

No. 86
AN ACT

To provide revenue by imposing a tax on retail sales of tangible personal property to consumers; requiring sellers to file returns; providing for the assessment, collection and lien of the tax; imposing duties on prothonotaries; prescribing penalties; and providing for the use of the proceeds of such tax for public school purposes.

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

"Consumers
Sales Tax Act."

Article I

Short Title and Definitions

Section 101. Short Title.—This act shall be known and may be cited as the "Consumers Sales Tax Act."

Section 102. Definitions.—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Business." Any and all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect.

(2) "Department." The Department of Revenue of this Commonwealth.

(3) "Sale Price." The amount received in money, credits or intangible property from sales at retail, without deduction on account of the cost of property sold, amounts paid for interest, discounts, losses or any other expenses or burdens whatsoever. In computing sale price, there may be deducted any credit actually given or refund actually paid for goods returned and any credit actually given or allowance actually made for any tangible personal property actually taken in trade or exchange for the whole or any part of the sale price of the property sold.

(4) "Person." Any natural person, firm, partnership, association, corporation, fiduciary, or other entity, carrying on business. Whenever used in any provision of this act which prescribes or imposes a fine or imprisonment or both, the term "person," as applied to a firm, partnership or association, shall include the members thereof, and, as applied to a corporation, the officers thereof. A firm, partnership, association or a corporation may be subjected as an entity, however, to the payment of a fine.

(5) "Purchaser." Any person who purchases tangible personal property in any transaction taxable under this act.

(6) "Seller." Any person engaged in the business of selling tangible personal property at retail, and it shall be immaterial whether the goods sold are or are not manufactured or produced by the seller.

(7) "Sale at Retail." Any transaction by which the ownership of tangible personal property is transferred for a consideration, when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use. The term "sale at retail" includes any rental, bailment lease, conditional sale and any other transaction, under whatever name or form, whereby title being retained for security is ultimately to pass to the purchaser or whereby possession is transferred in lieu of a transfer of title.

The term "sale at retail" does not include:

(a) Sales for the purpose of resale of tangible personal property in its original form.

(b) Any isolated sale of tangible personal property by one not a seller.

(c) Any isolated sale of tangible personal property by one who, though a seller, is not such a seller with respect to the article sold, but all sales by a seller shall be presumed to be sales at retail.

(d) Sales of intoxicating liquors, including malt and brewed beverages.

(e) Sales of cigarettes.

(f) Sales of gasoline and other motor fuels.

(g) Sales of utility services, the gross receipts from which are taxed by the Commonwealth.

(h) Sales to the Commonwealth or any of its agencies or political subdivisions or to authorities created by or pursuant to law.

(i) Sales to the United States or any of its agencies.

(j) Sales in interstate and foreign commerce, but only in the instances and to the extent that the Commonwealth is prohibited from taxing such sales by the Constitution of the United States.

(k) Sales of newspapers, magazines and other periodicals.

(l) Sales of medicine on prescription, sales of crutches, wheelchairs for the use of cripples and invalids, and when designed to be worn on the person of the purchaser or user, artificial limbs, artificial eyes and artificial hearing devices, sales of false teeth by a dentist and the materials used by a dentist in dental treatment, sales of eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser, and sales of artificial braces and supports designed solely for the use of crippled persons.

(m) Sales of bakery products, milk, groceries and meat as food products for human consumption. For the

purposes of this clause, (i) "milk" shall mean raw milk products from domestic animals or such milk when processed or canned; (ii) "groceries" shall mean all food products and all food ingredients for human consumption or for use in the preparation thereof for human consumption, ordinarily sold in grocery stores, except candies, confections, soft drinks, tobacco or tobacco products; (iii) "meat" shall include the flesh of animals, fish, sea food, poultry and game.

(n) Sale of clothing and shoes, but not jewelry or any other object not worn primarily to cover the human body against nakedness or cold.

