

RELATING TO TAXATION: MERCANTILE LICENSE TAX

Act of Jun. 20, 1947, P.L. 745, No. 320

Cl. 24

(Act reenacted and amended May 12, 1949, P.L.1238, No.374)

AN ACT

To provide revenue for school districts of the first class A by imposing a temporary mercantile license tax on persons engaging in certain occupations and businesses therein; providing for its levy and collection; for the issuance of mercantile licenses upon the payment of fees therefor; conferring and imposing powers and duties on boards of public education, receivers of school taxes and school treasurers in such districts; saving certain ordinances of council of certain cities, and providing compensation for certain officers, and employes and imposing penalties. (Title amended May 14, 1982, P.L.426, No.125)

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

Section 1. Definitions.--The following words and phrases when used in this act shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning.

(1) "Person" shall mean any individual, partnership, limited partnership, association or corporation.

(2) "Wholesale dealer" or "Wholesale vendor" shall mean any person who sells to dealers in, or vendors of, goods, wares and merchandise and to no other persons.

(3) "Retail dealer" or "Retail vendor" shall mean any person who is a dealer in, or vendor of, goods, wares and merchandise who is not a wholesale dealer or vendor.

(4) "Dealer in, or vendor of, goods, wares and merchandise" shall not include any mechanic who keeps a store or warehouse at his place of manufactory or workshop in which he sells only his own manufactures, any person vending or disposing of articles of his own growth, produce or manufacture, or any hawker or peddler licensed under any law of this Commonwealth.

(5) The terms "Person," "Wholesale dealer," "Wholesale vendor," "Retail dealer," "Retail vendor" and "Dealer in, or vendor of, goods, wares and merchandise" shall not include nonprofit corporations or associations organized for religious, charitable or educational purposes.

(6) "Broker" shall mean any stock broker, bill broker, note broker, exchange broker, merchandise broker, factor, commission merchant, real estate broker or agent and pawnbroker.

(7) "Place of amusement" shall mean any place indoors or outdoors where the general public or a limited or selected number thereof may upon payment of an established price attend or engage in any amusement, entertainment, exhibition, contest, recreation, including among other places, theaters, opera houses, motion picture houses, amusement parks, stadia, arenas,

baseball or football parks or fields, skating rinks, circus or carnival tents or grounds, fair grounds, bowling alleys, billiard or pool rooms, shuffle board rooms, nine or ten pin alleys, riding academies, golf courses, bathing and swimming places, dance halls, tennis courts, archery, rifle or shotgun ranges and other like places. The term does not include any exhibition, amusement, performance or contest conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes.

(8) "License year" shall mean the twelve month period corresponding to the fiscal year of the school district levying the tax.

(9) "Gross volume of business" shall include both cash and credit transactions.

(10) "Collector" shall mean the receiver of school taxes, or in a school district of the first class A in which there is no such receiver of school taxes, the school treasurer. ((10) amended May 14, 1982, P.L.426, No.125)

(1 reenacted May 12, 1949, P.L.1238, No.374)

Section 2. Authority to Levy and Collect Tax; Use of Tax.--

(a) For the year one thousand nine hundred forty-eight and annually thereafter, every school district of the first class A shall issue mercantile licenses and levy and collect an annual mercantile license tax in the manner and at the rates hereinafter set forth. Such tax shall be in addition to any other tax every such school district is empowered to levy and collect under any existing law. The license fees, taxes and penalties collected under the provisions of this act, shall be used by every such school district for general public school purposes.

(b) On and after the first day of January, one thousand nine hundred fifty, in any school district of the first class A which, after such date, has no authority to levy or does not levy the tax imposed by this act, the collector is authorized to and shall continue to collect delinquent taxes owing such school district under any levy for any prior year, under the provisions of this act, until such taxes are either collected or until the collector is exonerated with respect to such taxes. The delinquent taxes so collected shall be used by every such school district for general public school purposes.

