

INDIVIDUAL NET INCOME TAX ACT
Act of Jul. 12, 1935, P.L. 970, No. 314
AN ACT

Cl. 72

Imposing a graduated income tax for school purposes on residents of Pennsylvania including fiduciaries and on income of nonresidents derived from property or business in Pennsylvania; defining taxable income and requiring filing of returns thereof; providing for the assessment, collection and lien of said tax and for the disposition of proceeds thereof; providing for administration and enforcement of the act by the Department of Revenue; conferring powers and imposing duties on certain persons, partnerships, associations, corporations, school districts, State officers, employes and departments; imposing penalties; and appropriating the revenues derived from said tax.

Compiler's Note: The act of July 12, 1935, P.L.970, No.314, known as the Individual Net Income Tax Act, was declared unconstitutional by the Supreme Court of Pennsylvania on November 25, 1935, in Kelley v. Kalodner, 320 Pa. 180 (1935).

ARTICLE I
SHORT TITLE AND DEFINITIONS

Section 1. Short Title.--Be it enacted, &c., That this act shall be known and may be cited as the "Individual 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.

"Association." A partnership, limited partnership, or any other form of unincorporated enterprise owned by two or more persons.

"Corporation." A corporation or joint stock association organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country or dependency.

"Department." The Department of Revenue of this Commonwealth.

"Dividend." Any distribution made by a corporation or association, subject, or not subject, to the payment of a tax on capital stock under the laws of the Commonwealth, out of its net earnings or profits, accumulated after December thirty-first, one thousand nine hundred and thirty-four, to its stockholders or members, whether in cash or in other property or in stock, other than stock dividends as hereinafter defined.

"Fiduciary." A guardian, committee, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate or trust.

"Individual." A natural person.

"Paid." For the purposes of the deductions under this act, means "paid or accrued" or "paid or incurred," and the words "paid or accrued," "paid or incurred" and "incurred" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

"Person." Every natural person, fiduciary, association, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person,"

as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

"Received." For the purpose of the computation of the net income under this act, means "received or accrued" and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

"Resident." As applied to an individual, means any person domiciled in the Commonwealth of Pennsylvania and any person who maintains a permanent place of abode within this Commonwealth.

"Stock dividends." New stock for surplus or profits capitalized, issued to stockholders in proportion to their previous holdings.

"Tax year." The calendar year upon the basis of which the net income of a taxpayer is computed under this act.

"Taxpayer." Any individual, trust or estate required to pay a tax under the provisions of this act.

The singular shall include the plural, and the masculine shall include the feminine and neuter.

ARTICLE II IMPOSITION OF TAX

Section 201. Residents and Nonresidents.--A. A tax is hereby imposed upon every resident taxpayer of this Commonwealth, which tax shall be levied, collected and paid annually, with respect to his entire net income as herein defined, computed at the following rates, after deducting the exemptions provided in this act:

(1) Two per centum of the amount of net income not exceeding five thousand dollars (\$5,000.00);

(2) Two and one-half per centum of the amount of the net income in excess of five thousand dollars (\$5,000.00), but not in excess of ten thousand dollars (\$10,000.00);

(3) Three per centum of the amount of net income in excess of ten thousand dollars (\$10,000.00), but not in excess of twenty-five thousand dollars (\$25,000.00);

(4) Four per centum of the amount of net income in excess of twenty-five thousand dollars (\$25,000.00), but not in excess of fifty thousand dollars (\$50,000.00);

(5) Five per centum of the amount of net income in excess of fifty thousand dollars (\$50,000.00), but not in excess of seventy-five thousand dollars (\$75,000.00);

(6) Six per centum of the amount of net income in excess of seventy-five thousand dollars (\$75,000.00), but not in excess of one hundred thousand dollars (\$100,000.00);

(7) Eight per centum of the amount of net income in excess of one hundred thousand dollars (\$100,000.00).

B. A like tax is hereby imposed, and shall be levied and collected and paid annually, at the rates specified in this section, upon and with respect to the entire net income as herein defined, from all property owned and from every business, trade, occupation or profession carried on in this Commonwealth by natural persons not residents of this Commonwealth.

Section 202. Estates and Trusts.--A. The tax imposed by this act shall apply to estates and trusts which tax shall be levied, collected and paid annually upon and with respect to the income of estates or of any kind of property held in trust including:

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust;

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

(5) Income of an estate during the period of administration or settlement permitted by subsection C of this section to be deducted from the net income upon which the tax is to be paid by the fiduciary.

