

statement to the producer for milk delivered during such period, in order to make possible a check test.

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Section 2. This act shall take effect immediately.

Act effective
immediately.

APPROVED—The 8th day of July, A. D. 1957.

GEORGE M. LEADER

No. 325

AN ACT

Amending the act of March 6, 1956 (P. L. 1256), entitled "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." Making changes with respect to assessments, settlements, reassessments and resettlements.

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

The Hotel
Occupancy Tax
Act.

Section 1. Sections 402, 403, 404 and 405, act of March 6, 1956 (P. L. 1256), known as "The Hotel Occupancy Tax Act," are amended to read:

Section 402,
403, 404 and
405, act of
March 6, 1956,
P. L. 1256,
amended.

Section 402. [Examination of Returns; Settlement of Tax Credits] *Mode and Time of Assessment.*—(a) *Underpayment of Tax.* 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] *assess* the difference. Such difference shall be paid to the department within ten days after notice of its [settlement] *assessment*. If so paid, there shall be no interest or penalty. If not so paid, there shall be added to such amount [five] *three* 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) *Understatement of Tax.* If the department determines that any return or returns of any taxpayer understates the amount of tax due, the department shall [settle] *assess* the proper amount and shall determine the difference between the amount of tax shown in the return and the amount [settled] *assessed*, such difference being hereafter sometimes referred to as the "deficiency." Such deficiency shall be paid to the depart-

ment within [ninety] *thirty* days after a notice of the [settlement] *assessment* 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,] *reassessment* shall be given within [ninety] *thirty* days after notice of the [settlement] *assessment* 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.

(e) *Overstatement of Tax.* If the amount of the tax, as [settled] *ascertained* 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] *Assessments.*—

(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] *assessment* of the probable amount of tax owing by such person; but, in every such case, the department shall add to such estimated [settlement] *assessment* 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] *assessment* 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] *assessment* shall have been mailed by the department to the person against whom the estimated [settlement] *assessment* has been made.

Section 404. Limitation of [Settlement] *Assessment*.

—(a) Any [settlement] *assessment*, or estimated [settlement] *assessment*, shall be made by the department within [five] *three* 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] *assessment* or estimated [settlement] *assessment* may be made at any time during such period, notwithstanding that the department may have made one or more previous [settlements] *assessments*, or estimated [settlements] *assessments*, 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] *assessed* 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] *assessments*, additional or estimated [settlements] *assessments*, 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] *Reassessment*; Review; Appeal.—(a) Any taxpayer against whom [a settlement] *an assessment*, or estimated [settlement] *assessment*, is made may petition the department for a [resettlement] *reassessment*. 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] *assessment*, or estimated [settlement] *assessment*, 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,] *reassessment* 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] *reassessment*, if filed, shall set forth, explicitly and in detail, the grounds upon which the taxpayer claims that the [settlement] *assessment* or estimated [settlement] *assessment* is erroneous or unlawful, in whole or in part, and shall be accompanied by an affi-

davit, 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] *reassessment* filed with it, the person against whom such [settlement] *assessment* 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] *reassessment* 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] *reassessment* shall be sustained. The Board of Finance and Revenue may sustain the action taken on the petition for [resettlement] *reassessment*, or it may [resettle] *reassess* 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.

APPROVED—The 8th day of July, A. D. 1957.

GEORGE M. LEADER