

No. 381

AN ACT

To provide revenue for Commonwealth purposes by imposing a tax on the purchase, use, storage or other consumption of certain tangible personal property and utility services herein defined as tangible personal property; providing for licenses, reports, payment and collection of tax interest and penalties, assessments, collections, liens, reviews and appeals; conferring powers and imposing duties upon the Department of Revenue, public officers, manufacturers, wholesalers, retailers, corporations, partnerships, associations and individuals and making an appropriation.

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

ARTICLE I.

SHORT TITLE AND DEFINITIONS.

Selective Sales
and Use Tax
Act.

Definitions.

Section 1. Short Title.—This act shall be known and may be cited as the “Selective Sales and Use Tax Act.”

Section 2. 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:

(a) “Department.” The Department of Revenue of this Commonwealth.

(b) “Person.” Any natural person, association, partnership or corporation. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term “person” as applied to an association shall include the members thereof, and as applied to a corporation the officers thereof.

(c) “Purchase.” Acquiring tangible personal property for a consideration, whether the transaction was effected by a transfer of title, or of possession, or of both, or a license to use or consume, whether such transfer shall have been absolute or conditional and by whatsoever means the same shall have been effected, whether such consideration be a price or rental in money or by way of exchange or barter.

(d) “Purchase price.” (1) The total consideration paid by a user for the purchase of tangible personal property, excluding only any consideration received for returnable containers, materials, labor or service in delivering, installing, applying or warranting the property sold; if such consideration is stated separately from the consideration paid for the purchase, lease or transfer of the tangible personal property, there shall be deducted any allowance actually made for any tan-

gible personal property, as herein defined, actually taken in trade or exchange for the whole or any part of the purchase price.

(2) In any transaction not at arm's length, the sale price shall not be less than the prevailing market price for similar tangible personal property.

(e) "Storage." Any keeping or retention of tangible personal property within this Commonwealth.

(f) "Tangible personal property" shall mean:

(1) Motor vehicles, trailers, semi-trailers and aircraft and all *accessories, parts and equipment used in the maintenance, operation or repair of such motor vehicles, trailers, semi-trailers and aircraft, except gasoline.

(2) Formal day or evening apparel and articles made of fur on the hide or pelt and articles of which such fur is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

(3) All materials, supplies and equipment used in the construction, reconstruction, remodeling, repair and maintenance of any real estate.

(4) Furnishings, appliances, supplies, fittings, ornaments, furniture, equipment and accessories for home, business, industrial or commercial use for indoor or outdoor purposes.

(5) Business, industrial, professional and commercial supplies, equipment and machines of all types, including parts and accessories purchased on, or used in connection therewith.

(6) Cosmetics, toilet preparations, toilet articles, drugs and medical supplies except when sold on prescription.

(7) All tobacco products, except such products already subject to tax under the laws of this Commonwealth.

(8) Luggage, leather goods and related articles, including fittings and accessories.

(9) Jewelry, watches, clocks and related articles.

(10) Books, stationery and stationery supplies.

(11) Toys, games, hobby supplies, photographic and projection equipment and supplies, sporting goods and athletic equipment and supplies therefor, pleasure boats; equipment, parts and accessories used in conjunction therewith regardless of the use made of such property.

(12) Flowers, plants, shrubbery, trees, fertilizer, sprays and insecticides, bulbs and seeds and supplies and equipment used in connection therewith.

* "accessories" in original.

(13) Fuel oil and petroleum products for heating purposes, natural, manufactured and bottled gas *and steam.

(14) Hardware, tools, paint and painting materials and equipment.

(15) Live animals, fish and birds and supplies and equipment used in connection therewith.

(16) Radios, television receiving sets and receiving equipment, phonographs, sound recorders, musical instruments or any combination of the foregoing and parts, components and accessories for the same, and records and sheet music.

(17) Food and beverages when purchased for consumption on the premises (i) from persons engaged in the business of operating public restaurants, cafes, lunch counters, other eating places and clubs, except when purchased from a school, church or hospital in the ordinary course of the activities of such organizations, (ii) from persons engaged in the business of catering, when, in either case, the purchase price of the total transaction is more than fifty cents (50¢); beverages shall not include soft drinks, malt and brewed beverages and spirituous and vinous liquors.

