

No. 93

AN ACT

HB 1447

Amending the act of March 4, 1971 (Act No. 2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," redefining certain terms; further regulating certain taxing procedures and exclusions from tax; reducing rates; establishing exemptions and changing taxability; and providing for a personal income tax and procedures for the administration, collection and enforcement thereof and prescribing penalties.

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

Section 1. Subclause (3) of clause (c), subclause (2) of clause (i) and clause (m) of section 201, act of March 4, 1971 (Act No. 2), known as the "Tax Reform Code of 1971," are amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(c) "Manufacture." The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not limited to—

* * *

(3) Refining, exploring, mining and quarrying for, or otherwise extracting from the earth *or from waste or stock piles or from pits or banks* any natural resources, minerals and mineral aggregates *including blast furnace slag*;

* * *

(i) "Resale."

* * *

(2) The physical incorporation of personal property as an ingredient or constituent into other personal property, which is to be sold in the regular course of business or the performance of those services described in subclauses (2), (3) and (4) of clause (k) of this section upon personal property which is to be sold in the regular course of business *or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth.*

The term "resale" shall also include personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into personal property and thereafter transported outside this Commonwealth for use exclusively outside this Commonwealth.

The term "resale" shall not include any sale of "malt or brewed beverages" by a "retail dispenser," or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of the "Liquor Code."

* * *

(m) "Tangible personal property." Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for non-residential use, electricity for non-residential use, intrastate telephone and telegraph service for non-residential use, spirituous or vinous liquor and malt or brewed beverages and soft drinks; but the term shall not include household supplies purchased at retail establishments for residential consumption, including but not limited to, soaps, detergents, cleaning and polishing preparations, paper goods, household wrapping supplies and items of similar nature, or sanitary napkins, tampons or similar items used for feminine hygiene. Nor shall said term include steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate telephone or telegraph service when purchased [solely for residential use.] *directly by the user thereof solely for his own residential use.*

* * *

Section 2. Section 204 of the act is amended by adding two clauses to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon

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(34) *The sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.*

(35) *The sale at retail or use of mail order catalogs and direct mail advertising literature or materials.*

Section 3. Article III of the act is repealed.

Section 4. The act is amended by adding an article to read:

ARTICLE III PERSONAL INCOME TAX

PART I DEFINITIONS

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning.

Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, as amended to the date on which this article is effective.

(a) *“Accepted accounting principles and practices” means those accounting principles, systems or practices which are acceptable by standards of the accounting profession and which are not inconsistent with the regulations of the department setting forth such principles and practices.*

(b) *“Association” means any form of unincorporated enterprise other than a partnership.*

(c) *“Business” means an enterprise, activity, profession, vocation, trade, joint venture, commerce or any other undertaking of any nature when engaged in as commercial enterprise and conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association or other unincorporated entity.*

(c.1) *“Charitable trust” means a trust operated exclusively for religious, charitable, scientific, literary or educational purposes.*

(d) *“Compensation” means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.*

The term “compensation” shall not mean or include: (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen’s compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement.

(e) *“Department” means the Department of Revenue of this Commonwealth.*

(f) *“Dividends” means any distribution in cash or property made by a corporation, association or business trust, (i) out of accumulated earnings and profits, or (ii) out of earnings and profits of the year in which such dividend is paid.*

(g) *“Employe” means any individual who renders services to an employer and receives or accrues compensation. Any person from whose compensation an employer is required under the Internal Revenue Code to withhold Federal income tax shall prima facie be deemed an employe.*

(h) *“Employer” means an individual, partnership, association, corporation, governmental body or unit or agency, or any other entity who or that employs one or more persons for compensation. Any person required under the Internal Revenue Code to withhold Federal income tax from compensation paid to an employe shall prima facie be deemed an employer.*

(i) *“Fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any trust or similar capacity, whether domiciliary or ancillary.*

(j) *“Income” for a resident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article.*

(k) *“Income from sources within this Commonwealth” for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article to the extent that it is earned, received or acquired from sources within this Commonwealth:*

(1) *By reason or ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or*

(2) *In connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth; or*

(3) *As a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article; or*

(4) *From intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth.*

(l) *“Individual” means a natural person and shall include the members of a partnership or association.*

(m) *“Nonresident individual” means any individual who is not a resident of the Commonwealth.*

(n) *“Nonresident estate or trust” means any estate or trust which is not a resident estate or trust. The term “nonresident estate or trust” shall not include charitable trusts or pension or profit sharing trusts.*

(o) *“Person” means any individual, employer, association, fiduciary, partnership, corporation or other entity, estate or trust, resident or nonresident, and the plural as well as the singular number.*

(p) *“Resident individual” means an individual who is domiciled in this Commonwealth unless he maintains no permanent place of abode in this Commonwealth and does maintain a permanent place of abode elsewhere and spends in the aggregate not more than thirty days of the*

taxable year in this Commonwealth; or who is not domiciled in this Commonwealth but maintains a permanent place of abode in this Commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in this Commonwealth.

