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TIMELINESS OF SETTLEMENT OF CORPORATION TAXES BY THE COMMONWEALTH OF PENNSYLVANIA

SCOPE

The Commonwealth of Pennsylvania settles a tax return by notifying the taxpayer that the return is accepted as filed or as corrected with taxpayer having the right to appeal.¹ Statutes² provide that settlement of corporation taxes must be made by the Commonwealth within one year "as far as possible." This language has been the subject of litigation to determine the Commonwealth's requirement to settle within a one year period.

Three Pennsylvania Supreme Court decisions³ have dealt di-

1. For a discussion of the settlement procedure see text accompanying notes 32-37 *infra*.

2. PA. STAT. ANN. tit. 72, § 7420h(2) (1964), on settlement of corporate net income taxes states:

All taxes due under this act shall be settled by the department, and such settlement shall be subject to audit and approved by the Department of the Auditor General, and shall, *so far as possible*, be made so that notice thereof may reach the taxpayer before the end of a year after the tax report was required to be made. (emphasis added).

PA. STAT. ANN. tit. 72, § 801(c) (1949), on settlement of capital stock tax states:

All such settlements shall, *as far as possible*, be so made that notice thereof may *reach the taxpayer before the end of the year* succeeding the year for which the tax or bonus report or return was made or ought to have been made (emphasis added).

3. Commonwealth v. Western Md. Ry., 435 Pa. 525, 257 A.2d 530 (1969); Commonwealth v. Safe Harbor Water Power Corp., 423 Pa. 101, 223 A.2d 223, *aff'g on reargument*, 419 Pa. 497, 223 A.2d 223 (1966); Com-

rectly with the question of timeliness of settlement and have limited the Commonwealth in justifying lateness of settlement. In *Commonwealth v. Allied Building Credits, Inc.*⁴ the court held that the burden was on the Commonwealth to show a "reasonable" excuse for the delay. This rule was followed by the Dauphin County Court of Common Pleas⁵ in six cases.⁶ Ten years later, *Commonwealth v. Safe Harbor Water Power Corp.*⁷ held that generally the only valid justification of a delay is one that originates with the taxpayer.⁸ Recently, *Commonwealth v. Western Maryland Ry.*⁹ although it followed *Safe Harbor*, implied that the Commonwealth would be justified in a delay if it was unable to act or under a disability which prevented it from settling on a timely basis.

This Comment will analyze the judicial interpretation of the tax settlement statutes, discuss their effect on the Commonwealth and the taxpayer, and propose methods for stabilizing this area of the law.

THE REASONABLE EXCUSE RULE

The reasonable excuse rule was developed in *Commonwealth v. Allied Building Credits, Inc.*¹⁰ The conflict concerning timeliness of tax settlement was caused by the words "as far as possible" in the statute. On one extreme, if the words were merely descriptive, the Commonwealth would have a mandatory settlement time of one year. The opposite interpretation could give the Commonwealth an unlimited time for settlement.

monwealth v. Allied Bldg. Credits, Inc., 385 Pa. 370, 123 A.2d 686 (1956).

4. *Commonwealth v. Allied Bldg. Credits, Inc.*, 385 Pa. 370, 123 A.2d 686 (1956).

5. Claims for refunds are appealed from the Board of Finance and Revenue to the Court of Common Pleas of Dauphin County. PA. STAT. ANN. tit. 72, § 504 (Supp. 1969).

6. *Commonwealth v. Tonopah Mining Co.*, 83 Dauph. 279 (C.P. Pa. 1965); *Commonwealth v. Pennsylvania Mfr.'s Ass'n. Cas. Ins. Co.*, 76 Dauph. 275 (C.P. Pa. 1960), *exceptions on other grounds overruled*, 78 Dauph. 28 (C.P. Pa. 1961), *modified on other grounds*, 410 Pa. 207, 188 A.2d 729 (1963); *Commonwealth v. Anndale Co.*, 75 Dauph. 250 (C.P. Pa. 1960); *Commonwealth v. Dresser Indus., Inc.*, 75 Dauph. 106 (C.P. Pa. 1960); *Commonwealth v. Lehval Indus., Inc.*, 75 Dauph. 254 (C.P. Pa. 1959); *Commonwealth v. Fruehauf Trailer Co.*, 71 Dauph. 7 (C.P. Pa. 1957).