(g) "Tangible personal property" shall not include any tangible personal property purchased by the United States, the Commonwealth of Pennsylvania, a political subdivision, public authority or by any charitable, education or religious organization.

(h) "Manufacture." The performance of manufacturing or operations which place tangible personal property in a form different from that in which it is acquired, and shall include, but not be limited to, building, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or more when produced upon special order of the purchaser, or when repaired or enlarged, or when replacements are made upon order of, or for the account of, the owner; publishing of books, newspapers, magazines or other periodicals; refining, exploring, mining and quarrying for, or otherwise extracting from the earth any natural resources; but shall not include constructing, altering, repairing or improving real estate, or repairing or installing tangible personal property.

(i) "Taxpayer." Any person required to pay or collect the tax imposed by this act.

(j) "Use." The exercise of any right or power incidental to the ownership or leasing of tangible personal property and shall include, but not be limited to, trans-

* "and" omitted in original.

portation, storage and consumption, except that it shall not include the use for demonstration by a person of the property in any form as tangible personal property in the regular course of business. "Use" shall not mean the interim use of tangible personal property by a manufacturer, wholesaler or retailer, before he sells such tangible personal property, and shall not mean the physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property (1) which is sold in the regular course of business, or (2) which the person incorporating such ingredient or constituent therein has undertaken at the time of purchase to cause to be transported in interstate commerce to destinations outside the Commonwealth, nor shall "use" mean the use of tangible personal property used or consumed directly (i) in the manufacture of tangible personal property, or (ii) in farming, agriculture, horticulture or floriculture, engaged in as a business enterprise, or (iii) in the producing, delivering or rendering of a public utility service. Use shall not include the interim storage or transportation of tangible personal property purchased outside the Commonwealth of Pennsylvania for use outside the Commonwealth of Pennsylvania.

(k) "Maintaining place of business in Commonwealth." Any person having or maintaining within this Commonwealth, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this Commonwealth under the authority of the person or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether such person or subsidiary is authorized to do business within this Commonwealth.

ARTICLE II.

IMPOSITION OF TAX AND CREDITS.

Section 201. (a) There is hereby imposed an excise tax of three per centum of the purchase price upon the use within the Commonwealth of all tangible personal property, as defined in this act, purchased after the effective date of this act. The tax shall be payable by the person who uses such property.

Imposition of tax.

By whom payable.

(b) The tax shall be computed as follows:

Computation of tax.

(1) If the purchase price is ten cents (10¢) or less, no tax shall be collected;

(2) If the purchase price is eleven cents (11¢) or more, but less than forty-one cents (41¢), one cent (1¢) shall be collected;

(3) If the purchase price is forty-one cents (41¢) or more, but less than seventy-one cents (71¢), two cents (2¢) shall be collected;

(4) If the purchase price is seventy-one cents (71¢) or more, but less than one dollar and one cent (\$1.01), three cents (3¢) shall be collected;

(5) If the purchase price is more than one dollar (\$1), three per centum of each dollar of purchase price plus the above bracket charges upon any fractional part of a dollar in excess of even dollars shall be collected.

Section 202. Exclusions from Tax.—The tax imposed by section 201 shall not apply with respect to:

(a) The use of tangible personal property other than motor vehicles, trailers and semi-trailers purchased in an isolated transaction from a person not a seller, or from a person who is a seller but is not a seller with respect to the article acquired.

(b) The use of tangible personal property purchased by a nonresident person outside of, and brought into, this Commonwealth for temporary use therein not to exceed a period of five days, or while passing there-through.

(c) The use, after the effective date of this act, of tangible personal property in the fulfillment of contracts for the construction, reconstruction, remodeling, repairing or maintenance of real estate entered into prior to that date, which are fixed price agreements not subject to change or modification by reason of the tax imposed by this act: Provided, however, That notice of such contract is given by the taxpayer to the department within sixty days after the effective date of this act.

