

## No. 2003-45

## AN ACT

## HB 1133

Amending the act of April 9, 1929 (P.L.343, No.176), entitled, as amended, "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, authorizing the Commonwealth to issue tax anticipation notes to defray current expenses, implementing the provisions of section 7(a) of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt 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," further providing for the definitions of "cost of the stamping agent" and "dealer" and for interest on overpayments; providing for the definitions of "Crime Victim's Compensation Fund" and "restitution"; and further providing for property held by financial institutions, for escheat of property held by insurers, for property held by courts, public officers and agencies, for miscellaneous property held for or owing to another and for depositing funds relating to abandoned and unclaimed property.

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

Section 1. The definitions of "cost of the stamping agent" and "dealer" in section 202-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, added July 2, 1993 (P.L.250, No.46), are amended to read:

Section 202-A. Definitions.—As used in this article—\* \* \*

"Cost of the Stamping Agent" shall mean the basic cost of cigarettes plus the cost of doing business by the cigarette stamping agent in excess of the basic cost of cigarettes, expressed as a percentage and applied to the basic cost of cigarettes. Any fractional part of a cent in the cost per carton of cigarettes shall be rounded off to the next higher cent. In the case of sales at retail by cigarette stamping agents, the cost of the cigarette stamping agent shall be the same as the cost of the retailer. There shall be determined a separate cost of the cigarette stamping agent for sales to wholesale dealers and for sales to retail dealers. In the absence of filing of satisfactory proof of a lesser cost of doing business of the cigarette stamping agent making the sale, the cost of doing business shall be presumed to be *one and seven-*

*tenths per centum of the basic cost of cigarettes to the stamper for sales to wholesale dealers and [four per centum of the basic cost of cigarettes], with respect to sales to retail dealers, the cost of the stamping agent plus the cost of the wholesaler.* When a cigarette stamping agent establishes a lesser cost of doing business than the presumptive costs contained herein, such lesser cost of doing business may be used to compute the cost of the cigarette stamping agent for a period of time no greater than twelve months, at the end of which time the cost of the cigarette stamping agent shall be computed using the presumptive costs contained herein, unless the cigarette stamping agent again establishes a lesser cost of doing business.

\* \* \*

“Dealer” shall mean any cigarette stamping agency, wholesaler or retailer as these terms are more specifically defined herein. When used in this article, the term 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, That such person meets the requirements for each category of dealer *and that, where a person holds more than one license, the presumptive minimum price shall include all presumptive costs of doing business if the product is sold at retail.*

\* \* \*

Section 2. Section 806.1(b) of the act, amended December 9, 1982 (P.L.1057, No.248), is amended and the section is amended by adding a subsection to read:

Section 806.1. Interest on Overpayments.—\* \* \*

(b) Interest on overpayments shall be allowed and paid at the [same] rate as is prescribed for underpayments under section 806 *less two per centum.*

*(b.1) Interest on overpayments of the tax imposed under Article III of the act of March 4, 1971 (P.L.6, No.2), known as the “Tax Reform Code of 1971,” shall be allowed and paid at the same rate as is prescribed for underpayments under section 806.*

\* \* \*

Section 3. Section 1301.1 of the act is amended by adding definitions to read:

Section 1301.1. Definitions.—As used in this article, unless the context otherwise requires:

\* \* \*

*“Crime Victim’s Compensation Fund” shall mean the special nonlapsing fund created by the act of November 24, 1998 (P.L.882, No.111), known as the “Crime Victims Act.”*

\* \* \*

*“Restitution” shall mean restitution ordered by a court in accordance with the provisions of 18 Pa.C.S. § 1106 (relating to restitution for injuries to person or property) and collected in accordance with the*

*provisions of 42 Pa.C.S. § 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties).*

\* \* \*

Section 4. Clause 3 of section 1301.3 and sections 1301.4, 1301.9, 1301.10 and 1301.18 of the act, amended June 29, 2002 (P.L.614, No.91), are amended to read:

Section 1301.3. Property Held by Financial Institutions.—The following property held or owing by a financial institution is presumed abandoned and unclaimed:

\* \* \*

3. Any sum payable on checks or on written instruments including, but not limited to, drafts, money orders and travelers checks, on which a financial institution is directly liable, and (i) which have been outstanding for more than five (5) years, or in the case of travelers checks, fifteen (15) years, *or in the case of money orders, six (6) years in calendar year 2003 and seven (7) years in calendar year 2004 and thereafter*, from the date payable or from the date of issuance if payable on demand; and (ii) the owner of which has not written to the financial institution concerning it, nor otherwise indicated an interest as evidenced by a writing on file with the financial institution.

\* \* \*

Section 1301.4. Property Held by Insurers.—(a) In the case of life insurance, the following property held or owing by an insurer is presumed abandoned and unclaimed:

1. Any moneys held or owing by an insurer as established by its records under any contract of annuity or policy of life insurance including premiums returnable or dividends payable, unclaimed and unpaid for more than five (5) years after the moneys have or shall become due and payable under the provisions of such contract of annuity or policy of insurance. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five (5) years, (i) assigned, readjusted or paid premiums on the policy, or subjected the policy to loan, or (ii) corresponded in writing with the insurer concerning the policy.

2. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

3. Moneys otherwise payable according to the records of the insurer are deemed due and payable although the policy or contract has not been surrendered as required.

**4. *Property distributable in the course of a demutualization or related reorganization of an insurance company is deemed abandoned two (2) years after the date of the demutualization or reorganization if instruments or statements reflecting the distribution are either mailed to the owner and returned by the post office as undeliverable or not mailed to the owner because of a known bad address on the books and records of the holder.***

(b) In the case of insurance other than life insurance, the following property held or owing by an insurer is presumed abandoned and unclaimed:

1. Any moneys held or owing by an insurer as established by its records under any contract of insurance other than annuity or life insurance, including premiums or deposits returnable or dividends payable to policy or contract holders or other persons entitled thereto, unclaimed and unpaid for more than five (5) years after the moneys have or shall become due and payable under the provisions of such contracts of insurance.

2. If a person other than the insured, the principal or the claimant is entitled to the funds and no address of such person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal or the claimant according to the records of the insurer.

Section 1301.9. Property Held by Courts and Public Officers and Agencies.—The following property is presumed abandoned and unclaimed:

1. Except as provided in clause 2 *or* 6, all property held for the owner by any court, public corporation, public authority or instrumentality of the United States, the Commonwealth, or any other state, or by a public officer or political subdivision thereof, unclaimed by the owner for more than five (5) years from the date it first became demandable or distributable.

2. Bicycles held for the owner by a municipality unclaimed by the owner for more than ninety (90) days from the date it first became demandable or distributable.

3. The bicycles held pursuant to clause 2 may be disposed of by the municipality at public auction at such time and place as may be designated by the municipality or the governing body may, by resolution, donate the bicycles to a charitable organization. Any proceeds from the sale of the bicycles shall be retained by the municipality and used for municipal purposes.

4. Bicycles held by or acquired by the Commonwealth for ninety (90) days may be disposed of at public auction at such time and place as may be

designated by the State Treasurer. Proceeds of such sale or sales shall be deposited in the General Fund.

5. All property held by or subject to the control of any court, public corporation, public authority or instrumentality of the Commonwealth or by a public officer or political subdivision thereof, which is without a rightful or lawful owner, to the extent not otherwise provided for by law, held for more than one year.

**6. Restitution held for the owner by any court, public corporation, public authority or instrumentality of the Commonwealth, or by a public officer or political subdivision thereof, unclaimed by the owner for more than five (5) years from the date it first became demandable or distributable.**

Section 1301.10. Miscellaneous Property Held for or Owing to Another.—The following property, held or owing to any owner, is presumed abandoned and unclaimed:

1. All property, not otherwise covered by this article, that is admitted in writing by the holder and adjudicated to be due, that is held or owing in the ordinary course of the holder's business, and that has remained unclaimed by the owner for more than five (5) years after it became payable or distributable is presumed abandoned and unclaimed except for clause 2.

