

No. 1981-141

AN ACT

HB 82

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," changing the definition of "corporation," clarifying a provision relating to tax credits, providing for adjustments with respect to depreciation in determining taxable income for corporate income taxes, changing the imposition section, adding provisions relating to the taxation of cigarettes, making editorial changes and making repeals.

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

Section 1. Clause (1) of section 401, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," 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:

(1) "Corporation." A corporation having capital stock, joint-stock association, or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency, and (i) doing business in this Commonwealth; or (ii) *carrying on activities in this Commonwealth*; (iii) having capital or property employed or used in this Commonwealth; or (iv) *owning property in this Commonwealth*, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association or corporation. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies.

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Section 2. Subclause 1 of clause (3) of section 401 of the act, amended May 5, 1981 (P.L.36, No.14), 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. (a) 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**].

*(b) 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**].*

*(c) Further 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" or "targeted jobs" pursuant to section 44B or section 51 of the Internal Revenue Code[: **Provided further, That taxable**].*

(d) 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; and (ix) accelerated cost recovery deduction under section 57(a)(12)(B) of the Internal Revenue Code, but only to the extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government.

(e) Taxable income for tax years ending in 1981, 1982 and 1983 will also include the amount of the deduction related to depreciation claimed and allowable under section 168, accelerated cost recovery system, Internal Revenue Code of 1954, as amended by the Economic Recovery Tax Act of 1981, other than items of tax preference under section 57 which have been included in taxable income.

(f) For the tax years beginning and ending in 1981 and 1982 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981.

(g) For the tax year beginning and ending in 1983 a deduction shall be allowed from taxable income to the extent of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended,

prior to amendment by the Economic Recovery Tax Act of 1981, plus an additional deduction to the extent of one-half of the deduction related to depreciation claimed and allowable on such recovery property under section 168 of the Internal Revenue Code of 1954, as amended, in excess of the deduction for depreciation which would have been allowable on such recovery property under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981, if any.

(h) For tax years beginning in 1984, and for subsequent years, there shall be allowed as a deduction related to depreciation the ~~amount~~ allowable under section 168 of the Internal Revenue Code, as amended, with respect to recovery property.

(i) For all recovery property the amounts disallowed as a consequence of the aforesaid adjustments shall be recovered by an additional deduction from taxable income returned to and ascertained by the Federal Government in tax years commencing in 1984 of one-fourth of the sum per year or ten thousand dollars (\$10,000) per year, whichever is greater, until the total amount has been recovered.

(j) In the case of fiscal year taxpayers, the deduction from taxable income related to depreciation shall be prorated so as to reflect the relative portions of each of the calendar years 1981, 1982 and 1983 included in the taxpayer's fiscal year, in a manner pursuant to regulations to be promulgated by the secretary.

(k) A taxpayer reporting on a 52-53 week basis which closes its fiscal year on any of the last seven days in December or the first seven days of January is deemed a calendar year taxpayer with a year ending date of December 31.

(l) For the purpose of computing the depreciation deduction which would have been allowable under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981: (i) tax preference items as set forth above shall not be included; (ii) property shall be depreciated for a period and with a method consistent with that employed for similar property in prior years; and (iii) for taxable years 1982 and 1983, no deduction shall be allowed for additional first year depreciation on section 179 property.

(m) 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, 1981, no deduction shall be allowed for taxes imposed on or measured by net income.

* * *

Section 3. Section 402 of the act, amended May 5, 1981 (P.L.36, No.14), is amended to read:

Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of *(i)* doing business in this Commonwealth; or *(ii) carrying on activities in this Commonwealth*; *(iii)* having capital or property employed or used in this Commonwealth; or *(iv) owning property 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 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 1984 and at a rate of nine and one-half per cent for each fiscal year commencing in the calendar year 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 4. Sections 501, 502, 503, 505 and 506 of the act are repealed.

Section 5. The act is amended by adding an article to read:

**ARTICLE XII
CIGARETTE TAX**

**PART I
INTRODUCTORY PROVISIONS**

Section 1201. Definitions.—As used in this article:

“Article.” *Article XII and the rules and regulations promulgated thereunder.*

“Bureau.” *The Bureau of Cigarette and Beverage Taxes of the Pennsylvania Department of Revenue.*

“Cigarette.” *Any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of any substance or material other than tobacco regardless of the size or shape of the roll and regardless of whether or not the tobacco is flavored, adulterated or mixed with any other ingredient.*

“Cigarette stamping agency.” *Any person, as defined in this article, who shall be licensed as such by the department for the purpose of affixing cigarette tax stamps to packages of cigarettes and transmitting the proper tax to the Commonwealth.*

“Cigarette tax stamp.” *Any stamp, tax meter impression, label, print or impression which the department by regulation shall authorize to evidence the payment of the tax imposed by this article.*

“Cigarette vending machine.” *Any mechanical device from which cigarettes are dispensed for a consideration.*

“Dealer.” *Any cigarette stamping agency, wholesaler or retailer as these terms are more specifically defined herein. Whenever, in the provisions of this article, the word “dealer” is used, it shall include all of the above mentioned categories. Nothing contained in this article shall preclude any person from being a cigarette stamping agency, wholesaler, or retailer, provided such person meets the requirements for each category of dealer.*

“Department.” *The Department of Revenue of the Commonwealth of Pennsylvania.*

“Invoice or delivery ticket.” Any invoice or delivery ticket which shows the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported, the correct date of purchase or shipment and the true name and complete and exact address of the person who shall assume the payment of the Pennsylvania State tax or the tax, if any, of the state or foreign country at the point of ultimate destination.

