

No. 1981-14

## AN ACT

## HB 524

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 imposition of certain taxes, revising the definition of "taxable income" and adding the tax on real estate transfers to the code.

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," amended July 4, 1979 (P.L.60, No.27), 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 and two-tenths per cent until December 31, [1981] 1983 and at a rate of two per cent thereafter 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 and two-tenths per cent until December 31, [1981] 1983 and at a rate of two per cent thereafter on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

Section 2. Subclause 1 of clause (3) of section 401 of the act, amended December 8, 1980 (P.L.1117, No.195), is amended to read:

Section 401. Definitions.—The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

(3) "Taxable income." 1. In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government: Provided, That additional deductions shall be

allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government: Provided further, That additional deductions shall be allowed from taxable income in an amount equal to the amount of any reduction in an employer's deduction for wages and salaries as required by section 280C of the Internal Revenue Code as a result of the employer taking a credit for "new jobs" pursuant to section 44B of the Internal Revenue Code: Provided further, That taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) and capital gains but only to the extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government. No deduction shall be allowed for net operating losses sustained by the corporation during any other fiscal or calendar year: Provided, That for the calendar year 1981 and fiscal years beginning in 1981 and thereafter, a net operating loss, as provided by section 172 of the Internal Revenue Code, shall be allowed as a deduction and a carryover pursuant to the following schedule:

Net Operating Loss for Year	Carryover
1981	1 year
1982	2 years
1983 and thereafter	3 years

The net operating loss shall be carried to the earliest of the taxable years to which, under this schedule, such loss may first be carried. In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, "taxable income" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended. In arriving at "taxable income" for Federal tax purposes for any taxable year beginning on or after **[January 1, 1971, any corporate net income tax due to the Commonwealth pursuant to the provisions of this article shall not be allowed as a deduction and the amount of corporate tax so due and excluded from Federal taxable income under the Internal Revenue Code shall not be apportioned but shall be subject to tax at the rate imposed under this article.] January 1, 1981, no deduction shall be allowed for taxes imposed on or measured by net income.**

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Section 3. Sections 402 and 502 of the act, reenacted and amended July 4, 1979 (P.L.60, No.27), are 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 Common-

wealth, 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 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 to the beginning of calendar year **[1982] 1984** and at a rate of nine and one-half per cent for 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 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 to the fiscal year commencing in the calendar year **[1982] 1984** and at a rate of nine and one-half per cent for each fiscal year commencing in the calendar year **[1982] 1984** and 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 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 Common-

wealth 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 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 to the beginning of calendar year [1982] 1984 and at a rate of nine and one-half per cent for 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 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 to the fiscal year commencing in the calendar year [1982] 1984 and at a rate of nine and one-half per cent for each fiscal year commencing in the calendar year [1982] 1984 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 4. The act is amended by adding an article to read:

**ARTICLE XI-C**  
**REALTY TRANSFER TAX**

*Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section,*

*except in those instances where the context clearly indicates a different meaning:*

*“Association.” A partnership, limited partnership, or any other form of unincorporated enterprise, owned or conducted by two or more persons.*

*“Corporation.” A corporation or joint-stock association organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, including, but not limited to, banking institutions.*

*“Department.” The Department of Revenue of this Commonwealth.*

*“Document.” Any deed, instrument or writing whereby any lands, tenements or hereditaments within this Commonwealth or any interest therein shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, purchaser, or any other person, but does not include wills, mortgages, transfers between corporations operating housing projects pursuant to the Housing and Redevelopment Assistance Law and the shareholders thereof, transfers between nonprofit industrial development agencies and industrial corporations purchasing from them, any transfers to nonprofit industrial development agencies, and transfers between husband and wife, transfers between persons who were previously husband and wife but who have since been divorced provided such transfer is made within three months of the date of the granting of the final decree in divorce, or the decree of equitable distribution of marital property, whichever is later, and the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, transfers between parent and child or the spouse of such a child or between parent and trustee for the benefit of a child or the spouse of such child, transfers between a grandparent and grandchild or the spouse of such grandchild, by and between a principal and straw party for the purpose of placing a mortgage or ground rent upon the premises, correctional deeds without consideration, transfers to the United States, the Commonwealth of Pennsylvania, or to any of their instrumentalities, agencies or political subdivisions, by gift, dedication or deed in lieu of condemnation, or deed of confirmation in connection with condemnation proceedings, or reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation which reconveyance may include property line adjustments provided said reconveyance is made within one year from the date of condemnation, leases, a conveyance to a trustee under a recorded trust agreement for the express purpose of holding title in trust as security for a debt contracted at the time of the conveyance under which the trustee is not the lender and requiring the trustee to make reconveyance to the grantor-borrower upon the repayment of the debt, or a transfer by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises is taken in trade by*

