation of this chapter.

(b) Between noon local time and midnight on each July 31 and December 31, an affixing agent may not have in its possession cigarettes without the stamps affixed as provided under subsection (a) of this section or not segregated or marked as exempt from the requirement of Delaware tobacco product tax stamps. The affixing agent shall accurately report to the Director of Revenue the quantity of cigarettes bearing stamps and the balance remaining in any device used for affixation of stamps at that time. Failure to comply with this subsection is prima facie cause for suspension or revocation of licenses under § 5313 of this title.

(30 Del. C. 1953, § 5317; 57 Del. Laws, c. 136, § 23; 67 Del. Laws, c. 280, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 12.)

§ 5318 Appointment of stamp affixing agents; commission.

(a) The Department may appoint any manufacturer of tobacco products or wholesaler within this State and may appoint any other person within or without this State as its agent to affix Delaware tobacco product tax stamps. Tax affixing agents located outside the State must apply the stamps to all taxable tobacco products before bringing them into this State.

(b) Whenever the Department shall sell, consign, or deliver Delaware tobacco product tax stamps to any authorized stamp affixing agent,

such agent is entitled to receive as compensation for such agent's services and expenses a commission at the rate of 3/10 of 1 cent for affixing the tax stamp to each package of 20 or more cigarettes. The commission is to be retained out of the moneys to be paid by such agent for such stamps purchased from the Department.

(30 Del. C. 1953, § 5318; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 175; 57 Del. Laws, c. 136, § 23; 58 Del. Laws, c. 291, § 3; 65 Del. Laws, c. 118, § 4; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 13.)

§ 5319 Alternate method of collection; other tobacco products.

If in the judgment of the Department the collection of the excise tax imposed in § 5305 of this title upon tobacco products other than cigarettes will be more efficiently and economically collected by a system which does not employ tax stamps as authorized by this chapter, such alternative system may be utilized by the Department at its discretion. The alternative system may include self-assessment by any wholesale or retail tobacco products dealer on forms supplied by the Department. If instituted, the alternative collection system shall be set forth in the rules and regulations of the Department, which shall be distributed to all affected dealers at least 90 days in advance of the effective date of such rules and regulations.

(30 Del. C. 1953, § 5319; 57 Del. Laws, c. 136, § 24.)

Subchapter III

General Provisions

§ 5321 Duties imposed on licensed tobacco products dealers; lists.

(a) A licensed tobacco products dealer may not sell tobacco products or purchase tobacco products from any person required to be licensed who is not so licensed or is improperly licensed; except that a licensed wholesale tobacco products dealer may sell tax paid tobacco products to a tobacco products manufacturer's representative if the manufacturer's representative presents valid proof that the representative is a bona fide sales representative of the tobacco products manufacturer.

(b) All holders of wholesale licenses shall maintain at every licensed location a list of the names and license numbers or holders of wholesale and retail licenses to whom tobacco products are sold or delivered.

(c) A licensed tobacco products dealer may not sell smokeless tobacco products unless the package for such smokeless tobacco product bears a legible legend required by any federal law, rule, or regulation relating to the possible hazard involved in use of the product.

(30 Del. C. 1953, § 5321; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 65 Del. Laws, c. 350, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 14.)

§ 5322 Duties imposed on manufacturer's representatives.

A tobacco products manufacturer's representative may sell only to a licensed tobacco products dealer, unless the representative obtains a dealer's license under this chapter and the rules and regulations promulgated under this chapter. A manufacturer's representative who participates in promotional activities involving the sale of tobacco products to persons other than licensees is presumed to be acting as an agent of the licensee who furnished the tobacco products.

(30 Del. C. 1953, § 5322; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 15.)

§ 5323 Taxpayer's protest [Repealed].

Repealed by 68 Del. Laws, c. 187, § 16, effective Jan. 1, 1992.

§ 5324 Sample packs.

The Department shall promulgate regulations governing the receipt, distribution of, and the payment of tax on, sample packs of tobacco products used for free distribution. The regulations may provide that any licensed dealer may receive and make free distribution of sample packs of tobacco products without affixing Delaware tobacco product tax stamps thereto, so long as the proper tax thereon has been paid.

(30 Del. C. 1953, § 5324; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, §§ 23, 25.)

§ 5325 Late filing penalty.

Every stamp affixing agent shall file with the Department, on or before the twentieth day of each month, a report in such form as the Secretary of Finance shall prescribe. The report must disclose the number of tobacco products on hand on the first and last days of the calendar month immediately preceding the month in which such report is required, together with such information concerning the amount of stamps purchased, used and on hand during the report period, together with any other information for the report period that the Secretary of Finance shall prescribe. Any tax affixing agent who fails to file any report on the day when it is due shall forfeit, as a penalty for each day thereafter until the report is filed, the sum of $15 to be collected in the manner provided in this chapter for the collection of penalties. The Secretary of Finance, if satisfied that the failure to comply with this section was excusable, may remit the whole or any part of said penalty.

(30 Del. C. 1953, § 5325; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16D; 66 Del. Laws, c. 130, § 2; 81 Del. Laws, c. 55, § 16.)

§ 5326 Refunds.

Whenever any packs of tobacco products upon which stamps have been placed have been sold and shipped into another state for sale or use therein, or have been sold to persons exempt under § 5305(d) of this title for resale to authorized purchasers, or have been returned to the manufacturer for credit because they became unfit for use and consumption or became unsalable by reason of fire, flood, or other causes beyond the control of the person who sold the tobacco products and shipped them into another state for sale or for use therein or who sold the tobacco products to persons exempt under § 5305(d) of this title for resale to authorized purchasers or who owned the tobacco products at the time they were returned to manufacturer because they became unfit for use and consumption or unsalable by reason of fire, flood, or other cause beyond the control of the person seeking the refund shall be entitled to a refund of the actual amount of tobacco product tax paid with respect to such tobacco products. If the Department is satisfied that a refund is proper, it shall certify the proposed amount of refund and thereafter shall issue to the person seeking the refund stamps or cash of sufficient value to cover the refund.

(30 Del. C. 1953, § 5326; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 17.)

§ 5327 Exempt sales.

The Department may promulgate regulations to relieve authorized affixing agents from affixing stamps to packs of tobacco products to be sold and delivered to points outside the State for use outside the State, or to be sold to purchasers designated as exempt under § 5305(d) of this title for resale to authorized purchasers. However, all sales are presumed to be taxable and the burden is upon the person claiming an exemption to prove such person's right to the exemption.

(30 Del. C. 1953, § 5327; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 18.)

§ 5328 Invoices or delivery tickets and purchase orders required in certain cases.

(a) A person who possesses or transports 10 or more packs or packages, or an equivalent amount unpackaged, of unstamped tobacco products upon the public highways, roads, or streets of this State for the purpose of delivery, sale, or disposition is required to have in the person's possession invoices or delivery tickets and purchase orders for the tobacco products which must show all of the following:

(1) The true name and complete and exact address of the consignor or seller.

(2) The true name and complete and exact address of the person transporting the tobacco products.

(3) The quantity and brand of the tobacco products transported and the true name and complete and exact address of the person who has been licensed to assume the payment of the Delaware tax or the tax, if any, of the state or foreign country at the point of ultimate destination.

(b) Notwithstanding subsection (a) of this section, any common carrier which has issued a bill of lading for shipment of tobacco products and is without notice to itself or to any of its agents or employees that the tobacco products are not stamped as required by this chapter is deemed to have complied with this chapter.

(c) The absence of proper invoices or delivery tickets and purchase orders required under this section is prima facie evidence that the person is in violation of this chapter and subject to the penalties of this chapter.

(30 Del. C. 1953, § 5328; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 277, § 1; 57 Del. Laws, c. 136, § 26; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 19.)

§ 5329 Administration by Department; rules and regulations.

The administration, enforcement and collection of all taxes, permits, licenses and fees under this chapter are vested in the Department of Finance and the Secretary of Finance of the State, and the powers conferred upon the Department and the Secretary of Finance under Chapter 3 of this title shall, so far as applicable, be exercisable with respect to the provisions of this chapter. The Department may prescribe, adopt, promulgate and enforce rules and regulations relating thereto, including:

(1) The method and means to be used in the cancellation of stamps;

(2) The denominations and sale of stamps;

(3) The time and manner of filing reports;

(4) Any other matter or thing pertaining to the administration and enforcement of this chapter.

(30 Del. C. 1953, § 5329; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 741, §§ 16C, 16D.)

§ 5330 Bonds.

The Secretary, at the Secretary's discretion, in order to protect the revenues to be obtained under this chapter, may require any person liable for the payment of a tax imposed under this chapter to furnish a bond executed by a surety company authorized to do business in this State and approved by the State Insurance Commissioner as to solvency and responsibility, in such amounts as the Secretary may fix, to secure the payment of any tax and interest or penalties due or which may become due from the person.

(1) If the Secretary determines that a person must file a bond, the Secretary shall give notice to such person to that effect, specifying the amount of the bond required.

(2) The bond must be filed 5 days after the giving of notice under paragraph (1) of this section, unless within 5 days of such notice a request in writing for a hearing before the Secretary of Finance is made.

(3) At a hearing held under paragraph (2) of this section, the Secretary of Finance shall review and determine the necessity, propriety,

and amount of the bond.

(4) The Secretary's determination is final and the person requesting the hearing must comply with the determination within 15 days after notice of the determination is sent by the Secretary to the person requesting the hearing.

(30 Del. C. 1953, § 5330; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16D; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 20.)

Subchapter IV

Penalties and Enforcement

§ 5341 Sale of unstamped tobacco products; refusal to permit inspection; counterfeited or reused stamps; penalty.

(a) A person may not sell any pack of tobacco products that does not have affixed to it the proper amount of Delaware tobacco product tax stamps.

(b) A dealer may not refuse to permit the Department to examine such dealer's books and records, stock of tobacco products, or premises and equipment in order to verify the accuracy of the tax payments imposed by this chapter.

(c) A person may not falsely or fraudulently make, forge, alter, or counterfeit any stamp prescribed by the Department under this chapter; or cause or procure a stamp to be falsely or fraudulently made, forged, altered, or counterfeited; or knowingly and wilfully utter, publish, pass, or tender as true a false, altered, forged, or counterfeited stamp; or use more than once any stamp provided for and required by this chapter for the purpose of evading the tax hereby imposed and assessed.

(d) A person who violates this section may be fined not more than $1,000, or imprisoned for not more than 1 year, or both.

(30 Del. C. 1953, § 5341; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 21.)

§ 5342 Possession of untaxed tobacco products.

(a) Except as authorized by this chapter, a person who is not an affixing agent or does not hold a valid, unexpired exemption certificate may not possess within this State 10 or more packs or packages, or an equivalent unpackaged amount of tobacco products upon which the Delaware tobacco product tax has not been paid, or to which Delaware tobacco product tax stamps are not affixed in the amount required.

(b) Whenever any tobacco products are found at the place of business of a dealer, whether a stamp affixing agent or not, and the tobacco products do not have the proper amount of stamps affixed and cancelled, or it is determined that the Delaware tobacco product tax has not been paid on such tobacco products, and the boxes, cartons, or other containers have not been marked as having been received within 72 hours, such dealer may be fined not less than $100 nor more than $1,000, or imprisoned not more than 90 days, or both.

(c) Notwithstanding the provisions of subsection (b) of this section, any violation of § 5317(b) of this title is punishable as a violation of subsection (b) of this section, except that the Superior Court in and for the county in which any element of the offense occurred has exclusive original jurisdiction over offenses under this subsection.

(30 Del. C. 1953, § 5342; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 277, § 2; 57 Del. Laws, c. 136, § 27; 67 Del. Laws, c. 280, § 3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 336, § 1; 81 Del. Laws, c. 55, § 22.)

§ 5343 Penalties not specifically provided for.

Whoever violates any provision of this chapter for which a specific penalty is not otherwise provided, and whoever violates any regulation promulgated pursuant to this chapter, shall be fined not less than $100 nor more than $1,000, or imprisoned not more than 90 days, or both.

(30 Del. C. 1953, § 5343; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 277, § 2.)

§ 5344 Liability joint and several as between owner and operator.

Whenever a duty or liability is imposed under this chapter on the owner or operator of tobacco product vending machines, the owner and operator is jointly and severally liable for the performance of such duty or satisfaction of such liability.

(30 Del. C. 1953, § 5344; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 23.)

§ 5345 Police powers; arrests.

(a) Employees of the Department of Finance who are designated "tobacco product tax-enforcement officers" are peace officers and have the same police power and authority as constables throughout the State.

(b) Such officers may arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale of unstamped tobacco products, or unlawfully having in such person's possession unstamped tobacco products, contrary to this chapter.

(30 Del. C. 1953, § 5345; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16C; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 55, § 24.)

§ 5346 Prohibitions.

(a) No tobacco product tax stamp may be affixed to or made upon any package of cigarettes if:

(1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act for the placement

of labels, warnings or any other information upon a package of cigarettes that is to be sold within the United States;

(2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels or warnings described in paragraph (a)(1) or (2) of this section, including by the placement of a sticker on such package;

(4) Any person with respect to the cigarettes in such package is not in compliance with 15 U.S.C. § 1335a (relating to the submission of ingredient information to federal authorities);

(5) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754 or 19 U.S.C. §§ 1681 through 1681b; or

(6) The package in any way violates federal trademark or copyright laws or any law of this State.