ARTICLE III.

LICENSES.

Section 301. Licenses.—(a) Every person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, the use of which is subject to tax, shall, on or before the thirtieth day after the effective date of this act or prior to the beginning of business thereafter, make application to the department, on a form prescribed by the department, for a license and pay to the department the sum of two dollars (\$2) therefor. If such person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) The department shall, after the receipt of an application, issue the license applied for under subsection

(a) of this section. The license shall be nonassignable and of permanent duration.

(c) Any person who, after May 1, 1956, shall maintain a place of business in this Commonwealth for the purpose of selling or leasing tangible personal property, the use of which is subject to tax, without having first been licensed by the department pursuant to the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000), or to undergo imprisonment not exceeding one year, or both, together with costs of prosecution. The penalties imposed by this section shall be in addition to any other penalties imposed by this act.

(d) Failure of any person to obtain a license shall not relieve him of liability to pay the tax imposed by this act.

ARTICLE IV.

PREPAID TAX RECEIPTS.

Section 401. Cancelling Prepaid Tax Receipts.—On and after the effective date of this article, the payment of the tax shall be evidenced by cancelling prepaid tax receipts equal in face value to the amount of the tax in the manner provided by this article. No profit other than the compensation provided for by this act shall accrue to a vendor or other person from the collection of any tax imposed by this act. Any person collecting any such tax shall cancel the proper amount of prepaid tax receipts equal in face value to the tax collected for each purchase at retail. If the total amount of taxes so collected in any period shall be in excess of two per centum of the sale price of the sales by the person collecting taxes during such period, the person shall, nevertheless, account to the department for the total amount of taxes collected as well as the total amount of prepaid tax receipts cancelled without deducting the amount by which the taxes collected exceed two per centum of the sale price of his sales during such period and without making any other deduction other than the compensation allowed by this act.

Section 402. Issuance of Prepaid Tax Receipts.—The department shall issue prepaid tax receipts in such denominations and classifications as it deems necessary, and it shall adopt and promulgate such rules and regulations as it may deem necessary in order to carry out the provisions of this act.

Section 403. Distributors.—The department shall distribute the prepaid tax receipts to any bank or trust

company in this Commonwealth, which applies for a permit to act as a distributor of prepaid tax receipts to vendors. As a commission for handling and distributing the prepaid tax receipts, each distributor shall be allowed a commission of one-half of one per centum of the total value of stamps sold to vendors. Each distributor shall also furnish to the *Department of Revenue a semi-annual report showing an accounting of such sales. It shall be the duty of the Department of Revenue to conduct audits and make investigations to determine whether or not each distributor makes a proper accounting of the distribution of prepaid tax receipts.

Section 404. Purchase by Vendors.—Each vendor making taxable sales shall purchase and have on hand at all times prepaid tax receipts in suitable denominations and in amounts sufficient to supply the normal requirements of his business. A vendor shall procure prepaid tax receipts only from authorized distributors licensed as such by the Commonwealth. For the purpose of compensating vendors for the keeping of prescribed records and the proper accounting of taxes and prepaid tax receipts by them, such vendors shall be allowed to purchase prepaid tax receipts at a discount of two per centum upon each purchase amounting to twenty-five dollars **(\$25) or more.

Section 405. Redemption.—To encourage the assistance of health, welfare, charitable, religious, educational, fraternal, patriotic and volunteer firemen's organizations and the general public in the collection of the tax, the department shall redeem the consumer's or purchaser's portion of prepaid tax receipts at two per centum of the face value when presented in accordance with rules and regulations prescribed by the department in amounts aggregating one hundred dollars (\$100) or more.

ARTICLE V.

PROCEDURE AND ADMINISTRATION.

PART I.

Returns.

Section 501. Persons Required to Make Returns.—Every taxpayer shall file returns with respect to such tax.

Section 502. Form of Returns.—The returns required by section 501 shall be on forms prescribed by

* "Departments" in original.
 ** "(\$25.00)" in original.

the department, and shall show such information with respect to the taxes imposed by this act as the department may reasonably require.

PART II.

