

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1043 Session of  
2013

INTRODUCED BY PASHINSKI, O'BRIEN, BROWNLEE, KOTIK, D. COSTA,  
ROZZI, KORTZ, MUNDY, KINSEY, COHEN, CARROLL, MAHONEY, DeLUCA,  
MULLERY, MURT, FABRIZIO AND TRUITT, MARCH 21, 2013

REFERRED TO COMMITTEE ON FINANCE, MARCH 21, 2013

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," further providing for definitions and for  
11 collection of tax.

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

14 Section 1. Section 201(b) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
16 June 29, 2002 (P.L.559, No.89), is amended to read:

17 Section 201. Definitions.--The following words, terms and  
18 phrases when used in this Article II shall have the meaning  
19 ascribed to them in this section, except where the context  
20 clearly indicates a different meaning:

21 \* \* \*

22 (b) "Maintaining a place of business in this Commonwealth."

1       (1) Having, maintaining or using within this Commonwealth,  
2 either directly or through a subsidiary, representative or an  
3 agent, an office, distribution house, sales house, warehouse,  
4 service enterprise or other place of business; or any agent of  
5 general or restricted authority, or representative, irrespective  
6 of whether the place of business, representative or agent is  
7 located here, permanently or temporarily, or whether the person  
8 or subsidiary maintaining the place of business, representative  
9 or agent is authorized to do business within this Commonwealth.

10       (2) Engaging in any activity as a business within this  
11 Commonwealth by any person, either directly or through a  
12 subsidiary, representative or an agent, in connection with the  
13 lease, sale or delivery of tangible personal property or the  
14 performance of services thereon for use, storage or consumption  
15 or in connection with the sale or delivery for use of the  
16 services described in subclauses (11) through (18) of clause (k)  
17 of this section, including, but not limited to, having,  
18 maintaining or using any office, distribution house, sales  
19 house, warehouse or other place of business, any stock of goods  
20 or any solicitor, canvasser, salesman, representative or agent  
21 under its authority, at its direction or with its permission,  
22 regardless of whether the person or subsidiary is authorized to  
23 do business in this Commonwealth.

24       (3) Regularly or substantially soliciting orders within this  
25 Commonwealth in connection with the lease, sale or delivery of  
26 tangible personal property to or the performance thereon of  
27 services or in connection with the sale or delivery of the  
28 services described in subclauses (11) through (18) of clause (k)  
29 of this section for residents of this Commonwealth by means of  
30 catalogues or other advertising, whether the orders are accepted

1 within or without this Commonwealth.

2 (4) Regularly or substantially soliciting orders within this  
3 Commonwealth for the sale of tangible personal property or  
4 services for taxable use within this Commonwealth through  
5 referral by an independent contractor or other representative.

6 The following shall apply:

7 (i) A person making sales of tangible personal property or  
8 services taxable under this article shall be presumed to be  
9 regularly or substantially soliciting orders through an  
10 independent contractor or other representative if the person  
11 enters into an agreement with a resident of this Commonwealth  
12 under which the resident, for a commission or other  
13 consideration, directly or indirectly refers potential  
14 customers, whether by a link on an Internet website or  
15 otherwise, to the person, if the cumulative gross receipts from  
16 sales by the person to customers in this Commonwealth who are  
17 referred to the person by all residents with this type of an  
18 agreement with the person is in excess of ten thousand dollars  
19 (\$10,000) during the preceding twelve months.

20 (ii) The presumption under subparagraph (i) may be rebutted  
21 by proof that the residents with whom the person has an  
22 agreement did not engage in any activity within this  
23 Commonwealth that was significantly associated with the  
24 person's ability to establish or maintain the person's market in  
25 this Commonwealth during the preceding twelve months. Proof may  
26 consist of written statements from all of the residents with  
27 whom the person has an agreement stating that they did not  
28 engage in any solicitation in this Commonwealth on behalf of the  
29 person during the preceding twelve months provided that the  
30 statements were provided and obtained in good faith. Nothing in

this subparagraph may be construed to narrow the scope of the terms "independent contractor" or "other representative" for purposes of this subclause.

[(3.1)] (5) Entering this Commonwealth by any person to provide assembly, service or repair of tangible personal property, either directly or through a subsidiary, representative or an agent.

[(3.2)] (6) Delivering tangible personal property to locations within this Commonwealth if the delivery includes the unpacking, positioning, placing or assembling of the tangible personal property.

[(3.3)] (7) Having any contact within this Commonwealth which would allow the Commonwealth to require a person to collect and remit tax under the Constitution of the United States.

[(3.4)] (8) Providing a customer's mobile telecommunications service deemed to be provided by the customer's home service provider under the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116). For purposes of this clause, words and phrases used in this clause shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

(9) A person that is part of a group of persons conducting an integrated business enterprise shall be deemed to be "maintaining a place of business in this Commonwealth" if any member of the group either directly or through an agent or other representative maintains or uses an office, distribution house, sales house, warehouse, service enterprise or other place of business within this Commonwealth as part of the integrated enterprise, or if any member of the group directly or through an agent or other representative regularly or substantially

solicits orders within this Commonwealth in connection with the  
sales of tangible personal property or services by the  
integrated business enterprise for taxable use within this  
Commonwealth.

