

No. 2006-138

AN ACT

HB 552

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," further providing for the authority to invest and reinvest certain moneys; defining "general use prepaid cards," "gift card," "gift certificate" and "qualified gift certificate"; further providing for unclaimed property and for property held by courts and public officers and agencies; and clarifying provisions relating to notice and publication of lists.

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

Section 1. Section 301.1(i) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, amended November 30, 2004 (P.L.1725, No.220), is amended to read:

Section 301.1. Investment of Moneys.—* * *

(i) (1) Notwithstanding subsections (a) through (h), the Treasury Department shall have the exclusive management and full power to invest and reinvest the moneys of any fund as shall be accumulated beyond the ordinary needs of the various funds and which are not authorized by law to be invested by any board, commission or State officer, subject, however, to the exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence who are familiar with such matters exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of the funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The Treasury Department shall have

the power to hold, purchase, sell, assign, transfer and dispose of any securities, including equity securities and mutual funds consisting in whole or in part of equity securities, and investments in any such fund as well as the proceeds of such investments and of the money belonging to any such fund. The Treasury Department shall, through the Governor, submit to the General Assembly annually, at the same time the Treasury Department submits its budget covering administrative expenses, a report identifying the nature and amount of all existing investments made pursuant to this section.

(2) The authority to invest or reinvest the moneys of any fund pursuant to this subsection shall expire December 31, [2006] 2008. The Treasury Department may maintain investments pursuant to this subsection which are in existence on the expiration date in this paragraph for not more than two years following such expiration date.

Section 2. Section 1301.1 of the act is amended by adding definitions to read:

Section 1301.1. Definitions.—As used in this article, unless the context otherwise requires:

* * *

“General use prepaid cards” shall mean cards issued only by a bank or other similarly regulated financial institution or by a licensed money transmitter and shall mean plastic cards or other electronic payment devices which are:

(1) usable and honored upon presentation at multiple, unaffiliated merchants or service providers for goods or services or at automated teller machines (ATMs); and

(2) issued in a requested prepaid amount which amount may be, at the option of the issuer, increased in value or reloaded if requested by the holder.

The term shall not include debit cards linked to a deposit account or prepaid telephone calling cards. The term also shall not include flexible spending arrangements, including health reimbursement arrangements, as defined in section 106(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 106(c)(2)); flexible spending accounts subject to section 125 of the Internal Revenue Code of 1986; Archer MSAs as defined in section 220(d) of the Internal Revenue Code of 1986; dependent care reimbursement accounts subject to section 129 of the Internal Revenue Code of 1986; health savings accounts subject to section 223(d) of the Internal Revenue Code of 1986; or similar accounts from which, under the Internal Revenue Code of 1986 and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pretax basis.

“Gift card” shall mean plastic cards or other electronic payment devices which are:

(i) usable and honored upon presentation at a single merchant or an affiliated group or merchants that share the same name, mark or logo, or

usable at multiple, unaffiliated merchants or service providers for the future purchase or delivery of any goods or services; and

(ii) issued in a specified prepaid amount and may or may not be increased in value or reloaded.

The term shall not include general use prepaid cards or debit cards linked to a deposit account. The term also shall not include flexible spending arrangements, including health reimbursement arrangements, as defined in section 106(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 106(c)(2)); flexible spending accounts subject to section 125 of the Internal Revenue Code of 1986; Archer MSAs as defined in section 220(d) of the Internal Revenue Code of 1986; dependent care reimbursement accounts subject to section 129 of the Internal Revenue Code of 1986; health savings accounts subject to section 223(d) of the Internal Revenue Code of 1986; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pretax basis.

“Gift certificate” shall mean a written promise which is:

(i) usable and honored upon presentation at a single merchant or an affiliated group of merchants that share the same name, mark or logo, or usable at multiple, unaffiliated merchants or service providers for the future purchase or delivery of any goods or services; and

(ii) issued in a specific prepaid amount and may or may not be increased in value or reloaded.

The term shall not include general use prepaid cards or debit cards linked to a deposit account. The term also shall not include flexible spending arrangements, including health reimbursement arrangements, as defined in section 106(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 106(c)(2)); flexible spending accounts subject to section 125 of the Internal Revenue Code of 1986; Archer MSAs as defined in section 220(d) of the Internal Revenue Code of 1986; dependent care reimbursement accounts subject to section 129 of the Internal Revenue Code of 1986; health savings accounts subject to section 223(d) of the Internal Revenue Code of 1986; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses or similar expenses on a pretax basis.