“Pack of cigarettes.” The smallest package, box or container in or from which retail sales of cigarettes are normally made.

“Person.” Any individual, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, conservator, and any political subdivision of the Commonwealth of Pennsylvania, or any other state. Whenever used in any of the provisions of this article prescribing or imposing penalties, the word “person” as applied to a partnership, unincorporated association or other joint venture, means the partners or members thereof, and as applied to a corporation, means all the officers and directors thereof.

“Retailer.”

(1) any person, who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer;

(2) any person, who in the usual course of business, owns, leases, or otherwise operates one or more vending machines for the purpose of sale of cigarettes to the ultimate consumer; and

(3) any person, who in any manner, buys, sells, transfers or deals in cigarettes for profit, who is not licensed as a cigarette stamping agency or wholesaler under this article.

“Sale.” Any transfer of ownership, custody or possession of cigarettes for a consideration; any exchange, barter or gift; or any offer to sell or transfer the ownership, custody or possession of cigarettes for consideration.

“Unstamped cigarettes.” Any pack of cigarettes to which the proper amount of genuine Pennsylvania cigarette tax stamps have not been affixed. Any pack of cigarettes containing a forged, bogus or counterfeit Pennsylvania cigarette tax stamp or any pack of cigarettes bearing stolen, lost or misplaced genuine Pennsylvania cigarette tax stamps which have not been affixed to said pack of cigarettes by a proper cigarette stamping agency as provided for in this article, or any pack of cigarettes bearing genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of evading the payment of the Pennsylvania cigarette tax shall be considered, under the provisions of this article, to be a package of “unstamped cigarettes.”

“Vending machine operator.” Any person who places or services one or more cigarette vending machines, whether owned, leased or other-

wise operated by him, at locations from which cigarettes are sold to the ultimate consumer. The owner or tenant of the premises upon which a vending machine is placed shall not be considered a vending machine operator if his sole remuneration therefrom is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, unless said owner or tenant actually owns said vending machine or leases said vending machine under an agreement whereby the profits from the sale of said cigarettes directly inure to his benefit.

“Wholesaler.”

(1) Any person who, in the usual course of business, sells cigarettes within this Commonwealth to retail dealers, other wholesale dealers, or any other persons who shall buy said cigarettes from him or her for the purpose of resale to the ultimate consumer; Provided That such person maintains an established place of business for the storage and distribution of cigarettes.

(2) Any person who is engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing said cigarette vending machine, owned or leased by them, in various outlets within the Commonwealth, and who shall pay to the owner or lessee of the premises a commission or rental for the use of said premises: Provided, however, That such vending machine operator shall operate at least ten vending machines: And further provided, That said vending machine operator shall meet all of the other requirements for licensing of wholesalers under this article, including maintaining an established place of business for the storage and distribution of cigarettes.

(3) Any person who owns and operates no less than five stores which are retail outlets and who purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer: Provided, That such person maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.

PART II IMPOSITION OF TAX

Section 1206. Incidence and Rate of Tax.—An excise tax is hereby imposed and assessed upon the sale or possession of cigarettes within this Commonwealth at the rate of nine-tenths of a cent per cigarette.

Section 1207. Sales to Commonwealth and Political Subdivisions.—The excise tax imposed by this article is hereby levied upon the sale of cigarettes to any person as defined under the provisions of this article and to the Commonwealth of Pennsylvania or any other state, or any department, board, commission, authority or agency thereof.

Section 1208. Limitation of Tax.—Only one sale shall be taxable and used in computing the amount of tax due hereunder whether said sale be of individual cigarettes, packages, cartons or cases.

Section 1209. Exemptions from Tax.—(a) No tax imposed by this article shall be levied upon the possession or sale of cigarettes which this

Commonwealth is prohibited from taxing under the Constitution or statutes of the United States. In addition, when the seller and purchaser have registered with the department and have obtained exemption certificates in accordance with such regulations as the department shall prescribe, the following sales are exempt:

(1) Sales to veterans' organizations approved by the department, if the cigarettes are being purchased by the organization for gratuitous issue to veteran patients in Federal, State or State-aided hospitals.

(2) Sales to voluntary unincorporated organizations of military forces personnel operating under regulations promulgated by the United States Secretary of Defense or departments under his jurisdiction.

(3) Sales to retail dealers located in Veterans' Administration Hospitals for sales to patients in such hospitals.

(b) The department may otherwise promulgate regulations to relieve manufacturers and dealers from payment of tax on cigarettes sold and delivered to points inside and outside the Commonwealth for sale and use outside the Commonwealth or sold to purchasers designated as exempt by the provisions of this section. However, all sales shall be presumed to be taxable and the burden shall be upon the person claiming an exemption to prove his right thereto.

Section 1210. Liability for Collection of Tax.—Every person shall be liable to pay into the State Treasury, through the department, the tax imposed by this article on all cigarettes received by him to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this article. Nothing in this section shall relieve a cigarette stamping agency from its liability to pay the tax imposed by this article on all cigarettes received by it to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this article.

PART III METHOD OF PAYMENT OF TAX

Section 1215. Stamp to Evidence the Tax.—(a) The department shall by regulation require every cigarette stamping agency or ultimate consumer, to use cigarette tax stamps to evidence the payment of the tax imposed by this article unless such stamps have been affixed to the packs of cigarettes and properly cancelled before such cigarette stamping agency or ultimate consumer received them.

(b) The department shall by regulation authorize the sale of cigarette tax stamps at such places and at such times as it deems necessary and the department shall prescribe the manner, time and conditions under which the payment of tax shall be made.

