

association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable under this section for any tax upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

Act construed to apply to municipalities in certain cases.

This act shall be construed to apply to municipalities, and to impose a tax upon the gross receipts derived from any municipality owned [and] or operated public utility or from any public utility service furnished by any municipality, *except that gross receipts from other than sales of gas shall be exempt from the tax*, to the extent [of] that such gross receipts [as] are derived from business done [outside] *inside* the limits of the municipality, *owning or operating the public utility or furnishing the public utility service*.

Effective dates.

Section 2. This act shall take effect immediately, and the amendments herein provided shall be effective as to gross receipts received from gas sales beginning January 1, 1960, and thereafter, and as to gross receipts received from other sources during the calendar year beginning January 1, 1959, and subsequent years.

APPROVED—The 21st day of November, A. D. 1959.

DAVID L. LAWRENCE

No. 559

AN ACT

Amending the act of March 6, 1956 (P. L. 1228), entitled, as amended, "An act to provide revenue for purposes of public education by imposing a tax on the sale, use, storage, rental or consumption of certain personal property and certain services; providing for licenses, reports and payment of tax, interest and penalties, assessments, collections, liens, reviews and appeals; conferring powers and imposing duties upon the Department of Revenue, public officers, manufacturers, wholesalers, retailers, corporations, partnerships, associations and individuals and making an *appropriation," defining or redefining certain words, terms or phrases; imposing tax on soft drinks at the retail level; providing for alternate imposition of tax in certain cases; changing procedures relative to tax refunds or credits; conferring powers and imposing duties on certain persons soliciting orders by means of catalogues or other advertising; changing

* "appropriation" in original.

certain provisions relating to returns, assessments and basis of such assessments; imposing liabilities and duties on certain sellers, transferors, auctioneers and certain purchasers involved in bulk sales or auction sales transactions; clarifying provisions relating to liens and the priority and effect thereof; providing for suits by the Commonwealth for collection of tax; granting tax suit comity to certain foreign states in certain cases; regulating service of notice or process; authorizing abatement of additions or penalties under certain circumstances; changing the department's authority regarding enforcement of rules and regulations.

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

Selective Sales and Use Tax Act.

Section 1. Clause (a) of section 2, act of March 6, 1956 (P. L. 1228), known as the "Selective Sales and Use Tax Act," amended August 20, 1959 (Act No. 258), is amended to read:

Clause (a), section 2, act of March 6, 1956, P. L. 1228, amended August 20, 1959, Act No. 258, further amended.

Section 2. Definitions.—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) ["Bottled Soft Drinks."]

All "soft drinks" which are closed and sealed in glass, metal, paper or any other type of container or bottle of less than one gallon capacity.] "Soft Drinks"—All nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, Dr. Pepper, fruit juice when [any] plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as "soft drinks," of whatsoever kind, and are further described as including any and all beverages, commonly referred to as "soft drinks," which are made with or without the use of any syrup. The term "soft drinks" shall not include natural fruit or vegetable juices or their concentrates, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term "soft drinks" include *coffee*, *coffee substitutes*, *tea*, *cocoa*, natural fluid milk or non-carbonated drinks made from milk derivatives.

* * * * *

Section 2. Clause (b) of section 2 of the act, amended April 15, 1959 (P. L. 20), is amended by adding, at the end thereof, a new subclause to read:

Clause (b), section 2, act of March 6, 1956, P. L. 1228, amended April 15, 1959, P. L. 20, amended by adding a new subclause (3).

Section 2. Definitions.—

* * * * *

(b) "Maintaining a place of business in this Commonwealth."

* * * * *

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services for residents of this Commonwealth by means of catalogues or other advertising, whether such orders are accepted within or without this Commonwealth.

* * * * *

Last paragraph, clause (e), and last paragraph, subclause (2), clause (h), section 2, of act, amended August 20, 1959, Act No. 258, further amended.

