

No. 1978-114

AN ACT

HB 239

Amending the act of March 4, 1971 (P.L.6, 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," further providing for tax liens and enforcement thereof and providing that the exemption afforded to corporations organized for manufacturing, processing, research or development purposes does not apply to such companies as enjoy and exercise the right of eminent domain.

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

Section 1. Section 345, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L.362, No.93), is amended to read:

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] and personal property** 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.] and a writ of**

execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution on the lien, notice of the filing and effect of the lien shall be sent by certified mail to the taxpayer at his last known post office address: And provided further, That the said lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom said lien had been entered, unless and until a writ of execution has been issued and a levy made upon said stock of goods, wares and merchandise.

(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 2. Subsections (a) and (b) of section 602 of the act, amended August 31, 1971 (P.L.362, No.93), subsection (b) also amended September 9, 1971 (P.L.437, No.105), are amended to read:

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, ***except such companies as enjoy and exercise the right of eminent domain***, but every corporation, limited partnership or joint-stock association organized for the purpose of manufacturing, processing, research or development ***except such companies as enjoy and exercise the right of eminent domain*** 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.

The provisions of this article shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes, ***but shall not apply to such companies as enjoy and exercise the right of eminent domain.***

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Section 3. It is the intent of the General Assembly that the provisions of this act which amend subsections (a) and (b) of section 602 be construed insofar as possible to be retroactive to August 31, 1971. In the event that such construction would be deemed unlawful, then it is the intent of the General Assembly that the amendatory provision of section 602 be construed retroactive to the furthest legal date possible.

Section 4. This act shall take effect immediately and the provisions of section 2 relating to amendments to subsections (a) and (b) of section 602 shall be retroactive to August 31, 1971.

APPROVED—The 1st day of July, A. D. 1978.

MILTON J. SHAPP