(b) Any person who sells, acquires, holds, owns or possesses for sale or distribution in this State a cigarette package to which is affixed a tax stamp in violation of subsection (a) of this section shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both. Each cigarette package sold or held for sale shall be a separate violation.

(c) Notwithstanding any other provision of law, the Secretary may revoke any license issued under this chapter to any person who sell or holds for sale a cigarette package to which is affixed a tobacco product tax stamp in violation of subsection (a) of this section.

(d) Notwithstanding any other provision of law, the Secretary shall seize and destroy packages that do not comply with subsection (a) of this section.

(e) Notwithstanding any other provision of law, a violation of subsection (a) of this section is a deceptive practice under the Uniform Deceptive Trade Practices Act (subchapter III of Chapter 25 of Title 6).

(72 Del. Laws, c. 301, § 1; 73 Del. Laws, c. 112, §§ 1-7; 73 Del. Laws, c. 286, § 1.)

Subchapter V

Forfeitures

§ 5351 Forfeiture of tobacco products; disposal.

(a) In the event of a conviction under § 5342 of this title, the tobacco products which were the subject of the violation are automatically forfeited to the State.

(b) The Department shall destroy any tobacco products forfeited under this section. The Department may, prior to the destruction of any tobacco products, permit the true holder of the trademark rights in the tobacco product brand to inspect such forfeited tobacco products in order to assist the Department in any investigation regarding such tobacco products.

(30 Del. C. 1953, § 5351; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 277, § 3; 57 Del. Laws, c. 136, § 23; 77 Del. Laws, c. 336, § 2; 81 Del. Laws, c. 55, § 25.)

§ 5352 Forfeiture of vehicle used in illegally transporting tobacco products.

Any vehicle used in the transporting of tobacco products in violation of this chapter is subject to the provisions of subchapter II of Chapter 23 of Title 11.

(30 Del. C. 1953, § 5352; 54 Del. Laws, c. 296, § 1; 55 Del. Laws, c. 277, § 4; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 26.)

§ 5353 Tobacco product vending machine forfeiture proceedings.

(a) The proceedings for the forfeiture of any tobacco product vending machine in which are found untaxed tobacco products shall be in rem. The State shall be the plaintiff and the property the defendant. A petition shall be filed in the Superior Court of the county in which the machine was found, verified by the oath or affirmation of any tobacco product tax-enforcement officer or other person. The petition shall contain the following:

(1) A description of the machine seized;

(2) A statement of the time when and place where seized;

(3) The name and address of the owner, if known;

(4) The name and address of the person in possession, if known;

(5) A statement of the circumstances under which the machine was found and the number and a description of the unstamped tobacco products found therein; and

(6) A prayer for an order forfeiting the machine to the State, unless cause be shown to the contrary.

(b) A copy of the petition shall be served personally on the owner if the owner can be found within the State, or upon the person in possession at the time of the seizure. The copy shall have endorsed thereon a notice substantially similar to the following:

"To the claimant of the within tobacco product vending machine: You are required to file an answer to this petition setting forth your title in, and right to possession of, said machine within 20 days from the service hereof, and you are also notified that if you fail to file said answer, a decree of forfeiture will be entered against said machine."

This notice shall be signed by the Secretary of Finance or the Attorney General or a Deputy Attorney General.

(c) If the owner of the machine is unknown or outside the State, and there was no person in possession of the machine when seized, or the person in possession cannot be found within the State, a copy of the petition shall be sent by registered or certified mail, return receipt requested, to the person's last known address, if any, and notice of the petition shall also be given by an advertisement in 1 newspaper of general circulation published in the county where the machine was seized, once a week for 2 successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the machine with a description thereof, the place and date of seizure and shall direct any claimants thereof to file a claim therefor, on or before a date given in the notice, which shall not be less than 10 days from the date of the last publication.

(d) Thirty days after the filing of any claim for the machine setting forth a right of possession thereof, the case shall be deemed at issue and a time shall be fixed for the hearing thereof.

(e) At the time of the hearing, if the State shall produce evidence that the machine in question was found to contain unstamped tobacco products, the burden shall be upon the claimant to show:

(1) That the claimant is the owner of the machine and

(2) That all tobacco products found in the machine at the time of seizure did contain the proper amounts of Delaware tobacco product tax stamps.

(f) In the event the claimant shall prove by competent evidence, to the satisfaction of the Court, that the machine did not contain unstamped tobacco products, the Court shall order the machine returned to the claimant, otherwise the Court shall order it forfeited to the State.

(30 Del. C. 1953, § 5353; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 57 Del. Laws, c. 741, § 16D; 70 Del. Laws, c. 186, § 1.)

§ 5354 Seizure of untaxed tobacco products and tobacco product vending machines.

Whenever any law-enforcement officer, the Department or its agents have reasonable grounds to believe that any untaxed tobacco products are unlawfully in the State or that a vending machine is being used to hold untaxed tobacco products, they may seize such tobacco products or tobacco product vending machines and hold them in custody pending a decision of the Court. No tobacco products or tobacco product vending machines being held in custody shall be seized or taken therefrom on any writ of replevin or like judicial process.

(30 Del. C. 1953, § 5354; 54 Del. Laws, c. 296, § 1; 57 Del. Laws, c. 136, § 23; 81 Del. Laws, c. 55, § 27.)

Subchapter VI

Delivery Sales of Any Tobacco Product

§ 5361 Definitions.

For purposes of this subchapter:

(1) "Adult" means a person who is at least the legal minimum purchase age.

(2) "Consumer" means an individual who is not licensed as a distributor or retail dealer pursuant to subchapter II of this chapter.

(3) "Delivery sale" means any sale of any tobacco product or tobacco substitute to a consumer in this State where either:

a. The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or

b. The tobacco products or tobacco substitutes are delivered by use of the mails or of a delivery service.

A sale of any tobacco product or tobacco substitute shall be a delivery sale regardless of whether the seller is located within or without this State. A sale of any tobacco product or tobacco substitute not for personal consumption to a person who is a distributor or a retail dealer shall not be a delivery sale.

(4) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages or other containers.

(5) "Department" means the Department of Finance.

(6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase any tobacco product or tobacco substitute in this State under § 1116 of Title 11.

(7) "Mails" or "mailing" means the shipment of cigarettes through the United States Postal Office.

(8) "Person" means the same as that term is defined in § 302(15) of Title 1.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, airbills or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages or other containers.

(11) "Tobacco product" means as defined under § 1115(9)a. of Title 11.

(12) "Tobacco substitute" means as defined under § 1115 of Title 11.

(74 Del. Laws, c. 95, § 1; 76 Del. Laws, c. 171, §§ 1, 2; 78 Del. Laws, c. 179, § 1; 82 Del. Laws, c. 10, § 12.)

§ 5362 Requirements for delivery sales.

(a) No person shall make a delivery sale of any tobacco product or tobacco substitute to any individual who is under the legal minimum purchase age in this State.

(b) Each person accepting a purchase order for a delivery sale shall comply with:

(1) The age verification requirements set forth in § 5363 of this title;

(2) The disclosure requirements set forth in § 5364 of this title;

(3) The shipping requirements set forth in § 5365 of this title;

(4) The registration and reporting requirements set forth in § 5366 of this title;

(5) The tax collection requirements set forth in § 5367 of this title; and

(6) All other laws of this State generally applicable to sales of any tobacco product or tobacco substitute that occur entirely within this State, including, but not limited to, those laws imposing:

a. Excise taxes;

b. Sales taxes;

c. License and revenue-stamping requirements; and

d. Escrow payment obligations as set forth in § 6082 of Title 29.

(74 Del. Laws, c. 95, § 1; 82 Del. Laws, c. 10, § 13.)

§ 5363 Age verification requirements.

(a) No person shall mail, ship or otherwise deliver any tobacco product or tobacco substitute in connection with a delivery sale unless prior to the first delivery sale to such consumer:

(1) Receives both a copy of a valid form of government identification showing date of birth to verify the purchaser is age 21 years or over and an attestation from the purchaser certifying that the information on the government identification truly and correctly identifies the purchaser and the purchaser's current address. Such attestation shall also confirm:

a. That the prospective consumer understands that signing another person's name to such certification is illegal;

b. That the sale of tobacco products, including cigarettes, or tobacco substitutes to individuals under the legal minimum purchase age is illegal; and

c. That the purchase of tobacco products, including cigarettes, or tobacco substitutes by individuals under the legal minimum purchase age is illegal under the laws of this State;

(2) Delivers the tobacco product or tobacco substitute to the address of the purchaser given on the valid form of government identification and by a postal or package delivery service method that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package;

(3) Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of § 5364 of this title; and

(4) In the case of an order for any tobacco product or tobacco substitute pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name.

(b) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

(c) Any wholesale or retail seller of cigars or pipe tobacco shall affirm that the purchaser of said product is 21 years of age or older before the time of sale.

(74 Del. Laws, c. 95, § 1; 76 Del. Laws, c. 171, § 3; 82 Del. Laws, c. 10, § 14.)

§ 5364 Disclosure requirements.

The notice required under § 5363(a)(3) of this title shall include:

(1) A prominent and clearly legible statement that any tobacco product or tobacco substitute sales to consumers below the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with § 5363 of this title; and

(3) A prominent and clearly legible statement that any tobacco product sales are subject to tax under § 5305 of this title, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(74 Del. Laws, c. 95, § 1; 82 Del. Laws, c. 10, § 15.)

§ 5365 Shipping requirements.

(a) Each person who mails, ships or otherwise delivers a tobacco product, as defined under § 5301 of this title, in connection with a delivery sale shall become affixing agents as defined under § 5301 of this title and shall be eligible to receive commissions under § 5318 of this title. Each person who mails, ships or otherwise delivers a tobacco product or tobacco substitute, as defined under § 5361 of this title, must do all of the following:

(1) Include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows:

"Any Tobacco Product or Tobacco Substitute: Delaware Law Prohibits Shipping to Individuals Under 21, and Requires the Payment of all Applicable Taxes";

(2) Use a method of mailing, shipping or delivery that obligates the delivery service to require:

a. The consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container; and

b. Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept

delivery of the shipping container, demonstrating that the individual is either the addressee or another adult of legal minimum purchase age residing at the consumer's address.

However, proof of the legal minimum purchase age shall be required only if such individual appears to be under 30 years of age; and

(3) Provide to the delivery service retained for such delivery sale evidence of full compliance with § 5367 of this title.

(b) If the person accepting a purchase order for a delivery sale delivers the any tobacco product or tobacco substitute without using a delivery service, such person shall comply with all requirements of this subchapter applicable to a delivery service and shall be in violation of the provisions of this subchapter if he or she fails to comply with any such requirement.

(74 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 10, § 16.)

§ 5366 Registration and reporting requirements.

(a) Prior to making delivery sales or mailing, shipping or otherwise delivering any tobacco product, as defined under § 5301 of this title, in connection with any such sales, every person shall file with the Department a statement setting forth such person's name, trade name and the address of such person's principal place of business and any other place of business.

(b) Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped or otherwise delivered any tobacco product, as defined under § 5301 of this title, in connection with any such sale during the previous calendar month shall file with the Department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(1) The name and address of the consumer to whom such delivery sale was made;

(2) The brand or brands of the any tobacco product, as defined under § 5301 of this title, that were sold in such delivery sale; and

(3) The quantity of cigarettes that were sold in such delivery sale.

(c) Any person that satisfies the requirements of 15 U.S.C. § 376 shall be deemed to satisfy the requirements of this section.

(74 Del. Laws, c. 95, § 1; 82 Del. Laws, c. 10, § 17.)

§ 5367 Collection of taxes.

Each person accepting a purchase order for a delivery sale, to include cigars and pipe tobacco shall collect and remit to the Department all any tobacco product taxes imposed by this State with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the State.

(74 Del. Laws, c. 95, § 1; 76 Del. Laws, c. 171, § 4.)

§ 5368 Penalties.

(a) Except as otherwise provided in this section, a first violation of any provision of this subchapter shall be punishable by a fine of $1,000 or 5 times the retail value of the any tobacco product or tobacco substitute involved, whichever is greater. A second or subsequent violation of any provision of this subchapter shall be punishable by a fine of $5,000 or 5 times the retail value of the tobacco products or tobacco substitutes involved, whichever is greater.

(b) Any person who knowingly violates any provision of this subchapter, or who knowingly and falsely submits a certification under § 5363(a)(1) of this title in another person's name, shall, for each such offense, be fined $10,000 or 5 times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than 5 years, or both.

(c) Any person failing to collect or remit to the Department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of 5 times the retail value of the any tobacco product involved.

(d) (1) Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of this subchapter shall be forfeited to the State and destroyed.

(2) All fixtures, equipment and all other materials and personal property on the premises of any person who, with the intent to defraud the State, violates any of the requirements of this subchapter, shall be forfeited to the State.

(74 Del. Laws, c. 95, § 1; 82 Del. Laws, c. 10, § 18.)

§ 5369 Enforcement.

The Attorney General or the Attorney General's designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in this State to prevent or restrain violations of this subchapter by any person or any person controlling such person.

