

AMENDMENTS TO HOUSE BILL NO. 17

Sponsor: SENATOR SCARNATI

Printer's No. 1851

1 Amend Bill, page 1, line 12, by inserting after "~~collection.~~"  
2 in sales and use tax, further providing for exclusions from  
3 tax;

4 Amend Bill, page 1, line 12, by inserting after "PROVISIONS,"  
5 further providing for administrative bank attachment for  
6 accounts of obligors to the Commonwealth and

7 Amend Bill, page 1, lines 12 and 13, by striking out "STATUTE  
8 OF LIMITATION FOR"

9 Amend Bill, page 1, lines 13 and 14, by striking out "PERIOD  
10 OF LIMITATIONS ON"

11 Amend Bill, page 2, lines 18 through 20, by striking out all  
12 of said lines and inserting

13 Section 1. Section 204 of the act of March 4, 1971 (P.L.6,  
14 No.2), known as the Tax Reform Code of 1971, is amended by  
15 adding a paragraph to read:

16 Section 204. Exclusions from Tax.--The tax imposed by  
17 section 202 shall not be imposed upon any of the following:

18 \* \* \*

19 (73) The sale at retail or use by a financial institution of  
20 canned computer software directly utilized in conducting the  
21 business of banking. For the purposes of this clause, the  
22 following words and phrases shall have the following meanings:

23 "Financial institution" means an institution doing business  
24 in this Commonwealth subject to the tax imposed by Article VII  
25 or Article XV.

26 "Directly utilized in conducting the business of banking"  
27 includes the purchase of canned computer software by a financial  
28 institution to be used in transactions with customers and  
29 service providers. The term does not include the purchase of  
30 canned computer software by entities, other than a financial  
31 institution, such as holding companies and subsidiaries of a

1 financial institution.

2 Section 2. Section 3003.22 of the act is amended to read:

3 Section 3003.22. Administrative Bank Attachment for Accounts  
4 of Obligors to the Commonwealth.--(a) The following shall  
5 apply:

6 (1) Except as prohibited by Federal or State law, a  
7 financial institution doing business in this Commonwealth shall,  
8 upon request, and not more often than quarterly, undertake  
9 reasonable efforts to provide a report containing identifying  
10 information and asset information as the department may specify  
11 for any obligor as identified by the department by name and  
12 Social Security number, Federal employer identification number  
13 or other taxpayer identification number. The report and  
14 information shall be in the form and format as prescribed by the  
15 department pursuant to subsections (e) and (p).

16 (2) The department shall provide information identifying the  
17 obligors for which financial institutions are required to  
18 provide reports under paragraph (1) in a standard and generally  
19 utilized electronic machine readable format. If requested by a  
20 financial institution, the department shall coordinate the  
21 requests and the submission of reports under this section with  
22 similar procedures utilized for data exchanges under 23 Pa.C.S.  
23 § 4304.1 (relating to cooperation of government and  
24 nongovernment agencies).

25 (3) Reports providing identifying and asset information  
26 under this subsection shall be provided to the department within  
27 thirty days of receipt of requests for reports from the  
28 department, unless the department for good cause extends the  
29 deadline for providing reports.

30 (b) The department and financial institutions are authorized  
31 to enter into agreements for the purpose of carrying out the  
32 provisions of this section, which may modify the procedures  
33 contained in the department's guidelines as otherwise provided  
34 by subsection (p).

35 (c) The following shall apply:

36 (1) Information transmitted, provided or collected pursuant  
37 to this section shall be confidential and may be used by the  
38 department solely for official purposes relating to the  
39 administration and collection of taxes.

40 (2) Information transmitted, provided or collected pursuant  
41 to this section by a financial institution or the institution's  
42 agents and sent to the department shall not constitute a breach  
43 of confidentiality and this section shall not impose additional  
44 confidentiality requirements upon a financial institution.