Section 3. The last paragraph of clause (e) and the last paragraph of subclause (2) of clause (h) of section 2 of the act, amended August 20, 1959 (Act No. 258), are amended to read:

Section 2. Definitions.—

* * * * *

(e) "Purchase at Retail." * * *

[The term "purchase at retail" with respect to "bottled soft drinks" shall include the purchase of "bottled soft drinks" from a "soft drink bottler" or "soft drink distributor" by any person for any purpose, except purchases by a "soft drink bottler" or "soft drink distributor." The term "purchase at retail" shall not include any purchase of "bottled soft drinks" from any person other than a "soft drink bottler" or "soft drink distributor."]

* * * * *

(h) "Resale."

* * * * *

(2) * * *

[The term "resale" shall not include any sale of "bottled soft drinks" by any person other than a "soft drink bottler" or "soft drink distributor."]

* * * * *

Clause (1), section 2 of act, amended by adding a new subclause (3).

Section 4. Clause (i) of section 2 of the act is amended by adding, at the end thereof, a new subclause to read:

Section 2. Definitions.—

* * * * *

(i) "Resident."

* * * * *

(3) Any association, fiduciary, partnership or other entity (i) domiciled in this Commonwealth, or (ii) authorized to do business or doing business within this Commonwealth, or (iii) maintaining a place of business within this Commonwealth.

* * * * *

Section 5. Paragraph (ii) of subclause (3), subclause (4) and the last paragraph of clause (j) of section 2 of the act, amended August 20, 1959 (Act No. 258) are amended to read:

Paragraph (ii), subclause (3), subclause (4) and last paragraph clause (j), section 2 of act, amended August 20, 1959, Act No. 258, further amended.

Section 2. Definitions.—

* * * * *

(j) "Sale at Retail."

* * * * *

(3) The rendition for a consideration of the service of—

* * * * *

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code" [or "The Tractor Code"].

(4) The rendition for a consideration of the service of repairing, altering or cleaning tangible personal property or applying or installing tangible personal property as a repair or replacement part of other personal property for a consideration, whether or not any tangible personal property is transferred in conjunction therewith, *except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate.* Notwithstanding the meaning ascribed to the term "tangible personal property" by clause (1) of this section 2 for the purposes of this subclause 2 (j) (4) only, the term "tangible personal property" shall also include any and all wearing apparel upon which the services described herein, including such services as drycleaning, dyeing, fitting, laundering, mending or pressing, may be performed whether the services are performed directly or by means of coin-operated equipment or by any other means: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new wearing apparel (other than that described by clause (1) (2) of this section 2), or upon diaper service.

* * * * *

[The term "sale at retail" with respect to "bottled soft drinks" shall include the sale of "bottled soft drinks" by a "soft drink bottler" or "soft drink distributor" to any person for any purpose, except sales to a "soft drink bottler" or "soft drink distributor" for resale. The term "sale at retail" shall not include any sale of "bottled soft drinks" by any person other than a "soft drink bottler" or "soft drink distributor."]

* * * * *

Clauses (j.1) and (j.2), section 2 of act, added August 20, 1959, Act No. 258, repealed.
Paragraph (17), clause (1), section 2 of act, amended August 20, 1959, Act No. 258, further amended

Section 6. Clauses (j.1) and (j.2) of section 2 of the act, added August 20, 1959 (Act No. 258), are repealed.

Section 7. Paragraph (17) of clause (1) of section 2 of the act, amended August 20, 1959 (Act No. 258), is amended to read:

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

(17) Food and beverages, (except when purchased at, or from a school, church or hospital in the ordinary course of activities of such organization) when the purchase price of the total transaction is more than fifty cents (50¢), when purchased (i) from persons engaged in the business of catering, or (ii) from persons engaged in the business of operating restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels and other eating places, *except when packaged for home consumption*. For the purposes of this clause (17) beverages shall not include malt and brewed beverages and spirituous and vinous liquors [or bottled], *but shall include soft drinks [whether or not served in the original container] and the price of such soft drinks shall be considered together with the price of other beverages and food in determining whether the purchase price of the total transaction is more than fifty cents (50¢)*.

* * * * *

Paragraph (18), clause (1), section 2 of act, added August 20, 1959, Act No. 258, amended.

