

FISCAL CODE, THE - OMNIBUS AMENDMENTS

Act of Jun. 29, 2002, P.L. 614, No. 91

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Session of 2002

No. 2002-91

SB 1366

AN ACT

Amending the act of April 9, 1929 (P.L.343, No.176), entitled, as amended, "An act relating to the finances of the State government; providing for the settlement, assessment, collection, and lien of taxes, bonus, and all other accounts due the Commonwealth, the collection and recovery of fees and other money or property due or belonging to the Commonwealth, or any agency thereof, including escheated property and the proceeds of its sale, the custody and disbursement or other disposition of funds and securities belonging to or in the possession of the Commonwealth, and the settlement of claims against the Commonwealth, the resettlement of accounts and appeals to the courts, refunds of moneys erroneously paid to the Commonwealth, auditing the accounts of the Commonwealth and all agencies thereof, of all public officers collecting moneys payable to the Commonwealth, or any agency thereof, and all receipts of appropriations from the Commonwealth, authorizing the Commonwealth to issue tax anticipation notes to defray current expenses, implementing the provisions of section 7(a) of Article VIII of the Constitution of Pennsylvania authorizing and restricting the incurring of certain debt and imposing penalties; affecting every department, board, commission, and officer of the State government, every political subdivision of the State, and certain officers of such subdivisions, every person, association, and corporation required to pay, assess, or collect taxes, or to make returns or reports under the laws imposing taxes for State purposes, or to pay license fees or other moneys to the Commonwealth, or any agency thereof, every State depository and every debtor or creditor of the Commonwealth," further providing, in cigarette sales and licensing, for intent, for definitions, for licensing and for the Cigarette Licensing, Marketing and Control Board; providing for tax collection by the Pennsylvania Liquor Control Board; further regulating abandoned property; providing for the Budget Stabilization Reserve Fund, for a transfer from the Underground Storage Tank Indemnification Fund to the General Fund and for the Tobacco Settlement Fund; and making a repeal.

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

Section 1. Section 201-A of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

Section 2. The definition of "board" in section 202-A of the act, added July 2, 1993 (P.L.250, No.46), is amended to read:

Section 202-A. Definitions.--As used in this article--
* * *

"Board" shall mean the [Cigarette Licensing, Marketing and Control] Board [created under section 207-A] **of Appeals in the Department of Revenue.**

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Section 3. Section 207-A of the act, added July 2, 1993 (P.L.250, No.46), is amended to read:

Section 207-A. [Cigarette Licensing, Marketing and Control Board] **Appeals.**--(a) [There is hereby created a Cigarette Licensing, Marketing and Control Board consisting of three members designated by the secretary, one of whom shall be a deputy secretary of the department and one of whom shall be an attorney at law. The board shall take testimony, after proper notices as hereinafter mentioned, and shall make its recommendations in writing to the secretary under the provisions of this article.] **The board shall provide administrative review of all department actions taken under this article.**

(b) Whenever [any applicant for license or renewal thereof] **a person** is aggrieved by [the] **a** determination of the department, [he] **the person** may file a complaint with the board, [assigning specifically his] **stating the** reasons for believing that the department acted improperly. The complaint shall be filed within thirty days after notice by the department of its determination. [of his application. Whenever the department determines that a violation of this article has occurred, it may file a complaint with the board assigning specifically its reasons for believing that the provisions of this article have been violated. The complaint shall be filed by the department within thirty days after final determination of those facts which give rise to its belief that the provisions of this article have been violated. Upon receipt of the complaint, the board, if it determines that the complaint raises an issue of fact, shall, within] **Within** thirty days after receipt of the complaint, **the board shall** issue a [citation] **notice** directing the [applicant, dealer or department, as the case may be,] **person** to appear at a hearing scheduled by the board within thirty days. [The board shall afford the aggrieved party an opportunity to be heard at the hearing, which] **The hearing** shall be conducted in accordance with the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

(c) Within thirty days after the termination of the hearing, the board [shall make its recommendations to the secretary in writing, and within fifteen days subsequent thereto, the secretary] shall render a final decision. Any party aggrieved by the final decision shall have the right of appeal in accordance with the provisions of 2 Pa.C.S.

[(d) If any person is aggrieved by an assessment issued by the department for taxes due the Commonwealth, he may file an appeal from the assessment in accordance with the procedures of this article.]

Section 4. The act is amended by adding a section to read:

Section 1210.1. Collection of Taxes by the Pennsylvania Liquor Control Board.--(a) **Notwithstanding any other law to the contrary, the board shall, on the last business day of each calendar month, transmit to the department a statement containing all of the following:**

(1) **The board's gross receipts from the sale of liquor for all fiscal months ending in that calendar month.**

(2) **The taxes collected by the board during all fiscal months ending in that calendar month.**

(3) **Any other information required by the department.**

(b) **Notwithstanding section 237 of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the board shall, on the last day of each calendar month, transmit to the department the tax imposed by Article II of the "Tax Reform**

Code of 1971" and collected by the board during all fiscal months ending in that calendar month.