B. The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts whether such income be taxable to the estate or trust or to the beneficiaries thereof. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided for individual taxpayers, and in cases under paragraphs (four) and (five) of subsection A of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the tax year for which the return is made.

C. In cases under paragraphs (one), (two) and (three) of subsection A of this section, the tax shall be imposed upon the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income property paid or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall be allowed the same personal deductions as are allowed to single persons under section three hundred and eight, and in such cases an estate or trust created by a person not a resident, and an estate of a person not a resident, shall be subject to tax only to the extent to which individuals, other than residents, are liable, by reason of the limitation as to gross income provided in section three hundred and three, subsection C.

D. In cases under paragraphs (four) and (five) of subsection A of this section, if the distribution of income is in the discretion of the fiduciary, either as to the beneficiaries to whom payable, or as to the amounts to which any beneficiary is entitled, the tax shall be imposed upon the estate or trust in the manner provided in subsection C of this section, but without the deduction of any amounts of income paid or credited to any such beneficiary. In all other cases under paragraphs (four) and (five) of subsection A of this section, the tax shall not be paid by the fiduciary but there shall be included, in computing the net income of each beneficiary, his distributive share, whether distributed or not, of the net income of the estate or trust for the tax year. In such cases the net income of a beneficiary not a resident derived through such estate or trust shall be subject to tax only to the extent to which individuals, other than residents are liable, by reason of the limitations as to gross income provided in section three hundred and three, subsection C.

E. A trust created by an employer as a part of a stock bonus pension or profit-sharing plan for the exclusive benefit of some, or all, of his employees to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the

fund accumulated by the trust in accordance with such plan, shall not be taxable under this section but any amount actually distributed, or made available to any distributee, shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him.

F. Where any part of the income of a trust, other than a testamentary trust, is, or may be, applied to the payment of premiums upon policies of insurance on the life of the grantor, or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

Section 203. Partnerships.--Individuals carrying on business in partnerships shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the tax year. Taxpayers who are members of partnerships may be required by the department to make a return stating the gross receipts and net gains or profits of the partnership for any tax year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals and the personal deductions provided for in section three hundred and eight shall be allowed only to the individual partners.

Section 204. Initial Tax Levy.--The tax imposed by this article shall first be levied, collected and paid in the year one thousand nine hundred thirty-six upon and with respect to taxable net income for the calendar year one thousand nine hundred thirty-five.

ARTICLE III COMPUTATION OF THE TAX

Section 301. Net Income.--The term "net income" means the gross income of a taxpayer less the deductions allowed by this article.

Section 302. Manner of Computing Net Income.--The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of the taxpayer; but if no such method of accounting has been so employed, or if the method employed, does not clearly reflect the income, the computation shall be made upon such basis, and in such manner, as in the opinion of the department does clearly reflect the income.

Section 303. Gross Income.--A. The term "gross income" includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership, or use of, or interest in, such property, also from interest, rent, dividends, securities, or the transaction of any business, carried on for gain or profit, and all other income derived from any source whatever, including income derived through estates or trusts by the beneficiaries thereof, whether as distributed or as distributable shares. The amount of all such items shall be included in the gross income for the tax year in which received by the taxpayer.

B. The term "gross income" does not include the following items:

(1) Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income;

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contract, either during the term, or at the maturity of the term, mentioned in the contract, or upon surrender of the contract;

(3) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in gross income;

(4) Interest upon the obligations of the United States, or its possessions, or the obligations of the Commonwealth of Pennsylvania, or of any municipal corporation, or political subdivision thereof;

(5) Any amount received through accident or health insurance, or under workmen's compensation acts as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness, or through the war risk insurance act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States;

(6) Salaries, wages and other compensation received from the United States by officials or employees thereof, including persons in the military or naval forces of the United States;

(7) Income received by any officer of a religious denomination, or by any institution or trust for moral or mental improvement, religious, bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes or for the enforcement of laws relating to children or animals, or for two or more of such purposes, if such income be used exclusively for carrying out one, or more, of such purposes, but nothing herein shall be construed to exempt the fees, stipends, personal earnings or other private income of such officer or trustees;

(8) Stock dividends when received by a shareholder, but if before or after the distribution of any such dividend, the corporation proceeds to cancel or redeem its stock, at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be treated as a taxable dividend, and included in gross income: Provided, That any stock dividend shall be considered in computing gain, profit or income upon the sale, exchange or other disposition of the stock upon which a stock dividend has been declared, or of the stock included in such stock dividend;

(9) The principal and income paid by a building and loan association to a member thereof upon the maturity of his or her shares or upon the withdrawal of such member from the association;

(10) Any amount received by any person whatever under any law of this Commonwealth, the United States, or any other state providing for any pension, bonus or compensation whatsoever for, or in respect to, services in the military or naval forces of the United States in any war in which the United States has been engaged.

