

cution, or to undergo imprisonment for not more than five (5) years, or both, in the discretion of the court.

Constitutional provision.

Section 10. The provisions of this act are severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to be the legislative intent that this act would have been adopted, had such unconstitutional provisions not been included herein.

When effective.

Section 11. This act shall become effective thirty days after its final enactment, and shall remain in force for two years after said effective date.

APPROVED—The 16th day of May, A. D. 1935.

GEORGE H. EARLE

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No. 91

AN ACT

To provide revenue for State purposes by imposing an excise tax, for a limited period of time, on the net incomes of certain corporations, joint-stock associations, and limited partnerships; providing for the assessment and collection of the tax, and appeals to courts; conferring powers, and imposing duties on certain persons, corporations, joint-stock associations, limited partnerships, State, and county officers, boards, and departments; making an appropriation, and providing penalties.

Taxation.

Title.

Section 1. Short Title. Be it enacted, &c., That this act shall be known, and may be cited as the "Corporate Net Income Tax Act."

Definitions.

Section 2. Definitions.—The following words, terms, and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

"Corporation." A corporation having capital stock, joint-stock association, or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, and doing business in this Commonwealth, or having capital or property employed or used in this Commonwealth by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association, or corporation. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, beneficial life and limited life insurance companies, mutual fire, mutual casualty and mutual life insurance companies, and foreign stock companies registered in this Commonwealth and therein engaged in doing business as life, fire, and casualty insurance companies, and surety companies, and trust companies.

“Department.” The Department of Revenue of this Commonwealth.

“Net income.” 1. In case the entire business of the corporation is transacted within this Commonwealth, net income for the calendar year or fiscal year as returned to, and ascertained by the Federal Government, subject, however, to any corrections thereof, for fraud, evasion, or error as finally ascertained by the Federal Government: Provided, That deductions shall be allowed from net income on account of any taxes paid to the Government of the United States; and provided further, that in the case of stock, life, fire, casualty, and indemnity insurance companies doing business on the mutual or participating plan, the term “net income” shall not include the dividends paid to policy holders out of net income.

2. In case the entire business of any corporation is not transacted within this Commonwealth, the tax imposed by this act shall be based upon such portion of the net income of such corporation for the fiscal or calendar year, as defined in clause one hereof, as may be determined by allocations and apportionments made as follows:

(a) Gains realized from the sale of capital assets, if such assets consist of real estate or tangible personal property situated in the Commonwealth, shall be allocated to this Commonwealth.

(b) Gains realized from the sale of capital assets, if such assets consist of real estate or tangible personal property situated outside of the Commonwealth, shall not be allocated in any part to this Commonwealth.

(c) The remainder of such net income shall be divided into three equal parts.

(1) Of one-third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said one-third by a fraction, whose numerator is the value of the corporation's tangible property situated within this Commonwealth, and whose denominator is the value of all the corporation's tangible property wherever situated.

(2) Of one-third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said one-third by a fraction whose numerator is the expenditure of the corporation for wages, salaries, commissions, and other compensation to its employes, and assignable to this Commonwealth as hereinafter provided, and whose denominator is the total expenditures of the corporation for wages, salaries, commissions, and other compensation, to all its employes.

(3) Of the remaining third, such portion shall be attributed to business carried on within the Commonwealth, as shall be found by multiplying said third by a fraction, whose numerator is the amount of the taxpayer's gross

receipts from business assignable to this Commonwealth as hereinafter provided, and whose denominator is the amount of the taxpayer's gross receipts from all its business.

In cases where only two of the foregoing three rules are applicable, the remainder of the net income of the corporation shall be divided into two equal parts only, each of which shall be apportioned in accordance with one of the remaining two rules. If only one of the three rules is applicable, the part of the net income received from business carried on within the Commonwealth shall be determined solely by that rule.

The amount assignable to this Commonwealth of expenditures of the corporation for wages, salaries, commissions, or other compensation to its employes, shall be such expenditures for the taxable year as represent the wages, salaries, commissions, or other compensation of employes, not chiefly situated at, connected with, or sent out from, premises for the transaction of business owned or rented by the corporation outside the Commonwealth.