such builder as part of the consideration from the purchaser of a new previously unoccupied residential premises or any transfer from a purchase money mortgagor to the vendor holding the purchase money mortgage whether pursuant to a foreclosure or in lieu thereof, or conveyances to municipalities, townships, school districts and counties pursuant to acquisition by municipalities, townships, school districts and counties of tax delinquent properties at sheriff sale or tax claim bureau, or any transfer between religious organizations or other bodies or persons holding title to real estate for a religious organization if such real estate is not being or has not been used by such transferor for commercial purposes, or in any sheriff sale instituted by a mortgagee in which the purchaser of said sheriff sale is the mortgagee who instituted said sale.

**"Person."** Every natural person, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

**"Transaction."** The making, executing, delivering, accepting, or presenting for recording of a document.

**"Value."** In the case of any document granting, bargaining, selling, or otherwise conveying any land, tenement or hereditament, or interest therein, the amount of the actual consideration therefor, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances thereon and ground rents where such liens or other encumbrances and ground rents also encumber or are charged against other lands, tenements or hereditaments: Provided, That where such documents shall set forth a small or nominal consideration, the "value" thereof shall be determined from the price set forth in or actual consideration for the contract of sale, or, in the case of a gift, or any other document without consideration, from the actual monetary worth of the property granted, bargained, sold, or otherwise conveyed, which, in either event, shall not be less than the amount of the highest assessment of such lands, tenements or hereditaments for local tax purposes.

**Section 1102-C. Imposition of Tax.**—Every person who makes, executes, delivers, accepts or presents for recording any document or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, or for or in respect of the vellum parchment or paper upon which such document is written or printed, a State tax at the rate of one per cent of the value of the property represented by such document, which State tax shall be payable at the time of making, execution, delivery, acceptance or presenting for recording of such document.

**Section 1103-C. Transfer by Broker.**—Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him within the preceding year as part of the consideration

for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to him shall be given to him toward the amount of the tax due upon the transfer. If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid, and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.

**Section 1104-C. Proceeds of Judicial Sale.**—The tax herein imposed shall be fully paid, and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer, conducting said sale, shall pay the tax herein imposed out of the first moneys paid to him in connection therewith.

**Section 1105-C. Documentary Stamps.**—The payment of the tax imposed by this article shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting for recording such document. Such stamps shall be affixed in such manner that their removal will require the continued application of steam or water, and the person using or affixing such stamps shall write or stamp or cause to be written or stamped thereon the initials of his name and the date upon which such stamps are affixed or used so that such stamps may not again be used: Provided, That the department may prescribe such other method of cancellation as it may deem expedient.

**Section 1106-C. Furnishing Stamps.**—(a) The department shall prescribe, prepare and furnish stamps to each recorder of deeds, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article.

(b) The department shall allow each county a commission equal to one per cent of the face value of the stamps or two hundred fifty dollars (\$250) whichever is greater. The recorder of deeds shall pay the commission herein allowed to the general fund of the county. The department shall pay the premium or premiums on any bond or bonds required by law to be procured by recorder of deeds for the performance of their duties under this article.

(c) All moneys paid into the State Treasury during the effective period of this article shall be credited to the General Fund.

**Section 1107-C. Enforcement; Rules and Regulations.**—The department is hereby charged with the enforcement of the provisions of this article and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to:

(1) The method and means to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.

(2) The denominations and sale of stamps.

**(3) Any other matter or thing pertaining to the administration and enforcement of the provisions of this article.**

**Section 1108-C. Failure to Affix Stamps.**—No document upon which tax is imposed by this article shall be made the basis of any action or other legal proceeding, nor shall proof thereof be offered or received in evidence in any court of this Commonwealth, or recorded in the office of any recorder of deeds of any county of this Commonwealth, unless a documentary stamp or stamps as provided in this article have been affixed thereto.

