



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 40
Issue 2 *Dickinson Law Review - Volume 40,*
1935-1936

1-1-1936

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Recommended Citation

L. F. Hess, *Pennsylvania's New State Personal Property Tax Act*, 40 DICK. L. REV. 71 (1936).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol40/iss2/1>

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Dickinson Law Review

VOLUME XL

JANUARY, 1936

NUMBER 2

PENNSYLVANIA'S NEW STATE PERSONAL PROPERTY TAX ACT

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On June 22, 1935, Act No. 182 known as the State Personal Property Tax Act, became a law of Pennsylvania. Under its provisions certain defined classes of personal property became subject to a one mill property tax to be used for state purposes, when held by individual residents, partnerships or trustees of and in Pennsylvania. The act contemplates the imposition of the tax on all assets within the various taxable classes returned by the holder as of a listing date to be fixed by the Department between January 1 and January 15 of each year. This return is to be made out by the holder of the assets and returned to the Department of Revenue on or before the 15th day of March in the years 1936 and 1937. The value of the various assets is to be listed in the aggregate and is to be the total of the fair market value of each asset as of the listing date.

All recordable assets, such as mortgages and judgments, are required to be forwarded to the Department by way of a report by the prothonotaries, registers of wills, clerks of the court and recorders of deeds of the various counties of the Commonwealth each of whom must keep a daily record and make a return thereof monthly to the Department. In addition, each executor, administrator or trustee of an estate is required to file a list of the taxable assets, under affidavit, in duplicate, with the register of wills who in turn forwards one copy to the Department of Revenue so that a complete check of the taxable assets of record can be had by the Division of Personal Property in the Department of Revenue.

The Act of 1913, P. L. 507 required the prothonotaries, registers of wills, clerks of the court and recorders of deeds to keep a like daily record which they were to file with the Board of Revision of Taxes in each county of the Common-

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wealth. This requirement of the Act of 1913 has been very largely disregarded with the result that many of the taxable mortgages and judgments have escaped taxation.

The act is essentially a tax on intangibles. The only tangible assets required to be listed are, "All stages, omnibuses, hacks, cabs and other vehicles used in transporting passengers for hire, except steam and street passenger railway cars." Not all of the intangible assets owned by an individual resident are made taxable by this act. The classes of taxable assets are defined and fall in eleven divisions which are as follows:

1. Mortgages—irrespective of the location of the property on which the mortgage is secured.
2. Promissory notes or bonds.
3. Judgments.
4. Public loans or bonds issued by any state or territory, the District of Columbia, any foreign country or any county, city, borough, township, school district or incorporated district except those issued by the United States or the Commonwealth of Pennsylvania.
5. Bonds, notes or any other form of certificates or evidences of indebtedness including car trust securities.
6. Bonds or other evidences of indebtedness issued by corporations not for profit.
7. Shares of stock of any corporation, association, company or limited partnership except national banks formed under the laws of the United States or of any state or any foreign government.
8. Articles of agreement and accounts bearing interest.
9. Annuities yielding over \$200.
10. Stages, omnibuses, hacks, cabs and other vehicles used in transporting passengers for hire, except steam and street passenger railway cars.
11. All other forms of securities or evidences of debt not shown above.

The tax imposed on these assets is imposed either by Section 3, the personal property section, or Section 19, the corporate loans section of the Act. These two subdivisions of personal property are basic and run throughout the entire system of taxation of personal property in Pennsylvania. The corporate personal property is taxed by one method, and individual personal property by another.

Section 19 specifically imposes a tax on those classes of obligations issued by, assumed by, or the interest on which is paid by corporations either incorporated under Pennsylvania law or incorporated under the laws of other sovereignties and registered and doing business in the State of Pennsylvania. The tax imposed

is by way of the corporate loans tax. The corporate loans tax under this section of the statute is a tax that is imposed by way of a report filed by the treasurer of the corporation who is required to withhold the tax from the interest paid to the owner of the obligation. The tax so withheld in one year is paid to the Commonwealth by way of a report filed by the corporation in the succeeding year.