C. In the case of taxpayers, other than residents, gross income includes only the gross income from sources within the

State, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations or dividends from corporations, except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this State subject to taxation under this act.

D. In the case of taxpayers who regularly sell, or otherwise dispose of, personal property on the installment plan, gross income includes, in any tax year, only such portion of the total profit realized, or to be realized when the payment is completed, as the installment payments received in that year bears to the total of all installment payments.

E. In the case of a casual sale or other casual disposition of personal property, or of a sale or other disposition of real property, if in either case the payment in cash or property are not completed during the tax year when the sale or disposition was made, the income may be returned on the basis and in the manner above described in subsection D of this section for installment sales. Evidences of indebtedness of the purchaser, or amounts secured by the property sold or disposed of, shall not be construed to be payments, but in such cases the income shall be returned on the above basis in the tax year when such indebtedness, or the amounts secured or any part thereof, is paid to the vendor.

Section 304. Ascertainment of Gain and Loss.--A. For the purpose of ascertaining any gain included in gross income as herein defined, derived, or any deductible loss sustained, for the sale or other disposition of property, real, personal or mixed, the basis shall be, in case of property acquired on or after January first, one thousand nine hundred thirty-five, the cost thereof or the inventory value, if the inventory is made in accordance with this article.

B. In case of property acquired prior to January first, one thousand nine hundred thirty-five, and disposed of thereafter--

(1) No profit shall be deemed to have been derived if either the cost or the fair market price or value on January first, one thousand nine hundred thirty-five, exceeds the value realized;

(2) No loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, one thousand nine hundred thirty-five, is less than the value realized;

(3) Where both the cost and the fair market price or value on January first, one thousand nine hundred thirty-five, are less than the value realized, the basis for computing profit shall be the cost or the fair market price or value on January first, one thousand nine hundred thirty-five, whichever is higher;

(4) Where both the cost and the fair market price or value on January first, one thousand nine hundred thirty-five, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on January first, one thousand nine hundred thirty-five, whichever is lower.

Section 305. Exchange of Property.--Upon the sale or exchange of property in transactions, the gain or profit from which is included in gross income as herein defined, the entire amount of the gain or loss determined under section three hundred four of this act shall be recognized, except as hereinafter provided in this section.

(A) No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not

including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business, or for investment, or if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(B) No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are in pursuance of the plan or reorganization exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(C) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporations, but, in the case of an exchange by two or more persons; this subsection shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(D) If property (as a result of its destruction in whole or in part, theft, or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property, similar or related in service or use, to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the department, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be so recognized, but in an amount not in excess of the money which is not so expended.

(E) If there is distributed, in pursuance of a plan or reorganization, to a shareholder in a corporation, a party to the reorganization, stock or securities in such corporation, or in another corporation, a party to the reorganization, without the surrender by such shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(F) If an exchange would be within the provisions of subsections A, B or C of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(G) If an exchange would be within the provisions of subsections A, B or C of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss but also of other property or money, then no loss from the exchange shall be recognized.

(H) As used in this section the term "reorganization" means--(1) a merger or consolidation (including the acquisition by one corporation of at least a majority of the total number of shares of all other classes of stock of another corporation

or substantially all the properties of another corporation), or (2) a transfer by a corporation of all or a part of its assets to another corporation if, immediately after the transfer, the transferor or its stockholders, or both, are in control of the corporation to which the assets are transferred, or (3) recapitalization, or (4) a mere change in identity, form or place of organization, however effected.

The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

As used in this section, "control" means the ownership of at least eighty per centum of the voting stock and at least eighty per centum of the total number of shares of all other classes of stock of the corporation.

Section 306. Inventory.--Whenever, in the opinion of the department, the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the department may prescribe, conforming as nearly as may be to the best accounting practice in trade or business of such taxpayer.

