

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 239

Session of  
1977

INTRODUCED BY MESSRS. BRUNNER, ZEARFOSS AND GARZIA,  
FEBRUARY 9, 1977

SENATOR SMITH, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, MAY 31, 1978

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," further providing for tax liens and enforcement  
11 thereof AND PROVIDING THAT THE EXEMPTION AFFORDED TO  
12 CORPORATIONS ORGANIZED FOR MANUFACTURING, PROCESSING,  
13 RESEARCH OR DEVELOPMENT PURPOSES DOES NOT APPLY TO SUCH  
14 COMPANIES AS ENJOY AND EXERCISE THE RIGHT OF EMINENT DOMAIN.

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

17 Section 1. Section 345, act of March 4, 1971 (P.L.6, No.2),  
18 known as the "Tax Reform Code of 1971," amended August 31, 1971  
19 (P.L.362, No.93), is amended to read:

20 Section 345. Lien for Tax.--(a) If any person liable to pay  
21 any tax neglects or refuses to pay the same on the date the tax  
22 becomes collectible, the amount of such tax, together with any  
23 costs that may accrue in addition thereto, shall be a lien in

1 favor of the Commonwealth against the real [estate] and personal  
2 property of such person but only after such lien has been duly  
3 entered and docketed of record by the prothonotary of the county  
4 where such property is situated. No prothonotary shall require,  
5 as a condition precedent to the entry of such lien, the payment  
6 of costs incident thereto.

7 (b) The department may, at any time, transmit to the  
8 prothonotaries of the respective counties certified copies of  
9 all liens for taxes imposed by this article. It shall be the  
10 duty of each prothonotary receiving such lien to enter and  
11 docket the same of record in his office, which lien shall be  
12 indexed as judgments are now indexed. All such liens shall have  
13 priority to, and be fully paid before, any other obligation,  
14 judgment, claim, lien or estate paid and satisfied out of the  
15 judicial sale of said real estate with which said real estate  
16 may subsequently become charged, or for which it may  
17 subsequently become liable, subject, however, to mortgage or  
18 other liens existing and duly recorded at the time such tax lien  
19 is recorded, save and except the cost of sale and of the writ  
20 upon which it is made and real estate taxes imposed or assessed  
21 upon said property. The lien of said taxes shall continue for  
22 five years from the date of entry and may be revived and  
23 continued, in the manner now or hereafter provided for renewal  
24 of judgments, [and it shall be lawful for a writ of scire facias  
25 to issue and be prosecuted to judgment in the manner in which  
26 such writs are ordinarily employed.] and a writ of execution may  
27 directly issue upon such lien without the issuance and  
28 prosecution to judgment of a writ of scire facias: Provided,  
29 That not less than ten days before issuance of any execution on  
30 the lien, notice of the filing and effect of the lien shall be

1 sent by certified mail to the taxpayer at his last known post  
2 office address: And provided further, That the said lien shall  
3 have no effect upon any stock of goods, ware or merchandise  
4 regularly sold or leased in the ordinary course of business by  
5 the person against whom said lien had been entered, unless and  
6 until a writ of execution has been issued and a levy made upon  
7 said stock of goods, wares and merchandise.

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

13 SECTION 2. SUBSECTIONS (A) AND (B) OF SECTION 602 OF THE <—  
14 ACT, AMENDED AUGUST 31, 1971 (P.L.362, NO.93), SUBSECTION (B)  
15 ALSO AMENDED SEPTEMBER 9, 1971 (P.L.437, NO.105), ARE AMENDED TO  
16 READ:

17 SECTION 602. IMPOSITION OF TAX.--(A) THAT EVERY DOMESTIC  
18 CORPORATION OTHER THAN CORPORATIONS OF THE FIRST CLASS,  
19 NONPROFIT CORPORATIONS, AND COOPERATIVE AGRICULTURAL  
20 ASSOCIATIONS NOT HAVING CAPITAL STOCK AND NOT CONDUCTED FOR  
21 PROFIT, AND EVERY JOINT-STOCK ASSOCIATION, LIMITED PARTNERSHIP,  
22 AND COMPANY WHATSOEVER, FROM WHICH A REPORT IS REQUIRED UNDER  
23 SECTION 601 HEREOF, SHALL BE SUBJECT TO, AND PAY INTO THE  
24 TREASURY OF THE COMMONWEALTH ANNUALLY, THROUGH THE DEPARTMENT OF  
25 REVENUE, A TAX AT THE RATE OF TEN MILLS, UPON EACH DOLLAR OF THE  
26 ACTUAL VALUE OF ITS WHOLE CAPITAL STOCK OF ALL KINDS, INCLUDING  
27 COMMON, SPECIAL, AND PREFERRED, AS ASCERTAINED IN THE MANNER  
28 PRESCRIBED IN SECTION 601, FOR THE CALENDAR YEAR 1971 AND THE  
29 FISCAL YEAR BEGINNING IN 1971 AND EACH YEAR THEREAFTER, EXCEPT  
30 THAT ANY DOMESTIC CORPORATION, LIMITED PARTNERSHIP, JOINT-STOCK