2. Wages or other compensation for personal services that have remained unclaimed by the owner for more than [~~three (3)~~] *two (2)* years after the wages or other compensation for personal services become payable or are distributed are presumed abandoned and unclaimed.

Section 1301.18. Deposit of Funds.—(a) [~~All~~] *Except as provided in subsection (a.1), all* funds received under this article, including the proceeds from the sale of property under section 1301.17, shall forthwith be deposited by the State Treasurer in the General Fund of the Commonwealth except that the State Treasurer shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars (\$25,000) plus twenty per centum of deposits and sums paid to the State Treasurer under subsection (c) of section 1301.13 during the preceding twelve (12) months from which the State Treasurer shall make reimbursements under section 1301.14 and prompt payment of claims duly allowed under section 1301.19. Before making the deposit, the State Treasurer shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurer, its number, the name of the insurer and the amount due. The record with respect to any specific claim shall be available to the claimant at all regular business hours.

**(a.1) (1) On or before the thirtieth day of June, all of the funds received under clause 6 of section 1301.9 shall forthwith be deposited annually by the State Treasurer in the Crime Victim's Compensation Fund.**

**(2) Of these funds, the State Treasurer shall transfer five per centum in a special fund hereby established in the State Treasury to be designated the Rightful Owners' Claims Payment Fund from which the State Treasurer shall make reimbursements and prompt payments of claims for funds received under clause 6 of section 1301.9 duly allowed as provided by this act.**

**(3) If at any time the State Treasurer determines that there are insufficient funds in the Rightful Owners' Claims Payment Fund to pay all claims duly allowed by the State Treasurer or by order of a court of law to be paid, the State Treasurer shall withdraw from the Crime Victim's Compensation Fund an amount sufficient to pay such claims and need only notify the administrators of the Crime Victim's Compensation Fund as to when and what amount shall be withdrawn.**

**(4) If, however, the Rightful Owners' Claims Payment Fund has sufficient funds to satisfy all claims duly allowed by the State Treasurer or by order of a court of law to be paid throughout the twelve (12) month period immediately following the annual deposit by the State Treasurer in the Crime Victim's Compensation Fund, the remaining balance, if any, of the five per centum transferred by the State Treasurer during the preceding year shall be transferred to the Crime Victim's Compensation Fund.**

**(5) Before making the deposit in the Crime Victim's Compensation Fund and the Rightful Owners' Claims Payment Fund, the State Treasurer shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property. The record with respect to any specific claim shall be available to the claimant at all regular business hours.**

**(6) Notwithstanding any other provision of this subsection, the State Treasurer shall make reimbursements and prompt payment of claims for funds received under clause 6 of section 1301.9 first under clause (2) of this subsection<sup>1</sup> and then from other available sources as provided by this act.**

**(b) The General Assembly shall annually appropriate to the State Treasurer such funds as it deems necessary and appropriate to administer this article.**

**Section 5. The following provisions shall apply to interest accruing after December 31, 2003:**

**(1) The amendment of section 806.1(b) of the act.**

**(2) The addition of section 806.1(b.1) of the act.**

**Section 6. Property subject to clause 4 of section 1301.4(a) of the act shall be reported and delivered as provided in section 1301.13 of the act; however, the initial report under clause 4 consisting of all property deemed**

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<sup>1</sup> "section" in enrolled bill.

abandoned as of December 31, 2002, shall be reported and delivered to the State Treasurer 45 days after the effective date of this section.

Section 7. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment of sections 1301.3, 1301.4 and 1301.10 of the act.

(ii) Section 6 of this act.

(iii) This section.

(2) The amendment of the definitions of "cost of the stamping agent" and "dealer" in section 202-A of the act shall take effect January 7, 2004.

(3) The remainder of this act shall take effect in 60 days.

APPROVED—The 23rd day of December, A.D. 2003.

EDWARD G. RENDELL