(o) Sales of tangible personal property (i) which is to be used in fabricating, compounding or manufacturing tangible personal property or in producing public utility service to be sold ultimately at retail, or (ii) which is to be used in the process of farming, agriculture or horticulture and which, in either event, becomes an ingredient or component part of the fabricated, compounded or manufactured tangible personal property or public utility product or of the product of farming, agriculture or horticulture, or is consumed in the process of fabrication, compounding, manufacturing or producing or in the process of farming, agriculture or horticulture, or (iii) which is to be used in the production or delivery of public utility service.

(p) The performance of personal service.

(q) Sales of tangible personal property intended for incorporation and incorporated into a building, road, street, bridge, or other structure, provided such property is so incorporated pursuant to a contract entered into prior to the effective date of this act, and provided further that the person so incorporating such property submit to the department proof of the facts in such form as the department may require.

(8) "Tangible personal property." Corporeal personal property including, but not restricted to, goods, wares and merchandise. The term "tangible personal property" does not include money, deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property or evidence of debt.

(9) "Tax." Any tax, interest or penalty imposed or levied under the provisions of this act.

(10) "Taxpayer." Any retail dealer or any person making sales taxable under this act.

(11) "Ultimate consumer." As referring to any tangible personal property, any person who uses or consumes such tangible personal property.

(12) "Wholesale dealer." Any person engaged in the business of selling tangible personal property to retail dealers for resale only and not for personal use or consumption.

Article II

Imposition and Collection of Tax

Section 201. Imposition.—A tax is hereby imposed upon each separate sale at retail within this Commonwealth, which tax shall be collected by the seller from the purchaser and shall be paid over to the Commonwealth as herein provided.

Section 202. Amount of Tax.—(a) The rate of tax shall be one per centum (1%) of the sale price of each separate sale at retail.

(b) The tax shall be computed as follows:

(1) Where the consideration is ten cents or less, no tax shall be collected.

(2) On each sale where the consideration is from eleven cents to one dollar, both inclusive, the tax shall be one cent.

(3) On each sale where the consideration is in excess of one dollar, the tax shall be one cent on each additional dollar or fraction thereof.

Section 203. Purchaser to Pay; Accounting by Sellers.—The seller shall in each case demand the tax from the purchaser and the purchaser shall pay the same to the seller. The seller shall keep the amount of all of the taxes so paid to him by all purchasers in a fund separate and apart from the proceeds of the sales and from all his other funds, unless the department otherwise directs. If the department shall authorize any seller to commingle the proceeds of the tax with the proceeds of sale, the claim of the Commonwealth for the tax shall be enforceable against and shall take precedence over all other claims against the commingled fund. Each seller shall, as hereinafter provided, account to the Commonwealth for the entire amount of all taxes collected from purchasers.

Section 204. Total Amount Collected to be Remitted.—No profit other than the compensation provided for in section two hundred *twelve shall accrue to a seller or other person from the collection of any tax imposed by this act. Any person collecting any such tax shall return and remit the total amount thereof to the department, as hereinafter provided. If the total amount of taxes so collected in any period shall be in excess of one per centum (1%) of the sale price of the sales by the person collecting such taxes during such period, such person shall nevertheless remit to the department the total amount of taxes collected without deducting the amount by which the taxes collected exceed one per centum (1%) of the sale price of his sales during such period and without making any other deduction other than the compensation allowed by section two hundred *twelve of this act.

* "thirteen" in original.

Section 205. Sales Presumed to be at Retail.—Every sale of tangible personal property shall be presumed to be at retail and to be taxable. The seller may require any purchaser claiming that a sale is not taxable to give him a written statement signed by the purchaser and giving his address, certifying that the tangible personal property, the subject of the sale, is purchased for a purpose not included in the definition of "sale at retail." Such a certificate shall, in the absence of actual fraud on the part of the seller, justify him in failing to collect the tax. If he fails to collect a tax on any sale where he does not obtain such a written statement from the purchaser, the seller shall be liable for the tax, as hereinafter provided, unless he shall sustain the burden of proving that the sale was not at retail.