7. *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223, *aff'g on reargument*, 419 Pa. 497, 223 A.2d 223 (1966).

8. 423 Pa. at 105, 223 A.2d at 226.

9. *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

10. 385 Pa. 370, 123 A.2d 686 (1956).

The *Allied* court was required by the Statutory Construction Act to “. . . ascertain and effectuate the intention of the legislature. . . .”¹¹ It was guided by certain statutory presumptions.¹² The court relied upon two such presumptions: (1) “That the legislature does not intend a result that is absurd, impossible of execution or unreasonable,”¹³ and (2) “That the legislature intends the entire statute to be effective and certain.”¹⁴ Since the one year settlement period¹⁵ plus the two year statutory resettlement period¹⁶ added together equal the three year statutory record keeping period,¹⁷ the court, to give effect to the overall statute, held that the one year settlement period must be strictly followed. If the settlement period is unlimited, then the statutorily required period for keeping records would not have significance.¹⁸ The statute should also be strictly construed under the Statutory Construction Act.¹⁹ The court cited cases dealing with statutory construction and stated:

In the light of this voluminous case authority we feel that Section 8(a) of the Corporate Net Income Tax Law, a taxing statute, falls under the rule of strict construction. Since that section requires a certain act to be done for the protection of the taxpayer it must be strictly construed.²⁰

Relying heavily upon the *Black's Law Dictionary*²¹ definition of “possible,”²² the court construed the phrase “as far as possible” as subjecting the Commonwealth to the burden of proof to show that it would be unreasonable to require the Commonwealth to settle within the required time rather than as making the one year provision mandatory.²³ The court reasoned, that provided the Commonwealth had a reasonable excuse, it would be justified in making settlement after the one year period. Since

11. PA. STAT. ANN. tit. 46, § 551 (1969).

12. *Id.* § 552.

13. *Id.* § 552(1).

14. *Id.* § 552(2).

15. PA. STAT. ANN. tit. 72, § 3420h(8)(a) (1964).

16. *Id.* § 3420h(8)(c).

17. *Id.* § 3420h(10).

18. 385 Pa. at 374, 123 A.2d at 689.

19. PA. STAT. ANN. tit. 46, § 558 (1969): “All provisions of a law . . . shall be strictly construed:

(3) Provisions imposing taxes;”

20. 385 Pa. at 377, 123 A.2d at 690-91.

21. BLACK'S LAW DICTIONARY 1328 (4th ed. 1951).

22. 385 Pa. at 377, 123 A.2d at 691;

Black's Law Dictionary (4th Ed.) defines the word ‘possible’ as: ‘capable of existing, happening, being, becoming, or coming to pass; feasible, not contrary to the nature of things; neither necessitated nor precluded; free to happen or not, contrasted with necessary and impossible.’ Applying this definition to the phrase ‘so far as possible’ we find it capable of the following construction: so far as capable of happening, so far as capable of coming to pass, so far as feasible, contrasted with necessary and impossible. From this analysis it is apparent that the term as used in the Act would carry with it the notion of ‘reasonableness’ or ‘within reason’.

23. 385 Pa. at 377-78, 123 A.2d at 691.

the Commonwealth had not presented evidence to excuse the delay, the decision for the taxpayer was affirmed.²⁴

THE COMMONWEALTH'S EXCUSES FOR DELAY

The Commonwealth has presented several reasons to justify its delays;²⁵ however, under the holding in *Commonwealth v. Allied Building Credits, Inc.*²⁶ only a "reasonable" excuse would justify a late settlement. Several excuses have been found to be reasonable by the Pennsylvania courts prior to *Commonwealth v. Safe Harbor Water Power Corp.*²⁷ The Commonwealth felt that these excuses were necessary for their effective operation.

Pairing

The most frequent excuse of the Commonwealth is pairing, which is basically the comparison of one tax return with another. Pairing is an important tool that is used to insure accuracy. Three types of pairing are commonly used.

