

No. 1994-138

AN ACT

HB 353

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 penalties for failure to make certain payments by electronic transfer and for failure to file returns or documents or for filing false or fraudulent returns or documents; adding and amending certain definitions; regulating activities regarding uncashed Commonwealth checks and abandoned and unclaimed property; providing for the revival and priority of tax liens; providing for the timely filing of petitions for resettlement, redetermination, reassessment or similar petitions; adding provisions relating to political subdivision procurement interest payments; transferring certain powers from the Governor to the Secretary of the Commonwealth; and making editorial changes.

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

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is amended by adding sections to read:

Section 9.1. Failure to Make Payment by Electronic Fund Transfer.—*Any person who fails to make a required payment by a method prescribed by section 9 shall, in addition to any other penalty, interest or addition provided by law, be liable for a penalty of three per centum of the total tax due not to exceed five hundred dollars (\$500).*

Section 202.1. Method of Filing.—*Notwithstanding any provisions of law, the department may allow the electronic filing of any tax return or document.*

Section 214. Failure to File.—*(a) Any individual, person or entity required by law or regulation to furnish any return or other document to*

the Department of Revenue who furnishes a false or fraudulent return or who fails to file a return or other document in the manner and at the time required shall, in addition to any other penalty provided by law, be liable for a penalty of fifty dollars (\$50.00) for each failure to file or for each fraudulent filing.

(b) If any person liable to pay a penalty under this section neglects or refuses to pay the penalty after demand, the amount of the penalty, together with any costs, shall be a lien in favor of the Commonwealth upon both the real and personal property of that person. The department may at any time transmit to the prothonotaries of the respective counties certified copies of all liens for penalties imposed by this section. It shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office. The lien shall be indexed in the same manner as judgments are indexed.

Section 2. The definition of "basic cost of cigarettes" in section 202-A of the act, added July 2, 1993 (P.L.250, No.46), is amended to read:

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

"Basic Cost of Cigarettes" shall mean the [invoice cost of cigarettes to the dealer, or the replacement cost of cigarettes to the dealer, within thirty days prior to the date of sale in the quantity last purchased, whichever is lower, less all trade discounts and customary discounts for cash, but excluding any special, extraordinary or anticipatory discounts for payment within a shorter period of time than the customary discounts for cash,] *manufacturer's list price* to which shall be added the full face value of any tax which may be required by law, if not already included in the *manufacturer's list price*. *Manufacturer's list price shall mean the gross price of the cigarettes from the manufacturer to the dealer in the quantities stated and shall include any Federal tax, freight or handling charges, if not already included.*

* * *

Section 3. The act is amended by adding sections to read:

Section 308.1. Lists of Uncashed Commonwealth Checks.—(a) Any uncashed check or record of any such check issued by the State Treasurer from funds of the Commonwealth, which is uncashed within the time period specified on the face of the check, shall not be available for examination, inspection or copying by any person within twenty-four (24) months from the date the Treasury Department becomes aware that such check is uncashed. After the twenty-four-month time period provided for in this section, the State Treasurer shall make a list of uncashed checks available for examination, inspection or copying at fees to be determined by the State Treasurer.

(b) All agreements or powers of attorney entered into to recover the amount payable on the uncashed check within the twenty-four-month period set forth in subsection (a) shall be void.

(c) All such agreements entered into after the twenty-four-month period shall be valid and enforceable only if the agreements:

- 1. are in writing and duly signed and acknowledged by the payee designated on the uncashed check or record;*
- 2. clearly state the fee or compensation to be paid, which shall not exceed ten per centum of the value of the uncashed check;*
- 3. disclose the check number, pay date and amount payable of uncashed check; and*
- 4. disclose that the State Treasurer is the person who will be contacted to recover the amount payable.*

(d) Subsection (b) shall not apply to any agreement or power of attorney entered into between the personal representative, guardian, trustee or other person in a representative capacity to the owner of the property in which such person has an interest for a fixed fee or hourly or daily rate not contingent upon the discovery of property or the value of property discovered: Provided, however, That any such agreement under this subsection for the purpose of evading the provisions of subsection (b) shall be void.

(e) Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate or reveal abandoned and unclaimed property reported to the State Treasurer is based on an excessive or unjust consideration.

(f) To the maximum extent feasible, the State Treasurer shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the Commonwealth or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties hereunder.

Section 1102.1. Timely Filing.—A taxpayer shall be deemed to have timely filed a petition for resettlement, a petition for reassessment, a petition for redetermination or any other protest relating to the assessment of tax or any other matter relating to any tax imposed by the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," if the letter transmitting the petition is received by the Department of Revenue or is postmarked by the United States Postal Service on or prior to the final day on which the petition is to be received.