(74 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1.)

Part IV
Commodity Taxes
Chapter 54
REALTY TRANSFER TAX
Subchapter I
Realty Transfer Tax

§ 5401 Definitions [For application of this section, see 81 Del. c. 384, § 3].

As used in this subchapter, except where the context clearly indicates a different meaning:

(1) "Document" means any deed, instrument or writing whereby any real estate within this State, or any interest therein, shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, but shall not include the following:

a. Any will;

b. Any lease other than those described or defined in paragraph (5) of this section below;

c. Any mortgage;

d. Any conveyance between corporations operating housing projects pursuant to Chapter 45 of Title 31 and the shareholders thereof;

e. Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;

f. Any conveyance to nonprofit industrial development agencies;

g. Any conveyance between husband and wife;

h. Any conveyance between persons who were previously husband and wife, but who have since been divorced; provided such conveyance is made after the granting of the final decree in divorce and the real estate or interest therein subject to such conveyance was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce;

i. Any conveyance between parent and child or the spouse of such a child;

j. Any conveyance:

1. To a trustee, nominee or straw party for the grantor as beneficial owner,

2. For the beneficial ownership of a person other than the grantor where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter, or

3. From a trustee, nominee or straw party to the beneficial owner;

k. Any conveyance between a parent entity and a wholly-owned subsidiary entity; provided such conveyance is without actual consideration;

l. Correctional deeds without actual consideration;

m. Any conveyance to or from the United States or this State, or to or from any of their instrumentalities, agencies or political subdivisions and the University of Delaware and Delaware State University;

n. Any conveyance to or from an entity, where the grantor or grantee owns an equity interest in the entity in the same proportion as the grantor's or grantee's interest in, or ownership of, the real estate being conveyed; provided, however, that this paragraph shall not apply to any distribution in liquidation or other conveyance resulting from the partial or complete liquidation of an entity, unless the equity interest of the entity being liquidated has been held by the grantor or grantee for more than 3 years;

o. Any conveyance by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises are taken in trade by such builder as a part of the consideration from the purchaser of new, previously unoccupied premises;

p. Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure;

q. Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee, or by any privy of the grantee, for any commercial purpose; provided, however, that only that portion of the tax which is attributable to and payable by the religious organization or other body or person holding title to real estate for a religious organization under § 5402 of this title shall be exempt;

r. Any conveyance to or from a volunteer fire company, organized under the laws of this State; provided, however, that only that portion of the tax which is attributable to and payable by the volunteer fire company under § 5402 of this title shall be exempt;

s. Any conveyance of a "manufactured home" as defined in § 7003 of Title 25, provided tax on said conveyance has been paid under § 3002 of this title;

t. Any conveyance without consideration to an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue

Code [26 U.S.C. § 501(c)(3)];

u. Any conveyance to a nonprofit conservation organization when the property is purchased for open space preservation purposes;

v. Any conveyance to or from an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code when the purpose of said conveyance is to provide owner-occupied housing to low and moderate income households by rehabilitating residential properties and reselling said properties without profit;

w. Any conveyance between siblings, half siblings, or step siblings;

x. Any conveyance to or from a land bank formed under Chapter 47 of Title 31.

(2) "First-time home buyer" means any 1 of the following:

a. A natural person who has at no time held any direct legal interest in residential real estate, wherever located, and who intends to occupy the property being conveyed as his or her principal residence within 90 days following the transaction.

b. Spouses purchasing as joint tenants or tenants by the entirety, when neither spouse has ever held any direct legal interest in residential real estate, wherever located, and both of whom intend to occupy the property being conveyed as their principal residence within 90 days following the transaction.

c. Individuals purchasing as joint tenants or cotenants, when none of the individuals has ever held any direct legal interest in residential real estate, wherever located, and both of whom intend to occupy the property being conveyed as their principal residence within 90 days following the transaction.

(3) "Transaction" means the making, executing, delivering, accepting or presenting for recording of a document.

(4) "Value" means, in the case of any document granting, bargaining, selling or otherwise conveying any real estate or interest or leasehold interest therein, the amount of the actual consideration thereof, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances and ground rents which encumber the interest in real estate and any other interest in real estate conveyed; provided, that in the case of a transfer for an amount less than the highest appraised full value of said property for local real property tax purposes, "value" shall mean the highest such appraised value unless the parties or one of them can demonstrate that fair market value is less than the highest appraised value, in which case "value" shall mean fair market value, or actual consideration, whichever is greater.A demonstration that the transaction was at arm's length between unrelated parties shall be sufficient to demonstrate that the transaction was at fair market value.

(5) The term "document" defined in paragraph (1) of this section shall include the following:

a. Any writing purporting to transfer a title interest or possessory interest for a term of more than 5 years in a condominium unit or any unit properties subject to the Unit Property Act;

b. Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the State or other political subdivision thereof;

c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than 5 years. For this purpose, the term "residential property" means any structure or part of structure which is intended for residential use, and excluding any commercial unit subject to tax under § 2301(a)(6) of this title, relating to commercial lessors.

(6) In determining the term of a lease under paragraph (5) of this section above, it shall be presumed for the purpose of computing the lease term that any rights or options to renew or extend will be exercised.

(7) For purposes of paragraph (4) of this section, in the case of a document described in paragraph (5) of this section under which the consideration is based in whole or in part on a percentage of the income or receipts to be received in the future, actual consideration shall include the amounts actually received under such percentage of income or receipts provision; provided, however, and notwithstanding any other provisions of this chapter, that the tax imposed by this chapter shall be due and payable to the Division of Revenue within 30 days after the date such amounts become due and payable under the agreement.

(8) a. Except as provided in paragraphs (8)b. and c. of this section, where beneficial ownership in real estate in this State is transferred through a conveyance or series of conveyances of intangible interests including mergers and all other indirect exchanges, in a corporation, limited liability company, partnership, trust, pass-through entity or other entity, such conveyance shall be taxable under this chapter as if such property were conveyed through a duly recorded "document" as defined in paragraph (1) of this section, and subject to the exemptions contained therein, except those exemptions contained in paragraphs (1)j. and n. of this section.

b. No bona fide pledge of stock or limited liability membership interest, or partnership interests as loan collateral nor any transfer of publicly traded stock; publicly traded limited liability company member interest or publicly traded partnership interest shall be deemed subject to taxation under this paragraph.

c. Where the beneficial owners of real property prior to the conveyance or series of conveyances referred to in this paragraph own 80% or more of the beneficial interest in the real estate following said conveyance or conveyances, such transfers shall not be subject to tax under this paragraph. Where the beneficial owners of real property prior to the conveyance or series of conveyances referred to in this paragraph own less than 80% of the beneficial interest in the real estate following said conveyance or conveyances, such transfers shall not be subject to tax under this paragraph, unless, under regulations promulgated by the Secretary of Finance, such transfer or transfers are properly characterized as a sale of real property. Such characterization shall take into account the timing of the transaction, beneficial ownership prior to and subsequent to the conveyance or conveyances; the business purpose of the corporation, limited liability company, partnership, trust, pass-through entity or other entity, and such other factors as may be

relevant.

(9) a. Notwithstanding paragraph (1) of this section, there shall be included in the definition of "document" for purposes of this chapter any contract or other agreement or undertaking for the construction of all or a part of any building, except for 1 or more buildings of which 85% or more of the total square footage was constructed for the purpose of manufacturing, as defined in § 2701 of this title, all or a portion of which contract, agreement, or undertaking (or any amendment to the foregoing) is entered into, or labor or materials are supplied, either prior to the date of the transfer of the land on which the building is to be constructed or within 1 year from the date of the transfer to the grantee.

b. A jurisdiction in this State may not issue a building permit for a building unless the person or persons (including corporations or other associations) requesting the permit demonstrates in whatever form may be specified by the Director of Revenue, including at the Director's discretion, a form of affidavit, that 1 of the following applies:

1. A transfer as described in this section has not occurred within the preceding year.

2. A portion of the contract for construction for which the permit is being requested was not entered into, and materials or labor with respect to the building have not been provided, within 1 year of the date on which the property was transferred.

3. There has been paid a realty transfer tax on the document, as defined in this paragraph.

4. The grantee of the property, or an entity that is part of an enterprise with common ownership or common direction and control with the grantee of the property, is or will be licensed as a manufacturer under Chapter 27 of this title.

c. In addition, no jurisdiction in this State shall issue a certificate of occupancy relative to any building on which a tax is provided by this subsection unless and until the owner recertifies the actual cost of the building and pays any additional tax due as a result of such recertification.

d. A "building" for purposes of this paragraph shall mean any structure having a roof supported by columns or walls which structure is intended for supporting or sheltering any use or occupancy but shall not include any alteration of or addition to an existing building where the cost of said alteration or addition is less than 50% of the value of the property transferred.

e. A "transfer" for purposes of this paragraph shall include any transfer made by a "document" as described in this section, other than this paragraph, and shall not include any transaction excluded from the definition of "document" under the provisions of paragraphs (1)a.-u. of this section.

(30 Del. C. 1953, § 5401; 55 Del. Laws, c. 109, § 1; 55 Del. Laws, c. 413, § 1; 59 Del. Laws, c. 153, §§ 1-4; 60 Del. Laws, c. 507, § 3; 62 Del. Laws, c. 316, § 1; 64 Del. Laws, c. 182, §§ 1, 2; 65 Del. Laws, c. 118, § 3; 65 Del. Laws, c. 426, § 1; 67 Del. Laws, c. 40, §§ 8, 9; 67 Del. Laws, c. 262, § 1; 68 Del. Laws, c. 165, § 1; 69 Del. Laws, c. 188, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 217, § 1; 72 Del. Laws, c. 372, § 1; 75 Del. Laws, c. 225, §§ 1-3, 5-7; 80 Del. Laws, c. 155, § 3; 81 Del. Laws, c. 384, § 1; 83 Del. Laws, c. 56, § 72; 83 Del. Laws, c. 107, § 9; 83 Del. Laws, c. 323, § 7.)

§ 5402 Rate of tax; when payable; exception [For application of this section, see 81 Del. Laws, c. 56, § 2 and 81 Del. C. 384, § 3].

(a) Every person who makes, executes, delivers, accepts or presents for recording any document, except as defined or described in § 5401(5) of this title, or in whose behalf any document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or any part thereof, a realty transfer tax at the rate of 3 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 1½ percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of Title 9, in which case 2½ percent, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be apportioned equally between grantor and grantee.

(b) No tax shall be imposed on conveyances when the actual value of the property being transferred is less than $ 100

(c) Notwithstanding subsection (a) of this section, for any first-time home buyer who enters into a transaction, on or after August 1, 2017, who would otherwise be subject to the rate of tax set forth in subsection (a) of this section, that portion of the realty transfer tax payable by the first-time home buyer shall be reduced by an amount equal to ½ percent multiplied by the lesser of the value of the property or $400,000. The first-time home buyer reduction set forth in this subsection shall apply to the grantee's portion of the realty transfer tax as defined in subsection (a) and shall not relieve the grantor from payment of the grantor's portion of the realty transfer tax as defined in subsection (a).

(d) Every person who makes, executes, delivers, accepts or presents for recording any document defined or described in § 5401(5) of this title, or in whose behalf any such document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or in any part thereof, a realty transfer tax at the rate of 3 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 1½ percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of Title 9, in which case 2½ percent, which tax shall be payable as follows:

(1) The tax on the consideration attributed to the first year of the term shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording;

(2) The tax on the consideration attributed to each successive year of the term thereafter shall be paid annually to the Division of Revenue.

(e) There shall be no tax imposed on any document described in § 5401(5) of this title entered into prior to July 7, 1973.

(f) Notwithstanding subsection (a) of this section, the rate of tax on documents described in § 5401(9) of this title shall be 2 percent on

amounts exceeding $10,000, which shall be borne by the owner of the building whose construction is made subject to tax under § 5401(9) of this title.

(30 Del. C. 1953, § 5402; 55 Del. Laws, c. 109, § 1; 58 Del. Laws, c. 297; 59 Del. Laws, c. 153, §§ 5, 7; 67 Del. Laws, c. 262, § 2; 71 Del. Laws, c. 349, §§ 1, 2; 81 Del. Laws, c. 56, § 1; 81 Del. Laws, c. 384, § 1.)

§ 5403 Transfer by broker.

Where there is a transfer of a residential property by a licensed real estate broker, which property was transferred to the broker within the preceding year as part of the consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to the broker shall be given to the broker toward the amount of the tax due upon the transfer. If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.

(30 Del. C. 1953, § 5403; 55 Del. Laws, c. 109, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5404 Payment from proceeds of judicial sale.

The tax imposed by this subchapter shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer conducting said sale, shall pay the tax imposed out of the first moneys paid to the sheriff or other officer in connection therewith; provided, that if prior to delivery of the deed pursuant to the said sale, the purchaser shall deliver to the sheriff an affidavit as described in § 5409 of this title that the transfer is exempt from tax under § 5401(1)p. of this title, the sheriff shall not pay the tax, but shall deliver the affidavit to the Recorder of Deeds as agent for the Department of Finance.

