

No. 16

AN ACT

HB 714

Authorizing the imposition of a tax on the net income of corporate entities doing business within a city of the first class by any school district of the first class coterminous with a city of the first class for public school purposes under certain conditions; providing penalties and validating certain taxes levied in 1968.

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

Section 1. Short Title.—This act shall be known as the “First Class City and School District Corporate Net Income Tax Act of 1969.”

Section 2. Definitions.—As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(1) “City.” A city of the first class.

(2) “Corporation.” A corporate entity including but not limited to one 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 a city of the first class, or having capital or property employed or used in a city of the first class by or in the name of itself, or any person, partnership, association, limited partnership, joint stock association or corporation. It shall also include for purposes of this act any domestic or foreign corporation which is subject to the taxing jurisdiction of the Commonwealth of Pennsylvania and doing business within the city of the first class. Notwithstanding any other provision of this act, no corporation shall incur any tax or taxes imposed or authorized under this act by reason of the ownership of tangible personal property in transit through the city. It shall not include building and loan associations, banks, bank and trust companies, national banks, trust companies, foreign beneficial life and limited life insurance companies, foreign 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 foreign surety companies.

(3) “District.” A school district of the first class coterminous with a city of the first class.

(4) “Net income.” Taxable income of the corporation for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating or which has participated in prior taxable years in the filing of consolidated returns to the Federal Government the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for all years affected by the filing of consolidated returns to the Federal Government, subject,

however, to any corrections thereof for fraud, evasion, or error as finally ascertained by the Federal Government: And provided further, That additional deductions shall be allowed from taxable income on account of dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government: And provided further, That no deduction shall be allowed for net operating losses sustained by the corporation during any other fiscal or calendar year: 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 policyholders out of net income: And provided further, That in the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, "net income" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended.

(5) "Person." Every natural person or corporation. Whenever used in any clause prescribing or imposing a fine or imprisonment, or both, the term "person" as applied to corporations shall mean the officers thereof.

Section 3. Tax Authorization.—Any council of a city of the first class may authorize, by ordinance, the board of education of any coterminous school district of the first class to levy a tax imposed on or measured by the net income of a corporation, for the privilege of doing business therein, for district purposes: Provided, That the tax authorized pursuant to this paragraph shall not exceed a rate of three per cent per annum prior to July 1, 1972 and shall not exceed a rate of four and one-half per cent per annum beginning July 1, 1972.

The authorization provided herein for taxes for district purposes, if exercised for the fiscal year beginning July 1, 1972, shall operate to void and repeal the authority to authorize, impose or levy:

The tax authorized by the act of May 23, 1949 (P. L. 1669), entitled, as amended, "An act to provide revenue for school districts of the first class by imposing a tax on persons engaging in certain businesses, professions, occupations, trades, vocations and commercial activities therein; providing for its levy and collection; conferring and imposing powers and duties on the Board of Public Education, receiver of school taxes and school treasurer in such districts; and prescribing penalties."

In the event that the city elects not to authorize the corporate net income tax authorized hereunder for district purposes for the fiscal year beginning July 1, 1972, the authorization to empower the city to permit the district to impose that tax for district purposes shall become null and void.

Section 4. Interim School Tax.—During the interim of the fiscal year ending June 30, 1969, any city of the first class may authorize the board of public education of any district coterminous with a city of the first class

to impose any tax now or hereafter authorized to provide revenues for any current school expenses for that fiscal period. If this act shall not become law at least thirty days before said board of public education shall adopt its operating budget and levy taxes for the fiscal year ending June 30, 1970, said city may authorize the board to impose any tax herein authorized during the interim of the fiscal year ending June 30, 1970, to provide revenues for any current school expenses for that fiscal period.

Section 5. Rate, Levy, Assessment and Collection.—The ordinance imposing any tax or authorizing the district to impose a tax shall fix the rate thereof and provide for the levy, assessment and collection of the same.

Section 6. Allocation of Business for City Tax Purposes.—In case the entire business of any corporation is not transacted within the city, the tax or taxes authorized or imposed under this act shall be based upon that portion of the net income of a corporation for the tax year as may be determined by allocations and apportionments made as follows:

(1) Gains realized and losses sustained from the sale or exchange of capital assets, if those assets consist of real estate or tangible personal property situated in the city, shall be allocated to the city.

(2) Gains realized and losses sustained from the sale or exchange of capital assets, if those assets consist of real estate or tangible personal property situated outside of the city, shall not be allocated in any part to the city.

(3) The remaining net income shall be divided into three equal parts as follows:

(i) Of one part, a portion shall be attributed to business carried on within the city, as shall be found by multiplying that part by a fraction, whose numerator is the value of the corporation's tangible property situated within the city, and whose denominator is the value of all the corporation's tangible property wherever situated.

(ii) Of one part, a portion shall be attributed to business carried on within the city, as shall be found by multiplying that part by a fraction, whose numerator is the expenditures of the corporation for wages, salaries, commissions and other compensation to its employes, and assignable to the city, and whose denominator is the total expenditure of the corporation for wages, salaries, commissions, and other compensation to all its employes.

