

No. 124

AN ACT

To reenact the title and to reenact and amend the act, approved the twenty-fourth day of August, one thousand nine hundred fifty-one (1951-1952 Pamphlet Laws 1417), entitled, as amended, "An act to provide revenue for State purposes by imposing a property tax, for a limited period of time, on the net incomes derived from sources within the Commonwealth of certain corporations, joint-stock associations, and limited partnerships; excluding certain income; providing for the assessment, collection, settlement and resettlement of taxes, and reviews and appeal therefrom; 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," by extending the provisions of the act for a further limited period of time.

"Corporation
Income Tax
Law."

The title and all sections, act of August 24, 1951, P. L. 1417, as last reenacted and amended by act of December 27, 1951, P. L. 1763, reenacted and amended.

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

Section 1. The title and all the sections of the act, approved the twenty-fourth day of August, one thousand nine hundred fifty-one (1951-1952, Pamphlet Laws 1417), entitled, as amended, "An act to provide revenue for State purposes by imposing a property tax, for a limited period of time, on the net incomes derived from sources within the Commonwealth of certain corporations, joint-stock associations, and limited partnerships; excluding certain income; providing for the assessment, collection, settlement and resettlement of taxes, and reviews and appeal therefrom; 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," as last reenacted and amended by the act, approved the twenty-seventh day of December, one thousand nine hundred fifty-one (1951-1952, Pamphlet Laws 1763), are hereby reenacted and amended to read as follows:

An Act

To provide revenue for State purposes by imposing a property tax, for a limited period of time, on the net incomes derived from sources within the Commonwealth of certain corporations, joint-stock associations, and limited partnerships; excluding certain income; providing for the assessment, collection, settlement and resettlement of taxes, and reviews and appeal therefrom; 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.

Section 1. Short Title.—This act shall be known and may be cited as the “Corporation Income Tax Law.”

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 carrying on activities in this Commonwealth, or owning property 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 non-profit corporations, building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, title insurance companies, beneficial life and limited life insurance companies, mutual fire, mutual casualty and mutual life insurance companies, foreign stock companies registered in this Commonwealth and therein engaged in doing business as life, fire and casualty insurance companies, and foreign surety companies.

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

“Net Income.” 1. Net income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or, in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the net income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof for fraud, evasion or error, as finally ascertained by the Federal Government: Provided, That additional deductions shall be allowed from net income on account of any dividends received from any other corporation: And provided further, That no deduction shall be allowed for any Federal income or excess profits taxes whatsoever, except the declared value excess profits tax: 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 operating on the mutual

or participating plan, the term "net income" shall not include the dividends paid to policyholders out of net income.

2. In the case of corporations owning property or carrying on activities within and without this Commonwealth, other than corporations carrying on activities as insurance or surety companies, the net income of such corporations derived from sources within this Commonwealth for the fiscal or calendar year shall be determined by allocations and apportionments of net income as defined in clause one hereof, made as follows:

(a) Gains realized and losses sustained from the sale or exchange 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 and losses sustained from the sale or exchange 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 of this Commonwealth.

(c) The resultant net income, if any, after allocations, shall be divided into three equal parts:

(1) Of one-third, such portion shall be attributed to 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 the Commonwealth as shall be found by multiplying said one-third by a fraction whose numerator is the expenditures 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 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 property and activities assignable to this Commonwealth, as hereinafter provided, and whose denominator is the amount of the taxpayer's gross receipts from all its property and activities.

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 property and activities 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 to the extent of services rendered or work performed in the Commonwealth, and similar expenditures to employes not chiefly situated at, connected with, or sent out from, premises for the transaction of business maintained by the corporation outside the Commonwealth.

The amount of the corporation's gross receipts from property and activities assignable to this Commonwealth shall be: (1) the amount of its gross receipts for the taxable year from services rendered, work and contracts performed, and sales made, in the Commonwealth, and all other gross receipts, 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 maintained by the taxpayer outside of the Commonwealth, and except rentals and royalties and interest and dividends; (2) rentals or royalties from property situated, or from the use of patents, within this Commonwealth; and (3) dividends and interest, except such dividends and interest attributable to the business conducted on premises maintained by the taxpayer outside the 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 property and activities assignable to this Commonwealth, include therein the gross receipts attributed by the corporation to the business conducted at such place of business in another state. In the case of construction contracts negotiated or effected at an office in the State of Pennsylvania but performed outside the State, the gross receipts under such contracts shall be assignable outside the State, except that if the activities under any such contract to which the gross receipts are attributable shall occur partly within the State and partly outside the State, such proportion of the gross receipts under said contract shall be assignable to Pennsylvania as the direct and indirect costs incurred in Pennsylvania under the contract for the taxable year bear to the total costs

* "affected" in original.

incurred thereunder for the taxable year. In the case of construction contracts negotiated or effected at an office outside the State but performed in the State, the gross receipts under such contracts shall be assignable to the State, except that if the activities under any such contract to which the gross receipts are attributable shall occur partly within the State and partly outside the State, such proportion of the gross receipts under said contract shall be assignable to Pennsylvania as the direct and indirect costs incurred in the State under the contract for the taxable year bear to the total costs incurred thereunder for the taxable year.