Section 307. General Deductions.--In computing net income there shall be allowed as deductions--

A. All the ordinary and necessary expenses paid or incurred during the tax year in carrying on any trade or business, or in the production of income required to be included in gross income under this article, including a reasonable allowance for salaries or other compensation for personal service actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for purposes of the trade or business of property to which the taxpayer has not taken, or is not taking title, or in which he has no equity.

B. All interest paid or accrued during the taxable year on indebtedness.

C. Taxes paid or accrued within the tax year imposed by--(1) the authority of the United States or of any of its possessions, (2) by the Commonwealth of Pennsylvania (except the net income tax imposed by this act and taxes on liquid fuels), (3) by any city, borough, town, township, school district or poor district of this Commonwealth (except those assessed as local benefits tending to increase the value of the property assessed), or (4) by the authority of any other state, country or territory.

D. Losses sustained during the tax year and not compensated for by insurance, or otherwise, if incurred in trade or business.

E. Losses sustained during the tax year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business. No deduction shall be allowed under this clause for any loss claimed to have been sustained in any sale or other disposition of shares been sustained in any sale or other disposition of shares of stock or security where it appears that, within thirty days before or after the date of such sale or other disposition, the taxpayer has acquired (otherwise than by bequest or inheritance), or has entered into a contract or option to acquire, substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or disposition. If such acquisition or the contract or option to acquire is to the extent of part only of

substantially identical property, then only a proportionate part of the loss shall be disallowed.

F. Losses sustained during the tax year of property not connected with the trade or business (but in case of a taxpayer other than a resident only of real property or tangible personal property having an actual situs within the State) if arising from fires, storms, shipwrecks or other casualty, or from theft, and not compensated for by insurance or otherwise.

G. Debts ascertained to be worthless and charged off within the tax year, and, when satisfied that a debt is recoverable only in part, the department may allow such debt to be charged off in part. In the case of a debt existing on January first, one thousand nine hundred thirty-five, no more than its fair market value on that date shall be deducted. A worthless debt arising since January first, one thousand nine hundred thirty-five from unpaid wages, salary, rent or any similar item of taxable income is not an allowable deduction, unless the income which such item represents has been included as income by the taxpayer in a return rendered under this act.

H. A reasonable allowance for the exhaustion, wear and tear of property, the income from which is required to be included in gross income under this article, used in the trade or business, including a reasonable allowance for obsolescence. In case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property, and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or in the absence of such provisions, on the basis of the trust income allocable to each.

I. In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation or improvement, according to the peculiar conditions in each case, such reasonable allowance in all cases to be made under rules and regulations to be made by the department. The department may apportion such deductions equitably between the lessor and lessee.

J. In the case of a taxpayer other than a resident of the State, the deduction allowed in this section shall be allowed only if and to the extent that they are connected with income arising from sources within the State and taxable under this act to a nonresident taxpayer, and the proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules and regulations to be prescribed by the department.

Section 308. Deductions for Living Expenses.--The following fixed sums, and no others, shall also be allowed to all taxpayers in computing net income as personal deductions on account of living expenses:

A. In the case of a single person, a personal exemption of one thousand dollars (\$1,000.00), or in the case of the head of a family, or a married person living with husband or wife, a personal deduction of one thousand five hundred dollars (\$1,500.00). A husband and wife living together shall receive but one personal deduction. If such husband and wife make separate returns, the personal deduction may be taken by either or divided between them.

B. Four hundred dollars (\$400.00) for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependant person is under

eighteen years of age or is incapable of self-support because mentally or physically defective.

C. If the status of the taxpayer, in so far as it affects the deductions allowed by this section, changes during his tax year, such deduction shall be apportioned under rules and regulations prescribed by the department in accordance with the number of months before and after such change. For the purposes of this subsection, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

Section 309. Items Not Deductible.--In computing net income no deduction shall in any case be allowed in respect of--

A. Personal living or family expenses, except as otherwise herein expressly provided.

B. Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate.

C. Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made, or

D. Premiums paid on any life insurance policy covering the life of any officer or employe or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

Section 310. Credit for Taxes in Case of Taxpayers, Other than Residents of the Commonwealth.--Whenever a taxpayer, other than a resident of the Commonwealth, has become liable to income tax to the state, county or city where he resides, upon his net income for the tax year, derived from sources within this Commonwealth and subject to taxation under this act, the department shall credit the amount of income tax payable by him under this act with such proportion of the tax so payable by him to the state, county or city where he resides as the income subject to taxation under this act bears to his entire income upon which the tax so payable to such other state, county or city was imposed: Provided, That such credit shall be allowed only if the laws of said state, county or city--(1) grant a substantially similar credit to residents of this Commonwealth subject to income tax under such laws, or (2) impose a tax upon the personal incomes of its residents derived from sources in this Commonwealth and exempt from taxation the personal income of residents of this Commonwealth. No credit shall be allowed against the amount of the tax on any income taxable under this act, which is exempt from taxation under the laws of such other state, county or city.

Section 311. Certain Gifts not Taxable.--In case any taxpayer in any tax year, shall give or contribute, and has given or contributed in each of the ten preceding calendar years, ninety per centum or more of his net income in each year to any corporation, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, such net income so given or contributed shall not be subject to any tax under the provisions of this act.

ARTICLE IV

RETURNS AND PAYMENT

Section 401. Taxpayers' Returns; Time and Place of Filing; Payment.--A. Every taxpayer, having a net income for the tax year of one thousand dollars (\$1,000.00) or over, if single, or, if married, and not living with husband or wife, or of one thousand five hundred dollars (\$1,500.00) or over, if married and living with husband or wife, or a gross income for the tax year of five thousand dollars or over, regardless of the amount of his net income, shall make, under oath or affirmation, a return as hereinafter provided, stating specifically the items of his gross income and the deductions and credits allowed by this act. For the purposes of this section, any taxpayer, other than a married person, shall be deemed to be a single person. If a husband and wife living together have an aggregate net income of one thousand five hundred dollars (\$1,500.00) or over, or an aggregate gross income for such year of five thousand dollars (\$5,000.00) or over, each shall make such a return, or the income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer. A taxpayer other than a resident shall not be entitled to the deductions authorized by section three hundred and seven unless he shall make, under oath or affirmation, a complete return of his gross income both within and without the State.

B. Returns shall be in such form, and shall contain such information, as the department may from time to time prescribe, and shall be filed with the department, at its main office, or at any branch office which it may establish, on or before the fifteenth day of May in the year one thousand nine hundred thirty-six, and in each and every year thereafter for the preceding calendar year. The department is authorized to prepare and furnish such return forms, but the failure of any taxpayer to receive or procure a return form shall not excuse him from making a return.

C. The department may, upon application made to it, in such form as it may prescribe, on or prior to the last day for filing any report, and upon proper cause shown, grant a reasonable extension of time for the filing of any return, within which time such return may be filed without penalty except as herein provided, and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be granted for more than six months.

D. Any agent duly authorized by the department is hereby authorized to administer the oath or affirmation to any person or officer making any return or report required by this act for the taking of which oath or affirmation no charge shall be made. Any such agent who shall make any charge for administering such oath or affirmation shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500.00), or to undergo imprisonment not exceeding one (1) year, either, or both, in the discretion of the court.

E. Each taxpayer shall, or in cases where an agent, guardian, committee, fiduciary or other person makes the return for the taxpayer, then such agent, guardian, fiduciary, committee or person shall, at the time of filing the return, pay to the department the amount of tax payable under this act

as the same shall appear from a calculation made on the face of the return. If the time for filing the return shall have been extended by the department, the taxpayer shall pay, in addition, interest thereon at the rate of six per centum per annum from the time when the return was originally required to be filed to the time of payment.

Section 402. Returns in Cases of Changed Residence.--If a taxpayer, during the tax year, changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, he shall file two returns: One as a resident covering the fraction of the year during which he was a resident, and one as a taxpayer other than a resident covering the fraction of the year during which he was a nonresident. In case two returns for one year are filed as aforesaid, the taxes due thereon shall not be less than would be payable if the total net income shown by the two returns were included in a single return. If the aggregate of the taxpayer's net income from all sources during the fraction of the year in which he was a resident, and his net income from sources within the State during the fraction of the year in which he was a nonresident, shall be less than one thousand dollars (\$1,000.00) in the case of a taxpayer who is single or married and not living with husband or wife, or under one thousand five hundred dollars (\$1,500.00) in the case of a taxpayer who is married and living with husband or wife, no return shall be required under this section unless the aggregate of the taxpayer's gross income from all sources during the fraction of the year in which he was a resident, plus the aggregate of his gross income from sources within the State during the fraction of the year in which he was a nonresident, is five thousand dollars (\$5,000.00) or over, in which event returns shall be required.