1 ASSOCIATION OR COMPANY SUBJECT TO THE TAX PRESCRIBED HEREIN MAY  
2 ELECT TO COMPUTE AND PAY ITS TAX UNDER AND IN ACCORDANCE WITH  
3 THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION 602: PROVIDED,  
4 THAT THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE  
5 TAXATION OF THE CAPITAL STOCK OF CORPORATIONS, LIMITED  
6 PARTNERSHIPS AND JOINT-STOCK ASSOCIATIONS ORGANIZED FOR  
7 MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT PURPOSES,  
8 WHICH IS INVESTED IN AND ACTUALLY AND EXCLUSIVELY EMPLOYED IN  
9 CARRYING ON MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT  
10 WITHIN THE STATE, EXCEPT SUCH COMPANIES AS ENJOY AND EXERCISE  
11 THE RIGHT OF EMINENT DOMAIN, BUT EVERY CORPORATION, LIMITED  
12 PARTNERSHIP OR JOINT-STOCK ASSOCIATION ORGANIZED FOR THE PURPOSE  
13 OF MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT EXCEPT  
14 SUCH COMPANIES AS ENJOY AND EXERCISE THE RIGHT OF EMINENT DOMAIN  
15 SHALL PAY THE STATE TAX OF TEN MILLS HEREIN PROVIDED, UPON SUCH  
16 PROPORTION OF ITS CAPITAL STOCK, IF ANY, AS MAY BE INVESTED IN  
17 ANY PROPERTY OR BUSINESS NOT STRICTLY INCIDENT OR APPURTENANT TO  
18 THE MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT BUSINESS,  
19 IN ADDITION TO THE LOCAL TAXES ASSESSED UPON ITS PROPERTY IN THE  
20 DISTRICT WHERE LOCATED, IT BEING THE OBJECT OF THIS PROVISIO TO  
21 RELIEVE FROM STATE TAXATION ONLY SO MUCH OF THE CAPITAL STOCK AS  
22 IS INVESTED PURELY IN THE MANUFACTURING, PROCESSING, RESEARCH OR  
23 DEVELOPMENT PLANT AND BUSINESS.

24 (B) EVERY FOREIGN CORPORATION, JOINT-STOCK ASSOCIATION,  
25 LIMITED PARTNERSHIP, AND COMPANY WHATSOEVER, FROM WHICH A REPORT  
26 IS REQUIRED UNDER SECTION 601 HEREOF, SHALL BE SUBJECT TO AND  
27 PAY INTO THE TREASURY OF THE COMMONWEALTH ANNUALLY, THROUGH THE  
28 DEPARTMENT OF REVENUE, A FRANCHISE TAX AT THE RATE OF TEN MILLS  
29 FOR THE CALENDAR YEAR 1971 AND THE FISCAL YEAR BEGINNING IN 1971  
30 AND EACH YEAR THEREAFTER, UPON A TAXABLE VALUE TO BE DETERMINED

1 IN THE FOLLOWING MANNER. THE ACTUAL VALUE OF ITS WHOLE CAPITAL  
2 STOCK OF ALL KINDS, INCLUDING COMMON, SPECIAL, AND PREFERRED,  
3 SHALL BE ASCERTAINED IN THE MANNER PRESCRIBED IN SECTION 601 OF  
4 THIS ARTICLE. THE TAXABLE VALUE SHALL THEN BE DETERMINED BY  
5 EMPLOYING THE RELEVANT APPORTIONMENT FACTORS SET FORTH IN  
6 ARTICLE IV: PROVIDED, THAT THE MANUFACTURING, PROCESSING,  
7 RESEARCH AND DEVELOPMENT EXEMPTIONS AS CONTAINED UNDER SECTION  
8 602 (A) SHALL ALSO APPLY TO FOREIGN CORPORATIONS AND IN  
9 DETERMINING THE RELEVANT APPORTIONMENT FACTORS THE NUMERATOR OF  
10 THE PROPERTY, PAYROLL, OR SALES FACTORS SHALL NOT INCLUDE ANY  
11 PROPERTY PAYROLL OR SALES ATTRIBUTABLE TO MANUFACTURING,  
12 PROCESSING, RESEARCH OR DEVELOPMENT ACTIVITIES IN THE  
13 COMMONWEALTH.

14 THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO THE TAXATION OF  
15 CORPORATIONS, LIMITED PARTNERSHIPS AND JOINT-STOCK ASSOCIATIONS  
16 ORGANIZED FOR MANUFACTURING, PROCESSING, RESEARCH OR DEVELOPMENT  
17 PURPOSES, BUT SHALL NOT APPLY TO SUCH COMPANIES AS ENJOY AND  
18 EXERCISE THE RIGHT OF EMINENT DOMAIN.

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20 SECTION 3. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE  
21 PROVISIONS OF THIS ACT WHICH AMEND SUBSECTIONS (A) AND (B) OF  
22 SECTION 602 BE CONSTRUED INSOFAR AS POSSIBLE TO BE RETROACTIVE  
23 TO AUGUST 31, 1971. IN THE EVENT THAT SUCH CONSTRUCTION WOULD BE  
24 DEEMED UNLAWFUL, THEN IT IS THE INTENT OF THE GENERAL ASSEMBLY  
25 THAT THE AMENDATORY PROVISION OF SECTION 602 BE CONSTRUED  
26 RETROACTIVE TO THE FURTHEREST LEGAL DATE POSSIBLE.

27 Section ~~2~~ 4. This act shall take effect immediately AND THE <—  
28 PROVISIONS OF SECTION 2 RELATING TO AMENDMENTS TO SUBSECTIONS  
29 (A) AND (B) OF SECTION 602 SHALL BE RETROACTIVE TO AUGUST 31,  
30 1971.