(c) The department shall also prescribe the type of cigarette tax stamps which shall be used, to evidence payment of the tax. Nothing in this provision shall be construed as a limitation upon the department to prescribe various methods of affixing cigarette tax stamps and said department shall have the authority to prescribe one or more of several

types of tax stamps which shall be used by a particular cigarette stamping agency whenever, in the reasonable exercise of its powers, it shall be deemed necessary for the protection of the revenue.

(d) Under no circumstances shall any cigarette stamping agency be permitted to sell, transfer or deliver to any person any packages of unstamped cigarettes, or any unused cigarette tax stamps unless specifically permitted by the provisions of this article.

(e) The department shall by regulation permit a cigarette stamping agency to pay for purchases on a deferred basis, upon the filing of a surety bond, of the type approved by the department, with the department, in an amount deemed sufficient by the department to protect the revenue, said bond to be executed by the cigarette stamping agency as principal and by a corporate surety company, duly authorized to engage in such business in the Commonwealth of Pennsylvania, as surety. The department shall deny deferred purchase plans to any stamping agency in any state where such state denies stamping agencies in Pennsylvania the right to use deferred purchase plans.

Section 1216. Commissions on Sales.—Cigarette stamping agencies shall be entitled to a commission of three per cent of the value of all Pennsylvania cigarette tax stamps purchased by them from the department or its authorized agents to be used by them in the stamping of packages of cigarettes for sale within the Commonwealth of Pennsylvania, said commission to be paid to the cigarette stamping agent as compensation for his or her services and expenses as agent in affixing such stamps. Said cigarette stamping agencies shall be entitled to deduct from the moneys to be paid by them for such stamps an amount, equal to three per cent of the value of said stamps purchased by them when such cigarette stamping agencies have purchased said Pennsylvania cigarette tax stamps directly from the department or its authorized agents. This section shall not apply to purchases of stamps by a cigarette stamping agency in an amount less than one hundred dollars (\$100).

Section 1217. Sample Packs of Cigarettes.—(a) The department shall, by regulation, govern the receipt, distribution of and payment of tax on sample packs of cigarettes issued for free distribution.

(b) Nothing in this article or the regulations promulgated thereunder shall prohibit the bringing into this Commonwealth by a manufacturer of sample packs of cigarettes containing not more than five cigarettes and such packs shall be delivered and distributed only through licensed dealers or the manufacturers or their sales representatives. The tax shall be paid by the manufacturer but no tax stamp or tax impression need be used on the sample packs of cigarettes provided all such packs bear the legend "all applicable State taxes have been paid." Under no circumstances shall any unstamped sample cigarettes be sold within the Commonwealth of Pennsylvania.

**PART IV
LICENSING PROVISIONS**

Section 1221. Licensing of Cigarette Dealers.—(a) *No person, unless all of his sales of cigarettes are exempt from Pennsylvania cigarette tax, shall sell, transfer or deliver any cigarettes within this Commonwealth without first obtaining the proper license pursuant to the provisions of this article.*

(b) *Every applicant for a dealer's license shall complete and file an application with the department and said application shall be in such form and contain such information as the department, by regulation, shall prescribe, and shall set forth truthfully and accurately the information desired by the department. If said application is approved, the department shall license said dealer for a period of one year and said license may be renewed annually thereafter.*

Section 1222. Licensing of Cigarette Stamping Agents.—(a) *The department may license as its agent for a one year period (and may renew said license for further periods of one year) any person of good moral character who shall meet the requirements imposed by the following provisions for the privilege of operating as a cigarette stamping agency:*

(1) *Said applicant shall be a wholesale cigarette dealer licensed by the Commonwealth of Pennsylvania.*

(2) *The premises in which said applicant proposes to conduct his or her business are adequate to protect the revenue.*

(3) *The said applicant is a person of good moral character, of reasonable financial stability and reasonably experienced in the wholesale cigarette business.*

(4) *The applicant, or any shareholder controlling more than ten per cent of the stock if said applicant is a corporation or any officer or director if said applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.*

(b) *The department shall, by regulation, prescribe the form, content and manner of said application by which the licensing of a cigarette stamping agency shall be made.*

(c) *Said cigarette stamping agency license shall be valid for one specific location only.*

(d) *The department may reject any application for a new or renewal license whenever it shall find that any of the aforementioned requirements have not been met, or shall find that such applicant or licensee has (i) failed to disclose any material information required; (ii) has made any material false statement in his application; (iii) has violated any provision of this article.*

(e) *For purposes of this section, a person convicted of committing any felony, any infamous crime or any crime involving moral turpitude shall not be a "person of good moral character" and shall not be licensed as a cigarette stamping agent.*

Section 1223. Licensing of Wholesalers.—*Applicants for a wholesale license or renewal thereof shall meet the following requirements:*

(1) The premises on which said applicant proposes to conduct his or her business are adequate to protect the revenue.

(2) Said applicant is a person of reasonable financial stability and reasonable business experience. The applicant or any shareholder controlling more than ten per cent of the stock, if the applicant is a corporation or any officer or director if said applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(3) Said applicant shall not have failed to disclose any material information required by the department.

(4) Said applicant shall not have made any material false statement in his application.

(5) Said applicant shall not have violated any provision of this article.

(6) The wholesale dealer's license shall be valid for one specific location only.

Section 1224. Licensing of Retailers.—*Applicant for retail license or renewal thereof shall meet the following requirements:*

(1) The premises in which said applicant proposes to conduct his business are adequate to protect the revenues.

(2) Said applicant shall not have failed to disclose any material information required by the department.

(3) Said applicant shall not have any material false statement in his application.

(4) Said applicant shall not have violated any provision of this article.

