

## No. 1979-27

## AN ACT

## HB 404

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," continuing the rate of the personal income tax and the rate of tax imposed on certain corporations for a limited period and lowering the tax thereafter; including the public utility realty tax in the code, further defining utility realty and imposing a surtax; providing for additional liquid fuels taxes and making repeals.

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

Section 1. Section 302, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," amended December 21, 1977 (P.L.330, No.98), is amended to read:

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 two-tenths per cent *until December 31, 1981 and at a rate of two per cent thereafter* 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 two-tenths per cent *until December 31, 1981 and at a rate of two per cent thereafter* on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

Section 2. Sections 402 and 502 of the act, amended December 21, 1977 (P.L.330, No.98), are reenacted and amended to read:

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 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 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar years 1974, 1975 and 1976 and at the rate of ten and

one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977 and each calendar year thereafter ***to the beginning of calendar year 1982 and at a rate of nine and one-half per cent for each calendar 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 taxable income received by, and accruing to, such corporation during the first six months of the fiscal year commencing 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 during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1977 and during each fiscal year thereafter ***to the fiscal year commencing in the calendar year 1982 and at a rate of nine and one-half per cent for each fiscal year commencing in the calendar year 1982 and each fiscal year thereafter***. No penalty prescribed by subsection (e) of section 1202.1 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.

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 taxable income derived from sources within this Commonwealth at the rate of twelve per cent per annum upon each dollar of such 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 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977 and each calendar year thereafter ***to the beginning of calendar year 1982 and at a rate of nine and one-half per cent for each***

*calendar 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 taxable income received by and accruing to such corporation during the first six months of the fiscal year commencing 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 during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1977 and each fiscal year thereafter *to the fiscal year commencing in the calendar year 1982 and at a rate of nine and one-half per cent for each fiscal year commencing in the calendar year 1982 and each fiscal year thereafter*: Provided, however, That such taxable income shall not include income for any period for which the corporation is subject to taxation under Article IV: And, provided further, That no penalty prescribed by subsection (e) of section 1202.1 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.

Section 3. The act is amended by adding articles to read:

**ARTICLE XI-A**  
**PUBLIC UTILITY REALTY TAX**

*Section 1101-A. 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:*

(1) *“Department.” The Department of Revenue of the Commonwealth of Pennsylvania.*

(2) *“Public utility.” Any person, partnership, association, corporation or other entity furnishing public utility service under the jurisdiction of the Pennsylvania Public Utility Commission or the corresponding regulatory agency of any other state or of the United States; and any electric cooperative corporation, municipality or municipality authority furnishing public utility service, but shall not mean any public utility furnishing public utility sewage services, or municipality or municipality authority furnishing public utility services.*

(3) *“Utility realty.” All lands, together with all buildings, towers, smokestacks, dams, dikes, canals, cooling towers, storage tanks, reactor*

*structures, pump houses, supporting foundations, enclosing structures, supporting structures, containment structures, reactor containment outer shells, reactor containment vessels, turbine buildings, recovery tanks, solid waste area enclosures, primary auxiliary buildings, containment auxiliary safeguard structures, fuel buildings, decontamination buildings, and, all other structures and enclosures whatsoever which are physically affixed to the land, no matter how such structures and enclosures are designated and without regard to the classification thereof for local real estate taxation purposes, but not including machinery and equipment, whether or not housed within such building, structure or enclosure, located within this Commonwealth and owned by a public utility either directly or by or through a subsidiary, which are used or are in the course of development or construction for use, in the furnishing, including producing, storing, distributing or transporting, of public utility service and which are not subject to local real estate taxation under any law in effect on April 23, 1968: Provided, however, That the following specified items shall be exempt from the tax hereby imposed:*

*(i) Easements or similar interests.*

*(ii) Railroad rights-of-way and superstructures thereon.*

*(iii) Pole, transmission tower, pipe, rail or other lines whether or not said lines are attached to the land or to any structure or enclosure which is physically affixed to the land.*