Time and Place for Filing Returns.

Section 520. Time for Filing Returns.—(a) Monthly Returns. A return shall be filed monthly with respect to the preceding month by every licensee. Such return shall be filed on or before the last day of the month succeeding the month with respect to which the return is made.

(b) Annual Returns. In addition to the return required by subsection (a), a return shall be filed annually with respect to the preceding calendar year by every licensee. Such return shall be filed by the thirty-first day of January in the year succeeding the year with respect to which the return is made.

(c) Other Returns. Any person, other than a licensee, liable to pay to the department any tax under this act, shall file a return on or before the last day of the month succeeding the month in which such person becomes liable for the tax.

Section 521. Extension of Time for Filing Returns.—The department may, on written application and for good cause shown, grant a reasonable extension of time for filing any return required under this article. However, the time for making a return shall not be extended for more than three months.

Section 522. Place for Filing Returns.—Returns shall be filed with the department at its main office or at any branch office which it may designate for filing returns.

PART III.

Payment of Tax.

Section 530. Payment.—When a return of tax is required under this article, the person required to make the return shall pay the tax to the department.

Section 531. Time of Payment.—(a) Monthly Payments. The tax imposed by this act and collected by a licensee shall be due and payable in monthly *installments on or before the last day of the month succeeding the month during which the purchases subject to the tax were made, and shall accompany the return for such preceding month.

(b) Annual Payments. If the amount of tax due for the preceding year as shown by the annual return

* "Installments" in original.

of any taxpayer is greater than the amount already paid by him in connection with his monthly returns, he shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other payments. Any person other than a licensee liable to pay any tax under this act shall remit the tax at the time of filing the return required by this act.

Section 532. Other Times for Payment.—In the event that the department authorizes a taxpayer to file a return at other times than those specified in section 520, the tax due shall be paid at the time such return is filed.

Section 533. Place for Payment of Tax.—The tax imposed by this act shall be paid to the department at the place fixed for filing the return.

Section 534. Commissions.—The licensee shall be entitled to apply and credit against the amount of tax payable by him, an amount equal to two per centum of the gross tax collected by him, to cover his expense in the collection and remittance of said tax: Provided, however, That nothing contained in this section shall apply to any licensee who shall fail or refuse to file his return with, and pay the tax to, the department within the time prescribed.

PART IV.

Assessment and Collection of Tax.

Section 540. Assessment.—The department is authorized and required to make the inquiries, determinations and assessments of the tax (including interest, additions and penalties) imposed by this act.

Section 541. Mode and Time of Assessment.—(a) Underpayment of Tax. Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due than the amount of tax remitted with the return, the department shall forthwith assess the difference. The difference shall be paid to the department within thirty days after a notice of the assessment has been mailed to the taxpayer.

(b) Understatement of Tax. 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." The deficiency shall be paid to the department within thirty

days after a notice of the assessment thereof has been mailed to the licensee.

(c) Failure to File Return. In the event that any licensee fails to file a return required by this act, the department may make an estimated assessment (based on the best information available) of the probable amount of tax owing by the licensee, and the tax shall be paid within thirty days after a notice of such estimated assessment has been mailed to the licensee.

(d) Authority to Establish Effective Rates by Business Classifications. If a return required by this act is not filed or a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the department from such information as may be obtainable.

The department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales, and to use such rates in arriving at the tax liability of a licensee.

Any assessment based upon effective rates established by the department shall be binding upon the taxpayer, unless such assessment is appealed in accordance with the provisions of this act.

Section 542. Reassessment.—Any licensee against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department prior to the time the 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 licensee who has duly notified the department of an intention to file a petition for reassessment 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 licensee claims that the 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.

It shall be the duty of the department, within six months after the hearing, or after receiving a filed petition for reassessment, to dispose of the issue raised at such hearing or by such filed petition. Notice of the action taken shall be given to the petitioner promptly after the date of reassessment by the department.

Section 543. Review by Board of Finance and Revenue.—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, or after the de-

partment's failure to act within the time specified, 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. The board shall give notice of its action by mail to the department and to the petitioner.