Section 1225. Suspension or Revocation of License.—*If the department has reason to believe that any person holding a license has not, in good faith, complied with all of the provisions of this article or has violated any of the conditions or requirements imposed under section 1221, 1222, 1223 or 1224, the department shall prepare a complaint stating the facts charged and requesting such person to show cause why his license should not be suspended or revoked. Said complaint shall be presented to the Cigarette Tax Board as mentioned hereinafter, and if after a hearing conducted by the Cigarette Tax Board as hereinafter mentioned, the department finds that such person has not in good faith complied with this article and with the conditions or requirements under sections 1221 to 1224 inclusive, such license shall be suspended or revoked for such period as the department may deem proper.*

Section 1226. Cigarette Tax Board.—*(a) There is hereby created a Cigarette Tax Board consisting of three members designated by the Secretary of Revenue, one of whom shall be a deputy secretary of the department, and one of whom shall be an attorney at law. The Cigarette Tax Board shall take testimony, after proper notices as hereinafter mentioned, and shall make its recommendations in writing to the Secretary of Revenue under the provisions of this article.*

(b) Whenever any applicant for license or renewal thereof is aggrieved by the determination of the department or bureau, he may file a complaint with the Cigarette Tax Board, Harrisburg, Pennsylvania, assigning specifically his reasons for believing that the department or bureau acted improperly. Said complaint shall be filed within thirty days after notice by the department or bureau of its determination of his application. Whenever the bureau determines that a violation of this article has occurred, it may file a complaint with the Cigarette Tax Board assigning specifically its reasons for believing that the provisions of this article have been violated. Said complaint shall be filed by the bureau within thirty days after final determination of those facts which give rise to its belief that the provisions of this article have been violated. Upon receipt of said complaint the Cigarette Tax Board, if it determines that said complaint raises an issue of fact, shall within thirty days after receipt of said petition, issue a citation directing the applicant, dealer or bureau, as the case may be, to appear at a hearing to be scheduled by the Cigarette Tax Board in Harrisburg within said thirty-day period, and shall afford the aggrieved party an opportunity to be heard at said hearing, which shall be conducted in accordance with the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) Within thirty days after the termination of said hearing, the Cigarette Tax Board shall make its recommendation to the Secretary of Revenue, in writing, and within fifteen days subsequent thereto, the Secretary of Revenue shall render a final decision. Any party aggrieved by the final decision of the Secretary of Revenue shall have the right to appeal therefrom in accordance with the provisions of Title 2 of the Pennsylvania Consolidated Statutes.

(d) Whenever any person is aggrieved by an assessment issued by the department for taxes due the Commonwealth he may file an appeal from said assessment in accordance with the procedures of the act of April 9, 1929 (P.L. 343, No. 176), known as "The Fiscal Code."

Section 1227. License Fees; Issuance and Posting of License.—

(a) At the time of making any application, an applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of two hundred fifty dollars (\$250), an applicant for a retail cigarette dealer's license shall pay to the department a license fee of five dollars (\$5), an applicant for a vending machine license shall pay to the department a license fee of five dollars (\$5), an applicant for a cigarette stamping agency license, shall pay to the department a fee of five hundred dollars (\$500).

(b) Upon approval of the application and payment of the fees, the department shall issue the proper license which must be conspicuously displayed at the place for which issued.

Section 1228. Transfer of Licenses.—The department may permit a dealer, under such conditions as the department may impose by regulation, to transfer a license from one location to another or from one cigarette vending machine to another.

Section 1229. Disposition of License Fees.—*All license fees imposed and collected under the provisions of this article shall be paid into the General Fund.*

Section 1230. Expiration of License.—(a) *Every license shall expire on the last day of February next succeeding the date upon which it was issued unless sooner suspended, surrendered or revoked.*

(b) *After the expiration date of the license, or unless sooner suspended, surrendered or revoked, it shall be illegal for any dealer to engage directly or indirectly in the business heretofore conducted by him for which said license was issued. Any licensee who shall, after the expiration date of said license, engage in the business theretofore conducted by him either by way of purchase, sale, stamping, distribution, or in any other manner directly or indirectly engaged in the business of dealing with cigarettes for profit shall be in violation of section 1271 and be subject to the penalties provided therein.*

Section 1231. Duplicate License.—(a) *Whenever any license is defaced, destroyed, or lost, the department may issue a duplicate to the holder of the defaced, destroyed or lost license upon submission of a duplicate license application. Except as provided in subsection (b), at the time of making any application for a duplicate license, the applicant shall pay to the department a fee of one dollar (\$1). The duplicate license application shall be in such form and contain such information as the department shall prescribe and shall set forth truthfully and accurately the information called for on the form.*

(b) *In the event a license is defaced or destroyed in the performance of any duty imposed by this article, the department may, by regulation, waive the fee imposed by subsection (a).*

(c) *No license shall be issued by the department to any person within one year after rejection of an application, refusal to renew, or revocation of an existing license; said period of one year to commence from the date that said license is returned to the department or application is rejected.*

PART V CIGARETTE VENDING MACHINES

Section 1235. Cigarette Vending Machines; Names of Owner and Operator.—*There shall be conspicuously and visibly placed on every cigarette vending machine the name and address of the owner and the name and address of the operator.*

Section 1236. License for Machine.—*Each cigarette vending machine shall have a current license which shall be conspicuously and visibly placed on the machine.*

PART VI BUSINESS RECORDS

Section 1241. Retention of Records.—*Every licensed dealer shall keep and maintain for a period of four years, such records, in such form, as the department shall by regulation prescribe and said records must be maintained at the location for which the license is issued.*

Section 1242. Reports.—Every licensed dealer shall file reports at such times and in such form as the department by regulation may prescribe.