(q) *“Received” for the purpose of computation of income subject to tax under this article means “received, earned or acquired” and the phrase “received, earned or acquired” shall be construed according to the method of accounting required by the department under this article for computing and reporting income subject to the tax.*

(r) *“Resident estate” means the estate of a decedent who at the time of his death was a resident individual.*

(s) *“Resident trust” means:*

(1) *A trust created by the will of a decedent who at the time of his death was a resident individual; and*

(2) *Any trust created by, or consisting in whole or in part of property transferred to a trust by a person who at the time of such creation or transfer was a resident. The term “resident trust” under this subclause (2) shall not include charitable trusts or pension or profit sharing trusts.*

(t) *“State” means any state or commonwealth of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country.*

(u) *“Tax” includes interest, penalties and additions to tax, and further includes the tax required to be withheld by an employer on compensation paid, unless a more limited meaning is disclosed by the context.*

(v) *“Taxable year” means the taxable period on the basis of which a taxpayer is required to file his Federal income tax return pursuant to the Internal Revenue Code or if he is not required to or does not file a Federal income tax return, the calendar year provided that for the initial period during which the tax is first imposed “taxable year” means the period beginning June 1, 1971, and ending with the taxable period on the basis of which a taxpayer is required to file his Federal income tax return pursuant to the Internal Revenue Code or if he is not required to or does not file a Federal income tax return, December 31, 1971.*

(w) *“Taxpayer” means any individual, estate or trust subject to the tax imposed by this article, any partnership having a partner who is a taxpayer under this act and any employer required to withhold tax on compensation paid.*

PART II IMPOSITION OF TAX

Section 302. Imposition of Tax.—*(a) There is hereby imposed an*

annual tax to be paid by resident individuals, estates or trusts at the rate of two and three-tenths per cent on the privilege of receiving each of the classes of income hereinafter enumerated in section 303.

(b) There is hereby imposed an annual tax to be paid by nonresident individuals, estates or trusts at the rate of two and three-tenths per cent on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

Section 303. Classes of Income.—(a) The classes of income referred to above are as follows:

(1) Compensation. All salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered whether directly or through an agent and whether in cash or in property.

(2) Net profits. The net income from the operation of a business, profession, or other activity, after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with accepted accounting principles and practices but without deduction of taxes based on income.

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible but only to the extent that the amount of such net gain or income exceeds the taxpayer's actual or attributed base as determined in accordance with accepted accounting principles and practices.

The term "net gains or income" shall not include gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States.

(4) Net gains or income derived from or in the form of rents, royalties, patents and copyrights.

(5) Dividends.

(6) Interest derived from obligations which are not statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States.

(7) Gambling and lottery winnings.

(8) Net gains or income derived through estates or trusts.

To the extent that income or gain is subject to tax under one of the classes of income enumerated in this section such income or gain shall not be subject to tax under another of such enumerated classes.

(b) It is hereby declared to be the intent of the General Assembly that if one or more or part of one or more of the classes of income enumerated in subsection (a) of this section are, for any reason, held to be unconstitutional by a final decision of a court of last resort, said unconstitutional class or classes or part of a class or classes of income

shall be deemed severable, and the tax imposed by this article shall apply with respect to all the remaining classes of income or parts thereof enumerated in subsection (a) of this section as if the unconstitutional class or classes of income or part or parts thereof had not been included therein.

PART III ESTATES AND TRUSTS

Section 305. Taxability of Estates, Trusts and Their Beneficiaries.—The income of a beneficiary of an estate or trust in respect of such estate or trust shall consist of that part of the income or gains received by the estate or trust for its taxable year ending within or with the beneficiary's taxable year which, under the governing instrument and applicable State law, is required to be distributed currently or is in fact paid or credited to said beneficiary. The income or gains of the estate or trust, if any, taxable to such estate or trust shall consist of the income or gains received by it which has not been distributed or credited to its beneficiaries.

PART IV PARTNERSHIPS AND ASSOCIATIONS

Section 306. Taxability of Members.—A partnership or association as such shall not be subject to the tax imposed by this article, but the income or gain of a member of a partnership or association in respect of said partnership or association shall be subject to the tax and the tax shall be imposed on his share, whether or not distributed, of the income or gain received by the partnership or association for its taxable year ending within or with the partner's or member's taxable year.

PART V NONRESIDENT INDIVIDUALS

Section 308. Nonresident Individuals; Taxable Income.—The income of a nonresident individual shall be that part of his income derived from sources within this Commonwealth as defined in this article.

Section 309. Husband and Wife.—(a) Separate Return. If the income of husband or wife who are both nonresidents of this Commonwealth and are subject to tax under this article is determined on a separately filed return, their incomes from sources within this Commonwealth shall be separately determined.

(b) One Spouse a Nonresident. If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined on their separate incomes on such forms as the department shall

prescribe, unless both elect to determine their joint income as if both were residents, in which event their tax liabilities shall be joint and several.

Section 310. Allocation of Income of Nonresident.—Where a nonresident taxpayer earns, receives or acquires income from sources partly within and partly without this Commonwealth or engages in a business, trade, profession or occupation partly within and partly without this Commonwealth, and, as a result thereof or for other reasons that portion of the income derived from or connected with sources within this Commonwealth cannot readily or accurately be ascertained, the department shall by regulation prescribe uniform rules for apportionment or allocation of so much of such taxpayer's income as fairly and equitably represents income, derived from sources within this Commonwealth and subject to tax under this article.

PART VI CREDITS AGAINST TAX

Section 312. Tax Withheld.—The amount withheld under section 316 shall be allowed to the recipient of the compensation as a credit against the tax imposed on him by this article.

Section 313. Tax Paid Under Previous Act.—The amount of tax withheld from an employe and paid over to the Commonwealth or paid over by a taxpayer as an estimated payment pursuant to repealed Article III of the act of March 4, 1971 (Act No. 2), shall be held as a credit against the tax imposed by this article.

