

No. 1984-94

AN ACT

HB 1310

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for a reduction in the rate of corporate net income tax, credits and interest on underpayments and payment of interest, additions and penalties.

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

Section 1. Section 351 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added August 31, 1971 (P.L.362, No.93) and amended December 21, 1977 (P.L.330, No.98), is amended to read:

Section 351. Interest.—(a) If any amount of tax imposed by *Part II* of this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate [of three-fourths of one per cent per month, for each month or fraction thereof from such date,] established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for filing the return. This section shall not apply to any failure to pay estimated tax.

(b) *If any amount of tax required to be withheld by an employer and paid to the department under Part VII of this article is not paid by the due date prescribed under section 319, interest on the amount at the rate established under section 806 of "The Fiscal Code" shall be paid from that date for the period of underpayment.*

Section 2. Section 352 of the act, added August 31, 1971 (P.L.362, No.93) and amended November 23, 1976 (P.L.1129, No.240), is amended to read:

Section 352. Additions, *Penalties and Fees*.—(a) In case of failure to file any return required under [section 330] *this article* on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on such return five per cent of the amount of such tax if the failure is for not more than one month, with an additional five per cent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five per cent, in the aggregate, but in no case shall the amount added be less than five dollars (\$5). *The amount of tax required to be shown on the*

return shall, for purposes of computing the additions for the first month, be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. The amount of tax required to be shown on the return shall, for purposes of computing the addition for any subsequent month, be reduced by the amount of any part of the tax which is paid by the beginning of the subsequent month and by the amount of any credit against the tax which may be claimed on the return.

(b) If any part of any underpayment of any tax imposed by *Part II* of this article is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five per cent of the underpayment.

(c) If any part of any underpayment of tax required *under this article* to be shown on a return is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the underpayment. This amount shall be in lieu of any amount determined under subsection (b) *or (h)*.

(d) (1) If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate **[of six per cent per annum]** established pursuant to section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as "*The Fiscal Code*," upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to eighty per cent of the tax (two-thirds in the case of an individual described in subsection (e) of section 325) shown on the return for the taxable year (or if no return was filed, of the tax for such year) over the amount, if any, of the installments paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(2) No addition to tax shall be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the lesser of:

(A) The amount which would have been required to be paid on or before such date if the estimated tax were:

(i) the tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(ii) an amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year; or

(B) An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) Any person required to collect, account for and pay over any tax imposed by this article who wilfully fails to collect such tax or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded or not collected or not accounted for and paid over. No penalty shall be imposed under subsection (b), (c) or (h) for any offense to which this subsection (e) is applicable. The term "person" as used in this subsection includes an officer or employe of a corporation, or a member or employe of a partnership, who as such officer, employe or member is under a duty to perform the act in respect of which the violation occurs.

(f) Any person required under the provisions of section 317 to furnish a statement to an employe who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section 317 and the regulations prescribed thereunder, shall, for each such failure, be subject to a penalty of fifty dollars (\$50) for each employe.

(g) Whenever any check issued in payment of any tax, or for any other purpose required by this article, shall be returned to the department as uncollectible, the department shall charge a fee of ten per cent of the face amount thereof, plus all protest fees, to the person presenting such check to the department, to cover the cost of its collection in addition to the interest and penalties otherwise provided for in this article: Provided, That the additions imposed by this subsection shall not exceed two hundred dollars (\$200) nor be less than ten dollars (\$10).

(h) If any amount of tax required to be withheld by an employer and paid over to the department under **[this article] section 319** is not paid on or before the due date prescribed *for filing the quarterly return* under section **[319] 318, determined without regard to an extension of time for filing**, there shall be added **[thereto] to the tax** and paid to the department *each month* five per cent of such underpayment for each month or fraction thereof from the due date, *for the period from the due date to the date paid[,]*; but the *underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of such additions shall not exceed fifty per cent of the amount of [underpayment for such period] tax required to be shown on the return reduced by the amount of any part of the tax which is paid by the return due date and by the amount of any credit against the tax which may be claimed on the return.*

Section 3. Section 402 of the act, amended December 9, 1982 (P.L.1047, No.246), 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 *through the calendar year 1984 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 year 1985* and 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 *through the fiscal year commencing in 1984 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 1985* and during each fiscal year thereafter. No penalty prescribed by subsection (e) of section [1202.1] 3003 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. Section 3003 of the act, renumbered from section 1202.1 December 21, 1981 (P.L.482, No.141), is amended by adding a subsection to read:

Section 3003. Prepayment of Tax.—***

(f) Whenever the amount shown as due on the annual report is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to

the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code." Notification to the taxpayer by the department of the available credit under this subsection, if provided within 60 days of filing the annual report, shall be deemed a notice of final determination of the credit solely for the purposes of stopping the accruing of interest under section 806.1(c)(2)(i) of "The Fiscal Code." If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon settlement or resettlement, then interest shall be calculated on the amount of the underpayment from the date the credit was applied, assigned or refunded.

Section 5. Section 3 of this act shall apply to taxable years commencing with calendar year 1985.

Section 6. This act shall take effect immediately.

APPROVED—The 29th day of June, A. D. 1984.

DICK THORNBURGH