Section 544. Appeal to the Court of Common Pleas of Dauphin County.—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.

Section 545. Burden of Proof.—In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 546. Collection of Tax.—(a) Collection by Department. The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by Persons Maintaining Place of Business in Commonwealth. Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property, the use of which is subject to tax at the time of making the sale or lease, shall collect the tax from the purchaser or lessee and remit the tax to the department.

(c) Exemption Certificates. If the tax does not apply to the sale or lease of tangible personal property, the purchaser or lessee shall furnish to the seller or lessor a certificate indicating that the sale is not legally

subject to the tax. The certificate shall be in such form as the department, by regulation, shall prescribe. Where the identity of the user is such that the transaction is never subject to the tax imposed or where the tangible personal property is never subject to the tax imposed or where the sale or lease is in interstate commerce, no such certificate need be furnished.

(d) Direct Payment Permits. The department may authorize a purchaser or lessee who acquires tangible personal property under circumstances which normally make it impossible at the time of acquisition to determine the manner in which it will be used, to pay the tax directly to the department, and waive the collection of the tax by the sellers. No such authority shall be granted or exercised, except upon application to the department, and the issuance by the department of a direct payment permit. If a direct payment permit is granted, then the payment of tax on all acquisitions, including acquisitions of tangible personal property the use of which is known at the time of the acquisition, shall be made directly to the department by the permit holder. If such person is a licensee, the tax shall be paid at the same time and in the same manner as is prescribed for a licensee.

Section 547. Collection Upon Failure to Request Reassessment, Review or Appeal.—The department may collect any tax:

(a) If an assessment of tax is not paid within thirty days after notice thereof to the licensee, and no petition for reassessment has been filed;

(b) Within sixty days from the date of reassessment, if no petition for review has been filed;

(c) Within sixty days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or of the expiration of the board's time for acting upon such petition, if no appeal has been made; and

(d) In all cases of judicial sales, receiverships, assignments or bankruptcies.

In any such case in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts.

Section 548. Lien for Taxes.—(a) Lien Imposed. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, addition or penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the Commonwealth against all real estate within

the Commonwealth of any taxpayer, but only after same has been entered and docketed of record by the prothonotary of the county where such real estate is situated as hereafter provided.

(b) **Priority and Effect of Lien.** 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 the 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 the real estate before any other obligation, judgment, claim, lien or estate with which the 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 the 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 the property. The lien of the 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 writs are ordinarily employed.

(c) **Duty of Prothonotary.** 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 (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both.

PART V.

Refunds and Credits.

Section 550. **Refund or Credit for Overpayment.**—In the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this act on the part of the person who made the overpayment, and shall refund any balance to such person.

Section 551. **Restriction on Refunds.**—No refund shall be made under section 550 without the approval of the Board of Finance and Revenue.

PART VI.

Limitations.

Section 560. Limitation on Assessment and Collection.—The amount of the tax imposed by this act shall be assessed within three years after the date when the return required by subsection (b) or (c) of section 520 is filed. Any such assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments 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.

Section 561. Failure to File Return.—Where no return is filed, the amount of the tax due may be assessed and collected at any time as to taxable transactions not reported.

Section 562. False or Fraudulent Return.—Where the taxpayer files a wilfully false or fraudulent return with the intent to evade the tax imposed by this act, the amount of tax due may be assessed and collected at any time.

Section 563. Extension of Limitation Period.—Notwithstanding any of the foregoing provisions of this part, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented, in writing, that such period be extended, the amount of tax due may be assessed at any time within such extended period. The period so extended may be further extended by subsequent consents, in writing, made before the expiration of the extended period.

Section 564. Limitations on Refund or Credit.—(a) Application for Refund. Any application for refund must be filed with the department within three years from the time the return is required to be filed (determined without regard to any extension of time), or two years from the time the tax was paid, whichever is later.

(b) Assessment Where No Return Filed. If an assessment of tax is made where no return is filed, then any application for refund must be filed with the department within one year from the time of payment.

PART VII.

Interest, Additions, Penalties and Crimes.