(c) The board shall, on the last day of each calendar month, transmit to the department the liquor tax collected by the board during all fiscal months ending in that calendar month.

(d) Notwithstanding subsection (c), if the board adds the liquor tax to the wholesale and retail price of the liquor, the board shall, on the last day of each calendar month, transmit to the department an amount equal to the quotient of the board's aggregate gross receipts from the sale of liquor during all fiscal months ending in that calendar month divided by six and five-ninths.

(e) The following words and phrases when used in this section shall have the meaning given to them in this subsection unless the context clearly indicates otherwise:

"Board." The Pennsylvania Liquor Control Board.

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

"Liquor." Any alcoholic, spirituous, vinous, fermented or other alcoholic beverage or combination of liquors and mixed liquor, a part of which is spirituous, vinous, fermented or other alcoholic, and all drinks or drinkable liquids, preparations or mixtures intended for beverage purposes, which contain more than one-half of one per cent of alcohol by volume, except alcohol, and malt or brewed beverages.

"Liquor tax." The tax imposed in accordance with the act of June 9, 1936 (1st Sp. Sess., P.L. 13, No.4), entitled "An act imposing an emergency State tax on liquor, as herein defined, sold by the Pennsylvania Liquor Control Board; providing for the collection and payment of such tax; and imposing duties upon the Department of Revenue and the Pennsylvania Liquor Control Board."

Section 5. The definitions of "holder" and "secretary" in section 1301.1 of the act, added December 9, 1982 (P.L.1057, No.248), are amended to read:

Section 1301.1. Definitions.--As used in this article, unless the context otherwise requires:

* * *

"Holder" shall include any person in possession of property subject to this article belonging to another, or who is a trustee in case of a trust, or is indebted to another on an obligation subject to this article or any financial institution which has paid amounts and sums to the [secretary] **State Treasurer** under subsection (c) of section 1301.13 of this article.

* * *

["Secretary" shall mean the Secretary of Revenue of the Commonwealth of Pennsylvania.]

* * *

Section 6. Sections 1301.3, 1301.4, 1301.5, 1301.6 and 1301.8 of the act, added December 9, 1982 (P.L.1057, No.248), are amended to read:

Section 1301.3. Property Held by Financial Institutions.--The following property held or owing by a financial institution is presumed abandoned and unclaimed:

1. Any demand, saving or matured time deposit in a financial institution, or any funds paid toward the purchase of shares or other interest in a savings association, savings and loan or building and loan association, excluding any charges that may lawfully be withheld, unless within the preceding [seven (7)] **five (5)** years the owner has:

(i) Increased the amount of the deposit, shares or claim, otherwise than by the crediting of accrued interest, or

decreased it, or presented to the holder evidence of the deposit, shares or claim; or

(ii) Corresponded in writing with the holder concerning the deposit, shares or claim; or

(iii) Otherwise indicated an interest in the deposit, shares or claim as evidenced by a writing on file with the holder; or

(iv) Received tax reports or regular statements of the deposits, shares or claim by certified mail or other method of communication that will provide the financial institution with a record that such report or statement was transmitted and received; or

(v) Owned other property held by the financial institution to which subclause (i), (ii), (iii) or (iv) applies.

2. A deposit under clause 1 shall include any interest or dividend which the financial institution would pay to the owner upon claim therefor. The charges which may be excluded hereunder shall not include any charge due to inactivity imposed, directly or indirectly, after December 31, 1981 unless there is a valid and enforceable written contract between the financial institution and the owner of the deposit pursuant to which the financial institution may impose said charge.

3. Any sum payable on checks or on written instruments including, but not limited to, drafts, money orders and travelers checks, on which a financial institution is directly liable, and (i) which have been outstanding for more than [seven (7)] **five (5)** years, or in the case of travelers checks, fifteen (15) years, from the date payable[,] or from the date of issuance if payable on demand; and (ii) the owner of which has not written to the financial institution concerning it, nor otherwise indicated an interest as evidenced by a writing on file with the financial institution.

4. Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository in the Commonwealth on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, if the same has not been claimed by the owner for more than [seven (7)] **five (5)** years from the date on which the rental period expired.

5. The following deposits described in clause 1 shall be excluded from the presumption of being abandoned and unclaimed only while the conditions described below are in effect:

(i) Deposits during any period when withdrawals may be made only upon an order of a court of competent jurisdiction.

(ii) Deposits established under 20 Pa.C.S. Ch. 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or similar law concerning transfers to minors while the custodianship has not been terminated.

(iii) Burial reserve accounts and similar deposits established under written agreements to provide for the funeral and/or burial expenses of a person while the person is still alive.