By a provision in Section 19 of the Act the distinction between the classes made taxable for personal property tax and those made taxable by a corporate loans tax is clearly defined. The language of Section 19 of the Act is as follows:

"It is the intention of this Act that all scrip, bonds, certificates and evidences of indebtedness made taxable under this section, are not taxable under the third section of this act and that only such scrip, bonds, certificates and evidences of indebtedness which cannot be made taxable under this section are to be taxed under the third section of this act."

The 19th Section of the Act of June 22, 1935 provides exemption from taxation for all obligations, mortgages, etc. which may be owned by corporations reporting to the state and paying a capital stock tax thereon. It provides for exemption of building and loan associations and savings institutions having no capital stock and extends the exempting provisions to fire companies, firemen's relief associations, life or fire insurance corporations having no capital stock, secret and beneficial societies, labor unions and labor relief associations and all beneficial organizations paying sick or death benefits.

It also imposes a tax on all scrip, bonds, certificates and evidences of indebtedness issued, assumed or on which interest shall be paid by any and every private corporation incorporated or created under the laws of this Commonwealth or the laws of any other sovereignty and doing business in this Commonwealth.

It was the intent of the Legislature that all such corporations should return the tax to the Commonwealth by way of a corporate loans tax.

The Supreme Court, however, held that where a treasurer had neither his official nor his personal residence within the confines of the state that he was without the jurisdiction of the Commonwealth and that the duty to withhold the tax could not be imposed upon him.¹

The provision of Section 19 that only such obligations as were not made taxable by that section could be made taxable by Section 3 of the Act prevents the collection of the personal property tax on obligations of such foreign corporations as are doing business within this Commonwealth but whose treasurer resides beyond its confines. Millions of dollars of such obligations escape taxation completely because it is not the duty of the holder of the obligation to make

¹New York, *L. E. & W. R.R. Co. v. Pa.*, 153 U. S. 628, 14 Sup. Ct. 952 (1894). See *Comm. v. Sun Oil Co.*, 294 Pa. 99, 103, 104, 105 (1928).

such return and the treasurer whose duty it would have been to collect the tax is beyond the jurisdiction of this Commonwealth.

The Supreme Court of the State has also decided that since the capital stock tax is a tax on property that any person holding shares of stock of a corporation which has paid a capital stock tax is under no duty to make a return since the tax has once been paid.²

The provision of Section 3 of the Act with respect to the shares of stock of various corporations is as follows:

"All shares of stock in any bank, corporation, association, company or limited partnership * * * * Except shares of stock in any bank, corporation or limited partnership that may be liable to a tax on its shares or its capital stock for state purposes under the laws of this Commonwealth or relieved from the payment of tax on its shares or capital stock for state purposes by the laws of the Commonwealth, are made taxable annually for state purposes."

It is to be noted that the exception extends to "shares of stock in any bank, corporation or limited partnership that may be liable to a tax on its shares"; hence where a foreign corporation registers and does business in the State of Pennsylvania it may or may not be liable to a capital stock tax on its shares depending entirely on whether it has tangible property located within the state. If it has tangible property located in the state on which a tax is properly levied, then its shares are exempt from all taxation in the hands of the individual holder.³

Justice Kephart in a recent case very clearly set forth the principles of law in this situation.⁴

"A corporation becomes liable for a capital stock tax when its stock has value through its assets to make it liable; it is on that value the tax is computed for purposes of capital stock taxation and if the corporation in question is doing business here with no property or capital located or used in the Commonwealth assessable for state purposes its stock has no value upon which a capital tax may be based." "Registration in the nature of a license or a right to do business has no taxable value; nonregistration simply renders a foreign corporation's acts unconstitutional; and registration, without more, does not cause the corporation to become liable for a state tax * * * * Acts in conformity to and furtherance of the sole business purpose of a going concern undoubtedly represents "doing business"; but such acts alone do not constitute "doing business in and liable to taxation."