Section 8. Paragraph (18) of clause (1) of section 2 of the act, added August 20, 1959 (Act No. 258), is amended to read:

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

(18) Malt or brewed beverages, spirituous and vinous liquors [and bottled soft drinks].

* * * * *

Clause (1), section 2 of act, amended by adding a new paragraph (19).

Section 9. Clause (1) of section 2 of the act is amended by adding, after paragraph (18), a new paragraph to read:

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

(19) *Soft drinks, except when part of a taxable purchase of food and beverages under the provisions of paragraph (17) of this clause.*

* * * * *

Section 10. Paragraph (19) of clause (1), subclause (3), the first paragraph of *subclause (4) and the last paragraph of clause (n) of section 2, clause (b) of section 201, clause (f) of section 203 and section 204 of the act, amended August 20, 1959 (Act No. 258), are amended to read:

Paragraph (19), clause (1), subclause (3), first paragraph subclause (4) and last paragraph clause (n), section 2, clause (b) section 201, clause (f) section 203 and section 204 of the act, amended August 20, 1959, Act No. 258, further amended.

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

[(19)] (20) Periodical and other publications, but not including publications which are published at regular intervals not exceeding three months, circulated among the general public and containing matters of general interest and reports of current events.

* * * * *

(n) "Use."

* * * * *

(3) The obtaining by a purchaser of the service of (i) washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services, and (ii) inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code" [or "The Tractor Code"].

(4) The obtaining by a purchaser of the service of repairing, altering or cleaning tangible personal property or applying or installing tangible personal property as a repair or replacement part of other personal property whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, *except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate.* Notwithstanding the meaning ascribed to the term "tangible personal property" by clause (1) of this section 2 for the purposes of this subclause 2 (n) (4) only, the term "tangible personal property" shall also include any and all wearing apparel upon which the services described herein, including such services as drycleaning, dyeing, fitting, laundering, mending or pressing, may be performed whether the services are performed directly or by means of coin-operated equipment or by any other means: Provided, however, That this subclause shall not be deemed to impose tax upon

* "subclause" in original.

such services in the preparation for sale of new wearing apparel (other than that described by clause (1) (2) of this section 2), or upon diaper service: And provided further, That the term "use" shall not include—

* * * * *

[The term "use" with respect to "bottled soft drinks" shall include the purchase of "bottled soft drinks" from a "soft drink bottler" or "soft drink distributor" by any person for any purpose, except purchases by a "soft drink bottler" or "soft drink distributor" for resale. The term "use" shall not include any purchase of "bottled soft drinks" from any person other than a "soft drink bottler" or "soft drink distributor."]
The use of tangible personal property purchased at retail upon which the services described in subclauses (2), (3) and (4) of this clause (n) have been performed shall be deemed to be a use of said services by the person using said property.

* * * * *

Section 201. Imposition of Tax.— * * *

(b) There is hereby imposed upon the use, on and after the effective date of this act, within this Commonwealth of tangible personal property purchased at retail on or after March 7, 1956, and on those services described herein purchased at retail on and after April 15, 1959, a tax of four per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who makes such use as herein provided, except that such tax shall not be paid to the Commonwealth by such person where he has paid the tax imposed by subsection (a) of this section or has paid the tax imposed by this subsection (b) to the vendor with respect to such use. The tax at the rate of four per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred at the rate of three per cent or three and one-half per cent under this subsection prior to this amendment.

* * * * *

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon

* * * * *

(f) The sale at retail, or use of [machinery, equipment, parts, supplies and the obtaining of those services described in subclauses (2) and (4) of clause (j) of section 2 of this act directly used] *tangible personal property or services to be used or consumed directly* in broadcasting radio and television programs by licensed commercial stations.