(30 Del. C. 1953, § 5404; 55 Del. Laws, c. 109, § 1; 62 Del. Laws, c. 316, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5405 Documentary stamps; affixing; cancellation; other methods.

(a) The payment of the tax imposed by this subchapter shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting such document for recording. Such stamps shall be affixed in such manner that their removal will require the continued application of steam or water and the person using or affixing such stamps shall write, stamp or cause to be written or stamped thereon the initials of the person's name and the date upon which such stamps are affixed or used so that such stamps may not again be used; provided, that the Department of Finance may prescribe such other method of cancellation as it may deem expedient.

(b) The Department of Finance may, by regulation, provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing of documentary stamps.

(30 Del. C. 1953, § 5405; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A; 70 Del. Laws, c. 186, § 1.)

§ 5406 Furnishing stamps; sale; agents; compensation; bond premiums.

(a) The Department of Finance shall prescribe, prepare and furnish stamps, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this subchapter. The Department of Finance shall make provisions for the sale of such stamps in such places as it may deem necessary.

(b) The Department of Finance may appoint the recorder of deeds in each county, and other persons within or without the State, as agents for the sale of stamps to be used in paying the tax imposed by this subchapter upon documents and may allow a commission to said agents of 1 percent of the face value of the stamps. The commissions allowed to a Recorder of Deeds shall be turned over to the county treasurer in which the tax is collected, for the use of the county.

(c) The Department of Finance shall pay the premium on any bond required by the Department of Finance to be procured by any agent for the performance of the agent's duties under this subchapter.

(30 Del. C. 1953, § 5406; 55 Del. Laws, c. 109, § 1; 55 Del. Laws, c. 286; 57 Del. Laws, c. 741, § 17A; 63 Del. Laws, c. 446, § 1; 64 Del. Laws, c. 15, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5407 Enforcement; rules and regulations.

The Department of Finance shall enforce this subchapter and may adopt and enforce rules and regulations relating to:

(1) The method and means to be used in affixing or cancelling of stamps in substitution for, or in addition to, the method and means provided in this subchapter;

(2) The denominations and sale of stamps;

(3) Any other matter or thing pertaining to the administration and enforcement of this subchapter.

(30 Del. C. 1953, § 5407; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A.)

§ 5408 Failure to affix stamps.

No document upon which tax is imposed by this subchapter shall be recorded in the office of any recorder of deeds of any county of this State, unless proof of the payment of the realty transfer tax appears on the document as is provided in § 5405(a) of this title.

(30 Del. C. 1953, § 5408; 55 Del. Laws, c. 109, § 1.)

§ 5409 Value to be stated in document or affidavit.

Every document when lodged with, or presented to, any Recorder of Deeds in this State for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by an affidavit executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof and the reason, if any, why such document is not subject to tax under this chapter; provided, that in the case of a transaction exempt from tax under § 5401(1)p. of this title, the affidavit shall be made by the grantee.

(30 Del. C. 1953, § 5409; 55 Del. Laws, c. 109, § 1; 62 Del. Laws, c. 316, § 3; 64 Del. Laws, c. 182, § 3; 68 Del. Laws, c. 187, § 17.)

§ 5410 Unlawful acts; penalty.

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

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

(2) Make use of any documentary stamp to denote payment of the realty transfer tax without cancelling such stamp as required by § 5405(a) of this title, or as prescribed by the Department of Finance;

(3) Fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the Department of Finance under the provisions of this subchapter;

(4) Fraudulently cut, tear or remove from a document any documentary stamp or other evidence of payment of the realty transfer tax;

(5) Fraudulently affix to any document upon which tax is imposed by this subchapter any documentary stamp or other evidence of payment of the realty transfer tax which has been removed from any other document upon which tax is imposed by this subchapter, or any documentary stamp or other evidence of payment of the realty transfer tax of insufficient value, or any forged or counterfeited stamp or other evidence of payment of the realty transfer tax or any impression of any forged or counterfeited stamp, die, plate or other article;

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

(7) Knowingly have in possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this chapter; provided, that the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause;

(8) Knowingly or wilfully prepare, keep, sell, offer for sale or have in possession, any forged or counterfeited documentary stamps; or

(9) Accept for recording in the office of any Recorder of Deeds any document upon which the realty transfer tax is imposed, without the proper documentary stamp or other evidence of payment of the tax affixed thereto, as required by this chapter and as is indicated in such document or accompanying affidavit.

(b) Whoever violates this section shall be fined not more than $500 and imprisoned for not more than 1 year, or both.

(c) The Superior Court shall have jurisdiction over offenses under this section.

(30 Del. C. 1953, § 5410; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A; 70 Del. Laws, c. 186, § 1.)

§ 5411 Failure to pay tax; determination; redetermination; review; interest [Repealed].

Repealed by 68 Del. Laws, c. 187, § 18, effective Jan. 1, 1992.

§ 5412 Grantor to pay tax.

As between the parties to any transaction which is subject to the realty transfer tax imposed by this subchapter, in the absence of an agreement to the contrary, the burden for paying the tax shall be on the grantor.

(30 Del. C. 1953, § 5412; 55 Del. Laws, c. 109, § 1.)

§ 5413 Refunds [Repealed].

Repealed by 68 Del. Laws, c. 187, § 18.

§ 5414 Tax lien.

Chapter 29 of Title 25 shall not apply to taxes arising under this subchapter.

(65 Del. Laws, c. 426, § 2.)

§ 5415 Distribution of tax receipts [But see 66 Del. Laws, c. 94, § 2, regarding possible contingent repeal of statute].

(a) The tax received under this subchapter shall be disbursed by the appropriate county Recorder of Deeds, or by the agent appointed pursuant to § 5406 of this title, as follows:

(1) Seventy-five percent to the Division of Revenue;

(2) Twenty-five percent to the State Treasurer to be deposited in a special fund for distribution to municipalities and counties in accordance with this section.

(b) There is created in the office of the State Treasurer a special fund for the credit and redistribution of the tax receipts disbursed to the State Treasurer pursuant to paragraph (a)(2) of this section; provided, however, that if, in state fiscal year 1988, 25 percent of the realty transfer tax receipts exceeds $8,000,000, then the excess over that amount shall be disbursed by the State Treasurer to the Division of Revenue.

(c) The tax receipts disbursed to the State Treasurer pursuant to paragraph (a)(2) of this section, less any excess amount disbursed by the State Treasurer to the Division of Revenue pursuant to subsection (b) of this section, shall be distributed among the counties and municipalities in accordance with the following pro rata allocations:

Arden Village0.0200%Village of Ardencroft0.0125%Town of Ardentown0.0125%Town of Bellefonte0.0400%Town of Bethany Beach0.1000%Town of Bethel0.0125%Town of Blades0.1500%Town of Bowers Beach0.0400%Town of Bridgeville0.2900%Town of Camden0.1900%Town of Cheswold0.0125%Town of Clayton0.2400%Town of Dagsboro0.0700%City of Delaware City0.4600%Town of Delmar0.2100%Town of Dewey Beach0.0400%City of Dover5.3700%Town of Ellendale0.0300%Town of Elsmere0.8500%Town of Farmington0.0125%Town of Felton0.0900%Town of Fenwick Island0.0300%Town of Frankford0.1600%Town of Frederica0.0700%Town of Georgetown0.4400%Town of Greenwood0.1300%City of Harrington0.0800%Town of Hartly0.0125%Town of Henlopen Acres0.0400%Town of Houston0.0400%Kent County7.1200%Town of Kenton0.0125%Town of Laurel0.8000%Town of Leipsic0.0400%City of Lewes0.5900%Town of Little Creek0.0125%Town of Magnolia0.0200%Town of Middletown0.2300%City of Milford1.3500%Town of Millsboro0.3500%Town of Millville0.0125%Town of Milton0.3400%New Castle County44.4800%City of New Castle0.6800%City of Newark2.4800%Town of Newport0.2100%Town of Ocean View0.1200%Town of Odessa0.0125%City of Rehoboth Beach0.4300%City of Seaford1.2650%Town of Selbyville0.3000%Town of Slaughter Beach0.0300%Town of Smyrna1.1100%Town of South Bethany0.0300%Sussex County11.9400%Town of Townsend0.0200%Town of Viola0.0125%City of Wilmington16.5550%Town of Woodside0.0125%Town of Wyoming0.1800%

Provided, however, regardless of the percentage allocations stated above, that each county and municipality shall receive a minimum payment of $1,000; further provided, that the aggregate difference between the amounts determined by the percentage allocations for those recipients receiving such minimum payments and the total amount of all $1,000 minimum payments shall be deducted pro rata from the payments made to those counties and municipalities receiving more than $1,000, according to their percentage allocations and that such deduction shall be made in the disbursements to occur on or before the final distribution under this section.

(d) Except as provided in subsection (b) of this section, pro rata distributions to the counties and municipalities pursuant to this section shall be made on or before the fifteenth day of the month following the month in which the tax receipts are credited to the special fund established by subsection (b) of this section.

(e) Funds distributed to the counties and municipalities pursuant to this section may be used by the recipients for any object, program, function or purpose for which such recipient, or any officer, department, agency, board or commission thereof, is by law authorized or required to raise, appropriate or expend money; provided, however, that receipt of these funds shall not cause the recipients to be considered agencies, as defined in Chapters 63 and 65 of Title 29.

(66 Del. Laws, c. 94, § 1.)

Subchapter II

Conservation Trust Fund, Assignment of Tax Revenue

§ 5421 Definitions.

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

(1) “Conservation Trust Fund” means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to this subchapter.

(2) “Department” means the Department of Natural Resources and Environmental Control.

(3) “Endowment Account” means the account by that name created within the Conservation Trust Fund pursuant to § 5423 of this title.

(4) “Infrastructure Account” means the account by that name created within the Conservation Trust Fund pursuant to § 5423 of this title.

(5) “Open Space Program” means the program to carry out the purpose of Chapter 75 of Title 7, the Delaware Land Protection Act.

(6) “Outdoor Recreation, Park and Trails Program” means a local government matching grants program to support the expansion of access to outdoor recreational facilities across the state.

(7) “Project” means the planning for, and the acquisition and development of property, undertaken to achieve the purposes of this chapter.

(8) “Secretary” means the Secretary of the Department.

(9) “State agency” means the following units of state government which manage natural and cultural resources: Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife), Department of State (Division

of Historical and Cultural Affairs) and the Department of Agriculture (Division of Resource Management).

(10) "Stewardship Program" means the program by that name created within the Conservation Trust Fund pursuant to § 5423 of this title. Generally, this program shall be used in the planning for and implementation of management projects on public lands that promote cultural preservation and conservation activities related to plants and animals and their habitat.

(67 Del. Laws, c. 336, § 2; 68 Del. Laws, c. 385, § 1; 71 Del. Laws, c. 349, § 3; 73 Del. Laws, c. 88, § 1; 79 Del. Laws, c. 420, § 2.)

§ 5422 General.

The purpose of this subchapter is to provide funding to implement the conservation program described in 65 Del. Laws, c. 212, and safeguard this funding in perpetuity. Funding to achieve the purposes of this subchapter shall be provided from appropriations by the State, grants from the federal government, funds in the Conservation Trust Fund and the earnings thereon, private donations and any other sources which may be available from time to time. The Department is authorized and directed to encourage and seek funding from any available private and public sources.

(67 Del. Laws, c. 336, § 2; 71 Del. Laws, c. 349, § 4; 79 Del. Laws, c. 420, § 2.)

§ 5423 Delaware Land and Water Conservation Trust Fund.

(a) There is created and established under the jurisdiction and control of the Department a trust fund to be known as the Delaware Land and Water Conservation Trust Fund to implement the conservation program described in 65 Del. Laws, c. 212. Within the Conservation Trust Fund there is established an "Endowment Account," and an "Infrastructure Account." The Endowment Account shall be invested in a manner consistent with endowment investment guidelines as approved by the Cash Management Policy Board. Funds in the Conservation Trust Fund shall be applied for the purposes of this subchapter as hereinafter provided.

(b) (1) The corpus of funds remaining on deposit in the Delaware Land and Water Conservation Trust Fund maintained under § 4733 [repealed] of Title 7 on July 13, 1990, shall be deposited in the Endowment Account. Up to 5% of the value across a 5-year rolling average of the value of the Endowment Account shall be distributed annually as follows: 2/3 to the Outdoor Recreation, Parks and Trails Program and 1/3 to the Stewardship Program. Additional deposits shall be made to the Endowment Account from realty transfer taxes as hereinafter provided, from other state funds as the General Assembly may from time to time determine, and from any other public and private sources which may from time to time be made available. The Endowment Account is intended to provide a permanent endowment to accomplish the purposes of this subchapter. The corpus of the Endowment Account shall not be invaded unless for a purpose identified in this section.

(2) On or before December 15 of each fiscal year the State shall transfer $1,000,000 of realty transfer taxes to the Infrastructure Account annually.

(3) [Repealed.]

(c) (1) Funds for the Open Space Program, and the earnings thereon to be retained therein, shall be applied by the Department to pay the costs of planning, and acquisition and development of property, to achieve the purposes of this subchapter. The program shall be funded by a transfer of $9,000,000 of realty transfer taxes into the Endowment Account on or before December 15 of each fiscal year. The annual appropriations to the Endowment Account are intended to provide funds for current expenditure to achieve the purposes of this subchapter although the Department may, in its discretion, accumulate funds for particular project purposes.

