

No. 188

AN ACT

HB 615

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," changing the provisions relating to judicial review of decisions of the Department of Auditor General, Department of Revenue and the Board of Finance and Revenue and conforming language to existing law.

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

Section 1. Subsection (e) of section 503, act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," amended June 7, 1935 (P.L.283, No.124), is amended to read:

Section 503. Refunds of State Taxes, License Fees, Et Cetera.—The Board of Finance and Revenue shall have the power, and its duty shall be,

* * *

(e) **[The action of the board on all petitions filed under this section shall be final.] Any person, association, corporation, public officer, or other debtor, or the Commonwealth of Pennsylvania, aggrieved by the decision of the Board of Finance and Revenue on a petition for refund may appeal therefrom to the Commonwealth Court in the manner provided in section 1104 of this act for taking an appeal from the action of the Board of Finance and Revenue on a petition for review.**

Section 2. Section 1104 of the act, amended July 13, 1957 (P.L.838, No.388), is amended to read:

Section 1104. Appeal to Courts.—(a) Any person, association, corporation, public officer, or other debtor, or the Commonwealth of Pennsylvania, aggrieved by the decision of the Board of Finance and Revenue, or except as otherwise provided in this act by the board's failure to act upon his or its petition for review within six months, may within **[sixty (60)] thirty (30)** days, appeal to the **[court of common pleas**

of Dauphin County] *Commonwealth Court* from the decision of the Board of Finance and Revenue, or from the decision of the Department of Revenue, or of the Department of the Auditor General, as the case may be. The said ~~[sixty (60)]~~ *thirty (30)* day period shall begin to run: [(a)] (1) From the end of the six months period where the board fails to act, or [(b)] (2) from the date of *entry of the order of the board, which date shall be deemed to be either (i) the date of mailing of notice of the refusal of the petition for review, or [(c) from] (ii) the date of mailing by the Department of Revenue of the certification of a resettlement where the board has made a resettlement. [Such appeal shall be in such form as shall be prescribed by the rules of the court of common pleas of Dauphin County. All such appeals shall be lodged with the prothonotary of the court of common pleas of Dauphin County, and a conformed copy thereof indicating the date on which it was filed shall be forwarded immediately to the Department of Justice.*

Every such appeal shall be accompanied with a specification of objections to the settlement, resettlement or other decision, as the case may be, and]

(b) *Except when all tax, interest and penalty due with respect to the appeal has been paid, the party appealing, other than the Commonwealth, shall enter sufficient security, before [one of the judges of the court of common pleas of Dauphin County] the Commonwealth Court within sixty (60) days next after the filing of the appeal [with the clerk,] to prosecute the appeal with effect, to pay all costs and charges which the court shall award, and any sum of money which shall appear by the judgment of the court to be due by such party to the Commonwealth.*

[The party appealing shall file, with every such appeal, and the specification of objections, an affidavit stating that the appeal is not taken for delay but because appellant believes injustice has been done by the settlement or resettlement or other decision appealed from, and that the facts set forth therein are true to the best of affiant's knowledge and belief. If a corporation, limited partnership, or joint-stock association, is the party appellant, such affidavit shall be taken by one of its chief officers.]

(c) *Except as otherwise provided by general rule or rule of the Commonwealth Court:*

(1) *The appeal shall be in such form as shall be prescribed for the entry of an appeal to the Commonwealth Court from an order of a court of common pleas.*

(2) *Within sixty (60) days after the filing of an appeal, the party appealing shall file with the Commonwealth Court a specification of objections to the settlement, resettlement or other decision, as the case may be.*

(3) *Such specification of objections may be filed by the party appellant or his or its attorney and need not be verified.*

(4) Conformed copies of such specification of objections indicating the date on which it was filed, shall immediately be forwarded to the Department of Justice and to the Department of Revenue.

(d) Appeals taken hereunder shall be hearings de novo, and no question shall be raised by the appellant that were not brought to the attention of the department making the settlement, or in the application for resettlement, or petition for review prior to the appeal, and set forth in the specification of objections **[contained in the affidavit accompanying the appeal,]** unless the court shall be satisfied that the appellant was unable, by the exercise of reasonable diligence, to have raised such questions before the department making the settlement and the Board of Finance and Revenue, and no questions shall be raised which are not included in the specification of objections filed as hereinbefore provided.

(e) The Commonwealth may raise any question on appeal, although no appeal has been filed by it, and may introduce any facts in support of its settlement or in correction thereof, provided notice of twenty (20) days is given the appellant prior to trial of the intention of raising such new questions or presenting new facts.

[From the judgment of the court of common pleas of Dauphin County, an appeal may be taken by either party as in other cases.]

Section 3. This act shall take effect immediately, but shall apply only to appeals filed after the effective date of the act.

APPROVED—The 20th day of July, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 188.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

Secretary of the Commonwealth.