The first is the comparison of one year's tax return with the same type of return for the preceding year. This is done for both capital stock and corporate net income tax returns. This method of pairing enables the Commonwealth to compare the current year's beginning asset balances with the prior year's ending balances.²⁸ The ratios used in computing capital stock tax are dependent upon the value of the assets. A change in the beginning balance of an asset account will normally change the ending balance which is used in the tax calculation. This is one reason why it appears necessary to have the prior year settled before settling the current return; in order to insure an accurate tax settlement of the current return.

24. *Id.* at 378-79, 123 A.2d at 691.

25. The common excuses of the Commonwealth are exemplified in *Commonwealth v. Pennsylvania Mfr.'s Ass'n. Cas. Ins. Co.*, [76 Dauph. 275, 279 (C.P. Pa. 1960), *exceptions on other grounds overruled*, 78 Dauph. 28 (C.P. Pa. 1961), *modified on other grounds*, 410 Pa. 207, 188 A.2d 729 (1963)] which lists as excuses: "Pairing of returns, report of change, study of policy determination, study of other Insurance Companies, failure of Auditor General to concur, reference to the Board of Finance and Revenue, obtaining an opinion from the Department of Justice, comparison of tax reports with Insurance Department Reports, and diverse other reasons."

26. *Commonwealth v. Allied Bldg. Credits, Inc.*, 385 Pa. 370, 123 A.2d 686 (1956).

27. *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223, *aff'g on reargument*, 419 Pa. 497, 223 A.2d 223 (1966).

28. Record at 37a, *Commonwealth v. Western Md. Ry.*, 90 Dauph. 251, *aff'd*, 435 Pa. 525, 257 A.2d 530 (1969).

A second type of pairing is the comparison of different types of tax returns of the same corporation for the same tax year. An example would be the comparison of a corporation's capital stock return with its corporate net income return. Since there is a correlation between the earnings and the valuation factors of the capital stock tax, this comparison is valuable.²⁹

A third type of pairing is the comparison of returns between related companies such as a parent and a subsidiary. This is necessary to insure a proper balance of capital stock values, exemptions, and to determine the extent of inter-company transactions.³⁰

Pairing had been well accepted by the Dauphin County Courts in conjunction with other excuses as an adequate reason for delay.³¹ It cannot, therefore, be said that pairing alone was the basis for the decisions.

Time provided by statute may be beyond the one year limit.

In the settlement of a capital stock tax return the Department of Revenue is the settlor.³² After the Department of Revenue has made a tentative settlement, it forwards this to the Department of the Auditor General for approval.³³ The Department of Revenue and the Department of the Auditor General have four months in which to reach agreement.³⁴ If agreement is not reached, the conflicting settlements are submitted to the Board of Finance and Revenue.³⁵ The Board has three months to reach a decision³⁶ and should it fail to reach a decision, the Department of Revenue's settlement automatically becomes valid.³⁷ Thus, a total of seven months is provided for other departments after the Department of Revenue makes initial tentative settlement.

The Commonwealth has one year from the end of the tax year to settle the return, "as far as possible." A calendar year taxpayer is not required to file the capital stock return until April 15,³⁸ which leaves eight and one-half months for settle-

29. *Id.* at 39a.

30. Brief for Appellee upon reargument at 21, *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223 (1966).

31. *Commonwealth v. Pennsylvania Mfr.'s Ass'n. Cas. Ins. Co.*, 78 Dauph. 275 (C.P. Pa. 1960), *exceptions on other grounds overruled*, 78 Dauph. 28 (1961), *modified on other grounds*, 410 Pa. 207, 188 A.2d 729 (1963); *Commonwealth v. Anndale Co.*, 75 Dauph. 250 (C.P. Pa. 1960); *Commonwealth v. Dresser Indus., Inc.*, 75 Dauph. 106 (C.P. Pa. 1960); *Commonwealth v. Lehval Indus., Inc.*, 75 Dauph. 245 (C.P. Pa. 1959); *Commonwealth v. Fruehauf Trailer Co.*, 71 Dauph. 7 (C.P. Pa. 1957).