Section 1243. Examination of Records; Equipment and Premises.—
(a) The department is hereby authorized to examine the books and records, the inventory of cigarettes and the premises and equipment of any dealer in order to determine compliance with the provisions of this article and to verify the accuracy of the payment of the tax imposed by this article. Every such person is hereby directed and required to give to the department or its duly authorized representative, the means, facilities, and opportunity for such examinations.

(b) Any person who prevents or hinders the department or any designated agent thereof from making a full inspection of the premises where cigarettes are sold or stored, or prevents or hinders the inspection of invoices, books, records, equipment, inventory or papers required to be kept, shall be guilty of a violation of section 1276 (b) and subject to the penalties provided therein.

PART VII REFUNDS AND ALLOWANCES

Section 1251. Refund of Tax.—A refund of any tax imposed by this article shall be made to a person on proof satisfactory to the department, that the claimant:

- (1)** Paid the tax on cigarettes withdrawn by him from the market.
- (2)** Shipped cigarettes into another state for sale or use therein under the conditions as provided by the regulations promulgated by the department.
- (3)** Sold to persons exempt from the tax under the provisions of this article or regulations prescribed thereunder.
- (4)** Had possession of cigarettes which were lost (otherwise than by theft) or destroyed by fire, casualty or act of God.
- (5)** Paid the tax in error.
- (6)** Has no further use for cigarette stamps originally purchased by him.

Section 1252. Allowance for Nonpayment of Tax.—If the tax has not yet been paid on cigarettes for which a refund of said tax would be allowed under section 1251, relief from the payment of the tax on such cigarettes may be given upon the filing of a claim for allowance in the same manner as a claim for refund, or in any other manner provided by regulations.

Section 1253. Limitations.—Claims for refund or allowance of tax imposed by this article shall be filed within one year from the date of payment of the tax or from the date of the occurrence giving rise to the refund or allowance and shall be in such form and contain such information as the department shall, by regulation, prescribe.

Section 1254. Procedures for Claiming Refund.—**(a)** A dealer shall make a claim for a refund of tax on a form and in the manner prescribed by the department.

(b) *If the department is satisfied that the dealer is entitled to the refund it shall certify the proposed amount of such refund to the Board of Finance and Revenue for approval and, having obtained approval from the Board of Finance and Revenue, it shall thereafter issue to the dealer the proper refund.*

(c) *Claims for allowance for nonpayment of tax shall be allowed by the department if the department shall be satisfied that the dealer is entitled to such allowance.*

PART VIII ADVERTISING

Section 1261. Advertising.—Any dealer may state the amount of the tax separately from the price of the cigarettes on any displays, signs, sales slips, delivery slips or statements which advertise or indicate the price of such cigarettes.

PART IX PENALTIES AND ENFORCEMENT

Section 1271. Sales without License.—(a) Any dealer or other person who shall, without being the holder of a proper unexpired dealer's license or vending machine license properly affixed as required by this article, engage in the business of purchasing, selling, stamping, distributing or in any other manner directly or indirectly engaging in the business of dealing with cigarettes for profit shall be in violation of this article, and upon conviction in a summary proceeding shall be sentenced to pay a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), costs of prosecution or to suffer imprisonment for a term of not more than thirty days, or both, at the discretion of the court.

(b) *Open display of cigarettes in any manner shall be prima facie evidence that the person displaying such cigarettes is directly or indirectly engaging in the business of dealing with cigarettes for profit.*

Section 1272. Sales of Unstamped Cigarettes.—(a) Any person who shall sell any pack of cigarettes which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall, upon conviction in a summary proceeding be sentenced to pay costs of prosecution and a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) or to suffer imprisonment for a term of not more than sixty days, or both, at the discretion of the court.

(b) *Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax, sell any pack of cigarettes which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than fifteen thousand dollars (\$15,000), plus costs of prosecution or to suffer imprisonment for a term of not more than five years, or both, at the discretion of the court.*

(c) For the purposes of this section, the sale of cigarettes having affixed thereto genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall be considered an illegal sale subjecting the seller to the penalties provided in subsection (b).

Section 1273. Possession of Unstamped Cigarettes.—(a) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this article who shall possess more than two hundred but less than one thousand cigarettes, packages of which do not have affixed thereto the proper amount of genuine cigarette tax stamps shall be guilty of a summary offense and upon conviction thereof shall pay a fine of three hundred dollars (\$300), plus costs of prosecution or to suffer imprisonment for not more than ninety days, or both, at the discretion of the court.

(b) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this article who shall possess one thousand or more cigarettes, the packages of which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not less than one thousand dollars (\$1000) nor more than fifteen thousand dollars (\$15,000) and costs of prosecution or to suffer imprisonment for not more than three years, or both, at the discretion of the court.

(c) Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax possess any pack of cigarettes which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) and costs of prosecution and to suffer imprisonment for a term of not more than five years.

(d) Every person other than a common carrier engaged in interstate commerce who shall possess or transport more than two hundred unstamped cigarettes upon the public highways, roads or streets of this Commonwealth, shall be required to have in his possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets shall show the correct date of purchase or shipment, true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes so transported and the true name and complete and exact address of the person who shall assume the payment of the Pennsylvania State tax or the tax, if any, of the state or foreign country at the point of ultimate destination. If the cigarettes are consigned to or purchased by any person in the Commonwealth of Pennsylvania such consignee or purchaser must be a licensed cigarette stamping agency or otherwise authorized by this article to possess unstamped cigarettes within

the boundaries of this Commonwealth. The absence of such invoices or delivery tickets shall be prima facie evidence that the possession of such cigarettes is contrary to the provisions of this article and shall subject the possessor to the penalties imposed herein.

