

No. 1982-317

AN ACT

HB 1647

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," setting forth legislative findings and declaration of purpose; providing that the taxes imposed by Articles VII and VIII are privilege taxes measured by actual value of capital stock; defining "valuation reserve for loan losses" and providing for its use in determining the actual value of certain stock; validating taxes collected and acts done; giving retrospective effect to certain amendments; making provisions with respect to certain tax credits and refunds.

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

Section 1. The General Assembly finds and declares as follows:

(a) Article VII of the "Tax Reform Code of 1971," the Bank Shares Tax, was derived from the act of July 15, 1897 (P.L.292, No.227), as amended, and Article VIII, the Title Insurance and Trust Companies Shares Tax, was derived from the act of June 13, 1907 (P.L.640, No.512). Both these taxes were enacted in conformity with the authority of section 548 of Title 12, U.S.C.

(b) At the time of enactment of the "Tax Reform Code of 1971," the aforesaid taxes could have been enacted either in the form of privilege taxes or in the form of property taxes.

(c) Although the constitutionality and legality of taxing financial institutions in Pennsylvania using the value of capital stock in the hands of shareholders as the measure of taxing, and including Federal obligations in the ascertainment of said value, appears to be well settled, a recent decision of the Supreme Court of the State of Montana has, by a three-to-two decision, cast doubt upon the propriety of including obligations of the United States in the tax base of a property tax based upon the value of bank stock.

(d) If the rationale of the decision of the Montana Court were to be applied to Articles VII and VIII of the "Tax Reform Code of 1971" by a decision of a court of competent jurisdiction in Pennsylvania, the Commonwealth of Pennsylvania would suffer a financial crisis. Approximately \$400,000,000 would have to be refunded to the financial institutions as an undeserved windfall, and current revenues based upon Articles VII and VIII of the "Tax Reform Code of 1971" effectually would be terminated.

(e) Until the Montana decision in 1978, Pennsylvania financial institutions voluntarily have paid the taxes in question, and the moneys have been collected, appropriated to public use and expended in good faith, and for the common weal. Payment of the aforesaid refunds and termination of existing revenues derived from said taxes would require the enactment of new and onerous taxes, to the detriment of the general public.

(f) The General Assembly finds it essential to the public welfare that the taxes voluntarily paid heretofore under the provisions of Articles VII and VIII of the "Tax Reform Code of 1971" not be refunded, and that present and prospective revenues therefrom not be prejudiced.

Section 2. The act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," is amended by adding sections to read:

Section 701.1. Construction of Tax.—*The tax hereby imposed shall be a tax for the privilege of doing business in this Commonwealth or having capital or property employed or used in this Commonwealth, by or in the name of the bank or savings institution, or by or in the name of any person, partnership, association, limited partnership, joint-stock association, or corporation holding shares of the capital stock of any such bank or savings institution, measured by the actual value of each share of capital stock as ascertained in the manner provided by section 701.*

Section 701.2. Reserve for Loan Losses.—*In ascertaining the value of each share of stock pursuant to section 701, the Department of Revenue shall not increase the undivided profits by the amount of the valuation reserve for loan losses reported by such bank or savings institution on its report of condition made at the end of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation pursuant to section 161, 324 or 1817(a) of Title 12 of the United States Code as amended. The "valuation reserve for loan losses" shall mean, in the case of a bank or savings institution which is an insured bank under the Federal Deposit Insurance Act, the amount deducted (under the caption of the reserve or allowance for possible loan losses) from total loans on the report of condition prepared on the form and in accordance with the instructions of such Federal banking authorities and shall be binding on both the Department of Revenue and the bank or savings institution.*

Section 801.1. Construction of Tax.—*The tax hereby imposed shall be a tax for the privilege of doing business in this Commonwealth or having capital or property employed in this Commonwealth, by or in the name of the company or corporation or by or in the name of any person, partnership, association, limited partnership, joint-stock association, or corporation holding shares of the capital stock of any such company or corporation, measured by the actual value of each share of capital stock as ascertained in the manner provided by section 801: Provided, That the act is not intended to, and shall not, affect or repeal any deduction or*

exclusion heretofore applicable in measuring the actual value of each share of capital stock (except obligations of the United States) and shall not affect or repeal any exemption from other State or local taxations heretofore in effect.

Section 3. The provisions of section 2, adding sections 701.1 and 801.1, shall have retroactive effect to March 4, 1971, being deemed a part of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," and shall be construed as a part of, and read together with, the original statute as if originally enacted on March 4, 1971. Acts done and taxes collected under the said act from said date and prior to this amendment are hereby ratified. If, however, it should be finally determined by a court of competent jurisdiction that such retroactive effect and construction may not be so applied to the said act as hereby amended, the provisions of section 2 shall be construed to have retroactive effect to the earliest date to which such retroactive effect may be given.

Section 4. Notwithstanding any provision of any law to the contrary, including but not limited to the provisions of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," from and after the effective date of this act, no cash refund shall be made and no tax credit shall be allowed arising from any voluntary payment of tax under any provision of Article VII or VIII of the "Tax Reform Code of 1971," upon the basis that the inclusion of United States obligations in the tax base was or is unconstitutional or illegal or in the case of taxes due prior to the effective date of this act upon the basis of the inclusion in the law of section 701.2, nor shall any action or proceeding be commenced or further prosecuted for the attainment, directly or indirectly, of any such cash refund or tax credit, without regard to the legal or equitable entitlement of the Commonwealth to such taxes voluntarily paid. Nor shall any suit, proceeding, or action, whether brought before or after the effective date hereof, be maintained in any administrative board, tribunal, or court of record for the recovery, recoupment, setoff, refund, credit or counterclaim for any such tax payment upon any such basis. For the purpose of this section, every tax payment shall be presumed to be a voluntary payment and the payment of tax under mere protest shall be deemed to constitute a voluntary payment. Only the payment of these taxes under actual and direct duress, coercion or compulsion against the individual payor shall not be deemed to be a voluntary payment.

Section 5. All acts and parts of acts are repealed insofar as they are inconsistent herewith.

Section 6. This act shall take effect immediately and shall apply as follows:

(1) The provisions of section 2, adding sections 701.1 and 801.1, shall, as heretofore provided, be retroactive to March 4, 1971.

(2) The provision of section 2, adding section 701.2, shall apply to taxable years beginning January 1, 1982.

APPROVED—The 17th day of December, A. D. 1982.

DICK THORNBURGH