32. PA. STAT. ANN. tit. 72, § 801(a) (1949).

33. *Id.* § 802(a).

34. *Id.* § 802(e).

35. *Id.* § 802(e).

36. *Id.* § 802(f).

37. *Id.* § 802(f).

38. *Id.* § 707 (Supp. 1969).

ment. Subtracting the seven months allotted to the Auditor General and the Board of Finance, only one and one-half months remain for the Department of Revenue to make a tentative settlement for all calendar year corporations. Because of the large number of returns,³⁹ it does not appear realistic to require a strict adherence to the time restriction. Further, if a taxpayer is granted a sixty day extension⁴⁰ to file his return, it is not possible for the various departments to have the time allotted by statute and still settle within one year.⁴¹ The Department of Revenue would have to settle one-half month prior to its receiving the return. The phrase, "as far as possible," when used with the one year time limit, indicates that the legislature probably foresaw such difficulties and was making the time limit directory rather than mandatory.

Investigation

Investigation by the Department of Revenue had been held to be an appropriate reason for a delay in settlement.⁴² However, in *Commonwealth v. Safe Harbor Water Power Corp.*,⁴³ the appropriateness of delay due to investigation was rejected by the Pennsylvania Supreme Court which stated: "The Commonwealth may investigate as it pleases, but it must settle within the statutory period."⁴⁴ The court was following its original contention that generally the delay must originate with the taxpayer in order to excuse the Commonwealth's settlement after one year. In two decisions of the lower court,⁴⁵ investigation has been upheld as a further reason, along with other factors such as pairing, sufficient to justify delay. If the reasoning of the lower court cases was followed, investigations could be started whenever the Commonwealth has need for additional settlement time. The investigation would provide the necessary excuse to justify a delay. It is, there-

39. The Commonwealth handles the returns of 95,000 taxpayers per year. Brief for Appellant at 45, *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

40. PA. STAT. ANN. tit. 72, § 704 (Supp. 1969).

41. Brief for Appellant at 13, *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

42. *Commonwealth v. Pennsylvania Mfr.'s Ass'n. Cas. Ins. Co.*, 76 Dauph. 275, 279 (C.P. Pa. 1960), *exceptions on other grounds overruled*, 78 Dauph. 28 (C.P. Pa. 1961), *modified on other grounds*, 410 Pa. 207, 188 A.2d 729 (1963); *Commonwealth v. Lehval Indus., Inc.*, 75 Dauph. 254, 255 (C.P. Pa. 1959).

43. *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223, *aff'g on reargument*, 419 Pa. 497, 223 A.2d 223 (1966).

44. 423 Pa. at 108, 223 A.2d at 227.

45. Cases cited note 42 *supra*.

fore, not reasonable to grant a time extension for investigation. The intent of the legislature could not have been to give the Commonwealth a settlement procedure which would eliminate any significance of the one year time limitation.

Work load of the Commonwealth

In two cases⁴⁶ the lower court accepted the Commonwealth's large work load as a contributing reason to justify a delay of settlement. This excuse alone should not be a reasonable excuse. It would encourage inefficiency and condone delays that occur within the Department of Revenue. The legislature obviously did not intend to encourage inefficiency.

SAFE HARBOR RULE — DELAY MUST ORIGINATE WITH THE TAXPAYER

The Pennsylvania Supreme Court's second encounter with the timeliness of settlement of corporate tax returns was in *Commonwealth v. Safe Harbor Water Power Corp.*⁴⁷ The Commonwealth took two years and ten months to settle the company's 1955 corporate net income tax return. The Commonwealth's reasons for the delay were: (a) pairing reports with prior years, (b) pairing the other taxes, (c) pairing with other reports in the system, (d) investigation and legal advice, and the (e) effect of delay in resettlement procedures on subsequent years.⁴⁸ Pairing was delayed pending resettlement for prior years.