Section 314. Income Taxes Imposed by Other States.—(a) A resident taxpayer before allowance of any credit under section 312 shall be allowed a credit against the tax otherwise due under this article for the amount of any income tax, wage tax or tax on or measured by gross or net earned or unearned income imposed on him by another state with respect to income which is also subject to tax under this article.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this article that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire taxable income.

PART VII WITHHOLDING OF TAX

Section 316. Requirement of Withholding Tax.—Every employer maintaining an office or transacting business within this Commonwealth and making payment of compensation (i) to a resident individual, or (ii) to a nonresident individual taxpayer performing services on behalf of such employer within this Commonwealth, shall deduct and withhold from such compensation for each payroll period

a tax computed in such manner as to result, so far as practicable, in withholding from the employe's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to such compensation. The method of determining the amount to be withheld shall be prescribed by regulations of the department.

Section 317. Information Statement.—Every employer required to deduct and withhold tax under this article shall furnish to each such employe to whom the employer has paid compensation during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of compensation is made, a written statement in such manner and in such form as may be prescribed by the department showing the amount of compensation paid by the employer to the employe, the amount deducted and withheld as tax, pursuant to this article, the amount deducted, withheld and paid over to the Commonwealth as tax pursuant to repealed Article III of the act of March 4, 1971 (Act No. 2), and such other information as the department shall prescribe.

Section 318. Time for Filing Employers' Returns.—Every employer required to deduct and withhold tax under this article shall file a quarterly withholding return on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December. Such quarterly returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

Section 319. Monthly, Semi-monthly and Quarterly Payment of Taxes Withheld.—Every employer withholding tax under this article shall pay over to the department or to a depository designated by it the tax required to be deducted and withheld under this article.

(1) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be less than three hundred dollars (\$300), such employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 318.

(2) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be three hundred dollars (\$300) or more but less than one thousand dollars (\$1,000), such employer shall pay the tax monthly, on or before the fifteenth day of the month succeeding the months of January to November, inclusive, and on or before the last day of January following the month of December.

(3) Where the aggregate amount required to be deducted and withheld by any employer for each quarterly period can reasonably be expected to be one thousand dollars (\$1,000) or more, such employer

shall pay the tax semi-monthly, within three banking days after the close of the semi-monthly period.

Notwithstanding anything in this section to the contrary, whenever any employer fails to deduct or truthfully account for or pay over the tax withheld or file returns as prescribed by this article, the department may serve a notice on such employer requiring him to withhold taxes which are required to be deducted under this article and deposit such taxes in a bank approved by the department in a separate account in trust for and payable to the department, and to keep the amount of such tax in such account until payment over to the department. Such notice shall remain in effect until a notice of cancellation is served on the employer by the department.

Section 320. Employer's Liability for Withheld Taxes.—Every employer required to deduct and withhold tax under this article is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the department and any additions to tax penalties and interest with respect thereto, shall be considered the tax of the employer. All taxes deducted and withheld from employes pursuant to this article or under color of this article shall constitute a trust fund for the Commonwealth and shall be enforceable against such employer, his representative or any other person receiving any part of such fund.

Section 321. Employer's Failure to Withhold.—If an employer fails to deduct and withhold tax as prescribed herein and thereafter the tax against which such tax may be credited is paid, the tax which was required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved of the liability for any penalty, interest, or additions to the tax imposed with respect to such failure to deduct and withhold.

Section 322. Designation of Third Parties to Perform Acts Required of Employers.—In case a fiduciary, agent or other person has the control, receipt, custody or disposal of, or pays the compensation of an employe or a group of employes, employed by one or more employers, the department is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this article as the department may by regulation prescribe. Except as may be otherwise prescribed by the department, all provisions of this article which are applicable to an employer shall be applicable to a fiduciary, agent or other person.

PART VIII ESTIMATED TAX

Section 325. Declarations of Estimated Tax.—(a) Every resident and nonresident individual shall at the time hereinafter prescribed

make a declaration of his estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if his income, other than from compensation on which tax is withheld under this article, can reasonably be expected to exceed one thousand dollars (\$1,000).

(b) For the purposes of this article, the term "estimated tax" means the amount which an individual estimates to be his tax due under this article for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax under this article.

(c) A husband and wife may make a joint declaration of estimated tax hereunder as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Except as hereinafter provided, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual determines that his income on which no tax has been withheld under this article can reasonably be expected to exceed one thousand dollars (\$1,000) in the taxable year, as follows:

(1) If the determination is made on or before April 1 of the taxable year, a declaration of estimated tax shall be filed no later than April 15 of the taxable year.

(2) If the determination is made after April 1 but before June 2 of the taxable year, the declaration shall be filed no later than June 15 of such year.

(3) If the determination is made after June 1 but before September 2 of the taxable year, the declaration shall be filed no later than September 15 of such year.

(4) If the determination is made after September 1 of the taxable year, the declaration shall be filed no later than January 15 of the year succeeding the taxable year.

(e) Notwithstanding subsection (d) of this section, a declaration of estimated tax of an individual having an estimated taxable income from farming for the taxable year which is at least two-thirds of his total estimated taxable income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the farmer files a final return and pays the entire tax by March 1, the return may be considered as his declaration due on or before January 15.

(f) A declaration of estimated tax of an individual having a total estimated tax for the taxable year of fifty dollars (\$50) or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(g) An individual may amend a declaration under regulations of the department.

(h) If on or before January 31 of the year succeeding a taxable year, an individual files his return for the entire taxable year for which a declaration was required to be filed within the time prescribed by subsection (d) (4) of this section and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his declaration which was required to be filed no later than January 15.