45 (3) The department shall establish procedures to review, on  
46 at least a quarterly basis, whether information collected  
47 pursuant to this section continues to be needed to collect  
48 delinquent taxes and, upon a determination that the information  
49 is not needed, to require the permanent expungement of the  
50 information from the department's records and the records of any  
51 person to which the information has been made available,

1 including any automated data exchange utilized by the  
2 department. Within seven days following the receipt of new  
3 reports and information under subsection (a), all previous  
4 information collected pursuant to this section shall be  
5 permanently expunged from the records of the department and the  
6 department's representatives, including any automated data  
7 exchange utilized by the department.

8 (4) Any employe or agent of the department, or an automated  
9 data exchange who divulges or retains information in a manner  
10 not provided in this subsection, or lacks good faith for a  
11 disclosure not authorized under this section, commits a  
12 misdemeanor of the third degree and, upon conviction, shall be  
13 sentenced to pay a fine of up to one thousand dollars (\$1,000)  
14 per violation and costs and shall be subject to a term of  
15 imprisonment of not more than one year, or both.

16 (d) A financial institution shall be entitled to payment  
17 from the department in the amount of two hundred and fifty  
18 dollars (\$250) per quarter for conducting data matches pursuant  
19 to this section.

20 (e) The department, in consultation with associations  
21 representing financial institutions, shall develop proposed  
22 guidelines and the department shall publish final guidelines for  
23 the department's data matching processes and uses for the  
24 collection of information required under this section which  
25 shall be conducted no more frequently than on a quarterly basis.  
26 The department may designate an agent for the collection of  
27 information under this section from the financial institutions,  
28 which may include an automated data exchange organization who  
29 shall have the authority to enter into agreements for the manner  
30 of providing information exchanges as the agent and financial  
31 institution may agree. The guidelines shall not be subject to  
32 review under section 205 of the act of July 31, 1968 (P.L.769,  
33 No.240), referred to as the Commonwealth Documents Law, or  
34 section 204(b) of the act of October 15, 1980 (P.L.950, No.164),  
35 known as the Commonwealth Attorneys Act, or the act of June 25,  
36 1982 (P.L.633, No.181), known as the Regulatory Review Act.

37 (f) Provided that an obligor has not entered into and is in  
38 compliance with a deferred payment plan with the department, the  
39 department may order the attachment and seizure of funds in an  
40 obligor's account that the department reasonably believes to  
41 hold property subject to a tax lien recorded in favor of the  
42 Commonwealth for tax, interest, additions or penalties due to  
43 the Commonwealth. Upon receiving seized funds, the department  
44 shall apply the amount seized to the obligor's tax lien  
45 obligation.

46 [(b)] (g) (1) If the department has a reasonable belief  
47 that an obligor's account holds property subject to a tax lien  
48 in favor of the Commonwealth, the department may order the  
49 attachment of funds in the obligor's account by sending a notice  
50 to the financial institution.

51 (2) The notice given to a financial institution attaching an

1 account of the obligor shall be sent by an electronic format or  
2 any other reasonable manner as agreed to by the department and  
3 the financial institution.

4 (3) The notice shall include all of the following:

5 (i) The name of the obligor.

6 (ii) The amount of the Commonwealth's tax lien, including  
7 interest and penalty accrued up to forty-five days after the  
8 date of notice.

9 (iii) The current or last known address of the obligor.

10 (iv) The Social Security number, Federal employer  
11 identification number or other taxpayer identification number of  
12 the obligor.

13 (v) An order to immediately attach one or more accounts held  
14 by the financial institution in the name of the obligor for an  
15 aggregate amount equal to the lesser of the amounts in all  
16 accounts or the Commonwealth's tax lien.

17 [(c)] (h) (1) Upon receipt of the notice described in  
18 subsection [(b)] (g), the financial institution shall, by the  
19 end of the fifth business day following the date of the notice,  
20 attach one or more of the accounts of the obligor held by the  
21 financial institution for an aggregate amount equal to the  
22 lesser of:

23 (i) the total of the amounts in all the accounts of the  
24 obligor held by the financial institution as of the date of  
25 attachment; or

26 (ii) the amount stated in the notice.

27 Upon the attachment and until the financial institution receives  
28 further notice from the department or on order of a court, as  
29 provided in this section, the financial institution may not  
30 allow any activity to reduce the amounts in any of the accounts  
31 below the amount of the attachment.