Section 1301.4. Property Held by Insurers.--(a) In the case of life insurance, the following property held or owing by an insurer is presumed abandoned and unclaimed:

1. Any moneys held or owing by an insurer as established by its records under any contract of annuity or policy of life insurance including premiums returnable or dividends payable, unclaimed and unpaid for more than [seven (7)] **five (5)** years after the moneys have or shall become due and payable under the provisions of such contract of annuity or policy of insurance. A life insurance policy not matured by actual proof of the death

of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding [seven (7)] **five (5)** years, (i) assigned, readjusted or paid premiums on the policy, or subjected the policy to loan, or (ii) corresponded in writing with the insurer concerning the policy.

2. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

3. Moneys otherwise payable according to the records of the insurer are deemed due and payable although the policy or contract has not been surrendered as required.

(b) In the case of insurance other than life insurance, the following property held or owing by an insurer is presumed abandoned and unclaimed:

1. Any moneys held or owing by an insurer as established by its records under any contract of insurance other than annuity or life insurance, including premiums or deposits returnable or dividends payable to policy or contract holders or other persons entitled thereto, unclaimed and unpaid for more than [seven (7)] **five (5)** years after the moneys have or shall become due and payable under the provisions of such contracts of insurance.

2. If a person other than the insured, the principal or the claimant is entitled to the funds and no address of such person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal or the claimant according to the records of the insurer.

Section 1301.5. Property Held by Utilities.--The following funds held or owing by any utility are presumed abandoned and unclaimed:

1. Any customer advance, toll, deposit or collateral security or any other property held by any utility if under the terms of an agreement the advance, toll, deposit, collateral security or other property is due to or demandable by the owner and has remained unclaimed for [seven (7)] **five (5)** years or more from the date when it first became due to or demandable by the owner under the agreement.

2. Any sum which a utility has been ordered to refund, less any lawful deductions, and which has remained unclaimed by the person appearing on the records of the utility entitled thereto for two (2) years or more after the date it became payable in accordance with the final order providing for the refund.

Section 1301.6. Property Held by Business Associations.--The following property held or owing by a business association is presumed abandoned and unclaimed:

1. The consideration paid for a gift certificate which has remained unredeemed for two (2) years or more after its redemption period has expired or for [seven (7)] **five (5)** years or more from the date of issuance if no redemption period is specified.

2. Any certificate of stock or participating right in a business association, for which a certificate has been issued or is issuable but has not been delivered, whenever the owner thereof has not claimed such property, or corresponded in writing with the business association concerning it, within [seven (7)] **five (5)** years after the date prescribed for delivery of the property to the owner.

3. Any sum due as a dividend, profit, distribution, payment or distributive share of principal held or owing by a business association, whenever the owner has not claimed such sum or corresponded in writing with the business association concerning it within [seven (7)] **five (5)** years after the date prescribed for payment or delivery.

4. Any sum due as principal or interest on the business association's bonds or debentures, or coupons attached thereto, whenever the owner has not claimed such sum or corresponded in writing with the business association concerning it within [seven (7)] **five (5)** years after the date prescribed for payment.

5. Any sum or certificate or participating right due by a cooperative to a participating patron, whenever the owner has not claimed such property, or corresponded with the cooperative concerning the same within [seven (7)] **five (5)** years after the date prescribed for payment or delivery.

Section 1301.8. Property Held by Fiduciaries.--The following property held by fiduciaries is presumed abandoned and unclaimed:

All property held in a fiduciary capacity for the benefit of another person, unless the owner within [seven (7)] **five (5)** years after it has or shall become payable or distributable has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property or otherwise indicated an interest therein as evidenced by a writing on file with the fiduciary.

Section 7. Section 1301.9 of the act, amended May 16, 1986 (P.L.197, No.60), is amended to read:

Section 1301.9. Property Held by Courts and Public Officers and Agencies.--The following property is presumed abandoned and unclaimed:

1. Except as provided in clause 2, all property held for the owner by any court, public corporation, public authority or instrumentality of the United States, the Commonwealth, or any other state, or by a public officer or political subdivision thereof, unclaimed by the owner for more than [seven (7)] **five (5)** years from the date it first became demandable or distributable.

2. Bicycles held for the owner by a municipality unclaimed by the owner for more than ninety (90) days from the date it first became demandable or distributable.

3. The bicycles held pursuant to clause 2 may be disposed of by the municipality at public auction at such time and place as may be designated by the municipality or the governing body may, by resolution, donate the bicycles to a charitable organization. Any proceeds from the sale of the bicycles shall be retained by the municipality and used for municipal purposes.

4. Bicycles held by or acquired by the Commonwealth for ninety (90) days may be disposed of at public auction at such time and place as may be designated by the [Secretary of Revenue] **State Treasurer**. Proceeds of such sale or sales shall be deposited in the General Fund.

5. All property held by or subject to the control of any court, public corporation, public authority or instrumentality

of the Commonwealth or by a public officer or political subdivision thereof, which is without a rightful or lawful owner, to the extent not otherwise provided for by law, held for more than one year.

