

return to the Federal Government, such corporation shall certify such fact to the Department of Revenue, and shall make the annual report, herein required, within thirty (30) 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. The tentative report required of such corporation shall be due not later than four months after the end of the next preceding fiscal year.

(h) 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.

Effective dates.

Section 2. This amending act shall take effect as of the first day of January, one thousand nine hundred fifty-six, for corporations reporting on a calendar year basis, or as of the first day of any fiscal year beginning in the calendar year one thousand nine hundred fifty-six for corporations reporting on a fiscal year basis.

APPROVED—The 6th day of March, A. D. 1956.

GEORGE M. LEADER

No. 383

AN ACT

Imposing a tax on the occupancy of rooms in hotels, inns, motels, tourist homes, houses, or courts, lodging houses and rooming houses, defined herein as hotels; prescribing the manner of collecting the tax; providing for licenses; imposing duties on and prescribing powers of the Department of Revenue; and fixing penalties.

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

ARTICLE I.

PRELIMINARY PROVISIONS.

Section 101. Short Title.—This act shall be known and may be cited as “The Hotel Occupancy Tax Act.”

Section 102. 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:

(1) “Department.” The Department of Revenue of this Commonwealth.

(2) “Hotel.” A building or buildings in which the public may, for a consideration, obtain sleeping accom-

The Hotel Occupancy Tax Act.

Definitions.

modations. The term shall include inns, motels, *tourist homes, houses or courts, lodging houses and rooming houses.

(3) "Occupant." A person who, for a consideration, uses, possesses, or has a right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license or agreement. The term shall not include a permanent resident.

(4) "Occupancy." The use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. The term shall not include occupancy by a permanent resident.

(5) "Operator." Any person operating a hotel.

(6) "Permanent Resident." Any occupant who has occupied or has had the right to occupancy of any room or rooms in a hotel for at least thirty consecutive days.

(7) "Person." Any natural person, firm, partnership, association, corporation, fiduciary or other entity operating a hotel. Whenever used in any provision of this act which prescribes or imposes a fine or imprisonment, or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof and, as applied to a corporation, the officers thereof. A firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine.

(8) "Rent." 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.

(9) "Tax." Any tax, interest or penalty imposed or levied under the provisions of this act.

(10) "Taxpayer." Any operator of a hotel renting room taxable under this act.

ARTICLE II.

IMPOSITION AND COLLECTION OF TAX.

Section 201. Imposition of Tax.—An excise tax of three per centum of the rent thereof is hereby imposed upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth as herein provided.

* "tourists" in original.

Section 202. Occupant to Pay; Accounting by Operators.—The operator shall, in each case, demand the tax from the occupant, and the occupant shall pay the same to the operator. The operator shall keep the amount of all of the taxes so paid to him by all occupants in a fund separate and apart from all his other funds, unless the department otherwise directs. If the department shall authorize any operator to commingle the proceeds of the tax with other funds, the claim of the Commonwealth for the tax shall be enforceable against, and shall take precedence over, all other claims against the commingled fund. Each operator shall account to the Commonwealth for the entire amount of all taxes collected from occupants.

Section 203. Tax to be Paid by Occupants.—It is hereby stated as the legislative intent that the tax imposed hereby shall be paid by the occupant. The amount of the tax shall be added to the rent, and shall constitute a part of the rent price (though a separate item as hereinbefore provided), and shall be collectible as such.

Section 204. Records.—Every operator shall keep separate books or records of his business as an operator, so as to show the rents and occupancies taxable under this act separately from his transactions not taxable hereunder. If any such operator fails to keep such separate books or records, he shall be liable to tax at the rate designated in section 201 hereof upon the entire proceeds of his hotel.

Section 205. Compensation to Operator for Collection and Return.—For the purpose of compensating operators for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such operators shall be allowed a commission of two per centum of the amount of the tax due and accounted for and remitted to the department, which commission shall be allowed in the form of a deduction in submitting the report of such operator and the payment of the amount due by him. Such compensation, commission or allowance shall not be granted nor shall any deduction be permitted with respect to any taxes not paid on or before the due date thereof, or where there is a manifest failure to maintain proper records, or make proper prescribed reports.

ARTICLE III.

RETURNS AND PAYMENT.

Section 301. Returns and Payment.—(a) The taxes imposed by this act shall be due and payable, in quarterly installments, on or before the twentieth day of

the calendar month succeeding the quarters ending the last day of April, July, October and January of each year.

(b) Each taxpayer shall make out and sign a return for each quarter. Such return shall be mailed to the department in time so that it will reach the department, in the ordinary course of the mails, on or before the twentieth day of the month succeeding the quarter with respect to which the return is made.