Section 206. Tax to be Paid by Ultimate Consumer.—It is hereby stated as the legislative intent that the tax imposed hereby shall be paid by the ultimate consumer. The amount of the tax shall be added to the sale price and shall constitute a part of that price (though a separate item, as hereinbefore provided) and shall be collectible as such.

Section 207. Seller Shall Not Pay Tax; Penalty.—
(a) No person engaged in a business as a retail dealer shall advertise or represent to the public in any manner, directly or indirectly, that he will absorb said tax or any part thereof or that the full tax on each sale will not be considered an element of the price and be added to the price otherwise ascertained. Nor shall any such person knowingly absorb the tax on any sale nor fail to add the full amount of the tax to the sale price otherwise ascertained and collect said tax as part of the sale price.

(b) Any person who violates any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both, at the discretion of the court.

Section 208. Agreements and Regulations as to Methods of Adding the Tax.—(a) To provide uniform methods of adding the average equivalent of the tax imposed by this act to the sale price in each sale subject to the tax, appropriate rules and regulations may be adopted, subject to the approval of the department, by competing taxpayers or associations of taxpayers. Such rules and regulations shall provide that the tax shall in each instance be computed and collected on the basis of the total transaction, without regard to the value or price of the separate items making up the total amount of a single sales transaction. Such rules and regulations shall not, if complying with the foregoing provisions

and not involving price-fixing, be deemed illegal as in restraint of trade or commerce or otherwise. The department may cooperate in formulating such rules and regulations and shall approve any such rules and regulations which it finds to be in compliance with this act.

(b) In the event appropriate rules and regulations governing any class of business are not submitted to the department for approval within such time as the department prescribes, which shall be not earlier than thirty days after the effective date of this act, the department shall, as soon as reasonably possible, formulate and promulgate rules and regulations to effectuate the purpose of this section.

Section 209. Collection of Tax on Credit Sales.—If any sale subject to tax hereunder is wholly or partly on credit, the taxpayer shall require the purchaser to pay in cash at the time the sale is made or within thirty days thereafter, the full tax due on the basis of the entire sale price.

Section 210. Records of Sales.—Any person engaged in business as a retail dealer who is at the same time engaged in another business or businesses which does not involve the making of sales taxable under this act shall keep separate books or records of his business as a seller so as to show the sales taxable under this act separately from his transactions not taxable hereunder. If any such person fails to keep such separate books or records, he shall be liable to tax at the rate designated in section two hundred two hereof upon the entire sale price of both or all of his businesses.

Section 211. Sales between Affiliated Interests, etc.—In determining sale price of taxable sales where, because of affiliation of interests between the seller and buyer or for any other reason, the sale price from a sale are not indicative of the true value of the article sold or the fair price thereof, the department shall prescribe uniform and equitable rules for determining the amount of constructive sales prices upon the basis of which the tax shall be levied. Such rules shall provide for a constructive amount of a sales price for each such sale which shall equal a price for such article which would naturally and fairly be charged in an arms-length transaction in which the element of common interests between buyer and seller or any other element causing a distortion of the price is absent.

Section 212. Compensation to Seller for Collection and Return.—For the purpose of compensating sellers for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such sellers shall be allowed a commission of three per centum (3%) of the amount of the tax due and accounted for and remitted to the department, which commission shall be

allowed in the form of a deduction in submitting the report of such seller and the payment of the amount due by him. Such compensation, commission or allowance shall not be granted nor shall any deduction be permitted with respect to any taxes not paid on or before the due date thereof or where there is a manifest failure to maintain proper records or make proper prescribed reports.