(e) In the absence of such invoices or delivery tickets or, if the name or address of the purchaser or consignor is falsified, or if the purchaser or consignee in this Commonwealth is not authorized to possess unstamped cigarettes then and in that event the cigarettes so transported shall be subject to confiscation at the discretion of the Secretary of Revenue as is more fully described in section 1285.

(f) For the purpose of this section the possession of genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall be considered a violation of this article subjecting the possessor thereof to the penalties provided in subsection (c).

(g) Transportation of cigarettes from a point outside of this Commonwealth to a final destination outside of this Commonwealth shall not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession invoices, bills of lading or delivery tickets which give the true name and true address of such out-of-state consignor or seller and such out-of-state consignee or purchaser: Provided, however, That such consignor or consignee shall be authorized by the laws of such states to receive or possess cigarettes on which the taxes imposed by such other states have not been paid.

(h) In any case, where agents of the department have reason to believe that any vehicle is carrying or transporting cigarettes in violation of this article, then and in that event, the agents of the department shall be and are hereby authorized to stop such vehicle, make an inspection and confiscate all such unstamped or improperly stamped cigarettes found therein and confiscate the vehicle used to transport such unstamped or improperly stamped cigarettes.

Section 1274. Counterfeiting.—(a) Any person who falsely or fraudulently makes, forges, alters or counterfeits, or who has in his possession any stamping device, stencil, machine, or other material of any nature whatsoever designed to produce counterfeit tax stamps with the intent to produce counterfeit tax stamps or who causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any cigarette tax stamp or any stamping device, stencil, machine, or other material of any nature whatsoever designed to produce counterfeit stamps with the intent to produce counterfeit stamps or knowingly and wilfully possesses, utters, purchases, publishes, sells, passes, distributes, or tenders any such false, altered, forged, or counterfeit stamp or any stamping device, stencil, machine or other material of any nature whatsoever designed to produce counterfeit stamps with the intent to produce counterfeit stamps for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a felony, and upon conviction thereof

shall be sentenced to pay a fine of not more than ten thousand dollars (\$10,000) and costs of prosecution and suffer imprisonment for a term of not more than ten years.

(b) Possession of a forged, altered or counterfeited stamp or of any stamping device, stencil, machine, or other material, of any nature whatsoever designed to produce counterfeit stamps shall be prima facie evidence that such person has intended to produce counterfeit stamps for the purpose of evading the tax due under the provisions of this act.

Section 1275. Defacing of Cigarette Stamping Equipment.—Any person who shall wilfully, maliciously and for the purpose of evading the tax hereby imposed and assessed, shall in any manner deface, modify, change, tamper with, alter any cigarette tax meter, machine, or stamping equipment or do any other act, the result of which would be likely to affect the proper working order of said cigarette tax meter, machine, or stamping equipment shall be guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of five thousand dollars (\$5000) and to suffer imprisonment for a term of not more than five years.

Section 1276. Failure to Furnish Information, Returning False Information or Failure to Permit an Inspection.—(a) Any dealer who fails to keep or make any record, return, report, inventory or statement, or keeps or makes any false or fraudulent record, return, report, inventory or statement required by this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year, or both, in the discretion of the court.

(b) The department is hereby authorized to examine the books and records, the stock of cigarettes and the premises and equipment of any dealer in order to verify the accuracy of the payment of the tax imposed by this article. Every such person is hereby directed and required to give to the department or its duly authorized representative, the means, facilities and opportunity for such examinations. Wilful refusal to cooperate with or permit such examination to the satisfaction of the department shall be sufficient grounds for the suspension or revocation of any license issued hereunder, and in addition thereto shall constitute a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year or both.

Section 1277. Right of Department to Impound Vending Machines and Contents.—(a) Whenever any cigarettes are found or are suspected to be in any vending machine in violation of the provisions of this article, or whenever a vending machine is not properly licensed or labeled, the duly authorized agents or employes of the department shall seal the machine by the means of impounding stickers to prevent sale or removal of any cigarettes from the machine until such time as the violation is corrected in the presence of a duly authorized agent or employe of the department.

(b) Anyone other than the duly authorized agents or employes of the department who shall remove or otherwise tamper with any impounding stickers placed on any vending machine, contents, or other evidence shall be guilty of a misdemeanor and subject to a fine of not more than one thousand dollars (\$1000) and costs of prosecution and to suffer imprisonment of not more than one year or both.

Section 1278. Other Violations.—(a) Any person who wilfully omits, neglects, or refuses to comply with any duty imposed upon him by this article or does anything prohibited by this article for which no specific penalty is otherwise provided, shall upon conviction in a summary proceeding be sentenced to pay a fine not to exceed five hundred dollars (\$500) and costs of prosecution, and, in default of payment thereof, to undergo imprisonment for not more than thirty days.

(b) Any person who wilfully omits or neglects to pay any tax imposed by this article, or attempts in any manner to evade or defeat the tax or payment thereof, shall, in addition to any other penalty provided in this article, be liable to a penalty equal to the amount of tax evaded or not paid, which penalty shall be added to the tax and assessed and collected at the same time in the same manner as a part of the tax.

(c) Any person who fails to pay tax at the time prescribed shall, in addition to any other penalty provided in this article, be liable to a penalty of five per cent of the tax due but unpaid, together with the interest at the rate of six per cent per annum on such tax from the time the tax became due, but no interest for a fraction of a month shall be demanded. The penalties provided in this subsection shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.