(2) It is intended that property acquired with funds from the Endowment Account shall remain in public outdoor recreation and conservation use in perpetuity. Said property may not be converted to other uses without a subsequent act of the General Assembly. If the General Assembly approved the sale of any project or portion thereof, the State shall receive its pro rata share of net sale income. Said funds shall be deposited in the Endowment Account to be immediately available for other projects.

(d) (1) Funds in the Endowment Account, and the earnings thereon, which are to be retained therein, shall be disbursed, upon application, to state agencies, counties, municipal governments and local park districts, to pay the costs of planning, acquisition and outdoor recreation infrastructure development of property, to achieve the purposes of this subchapter. Not more than 75% of a total project cost may be paid from the Conservation Trust Fund. In any given year, state agencies shall only be eligible to receive funds as defined in this section where the Secretary determines that available funds exceed the eligible project requests from nonstate applicants. Private entities, including nonprofit entities, and school districts shall not be eligible for a grant through this program. Funds in the Endowment Account shall be eligible to fund outdoor recreation, park, and trail projects in accordance with the provisions of § 6102A(c)(1) of Title 29 and the provisions of § 8017A [repealed] of Title 29. Administrative costs associated with the administration of this section and development of the statewide outdoor recreation plan shall be eligible for funding under this section.

(2) The applicant requesting funds for outdoor recreation, park, and trail projects must provide evidence satisfactory to the Department that the required matching funds have been committed or will be expended for the proposed project. Any property previously held or expenditures already made by the applicant may not be counted as part of an applicant's matching contribution. Land donations, in-kind services and/or materials provided by the applicant or received by the applicant from other sources may be used by the applicant under certain conditions to satisfy its matching requirement.

(3) All expenses of operation and maintenance for property acquired with funds from the Endowment Account shall be borne perpetually by the applicant.

(4) It is intended that property acquired or improved with funds from the Endowment Account shall remain in public outdoor recreation and conservation use in perpetuity. Said property may not be converted to other uses without a subsequent act of the General

Assembly. If the General Assembly approved the sale or lease of any project or a portion thereof, the pro rata share of net sale and/or lease income shall be deposited into the Endowment Account. Said funds shall be deposited in the Endowment Account to be immediately available for other projects.

(e) Funds dedicated for the Stewardship program, and the earnings thereon, which are to be retained therein, shall be disbursed proportionately by the Secretary according to the following formula: 35% to the Division of Parks and Recreation, 35% to the Division of Fish and Wildlife, 10% to the Division of Historical and Cultural Affairs, and 20% to the Department of Agriculture Forest Service. The Stewardship program is intended to provide funds for current expenditure, although the state agencies may, in their discretion, accumulate funds for Stewardship programs for particular project purposes.

It is the intent of the General Assembly that funds in the Stewardship program shall be used by the state agencies for management, preservation and interpretation of biological, recreational and cultural resources in addition to any other funds which have been previously appropriated for this purpose or which may be so appropriated in the future.

(f) Funds in the Infrastructure Account, and the earnings thereon, which are to be retained therein, shall be disbursed by the Secretary to meet critical infrastructure needs of the Division of Parks and Recreation, the Division of Fish and Wildlife, and other department outdoor recreational facilities. The Infrastructure Account is intended to provide funds for reinvestment in key open space infrastructure such as campgrounds, trails, visitor centers, recreational amenities, hunting, fishing and wildlife viewing areas.

(g) The Secretary shall maintain an annual accounting of all Land and Water Trust fund expenditures and report to the General Assembly.

(67 Del. Laws, c. 336, § 2; 68 Del. Laws, c. 14, §§ 1, 2; 68 Del. Laws, c. 385, §§ 2, 3; 69 Del. Laws, c. 348, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 210, § 29; 71 Del. Laws, c. 349, §§ 5-11; 72 Del. Laws, c. 489, §§ 95, 96; 73 Del. Laws, c. 8, § 4; 73 Del. Laws, c. 88, §§ 1-7, 9[8]; 77 Del. Laws, c. 329, § 83; 79 Del. Laws, c. 420, § 2; 80 Del. Laws, c. 78, § 16; 80 Del. Laws, c. 299, § 12; 81 Del. Laws, c. 59, § 10; 83 Del. Laws, c. 310, § 1.)

§ 5424, 5425 Revenue bonds; Payment of tax receipts to Conservation Trust Fund [Repealed].

Repealed by 71 Del. Laws, c. 349, § 12.

§ 5426 Farmland Preservation Fund receipt transfer.

On or before October 15 of each fiscal year, the State shall transfer $10 million in receipts received under Chapter 54 of this title, to the Farmland Preservation Fund maintained under Chapter 9 of Title 3.

(75 Del. Laws, c. 203, § 1; 80 Del. Laws, c. 78, § 17.)

Part IV
Commodity Taxes
Chapter 55
PUBLIC UTILITIES TAXES

§ 5501 Definitions.

For purposes of this chapter only:

(1) "Direct-to-home satellite services" has the meaning ascribed in the Communications Act of 1934, 47 U.S.C. § 303(v).

(2) "Distribute" includes any and all activity to produce, distribute or supply any commodities and services as defined in this section within this State.

(3) "Distributor" includes any company, corporation, municipality, partnership, firm, association, cooperative or any person or group of persons which supplies any public utility for sale to ultimate consumers or users within this State, whether, in the case of gas or electricity, the gas or electricity is supplied through a distributor's own or a transmission company's facilities.

(4) "Gas" for purposes of this chapter means natural gas which is further defined as a naturally occurring gaseous mixture of hydrocarbons and non-hydrocarbons, the principal constituent of the gaseous mixture being methane.

(5) "Gross receipts" includes total consideration received by a distributor for commodities or services sold, distributed, produced or supplied within the State to ultimate consumers or users.

(6) "Internet access" means the provision of a computer and communication service through which a customer using a computer and a modem or other communications device may access content, information, electronic mail or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to users; the term "Internet access" does not include any services defined in paragraphs (8)a.3. and 4. of this section, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

(7) a. "Intrastate mobile telecommunications services" shall include the following:

1. Mobile telecommunications that originate and terminate in this State or that originate and terminate in the same state and, in either case, that are billed to a customer with a place of primary use in this State, other than charges which are specifically exempt from tax under § 5506 of this title, provided, however, that the taxation of such services shall be subject to the provisions of § 5508 of this title; and

2. All mobile telecommunications services that are sold to a customer whose place of primary use is within this State for a fixed periodic charge, whether or not calls provided within that fixed periodic charge originate or terminate in the same state; provided, however, that the taxation of such services shall be subject to the provisions of § 5508 of this title.

b. "Intrastate mobile telecommunications services" shall not include separately stated electronic paging services, internet access, and interstate wireless data services.

(8) a. "Public utility" includes the following commodities and services:

1. Electricity distributed for any heat, light or power use;

2. Gas (except liquefied gas) piped from a distribution center to the consumer or user for any heat, light or power use;

3. Intrastate telephone services that are not intrastate mobile telecommunications services, intrastate mobile telecommunication services and telegraph communication services;

4. Cable television communication services; and

5. Direct-to-home satellite services.

All such commodities and services are included whether distributed directly by the distributor to the consumer within this State or distributed through an intermediary to the consumer or user within this State.

b. Gas and electricity are public utilities whether distributed to a consumer or user within this State by a distributor, either directly or through an intermediary, or delivered by a transmission company.

(9) "Transmission company" includes any company, corporation, municipality, partnership, firm, association, cooperative or any person or group of persons owning, leasing or controlling property or fixtures to property within this State used for the transmission, transportation or distribution of gas or electricity.

(30 Del. C. 1953, § 5501; 58 Del. Laws, c. 301; 60 Del. Laws, c. 152, §§ 1-3; 71 Del. Laws, c. 170, §§ 1-4, 12; 72 Del. Laws, c. 39, §§ 1, 2; 72 Del. Laws, c. 101, §§ 1, 3; 73 Del. Laws, c. 399, §§ 1, 2; 75 Del. Laws, c. 5, §§ 1, 2; 77 Del. Laws, c. 82, §§ 2, 3.)

§ 5502 Imposition of tax; rate; adjustment of tariffs .

(a) A tax is imposed on intrastate telephone commodities and services distributed within this State and on intrastate mobile telecommunications services at the rate of 5.00% of the charges for such services excluding any charges for Internet access as defined in § 5501(6) of this title.

(b) (1) Except as provided in subsection (a) or paragraph (b)(2), (3) or (4) of this section, a tax is imposed upon any distributor of public

utilities, which tax shall be at the rate of 4.25% of the gross receipts or tariff charges received by the distributor for such public utilities. In addition thereto, any municipality with a population greater than 50,000 may impose, by duly enacted ordinance, a local franchise tax of no greater than 2.00% of the gross receipts received by the distributor from the amount of natural gas distributed to residences and businesses located within the boundaries of the municipality. The proceeds of any taxes imposed by such municipality pursuant to its authority set forth in this subsection shall be remitted to that municipality.

(2) A tax is imposed upon any distributor of electricity and gas commodities or services to business locations used primarily for the manufacture (as "manufacturing" is defined in § 2701 of this title and shall not include scientific, agricultural or industrial research, development or testing) of goods within this State; for food processing (as food processing is described in § 2903 of this title), agribusiness processing or the hatching of chickens in conjunction with either food processing or agribusiness processing within this State; which tax shall be at the rate of 2.00% of the gross receipts or tariff charges received by the distributor for said commodities or services distributed within this State. For purposes of this paragraph, in order for a business location to be "used primarily for the manufacture of goods or food and agribusiness processing within this State," more than 70% of the employees employed at the business location must be employed in such activity exclusively within this State. Employees employed, by way of example and not limitation, in the management or administrative support of facilities, other than or in addition to a Delaware manufacturing or food or agribusiness processing facility, are not employed exclusively in the manufacture of goods or food and agribusiness processing within this State. For purposes of this subsection, the "business location" means all contiguous real property in which the manufacturer or food or agribusiness processor, as the case may be, has an interest, including a possessory interest. For purposes of this section "agribusiness processing" means any processing, working, development, change, conditioning or reconditioning of raw materials or products into products of a different character, or effecting any combination or composition of materials, the inherent nature of which is changed such that the resulting product is food for consumption by livestock or is fertilizer for agricultural use.

(3) Notwithstanding paragraph (b)(1) or (2) of this section, whenever: (i) gas or electricity is delivered within this State by a transmission company from a person who is not a distributor within this State and such person does not report and remit the tax on such gas or electricity; and (ii) a tax would have been imposed under this section had the delivery been made by a distributor, then the tax imposed by this section shall be upon the use of the gas or electricity and shall be paid by the consumer or user and shall be at the same rate applied to the amount paid for the gas or electricity as if the tax had been computed under paragraph (b)(1) or (2) of this section. Transmission companies shall, in a manner to be prescribed by the Director of Revenue, inform persons to whom they deliver gas or electricity of the tax on the use of gas or electricity. The Director of Revenue may require information returns from transmission companies to include, without limitation, identification of the persons to which gas or electricity is delivered and the dates and quantities delivered. The Director of Revenue shall maintain the confidentiality of prices assessed or paid for gas or electricity.

(4) A tax is imposed upon any distributor of direct-to-home satellite commodities and services or cable television communications commodities and services which tax shall be at the rate of 2.125% of the gross receipts or tariff charges received by the distributor for such commodities or services distributed within this State excluding any charges for Internet access as defined in § 5501(6) of this title.

(c) When the tax imposed by subsection (b) of this section applies to a distributor subject to the regulation of the Public Service Commission, the Commission is directed, after consultation with such distributor and without a public hearing, to adjust the tariff of such distributor so that the tax is passed through pro rata to the distributor's customers and the distributor's earnings are neither increased nor decreased by such tax. The tariff adjustments filed by such distributor and approved by the Public Service Commission shall not incorporate the tax in the charges for commodities and services, and the tax shall appear on the customer's bill as a separate item. The Public Service Commission is further directed to allow such adjusted tariffs and the rates therein to become effective immediately upon filing without any requirement of 30 days' notice and without suspension thereof. The Public Service Commission may enter any orders which shall be necessary to permit the tax to be passed through to such distributor's customer while revised tariffs and billing procedures are being prepared.

(d) The tax imposed by subsection (a) and paragraph (b)(4) of this section applies to a "bundled transaction" as follows:

(1) The term "bundled transaction" means a transaction consisting of distinct and identifiable commodities or services which are sold for a single nonitemized sales price but which are treated differently for tax purposes.

(2) If the sales price is attributable to commodities or services that are taxable and commodities or services that are nontaxable, the portion of the sales price attributable to the nontaxable commodities or services shall be subject to tax unless the provider reasonably identifies and allocates such portion from its books and records kept in the regular course of business.

(3) If the sales price is attributable to commodities or services that are taxable at different rates, the total sales price shall be treated as attributable to the commodities or services taxable at the highest rate unless the selling provider reasonably identifies and allocates the portion of the sales price attributable to the commodities or services taxable at a lower rate from its books and records kept in the regular course of business.

(e) Nothing herein shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.