The Pennsylvania Supreme Court in effect dispensed with all of the Commonwealth's arguments by stating:

[I]n short, without completely foreclosing the possibility that in a given case something may occur other than an act by the taxpayer itself which prevents settlement, we believe that the only general basis for excusing a late settlement is when the taxpayer does something to delay timely action.⁴⁹

In the same paragraph, however, the court stated: "[W]e reaffirm the principles in *Allied Building Credits, supra*. We believe them to be sound."⁵⁰

It is difficult to see how the principles in *Commonwealth v. Allied Building Credits, Inc.* were reaffirmed by *Safe Harbor*. Although *Safe Harbor* seems to have gone beyond *Allied* by putting a larger burden on the Commonwealth, its effect is to have disavowed the reasonable excuse rule. Under the rule stated in *Safe*

46. *Commonwealth v. Anndale Co.*, 75 Dauph. 250, 253 (C.P. Pa. 1960); *Commonwealth v. Fruehauf Trailer Co.*, 71 Dauph. 7, 15 (C.P. Pa. 1957).

47. *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223, *aff'g on reargument*, 419 Pa. 497, 223 A.2d 223 (1966).

48. Brief for Appellant at i-ii, *Commonwealth v. Safe Harbor Water Power Corp.*, 423 Pa. 101, 223 A.2d 223 (1966).

49. 423 Pa. at 105, 223 A.2d at 226.

50. *Id.* at 105, 23 A.2d at 225.

Harbor, the Commonwealth may have a valid excuse but it is unable to justify a late settlement. The court's rationale was that the Commonwealth has a one year settlement period plus a two year resettlement period and since these two periods equal the time for which the taxpayer is required to maintain his records, the time periods must be strictly construed.

The *Safe Harbor* court stated further: "None of them [the reasons advanced by Commonwealth] constitutes the kind of reason which satisfies the statutory basis for relief."⁵¹ This is obvious if the delay must originate with the taxpayer, since all of the Commonwealth's arguments were based upon reasons that originated with the Commonwealth. The court, perhaps being apprehensive about the new rule, further stated: "Moreover, even if one or more did suffice in theory, none is justified by the actual facts."⁵² The court then discussed each argument advanced by the Commonwealth and explained why the facts did not justify a reasonable excuse for the delay.

The court, by not completely foreclosing the possibility that an excuse of the Commonwealth may justify a delay, cast a further doubt upon its complete acceptance of the rule that a justifiable excuse must originate with the taxpayer. What could be an excuse originating with the Commonwealth was not mentioned.

The constriction of the settlement time limitation is further clouded by *Commonwealth v. Western Maryland Ry.*⁵³ In that case the Pennsylvania Supreme Court quoted from *Safe Harbor* to the effect that the Commonwealth can be excused from delay by showing that it was unable to act or prevented from acting, and that, generally, the only acceptable excuse is one which originated with the taxpayer.⁵⁴ The two statements taken together indicate that, for the Commonwealth to be unable or prevented from acting, the action must originate with the taxpayer. What is a taxpayer caused delay appears to be the basis of the decision. Should this be the basis of the decision when the statute states that settlement should "as far as possible" be effected within one year? The court has in effect eliminated any reasonable use of the phrase, "as far as possible," and substituted the rule that the excuse must originate with the taxpayer.

51. *Id.* at 106, 223 A.2d at 226.

52. *Id.*

53. *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

54. *Id.* at 529, 257 A.2d at 532.

Justice Roberts filed strong dissents in both *Safe Harbor*⁵⁵ and *Western Maryland Ry.*,⁵⁶ pointing out that the view taken by the majority opinions is inconsistent with the holding of *Allied* which had recognized that there were valid reasons why the Commonwealth would be unable to act or could not act efficiently and properly. In addition, Justice Roberts considered the majority requirement, that the Commonwealth must settle within the first year regardless to the reasonableness of settlement and correct its settlement within the two year resettlement period, to be inefficient. Justice Roberts felt that the majority decisions could also encourage the Commonwealth to make arbitrary and unreasonably high settlements which would require resettlements to be made by the taxpayer. Both of Robert's dissents noted that the majority opinions would give a windfall to taxpayers that have in the past underassessed their taxes, since the Commonwealth, in reliance upon *Allied*, may not have settled the taxpayer's return within the one year limit.⁵⁷ The majority decisions also encourage taxpayers to underassess the tax in the hope that the Commonwealth will, perhaps through a reasonable excuse, miss the one year settlement period.⁵⁸