Article III

Returns and Payment

Section 301. Monthly Returns and Payment.—(a) The taxes imposed by this act shall be due and payable in monthly installments on or before the twentieth day of the calendar month succeeding the month during which the sales at retail subject to the tax were made.

(b) Each taxpayer shall each month make out and sign a return for the preceding calendar month. Such return shall be mailed to the department in time so that it will reach the department, in the ordinary course of the mails, on or before the twentieth day of the month succeeding the month with respect to which the return is made.

(c) The return shall be on a form prescribed by the department. The department shall distribute return forms to taxpayers but no taxpayer shall be excused from liability for failure to file a return or pay the tax because he has failed to receive a form.

Each such return shall show:

(1) The total gross proceeds of the business of the taxpayer for the month with respect to which the return is filed;

(2) The amount of sales at retail of such business with respect to which the tax is computed;

(3) The amount of tax due;

(4) Such other information with respect to the business, the amount of sales at retail or related matters as the department may reasonably require.

Any such return may be signed by a duly authorized agent of the taxpayer with the same effect as if signed by the taxpayer himself.

Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to.

(d) A remittance for the amount of the tax shall accompany each monthly return.

Section 302. Other Times for Returns and Payment.—The department may, upon written request, authorize a taxpayer whose books and records are not kept on a calendar month basis to file returns at other times than those specified in the preceding section and in lieu of such returns. In no event shall the taxpayer be permitted

to make less than one return during a calendar month, except as provided in section three hundred three. Except as to the time of filing and the period covered, all the provisions as to monthly returns required by section three hundred one shall be applicable to returns made under this section and a remittance for the tax shall accompany any return made under this section.

Section 303. Quarterly Returns.—When the total tax for which any taxpayer is liable does not exceed ten dollars (\$10) per month, he may, in lieu of monthly returns, make quarterly returns. Each such quarterly return shall be filed with the department by mailing in time so as to reach the department, in the ordinary course of the mails, on or before the twentieth day of the first month succeeding the end of the quarter with respect to which the return is filed. Except as to the time of filing and the period covered, all the provisions as to monthly returns prescribed in section three hundred one shall be applicable to returns made under this section and a remittance for the tax shall accompany any return made under this section.

Section 304. Annual Returns.—(a) On or before the thirty-first day of January in each year, every taxpayer shall file with the department, in the manner heretofore specified for monthly or quarterly returns, an annual return covering the entire preceding calendar year or such part thereof as the taxpayer was engaged in a business as a retail dealer. Such return shall be in addition to and not in lieu of returns required to be filed under the provisions of sections three hundred one, three hundred two or three hundred three.

(b) Each such annual return shall include all items required for monthly returns in section three hundred one hereof for the entire calendar year with respect to which it is made and shall be signed by the taxpayer or his authorized agent. Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to.

(c) If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by him in connection with his monthly, quarterly or other returns, he shall send with such annual return a remittance for the unpaid amount of tax for the year.

Section 305. Extension of Time for Making Returns.—The department may, on written application and for good cause shown, extend the time for making any return required or permitted by any of the preceding sections of this article: Provided, however, That the time for making any return other than an annual return shall not be extended more than one month and the time for making an annual return shall not be extended more than three months.

Article IV Procedure

Section 401. Department of Revenue to Administer.—The Department of Revenue shall administer and enforce this act and collect the tax hereby imposed.

Section 402. Examination of Returns; Assessment of Tax; Credits.—(a) As soon as practicable after any return is filed, the department shall examine it, and if the return shows a greater tax due than the amount of the remittance sent with such return, the department shall forthwith assess the difference. Such difference shall be paid to the department within ten days after notice of its assessment. If so paid, there shall be no interest or penalty; if not so paid, there shall be added to such amount five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month or fraction thereof from the date of such notice to the date of payment. No taxpayer shall have any right of appeal from such an assessment.