(2) Such return shall be considered as the amendment permitted by subsection (g) to be filed on or before January 15 provided the amount of the tax shown on the return is greater than the amount of the estimated tax shown in a declaration previously made.

(i) This article shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) This article shall apply to an individual having a taxable year of less than twelve months in accordance with procedures prescribed in regulations of the department.

Section 326. Payments of Estimated Tax.—*(a) Subject to the provisions of subsection (j) of section 325, the estimated tax with respect to which a declaration is required shall be paid as follows:*

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be paid on or before the succeeding June 15, September 15, and January 15, respectively.

(2) If the declaration is not required to be filed on or before April 15 of the taxable year and is filed after April 15, but before June 16 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the succeeding September 15 and January 15, respectively.

(3) If the declaration is not required to be filed on or before June 15 of the taxable year and is filed after June 15 but before September 16 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the succeeding January 15.

(4) If the declaration is not required to be filed on or before September 15 of the taxable year and is filed after September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is not filed within the time prescribed therefor, or after the expiration of any extension of time therefor, clauses (2), (3) and (4) of this subsection shall not apply, and there shall be paid at the

time of such filing the amount of all installments of estimated tax which were due and payable on or before the date the declaration was filed, and the remaining installments shall be paid at such times and in such amounts as they would have been payable if the declaration had been filed when due.

(b) If an individual described in subsection (e) of section 325 (relating to farmers) makes a declaration of estimated tax after September 15 of the taxable year, but before the following March 1, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) If any amendment of a declaration is filed, the remaining unpaid installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

PART IX RETURNS AND PAYMENT OF TAX

Section 330. Returns and Liability.—On or before the date when the taxpayer's Federal income tax return is due or would be due if the taxpayer were required to file a Federal income tax return, under the Internal Revenue Code of 1954, a tax return under this article shall be made and filed by or for every taxpayer having income for the taxable year.

Section 331. Returns of Married Individuals, Deceased or Disabled Individuals and Fiduciaries.—(a) If the income tax liability of husband or wife is determined on a separate return, their income tax liabilities under this article shall be separate.

(b) If the income tax liabilities of husband and wife are determined on a joint return, their tax liabilities shall be joint and several.

(c) If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this article on such single or separate forms as may be required by the department, in which event their tax liabilities shall be separate except as provided in subsection (d) unless both elect to determine their joint taxable income as if both were residents, in which event their tax liabilities shall be joint and several.

(d) If husband and wife file separate tax returns under this article on a single form pursuant to subsections (b) or (c) and:

(1) If the sum of the payments by either spouse, including withheld and estimated taxes, exceeds the amount of the tax for which such spouse is separately liable, the excess may be applied by the department to the credit of the other spouse if the sum of the payments by such other

spouse, including withheld and estimated taxes, is less than the amount of the tax for which such other spouse is separately liable.

(2) If the sum of the payments made by both spouses with respect to the taxes for which they are separately liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses, or if either is deceased, to the survivor.

Provided, however, That the provisions of this subsection (d) shall not apply if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

(e) The return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with his property.

(f) The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property, or by his duly authorized agent.

(g) The return for an estate or trust shall be made and filed by the fiduciary. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

Section 332. Time and Place for Filing Returns and Paying Tax.—A person required to make and file a return under this article shall, without assessment, notice or demand, pay any tax due thereon to the department on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The department shall prescribe by regulation the place for filing and return, declaration, statement, or other document required pursuant to this article and for payment of any tax.

Section 333. Signing of Returns and Other Documents.—(a) Any return, declaration, statement or other document required to be made pursuant to this article shall be signed in accordance with regulations or instructions prescribed by the department.

(b) Any return, statement, or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this article shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

Section 334. Extension of Time.—The department may, upon

application, grant a reasonable extension of time for filing any return, declaration, statement, or other document required pursuant to this article, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

Section 335. Requirements Concerning Returns, Notices, Records and Statements.—(a) *The department may prescribe by regulation for the keeping of records, the content and form of returns, declarations, statements and other documents and the filing of copies of Federal income tax returns and determinations. The department may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the department may deem sufficient to show whether or not such person is liable for tax under this article.*

(b) (1) *When required by regulations prescribed by the department:*

(i) *Any person required under the authority of this article to make a return, declaration, statement, or other document shall include in such return, declaration, statement or other document such identifying number as may be prescribed for securing proper identification of such person.*

(ii) *Any person with respect to whom a return, declaration, statement, or other document is required under the authority of this article to make a return, declaration, statement, or other document with respect to another person, shall request from such other person, and shall include in any such return, declaration, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.*

(2) *For purposes of this section, the department is authorized to require such information as may be necessary to assign an identifying number to any person.*

(c) *Every partnership having a resident partner or having any income derived from sources within this Commonwealth shall make a return for the taxable year setting forth all items of income, loss and deduction, and such other pertinent information as the department may by regulations prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subsection, "taxable year" means year or period which would be a taxable year of the partnership if it were subject to tax under this article.*

(d) *The department may prescribe regulations requiring returns of information to be made and filed on or before February 28 of each year as to the payment or crediting in any calendar year of amounts of ten dollars (\$10) or more to any taxpayer. Such returns may be required of any person, including lessees or mortgagors of real or personal*

property, fiduciaries, employers and all officers and employes of this Commonwealth, or of any municipal corporation or political subdivision of this Commonwealth having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on compensation required to be furnished by an employer to an employe, shall constitute the return of information required to be made under this section with respect to such compensation.

