

AN ACT

1 Repealing the act of May 23, 1945 (P.L.893, No.360), entitled
2 "An act to provide revenue for State purposes by imposing an
3 excise tax on the net income of co-operative agricultural
4 associations having capital stock, in lieu of all other
5 taxes, except tax on real estate; providing for the
6 assessment, collection, settlement and resettlement of tax,
7 and reviews and appeal therefrom; conferring powers and
8 imposing duties on certain persons, co-operative agricultural
9 associations having capital stock, State and county officers,
10 boards and departments; and providing penalties."

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

13 Section 1. The act of May 23, 1945 (P.L.893, No.360), known
14 as the Co-operative Agricultural Association Corporate Net
15 Income Tax Act, is repealed:

[AN ACT

17 To provide revenue for State purposes by imposing an excise tax
18 on the net income of co-operative agricultural associations
19 having capital stock, in lieu of all other taxes, except tax
20 on real estate; providing for the assessment, collection,
21 settlement and resettlement of tax, and reviews and appeal

therefrom; conferring powers and imposing duties on certain persons, co-operative agricultural associations having capital stock, State and county officers, boards and departments; and providing penalties.

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Section 1. This act shall be known and may be cited as the "Co-operative Agricultural Association Corporate Net Income Tax Act."

Section 2. Definitions.--The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

"Co-operative Agricultural Association."--An incorporated, co-operative agricultural association, composed of persons engaged in agriculture and instituted for the purposes of mutual help, having capital stock, either organized under the laws of this Commonwealth, the United States, or any state, territory or foreign country, or dependency, and doing business in this

1 Commonwealth, or having capital or property employed or used in
2 this Commonwealth by or in the name of itself, or any person,
3 partnership or association.

4 "Association."--Any co-operative agricultural association as
5 hereinbefore defined.

6 "Department."--The Department of Revenue of this
7 Commonwealth.

8 "Net Income."--In case the entire business transacted by the
9 association is transacted within this Commonwealth, net income
10 for the calendar year or fiscal year shall be only an amount
11 equal to the sum of the dividends declared, or declared and paid
12 on the shares of common and preferred stock during the year.

13 In case the entire business is not transacted by the
14 association within this Commonwealth, the tax imposed by this
15 act shall be based upon such portion of the net income for the
16 calendar or fiscal year, as defined herein, as shall be
17 attributed to business transacted in this Commonwealth by
18 multiplying such net income by a fraction, of which the
19 numerator is the gross receipts received from business
20 transacted within the Commonwealth, and of which the denominator
21 is the amount of the gross receipts received from all the
22 business.

23 Section 3. Imposition of Tax.--Every association shall be
24 subject to, and shall pay for, the privilege of doing business
25 in this Commonwealth, or having capital or property employed or
26 used in the Commonwealth, by, or in the name of itself, or any
27 other person, partnership or association, a State excise tax at
28 the rate of four per centum (4%) per annum upon each dollar of
29 the net income, which tax shall be collected in lieu of any
30 other excise tax except liquid fuel taxes, fuel use taxes, sales

1 and use taxes on registered motor vehicles and unemployment
2 compensation fund contributions but including corporate net
3 income tax or property tax. Nothing contained herein shall be
4 construed to impose an excise tax upon any subject of taxation
5 when such subject of taxation is specifically exempted under the
6 statute levying the excise tax. The property shall be free from
7 any county tax excepting tax on real estate.

8 Section 4. Report and Payment of Tax.--For the purpose of
9 ascertaining the amount of tax payable under this act, it shall
10 be the duty of every association liable to pay tax under this
11 act, on or before the fifteenth day of April of each year, to
12 transmit to the department upon a form prescribed, prepared and
13 furnished by the department, a report under oath or affirmation,
14 of its president, vice-president or other principal officer and
15 of its treasurer or assistant treasurer of net income taxable
16 under the provisions of this act.