Section 8. Section 1301.10 of the act, added December 9, 1982 (P.L.1057, No.248), is amended to read:

Section 1301.10. Miscellaneous Property Held for or Owing to Another.--The following property, held or owing to any owner, is presumed abandoned and unclaimed:

1. All property, not otherwise covered by this article, that is admitted in writing by the holder and adjudicated to be due, that is held or owing in the ordinary course of the holder's business, and that has remained unclaimed by the owner for more than [seven (7)] **five (5)** years after it became payable or distributable is presumed abandoned and unclaimed[.] **except for clause 2.**

2. **Wages or other compensation for personal services that have remained unclaimed by the owner for more than three (3) years after the wages or other compensation for personal services become payable or are distributed are presumed abandoned and unclaimed.**

Section 9. Section 1301.11 of the act, amended May 16, 1986 (P.L.197, No.60), December 12, 1994 (P.L.1015, No.138) and December 15, 1999 (P.L.942, No.66), is amended to read:

Section 1301.11. Report of Property Subject to Custody and Control of the Commonwealth under this Article.--(a) Every person holding property which became subject to custody and control of the Commonwealth under this article during the preceding year shall report to the [secretary] **State Treasurer** as hereinafter provided.

(b) The report shall be verified and shall include:

1. Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of [twenty-five dollars (\$25)] **fifty dollars (\$50)** or more;

2. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under [twenty-five dollars (\$25)] **fifty dollars (\$50)** each may be reported in the aggregate;

3. The date when the property became payable, demandable, returnable or the date upon which the property was declared or found to be without a rightful or lawful owner, and the date of the last transaction with the owner with respect to the property; and

4. Other information **consistent with law** which the [secretary] **State Treasurer** prescribes by [rules or] regulations as necessary for administration of this article.

(c) If the person holding property subject to custody and control of the Commonwealth under this article is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed on or before April 15 of the year following the year in which the property first became subject to custody and control of the Commonwealth under this article. The [secretary] **State Treasurer** may postpone for a period not exceeding six (6) months the reporting date upon written request by any person required to file a report.

(e) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer; **if made by a court, by an officer of the court; and if made by a public officer of the United States, of the Commonwealth of Pennsylvania or any political subdivisions thereof or of any other state or political subdivision thereof, by that public officer.**

(f) Subsequent to the filing of the reports required by this section, the State Treasurer shall compile a list of the abandoned and unclaimed property contained in the reports. The listing shall contain the names, [amount of value] **items of property** and last known addresses, if any, of the owners listed in the reports. [The listing shall not be available to any person for examination, inspection or copying prior to twenty-four (24) months after the reports have been filed with or payment or delivery of the property has been made to the State Treasurer. After the twenty-four-month period provided for in this section, the] **The State Treasurer shall, after the notification period provided for in section 1301.12,** make the listing available for examination, inspection or copying at fees to be determined by the State Treasurer.

(g) All agreements or powers of attorney to recover or collect abandoned and unclaimed property contained in the reports filed under this article [which are made within twenty-four (24) months after the date that the reports have been filed with the State Treasurer shall be void.

(h) All such agreements entered into after the twenty-four-month period] shall be valid and enforceable only if the agreements:

1. are in writing and duly signed and acknowledged by the owner;
2. clearly state the fee or compensation to be paid, which shall not exceed fifteen per centum of the value of the abandoned and unclaimed property;
3. disclose the nature and value of the property; and
4. disclose the name and address of the holder and, if known, whether the abandoned and unclaimed property has been paid or delivered to the State Treasurer.

(i) Subsection (g) shall not apply to any agreement or power of attorney entered into between the personal representative, guardian, trustee or other person in a representative capacity to the owner of the property in which such person has an interest for a fixed fee or hourly or daily rate not contingent upon the discovery of property or the value of property discovered: Provided, however, That any such agreement under this subsection for the purpose of evading the provisions of subsection (g) shall be void.

(j) Nothing in this section shall be construed to prevent an owner from asserting at any time that any agreement to locate or reveal abandoned and unclaimed property reported to the State Treasurer is based on an excessive or unjust consideration.

(k) To the maximum extent feasible, the State Treasurer shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the Commonwealth or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties hereunder.

Section 10. Section 1301.12 of the act, amended May 16, 1986 (P.L.197, No.60) and December 15, 1999 (P.L.942, No.66), is amended to read:

Section 1301.12. Notice and Publication of Lists of Property Subject to Custody and Control of the Commonwealth under this Article.--(a) Within [nine (9)] **twelve (12)** months from the filing of the report required by section 1301.11, the [secretary] **State Treasurer** shall cause notice to be published at least once [each week for two (2) successive weeks] in an English language newspaper of general circulation in the county in which the owner of the property had a last known address appearing from the verified report filed by the holder or, if there is no name or address or the owner is not a Pennsylvania resident, then at least one time in the Pennsylvania Bulletin.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned and Unclaimed Property," and shall contain:

1. The names and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified and the name and address of the holder;

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the holder;

3. A statement that a proof of claim should be presented by the owner to the holder within three (3) months from the date of the [second] published notice, and that thereafter claims should be filed with the [secretary] **State Treasurer**.