Section 1279. Peace Officers; Powers.—Such employes of the department as are officially designated by the Secretary of Revenue as field investigators of the bureau, and who carry identification of such capacity, are hereby declared to be peace officers and they, as well as other peace officers of the Commonwealth are hereby given police powers and authority throughout the Commonwealth to arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale of unstamped or counterfeit cigarettes or any counterfeit devices, or any person unlawfully having in his possession unstamped cigarettes, counterfeit cigarettes or counterfeiting devices contrary to the provisions of this article. Such peace officer shall have the power and authority upon reasonable and probable cause to search for and seize without warrant or process, except in private homes, any unstamped cigarettes, counterfeit cigarettes or counterfeiting devices which are unlawfully possessed.

Section 1280. Fines and Penalties Payable to Commonwealth.—All fines and penalties imposed and collected under the provisions of this article shall be payable to the Commonwealth and are hereby appropriated to the department to be used in enforcing this article.

PART X
CONFISCATION AND FORFEITURE

Section 1285. Property Rights.—(a) No property rights shall exist in any vending machine in which unstamped cigarettes are found, nor shall any property rights exist in any vehicle containing two thousand or more unstamped cigarettes or containing more than two hundred unstamped cigarettes if the owner has been previously convicted of the illegal sale, possession or transportation of unstamped cigarettes in this or any other jurisdiction. The said vending machine, all cigarettes contained therein, and the vehicle which contained said unstamped cigarettes shall be deemed contraband and shall be confiscated at the discretion of the Secretary of Revenue, and shall be forfeited to the Commonwealth as provided in subsections (e) and (f). No such property, when in the custody of the department, the police or other proper peace officers shall be seized or taken therefrom by any writ of replevin or other judicial process unless a petition for forfeiture is not timely filed.

(b) Upon said forfeiture or confiscation, the department shall dispose of any forfeited machine or forfeited cigarettes in accordance with subsections (e) and (f).

(c) No property rights shall exist in any packages of cigarettes which have been taken from any person who has been found in violation of the provisions of section 1273 and all such packages of cigarettes shall be deemed contraband, shall be confiscated and shall be forfeited to the Commonwealth without further proceedings and shall be delivered to the agents of the department at the time of conviction by the judge, justice of the peace, magistrate or alderman.

(d) No property rights shall exist in any machinery, equipment, fixtures, stenciling device, stamp, stamping device, or other paraphernalia designed or used to counterfeit Pennsylvania cigarette tax stamps nor shall any property rights exist in any packages of cigarettes confiscated in connection with the operation of any counterfeiting or other scheme designed to evade the payment of proper Pennsylvania cigarette tax. Said machinery, equipment, fixtures, stenciling device, stamp, stamping device or other paraphernalia and cigarettes shall be confiscated and at the discretion of the Secretary of Revenue, shall be forfeited to the Commonwealth in accordance with the provisions of this article.

(e) The department shall dispose of cigarettes forfeited under the provisions of this article by the sale of same through the Division of Escheats, Bureau of County Collections, pursuant to regulations promulgated by the Secretary of Revenue.

(f) The proceedings for the forfeiture of any cigarette vending machine or motor vehicle, in which are found unstamped cigarettes shall be in rem. The Commonwealth shall be the plaintiff and the property shall be the defendant. A petition shall be filed within five days after confiscation in the court of common pleas of the county in which the property or vehicle was taken by agents of the department, the police or other

such authorized peace officer, verified by oath or affirmation of any cigarette tax enforcement officer, police officer or other person. In the event that such petition is not filed within the time prescribed herein, such confiscated vending machine or motor vehicle shall be immediately returned to the person from whom confiscated or the owner thereof.

(g) The petition shall contain the following:

(1) The description of the property or vehicle seized.

(2) A statement of the time when and place where seized.

(3) The name and address of the owner, if known.

(4) The name and address of the person in possession, if known.

(5) The statement of the circumstances under which the property was found and the number and description of all unstamped or improperly stamped cigarettes found therein.

(6) A prayer for an order forfeiting said property to the Commonwealth, unless cause be shown to the contrary.

(h) A copy of the petition shall be served in any manner provided by law for service of process or complaint in an action in assumpsit on the owner if he can be found within the Commonwealth. If the owner cannot be found within the Commonwealth, a copy of the petition shall be served on the owner by registered mail or certified mail, return receipt requested, addressed to the last known address of the owner. The person in possession and all encumbrance holders having a perfected security interest in the property confiscated shall be notified in a like manner. The copies shall have endorsed thereon a notice substantially similar to the following:

"To the claimant of the within property: You are required to file an answer to this petition setting forth your title in and right to possession of said property, within twenty days from the service hereof, and you are also notified that if you fail to file said answer, a decree of forfeiture will be entered against said property."

(i) The notice shall be signed by the petitioner or his attorney or the district attorney or Attorney General.

(j) If the owner of the property is unknown, notice of the petition shall also be given by an advertisement in only one newspaper of general circulation published in the county where the property was seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property, with the description thereof, the place and date of seizure, and shall direct any claimants thereof to file a claim therefor, on or before a date given in the notice, which shall not be less than ten days from the date of the last publication.

(k) Upon the filing of any claim for the property setting forth a right of possession thereof, the case shall be deemed at issue and a hearing shall be held within five days thereof.

(l) At the time of the hearing, if the Commonwealth shall prove by competent evidence to the satisfaction of the court that the machine or motor vehicle in question was found to contain unstamped or improperly

stamped cigarettes, then and in that event the claimant shall show that he is the owner of the cigarette vending machine or other equipment, motor vehicle or cigarettes, and that all cigarettes found in the machine, or any other place from which the cigarettes were seized, did contain the proper amount of genuine Pennsylvania cigarette tax stamps, or that he is otherwise not subject to the provisions of this section as the result of any exemption or allowance provided for in other sections of this article.