17 The failure of any association liable to pay tax under this
18 act to procure or receive any report form shall not excuse it
19 from making a report. Every association, upon the date its
20 report is required herein to be made, shall pay to the
21 department the tax due to the Commonwealth by it for the
22 preceding year.

23 The amount of the tax imposed under this act not paid on or
24 before the time, as above provided, shall bear interest at the
25 rate of six per centum (6%) per annum from the date it is due
26 and payable until paid: Provided, however, That any association
27 may pay the full amount of such tax, or any part thereof,
28 together with interest due to the date of payment, without
29 prejudice to its right to present and prosecute a petition for
30 resettlement, a petition for review, or an appeal to court. If

1 it be thereafter determined that such taxes were overpaid the
2 department shall enter a credit to the account of such
3 association which may be used by it in the manner prescribed by
4 law.

5 If the officers of any association shall neglect or refuse to
6 make any report, as herein required, or shall knowingly make any
7 false report, an additional ten per centum (10%) of the amount
8 of the tax shall be added by the department to the tax
9 determined to be due.

10 If any association closes its fiscal year not upon the
11 thirty-first day of December, but upon some other date, such
12 association shall certify such fact to the Department of Revenue
13 and shall make the report herein required on or before the
14 fifteenth day of the fourth month after the close of its fiscal
15 year.

16 Section 5. Extension of Time to File Reports.--The
17 department may, upon application made to it in such form as it
18 shall prescribe, on or prior to the last day for filing any
19 report and upon proper cause shown, grant to the association
20 required to file such report, an extension of not more than
21 sixty (60) days within which such report may be filed, but the
22 amount of tax due shall, in such cases, nevertheless, be subject
23 to interest from the due date and at the rate fixed by this act.

24 Section 6. Settlement and Resettlement.--(a) All tax due
25 under this act shall be settled by the department and such
26 settlement shall be subject to audit and approval by the
27 Department of the Auditor General and shall, so far as possible,
28 be made so that notice thereof may reach the taxpayer before the
29 end of a year after the tax report was required to be made.

30 (b) Promptly after the date of any such settlement the

1 department shall send, by mail or otherwise, a copy thereof to
2 such association. The tax imposed by this act shall be settled,
3 resettled and otherwise imposed and adjusted in the same manner
4 within the same periods of time, and right of resettlement,
5 review, appeal and refund as provided by law in the case of
6 capital stock and franchise taxes imposed upon business
7 corporations.

8 (c) If, within a period of two (2) years after the date of
9 any settlement, the department is not satisfied with such
10 settlement the department is hereby authorized and empowered to
11 make a resettlement of the tax due by such association, based
12 upon the facts contained in the report, or upon any information
13 within its possession, or that shall come into its possession.

14 Whenever a resettlement shall have been made hereunder, the
15 department shall resettle the account according to law and shall
16 credit or charge, as the case may be, the amount resulting from
17 such resettlement upon the current accounts of the association
18 with which it is made.

19 The resettlement shall be subject to audit and approval by
20 the Department of the Auditor General, as in the case of
21 original settlement, and in case of the failure of the two
22 departments to agree, the resettlement shall be submitted to the
23 Board of Finance and Revenue, as in the case of original
24 settlements.

25 (d) If any association shall neglect or refuse to make any
26 report and payment of tax required by this act, the department
27 shall estimate the tax due by such association, and, subject to
28 audit and approval by the Department of Auditor General, settle
29 the amount due by it for tax penalties and interest thereon, as
30 prescribed herein, from which settlement there shall be no right

1 of review or appeal, but the department, with the approval of
2 the Department of Auditor General, may require a report to be
3 filed and thereupon make a settlement based upon such report and
4 cancel the estimated settlement.

5 Section 7. Enforcement; Rules and Regulations; Inquisitorial
6 Powers of the Department.--(a) The department is hereby charged
7 with the enforcement of the provisions of this act, and is
8 hereby authorized and empowered to prescribe, adopt, promulgate,
9 and enforce rules and regulations not inconsistent with this act
10 relating to any matter or thing pertaining to the administration
11 and enforcement of the provisions of this act, and the
12 collections of tax, penalties and interest imposed by this act.
13 The department is hereby required to have such rules and
14 regulations promulgated and adopted, printed, and shall
15 distribute the same to any person upon request.