PART X PROCEDURE AND ADMINISTRATION

Section 337. Payment on Notice and Demand.—Upon receipt of notice and demand from the department, there shall be paid the amount of any tax due under the provisions of this article stated in such notice and demand.

Section 338. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) In the event that any taxpayer fails to file a return required by this article, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within ninety days after a notice of such estimated assessment has been mailed to the taxpayer, unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by section 340 of this article.

Section 339. Jeopardy Assessments.—(a) Jeopardy Assessments, Filing and Notice. If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy including interest and penalties and additions thereto, if any.

(b) Closing of Taxable Year. If the department believes that a taxpayer designs quickly to depart from the State or to remove his property therefrom or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the department shall declare the taxable period for such

taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(c) Jeopardy Assessments, Collection. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section 340 to the contrary, accompanied by a bond or other security in such amounts as the department may deem necessary, not exceeding double the amount (including interest and penalties and additions thereto) as to which the stay is desired.

(d) Jeopardy Assessment, When Final. If a petition for reassessment, accompanied by bond or other security is not filed within the ten-day period, the assessment becomes final.

(e) Jeopardy Assessments, Hearing. If the taxpayer has so requested in his petition, the department shall grant him or his authorized representative an oral hearing.

(f) Jeopardy Assessments, Action on Petition for Reassessment. The department shall consider the petition for reassessment and notify the taxpayer of its decision thereon. Its decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within ninety days after notification of the department's decision files a petition for review authorized under section 341.

(g) Jeopardy Assessments, Presumptive Evidence of Jeopardy. In any proceeding brought to enforce payment of taxes made due and payable by this section, the belief of the department under subsection (a) whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

Section 340. Procedure for Reassessment.—Promptly after the date of an assessment by the department, the department shall send by mail a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him to such reassessment, and it shall be supported by affidavit that it is not

made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.

Section 341. Review by Board of Finance and Revenue.—*Within ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review such action. The failure of the department to notify the petitioner of a decision within the six-months period provided for by section 340 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-months period prescribed by section 340. Every petition for review filed hereunder shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been 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 in disposition of such petitions filed with it within six months after they have been received, and in the event of failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.*

Section 342. Appeal to the Commonwealth Court.—*Any person, or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue may, within sixty days, appeal to the Commonwealth Court from the decision of the Board of Finance and Revenue and, except for the sixty day period for appeal in the manner now or hereafter provided by law for appeals from decisions of said board in tax cases.*

Section 343. Collection of Tax.—*The department shall collect the taxes imposed by this article in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.*

Section 344. Collection upon Failure to Request Reassessment, Review or Appeal.—*The department may collect any tax:*

- (1) After ninety days from the date of mailing of a copy of the notice of assessment, if no petition for reassessment has been filed;*
- (2) After ninety days from the date of mailing of notice of the department's action thereon, if no petition for review has been filed;*

(3) *Within sixty days from the date of mailing of notice of the decision of the Board of Finance and Revenue upon a petition for review or from the expiration of the board's time for acting upon such petition, if no decision has been made; or*

(4) *Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.*

In any such proceeding for the collection of the tax imposed by this article, the person against whom the assessment was made shall not be permitted to set up any ground of defense that might have been presented to the department, the Board of Finance and Revenue or the Commonwealth Court if such person had properly pursued his administrative remedies under this article.

Section 345. Lien for Tax.—(a) *If any person liable to pay any tax neglects or refuses to pay the same on the date the tax becomes collectible, the amount of such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth against the real estate of such person but only after such lien has been duly entered and docketed of record by the prothonotary of the county where such property is situated. No prothonotary shall require, as a condition precedent to the entry of such lien, the payment of costs incident thereto.*

(b) *The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this article. 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 before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of said real 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 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.*

(c) *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 (\$1,000) and cost of prosecution, or to undergo imprisonment not exceeding one year, or both.*

Section 346. Refund or Credit of Overpayment.—(a) *In the case of*

any overpayment, the department may credit the amount of such overpayment against any liability in respect of the tax imposed by this article on the part of the person who made the overpayment and shall refund any balance to such person.

(b) The department is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year.

(c) If the taxpayer has paid as an installment of estimated tax more than the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in subsection (a) or (b).

Section 347. *Restrictions on Refunds.*—No credit or refund shall be made under section 346 without the approval of the Board of Finance and Revenue, except such credits or refunds as arise:

- (1) By reason of the overpayment of an installment of ~~estimated tax~~;
- (2) Upon the filing of a final return showing less tax due after the application of the allowable credits than the amount of tax withheld from the taxpayer's compensation or the amount of tax paid by him as estimated tax under this act or pursuant to Article III of the act of March 4, 1971 (Act No. 2).

Section 348. *Limitations on Assessment and Collection.*—(a) The amount of any tax imposed by this article shall be assessed within three years after the return is filed. For the purposes of this subsection and subsection (b), a return filed before the last day prescribed for the filing thereof, or before the last day of any extension of time for the filing thereof, shall be considered as filed on such last day.

(b) If the taxpayer omits from income an amount properly includable therein which is in excess of twenty-five per cent of the amount of income stated in the return, the tax may be assessed at any time within six years after the return was filed.

(c) Where no return is filed, or if a taxpayer shall fail, when required, to file an amended return, the amount of the tax due may be assessed at any time.

(d) Where the taxpayer files a false or fraudulent return with intent to evade the tax imposed by this article, the amount of tax due may be assessed at any time.