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.

3. In the case of corporations carrying on activities as insurance or surety companies within and without this Commonwealth, the net income of such corporations derived from sources within this Commonwealth for the fiscal or calendar year shall be determined by multiplying net income, as defined in clause one hereof, by a fraction of which the numerator is the gross premiums received from activities carried on within the Commonwealth, as hereinafter defined, and of which the denominator is the amount of the gross premiums received from all its activities everywhere.

“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:

(a) All premiums returned on policies cancelled or not taken;

(b) In the case of stock companies with participating features, an additional deduction for that portion of the premiums returned to the policyholders;

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

“Gross premiums received from activities carried on in the Commonwealth” shall mean gross premiums received from policies and annuities written on property or risks located or resident in this Commonwealth, whether such premiums were collected in this Commonwealth or elsewhere.

“Sources within this Commonwealth” includes tangible or intangible property located or having a situs in this Commonwealth, and any activities carried on in this Commonwealth, regardless of whether carried on in intrastate, interstate or foreign commerce.

“Carrying on activities” shall include every act, power or privilege exercised or enjoyed in this Commonwealth as an incident to, or by virtue of, the powers and privileges acquired by the nature of the corporate organization.

“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 carrying on activities in this Commonwealth or owning property in this Commonwealth by or in the name of itself or any person, partnership, joint-stock association or corporation shall be subject to and shall pay a State property tax on net income derived from sources within this Commonwealth at the rate of five per centum per annum upon each dollar of such net income received by and accruing to such corporation during the calendar years one thousand nine hundred fifty-one, one thousand nine hundred fifty-two and one thousand nine hundred [and] fifty-three, 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 at the rate of five per centum shall be levied, collected and paid upon each dollar of such net income received by and accruing to such corporation during the fiscal years commencing in the calendar years one thousand nine hundred fifty-one, one thousand nine hundred fifty-two and one thousand nine hundred [and] fifty-three and ending in the calendar years one thousand nine hundred fifty-two, one thousand nine hundred fifty-three and one thousand nine hundred [and] fifty-four [:], *and a similar tax at the rate of five per centum per annum upon each dollar of such net income received by and accruing to such corporation during the calendar years one thousand nine hundred fifty-four and one thousand nine hundred fifty-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 at the rate of five per centum per annum shall be*

levied, collected and paid upon each dollar of such net income received by and accruing to such corporation during the fiscal years commencing in the calendar years one thousand nine hundred fifty-four and one thousand nine hundred fifty-five and ending in the calendar years one thousand nine hundred fifty-five and one thousand nine hundred fifty-six: Provided, however, That such net income shall not include income for any period for which the corporation is subject to taxation under the Corporate Net Income Tax Act, approved the sixteenth day of May, one thousand nine hundred thirty-five (Pamphlet Laws, two hundred eight), as reenacted and amended, according to or measured by net income.

Except as otherwise provided in this section, the tax hereby imposed shall be in addition to all taxes now imposed on any corporation under the provisions of existing laws.

Section 4. Reports and Payment of Tax.—(a) 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 fifty-two, one thousand nine hundred fifty-three [and], one thousand nine hundred fifty-four, *one thousand nine hundred fifty-five and one thousand nine hundred fifty-six*, to transmit to the department, upon a form prescribed, prepared and furnished by the department, an annual 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:

(1) 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 portion of said return as the department may designate;

(2) 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,

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

(b) For the purpose of ascertaining the amount of tax payable under this act for the taxable [year] *years* one thousand nine hundred fifty-three, *one thousand nine hundred fifty-four and one thousand nine hundred fifty-five*, it shall be the duty of every corporation liable to pay tax under this act, on or before the thirteenth day of April, one thousand nine hundred fifty-three, *one thousand nine hundred fifty-four and one thousand nine hundred fifty-five*, to transmit in like form and

manner an additional tentative report. Such report shall set forth:

(1) The annual net income received or accruing in the calendar or fiscal year next preceding and reported to the department under the provisions of this act; or,

(2) The net income received or accruing in the first three months of the current calendar or fiscal year, together with such information as would have been contained in a return to the Federal Government had one been required or made;

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

(c) 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.