(10) (i) A person shall be presumed to be "maintaining a  
place of business in this Commonwealth" if an affiliated person  
is subject to sales and use tax jurisdiction of this  
Commonwealth and if:

(A) the person sells a similar line of products as the  
affiliated person and does so under the same or a similar  
business name;

(B) the affiliated person uses its in-State employees or in-  
State facilities to advertise, promote or facilitate sales by  
the person to consumers;

(C) the affiliated person maintains an office, distribution  
facility, warehouse or storage place, or similar place of  
business to facilitate the delivery of property or services sold  
by the person to the person's consumers;

(D) the affiliated person uses trademarks, service marks or  
trade names in this Commonwealth that are the same or  
substantially similar to those used by the person; or

(E) the affiliated person delivers, installs, assembles or  
performs maintenance services for the person's purchasers within  
this Commonwealth.

(ii) For the purposes of this subclause, the term  
"affiliated person" means a person that is a member of the same  
"controlled group of corporations" as defined in section 1563(a)  
of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
U.S.C. § 1563(a)) as the retailer or any entity that,  
notwithstanding its form of organization, bears the same

ownership relationship to the retailer as a corporation that is a member of the same controlled group of corporations.

(11) The presumption in subclause (10) may be rebutted by demonstrating that the affiliated person's activities in this Commonwealth are not significantly associated with the retailer's ability to establish or maintain a market in this Commonwealth for the retailer's sales.

[ (4) ] (12) The term "maintaining a place of business in this Commonwealth" shall not include:

(i) Owning or leasing of tangible or intangible property by a person who has contracted with an unaffiliated commercial printer for printing, provided that:

(A) the property is for use by the commercial printer; and

(B) the property is located at the Pennsylvania premises of the commercial printer.

(ii) Visits by a person's employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with said contract.

\* \* \*

Section 2. Section 237 of the act is amended by adding subsections to read:

Section 237. Collection of Tax.--\* \* \*

(b.1) Notification of Purchaser's Duty to Self-Remit Tax.

(1) A person making sales of tangible personal property or services for taxable use in this Commonwealth that is not required by law to collect tax shall provide notification on its retail Internet website, retail catalog, telemarketing script or other similar marketing tool and on its invoices and receipts provided to its customers, stating that tax must be paid by the

1 purchaser, unless otherwise exempt or not subject to tax, on the  
2 use of the tangible personal property or services in this  
3 Commonwealth.

4 (2) The notification required in paragraph (1) shall be made  
5 to the purchaser prior to the completion of the sale including  
6 the provisions of, and in a form substantially similar to, the  
7 notification under paragraph (3). The notification requirements  
8 may not be satisfied unless the purchaser is required to  
9 acknowledge that he or she has read and understood the  
10 notification prior to the completion of the purchase. The  
11 retailer shall retain evidence of the acknowledgment in a form  
12 and for a period of time prescribed by the department.

13 (3) The notification shall read substantially as follows:

14 The Commonwealth of Pennsylvania requires the payment of  
15 a sales or use tax on purchases of tangible personal  
16 property (for example, furniture, books, jewelry or  
17 household goods). While a retailer may collect that tax  
18 on the purchaser's behalf, [Name of Online Company] does  
19 not collect and remit sales tax for Pennsylvania  
20 residents. Accordingly, the Commonwealth of Pennsylvania  
21 requires you to remit the tax directly to the  
22 Pennsylvania Department of Revenue on applicable  
23 purchases. You can find information on how to pay this  
24 tax at [www.revenue.state.pa.us](http://www.revenue.state.pa.us). Failure to pay this tax  
25 on applicable purchases is a violation of State law and  
26 could result in fines, penalties and interest for each  
27 purchase.

28 I acknowledge that I have read and understand this sales  
29 and use tax notice.

30 (4) A person that makes sales for taxable use in this

1 Commonwealth but is not required to collect tax shall annually  
2 send a form, on or before January 31, to all purchasers with  
3 shipping addresses in this Commonwealth that made over five  
4 hundred dollars (\$500) in purchases from the retailer in the  
5 previous calendar year.

6 (i) The form shall include a description of the type of item  
7 purchased by the purchaser from the retailer for the prior year,  
8 including the dates of the purchases and the amounts of each  
9 purchase. The listing shall not include the product name, title  
10 or other identifying information that would disclose the  
11 expressive content of the items purchased.

12 (ii) The retailer shall send copies of the forms sent to  
13 each purchaser to the department on or before January 31.

14 (b.2) Advertisement. No retailer may advertise that  
15 purchases made from the retailer for taxable use in this  
16 Commonwealth are not subject to sales tax, are tax-free or other  
17 similar language.

18 \* \* \*

19 Section 3. On or before March 31, 2014, and on or before  
20 March 31 of each year through 2019, the Department of Revenue  
21 shall provide the Finance Committee of the Senate and the  
22 Finance Committee of the House of Representatives with a report  
23 describing the activities undertaken by the department to  
24 enforce the provisions of this act, the amount of additional  
25 taxes collected as a result of this act and recommendations to  
26 improve the uniform enforcement of tax on all sales of tangible  
27 personal property and taxable services for use within this  
28 Commonwealth. A copy of the report shall be posted on the  
29 department's Internet website within ten days after it is  
30 provided to the Finance Committees.



1       Section 4.   This act shall take effect in 90 days.