32 (2) Within five days after date of notice to the financial  
33 institution described in subsection [(b)] (g), the financial  
34 institution shall inform the department that the financial  
35 institution has complied with the attachment order and shall  
36 specify the aggregate amount attached pursuant to the order.

37 (3) Financial institution fees for costs are allowable as  
38 follows:

39 (i) The financial institution may assess a reasonable  
40 administrative fee against the accounts or the obligor in  
41 addition to the amount attached. An administrative fee may  
42 include a fee permitted to be assessed under an agreement  
43 between the obligor and the financial institution in connection  
44 with the early withdrawal of a certificate of deposit attached  
45 under this section.

46 (ii) In the case of insufficient funds to cover both the fee  
47 authorized by subparagraph (i) and the amount identified in the  
48 notice under subsection [(b)] (g), the financial institution may  
49 first deduct the fee from the amount attached and retain it from  
50 the amount seized and forwarded to the department as provided in  
51 this section.

1 (iii) A financial institution shall not be required to  
2 reimburse fees assessed against an account or an obligor as a  
3 result of the department instituting an action under this  
4 section or as otherwise permitted by law or authorized by  
5 contract even if there is a successful challenge or relief is  
6 granted under subsection (j).

7 [(d)] (i) (1) Except as otherwise provided in paragraph  
8 (3), no later than five business days after the date of the  
9 notice in subsection [(b)(2)] (g)(2), the department shall send  
10 a notice to the obligor by first class mail to the obligor's  
11 current or last known address and may attempt to deliver  
12 personal notice to the obligor.

13 (2) The notice shall contain the following information:

14 (i) The address of the department.

15 (ii) The telephone number, address and name of a contact  
16 person at the department.

17 (iii) The name and Social Security number, Federal employer  
18 identification number or other taxpayer identification number of  
19 the obligor.

20 (iv) The current or last known address of the obligor.

21 (v) The total amount of the Commonwealth's tax lien owed by  
22 the obligor, including interest and penalty accrued up to forty-  
23 five days after the date of notice.

24 (vi) The date the notice is being sent.

25 (vii) A statement informing the obligor that the department  
26 has ordered the financial institution to attach the amount of  
27 the Commonwealth's tax lien owed by the obligor from one or more  
28 of the accounts of the obligor.

29 (viii) For each account of the obligor, the name of the  
30 financial institution that has been given notice to attach  
31 amounts as required by this section.

32 (ix) A statement that the order may be challenged or relief  
33 from the order requested in accordance with subsection [(e)]  
34 (j).

35 (x) A statement informing the obligor that unless a timely  
36 challenge is made by the obligor, the financial institution or  
37 an account holder of interest under subsection [(e)] (j), the  
38 department shall notify the financial institution to seize the  
39 amount attached by the financial institution and forward it to  
40 the department.

41 (3) The department shall not be required to send the notice  
42 described under this subsection if, prior to the time that the  
43 notice must be sent, the department and the obligor agree to an  
44 arrangement under which the obligor will pay amounts owed under  
45 the Commonwealth's tax lien.

46 [(e)] (j) (1) An obligor, the financial institution or an  
47 account holder of interest may challenge the actions of the  
48 department under this section by filing a [motion] petition with  
49 the court of common pleas within ten days of the date of the  
50 notice sent under subsection [(d)] (i).

51 (2) An obligor, the financial institution or an account

1 holder of interest may challenge or seek relief from the actions  
2 of the department based on:

3 (i) a mistake as to any of the following:

4 (A) The identity of the obligor.

5 (B) The ownership of the account.

6 (C) The contents of the account.

7 (D) The amount of the tax lien obligation due.

8 (ii) the exclusion of the account from attachment under this  
9 section;

10 (iii) the failure of the department to properly record the  
11 tax lien upon which the attachment is based;

12 (iv) the failure of the department to send notice to the  
13 obligor of the assessment or determination of the tax, interest,  
14 penalties or addition to tax upon which the attachment is based;

15 (v) severe economic hardship;

16 (vi) a request for spousal relief from joint liability; or

17 (vii) any other good cause.