Section 570. Interest.—If any amount of tax imposed by this act is not paid on or before the last date prescribed for payment, interest on such amount at

the rate of one-half of one per centum per month for each month, or fraction thereof, from such date, shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined under subsections (a) or (c) of section 531 without regard to any extension of time for payment. In the case of any amount assessed as a deficiency or as an estimated assessment, the date prescribed for payment shall be thirty days after notice of such assessment.

Section 571. Additions to Tax.—(a) Failure to File Return. In the case of failure to file any return required by section 501 on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be added to the amount required to be shown as tax on such return five per centum of the amount of such tax if the failure is for not more than one month, with an additional five per centum for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five per centum in the aggregate, but in no case shall the amount added be less than ten dollars (\$10).

(b) Failure to Pay Tax Through Negligence or Fraud.

(1) If any part of any deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to five per cent of the underpayment.

(2) If any part of any deficiency is due to fraud, there shall be added to the tax an amount equal to fifty per centum of the deficiency. This amount shall be in lieu of any amount determined under paragraph (1).

(c) Interest. If the department assesses a tax according to section 541 (b) or (c), there shall be added to the amount of the deficiency interest at the rate of one-half of one per centum per month for each month, or fraction thereof, from the date prescribed by section 531 (a) or (c) of this act for the payment of the tax to the date of notice of the assessment.

(d) Uncollectible Checks. Whenever any check issued in payment of any tax assessment or for any other purpose shall be returned to the department as uncollectible, the secretary shall charge a fee of five dollars (\$5) plus all protest fees, to the person presenting such check to him to cover the cost of its collection.

Section 572. Penalties.—(a) Penalty Assessed as Tax. The penalties and liabilities provided by this act shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any

reference in this act to "tax" imposed by this act shall be deemed also to refer to the penalties and liabilities provided by this Part.

(b) Attempt to Evade or Defeat Tax. Any person who wilfully attempts, in any manner, to evade or defeat the tax imposed by this act, or the payment thereof, or assists any other person to evade, circumvent or defeat the tax imposed by this act, the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax evaded. No penalty shall be imposed under subsection (b) of section 571 for any offense to which this section is applicable.

Section 573. Crimes.—(a) Fraudulent Return. Any person who with intent to defraud the Commonwealth shall wilfully make, or cause to be made, any return required by this act, which is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2000), or undergo imprisonment not exceeding three years, or both.

(b) Other Crimes. Except as otherwise provided by subsection (a), any person maintaining a place of business in this Commonwealth, who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this act will be absorbed by such person, or that it will not be added to the selling price of the tangible personal property sold or, if added, that the tax or any part thereof will be refunded, other than when such person refunds the selling price because of such property being returned to the seller, and any person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property the use of which by the purchaser is subject to tax hereunder, who shall wilfully fail or refuse to collect the tax from the purchaser and remit the same to the department, and 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, 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 or purchases made by himself or any other person,

or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property, 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. The penalties imposed by this section shall be in addition to any penalties imposed by any provision of this act other than subsection (a).

PART VIII.

Enforcement and Examinations.

Section 580. Rules and Regulations.—(a) The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce, rules and regulations not inconsistent with the provisions of this act, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties and interest imposed by this act.

Section 581. Keeping of Records.—Every person liable for any tax imposed by this act, or for the collection thereof, shall keep the records, render such statements, make the returns and comply with such rules and regulations as the department may, from time to time, prescribe. Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon such person, or by regulations, to make such returns, render such statements or keep such records as the department deems sufficient to show whether or not such person is liable for the tax under this act.

Section 582. Examinations.—The department or any of its authorized agents is hereby authorized to examine the books, papers and records of any taxpayer 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, three 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 or purchases 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.

Section 583. Unauthorized Disclosure.—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 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.

Section 584. Cooperation with Other Governments.—Notwithstanding the provisions of section 583, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state, or the authorized representative of either such officer, to inspect the tax returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of any taxpayer, or supply him with information concerning any item contained in any return or disclosed by the report of any investigation of the return of any taxpayer. The permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of the Commonwealth charged with the administration of this act.