(f) The State shall transfer in each fiscal year the first $5,000,000 in tax receipts received under this chapter that would otherwise be deposited to the General Fund to the Energy Efficiency Investment Fund maintained by the Department of Natural Resources and

Environmental Control pursuant to Chapter 80 of Title 29.

(30 Del. C. 1953, § 5502; 58 Del. Laws, c. 301; 64 Del. Laws, c. 460, § 4; 65 Del. Laws, c. 387, §§ 1, 2; 69 Del. Laws, c. 290, §§ 1, 2; 70 Del. Laws, c. 1, § 1; 70 Del. Laws, c. 485, §§ 1, 2; 71 Del. Laws, c. 170, §§ 5, 6, 11; 72 Del. Laws, c. 39, § 3; 73 Del. Laws, c. 399, § 3; 74 Del. Laws, c. 120, § 1; 75 Del. Laws, c. 5, §§ 3-5; 77 Del. Laws, c. 82, §§ 4, 6; 78 Del. Laws, c. 75, §§ 1, 2, 4; 80 Del. Laws, c. 78, § 18; 80 Del. Laws, c. 299, § 14; 81 Del. Laws, c. 59, § 12; 82 Del. Laws, c. 244, § 23.)

§ 5503 Computation of tax.

(a) The tax imposed by § 5502(a) of this title shall be collected by the distributor from the ultimate consumer as a separate item not included in the sales price or tariff charge. The amount of tax collectible from the ultimate consumer shall in each case be calculated on the basis of a uniform percentage of the sale price or tariff charge payable by the ultimate consumer for the commodity or service which is subject to tax under this section and shall in each case be computed to the nearest highest cent; provided, however, that such tax shall not apply to receipts derived through the use of automatic coin collecting machines or coin boxes. A distributor's gross receipts shall not be deemed to include any portion of the tax collected from its consumer.

(b) The tax imposed by § 5502(b) of this title shall be paid only once and shall be considered imposed upon, in the case of deliveries of gas or electricity described in § 5502(b)(3) of this title, the ultimate consumer or user for the use of such gas or electricity. In all other cases, the tax shall be imposed on the distributor and is not to be construed as a tax upon the consumer or user.

(30 Del. C. 1953, § 5503; 58 Del. Laws, c. 301; 71 Del. Laws, c. 170, § 7; 72 Del. Laws, c. 39, § 4.)

§ 5504 Payment of tax.

(a) In the case of the distribution of public utilities as described in § 5502(a) and (b)(1), (2) or (4) of this title, the taxes collected under this chapter during any calendar month shall be paid by the distributor to the Department of Finance within 20 days after the end of said calendar month.

(b) A distributor may, with the approval of the Department of Finance, compute its remittances either upon its billings or upon its cash receipts; provided, that if the distributor is permitted to remit on the basis of its billings, the distributor shall be entitled to a credit against subsequent remittances for any taxes billed but not collected. The Secretary of Finance shall prescribe such rules, regulations and forms for the administration of the tax imposed by this chapter as the Secretary deems necessary and as are consistent with the laws of Delaware.

(c) In the case of deliveries of gas or electricity as described in § 5502(b)(3) of this title the taxes due under this chapter shall be paid within 20 days after the end of the calendar month in which the user first receives a statement from the seller of the utility setting forth the amount charged for such gas or electricity.

(30 Del. C. 1953, § 5504; 58 Del. Laws, c. 301; 60 Del. Laws, c. 547, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 170, §§ 8, 9; 72 Del. Laws, c. 39, § 4.)

§ 5505 Failure to file return or pay tax; interest and penalties [Repealed].

Repealed by 68 Del. Laws, c. 187, § 20, effective Jan. 1, 1992.

§ 5506 Exemptions.

(a) No person who is liable for the tax imposed by § 5502(b) of this title shall be required to be licensed as a wholesaler under § 2901(21) of this title.

(b) All intrastate telephone commodities and services shall be subject to the tax imposed by § 5502(a) of this title and the consumer or user thereof shall not be subject to the tax prescribed by Chapter 43 of this title.

(c) Sales of appliances or other equipment or machinery by a distributor shall be exempt from the tax imposed by § 5502(b) of this title; provided, that such sales are subject to and included in the license fees required by Chapter 29 of this title.

(d) The tax imposed by § 5502 of this title shall not apply to commodities and services furnished to:

(1) This State or the United States, or to any of their instrumentalities, agencies (including public school districts, Delaware State University and Delaware Technical and Community College) or political subdivisions;

(2) Delaware Transportation Authority and Delaware Housing Authority;

(3) The University of Delaware; and

(4) Delaware Solid Waste Authority.

(e) Gross receipts or tariff charges received by a distributor of electricity, gas or telegraph commodities and services from residential consumers and residential users and the sale price or tariff charges paid by residential consumers or residential users to distributors of telephone commodities and services shall be exempt from the tax imposed by this chapter. No distributor of electricity, gas or telegraph commodities and services shall pass on any tax imposed by this chapter to any residential consumer or residential user of such commodities and services. There shall be a presumption that all mobile telecommunications services are provided to nonresidential consumers or users unless it can be demonstrated that the services are charged to a place of primary use which is a residence and which has no other telephone service. Such presumption may be rebutted by the consumer a showing to the Division of Revenue that the use of the service took place inside the user's or consumer's residence.

(f) The tax imposed by § 5502(b) of this title shall not apply for 36 consecutive months to gas or electricity furnished to a corporation which, at any time after December 31, 1984, was a debtor in possession in a reorganization proceeding under Chapter 11 of the United

States Bankruptcy Code and which in good faith files a plan of reorganization with the United States Bankruptcy Court. The 36-month exemption period shall commence on the first day of the calendar month following the filing of the debtor corporation's plan of reorganization. During the 36-month exemption period no distributor of gas or electricity shall be assessed any tax imposed by this chapter upon the distribution of such gas or electricity to a corporation which qualifies for such exemption under this subsection, nor shall any distributor of gas or electricity pass on any tax imposed by this chapter to any such corporation. The Division of Revenue shall promulgate appropriate rules and regulations to implement this subsection.

(g) The gross receipts or tariff charges of a distributor of electricity and electrical services attributable to sales of electricity or electrical services for use in an electrolytic or electroarcthermal or air separation process shall be exempt from the tax imposed by this chapter.

(h) The gross receipts or tariff charges received by a person who furnishes gas or electricity to another person who purchases said gas or electricity for resale shall be exempt from the tax imposed by this chapter.

(i) The gross receipts or tariff charges received by a person who furnishes gas for use by a distributor in the generation of electricity for distribution and sale and the receipt and consumption of such gas shall be exempt from the tax imposed by this chapter.

(j) The gross receipts or tariff charges of a distributor of electricity, electrical services or gas attributable to sales of electricity, electrical services, gas or gas services for use in an automobile manufacturing process shall be exempt from the tax imposed by this chapter. For purposes of this subsection, the term "automobile manufacturing" shall refer to the manufacturing operations of an automobile assembly plant and shall not refer to either the administrative operations of an automobile assembly plant or to the manufacture of component parts of an automobile outside an automobile assembly plant.

(30 Del. C. 1953, § 5506; 58 Del. Laws, c. 301; 59 Del. Laws, c. 169, § 1; 60 Del. Laws, c. 35, § 1; 65 Del. Laws, c. 17, § 2; 66 Del. Laws, c. 412, § 1; 70 Del. Laws, c. 120, §§ 1, 2; 70 Del. Laws, c. 142, § 7; 70 Del. Laws, c. 507, § 1; 71 Del. Laws, c. 170, § 10; 72 Del. Laws, c. 101, § 4; 72 Del. Laws, 1st Sp. Sess., c. 249,, §§ 1, 2; 73 Del. Laws, c. 399, § 4; 77 Del. Laws, c. 412, § 2; 78 Del. Laws, c. 1, § 11; 78 Del. Laws, c. 100, § 19.)

§ 5507 Rebate of tax for certain qualified activities.

(a) In the case of the tax imposed by this chapter upon a distributor of gas or electricity commodities and services that is attributable to gross receipts or tariff charges received from a corporation that satisfies the requirements of § 2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax) for the taxable year of such corporation in which a qualified facility (as defined in § 2010(1) of this title) is placed in service by such corporation (within the meaning of § 2010(7) of this title), such corporation shall be allowed a rebate of the tax payable by such distributor for such corporation's taxable year in which such qualified facility is placed in service and for any of its 4 following taxable years in which such facility is a qualified facility with respect to such corporation on the last business day thereof. The amount of the rebate allowable to such corporation in each such taxable year shall be equal to 50 percent of the amount of the tax imposed by this chapter (computed without regard to this subsection, but computed with regard to subsection (a) of this section, if applicable) upon such distributor that is attributable to that portion of the tariff or other similar charge paid or payable to such distributor by such corporation on account of such taxable year that (1), if such qualified facility is a new facility within the meaning of § 2010(4) of this title, is allocable to the volume of such gas and electricity commodities and services consumed in the operation of such new facility during such taxable year, or (2), if such qualified facility is an expanded facility within the meaning of § 2010(5) of this title, is allocable to the excess, if any, of (i) the volume of such gas and electricity commodities and services consumed during such taxable year in the operation of that facility of which such expanded facility is a part, over (ii) the volume, if any, of such commodities and services consumed by such corporation or a related person (within the meaning of § 2010(10) of this title) in the operation of that same facility during such corporation's taxable year immediately preceding its taxable year in which such qualified facility is placed in service by such corporation. For purposes of this subsection, the amount of any tariff or other similar charge that shall be deemed allocable to the volume of any specific commodities and services shall be the excess of (1) the total amount of such tariff or charge, over (2) the amount of such tariff or charge computed without including such volume of commodities and services in the base for computing such tariff or charge.

(b) For purposes of this section, the taxable year of any person shall be the year used by such person in computing liability for Delaware income tax.

(64 Del. Laws, c. 460, § 5; 65 Del. Laws, c. 387, §§ 3, 4; 68 Del. Laws, c. 187, § 19.)

§ 5508 Sourcing rules for mobile telecommunications services.

(a) Mobile telecommunications services shall be sourced according to the provisions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116-126. The definitions and provisions of such act are hereby incorporated into this section by reference.

(b) (1) If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The written notification shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the home service provider reasonably requests to process the claim.

(2) a. Within 60 days of receiving a notice under this section, the home service provider shall review its records. If this review shows the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, then the home service provider shall correct the error and, within 90 days, refund or credit the amount of tax erroneously collected from the customer for a period of up to 2 years from the date of the customer's written notice. If this review shows that the amount of tax or assignment of place of primary use or taxing

jurisdiction is correct, then the home service provider shall provide a written explanation to the customer. In either event, the home service provider shall provide notice of any determination under this paragraph to the Director.

b. If the determination is adverse to the customer, the customer may protest such determination to the Director under § 523 of this title as if such determination were a notice of proposed assessment. If the determination is in favor of the taxpayer, the Director may nonetheless direct the home service provider to treat Delaware as the place of primary use and shall give notice to the customer of such determination, from which the customer may protest as if the home service provider had determined adversely to the customer.

(3) The procedures in paragraph (b)(1) and paragraph (b)(2)b. of this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction or a refund of or other compensation for taxes erroneously collected by the home service provider, and no cause of action based upon a dispute arising from such taxes shall accrue to the extent otherwise permitted by law until a customer has reasonably exercised the rights and procedures set forth in those subdivisions of this section.

(73 Del. Laws, c. 399, § 5.)

§ 5509,5510 [Reserved.]

Part V
Public Accommodation Taxes
Chapter 61
LODGING TAX
Subchapter I
Lodging Tax Collection

§ 6101 Definitions.

As used in this chapter:

(1) "Hotel" means any person engaged in the business of operating a place where the public may, for a consideration, obtain sleeping accommodations and meals and which has at least 6 permanent bedrooms for the use of guests, excluding, however, any charitable, educational or religious institution, summer camp for children, hospital or nursing home.

(2) "Motel" means any person engaged in the business of furnishing, for a consideration, transient guests with sleeping accommodations, bath and toilet facilities, linen service and a place to park an automobile.

(3) "Occupancy" means the use or possession or the right to the use or possession by any person other than a permanent resident of any room or rooms in a hotel, motel or tourist home 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.

(4) "Occupant" means any person other than a permanent resident who for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel, motel or tourist home under any lease, concession, permit, right of access, license or agreement.

(5) "Operator" means any person operating a hotel, motel or tourist home.

(6) "Permanent resident" means any occupant who has occupied or has the right to occupancy of any room or rooms in a hotel, motel or tourist home for at least 5 consecutive months.

(7) "Rent" means 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 and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(8) "Tourist home" means any person who operates a place where tourists or transient guests, for a consideration, may obtain sleeping accommodations and which has at least 5 permanent bedrooms for the use of tourists or transient guests, but which does not have cooking facilities for the use of tourists or transient guests.

(30 Del. C. 1953, § 6101; 58 Del. Laws, c. 288; 63 Del. Laws, c. 68, § 1.)

§ 6102 Levy of tax and disposition of proceeds.

(a) There is imposed and assessed an excise tax at the rate of 8% of the rent upon every occupancy of a room or rooms in a hotel, motel or tourist home within this State.