18 (3) Except as provided in paragraph (2) (iv), an obligor, the  
19 financial institution or an account holder of interest may not  
20 challenge the actions of the department based on a mistake or  
21 error in the original assessment underlying a tax lien against  
22 the obligor.

23 [(f)] (k) (1) If a timely challenge or request for relief  
24 is not made by the obligor, the financial institution or an  
25 account holder of interest under subsection [(e)] (j), the  
26 department shall direct the financial institution to:

27 (i) seize the amount attached by the financial institution  
28 and forward it to the department;

29 (ii) reduce the amount attached by the financial institution  
30 to a revised amount as stated by the department, seize the  
31 revised amount and forward it to the department and release the  
32 balance of the account; or

33 (iii) release the amount attached by the financial  
34 institution.

35 (2) The department may direct a financial institution to  
36 seize and forward attached funds before the time for filing a  
37 timely challenge under subsection [(e)] (j) upon agreement among  
38 the department, the obligor and, in cases where the department  
39 is aware of an account holder of interest, the account holder of  
40 interest.

41 [(g)] (l) (1) If a determination is made by the court,  
42 pursuant to a challenge or request for relief under subsection  
43 [(e)] (j), that the account of the obligor should not have been  
44 attached, the department shall notify the financial institution,  
45 in the manner specified in subsection [(b)(2)] (g)(2), to  
46 release the amount attached by the financial institution.

47 (2) If a determination is made by the court, pursuant to a  
48 challenge or request for relief under subsection [(e)] (j), to  
49 reduce the amount attached by the financial institution, the  
50 department shall notify the financial institution, in the manner  
51 specified in subsection [(b)(2)] (g)(2), to revise the amount

1 as stated by the department, to seize and forward the revised  
2 amount to the department and to release the balance of the  
3 account attached by the financial institution.

4 (3) If a determination is made by the court, pursuant to a  
5 challenge or request for relief made under subsection [(e)] (j),  
6 that the attachment by the financial institution was proper, the  
7 department shall notify the financial institution, in the manner  
8 specified in subsection [(b) (2)] (g)(2), to seize the amount  
9 attached by the financial institution and forward it to the  
10 department.

11 [(h) A financial institution that complies with an order and  
12 notice from the department under this section shall not be  
13 criminally or civilly liable to any person, including the  
14 department, the obligor or any account holder of interest, for  
15 any of the following:

16 (1) disclosing information to the department under this  
17 section;

18 (2) attaching an account as directed by the department;

19 (3) sending any amount seized to the department;

20 (4) wrongful dishonor or any other claim relating to the  
21 attachment and seizure of any account as ordered by the  
22 department; or

23 (5) any other action taken in good faith to comply with the  
24 requirements of this section.

25 (i) A financial institution shall not be required to  
26 reimburse fees assessed against an account or an obligor as a  
27 result of the department instituting an action under this  
28 section or as otherwise permitted by law or authorized by  
29 contract even if there is a successful challenge or relief is  
30 granted under subsection (e).

31 (j) (1)] (m) A person, government agency or financial  
32 institution shall not be subject to any civil or criminal  
33 liability for providing, reporting or matching information and  
34 data or encumbering or surrendering assets under this section.  
35 The immunity provided under this subsection shall not apply to  
36 any person or agent of a government agency or financial  
37 institution who knowingly supplies false information under this  
38 section.

39 (n) The following shall apply:

40 (1) The department may impose a penalty upon a financial  
41 institution that willfully fails to comply or respond to, or  
42 refuses to process without reasonable cause, a request by the  
43 department for information pursuant to subsection (a).

44 (2) The department shall provide a financial institution  
45 twenty-five days' notice and a hearing before the Board of  
46 Finance and Revenue prior to imposing a penalty under paragraph  
47 (1). The penalty shall be in an amount equal to fifty dollars  
48 (\$50) for each record not provided and the total penalty imposed  
49 on any financial institution for all such failures during any  
50 calendar year shall not exceed ten thousand dollars (\$10,000).