16 (b) The department or any agent, authorized in writing by
17 it, is hereby authorized to examine the books, papers and
18 records, and to investigate the character of the business
19 transacted by any association in order to verify the accuracy of
20 any report made, or if no report was made by such association,
21 to ascertain and settle the tax imposed by this act. Every such
22 association is hereby directed and required to give to the
23 department, or its duly authorized agent, the means, facilities
24 and opportunity for such examinations and investigations as are
25 hereby provided and authorized. Any information gained by the
26 department as a result of any returns, investigations, or
27 verifications required to be made by this act shall be
28 confidential, except for official purposes, and any person
29 divulging such information shall be guilty of a misdemeanor, and
30 upon conviction thereof, shall be sentenced to pay a fine of not

1 less than one hundred dollars (\$100), or more than one thousand
2 dollars (\$1,000), and costs of prosecution, or to undergo
3 imprisonment for not more than six (6) months, or both, in the
4 discretion of the court.

5 (c) Whenever any person acting for or on behalf of the
6 department shall, in good faith, institute legal proceedings for
7 any violations of the provisions of this act, and for any reason
8 shall fail to recover costs of record, such costs shall be a
9 charge upon the proper county, as shall such costs in the event
10 defendant is imprisoned for failure to pay fine or costs, or
11 both, and shall be audited and paid as are costs of like
12 character in said county.

13 (d) The powers conferred by this act upon the department
14 relating to the administration or enforcement of this act shall
15 be in addition to, but not exclusive of, any other powers
16 heretofore or hereafter conferred upon the department by law.

17 Section 8. Retention of Records by Associations; Penalty.--
18 Each association shall maintain and keep for a period of three
19 (3) years after any report is filed under this act, such record
20 or records of business transacted by it within this Commonwealth
21 for the period covered by such report, and other pertinent
22 papers as may be required by the department.

23 Any person violating any of the provisions of this section
24 shall be guilty of a misdemeanor and shall, upon conviction
25 thereof, be sentenced to pay a fine not exceeding one thousand
26 dollars (\$1,000) and costs of prosecution, or to undergo
27 imprisonment for not more than six (6) months, or both, in the
28 discretion of the court.

29 Section 9. Penalties.--(a) Any person who shall wilfully
30 make a false and fraudulent return of net income made taxable by

1 this act shall be guilty of willful and corrupt perjury, and
2 upon conviction thereof, shall be subject to punishment as
3 provided by law. Such penalty shall be in addition to any other
4 penalties imposed by this act.

5 (b) Any person who wilfully fails, neglects, or refuses to
6 make a report, or to pay the tax as herein prescribed, or who
7 shall refuse to permit the department to examine the books,
8 papers and records of any association liable to pay tax under
9 this act, shall be guilty of a misdemeanor, and upon conviction
10 thereof, shall be sentenced to pay a fine not exceeding one
11 thousand dollars (\$1,000) and costs of prosecution, or to
12 undergo imprisonment not exceeding six (6) months, or both, in
13 the discretion of the court. Such penalty shall be in addition
14 to any other penalties imposed by this act.

15 Section 10. Constitutional Construction.--The provisions of
16 this act are severable and if any of its provisions shall be
17 held unconstitutional, the decision of the court shall not
18 affect or impair any of the remaining provisions of this act. It
19 is hereby declared to be the legislative intent that this act
20 would have been adopted had such unconstitutional provisions not
21 been included herein.

22 Section 11. This act shall become effective immediately upon
23 its final enactment, and its provisions shall be applicable to
24 settlements of tax for the calendar year ending the thirty-first
25 day of December, one thousand nine hundred forty-four, or fiscal
26 year ending in the calendar year one thousand nine hundred
27 forty-five and every year thereafter.]

28 Section 2. This act shall take effect in 60 days.