Justice Roberts in *Commonwealth v. Western Maryland Ry.*⁵⁹ noted that the court had held assessment time limitations not to be mandatory where the statute did not even contain the liberal "as far as possible" language.⁶⁰ Justice Roberts believed that the statute⁶¹ may be interpreted as not being mandatory as long as the right of protest and appeal are not effected.

COMPARISON OF THE RULES

The rules established in *Allied* and *Safe Harbor* and followed in *Western Maryland Ry.* are in conflict. To require the justification for delay to originate with the taxpayer precludes justification based upon a reasonable excuse of the Commonwealth. At present, the law in Pennsylvania as founded in *Safe Harbor* ap-

55. 423 Pa. at 109-12, 223 A.2d at 227-29 (dissenting opinion).

56. 435 Pa. at 533-35, 257 A.2d at 534-35 (dissenting opinion).

57. In *Commonwealth v. Sherwin Equipment, Inc.*, 89 Dauph. 330, 45 D. & C.2d 587 (C.P. Pa. 1968), the taxpayer realizing the value of the *Safe Harbor* decision, petitioned the Dauphin County Court to include in its appeal the matter of timeliness of settlement. The court held that taxpayer should have raised the issue in the administrative review process, which had occurred prior to *Safe Harbor*, and that he was now barred from doing so.

58. There is no effect upon changes in the taxpayer is return due to federal tax adjustments, since PA. STAT. ANN. tit. 72, § 3420n(7) (1964) provides for Pennsylvania tax adjustment.

59. *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

60. *Id.* at 534, 257 A.2d at 534-35.

61. PA. STAT. ANN. tit. 72, § 801b (1949) construed in *Commonwealth v. Western Md. Ry.*, 435 Pa. 525, 257 A.2d 530 (1969).

pears to be that the excuse for settlement after one year must originate with the taxpayer. In the lower court decision of *Commonwealth v. Western Maryland Ry.*,⁶² the Dauphin County Court followed *Safe Harbor* believing that the principles and guidelines established in prior cases had been disapproved.⁶³

The basis of the conflict is in the interpretation of the legislative intent of "as far as possible" in the statutes regulating timeliness of settlement. Non-technical words and phrases are to be construed according to their common and approved usage.⁶⁴ Justice Chidsey in *Allied* used *Black's Law Dictionary* to define "possible."⁶⁵ Based upon the definition of possible, he concluded that "as far as possible" meant within reason or reasonable.

Justice Egan in *Safe Harbor*, in an attempt to give the taxpayer more certainty in tax administration, looked at the overall provisions of the statute and held that the time relationship of the one year settlement, the two year resettlement, and the three year record keeping requirement, justified a rule that excuses must generally originate with the taxpayer to permit an untimely settlement.⁶⁶ The fallacy in this reasoning is that it does not give effect to all the provisions as required by statute⁶⁷ in that it renders "as far as possible" meaningless. It does not seem to follow the intent of the legislature. The phrase must be construed to have some significance. It should be construed as an exception to an otherwise mandatory requirement which the court cannot overlook.

Safe Harbor, in an attempt to maintain stare decisis, affirmed *Allied* but in fact did not follow it. In *Safe Harbor* there was no need to overrule *Allied* since the court found the reasons for the delay were not justified by the facts.⁶⁸ However, as Judge Bowman recognized in the lower court decision of *Western Maryland Ry.*, the law was changed.⁶⁹ The *Safe Harbor* rule cannot be consid-

62. *Commonwealth v. Western Md. Ry.*, 90 Dauph. 251 (1969), *aff'd*, 435 Pa. 525, 257 A.2d 530 (1969).

63. *Id.* at 260.

64. PA. STAT. ANN. tit. 46, § 533 (1969).

65. See note 22 *supra*.

66. 423 Pa. at 105, 223 A.2d at 226.