*(4) "State taxable value." The cost of utility realty, less reserves for depreciation and depletion, as shown by the books of account of a public utility: Provided, That for any public utility which was not required to record annual depreciation on its utility realty prior to enactment of section 503 of the Public Utility Law or Title 66 Pa.C.S. § 1703 (relating to depreciation accounts; reports), the depreciation deduction prescribed in this definition shall be the book reserve or fifty per cent of the book cost, whichever is greater.*

*(5) "Local taxing authority." A county, city, institution district, borough, town, township or school district having authority to impose taxes on real estate.*

*(6) "Realty tax equivalent." The total amount of taxes which a local taxing authority could have imposed on utility realty but for this article, and unless otherwise provided shall be the product of the real estate property tax rate and the assessed valuation of utility realty.*

*(7) "Total tax receipts." The actual amount collected by a local taxing authority under all statutes authorizing the imposition of taxes, but shall not include fines, penalties, fees, licenses or receipts from any source other than taxes.*

*Section 1102-A. Imposition of Tax; Report; Interest and Penalties.—(a) On or before the first day of June of 1970 and of each year thereafter, every public utility shall pay to the State Treasurer, through the Department of Revenue, a tax at the rate of thirty mills upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year.*

*(b) Each such payment shall be accompanied by a report, upon oath of the owner or responsible officer of the public utility, showing the amount and manner of computation of the State taxable value upon which such payment is based.*

*(c) Payment of the tax hereby imposed may be enforced by any means provided by law for the enforcement of payment of taxes to the State. If the tax hereby imposed is not paid by the date herein prescribed, or within any extension granted by the department, the unpaid tax shall bear interest at the rate of one per cent per month, and shall in addition be subject to a penalty of five per cent of the amount of the tax, which penalty may be waived or abated, in whole or in part, by the department unless the public utility has acted in bad faith, negligently, or with intent to defraud.*

*(d) This article shall not be construed to apply to nor shall the tax be imposed upon any public utility furnishing any public utility sewage services, or upon any municipality or municipality authority furnishing any public utility services.*

*Section 1103-A. Surtax.—(a) On or before the sixtieth day following the effective date hereof, every public utility shall pay for the 1979-1980 fiscal year of the Commonwealth to the State Treasurer, through the Department of Revenue, a tax at the rate of one hundred five mills upon each dollar of the State taxable value of those items of its utility realty at the end of calendar year 1978, which were excluded from the tax imposed by the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," prior to the adoption hereof and which become subject to the tax under the provisions hereof.*

*(b) Each such payment shall be accompanied by a report prepared in the manner prescribed by section 1102-A(b) with respect to such items, and each such report and payment shall be subject to the provisions of section 1102-A(c).*

*(c) The tax imposed by this section shall be in addition to any other tax imposed by this article.*

*(d) On or before the first day of September, 1980, the department shall ascertain the total amount of all moneys refunded or credited to public utilities as a result of petitions for refund arising out of or supported by the interpretation of the definition of "utility realty" previously contained in the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," as construed by the decision of the Supreme Court of Pennsylvania in Commonwealth v. Philadelphia Electric Company, 472 Pa. 530 (1977), together with the amount of potential refunds sought by public utilities in timely petitions which are pending before the Board of Finance and Revenue arising out of or supported by said decision. Should the surtax imposed by this section produce an amount of revenue in excess of the total obligation of the Commonwealth ascertained in the manner herein stated, the Department of Revenue shall determine the nearest millage rate calculated to produce the amount of said obligations, and shall reduce and recalculate the surtax paid by the said utilities upon the basis of*

*such adjustment, and shall notify each such utility of its reduced surtax liability. Each such utility shall then be entitled to apply for a cash refund or credit in the manner provided by law and regulation.*

*(e) In order to implement the provisions of subsection (d), notwithstanding any provision of section 503 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," which may allow a more extended time for filing, no petition for refund of the tax imposed by the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," arising out of or supported by the interpretation of the previous definition of "utility realty" in the "Public Utility Realty Tax Act," as construed by the decision of the Supreme Court of Pennsylvania in *Commonwealth v. Philadelphia Electric Company*, 472 Pa. 530 (1977) shall be timely unless said petition has been filed with the Board of Finance and Revenue on or before the first day of July 1980.*

