

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1650

Session of
1981

INTRODUCED BY WILSON, DOMBROWSKI, VROON, CORNELL, MAIALE,
BOWSER, POTT, LUCYK, McVERRY, NAHILL AND PENDLETON, JUNE 17,
1981

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JANUARY 27, 1982

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled
2 "An act relating to the finances of the State government;
3 providing for the settlement, assessment, collection, and
4 lien of taxes, bonus, and all other accounts due the
5 Commonwealth, the collection and recovery of fees and other
6 money or property due or belonging to the Commonwealth, or
7 any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth and
17 imposing penalties; affecting every department, board,
18 commission, and officer of the State government, every
19 political subdivision of the State, and certain officers of
20 such subdivisions, every person, association, and corporation
21 required to pay, assess, or collect taxes, or to make returns
22 or reports under the laws imposing taxes for State purposes,
23 or to pay license fees or other moneys to the Commonwealth,
24 or any agency thereof, every State depository and every
25 debtor or creditor of the Commonwealth," establishing a
26 uniform interest rate for all taxes due the Commonwealth,
27 requiring the Commonwealth to pay interest on money due
28 taxpayers and providing for the payment of cash refunds by
29 the Department of Revenue.

30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 806, act of April 9, 1929 (P.L.343,
3 No.176), known as "The Fiscal Code," amended July 13, 1957
4 (P.L.838, No.388), is amended to read:

5 Section 806. Interest on Taxes [and Bonus] Due the
6 Commonwealth.--All [tax and bonus] taxes due the Commonwealth,
7 as provided by law, shall bear interest at the rate [of six per
8 centum] of fifteen per centum EIGHTY PER CENTUM OF THAT <—
9 ESTABLISHED BY THE SECRETARY OF THE TREASURY OF THE UNITED
10 STATES UNDER THE PROVISIONS OF SECTION 6621 OF THE INTERNAL
11 REVENUE CODE AS AMENDED BY SECTION 711 OF THE ECONOMIC RECOVERY
12 TAX ACT OF 1981 per annum from the date they are due and payable
13 until paid: Provided, [That in the case of all taxes and bonus
14 which other provisions of this act require taxpayers to compute
15 and pay at the time of filing the report to return, if a
16 settlement is not made within one year after the date upon which
17 the report or return was filed, no interest whatsoever shall be
18 imposed for the period between the end of such one year and
19 sixty days after the date of the mailing of the settlement,
20 unless the taxpayer has filed a written waiver permitting
21 interest to run after the end of said one year: Provided
22 further,] That no penalties [imposed under sections 1701, 1702
23 and 1705 of this act for failure to file bonus or tax reports on
24 time] shall bear any interest whatsoever. The payment of
25 interest, as aforesaid, shall not relieve any person,
26 association, or corporation, from any of the penalties, [or]
27 commissions or additional tax prescribed by law for neglect or
28 refusal to furnish timely returns or reports to the Department
29 of Revenue, or to pay any claim due to the Commonwealth from
30 such person, association, or corporation. THE SECRETARY OF <—

1 REVENUE SHALL, FROM TIME TO TIME, PUBLISH THE RATE OF INTEREST
2 AND THE COMMENCEMENT DATE THEREOF IN THE PENNSYLVANIA BULLETIN.
3 In the case of any tentative tax or installment payment,
4 interest shall run on any unpaid amount from the last day the
5 payment is due to the date paid.

6 Whenever the tax [or bonus] liability of a taxpayer is so
7 affected by any payment or credit settlement or resettlement,
8 assessment or reassessment or determination or redetermination
9 as to change the interest liability [which has been settled
10 against] of such taxpayer, such interest liability shall be
11 recomputed and adjusted by the Department of Revenue [and the
12 Department of the Auditor General] so as to correspond to the
13 tax [or bonus] liability as changed, without the necessity for
14 the filing of any petition or request by the taxpayer or by said
15 [departments] department.

