

of taxes on net income of corporations for the [eight] *ten* calendar years one thousand nine hundred thirty-five, one thousand nine hundred thirty-six, one thousand nine hundred thirty-seven, one thousand nine hundred thirty-eight, one thousand nine hundred thirty-nine, one thousand nine hundred forty, one thousand nine hundred forty-one, [and] one thousand nine hundred forty-two, *one thousand nine hundred forty-three, and one thousand nine hundred forty-four*, or for the [eight] *ten* fiscal years ending in the calendar years one thousand nine hundred thirty-six, one thousand nine hundred thirty-seven, one thousand nine hundred thirty-eight, one thousand nine hundred thirty-nine, one thousand nine hundred forty, one thousand nine hundred forty-one, one thousand nine hundred forty-two, [and] one thousand nine hundred forty-three, *one thousand nine hundred forty-four, and one thousand nine hundred forty-five*.

Section 2. This reenacting and amending act shall become effective immediately upon its final enactment, and in addition to its prospective operation shall, except to the extent its context expressly indicates otherwise, be applicable also to the tax upon net income received by or accruing to corporations during the calendar year one thousand nine hundred forty-two or during any fiscal year commencing in the calendar year one thousand nine hundred forty-two, as the case may be.

Act effective  
immediately.

APPROVED—The 7th day of May, A. D. 1943.

EDWARD MARTIN

No. 109

AN ACT

To further amend the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws, three hundred forty-three), entitled "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 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," by further regulating the procedure and the jurisdiction of the Board of Finance and Revenue relative to certain claims for refund; clarifying certain provisions relating to extensions of time for filing tax reports or returns, eliminating the provisions imposing interest on tax and bonus at any greater rate than six per centum per annum, changing and restricting the right of the Commonwealth to impose interest on certain unpaid taxes and bonus when such taxes and bonus are not settled within a prescribed period of time, providing for the automatic adjustment of interest liability so as to correspond to certain changes in tax or bonus liability; and further regulating the procedure for filing petitions for resettlement, petitions for review, appeals to court, and the security accompanying such appeals.

Refund of  
State taxes.

The Fiscal Code.

Clause (a), section 503, act of April 9, 1929, P. L. 343, as last amended by act of August 5, 1941, P. L. 797, further amended.

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

Section 1. Clause (a) of section five hundred three of the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws, three hundred forty-three), entitled "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 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," as last amended by the act, approved the fifth day of August, one thousand nine hundred and forty-one (Pamphlet Laws, seven hundred ninety-seven), is hereby further amended to read as follows:

Section 503. Refunds of State Taxes, License Fees,

Et Cetera.—The Board of Finance and Revenue shall have the power, and its duty shall be,

(a) To hear and determine any petition for the refund of taxes, license fees, penalties, fines, bonus, or other moneys paid to the Commonwealth and to which the Commonwealth is not rightfully or equitably entitled. and, upon the allowance of any such petition, to refund such taxes, license fees, penalties, fines, bonus, or other moneys, out of any appropriation or appropriations made for the purpose, or to credit the account of the person, association, corporation, body politic, or public officer entitled to the refund. *The jurisdiction of the Board of Finance and Revenue to hear and determine a petition for refund, as aforesaid, shall not be affected or limited by the fact that proceedings under sections 1102, 1103 or 1104 of this act, involving the same tax or bonus and period for which a refund is sought, are pending or have been closed, provided such proceedings relate to other objections than those raised in the petition for refund.* All such petitions must be filed with the board within two years of the payment of which refund is requested, *or within two years of the settlement in the case of taxes or bonus, whichever period last expires, except*

(1) Where a petition for refund filed by a domestic or foreign corporation involves the valuation of its capital stock, or in case of a foreign corporation the valuation of its tangible property for bonus purposes, or where a petition for refund filed by a bank, title insurance or trust company involves the valuation of its shares of stock, such petition must be filed with the board within one year of the payment of which refund is requested, *or within one year of the settlement of such taxes or bonus, whichever period last expires.*

(2) When the estate upon which any transfer inheritance tax has been paid shall have consisted in whole or in part of a partnership, or other interest of uncertain value, or shall have been involved in litigation, by reason whereof there shall have been an overvaluation of that portion of the estate on which the tax has been assessed and paid, which overvaluation could not have been ascertained within said period of two years. In such case, the application for repayment shall be made to the Board of Finance and Revenue, within one year from the termination of such litigation, or ascertainment of such overvaluation.

(3) When a court of record has adjudged a person to be legally dead, and thereafter, in the settlement of his or her estate, a transfer inheritance tax shall have been paid on such estate, and, after such payment has been made, such person shall reappear and the court shall rescind its order and adjudication. In such case,

the petition to the board shall be filed within six months after the court shall have rescinded its order and adjudication.