Section 349. *Extension of Limitation Period.*—Notwithstanding section 348, where, before the expiration of the period prescribed therein a taxpayer has consented in writing that such period be extended, the amount of tax due may be assessed at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

Section 350. Limitations on Refund or Credit.—Any application for refund must be filed with the Board of Finance and Revenue within three years from the time the return is required to be filed.

Section 351. Interest.—If any amount of tax imposed by this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate of one-half of one per cent per month, for each month or fraction thereof from such date, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

Section 352. Additions.—(a) In case of failure to file any return required under section 330 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent, in the aggregate, but in no case shall the amount added be less than five dollars (\$5).

(b) If any part of any underpayment of any tax imposed by this article is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five per cent of the underpayment.

(c) If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the underpayment. This amount shall be in lieu of any amount determined under subsection (b).

(d) (1) If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate of six per cent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to eighty per cent of the tax (two-thirds in the case of an individual described in subsection (e) of section 325) shown on the return for the taxable year (or if no return was filed, of the tax for such year) over the amount, if any, of the installments paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(2) *No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the lesser of:*

(A) *The amount which would have been required to be paid on or before such date if the estimated tax were:*

(i) *the tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or*

(ii) *an amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year; or*

(B) *An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.*

(e) *Any person required to collect, account for and pay over any tax imposed by this article who wilfully fails to collect such tax or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not collected or not accounted for and paid over. No penalty shall be imposed under subsection (b) or (c) for any offense to which this subsection (e) is applicable.*

(f) *Any person required under the provisions of section 317 to furnish a statement to an employe who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section 317 and the regulations prescribed thereunder, shall, for each such failure, be subject to a penalty of fifty dollars (\$50) for each employe.*

(g) *Whenever any check issued in payment of any tax, or for any other purpose required by this article, shall be returned to the department as uncollectible, the department shall charge a fee of ten per cent of the face amount thereof, plus all protest fees, to the person presenting such check to the department, to cover the cost of its collection in addition to the interest and penalties otherwise provided for in this article: Provided, That the additions imposed by this subsection shall not exceed two hundred dollars (\$200) nor be less than ten dollars (\$10).*

Section 353. Crimes.—*(a) Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction, be sentenced to*

pay a fine not exceeding twenty-five thousand dollars (\$25,000), or to undergo imprisonment not exceeding two years, or both.

(b) Any person required under this article to collect, account for and pay over any tax imposed by this article who wilfully fails to collect or truthfully account for and pay over such tax, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine not exceeding twenty-five thousand dollars (\$25,000) or to undergo imprisonment not exceeding two years, or both.

(c) Any person required under this article to pay any tax or to make a return, keep any records or supply any information, who wilfully fails to pay such tax or make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000), or to undergo imprisonment not exceeding two years, or both.

(d) Any person who wilfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter, or wilfully aids or assists in, or procures, counsels or advises the preparation or presentation, in connection with any matter arising under this article, of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document, shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding two years, or both.

(e) Any person who wilfully delivers or discloses to the department any list, return, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment not exceeding two years, or both.

(f) It shall be unlawful for any officer, agent or employe of the Commonwealth to divulge or to make known in any manner whatever, not provided by law, except for official purposes, to any person, the amount or source of income, profits, losses, expenditures or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law, and it shall be unlawful for any person to print or publish in any manner whatsoever not provided by law, any return or

any part thereof or source of income, profits, losses or expenditures appearing in any return, and any person committing an offense against the foregoing provisions shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both, together with the costs of prosecution; and, if the offender be an officer or employe of the Commonwealth, he shall be dismissed from office or discharged from employment.

(g) Notwithstanding subsection (f), it shall be lawful for any officer or employe of the Commonwealth having custody of returns to produce them or evidence of anything contained in them in any action or proceeding in any court on behalf of the department under the provisions of this article to which it is a party, or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof or the inspection by the Attorney General or other legal representatives of the Commonwealth of the return of any taxpayer who shall bring action to review the tax based thereon or against whom an action or proceeding has been instituted for the collection or recovery of the tax imposed by this article.

Section 354. Rules and Regulations.—The department is hereby charged with the enforcement of the provisions of this article, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this article and the collection of taxes imposed by this article.

Section 355. Examination.—The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, and to require the production of a copy of his return as made to and filed with the Federal Government, if one was so made and filed in order to verify the accuracy of any return made, or if no return was made, to ascertain and assess the tax imposed by this article. Every such taxpayer or supposed taxpayer 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. The department is hereby authorized to examine any person under oath concerning any income which was or

should have been returned for taxation, 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 have knowledge of such income. The procedure for such hearing or examination shall be the same as that provided by "The Fiscal Code" relating to inquisitorial powers of fiscal officers.

Section 356. Cooperation with Other Governmental Agencies.—*Notwithstanding the provisions of subsection (f) of section 353, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any political subdivision of this Commonwealth or of any other state imposing tax based upon the incomes of individuals, or the authorized representative of such officer, to inspect the tax returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer, or supply him with information concerning any item of income contained in any return of any taxpayer. Such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this Commonwealth charged with the administration of the personal income tax law thereof.*

Section 357. Appropriation for Refunds.—*So much of the proceeds of the tax imposed by this article as shall be necessary for the payment of refunds, enforcement, or administration, under this article, is hereby appropriated for such purposes.*

PART XI MISCELLANEOUS PROVISIONS

Section 358. Constitutional Construction.—*In addition to the provisions relating to legislative intent contained in subsection (b) of section 303 of this article, if any word, phrase, clause, sentence, sections or provision of this article is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared as the legislative intent that this article would have been adopted had such unconstitutional word, phrase, clause, sentence, section or provision thereof not been included herein.*

Section 359. Saving Clause.—*(a) Notwithstanding anything contained in any law to the contrary, the validity of any ordinance or part of any ordinance or any resolution or part of any resolution, and any amendments or supplements thereto now or hereafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this article.*

Section 360. Repealer.—All acts or parts of acts excluding lottery or gambling winnings from a State personal income tax are repealed in so far as inconsistent herewith.