The amount of the corporation's gross receipts from business assignable to this Commonwealth shall be the amount of its gross receipts for the taxable year from, (1) sales, except those negotiated or effected in behalf of the corporation by agents or agencies chiefly situated at, connected with, or sent out from, premises for the transaction of business owned or rented by the taxpayer outside the Commonwealth, and sales otherwise determined to be attributable to the business conducted on such premises, and (2) rentals or royalties from property situated, or from the use of patents, within this Commonwealth. If a corporation maintains an office, warehouse, or other place of business in a state other than this Commonwealth for the purpose of reducing its tax under this subsection, the department shall, in determining the amount of its gross receipts from business assignable to this Commonwealth, include therein the gross receipts from sales attributed by the corporation to the business conducted at such place of business in another state.

A rule shall not be deemed to be inapplicable merely because all the tangible property or the expenditures of a corporation for wages, salaries, commissions, or other compensation, or the gross receipts of the corporation are found to be situated, incurred, or received without the Commonwealth.

"Person." Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

The singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 3. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of doing business in this Commonwealth, a State excise tax at the rate of six per centum per annum upon each dollar of net income of such corporation. Such tax shall first be levied, collected, and paid upon all net income received by, and accruing to, such corporation during the calendar year one thousand nine hundred and thirty-five, except where a corporation reports to the Federal Government on the basis of a fiscal year, and has certified such fact to the department as required by section four of this act, in which case, such tax shall first be levied, collected, and paid upon all net income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year one thousand nine hundred and thirty-five and ending in the calendar year one thousand nine hundred and thirty-six.

Rate.  
Method of  
levying and  
collecting.  
  
Exception.

The tax hereby imposed shall be in addition to all taxes now imposed on any corporation under the provisions of existing laws.

Section 4. Report and Payment of Tax.—For the purpose of ascertaining the amount of tax payable under this act, it shall be the duty of every corporation, liable to pay tax under this act, on or before the fifteenth day of April, one thousand nine hundred and thirty-six, and on or before the fifteenth day of April, one thousand nine hundred and thirty-seven, to transmit to the department, upon a form prescribed, prepared, and furnished by the department, a report under oath or affirmation of its president, vice president or other principal officer, and of its treasurer or assistant treasurer, of net income taxable under the provisions of this act. Such report shall set forth:

Report  
required.  
  
Time for  
filing.

(a) A true copy of its return to the Federal Government of the annual net income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate.

Contents  
of report.

(b) If no return was filed with the Federal Government, the report made to the department shall show such information as would have been contained in a return to the Federal Government, had one been made, and

(c) Such other information as the department may require.

The failure of any corporation, liable to pay tax under this act, to procure or receive any report form shall not excuse it from making a report.

Every corporation, at the time of making the report required herein, shall pay to the department not less than one-half of the tax due to the Commonwealth by it for the preceding year, and the remaining one-half of

Time for  
payment  
of tax.

Rate of  
interest.

Proviso.

Failure  
to make  
report.

Where  
corporate  
fiscal year  
does not  
close on  
December 31.

such tax shall be paid on or before the fifteenth day of May succeeding. The amount of all taxes, imposed under the provisions of this act, not paid on or before the time as above provided, shall bear interest at the rate of twelve per centum per annum from the date they are due and payable until paid, except that any taxes found due as the result of an appeal to the court of common pleas or any appellate court, shall bear interest at the rate of six per centum per annum from the date such taxes are due and payable until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute a petition for resettlement; a petition for review, or an appeal to court, if such payment is accompanied by a protest that the whole, or any part of such payment, is not justly or legally due. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it or assigned to any other person or corporation for use in the payment of any obligation to the Commonwealth.

If the officers of any corporation shall neglect, or refuse to make any report as herein required, or shall knowingly make any false report, an additional ten per centum of the amount of the tax shall be added by the department to the tax determined to be due.

If any corporation shall certify to the department that its fiscal year does not close upon the thirty-first day of December but upon some other date, and that it reports to the Federal Government as of such other date, or that it would so report were it to make a return to the Federal Government; then such corporation shall be permitted to make the report, herein required, within sixty (60) days after the return to the Federal Government is due, or would be due were it to be required of such corporation, subject in all other respects to the provisions of this act.