(2 reenacted May 12, 1949, P.L.1238, No.374 and amended May 14, 1982, P.L.426, No.125)

Section 3. License Fees.--Beginning in the year one thousand nine hundred forty-eight, and annually thereafter, every person desiring to continue to engage in, or hereafter to begin to engage in, the business of wholesale or retail vendor of, or dealer in, goods, wares and merchandise, broker, conducting a restaurant or other place where food, drink or refreshments are sold, or place of amusement in a school district of the first class A, shall on or before the first day of January of each license year, or prior to commencing business in any such license year, procure a mercantile license for his place of business, or if more than one, for each of his places of business in the school district from the receiver of school taxes or school treasurer, who shall issue the same upon the

payment of a fee of two dollars (\$2) for a wholesale license or a retail license, and four dollars (\$4) for a wholesale and retail license for his place of business, or if more than one, for each of his places of business in the school district for each license year. Such license shall be conspicuously posted at the place of business or each of the places of business of every such person at all times.

(3 reenacted May 12, 1949, P.L.1238, No.374 and amended May 14, 1982, P.L.426, No.125)

Section 4. Imposition and Rate of Tax.--Every person engaging in any of the following occupations or businesses in any school district of the first class A shall pay an annual mercantile license tax at the rate set forth:

(1) Wholesale vendors or dealers in goods, wares and merchandise and brokers, at the rate of one-half (1/2) mill on each dollar of the volume of the annual gross business transacted by him;

(2) Retail vendors, or dealers in goods, wares and merchandise; all persons engaged in conducting restaurants or other places where food, drink or refreshments are sold, and all persons conducting places of amusement at the rate of one (1) mill on each dollar of the volume of the annual gross business transacted by him;

(3) Wholesale and retail vendors or dealers in goods, wares and merchandise, at the rate of one-half (1/2) mill on each dollar of the volume of the annual gross wholesale business transacted by him, and one (1) mill on each dollar of the volume of the annual gross retail business transacted by him;

(4) The tax imposed by this section shall not apply to the dollar volume of annual business covering the resale of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares and merchandise except to the extent that the resale price exceeds the trade-in allowance.

(4 reenacted and amended May 12, 1949, P.L.1238, No.374 and amended May 14, 1982, P.L.426, No.125)

Section 5. Computation of Volume of Business.--

(a) Every person, subject to the payment of the tax hereby imposed who has commenced his business at least one (1) full year prior to the beginning of any license year shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the preceding calendar year.

(b) Every person, subject to the payment of the tax hereby imposed, who has commenced his business less than one (1) full year prior to the license year one thousand nine hundred forty-eight, for the license year one thousand nine hundred forty-eight, or who has commenced his business subsequent to the beginning of any license year for such license year and the succeeding license year, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during the first month of his engaging in such business, multiplied by the number of months of the current license year remaining, or multiplied by twelve (12) for the first full license year he engages in business, as the case may be.

(c) Every person, subject to the payment of the tax hereby

imposed, who engages in a business temporary, seasonal or itinerant by its nature, shall compute his annual gross volume of business upon the actual gross amount of business transacted by him during such license year.

Section 6. Returns.--

(a) Every return shall be made upon a form furnished by the collector. Every person making a return shall certify the correctness thereof, by affidavit.

(b) Every person, subject to the tax imposed by this act, who has commenced his business at least one (1) full year prior to the beginning of any license year, shall on or before the fifteenth day of April, one thousand nine hundred forty-eight, and annually thereafter, file with the collector a return setting forth his name, his business and business address, and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during the preceding calendar year and the amount of the tax due.

(c) Every person, subject to the tax imposed by this act, who has commenced his business less than one (1) full year prior to the beginning of the license year one thousand nine hundred forty-eight, shall, on or before the fifteenth day of March, one thousand nine hundred forty-eight, file with the collector a return setting forth his name, his business, business address, and such other information as may be necessary in arriving at the actual gross amount of business transacted by him during his first month of business and the amount of the tax due.

(d) Every person, subject to the tax imposed by this act, who commences business subsequent to the beginning of any license year, shall within forty (40) days from the date of commencing such business, and on or before the fifteenth day of April of the succeeding license year, file a return with the collector setting forth his name, his business and business address, and such information as may be necessary in arriving at the actual gross amount of business transacted by him during his first month of business and the amount of the tax due.