Section 4. Section 1301.11 of the act is amended by adding subsections to read:

Section 1301.11. Report of Property Subject to Custody and Control of the Commonwealth under this Article.—* * *

(f) Subsequent to the filing of the reports required by this section, the State Treasurer shall compile a list of the abandoned and unclaimed property contained in the reports. The listing shall contain only the names and last known addresses, if any, of the owners listed in the reports. The listing shall not be available to any person for examination, inspection or

copying prior to twenty-four (24) months after the reports have been filed with or payment or delivery of the property has been made to the State Treasurer. After the twenty-four-month period provided for in this section, the State Treasurer shall make the listing available for examination, inspection or copying at fees to be determined by the State Treasurer.

(g) All agreements or powers of attorney to recover or collect abandoned and unclaimed property contained in the reports filed under this article which are made within twenty-four (24) months after the date that the reports have been filed with the State Treasurer shall be void.

(h) All such agreements entered into after the twenty-four-month period shall be valid and enforceable only if the agreements:

- 1. are in writing and duly signed and acknowledged by the owner;*
- 2. clearly state the fee or compensation to be paid, which shall not exceed ten per centum of the value of the abandoned and unclaimed property;*
- 3. disclose the nature and value of the property; and*
- 4. disclose the name and address of the holder and, if known, whether the abandoned and unclaimed property has been paid or delivered to the State Treasurer.*

(i) Subsection (g) shall not apply to any agreement or power of attorney entered into between the personal representative, guardian, trustee or other person in a representative capacity to the owner of the property in which such person has an interest for a fixed fee or hourly or daily rate not contingent upon the discovery of property or the value of property discovered: Provided, however, That any such agreement under this subsection for the purpose of evading the provisions of subsection (g) shall be void.

(j) Nothing in this section shall be construed to prevent an owner from asserting at any time that any agreement to locate or reveal abandoned and unclaimed property reported to the State Treasurer is based on an excessive or unjust consideration.

(k) To the maximum extent feasible, the State Treasurer shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the Commonwealth or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties hereunder.

Section 5. The act is amended by adding a section to read:

Section 1404.1. Automatic Revival and Priority of Tax Liens.—All tax liens required to be filed by the Department of Revenue shall continue and shall retain their priority without the necessity of refileing or revival. All tax liens shall have priority to and be fully paid before any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of the real and personal property with which that property may subsequently become charged or for which that property may subsequently become liable,

subject, however, to mortgage or other liens existing and duly recorded at the time the tax lien is recorded, except for the cost of sale and the writ upon which the sale is made and real estate taxes imposed or assessed upon that property.

Section 6. The act is amended by adding an article to read:

ARTICLE XVI-C

POLITICAL SUBDIVISION PROCUREMENT INTEREST PAYMENTS

Section 1601-C. Short Title.—This article shall be known and may be cited as the “Political Subdivision Procurement Interest Payment Act.”

Section 1602-C. Definitions.—As used in this article—

“Local authority” shall mean a municipal authority or any other body corporate and politic created by one (1) or more political subdivisions pursuant to statute.

“Political subdivision” shall mean any county, city, borough, incorporated town, township, school district, vocational school district, county institution district, local authority or any joint or cooperative body of political subdivisions having the power to enter into contracts.

“Proper invoice” shall mean an invoice which contains or is accompanied by substantiating documentation as the political subdivision involved may require by regulation or contract.

“Qualified small business concern” shall mean any independently owned and operated for-profit business concern, including any person engaged in a trade, employing one hundred or fewer employes operating as a contractor with a political subdivision.

“Received invoice” shall mean any invoice received by a political subdivision on the later of:

- 1. the date on which the political subdivision’s designated payment office or finance center actually receives a proper invoice; or*
- 2. the date on which the political subdivision accepts the property or service concerned.*

Section 1603-C. Political Subdivision Interest Payments.—(a) In accordance with section 1604-C, each political subdivision which acquires property or services from a qualified small business concern but which does not make payment for each complete delivered item of property or service by the required payment date shall pay an interest penalty to the business concern in accordance with this section on the amount of the payment which is due. Unless a lower rate has been agreed to, the interest rate to be assessed against any late payments shall be determined by the Secretary of Revenue under section 1605-C(b): Provided, That any qualified small business concern shall conspicuously present a statement, on or with the invoice statement, that it meets the definition of a qualified small business concern contained in this article.

(b) A payment shall be considered made on the date on which a check for the payment is dated.

Section 1604-C. Condition for Interest Payments.—*All of the following conditions shall apply for the payment of interest by a political subdivision:*

(a) The required payment date shall be:

- 1. the date on which payment is due under the terms of the contract for the provision of the property or service; or*
- 2. thirty calendar days after receipt of a proper invoice for the amount of the payment due if a specific date on which payment is due is not established by contract.*

(b) Separate required payment dates for contracts under which property or services are provided in a series of partial executions or deliveries shall be established to the extent that the contract provides for separate payment of the partial execution or delivery.

(c) Prior to the date upon which payment without an interest penalty is due, a political subdivision shall notify the qualified small business concern of any defect in goods and services or impropriety in the invoice which would prevent the running of the time periods specified in this paragraph.