If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the net income, taxable under this act, and the basis of such claim of inaccuracy, shall be fully specified.

Section 5. Consolidated Reports.—The department shall, upon application made to it in such form as it shall prescribe, permit any corporation owning or controlling, directly or indirectly, a majority of the voting capital stock of another corporation or of other corporations, subject to the provisions of this act, to make a consolidated report, showing the combined net income.

Section 6. Extension of Time to File Reports.—The department may upon application made to it, in such form as it shall prescribe, on or prior to the last day for

filing any report, and upon proper cause shown, grant to the corporation, required to file such report, an extension of not more than sixty (60) days within which such report may be filed, but the amount of tax due shall, in such cases, nevertheless, be subject to the payment from the due dates fixed by this act at the rate of six per centum.

Section 7. Changes Made by Federal Government.—

(a) If the amount of the net income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States, such corporation, within thirty (30) days after the receipt of such final change or correction, shall make report, under oath or affirmation, to the department of such finally changed or corrected net income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of such correction, which results in an increase in net income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5.00) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

Failure to  
file report  
of correction.

(b) If as a result of such final change or correction, there should be any deduction made from the amount of the net income of any corporation upon which tax is imposed by this act, the Board of Finance and Revenue shall have the power, and its duty shall be to hear and determine any petition for the refund of taxes alleged to have been overpaid, and upon the allowance of such petition to refund such taxes out of any appropriation made for the purpose, or to credit the account of the corporation entitled to such refund. All such petitions must be filed with the board within two (2) years of the date of such change or correction. Any person, aggrieved by the action of the Board of Finance and Revenue in the determination of any petition for the refund of taxes alleged to have been overpaid, may, within sixty days, appeal to the court of common pleas of Dauphin County from the decision of the board, in the manner provided by law for appeals in the case of tax settlements.

Where  
change  
entitles  
taxpayer  
to deduction.

Time to file  
petitions.

Appeals.

Section 8. Determination and Redetermination of Tax; Penalties and Interest Due.—(a) If within a period of two years after the filing of the report, the department is not satisfied with the report, and payment of tax made by any corporation under the provisions of this act, or if at any time the net income as returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States, with the result that tax, in addition to the amount paid, is due under this act, it is hereby authorized and empowered to make a determination of the tax due by such corpora-

Powers of  
department to  
redetermine  
tax.

tion, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.

Procedure to be followed.

Corporation may file petition.

Contents of petition.

Affidavit.

Time limit for decision.

Notice.

Review.

Contents of petition for review.

Affidavit.

Time allowed board to dispose of petitions.

Notice.

Appeals.

(b) Promptly after the date of any such determination, the department shall send, by registered mail, a copy thereof to such corporation. Within thirty (30) days after the date of any such determination, such corporation may file with the department a petition for redetermination of such tax. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and shall be supported by affidavit of an officer of the corporation that it is not made for the purpose of delay, and that the facts therein set forth are true to the best of his knowledge, information, and belief. The department shall, within ninety (90) days after the date of any determination, 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 department.

(c) Within thirty (30) days after notice by the department of the action taken on any petition for redetermination filed with it, the corporation, against which such determination was made, may by petition request the Board of Finance and Revenue to review such action. Every petition for review, filed hereunder, shall state specifically the reason upon which the petitioner relies and shall be in such form as the Board of Finance and Revenue shall prescribe. The petition shall be supported by affidavit of an officer of the corporation that it is not made for the purpose of delay, and that the facts therein set forth are true to the best of his knowledge, information, and belief. The Board of Finance and Revenue shall dispose of such petitions, filed with it, within ninety (90) days after they have been received, and in the event of the failure of said board to dispose of any such petition within ninety (90) days, the action taken by the department upon the petition for redetermination shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for redetermination, or it may redetermine the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioners.

(d) The department or any person aggrieved by the decision of the Board of Finance and Revenue, or by the board's failure to act upon his petition for review within ninety (90) days, may within sixty (60) days appeal to the court of common pleas of Dauphin County from the decision of the Board of Finance and Revenue or from the decision of the department, as the case may be,

in the manner now or hereafter provided by law for appeals in the case of tax settlements.

