

No. 323

AN ACT

Amending the act of March 6, 1956 (P. L. 1228), entitled, as amended, "An act to provide revenue for Commonwealth purposes by imposing a tax on the sale, use, storage, rental or consumption of certain tangible personal property and utility services herein defined as tangible personal property; providing for licenses, reports and payment 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," changing provisions relating to returns and refunds.

Selective Sales
and Use Tax
Act.

Subsections (a),
(b), (d) and
(e), section 520,
act of March 6,
1956, P. L. 1228,
amended April
4, 1957, Act No.
24, further
amended.

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

Section 1. Subsections (a), (b), (d) and (e) of section 520, act of March 6, 1956 (P. L. 1228), known as the "Selective Sales and Use Tax Act," amended April 4, 1957 (Act No. 24), are amended to read:

Section 520. Time for Filing Returns.—(a) *Monthly and Quarterly Returns:*

(1) For the period ending December 31, 1956, 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. [Except as provided for by regulations promulgated by the department pursuant to subsection (e) of this section]

(2) For the period beginning January 1, 1957, and thereafter, a return shall be filed *quarterly* by every licensee on or before the last day of April, July, October and January for the three months ending the last day of March, June, September and December, *except as hereinafter provided.*

(3) *For the period beginning July 1, 1957, and ending December 31, 1957, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the first calendar quarter of 1957 equals or exceeds six hundred dollars (\$600). For the year 1958, and for each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds six hundred dollars (\$600). Such returns shall be filed on or before the fifteenth day of the second month succeeding the month with respect to which the return is made, except*

that the return due for the month of April, 1959, shall be filed on or before the twentieth day of May next following. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

(b) Annual Returns.

(1) In addition to the *monthly* return required by subsection (a) for the year 1956, a return shall be filed [annually] on an annual basis with respect to the [preceding] calendar year 1956 by every licensee liable to pay tax during that year. Such return shall be filed on or before the fifteenth day of April in [the year succeeding the year with respect to which the return is made. Licensees] 1957 subject to any extension of time for filing allowed by the department under section 521 of this act.

(2) For the calendar year 1957, and for each year thereafter, no annual return shall be filed, except as may be required by rules and regulations of the department promulgated and published at least ninety days prior to the final date for filing such return. In the event that annual returns are required by rules and regulations of the department, licensees maintaining their books and records on a calendar year basis shall file returns on or before the fifteenth day of April of the year succeeding the year with respect to which the returns are made, and licensees maintaining their books and records on the basis of an annual fiscal period other than the calendar year may, on application, be authorized by the department to file returns with respect to such fiscal period on or before the fifteenth day of the fourth month following the end of such fiscal period. [The department, by regulation, may provide for the filing of short term returns by taxpayers who shall change reporting periods.]

* * * * *

[(d) Transmittal Returns. Except as provided for by regulations promulgated by the department pursuant to the provisions of subsection (e) of this section, every licensee shall, on or before the fifteenth day of every month other than April, July, October and January, file a transmittal return with respect to the total tax collected or incurred during the preceding calendar month. Such transmittal return shall set forth only the identity of the licensee and the tax collected or incurred during such period.]

(e) Small Taxpayers. The department, by regulation, may waive the requirement for the filing of quarterly return in the case of any [group of licensees] licensee whose individual tax collections do not exceed [twenty-five dollars (\$25) per month, and monthly transmittal returns in the case of any group of tax-

payers whose individual tax collections do not exceed one hundred dollars (\$100) per month, or in the alternative,] *seventy-five dollars (\$75) per calendar quarter* and may provide for reporting on a less frequent basis in such cases. [: Provided, That every licensee must file the annual return provided for by subsection (b) of this section.]

Sections 552 and 553, of the act, added May 9, 1957, Act No. 51, further amended.

Section 2. Sections 552 and 553 of the act, added May 9, 1957 (Act No. 51) are amended to read:

Section 552. Refunds.—The department shall, pursuant to the provisions of sections 553 and 554, refund all taxes, [which have been erroneously collected or paid over to the department] *interest and penalties paid to the Commonwealth under the provisions of this act and to which the Commonwealth is not rightfully entitled.* Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of that portion of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 542 of this act.

Section 553. Refund Petition.—(A) except as provided for in section 556 *and in subsection (b) and (d) of this section*, the refund or credit of tax, interest or penalty [erroneously collected or paid] provided for by section 552 shall be made only where the person who has actually paid the tax files a petition for refund with the department within eighteen months of the actual payment of the tax to the *Commonwealth. Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that [payment or collection was erroneous,] *the Commonwealth is not rightfully entitled to such tax, interest or penalty*, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

(b) *A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 541, shall be made only where the person who has actually paid the tax files with the department a notice of intention to petition for refund of such payment within thirty days of the date of payment, and files a petition for a refund with the department*

* "Commonwealth" in original.

within six months after the date the notice of assessment was mailed. The filing of such notice of intention to petition for refund and of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

(d) *Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this act subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, a petition for refund may be filed either before or subsequent to such final judgment, but such petition must be filed within five years of the date of the payment of which a refund is requested. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.*

Section 3. Section 560 of the act is amended to read :

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] *provided for by subsection [(b)] (a) or (c) or under subsection (e) of section 520 is filed or the end of the year in which the tax liability arises whichever shall last occur.* 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 560 of
the act amended.

Section 4. This act shall take effect immediately.

Act effective
immediately.

APPROVED—The 8th day of July, A. D. 1957.

GEORGE M. LEADER