

No. 1977-98

AN ACT

HB 247

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," increasing the rate of the personal income tax; increasing the rate of interest on unpaid tax; imposing certain conditions in the saving clause of the personal income tax as to the validity of State laws authorizing cities of the first class by ordinance to impose a tax on the income of nonresidents of such city; increasing the rate of tax imposed on certain corporations; changing the period for settlement of corporate income taxes and changing the prepayment of tax provisions for such taxes; prescribing the effective date for various provisions and repealing a certain act.

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

Section 1. Section 302, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L.362, No.93) and amended March 13, 1974 (P.L.179, No.32), is amended to read:

Section 302. Imposition of Tax.—(a) There is hereby imposed an annual tax to be paid by resident individuals, estates or trusts at the rate of **[two per cent] two and two-tenths per cent** on the privilege of receiving each of the classes of income hereinafter enumerated in section 303.

(b) There is hereby imposed an annual tax to be paid by nonresident individuals, estates or trusts at the rate of **[two per cent] two and two-tenths per cent** on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

Section 2. Sections 351 and 359 of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 351. Interest.—If any amount of tax imposed by this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate of **[one-half] three-fourths** of one per cent 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 without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

Section 359. Saving Clause *and Limitations*.—(a) Notwithstanding anything contained in any law to the contrary, *including but not limited to the provisions of the act of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act*, the validity of any ordinance or part of any ordinance or any resolution or part of any resolution, and any amendments

or supplements thereto now or hereafter enacted or adopted by any political subdivision of this Commonwealth for or relating to the imposition, levy or collection of any tax, shall not be affected or impaired by anything contained in this article, *except as hereinafter provided in subsection (b) of this section.*

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, any rate of tax imposed by ordinance of a city of the first class pursuant to the above cited Sterling Act on salaries, wages, commissions, compensation or other income received or to be received for work done or services performed within such city by persons who are not legal residents of such city, shall not, except as hereinafter provided, exceed the tax imposition rate of four and five-sixteenths per cent for the tax year 1977 or for any tax year thereafter.

In the event such city by ordinance imposes a tax rate on residents or nonresidents in excess of the aforesaid tax rate on the income categories enumerated herein, the provisions of the ordinance imposing such tax rate increase on income of persons who are legal residents of such city, shall be deemed valid and legally effective within the meaning and application of subsection (a) herein. But the provisions of such ordinance imposing a tax rate in excess of four and five-sixteenths per cent with respect to persons who are not legal residents of such city shall be deemed suspended and without any validity to the extent that such tax rate exceeds the tax rate of four and five-sixteenths per cent on income of such nonresidents. And, such excess tax rate provisions shall remain suspended and without any validity until such date as the city of the first class, by ordinance, imposes a rate of tax on income of both legal residents or nonresidents of such city in excess of the tax rate imposition of five and three-fourths per cent per year. In such case the Legislature hereby declares such suspension to be removed and the tax rate valid as to nonresidents, provided, however, that such suspension is removed and the rate deemed valid only to the extent the tax rate imposed on income of such nonresidents does not exceed seventy-five per cent of the tax rate imposed by ordinance per year on the income of legal residents of such city. It is the intention of the Legislature by this subsection to impose certain terms and conditions with respect to the validity and legal effectiveness of the Sterling Act or of any ordinance of the city of the first class enacted pursuant thereto which imposes a tax on the income of nonresidents of such city.

Notwithstanding the suspension provisions set forth heretofore, each city of the first class which imposes a tax pursuant to the above cited Sterling Act shall, by ordinance direct every employer maintaining an office or transacting business within such city and making payment of compensation (i) to a resident individual, or (ii) to a nonresident individual taxpayer performing services on behalf of such employer within such city, shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, so far as practicable, in

withholding from the employe's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due for such year with respect to such compensation. The method of determining the amount to be withheld shall be to withhold the highest amount of tax imposed with provision in such ordinance to provide refunds of the excess tax withheld to qualified nonresident taxpayers within four months of the end of each calendar year.

In the event that all or any part of the provisions of subsection (b) of this section are declared by a court to be unconstitutional, it shall be the duty of the court to construe the remaining amendatory provisions to Article III in accordance with section 358.