* * * * *

Section 204. Alternate Imposition of Tax.—(a) If any person brings tangible personal property purchased for use outside the Commonwealth into the Commonwealth for use (other than complete consumption) therein for a period not to exceed six months, such person may, upon notice to the department within ten days of the commencement of use of such property within the Commonwealth, elect to pay a tax upon the use of such property equal to four per cent (4%) of the fair rental value of such property for the actual period of use if such use does not exceed six months. Should such property be completely consumed within the Commonwealth or remain therein for longer than six months, the taxpayer shall be liable for a tax upon the use of such property according to section 201 (b) of this act but shall be allowed a credit equal to seventy per cent (70%) of the tax paid pursuant to the election provided for in this section. Such election may not be made with respect to any tangible personal property purchased or used in a state having a tax similar to that imposed by this act which does not grant, either

[(a)] (1) A similar election with respect to tangible personal property upon the sale or use of which tax has been paid under the provisions of this act, or

[(b)] (2) Tax relief substantially similar to that granted by section 205 of this act.

(b) If any person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semi-trailers, and registered with the department in the "dealer's class," acquires a motor vehicle, trailer or semi-trailer for the purpose of resale, and prior to such resale, uses the motor vehicle, trailer or semi-trailer for a taxable use under this act during a period not exceeding one year from the date of acquisition to the date of resale, such person may, upon notice to the department within ten days of the commencement of such use, elect to pay a tax equal to four per cent (4%) of the fair rental value of the motor vehicle, trailer or semi-trailer during such use. Should such motor vehicle, trailer or semi-trailer be used for a taxable use after a period of one year, the taxpayer shall be liable for a tax on the fair market value of such motor vehicle, trailer or semi-trailer at the time of acquisition, but shall be allowed a credit equal to the tax paid pursuant to the election provided for in this subsection. This subsection shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

Paragraph (2),
subsection (b),
section 520 of
the act, amended
July 8, 1957,
P. L. 584, fur-
ther amended.

Section 11. Paragraph (2) of subsection (b) of section 520 of the act, amended July 8, 1957 (P. L. 584), is amended to read:

Section 520. Time for Filing Returns.— * * *

(b) Annual Returns.

* * * * *

(2) For the calendar year [1957] 1959, and for each year thereafter, no annual return shall be filed, except as may be required by rules and regulations of the department promulgated and published at least [ninety] *sixty* days prior to the [final date for filing such return]. In the event that annual returns are required by rules and regulations of the department, licensees maintaining their books and records on a calendar year basis shall file returns on or before the fifteenth day of April of the year succeeding the year with respect to which the returns are made, and licensees maintaining their books and records on the basis of an annual fiscal period other than the calendar year may, on application, be authorized by the department to file returns with respect to such fiscal period on or before the fifteenth day of the fourth month following the end of such fiscal period.] *end of the year with respect to which the returns are made. Where such annual returns are required licensees shall not be required to file such returns prior to the sixty-first day of the year succeeding the year with respect to which the returns are made.*

* * * * *

Section 535 of
the act, added
May 24, 1956,
P. L. 1707,
amended.

Section 12. Section 535 of the act, added May 24, 1956 (P. L. 1707), is amended to read:

Section 535. Tax Held in Trust for the Commonwealth.—All taxes collected by any person from purchasers in accordance with *this act and all taxes collected by any person from purchasers under color of this act, which have not been properly refunded by such person to the purchaser*, shall constitute a trust fund for the Commonwealth, and such trust shall be enforceable against such person, his representatives and any person (*other than a purchaser to whom a refund has been made properly*) receiving any part of such fund without consideration, or knowing that the taxpayer is committing a breach of trust: Provided, however, That any person receiving payment of a lawful obligation of the taxpayer from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust. Any person, other than a taxpayer, against whom the department makes any claim under this section shall have the same right to petition and appeal as is given taxpayers by any provisions of this article.

Section 13. Subsections (a) and (b) of section 541 and section 542 of the act, amended or added May 9, 1957 (P. L. 114), are amended to read:

Subsections (a) and (b), section 541 and section 542 of the act, amended or added May 9, 1957, P. L. 114, further amended.

