

No. 1979-107

AN ACT

HB 852

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," further providing for the gross receipts tax on electricity produced in the Commonwealth and sold in certain states.

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

Section 1. Section 1101, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," amended December 21, 1977 (P.L.340, No.100), is amended to read:

Section 1101. Imposition of Tax.—(a) General Rule.—Every railroad company, pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any railroad, pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except taxicabs, motor buses and motor omnibuses, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company, express company, gas company, palace car company and sleeping car company, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone, telegraph, express, gas, palace car or sleeping car business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons,

received from passengers, baggage, and freight transported wholly within this State, from telegraph or telephone messages transmitted wholly within this State, from express, palace car or sleeping car business done wholly within this State, or from the sales of gas, except gross receipts derived from sales to any municipality owned or operated public utility and except gross receipts derived from the sales for resale, to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale and from the transportation of oil done wholly within this State. The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas.

(b) Electric Light, Waterpower and Hydro-electric Utilities.—Every electric light company, waterpower company and hydro-electric company now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in electric light and power business, waterpower business and hydro-electric business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from:

(1) the sales of electric energy within this State, except gross receipts derived from the sales for resale of electric energy to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this subsection upon gross receipts derived from such resale; and

(2) the sales of electric energy produced in Pennsylvania and made outside of Pennsylvania ***in a state that has taken action since December 21, 1977 which results in higher costs for electric energy produced in that state and sold in Pennsylvania unless the action that was taken after December 21, 1977 is rescinded*** according to the following apportionment formula: except for gross receipts derived from sales under clause (1), the gross receipts from all sales of electricity of the producer shall be apportioned to the Commonwealth of Pennsylvania by the ratio of the producer's operating and maintenance expenses in Pennsylvania and depreciation attributable to property in Pennsylvania to the producer's total operating and maintenance expenses and depreciation.

(c) Payment of Tax; Reports.—The said taxes imposed under subsections (a) and (b) shall be paid within the time prescribed by law, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, copartnership, limited partnership, association, joint-stock association or corporation, or

person or persons, to transmit to the Department of Revenue on or before April 15 of each year an annual report, and under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, associations, joint-stock associations, limited partnerships, person or persons, derived from all sources, and of gross receipts from business done wholly within this State and in the case of electric energy producers that transmit energy to other states *referred to in clause (2) of subsection (b)*, a compilation of the relevant information regarding operating and maintenance expenses and depreciation, during the period of twelve months immediately preceding January 1 of each year. It shall be the further duty of the treasurer or other proper officer of every such corporation or association and every individual liable by law to report or pay said taxes imposed under subsections (a) and (b) except municipalities to transmit to the Department of Revenue on or before April 30 of each year, a tentative report in like form and manner for each twelve-month period beginning January 1, of each year. The tentative report shall set forth (i) the amount of gross receipts received in the period of twelve months next preceding and reported in the annual report; or (ii) the gross receipts received in the first three months of the current period of twelve months; and (iii) such other information as the Department of Revenue may require.

(d) Tax Computation.—Upon the date its tentative report is required to be made, for the year 1972 and each year thereafter the corporation, association or individual making a tentative report shall transmit such report to the Department of Revenue on account of the tax due for the current period of twelve months and compute and make payment of the tentative tax with such report pursuant to the provisions of [**the act of March 16, 1970 (P.L.180, No.69)**] *section 1202.1*.

(e) Time to File Reports.—The time for filing annual reports may be extended, estimated settlements may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsections (a) and (b) shall be as prescribed by the laws defining the powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed under subsections (a) and (b) shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership,

person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable for any tax imposed under subsections (a) and (b) upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

(f) Application to Municipalities.—This article shall be construed to apply to municipalities, and to impose a tax upon the gross receipts derived from any municipality owned or operated public utility or from any public utility service furnished by any municipality, except that gross receipts shall be exempt from the tax, to the extent that such gross receipts are derived from business done inside the limits of the municipality, owning or operating the public utility or furnishing the public utility service.

Section 2. This act shall take effect in 60 days and shall first apply to the tax year commencing in 1980 and each year thereafter.

APPROVED—The 11th day of December, A. D. 1979.

DICK THORNBURGH