The amount assignable to the city of expenditures of the corporation for wages, salaries, commissions, or other compensation of its employes, shall be such expenditures for the taxable year as represents 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 maintained by the corporation outside the city.

(iii) Of the remaining part, a portion shall be attributed to business carried on within the city, as shall be found by multiplying that part by a fraction, whose numerator is the amount of the taxpayer's gross receipts

from sales of personal property delivered, rentals from real and personal property situated and services performed within the city and whose denominator is the amount of the taxpayer's gross receipts from all its sales of personal property, rentals of real and personal property and services performed.

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 instead of three, 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 city shall be determined solely by that rule.

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 city.

If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for, in respect to all or any part of the taxpayer's business activity, if reasonable: separate accounting; the exclusion of any one or more of the factors; the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the city; or the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

The ordinance authorizing or imposing a tax hereunder may create additional exclusions, allocations or exemptions and may provide for a reasonable limitation on the period within which actions to collect the tax may be instituted.

(4) Notwithstanding the provisions in subsections (1), (2), and (3) in the case the entire business of any corporation engaged in doing business as an insurance or surety company is not transacted within the city, the tax or taxes authorized or imposed under this act shall be based upon that portion of the net income of such corporation for the tax year as shall be attributed to business transacted within the city by multiplying such net income by a fraction, of which the numerator is the gross premiums received from business transacted within the city and of which the denominator is the amount of gross premiums received from all its business. "Gross premiums" shall mean the amount of dues, fees and premiums stated in the policy contracts and shall include gross premiums of every character and description received during the taxable year from all underwriting activities whether said premiums were received in money or in the form of notes, credits or any other substitute for money, less the following deductions:

- (i) All premiums returned on policies cancelled or not taken.
- (ii) In the case of stock companies with participating features, an additional deduction for that portion of the premiums returned to the policyholders.

(iii) In the case of life insurance companies, an additional deduction for dividends declared and actually used by policyholders in payment of renewal premiums.

Section 7. Other Taxing Powers.—Nothing in this act shall be deemed to diminish, limit or qualify any power now or hereinafter existing to impose, assess, levy, or collect any tax or taxes in the manner or through the agency provided by law except as expressly set forth herein.

Section 8. Auditing.—The books, records and applicable Commonwealth and Federal tax returns of corporations shall be subject to examination by any city or district official charged with the official duty of auditing, enforcing or collecting the taxes authorized by this act. The corporation is hereby charged with the responsibility of furnishing the means, facilities and opportunities for such audits.

Section 9. Penalties and Enforcement.—Any person who fails to keep or make any record, return or report required by the city or the district or keeps or makes any false or fraudulent record, return or report or who shall refuse the collector or other duly authorized representative of the city or district to examine his books and records in order to verify the accuracy of his payment of any tax or taxes authorized or imposed under the authority of this act shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment of not more than ninety days, or both, in the discretion of the court.

Any person who fraudulently omits or neglects to file any return required hereunder, or to pay any tax imposed under the authority of this act or attempts in any manner to evade or defeat the tax or payment hereof shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment of not more than ninety days, or both, in the discretion of the court.

Any person who fails to pay any tax imposed under the authority of this act at the time prescribed shall be liable to a penalty of one per cent per month or fraction thereof on such tax from the time the tax became due and interest at the rate of one-half of one per cent per month or fraction thereof. The penalties and interest provided for in this section shall be added to the tax and assessed and collected at the same time, in the same manner, and as a part of the tax.

Section 10. Severability Clause.—If any sentence, clause, section or part of this act is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this act. It is hereby declared as the intent of the General Assembly that this act would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 11. Retroactive Effect.—Any tax imposed pursuant to the

provisions of this act prior to June 30, 1969 may be (1) imposed retroactively with respect to incomes of taxpayers for fiscal years of taxpayers ending during the period January 1, 1968 through December 31, 1968; and (2) imposed for the fiscal year of the district commencing July 1, 1968 and ending June 30, 1969 notwithstanding any statute to the contrary.

Section 12. Validation of General Business and Investment Income Taxes.—The taxes imposed prior to January 1, 1969 by any district pursuant to any of the following acts and parts of acts are hereby validated and confirmed, notwithstanding any statute or law to the contrary:

(1). Act of May 23, 1949 (P. L. 1669), entitled, as amended, "An act to provide revenue for school districts of the first class by imposing a tax on persons engaging in certain businesses, professions, occupations, trades, vocations and commercial activities therein; providing for its levy and collection; conferring and imposing powers and duties on the Board of Public Education, receiver of school taxes and school treasurer in such districts; and prescribing penalties."

(2) Subsection (b) of section 1, act of August 9, 1963 (P. L. 640), entitled "An act empowering cities of the first class, coterminous with school districts of the first class, to authorize the boards of public education of such school districts to impose certain additional taxes for school district purposes, and providing for the levy, assessment and collection of such taxes."

Section 13. Effective Date.—This act shall take effect immediately.

APPROVED—The 29th day of May, A. D. 1969.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 16.



Secretary of the Commonwealth.