

No. 1982-78

AN ACT

HB 1650

Amending the act of April 9, 1929 (P.L.343, No.176), entitled "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," establishing a uniform interest rate for all taxes due the Commonwealth, requiring the Commonwealth to pay interest on money due taxpayers and providing for the payment of cash refunds by the Department of Revenue.

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

Section 1. Section 806, act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," amended July 13, 1957 (P.L.838, No.388), is amended to read:

Section 806. Interest on Taxes **[and Bonus]** Due the Commonwealth. —All **[tax and bonus]** taxes due the Commonwealth, as provided by law, shall bear interest at the rate **[of six per centum]** *established by law upon the date they become due and payable until paid. From and after the effective date hereof, all such taxes which become due and payable shall bear interest at the rate established by the Secretary of the Treasury of the United States under the provisions of section 6621 of the Internal Revenue Code as amended by section 711 of the Economic Recovery Tax Act of 1981* per annum from the date they are due and payable until paid: Provided, **[That in the case of all taxes and bonus which other provisions of this act require taxpayers to compute and pay at the time of filing the report to return, if a settlement is not made within one year after the date upon which the report or return was filed, no interest whatsoever shall be imposed for the period between the end of such one year and sixty days after the date of the mailing of the settlement, unless the taxpayer has filed a written waiver permitting interest to run after the end of said one year: Provided further,]** That no penalties **[imposed under**

sections 1701, 1702 and 1705 of this act for failure to file bonus or tax reports on time] shall bear any interest whatsoever. The payment of interest, as aforesaid, shall not relieve any person, association, or corporation, from any of the penalties, [or] commissions or additional tax prescribed by law for neglect or refusal to furnish *timely returns* or reports to the Department of Revenue, or to pay any claim due to the Commonwealth from such person, association, or corporation. *The Secretary of Revenue shall, from time to time, publish the rate of interest and the commencement date thereof in the Pennsylvania Bulletin. In the case of any tentative tax or installment payment, interest shall run on any unpaid amount from the last day the payment is due to the date paid.*

Whenever the tax [or bonus] liability of a taxpayer is so affected by any *payment or credit* settlement or resettlement, *assessment or reassessment or determination or redetermination* as to change the interest liability [which has been settled against] of such taxpayer, such interest liability shall be *recomputed and* adjusted by the Department of Revenue and the Department of the Auditor General so as to correspond to the tax [or bonus] liability as changed, without the necessity for the filing of any petition or request by the taxpayer or by said departments.

Section 2. The act is amended by adding a section to read:

Section 806.1. Interest on Overpayments.—(a) Interest shall be allowed and paid by the Commonwealth upon any overpayment to the Commonwealth of any tax. The interest shall be allowed and paid for the period during which the Commonwealth retained the overpayment, beginning with the date of the overpayment, except that:

(1) Any tax actually deducted and withheld at the source shall be deemed to have been overpaid on the last day prescribed for filing the return or report for the taxable year (determined without regard to any extension of time for filing);

(2) Any amount overpaid as estimated or tentative tax for a taxable year shall be deemed to have been overpaid on the last day prescribed for filing the final return or report for the taxable year (determined without regard to any extension of time for filing);

(3) Any overpayment made before the last day prescribed for payment shall be considered made on the last day; and

(4) Any amount claimed to be overpaid with respect to which an administrative review or appellate procedure is initiated in the manner provided by law by the taxpayer shall be deemed to have been overpaid sixty (60) days following the date of initiation of said review or procedure.

(5) If any overpayment of tax is refunded or credited within six (6) months after the last date prescribed for filing the final return or report of the tax (determined without regard to any extension of time for filing) or, in case the final return or report is filed after the last day, and is refunded or credited within six (6) months after the date the final return or report is filed, no interest shall be allowed on the overpayment.

(b) Interest shall be computed at a rate which is equal to the rate of interest imposed by the Commonwealth on underpayments of the same tax for the same period during which the Commonwealth retained the overpayment.

(c) Interest shall be allowed and paid as follows:

(1) In the case of a cash refund, from the date of the overpayment to a date preceding the date of the Commonwealth's refund check by not more than thirty (30) days.