Section 361. Effective Date.—Except as hereinafter provided this article shall take effect immediately, except the tax shall first apply and be imposed upon income received by or accrued to a taxpayer on and after June 1, 1971: Provided, however, That a taxpayer who filed returns on the basis of a fiscal year or who is the beneficiary of an estate or trust or member of a partnership which files its returns under this article on the basis of a fiscal year, shall be subject to tax for his first taxable period on the portion of his fiscal year or of the fiscal year of the estate, trust or partnership which postdates May 31, 1971, as prescribed by the department by regulations. Section 1016 which provides for additions or penalties to the tax shall not take effect until thirty days after the date on which the department has promulgated and issued regulations relating to the duties and liabilities imposed on taxpayers under this article.

Section 5. Subclause 1. of clause (3) of section 401 and sections 402, 502 and 602 of the act are amended to read:

Section 401. Definitions.—The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(3) [“Net] *“Taxable income.”* 1. In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, [net] *taxable* 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] *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 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] *taxable* income on account of any 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: Provided further, That taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) [depletion; and (ix)] *and* capital gains *but only to the*

extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government. No deduction shall be allowed for net operating losses sustained by the corporation during any other fiscal or calendar year. In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, [**net**] "**taxable income**" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended. In arriving at [**net**] "**taxable income**" for Federal tax purposes for any taxable year beginning on or after January 1, 1971, any corporate net income tax [**paid**] *due* to the Commonwealth pursuant to the provisions of this article shall not be allowed as a deduction [**however,**] *and* the amount of corporate [**net income**] *Federal taxable income under the Internal Revenue Code* tax so paid and excluded from net income shall not be apportioned but shall be subject to tax at the rate imposed under this article.

* * *

Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of 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, a State excise tax at the rate of twelve per cent per annum upon each dollar of [**net**] *taxable income* of such corporation received by, and accruing to, such corporation during the calendar year 1971 *and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972* and each year thereafter, 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 403 of this article, in which case, such tax, at the rate of twelve per cent, shall be levied, collected, and paid upon all [**net**] *taxable income* received by, and accruing to, such corporation during *the first six months of the fiscal year commencing in the calendar year [1971 and ending in the calendar year] 1972 and at the rate of eleven per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and ending in the calendar year 1973* and during each fiscal year thereafter.

Section 502. 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**] *taxable income* derived from sources within this Commonwealth at the rate of twelve per cent per annum upon each dollar of such [**net**] *taxable income* received by and accruing to such

corporation during the calendar year 1971 *and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972* and each year thereafter, 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 403 of Article IV, in which case such tax at the rate of twelve per cent shall be levied, collected and paid upon each dollar of such [net] *taxable* income received by and accruing to such corporation during *the first six months of the fiscal year commencing in the calendar year [1971 and] 1972 and at the rate of eleven per cent shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and ending in the calendar year 1973 and* each year thereafter: Provided, however, That such [net] *taxable* income shall not include income for any period for which the corporation is subject to taxation under Article IV.

Section 602. Imposition of Tax.—(a) That every domestic corporation other than corporations of the first class, nonprofit corporations, and cooperative agricultural associations not having capital stock and not conducted for profit, and every joint-stock association, limited partnership, and company whatsoever, from which a report is required under section 601 hereof, shall be subject to, and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a tax at the rate of ten mills, upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed in section 601, for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, except that any domestic corporation, limited partnership, joint-stock association or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602: *Provided, That the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, processing, research or development within the State, but every corporation, limited partnership or joint-stock association organized for the purpose of manufacturing, processing, research or development shall pay the State tax of ten mills herein provided, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to the manufacturing, processing, research or development business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this proviso to relieve from*

State taxation only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business.

(b) Every foreign corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under section 601 hereof, shall be subject to and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a franchise tax at the rate of ten mills for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, upon a taxable value to be determined in the following manner. The actual value of its whole capital stock of all kinds, including common, special, and preferred, shall be ascertained in the manner prescribed in section 601 of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: *Provided, That the manufacturing, processing, research and development exemptions as contained under section 602 (a) shall also apply to foreign corporations and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth.*

(c) *The term processing, as used in this section, shall mean and be limited to the following activities when engaged in as a business enterprise:*

(1) *The cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.*

(2) *The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.*

(3) *The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.*

(4) *The rolling, drawing or extruding of ferrous and nonferrous metals.*

(5) *The fabrication for sale of ornamental or structural metal or metal stairs, staircases, gratings, fire escapes or railings, (not including fabrication work done at the construction site).*

(6) *The preparation of animal feed or poultry feed for sale.*

(7) *The production, processing and bottling of nonalcoholic beverages for wholesale distribution.*

(8) *The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products, including lard, tallow, grease, cooking and inedible oils for wholesale distribution.*

(9) *The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.*

(10) *The milling for sale of flour or meal from grains.*

(11) *The publishing of books, newspapers, magazines or other periodicals, printing and broadcasting radio and television programs by licensed commercial or educational stations.*

(12) *The processing of used lubricating oils.*

(13) *The blending, rectification or production by distillation or otherwise of alcohol or alcoholic liquors, except the distillation of alcohol from by-products of wine-making for the sole purpose of fortifying wine.*

(d) *“Research and development” shall mean activities relating to the discovery of new and the refinement of known substances, products, processes, theories and ideas, but shall not include activities directed primarily to the accumulation or analysis of commercial, financial or mercantile data.*

[The provisions of this subsection shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes.]