*Section 1104-A. Effect of Payment; Additional Assessment.—(a) Payment of the tax imposed by the act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," or section 1102-A, or section 1103-A, and the distribution to local taxing authorities prescribed by section 1107-A, shall be in lieu of local taxes upon utility realty, as contemplated by Article VIII, section 4, of the Constitution of Pennsylvania.*

*(b) If in any calendar year the amount determined by the department pursuant to section 1107-A(a)(2) shall exceed the total amount of tax collected pursuant to section 1102-A(a), the department shall determine the ratio which the amount of such excess bears to the total State taxable value of all utility realty reported to it pursuant to section 1102-A(b). The department shall notify each reporting public utility of such ratio, and it shall be the duty of such public utility, within forty-five days thereafter, to pay to the State Treasurer, through the Department of Revenue, an additional amount of tax equal to the product of (1) such ratio and (2) the State taxable value shown in its report required by section 1102-A(b). The provisions of section 1102-A(c) shall be applicable to such additional amount of tax.*

*Section 1105-A. Local Assessment of Utility Realty; Initial Assessment; Procedure and Appeals.—(a) It shall be the duty of the several elected and appointed assessors of real property to assess and value all utility realty in the same manner as is provided by law for the assessment and valuation of real estate.*

*(b) Such utility realty shall be initially assessed on or before October 1, 1970, whichever is later, and thereafter shall be assessed or reassessed at the same time and in the same manner as real estate.*

*(c) A public utility may appeal from the assessment of its utility realty, including the initial assessment, in the manner provided by law for appeals from assessment of real estate. If appeals are pending at the time a local taxing authority prepares its report for submission to the department as prescribed by section 1106-A, the report shall include as the assessment for*

*the utility realty appealed the amount which the public utility has stipulated or alleged as the proper assessment.*

**Section 1106-A. Reports by Local Taxing Authorities.**—(a) *On or before the first day of April of 1971 and of each year thereafter, each local taxing authority shall submit to the department:*

(1) *The name and address of each public utility owning utility realty within its jurisdiction, and the assessed value of such utility realty.*

(2) *Its real estate tax rate for its current fiscal year.*

(3) *The realty tax equivalent, which is the assessed value of clause (1) multiplied by the tax rate of clause (2).*

(4) *Its total tax receipts for its last completed fiscal year.*

(5) *Any adjustment to the assessed values, tax rates, realty tax equivalents or total tax receipts previously reported pursuant to clauses (1) to (4).*

(b) *If a local taxing authority shall fail to file the report required by subsection (a) by the date therein prescribed, or within any extension granted by the department, it shall forfeit its right to share in the next-ensuing distribution made pursuant to section 1107-A.*

**Section 1107-A. Distribution to Local Taxing Authorities.**—(a) *From the reports received by it in each year pursuant to section 1106-A, the department shall determine:*

(1) *The total tax receipts shown in all such reports.*

(2) *The total realty tax equivalent shown in all such reports.*

(b) *On or before the first day of October of 1971 and of each year thereafter, the department shall distribute to each reporting local taxing authority its share of the total realty tax equivalent determined pursuant to subsection (a)(2), which share shall be the ratio which the total tax receipts reported by that local taxing authority bear to the total tax receipts determined pursuant to subsection (a)(1).*

(c) *For the purpose of making such payment, the department shall make requisition therefor in the manner prescribed by "The Fiscal Code."*

**Section 1108-A. Legislative Intent.**—(a) *It is the legislative intent that the tax imposed by this act shall be in addition to any tax now or hereafter imposed upon the gross receipts of public utilities under the act of June 1, 1889 (P.L.420, No.332), and this act shall not be construed in any manner as to constitute a replacement for or a repealer of the above cited act.*