Section 1605-C. Due Date of Payment.—*(a) Interest penalties payable on amounts due to a qualified small business concern under this article shall be paid to the business concern for the period beginning on the day after the required payment date and ending on the date on which payment on the amount due is made except no interest penalty shall be paid if payment for the complete delivered item of property or service concerned is made on or before the 15th calendar day after the required payment date.*

(b) Interest shall be computed at the rate determined by the Secretary of Revenue for interest payments on overdue taxes or the refund of taxes as provided in sections 806 and 806.1 and any subsequent amendments to those sections.

(c) Interest may be paid by separate payment made to a qualified small business concern within thirty days of payment of the original invoice.

(d) Any amount of an interest penalty imposed because of a debt which remains unpaid at the end of any thirty-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

Section 1606-C. Funds for Interest Payment.—*A political subdivision shall pay any interest penalties required by this article out of funds made available for the administration or operation of the program for which the penalty was incurred or from general administrative funds of the political subdivision. Nothing in this article shall be construed to require payment of interest penalties from Federal or State funds if the payment is prohibited by Federal or State law or regulation.*

Section 1607-C. Claims.—*Claims for interest penalties which a political subdivision has failed to pay in accordance with this article shall be made in a formal civil action against the offending political subdivision following the exhaustion of all contractual remedies.*

Section 1608-C. Disputes.—*This article shall not be construed to require interest penalties on payments which are not made by the required payment date by reason of a dispute between a political subdivision and a qualified small business concern over the amount of that payment or other allegations concerning compliance with a contract.*

Section 1609-C. Exception.—*This article shall not apply when the political subdivision's nonpayment on a particular project is caused by failure of the Federal or State government to pay funds designated for the specific project. Nothing in this article shall be construed to require payment of interest penalties by the Federal or State government.*

Section 1610-C. Nonapplication of Article.—*This article shall not apply to any of the following:*

1. *"Public contracts" subject to the act of November 26, 1978 (P.L.1309, No.317), referred to as the Public Works Contract Regulation Law.*

2. *A municipality determined to be distressed under the act of July 10, 1987 (P.L.246, No.47), known as the "Municipalities Financial Recovery Act."*

3. *A school district which has been determined to be a distressed school district under section 691 of the act of March 10, 1949 (P.L.30, No.14), known as the "Public School Code of 1949."*

4. *A city of the first class that has entered into the intergovernmental cooperation agreement under the act of June 5, 1991 (P.L.9, No.6), known as the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class," for so long as any deficit-reducing bonds issued by the authority pursuant to section 301(b)(1) of that act are outstanding and payable.*

5. *Any corporate entity or school district as defined in the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class."*

Section 1611-C. Applicability.—*This article shall apply to all contracts entered into on or after the effective date of this article.*

Section 7. Section 1704 of the act, amended February 2, 1937 (P.L.3, No.1), is amended to read:

Section 1704. Intentional Failure of Corporate Officers to Make Reports.—(a) If any officer or officers of any corporation or association shall intentionally have neglected or refused to make reports to the Auditor General, or to the Department of Revenue, or successively to the Auditor General and to the Department of Revenue, as required by law, for any two successive tax years, he or they shall be guilty of a misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine of five hundred dollars, and undergo an imprisonment not exceeding one year, or either, at the discretion of the court.

(b) If any officer or officers of any corporation or association shall have neglected or refused to make reports to the Department of Revenue for three successive years, unless excused from so doing by said department, the

Department of Revenue [shall] *may* report the fact to the [Governor, who may thereupon by proclamation,] *Secretary of the Commonwealth who shall thereupon:*

[(a)] (1) In the case of a corporation or association organized under the laws of Pennsylvania, declare the charter thereof forfeited, and its charter privileges at an end, whereupon the same shall cease, end, and be determined, saving, however, the rights of the creditors and stockholders in and to any property, assets, claims, or demands, of or belonging to such corporation or association;

[(b)] (2) In the case of a corporation or association organized under the laws of any other State, or of the United States, or of any foreign government, and qualified to do business within this Commonwealth, declare forfeited the right of such corporation or association to do business within this Commonwealth, and thereupon such right shall cease, end, and be determined.

(c) Any person or persons who shall [(a)] (i) exercise or attempt to exercise any powers, privileges, or franchises, under a charter which shall have been declared forfeited hereunder, or [(b)] (ii) do or attempt to do any business within this Commonwealth in the name of, or for, or on account of any corporation or association, whose right to do business within this Commonwealth shall have been declared forfeited hereunder, shall be guilty of a misdemeanor, and, on being convicted thereof, shall be fined not less than one hundred dollars, or more than one thousand dollars.

Section 8. This act shall take effect as follows:

- (1) The addition of Article XVI-C of the act shall take effect in 180 days.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 12th day of December, A.D. 1994.

ROBERT P. CASEY