Section 403. Partnership Returns.--Every partnership shall make a return for each tax year, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the persons who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall be sworn to or affirmed by any one of the partners.

Section 404. Fiduciary Returns.--Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make, under oath or affirmation, a return for the individual, estate, or trust for whom he acts as follows:

A. If he acts for an individual whose entire income, from whatever source derived, is in his charge and the net income of such individual is one thousand dollars (\$1,000.00) or over, if single, or, if married and not living with husband or wife, or one thousand five hundred dollars (\$1,500.00) or over if married and living with husband or wife, or whose gross income for the tax year is five thousand dollars (\$5,000.00) or over, regardless of the amount of his net income.

B. If he acts--(a) for an estate of a deceased person during the period of administration or settlement whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary, (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests, or (c) for an estate or trust the income of which is held for future distribution, or is distributable, in the discretion of the fiduciary, under the terms of the will or trust, and the

net income of such estate or trust is one thousand dollars (\$1,000.00) or over, or the gross income for the tax year is five thousand dollars (\$5,000.00) or over, regardless of the amount of the net income.

C. If he acts--(a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically, or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct, and any beneficiary of such estate or trust, or such infant, receives, or is entitled to a distributive share of the income of one thousand dollars (\$1,000.00) or more. The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions and credits allowed by this act. Under such regulations as the department may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the above requirement.

D. The fiduciary shall make oath or affirmation that he has sufficient knowledge of the affairs of the individual, estate or trust for whom, or which, he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct. Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to taxpayers.

ARTICLE V PROCEDURE

Section 501. Department of Revenue to Administer.--The Department of Revenue shall administer and enforce the tax herein imposed for which purpose it may divide the State into districts, in each of which a branch office of the department may be maintained.

Section 502. Examination of Returns; Assessment of Tax Refunds.--A. As soon as practicable after the return is filed, the department shall examine it and assess the tax.

B. If the amount of tax, as assessed, shall be greater than the amount theretofore paid, the additional assessment shall be paid by the taxpayer to the department within ten days after a notice of the amount of such additional tax, as assessed, shall be mailed to the taxpayer by the department. In such case, if the return is made in good faith, and the understatement of the amount in the return is made in good faith, there shall be no interest or penalty because of such understatement, provided the deficiency be paid, or notice of an intention to file a petition for a reassessment, or to appear and be heard as herein provided, shall be given within ten days after notice of the amount is mailed to the taxpayer. If payment is not made within ten days, and if no notice of an intention to file a petition for a reassessment, or to appear and be heard is given to the department within ten days as herein provided, there shall be added to the amount of the deficiency five per centum thereof, and, in addition, interest at the rate of one per centum per month for each month or fraction thereof, from the date of such notice to the date of payment. If the understatement is false or fraudulent with intent to evade the tax, the tax, on the additional income, discovered to be taxable and assessed by the department shall be double, and an additional one per centum shall be added to the amount so due for each month or fraction of a month from the date the tax was originally due to the date of payment.

C. If the amount of tax as assessed by the department shall be less than the amount paid by the taxpayer, the excess shall

be refunded upon written application, by the department, with the approval of the Board of Finance and Revenue, out of the moneys in the State School Fund to the credit of the school district income tax account.

As much of the moneys, from time to time, standing to the credit of the school district income tax account of the State School Fund, as may be necessary, is hereby appropriated to the department for the purpose of making refunds as herein authorized. Estimates of the amounts to be expended from this account for refunds, from time to time, by the department shall be submitted to the Governor for his approval or disapproval as in the case of other appropriations to administrative departments, boards, and commissions; and it shall be unlawful for the Auditor General to honor any requisition of the department for the expenditure of moneys hereunder in excess of the estimates approved by the Governor.

Section 503. Estimated Assessments.--A. If any individual or fiduciary believed by the department to be liable for a tax under the provisions of this act shall have failed to file a return in accordance with, and within the time prescribed by, the provisions of this act, or any extension thereof granted by the department, if the department should deem it more conducive to the public interest because of the supposed smallness of the tax, or for any other reason, not to proceed to compel the exhibition of such individual's or fiduciary's accounts, it may make an estimated assessment of the probable amount of the tax owing by such individual or fiduciary; but, in every such case, it shall add to every such estimated assessment a penalty of fifty per centum, to include any losses which might otherwise accrue to the Commonwealth from such neglect or refusal to file a return or statement, and the department shall proceed to recover money so due the Commonwealth as in other cases, if not paid when due, as hereinafter provided.