67. PA. STAT. ANN. tit. 46, § 551 (1969), states: "[E]very law shall be construed, if possible, to give effect to all its provisions."

68. 423 Pa. at 106-08, 223 A.2d at 226-27.

69. Judge Bowman stated:

If the view expressed by the dissent correctly assesses the import of the majority opinion, then most of the principles and guidelines laid out in our prior opinions on this subject must be considered as disapproved.

ered dicta since it was clearly the basis for the supreme court's decision with the court using the words "even if"⁷⁰ to discuss the reasonableness of delay rule. The effects of *Safe Harbor* are not within the intent of the legislature. The Commonwealth must now settle returns when other returns, which give information and verify accuracy, are not settled and are subject to change. The Commonwealth *must* now settle within one year regardless of conflicts in the settlement of the return. In a resettlement even if the settlement has been rushed, the Commonwealth has the burden of showing why its own settlement is in error. This will certainly encourage inefficiency and duplication of work in the government. It disregards "the object to be attained"⁷¹ and the "consequences of a particular interpretation."⁷²

The phrase "as far as possible" was in the original timeliness of settlement statute.⁷³ The capital stock tax was enacted in 1929 when the taxpayer paid his tax after the Commonwealth made settlement⁷⁴ instead of paying upon filing the return. "As far as possible" appears to have been originally for the benefit of the Commonwealth, not the taxpayer, by encouraging an early settlement by the Commonwealth in order to collect the revenue.⁷⁵ Although *Safe Harbor* dealt with corporate net income tax, its decision is interpreted to include the capital stock tax.⁷⁶ To have applied the *Safe Harbor* rule to the capital stock tax in 1930 would have resulted in the taxpayer not paying any tax if the Commonwealth had not settled within one year. This could not have been the intent of the legislature. The settlement time was meant to be directive not mandatory.

The effect of *Safe Harbor* upon the taxpayer is to encourage underassessment on returns because, if the assessment is increased, he will pay the amount due, and will have had, in effect, a loan at six per cent interest.⁷⁷ If the assessment is not challenged, his "loan" is cancelled and becomes an unwarranted gift.

Commonwealth v. Western Md. Ry., 90 Dauph. 251, 260, *aff'd*, 435 Pa. 525, 257 A.2d 530 (1969).

70. 423 Pa. at 106, 223 A.2d at 226.

71. PA. STAT. ANN. tit. 46, § 551(4) (1969).

72. *Id.* § 551(6).

73. Act of 176, § 801(b), [1929] Pa. Laws 389-90, *as amended*, PA. STAT. ANN. tit. 72, § 801(b) (1949).

74. Act of 176, § 805(b), [1929] Pa. Laws 393, *as amended*, PA. STAT. ANN. tit. 72, § 805(c) (1949).

75. Brief for Appellant at 39, Commonwealth v. Western Md. Ry., 435 Pa. 525, 257 A.2d 530 (1969).

76. Commonwealth v. Western Md. Ry., 435 Pa. 525, 257 A.2d 530 (1969), in dealing with timeliness of settlement of capital stock tax followed *Safe Harbor*, which dealt with corporate net income tax.

77. PA. STAT. ANN. tit. 72, § 806 (1964) provides that interest is only chargeable for the first year:

[I]f a settlement is not made within one year after the date upon which the report or return was filed, no interest whatsoever shall be imposed for the period between the end of such one year and sixty days after the date of the mailing of the settlement.

Under the "reasonable excuse" rule of *Allied* the taxpayer pays only what is due. If there is an unreasonable delay which is detrimental to him, he may use the courts for relief. This was done in *Commonwealth v. Tonopah Mining Co.*⁷⁸ where because the Commonwealth was unable to meet its burden of showing that it had a reasonable excuse, that it was unable to act. Therefore, the taxpayer is protected under the "reasonable excuse" rule, whereas, under the "taxpayer-originated delay" rule of *Safe Harbor*, he gains an untenable benefit.