(m) The claimant shall have the burden of proving that he is not subject to the provisions of this section, but the burden of proof shall be upon the Commonwealth to prove all other facts necessary for the forfeiture of a cigarette vending machine or motor vehicle. In the event that the Commonwealth has not met its burden by a preponderance of the evidence, or the claimant has proved that he is not subject to the provisions of this section, the court shall order the machine, motor vehicle or other equipment returned to the claimant; otherwise, the court shall order the same forfeited to the Commonwealth: Provided, however, That in the case of a motor vehicle, should the claimant prove to the satisfaction of the court that he is the registered owner of the motor vehicle and that he did not know, nor had reason to know, that it was being used to carry unstamped or improperly stamped cigarettes or tobacco products, the court in its discretion, may order the same returned to the claimant.

(n) In the case of a motor vehicle, should the claimant prove that he holds a valid encumbrance upon such motor vehicle, notice of which encumbrance has been duly noted on the certificate of title to said motor vehicle in accordance with the provisions of Title 75 of the Pennsylvania Consolidated Statutes (relating to vehicles), such forfeiture shall be subject to such encumbrance as of the date of the seizure less prepaid or unearned interest and before said motor vehicle may be sold, exchanged or otherwise transferred or retained for use by the Commonwealth, the outstanding amount of such encumbrance shall be paid to the claimant; or possession of the motor vehicle shall be turned over to the claimant who shall expose the same to public sale and shall pay over to the Commonwealth any amount realized in excess of the outstanding amount of such encumbrance less the reasonable costs incurred by claimant in conducting such sale.

Section 1286. Disposition of Unclaimed Motor Vehicles.—If the court orders a motor vehicle returned to the owner or claimant and the owner or claimant fails to remove the vehicle from Commonwealth property, the department shall give the owner or claimant notice, in the manner provided in section 1285 for service of notice of the petition, to remove the vehicle within ninety days. Should the owner or claimant fail to remove the vehicle within ninety days from the date notice was given, the vehicle shall, without regard to any other period of limitations, be disposed of as provided in the act of August 9, 1971 (P.L.286, No.74), known as the "Disposition of Abandoned and Unclaimed Property Act."

PART XI
ENFORCEMENT AND REGULATIONS

Section 1291. Enforcement; Regulations.—The department is hereby charged with the enforcement of the provisions of this article and it is hereby authorized to promulgate regulations relating to the administration and enforcement of the provisions of this article. The violation of a regulation promulgated under the authority of this article shall be considered to be a violation of the article.

PART XII
SAVING CLAUSE: PAYMENT: REPEALER

Section 1295. Saving Clause.—(a) This article shall be deemed to be a continuation of prior law. All cigarette tax stamps and licenses sold or issued pursuant to any act repealed hereby shall continue in full force and effect in accordance with their terms and any cigarettes upon which tax has once been paid shall not be taxed a second time. All licenses issued after the effective date of this article shall be issued in accordance with the requirements of and the schedule of fees provided in this article. The enactment of this article shall not affect or impair any act done or right existing or accrued or affect any action presently pending before a court involving the enactment or validity of the article or any criminal suit, action, proceeding or prosecution to enforce any right acquired or prosecute any violation committed under the provisions of any law repealed hereby.

(b) If any section, sentence, clause or part of this article is for any reason held to be unconstitutional, the decision of the court shall not affect or impair the remaining provisions of this article. It is hereby declared to be the legislative intent that this article would have been adopted had such unconstitutional section, sentence, clause or part thereof not been included therein.

Section 1296. Disposition of Certain Funds.—All cigarette tax revenues collected by the Department of Revenue under this article and heretofore paid into the Parent Reimbursement Fund in accordance with the act of August 27, 1971 (P.L.358, No.92), known as the "Parent Reimbursement Act for Nonpublic Education," shall be transferred into the General Fund, and all such revenues hereinafter collected shall be paid into the General Fund.

Section 1297. Repealer.—The act of July 22, 1970 (P.L.513, No.178), known as the "Pennsylvania Cigarette Tax Act," is repealed.

Section 6. Article XII of the act, amended September 9, 1971 (P.L.437, No.105) and December 21, 1977 (P.L.330, No.98), is amended to read:

ARTICLE [XII] XXX
GENERAL PROVISIONS

Section [1201] 3001. Saving Clause.—(a) Notwithstanding anything contained in any law to the contrary, 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 hereinafter 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 code.

(b) Nothing contained in this code shall be construed to relieve any person, corporation or other entity from the filing returns or from any taxes, penalties or interest imposed by the provisions of any laws which were in effect prior to being repealed by this code, or affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws or prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of taxes, penalties or interest due to the Commonwealth under any of the laws which were in effect prior to being repealed by this code.

Section [1202] 3002. Constitutional Construction.—If any word, phrase, clause, sentence, section or provision of this code 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 code. It is hereby declared as the legislative intent that this code would have been adopted had such unconstitutional word, phrase, clause, sentence, section or provision thereof not been included herein.

Section [1202.1] 3003. 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	First	Second	Third	Fourth
	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 [1203] 3004. Effective Date.—The provisions of this code, except as otherwise specified, shall take effect immediately.

Section 7. (a) Sections 1, 2, 3, 4 and 6 of this act shall take effect immediately and shall apply to taxable years ending on or after January 1, 1981.

(b) Section 5 of this act shall take effect in 30 days.

APPROVED—The 21st day of December, A. D. 1981.

DICK THORNBURGH