(d) For the taxable years up to and including the year one thousand nine hundred fifty-two, every corporation, upon the date its report is required herein to be made, shall pay to the department not less than one-half of the tax due to the Commonwealth by it for such preceding year, and the remaining one-half of such tax shall be paid within the thirty days next succeeding; and, except as otherwise provided by law, no extension of time for the filing of any report granted by the department shall extend the date any tax imposed by this act shall be due and payable. For the taxable [year] *years one thousand nine hundred fifty-three, one thousand nine hundred fifty-four and one thousand nine hundred fifty-five, every corporation*, upon the date its tentative report is required herein to be made, shall pay on account of the tax due for the current year, at its election, (1) not less than two and one-half per centum upon each dollar of net income of such corporation last reported as received or accrued during an entire preceding year, or of such multiple of the net income last reported for a portion of such year as the entire year bears to the portion of the year for which the net income had been reported, or (2) not less than ten per centum upon each dollar of net income of such corporation received or accrued during the first three months of the current calendar or fiscal year, whichever is applicable. The remaining portion of the tax due shall be paid upon the date the corporation's annual report is required herein to be made.

(e) The amount of all taxes imposed under the provisions of this act not paid on or before the times as above provided shall bear interest at the rate of six (6) per centum per annum from the date they are due and payable until paid, except that if the taxable income has been or is increased by the Commissioner of Internal Revenue or by any other agency or court of the United

States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income 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 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 in the manner prescribed by law.

(f) 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.

(g) If any corporation closes its fiscal year not upon the thirty-first day of December but upon some other date and reports to the Federal Government as of such other date or would so report were it to make a 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 corporations 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.

Section 5. Consolidated Reports.—The department shall not permit any corporation owning or controlling, directly or indirectly, any 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 annual 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, and in case the Federal income tax authorities at any time grant a longer extension of time for filing such reports with the Federal Government, the department may grant an additional exten-

sion of time for filing the annual report under this act of not more than thirty (30) days after the termination of the Federal extension, but the amount of tax due shall, in such cases, nevertheless be subject to interest from the due dates and at the rates fixed by this act.

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 a corrected report, under oath or affirmation, to the department, showing 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.

(b) If, as a result of such final change or correction, there should be any change made in the amount of the net income of any corporation upon which tax is imposed by this act, the department shall have the power and its duty shall be to resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law and shall credit or charge, as the case may be, the amount resulting from such resettlement, upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue as in the case of original settlements.

(c) Where a report of change, correction or redetermination of Federal income or Federal tax has been filed after a petition for review or an appeal has been taken, such report shall be deemed a part of the original annual report, upon petition of the taxpayer at any subsequent proceedings, as though it had been filed with such original report, and no separate petition for review or appeal from the resettlement resulting from such report of change, correction or redetermination shall be necessary.

Section 8. Settlement and Resettlement.—(a) All taxes due under this act shall be settled by the department, and such settlement shall be subject to audit and

approval by the Department of the Auditor General, and shall, so far as possible, be made so that notice thereof may reach the taxpayer before the end of the year after the tax report was required to be made.

(b) Promptly after the date of any such settlement, the department shall send, by mail or otherwise, a copy thereof to such corporation. The tax imposed by this act shall be settled, resettled and otherwise imposed and adjusted in the same manner, within the same periods of time, and right of resettlement, review, appeal and refund as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

(c) If, within a period of two years after the date of any settlement, the department is not satisfied with such settlement, 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, the department is hereby authorized and empowered to make a resettlement of the tax due by such corporation, based upon the facts contained in the report or upon any information within its possession or that shall come into its possession.

Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement, upon the current accounts of the corporation with which it is made.

The resettlement shall be subject to audit and approval by the Department of the Auditor General as in the case of original settlement, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue as in the case of original settlements.

(d) 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, subject to audit and approval by the Department of the Auditor General, settle the amount due by it for taxes, penalties and interest thereon, as prescribed herein, from which settlement there shall be no right of review or appeal; but the department, with the approval of the Department of the Auditor General, may require a report to be filed, and thereupon make a settlement based upon such report and cancel the estimated settlement.

Section 9. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.—(a) The depart-

ment 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.

(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 settle 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.

(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.

(d) The powers conferred by this act upon the department relating to the administration or enforcement of this act shall be in addition to, but not exclusive of, any other powers heretofore or hereafter conferred upon the department by law.

Section 10. Retention of Records by Corporations; Penalty.—Each corporation shall maintain and keep for a period of three (3) years after any report is filed under this act, such record or records of its business within this Commonwealth for the period covered by such report and other pertinent papers as may be required by the department.

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 (\$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.

Section 11. Penalties.—(a) Any person who shall wilfully 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 or 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 (\$1000.00) and costs of prosecution, or 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.

Section 12. 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 13. 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 of corporations derived from sources within the Commonwealth for the calendar years one thousand nine hundred fifty-one, one thousand nine hundred fifty-two [and], one thousand nine hundred fifty-three, *one thousand nine hundred fifty-four and one thousand nine hundred fifty-five*, or for the fiscal years ending in the calendar years one thousand nine hundred fifty-two, one thousand nine hundred fifty-three [and], one thousand nine hundred fifty-four, *one thousand nine hundred fifty-five and one thousand nine hundred fifty-six*.

Act effective immediately.

Section 2. This reenacting and amending act shall become effective immediately upon its final enactment.

APPROVED—The 17th day of July, A. D. 1953.

JOHN S. FINE