(e) If any corporation shall neglect or refuse to make any report and payment of tax required by this act, the department shall estimate the tax due by such corporation and determine the amount due by it for taxes, penalties, and interest thereon as prescribed herein, from which determination there shall be no right of review or appeal.

Failure to make report and to pay tax.

Section 9. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.—(a) The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations, not inconsistent with this act, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties, and interest imposed by this act. The department is hereby required to have such rules and regulations, promulgated and adopted, printed and shall distribute the same to any person upon request.

Department to prescribe rules, etc.

Printing of rules.

(b) The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and assess the tax imposed by this act. Every such corporation is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this act, shall be confidential, except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1000.00) and costs of prosecution, or to undergo imprisonment for not more than six (6) months, or both, in the discretion of the court.

May examine books, etc., of corporations.

Information to be confidential.

Penalty.

(c) Whenever any person, acting for or on behalf of the department, shall in good faith institute legal proceedings for any violations of the provisions of this act, and for any reason shall fail to recover costs of record, such costs shall be a charge upon the proper county, as shall such costs in the event defendant is imprisoned for failure to pay fine or costs, or both, and shall be audited and paid as are costs of like character in said county.

Costs.

(d) The powers, conferred by this act upon the department, relating to the administration or enforcement

Extent of powers.



of this act, shall be in addition to, but not exclusive of, any other powers heretofore or hereafter conferred upon the department by law.

Records shall  
be retained  
for 2 years.

Section 10. Retention of Records by Corporations; Penalty.—Each corporation shall maintain and keep for a period of two (2) years, such record or records of its business within this Commonwealth and other pertinent papers, as may be required by the department.

Penalty.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars (\$1,000.00) and costs of prosecution, or to undergo imprisonment for not more than six (6) months, or both, in the discretion of the court.

Penalties.

Section 11. Penalties.—(a) Any person, who shall wilfully and corruptly make a false and fraudulent return of net income made taxable by this act, shall be guilty of wilful and corrupt perjury, and, upon conviction thereof, shall be subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this act.

(b) Any person, who wilfully fails, neglects, or refuses to make a report and to pay the tax as herein prescribed, or who shall refuse to permit the department to examine the books, papers, and records of any corporation liable to pay tax under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000.00) and costs of prosecution, or to undergo imprisonment not exceeding six (6) months, or both, in the discretion of the court. Such penalty shall be in addition to any other penalties imposed by this act.

Taxes and  
penalties  
collected.

Section 12. All taxes and penalties received and collected, under the provisions of this act, shall be paid into the State Treasury, and those imposed for the calendar year one thousand nine hundred and thirty-five or the fiscal year, beginning in the calendar year one thousand nine hundred and thirty-five, and collectible in the year one thousand nine hundred and thirty-six, or thereafter, shall be used only for unemployment relief purposes, and for such purposes are hereby appropriated. All other taxes and penalties, received and collected under the provisions of this act, shall be credited to the General Fund.

Unemployment  
relief.

Constitutional  
provision.

Section 13. Constitutional Construction.—The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted, had such unconstitutional provisions not been included herein.

Section 14. **Effective Date.**—This act shall become effective immediately upon its final enactment, and shall remain in force, only for the imposition and collection of taxes on net income for the two calendar years one thousand nine hundred and thirty-five and one thousand nine hundred and thirty-six, or for the two fiscal years ending in the calendar years one thousand nine hundred and thirty-six and one thousand nine hundred and thirty-seven. When effective.

APPROVED—The 16th day of May, A. D. 1935.

GEORGE H. EARLE

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No. 92

AN ACT

To amend section two hundred seven of the act, approved the ninth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, one hundred seventy-seven), entitled “An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,” requiring certain qualifications for the Adjutant General.

Section 1. Be it enacted, &c., That section two hundred and seven of the act, approved the ninth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, one hundred seventy-seven), entitled “An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Gover-

Administrative code.

Section 207  
act of April  
9, 1929 (P. L.  
177), amended.