Section 3. Section 402 of the act, amended March 13, 1974 (P.L. 179, No.32), is amended to read:

Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of doing business in this Commonwealth, or having capital or property employed or used in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association, or corporation, a State excise tax at the rate of twelve per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1971 and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar [year] years 1974, 1975 and 1976 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977 and each calendar year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year, and has certified such fact to the department as required by section 403 of this article, in which case, such tax, at the rate of twelve per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the first six months of the fiscal year commencing in the calendar year 1972 and at the rate of eleven per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar [year] years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during

the fiscal year commencing in the calendar year 1977 and during each fiscal year thereafter. No penalty prescribed by subsection (e) of section 1202.1 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.

Section 4. Subsection (a) of section 407 of the act is amended to read:

Section 407. Settlement and Resettlement.—(a) All taxes due under this article shall be settled by the department, and such settlement shall be subject to audit and approval by the Department of the Auditor General, and shall, so far as possible, be made so that notice thereof may reach the taxpayer **[before the end of two years] within eighteen months** after the tax report was required to be made.

* * *

Section 5. Section 502 of the act, amended March 13, 1974 (P.L. 179, No.32), is amended to read:

Section 502. Imposition of Tax.—Every corporation carrying on activities in this Commonwealth or owning property in this Commonwealth by or in the name of itself or any person, partnership, joint-stock association or corporation shall be subject to and shall pay a State property tax on taxable income derived from sources within this Commonwealth at the rate of twelve per cent per annum upon each dollar of such taxable income received by and accruing to such corporation during the calendar year 1971 and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar **[year] years 1974, 1975 and 1976 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977** and each calendar year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year and has certified such fact to the department as required by section 403 of Article IV, in which case such tax at the rate of twelve per cent shall be levied, collected and paid upon each dollar of such taxable income received by and accruing to such corporation during the first six months of the fiscal year commencing in the calendar year 1972 and at the rate of eleven per cent shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the

fiscal year commencing in the calendar [year] years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1977 and each fiscal year thereafter: Provided, however, That such taxable income shall not include income for any period for which the corporation is subject to taxation under Article IV: *And, provided further, That no penalty prescribed by subsection (e) of section 1202.1 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.*

Section 6. The act is amended by adding a section to read:

Section 1202.1. Prepayment of Tax.—(a) Notwithstanding the provisions of this act, or any other State tax law to the contrary, which required taxpayers to make payment of tentative tax, including but not limited to the capital stock and franchise tax, corporate net income and corporation income tax, gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, insurance premiums tax, mutual thrift institutions tax, net earnings tax, or other similar tax law requiring payment of tentative tax, but excluding the prepayment by banks and savings institutions under Article VII and title insurance and trust companies under Article VIII of this act, such taxpayers, commencing with the calendar year 1970 and fiscal years beginning during the calendar year 1970 and each taxable year thereafter, on or before the fifteenth day of April for calendar year taxpayers, and on or before the fifteenth day of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, shall report annually and pay on account of the tax due for the current year, an amount to be computed by applying the current tax rate to ninety per cent of such tax base from the immediate prior year as may be applicable with respect to the tax being reported.

(b) For the taxable years commencing with calendar year 1979 and for each taxable year thereafter, the tentative tax due for the current year shall be computed by applying the current tax rate to ninety per cent of such tax base from the year preceding the immediate prior year as may be applicable with respect to the tax being reported; except that with respect to the aforesaid gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, and the aforesaid insurance premiums tax, such amount shall continue to be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year as may be applicable with respect to the tax being reported.

The tax imposed on shares of bank and savings institutions and title insurance and trust companies shall be paid in the manner and within the

time prescribed by Article VII or Article VIII, as the case may be, but subject to the additions and interest provided in subsection (e) of this section.

(c) Payment of taxes imposed by Articles IV, V, IX and XI of this act and by the act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift Institutions Tax Act," may at the taxpayer's election be an amount estimated by the taxpayer which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current calendar or fiscal year.