51 (3) If, under the provisions of this section, a financial

1 institution fails to attach accounts as required in a timely  
2 manner or fails to forward the proper amount of funds attached  
3 to the department at the time and in the manner required by this  
4 section, the financial institution may be subject to a penalty  
5 of five per cent of the amount of funds which should have been  
6 attached or forwarded for each month or fraction thereof from  
7 the date the funds should have been attached or forwarded to the  
8 date the funds are attached or forwarded. The total amount of  
9 the penalty shall not exceed fifty per cent of the proper amount  
10 of funds which should have been attached or forwarded.

11 [(2)] (4) The penalty imposed by this section shall be  
12 assessed, enforced, administered or collected under the  
13 provisions of Article II.

14 [(k)] (o) This section shall not be construed to prohibit  
15 the department or any other Commonwealth agency from requesting  
16 information or collecting obligations due from an obligor in any  
17 other manner authorized by law.

18 [(l) No financial institution may be required to notify an  
19 obligor or an account holder of interest of a request for  
20 information under this section by the department or a court.

21 (m) (p) Prior to requesting information or attaching an  
22 account under this section, the department shall develop  
23 guidelines:

24 (1) describing its tax collection procedures;

25 (2) describing the rights and remedies available to  
26 taxpayers;

27 (3) describing acceptable formats of information reports  
28 between the department and financial institution pursuant to  
29 subsection (b);

30 (4) describing the manner in which accounts must be  
31 disclosed by the financial institution completing the reports;

32 [(3)] (5) disclosing the circumstances in which the  
33 department may attach an account under this section;

34 [(4)] (6) describing the policies regarding spousal relief  
35 and severe economic hardship relief;

36 [(5)] (7) advising financial institutions of the requirements  
37 of this section; and

38 [(6)] (8) describing the department's policies and  
39 procedures used to attach and seize accounts under this section.

40 (g) Accounts, funds and property subject to attachment under  
41 this section shall not include the following:

42 (1) An account subject to a security interest, control  
43 agreement or pledged security for a loan or other obligation.

44 (2) Money or property deposited to an account after the time  
45 that a financial institution initially attaches the account.

46 (3) An account that a financial institution has a present  
47 right to exercise a right of setoff either under an agreement  
48 between the financial institution and the obligor or otherwise  
49 under applicable law.

50 (4) An account that has an account holder of interest named  
51 as an owner on the account.



1       (5) An account to which an obligor does not have an  
2 unconditional right of access.

3       (6) An account that may not be attached under Federal law.

4       [(n)] (r) As used in this section, the following words and  
5 phrases shall have the meanings given to them in this  
6 subsection:

7       "Account." [(1)] Any of the following:

8       [(i)] (1) Funds from a demand deposit account, checking  
9 account, negotiable order of withdrawal account, savings  
10 account, time deposit account, money market mutual fund account  
11 or certificate of deposit account.

12       [(ii)] (2) Funds paid toward the purchase of shares or other  
13 interest in an entity as described in paragraphs (1) and (2) of  
14 the definition of "financial institution."

15       [(iii)] (3) Funds or property held by a depository  
16 institution as described in paragraph (3) of the definition of  
17 "financial institution."

18       [(2) The term shall not include any of the following:

19       (i) An account subject to a security interest, control  
20 agreement or pledged security for a loan or other obligation.

21       (ii) Funds or property deposited to an account after the  
22 time that a financial institution initially attaches the  
23 account.

24       (iii) An account that a financial institution has a present  
25 right to exercise a right of setoff either under an agreement  
26 between the financial institution and the obligor or otherwise  
27 under applicable law.

28       (iv) An account that has an account holder of interest named  
29 as an owner on the account.

30       (v) An account that an obligor does not have an  
31 unconditional right of access.

32       (vi) An account that can not be attached under Federal law.]

33       "Account holder of interest." A person, other than an  
34 obligor of an account, who asserts an interest in an account  
35 based upon ownership, possession of a security interest, lien or  
36 judgment.

37       "Asset information." Account balances and account  
38 identifying information provided by a report requested under  
39 subsection (a).

40       "Department." The Department of Revenue of the Commonwealth.