(b) The proceeds of this tax shall be distributed as follows: 5% to the State General Fund, 1% to the Beach Preservation Program of the Department of Natural Resources and Environmental Control of the State, 1% annually shall be designated in the proportion in which collected, to the duly established convention and visitors bureau in each county and 1% to the Delaware Tourism Office.

(30 Del. C. 1953, § 6102; 58 Del. Laws, c. 288; 67 Del. Laws, c. 138, § 1; 72 Del. Laws, c. 395, § 76.)

§ 6103 Collection of tax.

The tax shall be collected by the operator from the occupant at the time of the payment of the rent for the occupancy.

(30 Del. C. 1953, § 6103; 58 Del. Laws, c. 288.)

§ 6104 Payment of tax.

The amount of the tax collected for each month shall be reported and paid over to the Department of Finance not later than the fifteenth day of the month following the month of collection on forms to be prescribed by the Department of Finance. Interest at the rate of 1 percent per month, or fraction thereof, shall be charged on payments made after the prescribed due date.

(30 Del. C. 1953, § 6104; 58 Del. Laws, c. 288.)

§ 6105-6109 Failure to file or pay; assessments; notice of demand; judgments; refunds [Repealed].

Repealed by 68 Del. Laws, c. 187, § 21, effective Jan. 1, 1992.

Subchapter II
County Convention & Visitors Bureaus

§ 6121 Eligible organizations.

Each county-based convention and visitors bureau, to be eligible to receive such moneys as enumerated in § 6102 of this title must be a registered Delaware nonprofit corporation, qualified under terms of the Internal Revenue Code of 1986, as amended, § 501(c)(6) [26 U.S.C. § 501(c)(6)]. For the Counties of Kent, New Castle and Sussex, the following organizations are designated to receive the 1% funding:

(1) Kent County: A Convention & Visitors Bureau shall be established in a manner to be determined by the Governor of the State and the Administrator of the Kent County Levy Court.

(2) Sussex County: A Convention & Visitors Bureau shall be established in a manner to be determined by the Governor of the State and the Administrator of the Sussex County Council, and representatives from the Lewes Chamber of Commerce, Rehoboth Beach — Dewey Beach Chamber of Commerce and the Bethany — Fenwick Area Chamber of Commerce.

(3) In New Castle County: A qualifying county-based Convention & Visitors Bureau (The Greater Wilmington Convention and Visitors Bureau), has been chartered by the Governor of the State, the County Executive of New Castle County, and the Mayor of the City of Wilmington.

(67 Del. Laws, c. 138, § 2.)

§ 6122 Reporting and operating conditions.

Such recipient organization shall be subject to all reporting and operating conditions normally imposed upon Delaware nonprofit corporations and public bodies.

(67 Del. Laws, c. 138, § 2.)

§ 6123 Period to establish [Repealed].

67 Del. Laws, c. 138, § 2; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 19; repealed by 81 Del. Laws, c. 374, § 54, effective July 1, 2018.

Part VI
Miscellaneous Taxes
Chapter 63
AFFILIATED FINANCE COMPANIES

§ 6301 Definitions.

As used in this chapter:

(1) "Affiliated corporations" means 2 or more corporations which are members of a controlled group of corporations as defined in § 1563 of the Internal Revenue Code of 1954 [26 U.S.C. § 1563].

(2) "Affiliated finance company" means a corporation substantially all of whose activity within this State is limited to the issuance of commercial paper or other debt obligations and use of the proceeds to make loans to 1 or more of its affiliated corporations or to purchase receivables from 1 or more of its affiliated corporations.

(63 Del. Laws, c. 2, § 23.)

§ 6302 License required; issuance.

No corporation shall carry on business as an affiliated finance company after May 1, 1981, without an unexpired license issued by the Secretary of Finance authorizing the conduct of such business. The license shall be issued by the Secretary of Finance for each calendar year. Upon payment of the tax imposed by § 6303 of this title, the Secretary shall issue the license with respect to each calendar year.

(63 Del. Laws, c. 2, § 23.)

§ 6303 Imposition of tax; "capital base" defined.

(a) The tax payable by an affiliated finance company shall be in accordance with the following table:

If the capital base is:	The annual license fee shall be:
$0 to $99,999,999.99	$10,000
$100,000,000 to $224,999,999.99	$15,000
$225,000,000 to $749,999,999.99	$25,000
Over $750,000,000	$50,000

(b) The "capital base" of an affiliated finance company shall consist of its capital, surplus and retained earnings, or equivalent accounting terms, as set forth in the company's certified financial statements.

(63 Del. Laws, c. 2, § 23.)

§ 6304 Payment of tax.

The tax imposed by § 6303 of this title shall be due and payable in a single installment on or before April 30 of the calendar year with respect to which the license is issued or as soon thereafter as the corporation shall commence operations as an affiliated finance company as shown on its certified financial statements for its fiscal year ending with or within the immediately preceding calendar year.

(63 Del. Laws, c. 2, § 23.)

§ 6305 Exemption from occupational license taxes.

Notwithstanding this title, all affiliated finance companies being taxed in accordance with this chapter shall be exempt from any occupational license taxes imposed by Part III of this title.

(63 Del. Laws, c. 2, § 23.)

§ 6306 Review of license fee; refund procedure; penalty; interest [Repealed].

Repealed by 68 Del. Laws, c. 187, § 22, effective Jan. 1, 1992.

Part VI
Miscellaneous Taxes
Chapter 64
HEADQUARTERS MANAGEMENT CORPORATIONS

§ 6401 Definitions.

As used in this chapter and in §§ 2061 through 2063 of this title:

(1) "Affiliated group" has the meaning provided by § 1504 of the Internal Revenue Code [26 U.S.C. § 1504], but including for this purpose:

a. Foreign corporations that would otherwise not be includible corporations; and

b. Partnerships, as defined in § 7701(a)(2) of the Internal Revenue Code [26 U.S.C. § 7701(a)(2)], that would be includible if they were classified as corporations, the interests in which were treated as stock and the ownership of such interests satisfied the stock ownership requirements of the said § 1504 [26 U.S.C. § 1504].

(2) "Certified," "certificate" or "certification" means or refers to the written determination of the Director of Revenue issued to a corporation that it qualifies as a Headquarters Management Corporation pursuant to the provisions of this chapter.

(3) "Director of Revenue" and "Director" mean the individual appointed as Director of the State Division of Revenue or such individual's designee.

(4) "Expenditure" means a payment of an operating expense incurred in this State by a Headquarters Management Corporation.

(5) "Headquarters Management Corporation" means an entity treated as a corporation under the Internal Revenue Code of the United States (Title 26 of the United States Code) that:

a. Makes an election to be taxed as a Headquarters Management Corporation; and

b. Whose activities in this State are certified by the Director of Revenue to be confined to investment activities and/or the provision of headquarters services to itself and members of its affiliated group.

(6) "Headquarters services" includes, without limitation, accounts receivable and payable, employee benefit plan, insurance, legal, payroll, data processing, purchasing, and tax, financial and securities accounting, reporting and compliance services provided by a Headquarters Management Corporation to itself and members of its affiliated group, and the maintenance and management of the intangible investments of other members of its affiliated group.

(7) "Intangible investments" includes, without limitation, investments in stocks, bonds, notes and other debt obligations (including debt obligations of affiliates), patents, patent applications, trademarks, trade names and similar types of intangible assets.

(8) "Investment activities" means the maintenance and management by a Headquarters Management Corporation of its intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this State.

(9) "Operating expense" means a Headquarters Management Corporation's cost of its wages, salaries and benefits, and the cost, if any, of other services obtained by it in connection with its investment activities and for the provision of headquarters services to itself and members of its affiliated group.

(10) "Qualified employee" means an individual:

a. Employed by a Headquarters Management Corporation after the effective date of its original license on a regular basis 35 or more hours per week to provide headquarters services and/or investment activities within this State; and

b. Who was not in any capacity an employee in this State on a regular basis 35 or more hours per week of the Headquarters Management Corporation or of any member of its affiliated group before the effective date of its original license.

(11) Terms defined in § 502 of this title or in § 1901 of this title shall have the same meaning when used in this chapter and in §§ 2061 through 2063 of this title.

(74 Del. Laws, c. 256, § 1.)

§ 6402 Imposition of income tax on Headquarters Management Corporations.

Every Headquarters Management Corporation shall annually pay a tax in lieu of the taxes imposed under Chapter 19 of this title equal to the greater of:

(1) Eight and seven tenths percent of its Headquarters Management Corporation taxable income; or

(2) Five thousand dollars.

(74 Del. Laws, c. 256, § 1; 75 Del. Laws, c. 123, § 1.)

§ 6403 Computation of Headquarters Management Corporation taxable income.

(a) Except as modified in subsections (b) and (c) of this section, the Headquarters Management Corporation taxable income of a Headquarters Management Corporation for any income year means the amount of its federal taxable income for such year as computed for

purposes of the federal income tax increased by (i) any interest income (including discount) on obligations issued by states of the United States or political subdivisions thereof other than this State and its subdivisions, and (ii) the amount of any deduction allowed for purposes of the federal income tax pursuant to § 164 of the Internal Revenue Code [26 U.S.C. § 164] for taxes paid on, or according to or measured by, in whole or in part, such corporation's net income or profits, to any state (including this State), territory, county or political subdivision thereof, or any tax paid in lieu of such income tax, and its federal taxable income shall be further adjusted by eliminating:

(1) Dividends received on shares of stock or voting trust certificates of foreign corporations or interest income or royalty income, on which a foreign tax is paid, deemed paid or accrued under the applicable provisions of the Internal Revenue Code [26 U.S.C. § 1 et seq.];

(2) Interest income (including discount) from securities issued by the United States or agencies or instrumentalities thereof and interest income (including discount) arising from obligations representing advances, loans or contractual transactions between corporations which are eligible to file a consolidated return for federal income tax purposes and which are subject to taxation under Chapter 19 of this title or under this chapter, if the paying corporation eliminates such interest (including discount) in determining its entire net income under Chapter 19 of this title or in determining its Headquarters Management Corporation taxable income under this section, whichever is applicable; provided, however, that the expenses allocable to interest income from securities issued by the United States or agencies or instrumentalities thereof shall not be allowed as a deduction;

(3) Gains and losses from the sale or other disposition of securities issued by the United States or agencies or instrumentalities thereof or by this State or political subdivisions thereof. Expenses incurred in connection with such gains and losses shall not be considered in computing Headquarters Management Corporation taxable income;

(4) Any deduction allowed for depletion of oil and gas wells under § 611 of the Internal Revenue Code [26 U.S.C. § 611] to the extent such deduction is determined by reference to § 613 of the Internal Revenue Code [26 U.S.C. § 613] (relating to percentage depletion);

(5) An amount equal to the portion of the wages paid or incurred for the taxable year which is disallowed as a deduction for federal purposes under § 280C of the Internal Revenue Code [26 U.S.C. § 280C], relating to the portion of wages for which the new jobs tax credit is claimed;

(6) The cost, not to exceed $5,000, of a renovation project to remove physical design features in a building that restricts the full use of the building by physically handicapped persons. The modification shall be allowed for the taxable year in which the renovation project is completed and is in addition to any depreciation or amortization of the cost of the renovation project. "Building" means a building or structure or that part of a building or structure and its related sidewalks, curbing, driveways and entrances that are located in this State and open to the general public;

(7) The "eligible net income" of an Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act [12 U.S.C. § 611 et seq.]. The eligible net income of an Edge Act corporation shall be the net income from any international banking facility of such corporation each computed as described in § 1101(a)(1)d. and e. of Title 5; and

(8) Any deduction, to the extent such deduction exceeds $30,000, for a net operating loss carryback as provided for in § 172 of the Internal Revenue Code [26 U.S.C. § 172] or successor provisions; provided, however, that the taxpayer may increase deductions in any year, consistent with the operation of § 172, to carry forward losses which were carried back in calculating federal taxable income but which were prevented from being carried back under this paragraph.