(4) When any tax or other money has been paid to the Commonwealth, under a provision of an act of Assembly subsequently held by [the] *final judgment of a court of [final] competent jurisdiction* to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous. In such case, the petition to the board shall be filed within five years of the payment of which a refund is requested. But the limitation of five years, herein prescribed, shall not be deemed to apply in the case of applications for refunds of taxes paid on liquid fuels by political subdivisions prior to the effective date of this amendment, where, by court decision, it has been held that the collection of such tax was erroneous and without authority of law, if application for such refunds shall be made within two years after the effective date of this amendment. The aforesaid limitation of five years shall likewise not be deemed to apply in the case of applications for refunds of taxes paid on certain alcohol usable for beverage purposes under the provisions of the act, approved the twenty-second day of November, one thousand nine hundred and thirty-three (Pamphlet Laws, five (1933-34)), entitled, "An act imposing a State floor tax on alcohol usable for beverage purposes and certain alcoholic liquors in the Commonwealth between the date this act becomes effective and the date the Twenty-first Amendment to the Constitution of the United States is ratified; describing the method and manner of collection of such tax; conferring powers and imposing duties on certain State officers and departments, and certain individuals, firms and corporations; and imposing penalties," where by court decision it has been held that the imposition or collection of such tax was erroneous and without authority of law, if application for such refunds shall be made within two years after the effective date of this amendment.

Section 2. Sections seven hundred four and eight hundred six of said act, as last amended by the act, approved the second day of February, one thousand nine hundred thirty-seven (Pamphlet Laws, three), are hereby further amended to read as follows:

Section 704. Extensions of Time.—The Department of Revenue may, upon application made to it in such form as it shall prescribe, on or prior to the last day for filing any tax report, tax return, or bonus return, grant to the person, association, or corporation, required to file such report or return, an extension of not more than sixty days within which such report or return may be filed without penalty. The department may also,

in its discretion, extend generally, for a period not exceeding fifteen days, the time within which reports or returns may be filed for any tax. *The provisions of this section shall not be construed to affect the provisions of any other act authorizing the department to grant extensions of time for filing corporate net income tax reports.*

Section 806. Interest on Taxes and Bonus Due the Commonwealth.—All tax and bonus due the Commonwealth, as provided by law, shall bear interest at the rate of six per centum per annum from the date they are due and payable until [sixty (60) days after settlement, and thereafter at the rate of twelve (12) per centum per annum until paid, except that any taxes or bonus due as a result of an appeal to the court of common pleas or any appellate court, shall bear interest at the rate of six (6) per centum per annum from the date such tax is due and payable until] paid: *Provided, That in the case of all taxes and bonus which other provisions of this act require taxpayers to compute and pay at the time of filing the report or return, if a settlement is not made within two years after the date upon which the report or return was filed, no interest whatsoever shall be imposed for the period between the end of such two years and the date of the approval of the settlement, unless the taxpayer has filed a written waiver permitting interest to run after the end of said two years.* The payment of interest, as aforesaid, shall not relieve any person, association, or corporation, from any of the penalties or commissions prescribed by law for neglect or refusal to furnish reports to the Department of Revenue, or to pay any claim due to the Commonwealth from such person, association, or corporation.

*Whenever the tax or bonus liability of a taxpayer is so affected by any settlement or resettlement as to change the interest liability which has been settled against such taxpayer, such interest liability shall be adjusted by the Department of Revenue and the Department of the Auditor General so as to correspond to the tax or bonus liability as changed, without the necessity for the filing of any petition or request by the taxpayer or by said departments.*

Section 3. Section one thousand one hundred two of said act is hereby amended to read as follows:

Section 1102. Petition for Resettlement.—Within ninety (90) days after the date upon which the copy of any settlement was mailed to the party with whom or with which the settlement was made, such party may file, with the department which made it, a petition for resettlement.

Every petition for resettlement shall fully state the

reasons which the petitioner believes entitle him or it to such resettlement.

It shall be the duty of the department with which the petition was filed, within six (6) months after the date of any settlement, to dispose of any petition for resettlement.

In the case of petitions for resettlement filed with the Department of Revenue, the disposition of the petition shall be subject to the approval of the Department of the Auditor General, as in the case of original settlements, and, if the two departments shall be unable to agree, the case shall be submitted to the Board of Finance and Revenue by the Department of Revenue. The Board of Finance and Revenue shall decide every such case within three (3) months from the date of the submission thereof, and, in case of its failure to reach a decision within such period, the disposition of the Department of Revenue shall automatically become valid, and the Board of Finance and Revenue shall immediately return to the Department of Revenue all of the papers appertaining to the case.

In the case of petitions for resettlement filed with the Department of the Auditor General, the petition shall be disposed of by the joint action of that department and of the Treasury Department, as in the case of original settlements.