41       "Financial institution." Any of the following:

42       (1) A depository institution as defined in section 3(c) of  
43 the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §  
44 1813(c)).

45       (2) A Federal credit union or State credit union as defined  
46 in section 1752(1) of the Federal Credit Union Act (48 Stat.  
47 1216, 12 U.S.C. § 1752(1)).

48       (3) A benefit association, safe deposit company, money  
49 market mutual fund or similar entity doing business in this  
50 Commonwealth that holds property or maintains accounts  
51 reflecting property belonging to others.

1 "Identifying information." Name, record address, Social  
2 Security number of an individual or other taxpayer  
3 identification number.

4 "Obligor." Any of the following:

5 (1) An entity engaged in a business whose property is  
6 subject to a Commonwealth tax lien or liens totaling at least  
7 one thousand dollars (\$1,000).

8 (2) An individual operating as a sole proprietor whose  
9 property is subject to a Commonwealth tax lien or liens totaling  
10 at least one thousand dollars (\$1,000).

11 (3) A shareholder, member or partner of a pass-through  
12 entity whose property is subject to a Commonwealth tax lien or  
13 liens totaling at least one thousand dollars (\$1,000).

14 (4) A corporate officer or other responsible individual who  
15 has been assessed pursuant to the provisions of section 225 or  
16 320 and whose property is subject to a Commonwealth tax lien or  
17 liens totaling at least one thousand dollars (\$1,000).

18 "Pass-through entity." A partnership as defined in section  
19 301(n.0) or a Pennsylvania S corporation as defined in section  
20 301(n.1).

21 "Tax lien."

22 (1) A lien recorded as provided by law to reflect a final  
23 tax liability. A tax lien may be recorded only after:

24 (i) an assessment or similar determination that a taxpayer  
25 has a tax liability is issued by the department;

26 (ii) the assessment or similar determination under  
27 subparagraph (i) is issued in the manner required by law; and

28 (iii) the appeal rights to the assessment or similar  
29 determination have expired, the liability was sustained through  
30 the appeals process or the taxpayer failed to provide an appeal  
31 bond if required to do so by the department as authorized by  
32 law.

33 (2) A tax lien does not include a statutory lien that has  
34 not been recorded in accordance with paragraph (1).

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

36 Amend Bill, page 2, line 21, by striking out "STATUTE OF  
37 LIMITATION FOR"

38 Amend Bill, page 4, line 26, by striking out "PERIOD OF  
39 LIMITATIONS ON"

40 Amend Bill, page 5, line 6, by striking out "OF LIMITATION"  
41 and inserting

42 under subsection (a)

43 Amend Bill, page 5, lines 10 and 11, by striking out "OF

1 LIMITATION" and inserting

2 under subsection (a)

3 Amend Bill, page 5, line 25, by striking out "2" and  
4 inserting

5 4

6 Amend Bill, page 5, by inserting between lines 25 and 26

7 (1) The addition of section 204(73) of the act shall  
8 apply to the sale at retail or use of canned software on or  
9 after the effective date of this section.

10 Amend Bill, page 5, line 26, by striking out "(1)" and  
11 inserting

12 (2)

13 Amend Bill, page 5, line 30, by striking out "(2)" and  
14 inserting

15 (3)

16 Amend Bill, page 6, line 8, by striking out "(3)" and  
17 inserting

18 (4)

19 Amend Bill, page 6, line 17, by striking out "STATUTE" and  
20 inserting

21 period

22 Amend Bill, page 6, lines 20 and 21, by striking out "BEFORE  
23 OR ON" and inserting

24 as of

25 Amend Bill, page 6, line 22, by striking out "STATUTE" and  
26 inserting

27 period

28 Amend Bill, page 6, line 24, by striking out "(4)" and  
29 inserting

30 (5)

31 Amend Bill, page 6, line 29, by striking out "3" and

1 inserting

2 5

3 Amend Bill, page 7, by inserting between lines 1 and 2

4 (2) The amendment of section 3003.22 shall take effect  
5 in 60 days.

6 Amend Bill, page 7, line 2, by striking out "(2)" and

7 inserting

8 (3)