(d) A corporation with respect to the corporate net income tax imposed by Article IV and the corporation income tax imposed by Article V of this act may, at its election, report and pay in installments on account of the tax due for the current taxable year an amount computed either by applying the current tax rate to ninety per cent of the tax base as determined in subsection (a) or (b) of this section, or as computed on the basis estimated by the taxpayer to be due for the current year which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current year as provided in subsection (c) of this section. The installments shall be paid in accordance with the following schedules:

Year In Which Tax Year Begins	Due on the 15th day of the following months after close of the previous tax year:			
	4th Month	6th Month	9th Month	12th Month
1978	95%	0%	5%	0%
1979	95%	0%	5%	0%
1980	80%	0%	10%	10%
1981	40%	30%	20%	10%
1982	30%	30%	25%	15%
1983 and thereafter	25%	25%	25%	25%

Any taxpayer which has elected to compute its tentative tax liability on the aforesaid estimated basis and which has elected to report and pay said estimated tax in installments, may when reporting and paying its third or fourth installment, base such installment on an amended tentative tax report reflecting the taxpayer's new estimate of its tax liability for the tax year: Provided, That the new estimate reflects a lower tax liability than was previously reported in its original or, if applicable, amended tentative tax report. If an amended tentative tax report is filed, each remaining installment payment due, if any, shall be such as to bring the total installment payments made on account of the tax due for the current taxable year up to an amount determined by multiplying the tentative tax due for the year as reported in the amended report by the sum of the

percentages set forth in the above schedule for the applicable elapsed installments.

The remaining portion of the tax due, if any, shall be paid upon the date the taxpayer's annual report is required to be filed under the applicable tax statute, determined without reference to any extension of time for filing such report.

(e) For taxable years beginning prior to January 1, 1979, should it subsequently be determined that the amount of the annual or any installment payment of tentative tax due was understated by more than five per cent, there shall be added to the tax determined to be due an additional ten per cent of the understatement and said percentage addition to the understatement shall be deemed an additional tax and shall bear interest from the date the tentative tax was due.

For taxable years beginning January 1, 1979 and thereafter, should it subsequently be determined that the amount of the annual or any installment payment of tentative tax due was underpaid, there shall be imposed an additional tax of ten per cent of the underpayment and said tax shall bear interest from the date the annual or any installment payment of tentative tax was due. Failure to remit the annual or any installment of tentative tax payments on or before the due dates prescribed in this act shall result in the assessment of interest and additions, if any, in the same manner as prescribed by law.

Section 7. The act of March 16, 1970 (P.L.180, No.69), entitled "An act relating to State taxation; changing the manner in which tentative and annual taxes are to be paid; providing a penalty in certain cases; and making a repealer," is repealed on the date the amendatory provisions of section 1202.1 of this article become applicable.

Section 8. Notwithstanding anything to the contrary in section 9 relating to the applicability of the tax rate increases imposed by sections 302, 402 or 502 in this amendatory act, such amendatory sections are hereby repealed as follows:

(1) The tax rate increase imposed by section 302 in this amendatory act is hereby repealed to the extent of such increase, effective January 1, 1980.

(2) The tax rate increases imposed by sections 402 and 502 in this amendatory act are hereby repealed to the extent of such increases effective January 1, 1980, for those corporations reporting on a calendar year basis, and effective on the date the fiscal year commences in the year 1980 for a corporation reporting on a fiscal year basis.

(3) If the tax increases provided in sections 302, 402 and 502 are not reenacted before January 1, 1980, the schedule for prepayment of taxes in section 1202.1 is repealed insofar as it relates to prepayment of taxes for the calendar years beginning on or after January 1, 1980, or fiscal years beginning in or after 1980; and, thereafter prepayments shall be made on the same basis as prepayments were made for the calendar or fiscal years beginning in 1979.

Section 9. This act shall take effect immediately, but certain articles, sections or parts or provisions shall be applicable as follows:

(1) The rate of tax imposed by section 302 shall apply on January 1, 1978 and thereafter.

(2) The rate of tax imposed by sections 402 and 502 shall be applicable to the calendar year 1977 or fiscal year beginning 1977.

(3) Section 407 of the act relating to settlement shall first apply to reports filed for the taxable year 1978.

(4) Section 1202.1 shall take effect immediately, and shall apply to tentative tax reports and payments for the calendar and fiscal years beginning in 1978 and thereafter.

APPROVED—The 21st day of December, A. D. 1977.

MILTON J. SHAPP