

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 405** Session of
2011

INTRODUCED BY BROWNE, FOLMER, ORIE, ALLOWAY, M. WHITE, FONTANA,
LEACH, YUDICHAK AND BLAKE, FEBRUARY 4, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 19, 2011

AN ACT

1 Amending the act of December 31, 1965 (P.L.1257, No.511),
2 entitled "An act empowering cities of the second class,
3 cities of the second class A, cities of the third class,
4 boroughs, towns, townships of the first class, townships of
5 the second class, school districts of the second class,
6 school districts of the third class and school districts of
7 the fourth class including independent school districts, to
8 levy, assess, collect or to provide for the levying,
9 assessment and collection of certain taxes subject to maximum
10 limitations for general revenue purposes; authorizing the
11 establishment of bureaus and the appointment and compensation
12 of officers, agencies and employes to assess and collect such
13 taxes; providing for joint collection of certain taxes,
14 prescribing certain definitions and other provisions for
15 taxes levied and assessed upon earned income, providing for
16 annual audits and for collection of delinquent taxes, and
17 permitting and requiring penalties to be imposed and
18 enforced, including penalties for disclosure of confidential
19 information, providing an appeal from the ordinance or
20 resolution levying such taxes to the court of quarter
21 sessions and to the Supreme Court and Superior Court,"
22 further providing for delegation of taxing powers and
23 restrictions.

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

26 Section 1. Section 301.1(f)(12) of the act of December 31,
27 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,
28 amended October 15, 2008 (P.L.1615, No.130), is amended to read:

1 Section 301.1. Delegation of Taxing Powers and Restrictions
2 Thereon.--* * *

3 (f) Such local authorities shall not have authority by
4 virtue of this act:

5 * * *

6 (12) To levy, assess and collect a mercantile or business
7 privilege tax on gross receipts or part thereof which are: (i)
8 discounts allowed to purchasers as cash discounts for prompt
9 payment of their bills; (ii) charges advanced by a seller for
10 freight, delivery or other transportation for the purchaser in
11 accordance with the terms of a contract of sale; (iii) received
12 upon the sale of an article of personal property which was
13 acquired by the seller as a trade-in to the extent that the
14 gross receipts in the sale of the article taken in trade does
15 not exceed the amount of trade-in allowance made in acquiring
16 such article; (iv) refunds, credits or allowances given to a
17 purchaser on account of defects in goods sold or merchandise
18 returned; (v) Pennsylvania sales tax; (vi) based on the value of
19 exchanges or transfers between one seller and another seller who
20 transfers property with the understanding that property of an
21 identical description will be returned at a subsequent date;
22 however, when sellers engaged in similar lines of business
23 exchange property and one of them makes payment to the other in
24 addition to the property exchanged, the additional payment
25 received may be included in the gross receipts of the seller
26 receiving such additional cash payments; (vii) of sellers from
27 sales to other sellers in the same line where the seller
28 transfers the title or possession at the same price for which
29 the seller acquired the merchandise; or (viii) transfers between
30 one department, branch or division of a corporation or other

1 business entity of goods, wares and merchandise to another
2 department, branch or division of the same corporation or
3 business entity and which are recorded on the books to reflect
4 such interdepartmental transactions. ~~A mercantile or business~~ ←
5 ~~privilege tax on gross receipts or on the privilege of doing~~
6 ~~business within or from a location within a local taxing~~
7 ~~jurisdiction may be imposed by a local taxing jurisdiction only~~
8 ~~if the privilege of doing business is exercised through a base~~
9 ~~of operations in the local taxing jurisdiction. In the case of a~~
10 ~~tax on the privilege of doing business within or from a location~~
11 ~~within a local taxing jurisdiction, no tax shall be imposed on~~
12 ~~gross receipts from activities which are also subject to a tax~~
13 ~~imposed by another local taxing jurisdiction on the privilege of~~
14 ~~doing business or on business receipts within that other~~
15 ~~jurisdiction. The taxpayer may exclude the gross receipts that~~
16 ~~are taxed or taxable in the other local jurisdiction A~~ ←
17 MERCANTILE OR TRANSACTION TAX ON THE PRIVILEGE OF CONDUCTING
18 SPECIFIC TRANSACTIONS OR BUSINESS WITHIN A TAXING JURISDICTION
19 ON THE GROSS RECEIPTS FROM SUCH TRANSACTIONS OR BUSINESS MAY BE
20 IMPOSED BY A LOCAL TAXING JURISDICTION WHEREIN SUCH BUSINESS
21 TRANSACTIONS TOOK PLACE. A TAXPAYER MAY EXCLUDE SUCH GROSS
22 RECEIPTS FROM ANY TAX ON OR MEASURED BY SUCH GROSS RECEIPTS
23 WHICH IS IMPOSED BY A JURISDICTION IN WHICH THE TAXPAYER
24 MAINTAINS A BASE OF OPERATIONS. A BUSINESS PRIVILEGE TAX ON THE
25 PRIVILEGE OF DOING BUSINESS WITHIN A TAXING JURISDICTION ON OR
26 MEASURED BY GROSS RECEIPTS MAY BE IMPOSED BY THE LOCAL TAXING
27 JURISDICTION ONLY IF THE PRIVILEGE OF DOING BUSINESS IS
28 EXERCISED THROUGH A BASE OF OPERATIONS IN THE LOCAL TAXING
29 JURISDICTION. IF A TAXPAYER MAINTAINS MORE THAN ONE BASE OF
30 OPERATIONS, THE LOCAL TAXING JURISDICTION SHALL ONLY BE ABLE TO

1 TAX THE GROSS RECEIPTS GENERATED BY THE BASE OF OPERATIONS
2 LOCATED WITHIN THAT LOCAL TAXING JURISDICTION. For purposes of
3 this section, the term "base of operations" shall mean an
4 actual, physical and permanent place of business from which a
5 taxpayer manages, directs and controls its business activities
6 at that location and shall not include a structure which is
7 utilized in a municipality for the purpose of overseeing
8 construction for the duration of the construction project.

9 * * *

10 Section 2. The amendment of section 301.1(f)(12) of the act
11 shall apply to taxable years beginning after December 31, 2011.

12 Section 3. This act shall take effect immediately.