RECOMMENDATIONS

It is submitted that the Pennsylvania Supreme Court should alter its present position on excuses for late settlement. The present position does not give effect to the words "as far as possible" contained within the statutes. The "reasonable excuse" test put forward by *Commonwealth v. Allied Building Credits, Inc.* gives effect to the language of the statute and protects both the taxpayer and the Commonwealth from unreasonable manipulation of the statute by the other.

Legislative action is an alternative which could bring quicker and clearer results than may be accomplished by the judiciary. The court in *Commonwealth v. Western Maryland Ry.* placed the burden for change on the legislature when it stated: "It rests with the legislature, not this court, to equalize the time requirement of the fiscal statutes, if such a change is desirable."⁷⁹

If definite wording were used to set mandatory time limits, it would save both the taxpayer and Commonwealth future litigation in determining whether an excuse was reasonable or not. The legislature could require settlement to be made one year after: (1) the return is filed by the taxpayer, (2) the return is due, or, (3) after the prior year's Pennsylvania tax returns of the corporation, a parent and/or a subsidiary are finally settled, whichever occurs last.

This suggested language would give the Commonwealth a minimum of one year to settle a return. If pairing were necessary, the time limit would not begin until after the needed returns were available. All delays beyond the prescribed limits would have to be caused directly or indirectly by the taxpayer. Lengthy litigation would be discouraged but litigation would not be prohibited.

78. *Commonwealth v. Tonopah Mining Co.*, 83 Dauph. 279 (C.P. Pa. 1965).

79. 435 Pa. 525, 533, 257 A.2d 530, 534.

The Commonwealth should be able to extend the settlement period into the two year resettlement period without having to file a formal settlement. Presently, if the Commonwealth wishes to use the two year resettlement period, it must file a settlement within one year. If the Commonwealth needs additional time, it must formalize a settlement and notify the taxpayer of settlement. This forming of the settlement is an improper use of time and subjects the taxpayer to the misbelief that the Commonwealth tentatively agrees with his return. To simplify this procedure, it is submitted that the Commonwealth should be required to notify the taxpayer before the end of the one year period that it has been unable to settle and the return will be continued into the two year resettlement period. If the Commonwealth were not to notify the taxpayer before the expiration of the settlement period, the tax would be settled as filed. The combination settlement-resettlement period should not exceed three years. The taxpayer would be able to know at the end of three years that his return is final unless he contests it through the appeal procedure.

A maximum overall time limit from the date of filing should be provided to insure that the taxpayer is not subjected to settlement or resttlement proceedings for an indefinite period of time. This maximum time limit, however, would not apply to a return contested in the courts. The taxpayer should be required to keep records until the settlement-resettlement procedure is complete. The maximum period would limit the length of time records would have to be kept.

Under the proposed system the taxpayer may be required to settle or resettle several years after the return is filed. There would, however, be little detriment to the taxpayer other than the requirement of keeping records since the taxpayer would be paying only what he originally owed plus a maximum of one year's interest.⁸⁰

CONCLUSION

Timeliness of settlement of corporate tax returns under current judicial interpretation of "as far as possible" phase of the corporate tax statistics does not reflect the intention of the legislature. The current interpretation removes all reasonable excuses for a delayed settlement caused by the Commonwealth and encourages underassessments by taxpayers to gain an unjust benefit if the Commonwealth, by a reasonable excuse, fails to meet the one year limitation.

Commonwealth v. Safe Harbor Water Power Corp. changes prior law where the facts of the case could have produced the same result as the prior interpretation of the statutory language

80. See note 77 *supra*.

expressed in *Commonwealth v. Allied Building Credits, Inc.* The "taxpayer-originated delay" rule of *Safe Harbor* is unnecessary, goes against prior decision, fails to give a reasonable meaning to the statute and causes unjust results.

The judiciary can solve the problem by overruling, in a future decision, the "taxpayer-originated delay" rule expressed in *Safe Harbor* and followed in *Commonwealth v. Western Maryland Ry.* A better solution calls for legislation to strictly construct the time limitations for settlement and resettlement of corporate tax returns with adequate provisions permitting the Commonwealth to use reasonable administrative tools for efficient and effective processing of tax returns.

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