(b) The amount determined under subsection (a) of this section shall be allocated and apportioned to this State in accordance with the following provisions:

(1) Rents and royalties (less applicable or related expenses) from tangible property shall be allocated to the state in which the property is physically located;

(2) Copyright, patent, service mark, trademark and trade name royalties (less applicable or related expenses) shall be allocated to this State;

(3) Gains and losses from the sale or other disposition of real property shall be allocated to the state in which the property, and expenses incurred in connection with dispositions resulting in such gains and losses, is physically located;

(4) Gains and losses from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes, and expenses incurred in connection with dispositions resulting in such gains and losses, shall be allocated to the state where the property is physically located or is normally used in the taxpayer's business;

(5) Interest (including discount) to the extent included in determining Headquarters Management Corporation taxable income under subsection (a) of this section, less related or applicable expenses, shall be allocated to this State, except where the facts and circumstances demonstrate that the transaction creating the obligation with respect to which the interest was earned occurred in another state, in which case it shall be allocated to such other state;

(6) If the entire business of the Headquarters Management Corporation is transacted or conducted within this State, the remainder of the amount determined under subsection (a) of this section shall be allocated to this State. If the business of the Headquarters Management Corporation is transacted or conducted in part without this State, such remainder, whether income or loss, shall be apportioned to this State on the basis of the ratio obtained by taking the arithmetical average of these 3 ratios:

a. The average of the value, at the beginning and end of the income year, of all the real and tangible personal property, owned or rented, in this State by the taxpayer, expressed as a percentage of the average of the value at the beginning and end of the income year

of all such property of the taxpayer both within and without this State; provided, that any property, the income from which is separately allocated under paragraph (b)(1) of this section or which is not used in the taxpayer's business, shall be disregarded. For the purposes of this paragraph, property owned by the taxpayer shall be valued at its original cost to the taxpayer, and property rented by the taxpayer shall be valued at 8 times the annual rental;

b. Wages, salaries and other compensation paid by the taxpayer to employees within this State during the income year expressed as a percentage of all such wages, salaries and other compensation paid within and without this State during the income year to all employees of the taxpayer;

c. Gross receipts from sales of tangible personal property physically delivered within this State to the purchaser or the purchaser's agent (but not including delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State) and gross income from other sources within this State for the income year expressed as a percentage of all such gross receipts from sales of tangible personal property and gross income from other sources both within and without this State for the income year; provided, that any receipts or items of income that are eliminated in determining the taxpayer's Headquarters Management Corporation taxable income or are directly allocated under paragraphs (b)(1) to (6) of this section shall be disregarded.

(c) If, in the discretion of the Secretary of Finance, the application of the allocation or apportionment provisions of this section would result in an unfair or inequitable proportion of the taxpayer's Headquarters Management Corporation taxable income being assigned to this State, the Secretary of Finance or the Secretary's delegate may permit or require the exclusion or alteration of the weight to be given to 1 or more of the factors in the formula specified in subsection (b) of this section or the use of separate accounting or other method to produce a fair and equitable result. For purposes of this chapter and of § 2061 of this title, the Director may, in the Director's discretion, redistribute, reallocate, or reapportion items of gross income or deduction on account of the providing of headquarters services if the Director determines that such items are disproportionate to their fair market value compared to arm's length transactions between similar but unrelated companies.

(74 Del. Laws, c. 256, § 1.)

§ 6404 Election and returns.

(a) *Election.* — Every Headquarters Management Corporation desiring to be certified under this chapter shall file an election with its application for a Headquarters Management Corporation license.

(b) *Termination of election.* — An election under this section shall remain in effect until terminated by revocation by the taxpayer or the taxpayer's failing to limit its activities in this State to headquarters services or investment activities.

(c) *Returns.* — Every Headquarters Management Corporation shall file an annual tentative return and an annual final return regardless of the amount of its estimated tax liability, its gross income or its taxable income.

(1) A tentative return, covering estimated income tax liability for the current taxable year, in such form and containing such information as the Secretary of Finance shall prescribe, shall be filed with the Secretary of Finance on or before the first day of the fourth month of the current taxable year.

(2) A final return, in such form and containing such information as the Secretary of Finance shall prescribe, shall be filed with the Secretary of Finance on or before the first day of the fourth month immediately following the end of the taxable year.

(d) *Certification of returns.* — Every return shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer or other individual duly authorized so to act to the effect that the statements contained therein are true to the best of such officer's or such other individual's knowledge and belief.

(e) *Consolidated returns.* — An affiliated group of Headquarters Management Corporations may elect to make a consolidated return with respect to the income tax imposed by § 6402 of this title for the taxable year in lieu of separate returns. The making of a consolidated return shall be considered the election and consent of all members of the affiliated group. The tax due by an affiliated group of Headquarters Management Corporations filing a consolidated return shall be no less than the tax payable under § 6402(2) of this title multiplied by the number of members reporting on the consolidated return.

(74 Del. Laws, c. 256, § 1; 75 Del. Laws, c. 123, § 2.)

§ 6405 Payment of tax.

The tax imposed by this chapter shall be payable as follows:

(1) *Calendar year corporations.* — Twenty-five percent of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before April 1 of the current taxable year, June 15 of the current taxable year, September 15 of the current taxable year and January 15 of the immediately following taxable year.

(2) *Fiscal year corporations.* — Twenty-five percent of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before the April 1 of the current taxable year, June 15 of the current taxable year, September 9 of the current taxable year and January 1 of the immediately following taxable year.

(3) *Additional taxes due on final return.* — Any additional tax due as computed in the final return required to be filed pursuant to § 6404 of this title shall be paid with such final return.

(4) Tentative tax declarations and payments are not required for returns for taxable periods of less than 92 calendar days.

(74 Del. Laws, c. 256, § 1.)

§ 6406 Regulations.

The Director of Revenue is authorized to promulgate rules, regulations and decisions not inconsistent with this chapter and require such facts and information to be reported as the Director deems necessary for its administration and enforcement and the certification of Headquarters Management Corporations. No rule or regulation adopted pursuant to the authority granted by this section shall extend, modify or conflict with any law of this State, or the reasonable implications thereof.

(74 Del. Laws, c. 256, § 1.)

§ 6407 Taxes of other states.

(a) A Headquarters Management Corporation shall be credited with the amount of any income tax paid under this chapter on income upon which income tax (or tax computed upon or by reference to income) was also paid with respect to the taxable year to any other state of the United States or the District of Columbia.

(b) The credit provided by this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary:

(1) The total amount of income derived from sources without this State,

(2) The amount of income derived from each state,

(3) The amount and nature of the tax paid to each state, and

(4) All other information necessary for the verification and computation of such credit.

(74 Del. Laws, c. 256, § 1.)

Part VI
Miscellaneous Taxes
Chapter 65
NURSING FACILITY QUALITY ASSESSMENTS

§ 6501 Definitions.

As used in this chapter:

(1) "A managed care company under contract to the Medicaid agency" means an entity that meets the definition of an MCO under 42 C.F.R. § 438.2 and has a contract with the Delaware Medicaid program.

(2) "CMS" means the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

(3) "Continuing care retirement community" and "CCRC" means an entity providing nursing facility services together with assisted living or independent living on a contiguous campus with the number of assisted living and independent living beds in the aggregate being at least twice the number of nursing facility beds. For purposes of this definition contiguous means land adjoining or touching other property held by the same or related organization. Land divided by a public road shall be considered contiguous.

(4) "DHSS" means the Delaware Department of Health and Social Services.

(5) "Fiscal year" shall mean the time period from July 1 to June 30.

(6) The terms "Medicaid" and "medical assistance" mean the Medicaid program operated in Delaware by the DHSS under Title XIX of the federal Social Security Act [42 U.S.C. § 1396 et seq.].

(7) "Medicaid resident day" means a resident day paid for by the Delaware medical assistance program including a managed care company under contract to the Medicaid agency.

(8) "Medicare resident day" means:

a. A resident day paid for by the Medicare program, a Medicare Advantage program or Special Needs Plan; or

b. A resident day in a facility for a resident enrolled in a Medicare hospice program under which hospice services are covered by the Medicare program while the facility is compensated for room and board services by the Medicaid program or another payer.

(9) "Non-Medicare resident day" means a resident day not paid for by the Medicare program, a Medicare Advantage or special needs plan, or by a Medicare hospice program.

(10) "Nursing facility" means a nursing facility as defined and licensed pursuant to Chapter 11 of Title 16. As used in this chapter, the term "nursing facility" shall include for-profit and nonprofit entities but shall exclude the Delaware Veterans Home and any state, federal or other public government-owned facilities and any facilities that exclusively serve children.

(11) "Nursing facility services" has the meaning given that term in 42 C.F.R. § 433.56, or any successor regulation or superseding statute.

(12) "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge, provided that 1 resident day shall be deemed to exist when admission and discharge occur on the same day. A resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.

(78 Del. Laws, c. 286, § 1; 79 Del. Laws, c. 84, § 1.)

§ 6502 Quality assessment.

(a) Effective for assessment periods beginning on or after June 1, 2012, any nursing facility engaged in this State in providing nursing facility services with the exception of those exempted under subsection (d) of this section, shall be charged a quarterly quality assessment as prescribed in subsection (b) of this section on nursing facility services provided by nursing facilities for the purpose of obtaining federal Medicaid matching funds under the State's Medicaid program. If an entity conducts, operates or maintains more than 1 nursing facility, the entity shall pay the quality assessment for each separately licensed nursing facility. The quality assessment shall be charged on a per non-Medicare resident day basis as set forth in subsection (b) of this section.

(b) The quality assessment fees for each non-Medicare resident day shall:

(1) For assessment periods ending prior to June 1, 2013, not exceed:

a. $14 per non-Medicare resident day for each nursing facility that is described in paragraph (d)(2) of this section; and

b. $16 per non-Medicare resident day for all other nursing facilities subject to the quality assessment; and

(2) For assessment periods beginning on and after June 1, 2013, be in amounts determined by the Secretaries of the Department of Finance and the Department of Health and Social Services on an annual basis, not later than May 1, which amounts shall not exceed:

a. $14 per non-Medicare resident day for each nursing facility that is described in paragraph (d)(2) of this section; and

b. $26 per non-Medicare resident day for all other nursing facilities subject to the quality assessment.

(3) For assessment periods beginning on or after June 1, 2016, be in amounts determined by the Secretaries of the Department of

Finance and the Department of Health and Social Services on an annual basis, not later than May 1, which amounts shall not exceed:

a. $19 per non-Medicare resident day for each nursing facility that is described in paragraph (d)(2) of this section; and

b. $35 per non-Medicare resident day for all other nursing facilities subject to the quality assessment.

(4) The rates in this section can be modified if required by the Centers for Medicare and Medicaid to meet the redistribution test of 42 C.F.R. § 433.68(e)(2);

(5) The quality assessment fees in the aggregate for all facilities assessed will not exceed the maximum allowed under federal law.

(c) The quality assessment imposed by this section shall be payable on a calendar quarter basis using returns prescribed by the Department of Finance, which returns shall provide notice to nursing facilities by setting forth the quality assessment amounts determined as provided in paragraph (b)(2) of this section, and shall be available not less than 30 days prior to the start of the next calendar quarter. The assessment for each calendar quarter will be based upon non-Medicare resident days for the 3-month period ending prior to the start of the last month in the calendar quarter. Payments shall be due as follows:

(1) For calendar quarters that end prior to the date of notification by CMS of the approval of the waiver, and if required a state plan amendment, no later than 45 days after the date of the CMS approval letter;

(2) For calendar quarters that end after the date of notification by CMS of the approval of the waiver and any required state plan amendment:

a. For the calendar quarter ending June 30: no later than the fifteenth day of the last month of that quarter;

b. For all other calendar quarters: no later than 30 days after the end of the quarter.

(d) In accordance with the redistribution method set forth in 42 C.F.R. § 433.68(e)(1) and (2), DHSS shall seek a waiver from CMS of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the quality assessment and to permit certain nursing facilities with a high volume of Medicaid resident days or facilities with a high number of total annual resident days to pay the quality assessment at a lesser amount per non-Medicare resident day. Such waiver shall seek authority from CMS for DHSS to:

(1) Exempt the following nursing facilities from the quality assessment:

a. Continuing care retirement communities as defined in § 6501 of this title; and

b. Nursing facilities with 46 or fewer beds.

(2) Lower the quality assessment for nursing facilities with greater than or equal to 44,000 annual Medicaid resident days based upon the most recent cost report ending in the calendar year prior to the state fiscal year in which the assessment is applied.

(e) The Department of Finance shall, within 30 days after the return due date for each quarter, deposit the quality assessments collected as follows:

(1) 90% of the quality assessments shall be deposited to the Nursing Facility Quality Assessment Fund established pursuant to § 1181 of Title 16; and

(2) 10% of the quality assessments collected shall be deposited to the State's General Fund.

(f) The quality assessment fee imposed by this section shall be subject to and shall have available all provisions of Chapter 5 of this title regarding procedures, administration, and enforcement.

(g) Within 7 days of receiving notification from CMS of the approval of the waiver and if required a state plan amendment, DHSS shall notify the nursing facilities and the Department of Finance of:

(1) The CMS approval date, and

(2) The facilities that are subject to the quality assessment and those that are exempt and the reasons for the exemption, and

(3) The specific dollar amounts of the per non-Medicare resident day quality assessment to be charged in accordance with subsection (b) of this section, and

(4) Identify which facilities are subject to the differing assessment amounts specified in subsection (b) of this section, and

(5) The date the quality assessments are due to be paid by nursing facilities to the Department of Finance.

(78 Del. Laws, c. 286, § 1; 79 Del. Laws, c. 84, § 1; 80 Del. Laws, c. 69, § 1; 81 Del. Laws, c. 79, § 46; 81 Del. Laws, c. 207, § 8.)

§ 6503 Penalties.

In addition to the penalties prescribed in Chapter 5 of this title, if any quality assessment is not paid when due, or a facility fails to timely prepare the prescribed return form, DHSS may:

(1) Withhold any Medicaid payments to the delinquent nursing facility, including any payments due to the nursing facility for Medicaid patients from a managed care company under contract to the Medicaid agency, until such time as the quality assessment amount is paid in full; and/or

(2) Suspend or revoke the nursing facility license; and/or

(3) Develop a plan that requires the nursing facility to pay any delinquent quality assessment and penalty amounts in installments.

(78 Del. Laws, c. 286, § 1.)