(c) The [secretary] **State Treasurer** is not required to publish in such notice any item of less than one hundred dollars (\$100) unless [he] **the State Treasurer** deems such publication to be in the public interest.

(d) Within [six (6)] **nine (9)** months from the receipt of the report required by section 1301.11, the [secretary] **State Treasurer** shall mail a notice to each person having an address listed who appears to be entitled to property of the value of one hundred dollars (\$100) or more subject to custody and control of the Commonwealth under this article. The mailed notice shall contain:

1. A statement that, according to a report filed with the [secretary] **State Treasurer**, property is being held to which the addressee appears entitled;

2. The name and address of the holder of the property and any necessary information regarding changes of name and address of the holder;

3. A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, claims should thereafter be filed with the [secretary] **State Treasurer**.

(e) This section is not applicable to sums payable on travelers checks and money orders or to property reported to be without a rightful or lawful owner.

Section 11. Section 1301.13 of the act, amended May 16, 1986 (P.L.197, No.60), is amended to read:

Section 1301.13. Payment or Delivery.--(a) Every person who holds property subject to the custody and control of the Commonwealth shall, [within sixty (60) days after receipt of written demand from the secretary and] after compliance with section [1301.12] **1301.11**, where required, **and on or before April 15 of the year following the year in which the property first became subject to custody and control of the Commonwealth under this article**, pay or deliver to the [secretary] **State Treasurer** all property subject to custody and control of the Commonwealth under this article, except that, if the owner

establishes his right to receive the property to the satisfaction of the holder, or if it appears that for some other reason the property is not then subject to custody and control of the Commonwealth under this article, the holder need not pay or deliver the property to the [secretary] **State Treasurer**, but in lieu thereof shall file a verified written explanation of the proof of claim or as to the reason the property is not subject to custody and control of the Commonwealth.

(b) A receipt shall be issued, on behalf of the Commonwealth, for all property received under this article.

(c) Notwithstanding subsection (a) of this section, in the case of the deposits and the sums payable under clauses 1 and 3 of section 1301.3 the amount of such deposits and such sums shall be paid to the [secretary] **State Treasurer** on or before the final date for filing the report required by section 1301.11.

(d) Any person who holds property which may become subject to the custody and control of the Commonwealth pursuant to this act may, with the consent of the [secretary] **State Treasurer**, report and deliver such property prior to the expiration of any holding period specified for such reporting. Any person who pays or delivers property prior to the expiration of such holding period shall be relieved of further liability pursuant to section 1301.14. Property thus reported may be disposed of pursuant to [sections 1301.12 and] **section** 1301.17, but in no event shall the period for filing of claims be diminished by such early delivery or disposition.

Section 12. Sections 1301.14, 1301.15 and 1301.16 of the act, added December 9, 1982 (P.L.1057, No.248), are amended to read:

Section 1301.14. Relief from Liability by Payment or Delivery.--Upon the payment or delivery of the property to the [secretary] **State Treasurer**, the Commonwealth shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers property to the [secretary] **State Treasurer** under this article is relieved of all liability with respect to the safekeeping of such property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to such property. Any holder who has paid moneys to the [secretary] **State Treasurer** pursuant to this article may make payment to any person appearing to such holder to be entitled thereto. In the case of deposits and sums paid to the [secretary] **State Treasurer** under subsection (c) of section 1301.13, financial institutions shall make payment to any person appearing to such financial institution to be entitled thereto. Upon proof of such payment by a holder and proof that the payee was entitled thereto, the [secretary] **State Treasurer** shall forthwith reimburse the holder for such payment together with interest from the date of receipt of such proofs by the [secretary] **State Treasurer** to a date within thirty (30) days of the date of mailing of the reimbursement. Interest under this section shall be at the rate prevailing for tax over payments on the date of receipt of the proofs by the [secretary] **State Treasurer** as provided for in section 806 of this act.

Section 1301.15. Income Accruing After Payment or Delivery.--When property is paid or delivered to the [secretary] **State Treasurer** under this article, the owner is entitled to receive income or other increments actually received by the [secretary] **State Treasurer**.

Section 1301.16. Periods of Limitation.--Except as hereinbelow set forth, the expiration of any period of time

specified by statute or court order, during which an action may be commenced or maintained, or could have been commenced or maintained, by the owner against the holder of the property, shall not prevent such property from being subject to the custody and control of the Commonwealth under this article, nor affect the duty to file a report or to pay or deliver the property to the [secretary] **State Treasurer**, as required by this article, nor bar any action by the [secretary] **State Treasurer** under this article, provided that:

1. If any holder required to file a report under any act in effect prior to the effective date of this article, or under this article, has filed or files a report, no action shall be commenced or maintained against such holder unless it has been or is commenced within fifteen (15) years after such report has been or is filed.

2. If any holder was not required to file a report under any act in effect prior to the effective date hereof, no action shall be commenced or maintained unless it has been or is commenced within fifteen (15) years after the property first became escheatable or payable into the State Treasury without escheat.