16 Section 2. The act is amended by adding a section to read:

17 Section 806.1. Interest on Overpayments.--(a) Interest
18 shall be allowed and paid by the Commonwealth upon any
19 overpayment to the Commonwealth of any tax. The interest shall
20 be allowed and paid for the period during which the Commonwealth
21 retained the overpayment, beginning with the date of the
22 overpayment, except that:

23 (1) Any tax actually deducted and withheld at the source
24 shall be deemed to have been overpaid on the last day prescribed
25 for filing the return or report for the taxable year (determined
26 without regard to any extension of time for filing);

27 (2) Any amount overpaid as estimated or tentative tax for a
28 taxable year shall be deemed to have been overpaid on the last
29 day prescribed for filing the final return or report for the
30 taxable year (determined without regard to any extension of time

1 for filing);

2 (3) Any overpayment made before the last day prescribed for
3 payment shall be considered made on the last day; and

4 (4) Any amount claimed to be overpaid with respect to which
5 an administrative review or appellate procedure is initiated in
6 the manner provided by law by the taxpayer shall be deemed to
7 have been overpaid sixty (60) days following the date of
8 initiation of said review or procedure.

9 (5) IF ANY OVERPAYMENT OF TAX IS REFUNDED OR CREDITED WITHIN <—
10 SIX (6) MONTHS AFTER THE LAST DATE PRESCRIBED FOR FILING THE
11 FINAL RETURN OR REPORT OF THE TAX (DETERMINED WITHOUT REGARD TO
12 ANY EXTENSION OF TIME FOR FILING) OR, IN CASE THE FINAL RETURN
13 OR REPORT IS FILED AFTER THE LAST DAY, AND IS REFUNDED OR
14 CREDITED WITHIN SIX (6) MONTHS AFTER THE DATE THE FINAL RETURN
15 OR REPORT IS FILED, NO INTEREST SHALL BE ALLOWED ON THE
16 OVERPAYMENT.

17 (b) Interest shall be computed at a rate which is equal to
18 the rate of interest imposed by the Commonwealth on
19 underpayments of the same tax for the same period during which
20 the Commonwealth retained the overpayment.

21 (c) Interest shall be allowed and paid as follows:

22 (1) In the case of a cash refund, from the date of the
23 overpayment to a date preceding the date of the Commonwealth's
24 refund check by not more than thirty (30) days.

25 (2) In the case of a credit for an overpayment, from the
26 date of the overpayment to:

27 (i) The date of the Commonwealth's notice to the taxpayer of
28 the final determination of the credit; or

29 (ii) The date as of which the credit is applied, whichever
30 first occurs: Provided, however, That in the case of a cash

1 refund of a previously determined credit, interest shall be
2 allowed and paid on the amount of the credit from a date ninety
3 (90) days after the filing of a petition for a cash refund to a
4 date preceding the date of the refund check by not more than
5 thirty (30) days whether or not the refund check is accepted by
6 the taxpayer after tender to the taxpayer.

7 (3) The taxpayer's acceptance of the Commonwealth's check
8 shall be without prejudice to any right of the taxpayer to claim
9 any additional overpayment and interest thereon. Tender of a
10 refund check shall be deemed acceptance thereof for the purposes
11 of this section.

12 ~~(d) If any overpayment of tax is refunded or credited within~~ <—
13 ~~six (6) months after the last date prescribed for filing the~~
14 ~~final return or report of the tax (determined without regard to~~
15 ~~any extension of time for filing) or, in case the final return~~
16 ~~or report is filed after the last day, and is refunded or~~
17 ~~credited within six (6) months after the date the final return~~
18 ~~or report is filed, no interest shall be allowed on the~~
19 ~~overpayment.~~