Section 585. Bonds.—(a) Where the secretary, in his discretion, deems it necessary to protect the revenues to be obtained under the provisions of this act, he may require any taxpayer to file with him a bond issued by a surety company authorized to do business in this Commonwealth and approved by the insurance commissioner as to solvency and responsibility, in such amounts as the secretary may fix, to secure the payment of any tax or penalties due, or which may become due, from such taxpayer. In the event that the secretary determines that a taxpayer is to file such a bond, he shall give notice to such taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file such bond within five days after the giving of such notice unless, within such five days, the tax-

payer shall request, in writing, a hearing before the secretary at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary. Such determination by the secretary shall be final and shall be complied with within fifteen days after the taxpayer is given notice thereof.

(b) In lieu of the bond required by this section, securities approved by the secretary, or cash in such amount as he may prescribe, may be deposited, which shall be kept in the custody of the secretary who may, at any time, without notice to the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by the secretary, at public or private sale, without notice, to the depositor.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

Section 601. Saving Clause.—Notwithstanding anything contained in any law to the contrary, the validity of any law or any ordinance, or part of law or of any ordinance, or any resolution or part of any resolution, and any amendments or supplements thereto, now or hereafter enacted or adopted by the Commonwealth or any political subdivision thereof, providing for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this act.

Section 602. Constitutional Construction.—If any section, sentence, clause or part of this act, is, for any reason, held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional sentence, section, clause or part thereof, not been included herein.

Section 603. Appropriations.—So much of the *proceeds of the tax imposed by this act as shall be necessary for the payment of refunds, provided for hereunder, is hereby appropriated for the payment of such refunds.

Effective date.

Section 604. Effective Date.—The provisions of this act shall take effect the day following final enactment but the provisions of Article IV shall not be operative until July 1, 1956.

The rate of tax imposed by section 201 shall be two per centum of the purchase price on and after June 1, 1957, and shall be computed as follows:

* "proceeds" in original.

(1) If the purchase price is ten cents (10¢) or less, no tax shall be collected;

(2) If the purchase price is eleven cents (11¢) or more, but less than sixty-two cents (62¢), one cent (1¢) shall be collected;

(3) If the purchase price is sixty-two cents (62¢) or more, but less than one dollar and one cent (\$1.01), two cents (2¢) shall be collected;

(4) If the purchase price is more than one dollar (\$1), two per centum of each dollar of the purchase price, plus the above bracket charges upon any fractional part of a dollar in excess of even dollars, shall be collected.

APPROVED—The 6th day of March, A. D. 1956.

GEORGE M. LEADER

No. 382

AN ACT

Amending the act of May sixteen, one thousand nine hundred thirty-five (Pamphlet Laws 208), entitled, as amended, "An act to provide revenue for State purposes by imposing an excise tax, for a limited period of time, on the net incomes of certain corporations, joint-stock associations, and limited partnerships; providing for the assessment, collection, settlement and resetting of taxes, and reviews and appeal therefrom; conferring powers, and imposing duties on certain persons, corporations, joint-stock associations, limited partnerships, State, and county officers, boards, and departments; making an appropriation; and providing penalties," changing formula for determining gross receipts where entire business is not transacted in the Commonwealth, modifying the manner of imposing tax on certain corporations engaged in business or owning property outside of the Commonwealth, and the penalty for failure to make report or for making false report, and increasing the rate of tax for a limited period of time.

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

Section 1. Subdivision two of the definition of "net income" of section two and sections three and four, act of May sixteen, one thousand nine hundred thirty-five (Pamphlet Laws 208), known as the "Corporate Net Income Tax Act," reenacted and amended September twenty-seven, one thousand nine hundred fifty-five (Pamphlet Laws 609), are amended to read:

Section 2. 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.

Corporate Net
Income Tax
Act.

Subdivision 2 of
the definition of
"Net Income"
of section 2,
and sections 3
and 4, act of
May 16, 1935,
P. L. 208, re-
enacted and
amended Sep-
tember 27,
1955, P. L. 609,
further
amended.

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