(c) (e) It shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association, or limited partnership, upon which a tax is imposed by this section, to transmit the amount of said tax to the Department of Revenue within the time prescribed by law: Provided, That for the purposes of this act interest in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly: Provided, further, That corporations, limited partnerships, and joint-stock associations, liable to a tax under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them and in which the whole body of stockholders or members, as such, have the entire equitable interest in remainder; but corporations, limited partnerships, and joint-stock associations, owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders or members thereof as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals.

(d) (f) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute said tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the actual value of its whole capital stock. If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

The term “holding company” shall mean any corporation (i) at least ninety per cent of the gross income of which for the taxable year is derived from dividends, interest, gains from the sale or other disposition of stock

or securities and the rendition of management and administrative services to subsidiary corporations, and (ii) at least sixty per cent of the actual value of the total assets of which consists of stock securities or indebtedness of subsidiary corporations.

The term "subsidiary corporation" shall mean any corporation, a majority of the total issued and outstanding shares of voting stock of which are owned by the taxpayer corporation directly or through one or more intervening subsidiary corporations.

[**(e)**] (**g**) Notwithstanding any other provisions contained in this section 602, relating to the appraisal, allocation or apportionment of the value of the capital stock of a corporation subject to tax in the Commonwealth of Pennsylvania, every domestic corporation and every foreign corporation registered to do business in Pennsylvania and (i) which maintains an office in Pennsylvania and (ii) which has filed a timely election to be taxed as a regulated investment company with the Federal Government and (iii) which duly qualifies to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954 as amended, shall be taxed as a regulated investment company and shall be subject to the capital stock or franchise tax imposed by section 602, which tax shall be computed in the following manner:

(1) The value of its capital stock shall be determined by adding its net asset values as of the last day of each month during the taxable period or year and dividing the total sum by the number of months involved, for which purpose net asset value means the actual market value of all assets owned by such corporation without any exemptions or exclusions less all of its liabilities, debts and other obligations.

(2) The proportion of such value taxable in this Commonwealth at the rate of ten mills, shall be determined by applying to such value a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

(3) Any regulated investment company shall have the right annually, to elect to compute its capital stock or franchise tax by applying the rate of tax of ten mills, upon each dollar to ten per cent of the capital stock value of such corporation. If exercised this election shall be in lieu of any other apportionment or allocation to which such corporation would otherwise be entitled.

Section 6. The act is amended by adding a section to read:

Section 602.1. Pollution Control Devices.—Notwithstanding the

foregoing provisions of section 602, to the contrary, equipment, machinery, facilities and other assets employed or utilized within the Commonwealth of Pennsylvania for water and air pollution control or abatement devices which are being employed or utilized for the benefit of the general public shall be exempt from the tax imposed under this Article VI. The Department of Revenue shall have the power, by regulation, to prescribe the manner and method by which such exemption shall be claimed.

Section 7. The second paragraph of section 1101 of the act is amended to read:

Section 1101. Imposition of Tax.—* * *

Upon the date its tentative report is required to be made, the corporation, association or individual making the report shall compute and pay to the Department of Revenue on account of the tax due for the current period of twelve months, at its election (i) for the year 1971 not less than twenty-nine and one-third mills of the dollar amount of its gross receipts reported for the entire preceding period of twelve months; or (ii) for the year 1971 not less than one hundred and seventeen and one-third mills of the dollar amount of its gross receipts received within the first three months of the current period of twelve months. *Notwithstanding any other provision in this section to the contrary, for the year 1972 and each year thereafter the corporation, association or individual making a tentative report shall transmit such report to the Department of Revenue on account of the tax due for the current period of twelve months and compute and make payment with such report pursuant to the provisions of the act of March 16, 1970 (P.L.180).*

* * *

Section 8. This act shall take effect as follows:

(1) The amendments to section 201 and 204 shall take effect immediately and shall be retroactive to March 4, 1971.

(2) The amendatory provisions of sections 401, 402, 502 and 602 shall take effect immediately and the tax imposed pursuant to such amendatory provisions shall apply for calendar year companies beginning July 1, 1972, and for fiscal year companies commencing in 1972 after the end of the first six months of such companies fiscal year: Provided that each corporation shall compute its tax due for the calendar year 1972 or fiscal year beginning in calendar year 1972 on the basis of the act of March 4, 1971 (Act No. 2) without regard to said amendments for the first six months of companies on either a calendar or fiscal year basis and on the basis of the provisions of the amendatory sections for the second six months; and shall pay tax, or be entitled to tax credit for the difference between the tax so computed and the amount of tax paid for such tax year; and the amount of any tax credit so determined by the corporation shall become, or be made, available for the payment of tentative or annual corporate taxes due for the year 1973 or thereafter.

(3) Section 602.1, added herein, shall take effect immediately and shall apply to the calendar or fiscal years commencing in the year 1971.

(4) The amendment to section 1101 shall take effect immediately.

APPROVED—The 31st day of August, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 93.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.