Section 13. Section 1301.17 of the act, amended May 16, 1986 (P.L.197, No.60), is amended to read:

Section 1301.17. Disposition of Property.--(a) Within a reasonable time after delivery to [him] **the State Treasurer** of any property under this article, the [secretary] **State Treasurer** may sell it to the highest bidder at public sale in whatever city in the Commonwealth affords, in [his] **the State Treasurer's** judgment, the most favorable market for the property involved. The [secretary] **State Treasurer** may decline the highest bid or reoffer the property for sale if [he] **the State Treasurer** considers the price bid insufficient. [He] **The State Treasurer** need not offer any property for sale, if, in [his] **the State Treasurer's** opinion, the probable cost of sale exceeds the value of the property.

(b) If the property is of a type customarily sold on a recognized market or of a type which is subjected to widely distributed standard price quotations, the [secretary] **State Treasurer** may sell the property without notice by publication or otherwise. **The language provided in this section grants to the State Treasurer express authority to sell any property, including, but not limited to, stocks, bonds, notes, bills and all other public or private securities.**

(c) Property reported or delivered to the custody or control of the [secretary] **State Treasurer** pursuant to this act may be donated to the use of the Commonwealth or any of its political subdivisions or otherwise consumed or discarded, at the discretion of the [secretary] **State Treasurer** where, in the opinion of the [secretary] **State Treasurer**, the costs associated with delivery, notice or sale exceed the value of the property. Property which is refused or is to be donated to the use of a political subdivision shall first be offered to the political subdivision which holds the property. A donee or purchaser at any sale conducted by the [secretary] **State Treasurer** pursuant to this article shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The [secretary] **State Treasurer** shall execute all documents necessary to complete the transfer of title.

(d) **The State Treasurer shall be responsible to an owner only for the amount actually received by the State Treasurer**

upon the sale of any property pursuant to subsections (a), (b) and (c).

(e) **The State Treasurer shall be required to sell all stocks, bonds and other negotiable financial instruments upon receipt of such items. The State Treasurer shall not be held liable for any loss or gain in the value that the financial instrument would have obtained had the financial instrument been held instead of being sold.**

Section 14. Sections 1301.18, 1301.19, 1301.20 and 1301.21, added December 9, 1982 (P.L.1057, No.248), are amended to read:

Section 1301.18. Deposit of Funds.--(a) All funds received under this article, including the proceeds from the sale of property under section 1301.17, shall forthwith be deposited by the [secretary] **State Treasurer** in the General Fund of the Commonwealth[,] except that the [secretary] **State Treasurer** shall retain in a separate trust fund an amount not exceeding twenty-five thousand dollars (\$25,000) plus twenty per centum of deposits and sums paid to the [secretary] **State Treasurer** under subsection (c) of section 1301.13 during the preceding twelve (12) months from which [he] **the State Treasurer** shall make reimbursements under section 1301.14 and prompt payment of claims duly allowed under section 1301.19. Before making the deposit [he], **the State Treasurer** shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of an insurer, its number, the name of the insurer and the amount due. The record with respect to any specific claim shall be available to the claimant at all regular business hours.

(b) [Before making any deposit to the credit of the General Fund, the secretary may deduct:

(i) Reasonable costs in connection with sale of the property,

(ii) Reasonable costs of mailing and publication in connection with any property, and

(iii) Reasonable service charges.] **The General Assembly shall annually appropriate to the State Treasurer such funds as it deems necessary and appropriate to administer this article.**

Section 1301.19. Claim for Property Paid or Delivered.--Any person claiming an interest in any property paid or delivered to the Commonwealth under this article may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the [secretary] **State Treasurer**.

Section 1301.20. Determination of Claims.--(a) The [secretary] **State Treasurer** shall consider any claim filed under this article and may hold a hearing and receive evidence concerning it. If a hearing is held, [he] **the State Treasurer** shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by [him] **the State Treasurer** and the reasons for [his] **the State Treasurer's** decision. The decision shall be a public record.

(b) If the claim is allowed, the [secretary] **State Treasurer** shall make payment forthwith.

Section 1301.21. Judicial Action upon Determinations.--Any person aggrieved by a decision of the [secretary] **State Treasurer**, or as to whose claim the [secretary] **State Treasurer** has failed to act within ninety (90) days after the filing of the claim, may commence an action in the Commonwealth Court to establish his claim. The proceeding shall be brought within

thirty (30) days after the decision of the [secretary] **State Treasurer** or within one hundred twenty (120) days from the filing of the claim if the [secretary] **State Treasurer** fails to act. The action shall be tried de novo without a jury.

Section 15. Section 1301.22 of the act, amended May 16, 1986 (P.L.197, No.60), is amended to read:

Section 1301.22. Election to Take Payment or Delivery.--The [secretary] **State Treasurer** may decline to receive any item of property reported, in which event the holder thereof shall be discharged of any liability to the Commonwealth with respect thereto. Unless the holder of the property is notified to the contrary within [one hundred twenty (120)] **ninety (90)** days after filing the report required under section 1301.11, the [secretary] **State Treasurer** shall be deemed to have elected to receive the custody of the property.