(b) If the department determines that any return or returns of any taxpayer understates the amount of tax due, the department shall assess the proper amount and shall determine the difference between the amount of tax shown in the return and the amount assessed, such difference being hereafter sometimes referred to as the "deficiency." Such deficiency shall be paid to the department within ten days after a notice of the assessment thereof shall be mailed to the taxpayer by the department. In such case, if such understatement of the tax in the return or returns was made in good faith, there shall be no interest or penalty because of such understatement: Provided, That the deficiency be paid or notice of an intention to file a petition for a reassessment or to appear and be heard, as herein provided, shall be given within ten days after notice of the assessment of such deficiency be mailed to the taxpayer. If such payment is not made within ten days and if no notice of an intention to file a petition for a reassessment or to appear and be heard is given to the department within ten days, as herein provided, there shall be added to the amount of the deficiency five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month or fraction thereof from the date of such notice to the date of payment. If any understatement in any of such returns is false or fraudulent with intent to evade the tax, the deficiency resulting from such understatement shall be doubled and, in addition thereto, an additional one-half of one per centum of such doubled deficiency shall be added for each such month or fraction of a month from the date the tax was originally due to the date of payment.

(c) If the amount of the tax as assessed by the department shall be less than the amount already paid by the taxpayer, the department shall so notify the taxpayer and the amount so overpaid may be taken by such taxpayer as a credit on the tax shown as due in any subsequent return or returns filed in accordance with the provisions of this act.

Section 403. Estimated Assessments.—(a) If any person believed by the department to be liable for tax under the provisions of this act shall have failed to file a return in accordance with and within the time prescribed by this act, and if the department shall deem it more conducive to the public interest because of the supposed smallness of the tax or for any other reason not to proceed to compel the exhibition of the accounts of such person, it may make an estimated assessment of the probable amount of tax owing by such person; but in every such case the department shall add to such estimated assessment a penalty of fifty per centum (50%) thereof and the department shall proceed to collect such estimated tax and penalty as in other cases if the amount is not paid when due.

(b) The estimated assessment thus determined, together with the penalty of fifty per centum (50%) specified above and interest at the rate of one-half of one per centum per month or fractional part thereof until paid, shall be due and payable ten days after notice of such settlement shall have been mailed by the department to the person against whom the estimated assessment has been made.

Section 404. Limitation of Assessments.—(a) Any additional assessment or estimated assessment shall be made by the department within five years of the date when the annual return required by section three hundred four hereof should have been filed, as prescribed in this act, whether the date originally prescribed or pursuant to any extensions of the time for filing such return duly granted by the department and not after. Any such additional assessment or estimated assessment may be made at any time during such period, notwithstanding that the department may have made one or more previous additional assessments or estimated assessments or both against the taxpayer for the year in question or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

(b) If the taxpayer shall have died, any taxes, interest and penalties due under this act for years prior to his death or for the year of his death and whether based on original assessments, additional or estimated assessments or otherwise, may be presented by the department at audit of his estate in the orphans' court. Such court

shall give full effect to the priorities and equitable interest given to the Commonwealth by this act.

Section 405. Reassessment; Review; Appeal; Refund.—(a) Any taxpayer against whom an additional or estimated assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition or to appear and be heard shall be given to the department prior to the time the additional or estimated assessment becomes due and payable. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly notified the department of an intention to file a petition for reassessment or to appear and be heard shall be notified by the department of the time when and the place where such hearing in his case will be held. A petition for reassessment, if filed, shall set forth explicitly and in detail the grounds upon which the taxpayer claims that the additional or estimated assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit under oath or affirmation certifying to the facts stated in the petition. If no petition for reassessment has been filed with the department but the taxpayer has given due notice of an intention to appear and be heard, the taxpayer may appear at the hearing and present his petition orally, in which event all statements of fact at the hearing shall be made under oath or affirmation.