(c) The return shall be on a form prescribed by the department. The department shall distribute return forms to taxpayers, but no taxpayer shall be excused from liability for failure to file a return or pay the tax because he has failed to receive a form.

Each such return shall show:

(1) The total number of rooms available for occupancy during the quarter with respect to which the return is filed.

(2) The total number of occupancies during such quarter and the total rents charged therefor.

(3) The amount of tax due.

(4) Such other information with respect to the business, the amount of occupancies, or rents, or related matters as the department may reasonably require.

Any such return may be signed by a duly authorized agent of the taxpayer with the same effect as if signed by the taxpayer himself.

Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to.

(d) A remittance for the amount of the tax shall accompany each quarterly return.

Section 302. Other Times for Returns and Payment.—The department may, upon written request, authorize a taxpayer whose books and records are not kept on a calendar month basis, or whose hotel is operated only during certain seasons of the year, to file returns at other times than those specified in the preceding section, and in lieu of such returns. Except in the case of seasonal hotels, no taxpayer shall be permitted to make less than four returns during a year. Except as to the time of filing and the period covered, all the provisions as to returns required by section 301 shall be applicable to returns made under this section, and a remittance for the tax shall accompany any return made under this section.

Section 303. Annual Returns.—(a) On or before the last day of February in each year, every taxpayer shall file with the department, in the manner heretofore

specified for quarterly returns, an annual return covering the entire preceding calendar year or such part thereof as the taxpayer was engaged in a business as a hotel operator. Such return shall be in addition to, and not in lieu of, returns required to be filed under the provisions of section 301 or section 302.

(b) Each such annual return shall include all items required for quarterly returns for the entire calendar year with respect to which it is made and shall be signed by the taxpayer or his authorized agent. Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to.

(c) If the amount of tax due for the preceding year as shown by the annual return of any taxpayer, is greater than the amount already paid by him in connection with his quarterly returns, he shall send with such annual return a remittance for the unpaid amount of tax for the year.

Section 304. Extension of Time for Making Returns.—The department may, on written application and for good cause shown, extend the time for making any return required or permitted by any of the preceding sections of this article: Provided, however, That the time for making any return other than an annual return shall not be extended more than one month, and the time for making an annual return shall not be extended more than three months.

ARTICLE IV.

PROCEDURE.

Section 401. Department of Revenue to Administer.—The Department of Revenue shall administer and enforce this act and collect the tax hereby imposed.

Section 402. Examination of Returns; Settlement of Tax Credits.—(a) As soon as practicable after any return is filed, the department shall examine it and, if the return shows a greater tax due than the amount of the remittance sent with such return, the department shall forthwith settle the difference. Such difference shall be paid to the department within ten days after notice of its settlement. If so paid, there shall be no interest or penalty. If not so paid, there shall be added to such amount five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month, or fraction thereof, from the date of such notice to the date of payment. No taxpayer shall have any right of appeal from such a settlement.

(b) If the department determines that any return or returns of any taxpayer understates the amount of tax due, the Department shall settle the proper amount and shall determine the difference between the amount of tax shown in the return and the amount settled, such difference being hereafter sometimes referred to as the "deficiency." Such deficiency shall be paid to the department within ninety days after a notice of the settlement thereof shall be mailed to the taxpayer by the department. Unless notice of an intention to file a petition for a resettlement or to appear and be heard, as herein provided, shall be given within ninety days after notice of the settlement of such deficiency be mailed to the taxpayer, there shall be added to the amount of the deficiency five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month, or fraction thereof, from the date of such notice to the date of payment. If any understatement in any of such returns is false or fraudulent, with intent to evade the tax, the deficiency resulting from such understatement shall be doubled and, in addition thereto, an additional one-half of one per centum of such doubled deficiency shall be added for each such month, or fraction of a month, from the date the tax was originally due to the date of payment.

(c) If the amount of the tax, as settled by the department, shall be less than the amount already paid by the taxpayer, the department shall so notify the taxpayer and the amount so overpaid may be taken by such taxpayer as a credit on the tax shown as due in any subsequent return or returns filed in accordance with the provisions of this act.

Section 403. Estimated Settlements.—(a) If any person believed by the department to be liable for tax under the provisions of this act shall have failed to file a return in accordance with, and within the time prescribed by, this act, and, if the department shall deem it more conducive to the public interest because of the supposed smallness of the tax, or for any other reason, not to proceed to compel the exhibition of the accounts of such person, it may make an estimated settlement of the probable amount of tax owing by such person; but, in every such case, the department shall add to such estimated settlement a penalty of ten per centum thereof, and the department shall proceed to collect such estimated tax and penalty as in other cases if the amount is not paid when due.