B. The amount thus determined, together with penalties and interest at the rate of one per centum per month or fractional part thereof, shall be due and payable ten days after notice of such settlement shall be mailed by the department.

Section 504. Assessments Made at any Time Within Five Year.--An additional assessment or estimated assessment as heretofore provided shall be made by the department at any time within five (5) years after any net income of any taxpayer should have been returned by him for taxation, any such additional assessment or estimated assessment may be made at any time during said period, notwithstanding he shall have paid a tax assessed on the basis of returns previously made or filed, and notwithstanding the department shall have made previous additional or estimated assessments against such taxpayer. In any such case no credit shall be given for any penalty formerly assessed and paid.

Section 505. Petition for Reassessment; Appeal.--A. Any taxpayer against whom any estimated or additional assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition, or to appear and be heard, shall be given to the department prior to the time the amount becomes due and payable, to wit, within ten (10) days after notice of such estimated or additional assessment is given, or sent by the department, to the taxpayer as provided in this act. The department shall hold such hearings in each county as may be necessary to hear and determine petitions for reassessment, at such places, and at such times, as may be determined by rules and regulations of the department; and each

petitioner who has duly notified the department of an intention to file a petition for reassessment, or to appear and be heard, shall be notified by the department of the time when, and the place where, such hearings shall be held. All such petitions shall set forth specifically and in detail the grounds upon which it is claimed the estimated or additional assessment is erroneous or unlawful and shall be accompanied by an affidavit under oath or affirmation certifying to the correctness of the facts stated therein. If no petition for reassessment is filed with the department, the petitioner may, in lieu thereof, appear at the hearing and present his petition orally in which event all testimony or statements of facts shall be made under oath or affirmation.

B. If such petitioner is dissatisfied with the action of the department on his petition for reassessment, he shall have the right to appeal to the court of common pleas of the proper county at any time within thirty (30) days after notice of such action or refusal is given to him by the department. If any resident shall fail to give due notice of an intention to petition for a reassessment, and to file a petition for reassessment, or to appear and be heard after due notice of his intention to do so, or to appeal to the court of common pleas within the time and in the manner herein set forth, the right to do so shall be forever barred, and any such resident so failing shall not thereafter be permitted in a suit for the recovery of such tax to set up any ground of defense which might have been determined either by the department or the court of common pleas as aforesaid. In all cases of petitions for reassessment and appeals, the burden of proof shall be on the petitioner or appellant, as the case may be, and every appeal to the court of common pleas under this section shall specify all the objections to the assessment, and any objection not specified in the appeal shall not be considered by the court.

Section 506. Enforcement, Rules and Regulations; Inquisitorial Powers of the Department.--A. The department is hereby charged with the enforcement of the provisions of this act and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act and the collection of taxes, penalties and interest imposed by this act.

B. The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or if no return was made, to ascertain and assess the tax imposed by this act. Every such taxpayer or supposed taxpayer is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examination and investigations as are hereby provided and authorized. The department is hereby authorized to examine any person under oath concerning any property which was, or should have been, returned for taxation, and to this end may compel the production of books, papers, and records, and the attendance of all persons, whether as parties or witnesses, whom it believes have knowledge of such property. The procedure for such hearing or examination shall be the same as that provided by The Fiscal Code relating to inquisitorial powers of fiscal officers.

C. Any information gained by the department as a result of any returns, investigations, hearings or verifications, required or authorized by this act, shall be confidential except for official purposes and except in accordance with proper judicial

order or as otherwise provided by law, and any person or agent divulging such information shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not in excess of five hundred dollars (\$500.00) and costs of prosecution, or to undergo imprisonment for not more than three (3) years, or both, in the discretion of the court.

Notwithstanding the provisions of subsection C of this section, the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect the income tax returns of any individuals, or may furnish to such officer, or his authorized representative, an abstract of the return of income of any individual, or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual; but such permission shall be granted, or such information furnished, to such officer or his representative only if the statutes of the United States, or of such other state as the case may be, grant substantially similar privileges to the proper officer of this State charged with the administration of the personal income tax law thereof.