(b) Within sixty days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment 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 on which the petitioner relies or shall incorporate by reference the petition for reassessment in which the reasons are stated. 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. The Board of Finance and Revenue shall act finally in disposing of petitions filed with it, within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for reassessment shall be sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment or it may reassess the tax due on such basis as it deems according to law and equity. The board shall give notice of its action by mail to the department and to the petitioner.

(c) Any person or the Commonwealth aggrieved by the decision of the Board of Finance and Revenue or

by the board's failure to act upon a petition for review within six months may, within sixty days, appeal to the Court of Common Pleas of Dauphin County from the decision of the board or from the decision of the department, as the case may be, in the manner now or hereafter provided by law for appeals in the case of tax settlements.

(d) Refunds of taxes paid under this act shall be made under the provisions of section five hundred three of the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 343), known as "The Fiscal Code" and its amendments.

Section 406. Rules and Regulations; Inquisitorial Powers of the Department.—(a) The department shall have the authority to prescribe, adopt, promulgate and enforce rules and regulations in conformity with this act and relating to any matter or thing pertaining to the administration of the taxes imposed by this act. The department may from time to time alter or amend such rules and regulations in any manner it considers advisable.

(b) The department or any of its authorized agents is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, including his bank accounts or similar items, in order to verify the accuracy and completeness of any return made, or, if no return was made, to ascertain and assess the tax imposed by this act. The department may require the preservation of all such books, papers and records for any period deemed proper by it, not to exceed, however, six years from the end of the calendar year to which the records relate. Every such taxpayer is hereby required to give to the department or its agent the means, facilities and opportunity for such examinations and investigation. The department is further authorized to examine any person under oath concerning taxable sales by any taxpayer or concerning any other matter relating to the enforcement or administration of this act; and to this end may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes to have knowledge of such matters. The procedure for such hearings or examinations shall be the same as that provided by the Fiscal Code relating to inquisitorial powers of fiscal officers.

(c) Any information gained by the department as a result of any return, investigation, hearing or verification required or authorized by this act shall be confidential except for official purposes and except in accordance with proper judicial order or as otherwise provided by law; and any person unlawfully divulging such information shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced

to pay a fine not in excess of one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both, in the discretion of the court.

Notwithstanding the foregoing provisions of this subsection, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any other state now or hereafter imposing a tax upon sales of tangible personal property or classes of such property, or the authorized representative of such Commissioner or officer, to inspect any returns or reports of investigations filed or made under the provisions of this act, or may furnish to such Commissioner or officer or his authorized representative an abstract of any such return, or supply him with information concerning any items contained in any such return or report; but such permission shall be granted or such information furnished to such Commissioner or officer only if the statutes of the United States or of such other state, as the case may be, grant equal privileges to the officers of this Commonwealth charged with the administration of this act.

Section 407. Records of Non-Residents.—(a) A non-resident person, including a foreign corporation, who is engaged in one or more businesses in this Commonwealth as a retail dealer, shall keep adequate records of such business or businesses and of the taxes due with respect thereto, which records shall at all times be retained within this Commonwealth. No taxes collected from purchasers shall be sent outside the Commonwealth without the written consent of and in accordance with conditions prescribed by the department.

(b) Any person who shall violate or assist in the violation of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both, in the discretion of the court.

Section 408. Tax Held in Trust for the Commonwealth.—All taxes collected by any retail dealer from purchasers in accordance with this act shall constitute a trust fund for the Commonwealth, and such trust shall be enforceable against such taxpayer, his representatives and any person receiving any part of such fund without consideration or knowing that the taxpayer is committing a breach of trust: Provided, however, That any person receiving payment of a lawful obligation of the taxpayer from such fund shall be presumed to have received the same in good faith and without knowledge of the breach of trust. Any person, other than a taxpayer, against

whom the department makes any claim under this section, shall have the same rights to petition and appeal as are given taxpayers by any provisions of this article.