**Section 1109-C. Statement of Value; Penalty.**—(a) Every document when lodged with or presented to any recorder of deeds in this Commonwealth for recording, shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by an affidavit executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof or the reason, if any, why such document is not subject to tax under this article. The provisions of this subsection shall not apply to any real estate transfers which are exempt from taxation based on family relationship.

(b) Any recorder of deeds who shall record any document upon which tax is imposed by this article without the proper documentary stamp or stamps affixed thereto as required by this article as is indicated in such document or accompanying affidavit, shall, upon summary conviction before any magistrate, alderman or justice of the peace, or other officer having the powers of a committing magistrate, be sentenced to pay a fine of fifty dollars (\$50) and costs of prosecution, and in default of payment thereof, undergo imprisonment for not more than thirty days: Provided, That when any document shall have been recorded, it shall be presumed that all requirements of law affecting the title to any real property conveyed thereby have been complied with.

**Section 1110-C. Unlawful Acts; Penalty.**—(a) It shall be unlawful for any person to:

(1) make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document, without the full amount of tax thereon being duly paid; or,

(2) make use of any documentary stamp to denote payment of any tax imposed by this article without cancelling such stamp as required by this article or as prescribed by the department; or,

(3) fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the department under the provisions of this article.

(b) Any person violating any of the provisions of subsection (a) shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) and costs of prosecution, or to undergo imprisonment of not more than ninety days, or both, in the discretion of the court.



*(c) It shall be unlawful for any person to:*

*(1) fraudulently cut, tear or remove from a document any documentary stamp; or,*

*(2) fraudulently affix to any document upon which tax is imposed by this article any documentary stamp which has been cut, torn or removed from any other document upon which tax is imposed by this article, or any documentary stamp of insufficient value, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate or other article; or,*

*(3) wilfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any person for use, or knowingly use the same; or,*

*(4) knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this article: Provided, That the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause; or,*

*(5) knowingly or wilfully prepare, keep, sell, offer for sale, or have in his possession, any forged or counterfeited documentary stamps.*

*(d) Any person violating any of the provisions of subsection (c) shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than five years, or both, in the discretion of the court.*

*Section 1111-C. Failure to Pay Tax; Review.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make a determination of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such determinations shall be made so that notice thereof shall reach the parties against whom made within three years after the date of the recording of the document.*

*(b) Promptly after the date of such determination, the department shall send, by registered mail, a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department within six months after the date of any determination to dispose of any petition for redetermination. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.*

(c) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

**Section 1112-C. Lien.**—(a) Any tax determined to be due by any person hereunder and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after said lien has been entered and docketed of record by the prothonotary of the county where such property is situated. The department may at any time transmit to the prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest, and 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. A writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution on the lien, notice of the filing and the effect of the lien shall be sent by registered mail to the taxpayer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(b) The lien imposed hereunder shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property subject to a lien imposed hereunder upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid.

(c) The department may at any time transmit, to the prothonotaries of the respective counties of the Commonwealth to be by them entered of record and indexed as judgments are now indexed, certified copies of all liens, and a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution on the lien, notice of the filing and the effect of the lien shall be sent certified mail to the taxpayer at his last known post office address.

(d) The lien imposed hereunder shall continue for five years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments, or as may be provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 5. 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 Article XI-C added by this act.

Section 6. The act of December 27, 1951 (P.L.1742, No.467), entitled, as amended, "An act to provide revenue by imposing a State tax relating to certain documents and transactions; prescribing and regulating the method and manner of evidencing the payment of such tax; conferring powers and imposing duties upon certain persons, partnerships, associations, and corporations, sheriffs, recorders of deeds, and the Department of Revenue; saving certain State and local taxes and authorizing amendments, extensions and supplements to the ordinances and resolutions relating thereto; and providing penalties," is repealed.

Section 7. Section 2 shall apply to taxable income for the calendar or fiscal year of the corporation, beginning on or after January 1, 1981.

Section 8. This act shall take effect immediately.

APPROVED—The 5th day of May, A. D. 1981.

DICK THORNBURGH