

No. 1989-20

AN ACT

HB 31

Amending the act of April 9, 1929 (P.L.343, No.176), entitled, as amended, "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth, authorizing the Commonwealth to issue tax anticipation notes to defray current expenses, implementing the provisions of section 7(a) of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," requiring the Board of Finance and Revenue to issue written opinions to accompany its decisions; and providing for shares tax appeals.

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

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is amended by adding sections to read:

Section 503.1. Written Decisions.—(a) Whenever the Board of Finance and Revenue grants or denies a petition for review or a petition for refund, in whole or in part, the board shall provide written notice of the decision to the petitioner. If the decision denies a petition in whole or in part, the written notice shall advise the petitioner of the procedure by which the petitioner may obtain a written order pursuant to this section.

(b) Whenever the board denies a petition for review or a petition for refund, in whole or in part, the board, at the petitioner's request, shall issue a written order which sets forth the decision on the petition, summarizes the relevant factual and legal issues and explains the rationale upon which the decision is based. For purposes of an appeal from a decision of the board, the board shall not be deemed to have issued a final order until it has issued the written order requested by the petitioner.

(c) In addition to the requirements of subsections (a) and (b), the board, with the approval of a majority of its members, shall permit the publication of any significant decision which grants or denies a petition for review or a

petition for refund in whole or in part. Prior to such publication, the board shall edit the decision to delete any confidential tax information. The disclosure of any remaining information shall be deemed not to violate section 731 of this act. In determining if a decision is significant for the purposes of this subsection, the board shall consider the following:

- (1) Whether the decision is one of first impression for the board.*
- (2) Whether the decision is contrary to prior board decisions.*
- (3) Whether the decision reverses Department of Revenue policy.*
- (4) Whether the decision involves a unique legal issue or factual situation.*
- (5) Whether the decision could reduce the number of potential petitions in the future by setting forth the board's position on a particular issue.*
- (6) Whether the decision could serve an educational purpose by providing guidance regarding tax matters.*
- (7) Whether the decision could have a substantial fiscal impact for the Commonwealth.*

Section 1104.1. Exclusive Appeal Procedure; Shares Taxes.—(a) A taxpayer may file a petition for refund with the Board of Finance and Revenue concerning the payment of the tax imposed by Article VII or VIII of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," within two (2) years of the date of payment of the tax or the settlement of the tax, whichever period last expires.

(b) Upon sufficient cause shown by a taxpayer that the payment of the tax settled against the taxpayer under Article VII or VIII of the "Tax Reform Code of 1971" would irreparably harm the taxpayer, the Board of Finance and Revenue may, by a majority vote of the members, take jurisdiction of a petition challenging the settlement of the tax without the tax being paid.

(c) Notwithstanding any provision of this act, the "Tax Reform Code of 1971," or any other law to the contrary, the procedure set forth in this section shall constitute the exclusive method by which any appeal from the settlement of the tax imposed by Article VII or VIII of the "Tax Reform Code of 1971" may be made.

Section 2. The provisions of section 1 (relating to section 1104.1) shall apply to taxes imposed for calendar year 1989 and each calendar year thereafter.

Section 3. This act shall take effect as follows:

- (1) Sections 1 (relating to section 1104.1) and 2 shall take effective immediately.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 1st day of July, A. D. 1989.

ROBERT P. CASEY