“Qualified gift certificate” shall mean a gift certificate or gift card that does not contain any of the following:

(i) An expiration date or a period of time after which it expires.

(ii) Any type of postsale charge or fee, including, but not limited to, a service charge, dormancy fee, account maintenance fee, cash-out fee, replacement card fee or activation or reactivation fee.

The term shall not include general use prepaid cards.

* * *

Section 3. Clause 1 of section 1301.6 of the act, amended June 29, 2002 (P.L.614, No.91), is amended to read:

Section 1301.6. Property Held by Business Associations.—The following property held or owing by a business association is presumed abandoned and unclaimed:

1. The consideration paid for a gift certificate *or gift card* which has remained unredeemed for two (2) years or more after its redemption period has expired or for five (5) years or more from the date of issuance if no redemption period is specified. *The provisions of this clause shall not apply to a qualified gift certificate.*

* * *

Section 4. Section 1301.9 of the act, amended December 23, 2003 (P.L.243, No.45), is amended to read:

Section 1301.9.. Property Held by Courts and Public Officers and Agencies.—The following property is presumed abandoned and unclaimed:

1. Except as provided in **[clause 2 or 6] clauses 2 and 2.1 or clause 6**, all property held for the owner by any court, public corporation, public authority or instrumentality of the United States, the Commonwealth, or any other state, or by a public officer or political subdivision thereof, unclaimed by the owner for more than five (5) years from the date it first became demandable or distributable.

2. Bicycles held for the owner by a municipality unclaimed by the owner for more than ninety (90) days from the date it first became demandable or distributable.

2.1. All tangible property, other than bicycles, held for the owner by a municipality unclaimed by the owner for more than three (3) years from the date it first became demandable or distributable.

3. The bicycles held pursuant to clause 2 *and tangible property held pursuant to clause 2.1 and which the State Treasurer refuses in writing to accept* may be disposed of by the municipality *to the highest bidder after due notice by advertisement for bids or* at public auction at such time and place as may be designated by the municipality or the governing body may, by resolution, donate the bicycles *or such tangible property* to a charitable organization. Any proceeds from the sale of the bicycles *or such tangible property* shall be retained by the municipality and used for municipal purposes.

4. Bicycles held by or acquired by the Commonwealth for ninety (90) days may be disposed of at public auction at such time and place as may be designated by the State Treasurer. Proceeds of such sale or sales shall be deposited in the General Fund.

5. All property held by or subject to the control of any court, public corporation, public authority or instrumentality of the Commonwealth or by a public officer or political subdivision thereof, which is without a rightful or

lawful owner, to the extent not otherwise provided for by law, held for more than one year.

6. Restitution held for the owner by any court, public corporation, public authority or instrumentality of the Commonwealth, or by a public officer or political subdivision thereof, unclaimed by the owner for more than five (5) years from the date it first became demandable or distributable.

Section 5. Section 1301.12(a) of the act, amended June 29, 2002 (P.L.614, No.91), is amended to read:

Section 1301.12. Notice and Publication of Lists of Property Subject to Custody and Control of the Commonwealth under this Article.—(a) Within twelve (12) months from the filing of the report required by section 1301.11, the State Treasurer shall cause notice to be published at least once in *a legal newspaper as well as* an English language newspaper of general circulation in the county in which the owner of the property had a last known address appearing from the verified report filed by the holder or, if there is no name or address or the owner is not a Pennsylvania resident, then at least one time in the Pennsylvania Bulletin. *Notice shall also be posted on the Internet website of the Treasury Department.*

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Section 6. This act shall apply to gift cards and gift certificates reported to the Commonwealth for the year 2006 and each year thereafter.

Section 7. This act shall take effect as follows:

(1) The amendment of section 1301.9 of the act shall take effect in 60 days.

(2) The amendment of section 1301.12 of the act shall take effect July 1, 2007.

(3) The remainder of this act shall take effect immediately.

APPROVED—The 9th day of November, A.D. 2006.

EDWARD G. RENDELL