Section 507. Information at the Source.--Every person, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employes of the Commonwealth, or of any municipal corporation or political subdivision of the Commonwealth, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income amounting to one thousand dollars (\$1,000.00) or over, shall, on or before the fifteenth day of May, make a return under oath or affirmation to the department containing complete information concerning the amount of all such interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits, and income of any individual, partnership or fiduciary under such regulations, and in such form and manner, and to such extent, as may be prescribed by the department. The return shall be in such form as the department shall prescribe, and shall contain a statement that the individual, officer or employe of the Commonwealth, political subdivision thereof, or corporation or member or partner of the association making the return, verifies the information contained in the return. Upon conviction of making a false statement in such return, the person making the same shall be subject to the penalties provided by the laws of the Commonwealth for perjury.

Every person who fails, refuses or neglects to file a return, in accordance with the provisions of this section, shall be liable to a penalty of not more than five hundred dollars to be imposed, assessed and collected in the same manner as is provided in this act with regard to taxes.

Section 508. Lien of Taxes.--A. All taxes imposed by this act, together with all penalties and interest, shall be considered a public account, after being assessed in the manner prescribed in this act, and as such shall be a lien upon the franchises and property both real and personal of the taxpayer against whom the same are assessed, after the same has been

entered and docketed of record by the prothonotary of the county where the resident's franchises or property are situated.

B. The department may at any time transmit to the prothonotaries of the respective counties of the Commonwealth, to be by them entered of record, certified copies of all liens for taxes imposed by this act, and penalties and interest, upon which record it shall be lawful for writs of scire facias to issue and be prosecuted to judgment and execution in the same manner as such writs are ordinarily employed.

Section 509. Collection of Unpaid Taxes.--Whenever the taxes, penalties or interest imposed by this act are not paid, and not petition for reassessment thereof has been filed, or if such taxes, interest and penalties are not paid after all appeals have finally been disposed of, the department shall call upon the Department of Justice to collect the same in like manner as is provided by law for the collection of other Commonwealth taxes.

ARTICLE VI VIOLATIONS

Section 601. Violations; Penalties.--Any person who shall fail, neglect or refuse to make any report required by this act, or any taxpayer who shall refuse to pay the tax, penalties and interest imposed by this act, or any person who shall refuse to permit the department or any agent appointed by it in writing, to examine his or her books, records, and papers, or who shall knowingly make any incomplete, false or fraudulent report, or who shall attempt to do anything whatever to avoid the full disclosure of the amount of net income to avoid the payment of the whole or any part of the tax, shall be guilty of a misdemeanor and shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000.00) and costs of prosecution, or undergo imprisonment not exceeding three (3) years, or both, in the discretion of the court.

Such fine shall be in addition to any penalty imposed by any other section or subsection of this act.

Section 602. Costs.--Whenever any person acting for or on behalf of the department shall, in good faith, institute legal proceedings for any violations of the provisions of this act, and, for any reason, shall fail to recover costs of record, such costs shall be a charge upon the proper county, as shall such costs in the event defendant is imprisoned for failure to pay fine or costs, or both, and shall be audited and paid as are costs of like character in said county.

ARTICLE VII DISPOSITION AND USE OF TAX

Section 701. Disposition and Use of Tax.--All taxes, interest and penalties received, recovered, paid or collected under the provisions of this act shall be paid by the department into the State School Fund of the State Treasury. Two per centum of such moneys shall be transferred, on or before the first day of January and July of each year during which the tax imposed by this act shall be collected, to the General Fund of the State Treasury upon requisition of the Superintendent of Public Instruction, and shall be added and credited to the current biennial maintenance appropriation of the department, and shall be available and is hereby appropriated for the same purposes for which such current biennial appropriation is available. The balance, less such sums as shall be reserved for the payment

of refunds as provided in this act, shall be available only for the payment of any appropriations made at any time by the General Assembly to the Department of Public Instruction for payment to school districts for salaries of members of the teaching and supervisory staffs of elementary schools and junior high schools, in accordance with the provisions of law.

ARTICLE VIII
MISCELLANEOUS

Section 801. Saving Clause.--Nothing contained in this act shall be construed to repeal any other law of this Commonwealth imposing any tax for State or local purposes.

Section 802. Constitutional Construction.--If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act; it is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional sentence, section, clause, or part thereof, not been included herein.

Section 803. Effective Date.--This act shall become effective immediately upon final enactment.