Section 541. Mode and Time of Assessment.—(a) Underpayment of Tax. Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall issue an assessment for the difference, [The difference shown on the assessment,] together with an addition of three per cent of such difference, *which shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer. If such assessment is not paid within ten days, there shall be added thereto and paid to the department *an additional three per cent of such difference for each month thereof during which the assessment remains unpaid, but the total of all additions shall not exceed eighteen per cent of the difference shown on the assessment.*

(b) Understatement of Tax. If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall determine the proper amount and shall ascertain the difference between the amount of tax shown in the return and the amount determined, such difference being hereafter sometimes referred to as the “deficiency.” A notice of assessment for the deficiency *and the reasons therefor* shall then be sent to the taxpayer. [Such notice shall set forth in a reasonable manner the basis of the assessment.] The deficiency shall be paid to the department within thirty days after a notice of the assessment thereof has been mailed to the taxpayer.

* * * * *

Section 542. Reassessment.—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety days of the date the notice of assessment was mailed. *The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within thirty days after receipt of the taxpayer’s notice of intention to file a petition for reassessment.* A petition for reassessment shall thereafter be filed within thirty days [of the receipt by the department of the notice of intention.] *after such basis*

* “and” in original.

of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained therein are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly filed such petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

Section 546.1 of
the act, added
May 9, 1957,
P. L. 114,
further amended.

Section 14. Section 546.1 of the act, added May 9, 1957 (P. L. 114), is amended to read:

Section 546.1. Collection of Tax on Motor [Vehicle] Vehicles. Trailers and Semi-Trailers.—Notwithstanding the provisions of section 546 (b) (1) of this act tax due on the sale at retail *or use* of a motor vehicle, trailer or semi-trailer [by persons other than those registered with the department in "Dealer's Class" under the provisions of section 408 of the Vehicle Code of May 1, 1929 (P. L. 905), and the tax due upon the use of a motor vehicle, trailer or semi-trailer shall be collected by] *required by law to be registered with the department under the provisions of "The Vehicle Code" shall be paid by the purchaser or user directly to the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semi-trailer. The department shall not issue a certificate of title until the tax has been paid or evidence satisfactory to the department has been given to establish that tax is not due. The department may cancel or suspend any record of certificate of title or registration of a motor vehicle, trailer or semi-trailer when the check received in payment of the tax on such vehicle is not paid upon demand. Such tax shall be considered as a first encumbrance against such vehicle and the vehicle may not be transferred without first payment in full of such tax and any interest additions or penalties which shall accrue thereon in accordance with this act.*

Section 15. The act is amended by adding, after section 546.2, a new section to read:

The act amended by adding a new section 546.3.

*Section 546.3. Bulk and Auction Sales.—Every person who shall sell or cause to be sold at auction, or who shall sell or transfer in bulk, fifty-one per centum or more of any stock of *goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which such person is licensed or required to be licensed under the provisions of section 301 of this act, or is liable for filing use tax returns in accordance with section 520 of this act, shall give the department ten days' written notice of the sale or transfer prior to the completion of the transfer of such property. Whenever the seller or transferor shall fail to give such notice to the department, or whenever the department shall inform the purchaser or transferee that a possible claim for tax imposed by this act exists, any sums of money, property or choses in action or other consideration, which the purchaser or transferee is thereafter required to transfer over to the seller or transferor, shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller or transferor, and the purchaser or transferee is forbidden to transfer to the seller or transferor any such sums of money, property or choses in action to the extent of the amount of the Commonwealth's claim. For failure to comply with the provisions of this section, the purchaser or transferee shall be liable for the payment to the Commonwealth of any such taxes theretofore or thereafter determined to be due from the seller or transferor, and such liability may be assessed and enforced in the same manner as the liability for tax under this act: Provided, That nothing contained in this provision shall apply to sales or transfers made under any order of court: And provided further, That the written notice required to be filed with the department by this provision shall be deemed to satisfy the requirements of section 1403 of "The Fiscal Code" as to taxes imposed by this act.*

Section 16. Section 548 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Section 548 of act, amended May 24, 1956, P. L. 1707, further amended.