20 Section 3. Section 1108 of the act, amended June 27, 1947
21 (P.L.1023, No.435), is amended to read:

22 Section 1108. Payment of Accounts; [Without Prejudice to]
23 Effect Upon Right of Resettlement, Review, and Appeal.--(a) Any
24 person, association, corporation, public officer, or other
25 debtor who or which is required to make to the Department of
26 Revenue a return or report upon the basis of which any [bonus,]
27 tax, or other charge is [to] or will be settled, determined or
28 assessed, shall have the right at any time, to pay to the
29 Department of Revenue all or any part of the amount of any
30 [bonus,] tax, penalty, additional tax, or other charge due or

1 deemed by him, it, or them to be due, with interest, if any, as
2 is then due and payable for the purpose of stopping the running
3 of further interest thereon, without prejudice to his, its, or
4 their right to present and prosecute a petition for review,
5 resettlement, reassessment or redetermination to the Department
6 of Revenue, a petition for review to the Board of Finance and
7 Revenue, a petition for credit or refund, or an appeal to the
8 [court of common pleas of Dauphin County] Commonwealth Court of
9 Pennsylvania, in the manner and within the times provided by
10 law.

11 [The payment by any corporation of bonus settled against it
12 by the Secretary of the Commonwealth shall not prejudice its
13 right to present and prosecute a petition for resettlement to
14 the Department of State, a petition for review to the Board of
15 Finance and Revenue, or an appeal to the court of common pleas
16 of Dauphin County, in the manner and within the times provided
17 by law.]

18 (b) Whenever the principal amount due upon a settlement,
19 assessment, determination, resettlement, reassessment, or
20 redetermination, or the principal amount determined to be due
21 upon a petition to the Board of Finance and Revenue, is less
22 than the principal amount paid to the Department of Revenue, [or
23 to the Department of State] on account thereof, and the person,
24 association, corporation, public officer, or other debtor
25 against whom such settlement, assessment or determination has
26 been made is satisfied therewith, or whenever the principal
27 amount, due upon the final judgment entered on any appeal, is
28 less than the principal amount paid to the Department of
29 Revenue[, or to the Department of State] on account thereof, the
30 Department of Revenue [or the Department of State,] shall enter

1 a credit in the amount of such difference to the account of such
2 person, association, corporation, public officer, or other
3 debtor. Such credit may be applied by the Commonwealth or used
4 by the person, association, corporation, public officer, or
5 other debtor, to whose account it is entered, in payment of any
6 tax[, bonus,] or other claim which may be or become due from
7 him, it, or them, to the Commonwealth; and if all such charges
8 have been fully paid, any remaining credit may be assigned to
9 any other person, association, corporation, public officer, or
10 other debtor, and such assignee may use it in payment of any
11 such obligation to the Commonwealth or the remaining credit
12 shall be refunded in cash by the Department of Revenue upon
13 application of the person, association, corporation, public
14 officer or other person entitled thereto.

15 The Department of Revenue is authorized to prescribe
16 regulations providing for the payment of refunds. So much of the
17 proceeds of the various taxes, as shall be necessary for the
18 payment of refunds out of the general or special funds shall be
19 authorized by the Governor.

20 SECTION 4. ALL OTHER ACTS AND PARTS OF ACTS ARE HEREBY <—
21 REPEALED INSOFAR AS THEY ARE INCONSISTENT HEREWITH.

22 Section 4 5. This act shall take effect July 1, 1982, or, if <—
23 finally enacted after said date, on January 1, 1983. In the case
24 of an overpayment made before the effective date of this act,
25 the date of the overpayment shall be deemed to have been made on
26 the effective date of this act. Nothing contained herein shall
27 affect or impair litigation pending on the effective date of
28 this act. This act shall not be construed to indicate the intent
29 of the General Assembly with regard to the status of the law of
30 the Commonwealth's payment of interest prior to the effective

1 date of this act. The rate of interest upon the effective date
2 hereof shall be based upon the immediate prior determination
3 made in accordance with section 806.