(b) *It is specifically declared as the legislative intent of the General Assembly that for purposes of imposition or nonimposition of tax hereon, that this Article XI-A shall not be construed or determined in any way by any court of record that this article is in pari materia with any county assessment law heretofore or hereafter enacted, nor shall such courts have the authority to construe the tax assessment base relating to industrial realty classification under such county assessment laws as being in conformity with or in any way applicable to the utility realty tax assessment base as defined in this article. Accordingly, whether or not public utility*

*property is subject to tax or is exempted from tax under this article shall be determined solely by the application of the term "utility realty," as that term is specifically defined by the General Assembly under section 1101-A(3).*

**ARTICLE XI-B  
FUEL TAXES  
PART I  
LIQUID FUELS TAX**

*Section 1101-B. Imposition of Additional Tax.—In addition to the tax imposed upon liquid fuels by the act of May 21, 1931 (P.L.149, No.105), known as "The Liquid Fuels Tax Act," and by the act of July 12, 1974 (P.L.458, No.161), an additional State tax in an amount of two cents (2¢) per gallon, or fractional part thereof, is hereby imposed and assessed upon all liquid fuels used or sold and delivered by distributors within this Commonwealth except as herein provided. The tax herein imposed and assessed shall be collected by and paid to the Commonwealth only once in respect to any liquid fuels. The tax imposed by this section shall not be imposed upon liquid fuels:*

*(1) Used or sold and delivered that are not within the taxing power of this Commonwealth under the Commerce Clause of the United States Constitution.*

*(2) Used as fuel in aircraft or aircraft engines.*

*(3) Delivered to and used by the United States Government on presentation of a duly authorized United States Government exemption certificate or other evidence satisfactory to the department.*

*(4) Delivered to and used by the Commonwealth.*

*(5) Delivered to and used by any political subdivision.*

*(6) Delivered to and used by any second class county port authority.*

*(7) Delivered to and used by any nonpublic school not operated for profit on presentation of evidence satisfactory to the department.*

*(8) Delivered to and used by any volunteer fire company, volunteer ambulance service or volunteer rescue squad.*

*(9) Used as fuel in any nonlicensed powered farm machinery for purposes relating to the actual production of farm products or any licensed farm tractor when used off the highways for agricultural purposes or any nonlicensed farm tractor.*

*Section 1102-B. Payment to Motor License Fund.—Notwithstanding the provisions of any other act, all tax moneys collected pursuant to section 1101-B and all penalties and interest shall be paid into the Motor License Fund.*

**PART II  
FUEL USE TAX**

*Section 1121-B. Additional Tax Imposed.—In addition to the tax imposed by the act of January 14, 1952 (1951 P.L.1965, No.550), known as*



*the "Fuel Use Tax Act," there is hereby imposed a tax at a rate equivalent to that imposed under Part I of this article.*

Section 4. The act of March 10, 1970 (P.L.168, No.66), known as the "Public Utility Realty Tax Act," is repealed.

Section 5. Section 8, act of December 21, 1977 (P.L.330, No.98), entitled "An act 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,' increasing the rate of the personal income tax; increasing the rate of interest on unpaid tax; imposing certain conditions in the saving clause of the personal income tax as to the validity of State laws authorizing cities of the first class by ordinance to impose a tax on the income of nonresidents of such city; increasing the rate of tax imposed on certain corporations; changing the period for settlement of corporate income taxes and changing the prepayment of tax provisions for such taxes; prescribing the effective date for various provisions and repealing a certain act," is repealed.

Section 6. Nothing contained in this act shall be construed to relieve any person, corporation or other entity from the filing returns or from any taxes, penalties or interest imposed by the provisions of any laws which were in effect prior to being repealed by this act, or affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws or prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of taxes, penalties or interest due to the Commonwealth under any of the laws which were in effect prior to being repealed by this act.

Section 7. This act shall take effect immediately and the provisions of section 3 adding Article XI-A shall be retroactive to January 1, 1978.

APPROVED—The 4th day of July, A. D. 1979.

DICK THORNBURGH