Section 548. Lien for Taxes.—(a) Lien Imposed. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, addition or penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the Commonwealth [against all real estate within the Commonwealth of any taxpayer] upon the property, both real and personal, of such person but

* "good" in original.

only after same has been entered and docketed of record by the prothonotary of the county where such [real estate] *property* is situated. [as hereafter provided

(b) *Priority and Effect of Lien.*] The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all liens for taxes imposed by this act and penalties and interest. It shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. *No prothonotary shall require, as a condition precedent to the entry of such liens, the payment of the costs incident thereto.*

(b) *Priority and Effect of Lien on Judicial Sale.* All such liens shall have priority to, and be fully paid and satisfied out of, the judicial sale [of the real estate] before any other obligation, judgment, claim, lien or estate with which the [real estate] *property* may subsequently become charged or for which it may subsequently become liable; subject, however, to mortgage or other liens existing and duly recorded at the time the tax lien is recorded, save and except the cost of sale and of the writ upon which it is made [and real estate taxes imposed or assessed upon the property]. *There shall be no inquisition or condemnation upon any judicial sale of real estate made by the Commonwealth pursuant to the provisions hereof.* The lien of the taxes, interest and penalties, shall continue for five years from the date of entry, and may be revived and continued in the manner now or hereafter provided for the renewal of judgments, and [it shall be lawful for a writ of scire facias to issue and be prosecuted to judgment in the manner in which such writs are ordinarily employed] *a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias, but the said lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the person against whom said lien has been entered, unless and until a writ of execution has been issued and a levy made upon said stock of goods, wares or merchandise.*

(c) *Duty of Prothonotary.* Any wilful failure of any prothonotary to carry out any duty imposed upon him by this section shall be a misdemeanor, and, upon conviction, he shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both.

(d) *Priority of Tax.* [In] *Except as hereinbefore provided* in the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this act which

are due and unpaid and are not collectible under the provisions of section 535 hereof, shall be paid from the first money available for distribution in priority to all other claims and liens, except insofar as the laws of the United States may give a prior claim to the Federal government. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this section, shall be personally liable for any taxes imposed by this act, which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

(e) *Other Remedies.* Subject to the limitations contained in this act as to the assessment of taxes, nothing contained in this section shall be construed to restrict, prohibit or limit the use by the department in collecting taxes finally due and payable of any other remedy or procedure available at law or equity for the collection of debts.

Section 17. The act is amended by adding, after section 548, three new sections to read:

The act amended by adding three new sections 548.1, 548.2, and 548.3.

Section 548.1. Suit for Taxes.—(a) Commencement. At any time within three years after any tax or any amount of tax shall be finally due and payable, the department may commence an action in the courts of this Commonwealth, of any state or of the United States, in the name of the Commonwealth of Pennsylvania, to collect the amount of tax due together with additions, interest, penalties and costs in the manner provided at law or in equity for the collection of ordinary debts.

(b) *Procedure.* The Attorney General shall prosecute the action and, except as provided herein, the provisions of the Rules of Civil Procedure and the provisions of the laws of this Commonwealth relating to civil procedures and remedies shall, to the extent that they are applicable, be available in such proceedings.

(c) *Other Remedies.* The provisions of this section are in addition to any process, remedy or procedure for the collection of taxes provided by this act or by the laws of this Commonwealth, and this section is neither limited by nor intended to limit any such process, remedy or procedure.

*Section 548.2. Tax Suit Comity.—*The courts of this Commonwealth shall recognize and enforce liabilities for sales and use taxes, lawfully imposed by any other state: Provided, That such other state extends a like comity to this Commonwealth.

*Section 548.3. Service.—*Any person maintaining a place of business within this Commonwealth is deemed to have appointed the Secretary of the Commonwealth

his agent for the acceptance of service of process or notice in any proceedings for the enforcement of the civil provisions of this act, and any service made upon the Secretary of the Commonwealth as such agent shall be of the same legal force and validity as if such service had been personally made upon such person. Where service cannot be made upon such person in the manner provided by other laws of this Commonwealth relating to service of process, service may be made upon the Secretary of the Commonwealth and, in such case, a copy of the process or notice shall also be personally served upon any agent or representative of such person who may be found within this Commonwealth, or where no such agent or representative may be found a copy of the process or notice shall forthwith be sent by registered mail to such person at the last known address of his principal place of business, home office or residence.