(b) The estimated settlement thus determined, together with the penalty of ten per centum specified above and interest at the rate of one-half of one per centum per month, or fractional part thereof, until paid, shall

be due and payable ten days after notice of such settlement shall have been mailed by the department to the person against whom the estimated settlement has been made.

Section 404. Limitation of Settlement.—(a) Any settlement, or estimated settlement, shall be made by the department within five years of the date when the annual return required by this act should have been filed as prescribed in this act, whether the date originally prescribed, or pursuant to any extensions of the time for filing such return, duly granted by the department, and not after. Any such settlement or estimated settlement may be made at any time during such period, notwithstanding that the department may have made one or more previous settlements, or estimated settlements, or both, against the taxpayer for the year in question or for any part of such year. In any such case, no credit shall be given for any penalty previously settled or paid.

(b) If the taxpayer shall have died, any taxes, interest and penalties due under this act for years prior to his death, or for the year of his death, and whether based on original settlements, additional or estimated settlements, or otherwise, may be presented by the department at audit of his estate in the orphans' court, and such court shall give full effect to the priorities and equitable interest given to the Commonwealth by this act.

Section 405. Resettlement; Review; Appeal.—(a) Any taxpayer against whom a settlement, or estimated settlement, is made may petition the department for a resettlement. Notice of an intention to file such a petition, or to appear and be heard, shall be given to the department prior to the time the settlement, or estimated settlement, becomes due and payable. The department shall hold such hearings, as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly notified the department of an intention to file a petition for resettlement, or to appear and be heard, shall be notified by the department of the time when, and the place where, such hearing in his case will be held. A petition for resettlement, if filed, shall set forth, explicitly and in detail, the grounds upon which the taxpayer claims that the settlement or estimated settlement is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit, under oath or affirmation, certifying to the facts stated in the petition. If no petition for resettlement has been filed with the department, but the taxpayer has given due notice of an intention to appear and be heard, the taxpayer may appear at the hearing

and present his petition orally, in which event, all statements of fact at the hearing shall be made under oath or affirmation.

(b) Within sixty days after the date of mailing of notice by the department of the action taken on any petition for resettlement filed with it, the person against whom such settlement 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 on which the petitioner relies, or shall incorporate by reference the petition for resettlement in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. The board of finance and revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for resettlement shall be sustained. The board of finance and revenue may sustain the action taken on the petition for resettlement, or it may resettle the tax due on such basis as it deems according to law and equity. The board shall give notice of its action by mail to the department and to the petitioner.

(c) Any person or the Commonwealth aggrieved by the decision of the board of finance and revenue, or by the board's failure to act upon a petition for review within six months, may, within sixty days, appeal to the court of common pleas of Dauphin County from the decision of the board 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.

Section 406. Rules and Regulations; Inquisitorial Powers of the Department.— (a) The department shall have the authority to prescribe, adopt, promulgate and enforce rules and regulations in conformity with this act and relating to any matter or thing pertaining to the administration of the taxes imposed by this act. The Department may, from time to time, alter or amend such rules and regulations in any manner it considers advisable.

(b) The department, or any of its authorized agents, is hereby authorized to examine the books, papers and records of any taxpayer, or supposed taxpayer, including his bank accounts or similar items, in order to verify the accuracy and completeness of any return made or, if no return was made, to ascertain and settle the tax imposed by this act. The department may require the preservation of all such books, papers and records for

any period deemed proper by it not to exceed six years from the end of the calendar year to which the records relate. Every such taxpayer is hereby required to give to the department, or its agent, the means, facilities and opportunity for such examinations and investigation. The department is further authorized to examine any person, under oath, concerning taxable occupancies by any taxpayer, or concerning any other matter relating to the enforcement or administration of this act and, to this end, may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes to have knowledge of such matters. The procedure for such hearings or examinations shall be the same as that provided by "The Fiscal Code," relating to inquisitorial powers of fiscal officers.

(c) Any information gained by the department as a result of any return, investigation, hearing or verification required or authorized by this act, shall be confidential, except for official purposes and except in accordance with proper judicial order, or as otherwise provided by law, and any person unlawfully divulging such information shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not in excess of one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both, in the discretion of the court.

Section 407. Records of Nonresidents.—(a) A non-resident person, including a foreign corporation, who is engaged in one or more businesses in this Commonwealth as a hotel operator shall keep adequate records of such business or businesses and of the taxes due with respect thereto, which records shall at all times be retained within this Commonwealth. No taxes collected from occupants shall be sent outside the Commonwealth without the written consent of, and in accordance with, conditions prescribed by the department.