Section 16. Sections 1301.23, 1301.24, 1301.25, 1301.26 and 1301.28 of the act, added December 9, 1982 (P.L.1057, No.248), are amended to read:

Section 1301.23. Examination of Records.--(a) If the [secretary] **State Treasurer** has reason to believe that any holder has failed to report property that should have been reported pursuant to this article, the [secretary] **State Treasurer** may, at reasonable times and upon reasonable notice, examine the records of such person with respect to such property.

(b) **If a holder fails after the effective date of this subsection to maintain the records required or the records of the holder available for the periods subject to this act are insufficient to permit the preparation of a report, the State Treasurer may require the holder to report and pay the amount the State Treasurer may reasonably estimate on the basis of any available records of the holder or on the basis of any other reasonable method of estimation that the State Treasurer may select.**

Section 1301.24. Proceeding to Compel Reporting or Delivery.--(a) If any person refuses to report **or to pay** or deliver property to the [secretary] **State Treasurer** as required under this article, **including property subject to written demands pursuant to section 1301.3 and the amount required to be paid pursuant to section 1301.23(b)**, the Commonwealth shall bring an action in a court of appropriate jurisdiction to enforce reporting or delivery. In any such action the Pennsylvania Rules of Civil Procedure shall apply, including without limitation those pertaining to discovery. **The State Treasurer bears the burden of proof regarding the estimation of the value of property pursuant to this article.**

(b) If any holder fails, without proper cause, (i) to report or (ii) to pay and deliver to the [secretary] **State Treasurer** property subject to custody and control of the Commonwealth under this article, such holder shall be liable to pay to the [secretary] **State Treasurer** interest at the rate of twelve per centum per annum from the time such report should have been filed, to be computed on the value of such property as established in an action by the [secretary] **State Treasurer** under subsection (a), and such interest shall be recoverable in the same action.

Section 1301.25. Penalties.--(a) Any person who, without proper cause, fails to render any report or perform other duties required under this article, shall, upon conviction in a summary proceeding be sentenced to pay a fine of [ten dollars (\$10)] **one hundred dollars (\$100)** for each day such report is withheld,

but not more than [one thousand dollars (\$1,000)] **ten thousand dollars (\$10,000)**.

(b) Any person who, without proper cause, refuses to pay or deliver property to the [secretary] **State Treasurer** as required under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than [one hundred dollars (\$100)] **one thousand dollars (\$1,000)** nor more than [one thousand dollars (\$1,000)] **ten thousand dollars (\$10,000)**, or imprisonment for not more than [twelve (12)] **twenty-four (24)** months, or both.

(c) Upon good cause shown, the **State Treasurer** may waive, in whole or in part, interest and penalties under subsections (a) and (b) and shall waive penalties if the holder acted in good faith and without negligence.

Section 1301.26. [Rules and] Regulations.--(a) The [secretary] **State Treasurer** is hereby authorized to make necessary [rules and] regulations to carry out the provisions of this article.

(b) Within twelve (12) months of the effective date of this subsection, the **State Treasurer** shall promulgate regulations regarding estimation calculations. Pending the promulgation of the regulations and prior to issuing any demand pursuant to section 1301.24 that incorporates any estimate of amounts due following the **State Treasurer's** examination of a holder's records, the **State Treasurer** shall promulgate a statement of policy regarding estimation calculations. Estimation procedures set forth by the statement of policy shall conform to generally accepted auditing standards. The statement of policy shall expire upon promulgation of final regulations or one year from the effective date of this subsection, whichever occurs first.

[Section 1301.28. Exclusions.--The provisions of this article shall not apply to nonprofit hospitalization corporations or nonprofit medical service corporations.]

Section 17. The act is amended by adding a section to read:

Section 1301.28a. Interdepartmental Cooperation.--(a) The head of any department, board, commission, agency or instrumentality of the Commonwealth shall, unless otherwise prohibited by law, disclose to the **State Treasurer** the last known address of individuals listed in the **Treasury Department's** records as owners of unclaimed property.

(b) Notwithstanding subsection (a), section 731 of this act and sections 274, 353(f) and 408(b) of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the **Department of Revenue** shall disclose to the **State Treasurer** the last known address of individuals listed in the **Treasury Department's** records as owners of unclaimed property.

(c) Upon receipt of the information referred to in subsections (a) and (b), the **Treasury Department** shall keep the information confidential and shall use it solely to assist in the process of returning unclaimed property to its rightful owner.

Section 18. The act is amended by adding an article to read:

**ARTICLE XVII-A
SPECIAL FUNDS
SUBARTICLE A**

BUDGET STABILIZATION RESERVE FUND

Section 1701-A. Establishment of Budget Stabilization Reserve Fund.