Section 552 and subsection (b), section 553 of the act, amended July 8, 1957, P. L. 584, further amended.

Section 18. Section 552 and subsection (b) of section 553 of the act, amended July 8, 1957 (P. L. 584), are amended to read:

Section 552. Refunds.—The department shall, pursuant to the provisions of sections 553 and 554, refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this act and to which the Commonwealth is not rightfully entitled. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of [that portion of] an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 542 of this act to the extent that said petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal: Provided further, That nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

Section 553. Refund *Petition.—* * *

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 541, shall be made only where the person who has actually paid the tax files with the department a [notice of intention to petition for refund of such payment within thirty days of the date of payment and files a] petition for a refund with the department within six months after the date the notice of assessment was mailed. The filing of [such notice of

* "Petitions" in original.

intention to petition for refund and of] a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

* * * * *

Section 19. The act is amended by adding, after section 573, a new section to read:

The act amended by adding a new section 574.

Section 574. Abatement of Additions or Penalties.— Upon the filing of a petition for reassessment or a petition for refund as provided under this act by a taxpayer, additions or penalties imposed upon such taxpayer by this act may be waived or abated, in whole or in part, where the petitioner has established that he has acted in good faith, without negligence and with no intent to defraud.

Section 20. Subsection (a) of section 580 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Subsection (a), section 580 of the act, amended May 24, 1956, P. L. 1707, further amended.

Section 580. Rules and Regulations.—(a) General Provision. The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce, rules and regulations not inconsistent with the provisions of this act, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties and interest imposed by this act. *The department may prescribe the extent, if any, to which any of such rules and regulations shall be applied without retroactive effect.*

* * * * *

Section 21. The last paragraph of subsection (e) of section 581 and subsection (a) of section 585 of the act, amended May 9, 1957 (P. L. 114), are amended to read:

Last paragraph, subsection (e), section 581, and subsection (a), section 585 of the act, amended May 9, 1957, P. L. 114, further amended.

Section 581. Keeping of Records.—* * *

(e) Other Methods.* * *

A vendor may apply to the department for permission to use a collection and recording procedure which will show such information as the law requires with reasonable accuracy and simplicity. Such application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected. The department may revoke such permission upon thirty days' notice to the vendor. *Refusal of the department to grant permission in advance to use such procedure shall not be construed to invalidate a procedure which upon examination shows such information as the law requires.*

Section 585. Bonds.—(a) Taxpayer to File Bond. Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under the provisions of this act, it may require any nonresident natural person or any foreign corporation, [either] *association, fiduciary, partnership or other entity*, not authorized to do business within this Commonwealth or not having an established place of business therein and subject to the tax imposed by section 201 of this act, to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the Insurance Commissioner as to solvency and responsibility, in such amounts as it may fix, to secure the payment of any tax or penalties due, or which may become due, from such natural person or corporation. The department may also require such a bond of any person petitioning the department for reassessment, in the case of any assessment over five hundred dollars (\$500) or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require such a bond of any person who has on three or more occasions within a twelve month period either filed a return or made payment to the department more than thirty days late. In the event that the department determines that a taxpayer is to file such a bond, it shall give notice to such taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file such bond within five days after the giving of such notice by the department unless, within such five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or his representative at which hearing the necessity, propriety and amount of the bond shall be determined by the secretary or such representative. Such determination shall be final and shall be complied with within fifteen days after notice thereof is mailed to the taxpayer.

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Effective dates.

Section 22. The provisions of this act amending section 201 of the act shall be effective April 15, 1959. The provisions of this act amending section 581 of the act shall be effective March 6, 1956. The provisions of this act imposing tax on soft drinks at the retail level shall take effect one day after final enactment. All other provisions of this act shall take effect thirty days after final enactment.

APPROVED—The 21st day of November, A. D. 1959.

DAVID L. LAWRENCE