²Dupuy v. Johns, 261 Pa. 40 (1918). See *Comm. v. Standard Oil Co.*, 101 Pa. 119, 148 (1882).

³Dupuy v. Johns, 261 Pa. 40 (1918).

⁴Callery's Appeal, 272 Pa. 255, at 267 (1922).

The act recognizes a distinction between doing business that requires registration to bring a company within reach of legal procedure or that will require filing a loan report, and "doing business in and liable to taxation."⁵

The Personal Property Section of the Act of 1935 not only is applicable to taxable assets held, owned or possessed by an individual resident of Pennsylvania in his own right but it extends also to such obligations as he may hold in trust either as active trustee or as agent, attorney in fact or in any other manner for the use, benefit and behoof of any other person. The trustee makes his return the same as though the assets were his own and pays the tax thereon deducting the tax so paid from the interest or income paid over to the beneficiary.

This provision is extended also to all corporations, joint stock companies, limited partnerships or banks created under the laws of the Commonwealth of Pennsylvania or any other sovereignty and liable to taxation within this Commonwealth by this provision,

"and provided further, that corporations, limited partnerships, etc. liable to tax on capital stock for such purposes, shall not be required to make any report or pay any further tax under this section on the mortgages, bonds and other securities owned by them in their own right; but corporations, limited partnerships and joint stock associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals."

It is apparent therefore that when a corporation holds title to any mortgage or judgment and has assigned or sold beneficial interests therein to any other individual that the corporation holding the record title holds it in trust and must pay the tax for the parties to whom it has sold the beneficial interests.⁶

If such mortgage be given by a corporation to a corporation, bank or trust company and such owning corporation, assigns an interest therein to an individual, the tax is collected on the mortgage so assigned, by way of withholding from the interest paid, the amount of the tax, by the corporate treasurer of the first company who returns it to the Commonwealth as a corporate loans tax.

Neither is it necessary that the trust be active. If the mortgages are held or possessed by a company in some ("any other") capacity or manner for the use, benefit or advantage of another than the whole body of the stockholders of the holding company in remainder, they are taxable in its hands.⁷

If the mortgages are individual mortgages, it makes no difference where the property on which it is a lien is located, so long as the title is held in trust by a cor-

⁵Comm. v. Wilkes-Barre and Hazelton R.R., 251 Pa. 6 (1915).

⁶Cumberland County v. Lemoyne Trust Co., 318 Pa. 85 (1935).

⁷Cumberland County v. Lemoyne Trust Co., 318 Pa. 85, 95, 96 (1935).

poration organized under the laws of Pennsylvania for it is taxable at the residence or domicile of the trustee; and this is true even where the party for whose benefit such mortgage is held resides outside the Commonwealth.⁸

This is an act taxing only certain intangibles; many are excluded. Care must be observed in distinguishing between those made taxable by Section 3, and those made taxable by Section 19. The intention of the Legislature is obscured by involved and ancient phraseology, and while it is assumed that "through all their various forms, the predominating policy runs to cause the citizen so investing capital to bear a fair share of the cost of maintaining the government yet he who seeks to be excused must bring himself within the class of exempted persons."⁹

What is a fair share of the burden of government is a question for the Legislature. Students of taxation, however, cannot help but be impressed with the fact that the rate of the levy on intangibles formerly was but four mills, while the levy on real estate ranges from 10 mills on the dollar to 82 mills on the dollar. This Act increased the rate to five mills on the dollar but did not affect the levy on real estate. The difference in the rates has been slightly lessened.

If the expense of Government is justified only by the protection it affords to people and property, it would seem the Legislature in passing this Act has taken a step in the right direction.

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⁸*Guthrie v. Pittsburgh, Cincinnati and St. Louis R.R.*, 158 Pa. 433 (1893).

⁹*Callery's Appeal*, 272 Pa. 255 at 272 (1922).