Section 409. Priority of Tax.—In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this act which are due and unpaid and are not collectible under the provisions of section four hundred eight hereof shall be paid from the first money available for distribution in priority to all other claims and liens, except in so far as the laws of the United States may give a prior claim to the Federal government. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes imposed by this act which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

Section 410. Lien of Taxes.—All taxes imposed by this act, together with all penalties and interest, shall be considered a public account, after being assessed in the manner provided in this act, and as such shall be a lien upon all real estate within the Commonwealth of any taxpayer, resident or non-resident, but only after the same has been entered and docketed of record by the prothonotary of the county where such real estate is situated, as hereafter provided.

The department may at any time transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this act and penalties and interest. 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 and satisfied out of the judicial sale of said real estate before any other obligation, judgment, claim, lien or 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, interest and penalties 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 written writs are ordinarily employed.

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 (\$1000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both, in the discretion of the court.

Article V

Violation and Penalties

Section 501. Penalty for Fraudulent Annual Return.—Any person who shall wilfully make or cause to be made the annual return required by section three hundred four of this act which is false and fraudulent shall be guilty of wilful and corrupt perjury and, upon conviction thereof, shall be subject to punishment as provided by law. Such penalty shall be in addition to all other penalties imposed by any of the preceding provisions of this act.

Section 502. Other Penalties.—Except as otherwise provided by section five hundred one, any person who shall wilfully fail, neglect or refuse to file any return or report required by this act, or any taxpayer who shall refuse to pay any tax, penalty or interest imposed or provided for by this act, or who shall wilfully fail to preserve his books, papers and records as directed by the department, in accordance with section four hundred six hereof, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do or attempt to do anything whatever to prevent the full disclosure of the amount or character of taxable sales made by himself or any other person, shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both, in the discretion of the court. The penalties imposed by this section shall be in addition to any penalties imposed by any provision of this act other than section five hundred one.

Article VI

Disposition of Tax, Penalties, Interest

Section 601. Disposition of Proceeds.—All taxes collected under the provisions of this act, together with any penalties and interest thereon, shall be used for public school purposes, in so far as permitted by the requirements of the Constitution of Pennsylvania.

Article VII

Miscellaneous

Section 701. Saving Clause.—Nothing contained in this act shall be construed to repeal any other law of this Commonwealth imposing any tax for any purpose.

Section 702. Effective Date.—This act shall become effective on the first day of the second calendar month after the month in which it is finally enacted; and all taxable sales during that month and for a period of two years thereafter shall be subject to tax hereunder.

APPROVED—The 13th day of July, A. D. 1953.

JOHN S. FINE

No. 87

AN ACT

To add Article XX-A to the act, approved the first day of May, one thousand nine hundred thirty-three (Pamphlet Laws 103), entitled "An act concerning townships of the second class; and amending, revising, consolidating, and changing the law relating thereto," by authorizing the creation of planning commissions and prescribing their powers and duties.

"The Second Class Township Code."

Act of May 1, 1933, P. L. 103, as reenacted and amended by act of July 10, 1947, P. L. 1481, amended by adding, after Article XX thereof, a new Article XX-A.

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

Section 1. The act, approved the first day of May, one thousand nine hundred thirty-three (Pamphlet Laws 103), entitled "An act concerning townships of the second class; and amending, revising, consolidating, and changing the law relating thereto," as reenacted and amended by the act, approved the tenth day of July, one thousand nine hundred forty-seven (Pamphlet Laws 1481), is hereby amended by adding, after Article XX thereof, a new article to read as follows:

ARTICLE XX-A

TOWNSHIP PLANNING COMMISSION

Section 2051. *Creation and Appointment of Planning Commission; Residence of Commissioners; Removal.*—The board of supervisors may create and establish by ordinance a township planning commission consisting of five (5) members. The members of the planning commission shall be appointed by the supervisors for terms of five (5) years, except that the terms of the members first appointed shall be so fixed that one (1) member shall be appointed for one (1) *year, one for two (2) years,

* "years" in original.