Notice of the action taken upon any petition for a resettlement shall be given to the petitioner, promptly after the date of resettlement, by the department with which the petition was filed.

Section 4. Section one thousand one hundred three of said act, as amended by the act, approved the sixth day of June, one thousand nine hundred thirty-nine (Pamphlet Laws, two hundred sixty-one), is hereby further amended to read as follows:

Section 1103. Petition to Board of Finance and Revenue for Review.—Within sixty days after *the date of mailing of* notice by the Department of Revenue, or of the Auditor General, of the action taken on any petition for a resettlement filed with it, the party with whom the settlement was made may, by petition, request the Board of Finance and Revenue to review such action.

Every petition for review, filed hereunder, shall state specifically the reasons upon which the petitioner relies. 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. If the petitioner be a corporation, joint-stock association, or limited partnership, the affidavit must be made by one of the principal officers thereof.

The Board of Finance and Revenue shall dispose of such petitions filed with it within ninety (90) days

after they have been received, and, in the event of the failure of the Board of Finance and Revenue to dispose of any such petition within ninety (90) days, the action taken upon the petition for resettlement shall be deemed sustained.

The Board of Finance and Revenue may sustain the action taken on the petition for resettlement, or it may resettle the account upon such basis as it shall deem according to law and equity.

Notice of the action of the Board of Finance and Revenue shall be given, by mail or otherwise, to all departments involved and to the petitioner.

Section 5. Section one thousand one hundred four of said act is hereby amended to read as follows:

Section 1104. Appeal to Courts.—Any person, association, corporation, public officer, or other debtor, aggrieved by the decision of the Board of Finance and Revenue, or by the board's failure to act upon his or its petition for review within ninety (90) days, may within sixty (60) days, appeal to the court of common pleas of Dauphin County from the decision of the Board of Finance and Revenue, or from the decision of the Department of Revenue, or of the Department of the Auditor General, as the case may be. *The said sixty (60) day period shall begin to run: (a) From the end of the ninety (90) day period where the board fails to act, or (b) from the date of mailing of notice of the refusal of the petition for review, or (c) from the date of mailing by the Department of Revenue of the certification of a resettlement where the board has made a resettlement.* Such appeal shall be in such form as shall be prescribed by the rules of the court of common pleas of Dauphin County. All such appeals shall be lodged with the [Department of Justice, which department shall transmit them to the clerk of the court of common pleas of Dauphin County and notify the appellant of the date of filing and the term and number of the appeal] *prothonotary of the court of common pleas of Dauphin County, and a conformed copy thereof indicating the date on which it was filed shall be forwarded immediately to the Department of Justice.*

Every such appeal shall be accompanied with a specification of objections to the settlement, resettlement or other decision, as the case may be, and the party appealing shall enter sufficient security, before one of the judges of the court of common pleas of Dauphin County, within [ten (10)] *sixty (60)* days next after the filing of the appeal, with the clerk, to prosecute the appeal with effect, to pay all costs and charges which the court shall award, and any sum of money which shall appear by the judgment of the court to be due by such party to the Commonwealth.

The party appealing shall file, with every such appeal, an affidavit, containing the specification of objections, and stating that the appeal is not taken for delay but because appellant believes injustice has been done by the settlement or resettlement or other decision appealed from, and that the facts set forth therein are true to the best of affiant's knowledge and belief. If a corporation, limited partnership, or joint-stock association, is the party appellant, such affidavit shall be taken by one of its chief officers.

Appeals taken hereunder shall be hearings de novo, but no facts shall be admitted in evidence that were not brought to the attention of the department making the settlement, or in the application for resettlement, or petition for review prior to the appeal, and set forth in the specification of objections contained in the affidavit accompanying the appeal, unless the court shall be satisfied that the appellant was unable, by the exercise of reasonable diligence, to have laid such evidence before the department making the settlement and the Board of Finance and Revenue, and no questions shall be raised which are not included in the specification of objections filed as hereinbefore provided.

From the judgment of the court of common pleas of Dauphin County, an appeal may be taken by either party as in other cases.

Section 6. The amendments hereinbefore made to section eight hundred six, reducing the rate of interest on unpaid tax and bonus, and changing and restricting the right of the Commonwealth to impose interest on certain unpaid tax and bonus when such tax and bonus are not settled within a prescribed period of time, shall apply only to tax and bonus under reports filed for the calendar year one thousand nine hundred forty-two, or for fiscal years or periods beginning in the calendar year one thousand nine hundred forty-two and for calendar and fiscal years or periods thereafter.

All other provisions of this act shall become effective upon the first day of July, one thousand nine hundred forty-three.

APPROVED—The 7th day of May, A. D. 1943.

EDWARD MARTIN