(2) In the case of a credit for an overpayment, from the date of the overpayment to:

(i) The date of the Commonwealth's notice to the taxpayer of the final determination of the credit; or

(ii) The date as of which the credit is applied, whichever first occurs: Provided, however, That in the case of a cash refund of a previously determined credit, interest shall be allowed and paid on the amount of the credit from a date ninety (90) days after the filing of a petition for a cash refund to a date preceding the date of the refund check by not more than thirty (30) days whether or not the refund check is accepted by the taxpayer after tender to the taxpayer.

(3) The taxpayer's acceptance of the Commonwealth's check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon. Tender of a refund check shall be deemed acceptance thereof for the purposes of this section.

Section 3. Section 1108 of the act, amended June 27, 1947 (P.L.1023, No.435), is amended to read:

Section 1108. Payment of Accounts; **[Without Prejudice to] Effect Upon Right of Resettlement, Review, and Appeal.**—*(a) Any person, association, corporation, public officer, or other debtor who or which is required to make to the Department of Revenue a return or report upon the basis of which any [bonus,] tax, or other charge is [to] or will be settled, determined or assessed, shall have the right at any time, to pay to the Department of Revenue all or any part of the amount of any [bonus,] tax, penalty, additional tax, or other charge due or deemed by him, it, or them to be due, with interest, if any, as is then due and payable for the purpose of stopping the running of further interest thereon, without prejudice to his, its, or their right to present and prosecute a petition for review, resettlement, reassessment or redetermination to the Department of Revenue, a petition for review to the Board of Finance and Revenue, a petition for credit or refund, or an appeal to the [court of common pleas of Dauphin County] Commonwealth Court of Pennsylvania, in the manner and within the times provided by law.*

[The payment by any corporation of bonus settled against it by the Secretary of the Commonwealth shall not prejudice its right to present and prosecute a petition for resettlement to the Department of State, a petition for review to the Board of Finance and Revenue, or an appeal to the court of common pleas of Dauphin County, in the manner and within the times provided by law.]

(b) Whenever the principal amount due upon a settlement, *assessment*, determination, resettlement, *reassessment*, or redetermination, or the principal amount determined to be due upon a petition to the Board of Finance and Revenue, is less than the principal amount paid to the Department of Revenue, **[or to the Department of State] on account thereof**, and the person, association, corporation, public officer, or other debtor against whom such settlement, *assessment or determination* has been made is satisfied therewith, or whenever the principal amount, due upon the final judgment entered on any appeal, is less than the principal amount paid to the Department of Revenue**[, or to the Department of State] on account thereof**, the Department of Revenue **[or the Department of State,]** shall enter a credit in the amount of such difference to the account of such person, association, corporation, public officer, or other debtor. Such credit may be *applied by the Commonwealth* or used by the person, association, corporation, public officer, or other debtor, to whose account it is entered, in payment of any tax**[, bonus,]** or other claim which may be or become due from him, it, or them, to the Commonwealth; and if all such charges have been fully paid, any remaining credit may be assigned to any other person, association, corporation, public officer, or other debtor, and such assignee may use it in payment of any such obligation to the Commonwealth *or the remaining credit shall be refunded in cash by the Department of Revenue upon application of the person, association, corporation, public officer or other person entitled thereto.*

The Department of Revenue is authorized to prescribe regulations providing for the payment of refunds. So much of the proceeds of the various taxes, as shall be necessary for the payment of refunds out of the general or special funds shall be authorized by the Governor.

Section 4. All other acts and parts of acts are hereby repealed insofar as they are inconsistent herewith.

Section 5. This act shall take effect immediately and shall apply retroactively to January 1, 1982. In the case of an overpayment made before the effective date of this act, the date of the overpayment shall be deemed to have been made on the effective date of this act. Nothing contained herein shall affect or impair litigation pending on the effective date of this act. This act shall not be construed to indicate the intent of the General Assembly with regard to the status of the law of the Commonwealth's payment of interest prior to the effective date of this act. The rate of interest upon the effective date hereof shall be based upon the immediate prior determination made by the Secretary of the Treasury of the United States in accordance with section 806.

APPROVED—The 8th day of April, A. D. 1982.

DICK THORNBURGH