There is established a special fund to be known as the **Budget Stabilization Reserve Fund**.

Section 1702-A. Funding.

(a) Intent.--It is hereby declared as the intent and goal of the General Assembly to create a stabilization reserve in an eventual amount of 6% of the revenues of the General Fund of the Commonwealth.

(b) Transfer of portion of surplus.--

(1) Except as may be provided in paragraph (2), for the fiscal year beginning July 1, 2002, and in any fiscal year thereafter in which the Secretary of the Budget certifies that there is a surplus in the General Fund, 25% of the surplus shall be deposited by the end of the next succeeding quarter into the Budget Stabilization Reserve Fund.

(2) If, at the end of any fiscal year, the ending balance of the Budget Stabilization Reserve Fund equals or exceeds 6% of the actual General Fund revenues received for the fiscal year in which the surplus occurs, 10% of the surplus shall be deposited by the end of the next succeeding quarter into the Budget Reserve Stabilization Fund.

(c) Appropriated funds.--The General Assembly may at any time provide additional amounts from any funds available to this Commonwealth as an appropriation to the Budget Stabilization Reserve Fund.

Section 1703-A. Disposition of Budget Stabilization Reserve Fund.

(a) Purpose.--It is the intent of the General Assembly that:

(1) Money from the Budget Stabilization Reserve Fund be appropriated only when emergencies involving the health, safety or welfare of the residents of this Commonwealth or downturns in the economy resulting in significant unanticipated revenue shortfalls cannot be dealt with through the normal budget process.

(2) Money in the Budget Stabilization Reserve Fund shall not be used to begin new programs but to provide for the continuation of vital public programs in danger of being eliminated or severely reduced due to financial problems resulting from the economy.

(b) Appropriation.--Whenever the Governor determines that an appropriation from the Budget Stabilization Reserve Fund is necessary to meet emergencies involving the health, safety or welfare of the residents of this Commonwealth or to counterbalance downturns of the economy which result in significant unanticipated revenue shortfalls, the Governor shall present a request for an appropriation along with the specifics of the proposal and suggested ancillary and substantive legislation as may be necessary to the chairman of Appropriations Committee of the Senate and the chairman of the Appropriations Committee of the House of Representatives. The General Assembly may then through approval of a separate appropriation bill by a vote of two-thirds of the members elected to the Senate and the House of Representatives appropriate money from the Budget Stabilization Reserve Fund to meet the needs identified in the Governor's proposal. Any money appropriated according to this section which has then lapsed shall be returned to the Budget Stabilization Reserve Fund.

SUBARTICLE B

UNDERGROUND STORAGE TANK INDEMNIFICATION FUND

Section 1711-A. Transfer.

Notwithstanding section 704 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, the Secretary of the Budget shall, by October 15, 2002,

transfer the sum of \$100,000,000 from the Underground Storage Tank Indemnification Fund to the General Fund. The sum transferred under this section shall be repaid to the Underground Storage Tank Indemnification Fund over a ten-year period commencing July 1, 2004, plus interest. An annual payment amount shall be included in the budget submission required pursuant to section 613 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

SUBARTICLE C

TOBACCO SETTLEMENT FUND

Section 1721-A. Deposits.

(a) Funds.--Notwithstanding sections 303(b) and 306(c) of the act of June 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement Act, the following shall apply:

(1) For fiscal year 2002-2003, funds derived pursuant to section 303(b)(3) of the Tobacco Settlement Act shall be deposited into the Tobacco Settlement Fund.

(2) Funds lapsed pursuant to section 306(c) in fiscal years 2001-2002 and 2002-2003 shall be deposited into the Tobacco Settlement Fund.

(b) Appropriation.--Money deposited into the Tobacco Settlement Fund under subsection (a) shall be appropriated for health-related purposes in the General Appropriation Act for the fiscal year commencing July 1, 2002.

Section 1722-A. Expiration.

This subarticle shall expire July 1, 2003.

Section 19. (19 expired December 31, 2003. See Act 91 of 2002.)

Section 20. The act of July 1, 1985 (P.L.120, No.32), entitled "An act creating a special fund in the Treasury Department for use in attracting major industry into this Commonwealth; establishing a procedure for the appropriation and use of moneys in the fund; establishing the Tax Stabilization Reserve Fund; and providing for expenditures from such account," is repealed.

Section 21. This act shall take effect as follows:

(1) The following provisions shall take effect July 1, 2002, or immediately, whichever is later:

- (i) The amendments to Article XIII.1 of the act.
- (ii) Section 19 of this act.

(2) The following provisions shall take effect July 15, 2002, or immediately, whichever is later:

(i) The amendments to Article II-A of the act. This subparagraph includes the repeal of section 201-A of the act.

(ii) The addition of Subarticle A of Article XVII-A of the act.

(3) The addition of section 1210.1 of the act shall take effect December 31, 2002.

(4) The remainder of this act shall take effect immediately.

APPROVED--The 29th day of June, A. D. 2002.

MARK S. SCHWEIKER