(b) Any person who shall violate or assist in the violation of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both, in the discretion of the court.

Section 408. Tax Held in Trust for the Commonwealth.—All taxes collected by any operator from occupants in accordance with this act shall constitute a trust fund for the Commonwealth and such trust shall be enforceable against such taxpayer, his representatives and any person receiving any part of such

fund without consideration or knowing that the taxpayer is committing a breach of trust: Provided, however, That any person receiving payment of a lawful obligation of the taxpayer from such fund shall be presumed to have received the same in good faith and without knowledge of the breach of trust. Any person other than a taxpayer against whom the department makes any claim under this section shall have the same rights to petition and appeal as are given taxpayers by any provisions of this article.

Section 409. Priority of Tax.—In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any taxpayer, all taxes imposed by this act which are due and unpaid and are not collectible under the provisions of section 408 shall be paid from the first money available for distribution in priority to all other claims and liens, except in so far as the laws of the United States may give a prior claim to the Federal government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this act which are accrued and unpaid and are chargeable against the taxpayer whose property or estate is being administered or distributed.

Section 410. Lien of Taxes.—All taxes imposed by this act, together with all penalties and interest, shall be considered a public account after being settled in the manner provided in this act, and, as such, shall be a lien upon all real estate within the Commonwealth of any taxpayer, resident or non-resident, but only after the same has been entered and docketed of record by the prothonotary of the county where such real estate is situated, as hereafter provided.

The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this act and penalties and interest. It shall be the duty of each prothonotary receiving such lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to, and be fully paid and satisfied out of, the judicial sale of said real estate before any other obligation, judgment, claim, lien or estate with which said real estate may subsequently become charged, or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time such tax lien is recorded, save and except the cost of sale and of the writ upon which it is made, and real estate taxes imposed or assessed upon said property. The lien of said taxes, interest and

penalties shall continue for five years from the date of entry and may be revived and continued in the manner now or hereafter provided for renewal of judgments, and it shall be lawful for a writ of scire facias to issue and be prosecuted to judgment in the manner in which such writs are ordinarily employed.

Any wilful failure of any prothonotary to carry out any duty imposed upon him by this section shall be a misdemeanor, and, upon conviction, he shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both, in the discretion of the court.

ARTICLE V.

VIOLATION AND PENALTIES.

Section 501. Penalty for Fraudulent Annual Return.—Any person who shall wilfully make, or cause to be made, an annual return required by this act which is false and fraudulent 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 all other penalties imposed by any of the preceding provisions of this act.

Section 502. Other Penalties.—Except as otherwise provided by section 501, any person who shall wilfully fail, neglect or refuse to file any return or report required by this act, or any taxpayer who shall wilfully fail to preserve his books, papers and records as directed by the department in accordance with section 406 hereof, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable occupancies made by himself or any other person, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both, in the discretion of the court. The penalties imposed by this section shall be in addition to any penalties imposed by any provision of this act other than section 501.

ARTICLE VI.

LICENSES.

Section 601. Licenses.—(a) Every operator shall, on or before the thirtieth day after the effective date of this act, or prior to the beginning of business thereafter,

make application to the department, on a form prescribed by the department, for a license, and pay to the department the sum of two dollars (\$2) therefor. If such person maintains more than one place of business in this Commonwealth, such license shall be issued for the principal place of business in this Commonwealth.

(b) The department shall, either prior to May 1, 1956, or the tenth day after the receipt of an application, whichever shall last occur, issue the license applied for under subsection (a) of this section. Such license shall be nonassignable and of permanent duration.

(c) Any person who, after May 1, 1956, shall operate a hotel without having first been licensed by the department pursuant to the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or to undergo imprisonment not exceeding one year, or both, together with costs of prosecution. The penalties imposed by this section shall be in *addition to any other penalties imposed by this act.

(d) Failure of any person to obtain a license shall not relieve him of liability to pay the tax imposed by this act.

ARTICLE VII.

DISPOSITION OF TAX, PENALTIES, INTEREST.

Section 701. Disposition of Proceeds.—All taxes collected under the provisions of this act, together with any penalties and interest thereon, shall be paid into the general fund.

ARTICLE VIII.

MISCELLANEOUS.

Section 801. Saving Clause.—Nothing contained in this act shall be construed to repeal any other law of this Commonwealth imposing any tax for any purpose.

Section 802. Effective Date.—This act shall become Effective date. effective ten days after final enactment.

APPROVED—The 6th day of March, A. D. 1956.

GEORGE M. LEADER.

* "addition" in original.