(e) Every person, subject to the payment of the tax imposed by this act, who engages in a business temporary, seasonal or itinerant by its nature, shall, within seven (7) days from the day he completes such business, file a return with the collector setting forth his name, his business and business address, and such information as may be necessary in arriving at the actual gross amount of business transacted by him during such period and the amount of the tax due.

(6 amended Sept. 9, 1959, P.L.850, No.338)

Section 7. Payment.--At the time of filing the return the person making the same shall pay the amount of tax shown as due thereon to the collector.

Section 8. Powers and Duties of Collector.--

(a) It shall be the duty of the collector to collect and receive the taxes, fines and penalties imposed by this act for payment over to the school treasurer. Where such school treasurer is not the collector, as in the case of other school taxes collected, it shall also be his duty to keep a record showing the amount received by him from each person paying the tax and the date of such receipt.

(b) The collector is hereby charged with the administration and enforcement of the provisions of this act, and is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter pertaining to the administration and enforcement of this act, including provision for the re-examination and correction of returns, and payments alleged or found to be incorrect, or as to which an overpayment is claimed, or found to have occurred. No assessment may be made more than five years after the date on which such taxes should have been paid, except where a fraudulent return or no return has been filed. Any person aggrieved by any decision of the collector shall have the right of appeal to the county court of Allegheny County. ((b) amended May 10, 1956, 1955 P.L.1559, No.519)

(c) The collector is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer in order to verify the accuracy of any return made, or, if no return was made, to ascertain the tax imposed. Every such taxpayer, or supposed taxpayer, is hereby directed and required to give to the collector the means, facilities and opportunity for such examinations and investigations as are hereby authorized. The collector is hereby authorized to examine any person connected with any business, concerning any gross volume of business, or gross receipts, which was, or should have been returned for taxation, and to this end may compel the production of books, papers and records, and the attendance of all persons before him, whether as parties, or witnesses, whom he believes to have knowledge of such gross volume of business or gross receipts.

(d) The powers conferred by this act upon the collector relating to the administration and enforcement of this act shall be in addition to, but not exclusive of, any other powers heretofore or hereafter conferred upon him.

Section 8.1. Review of Returns; Reassessment of Taxes.--No tax return shall be reexamined nor an additional tax imposed on any taxpayer on account of any rule or regulation which declares certain activities to be included in the retail business classification and which were allowed by the taxing authorities to be included in the wholesale business classification in previous returns, unless such rule or regulation is approved prior to the date such return is required to be filed.

(8.1 added July 13, 1953, P.L.450, No.104)

Section 9. Suit on Collection; Penalty.--

(a) It shall be the duty of the board of public education, or the collector if designated by the Board, to sue for the recovery of all taxes due, not paid when due. Such suits shall be begun within one (1) year after such taxes have been assessed.

(b) If for any reason the tax is not paid when due in each year, interest at the rate of six per centum (6%) per annum or at a per annum rate which does not exceed the Federal Reserve Discount Rate in effect for Federal Reserve District Four on December 1 of the preceding tax year, whichever is greater, on the amount of said tax, and an additional penalty of one-half of one per centum (1/2%) of the amount of the unpaid tax for each month, or fraction thereof, during which the tax remains unpaid,

shall be added and collected: Provided, That the maximum penalty which shall be imposed on a tax not paid when due shall be seven (7%) percent. A school district shall, on or before December 31, establish by resolution the specific per annum interest rate to be imposed on unpaid taxes during the following tax year. Where suit is brought for the recovery of any such tax the person shall be liable for, and in addition to the tax assessed against such person, the costs of such collection, and the interest and penalties herein imposed shall be collected. ((b) amended May 14, 1982, P.L.426, No.125)

(c) All penalty in excess of one-half of one per centum (1/2%) per month on unpaid taxes levied pursuant to the act for the year 1955 and all previous years are hereby abated, if the unpaid taxes and penalty (not to exceed one-half of one per centum (1/2%) per month) and interest are paid on or before December thirty-one, one thousand nine hundred fifty-six, provided the taxpayer's 1955 and 1956 taxes levied under this act are paid. No refund of taxes, interest or penalties paid prior to the date of the enactment of this act shall be made as a result of the amendments herein contained.

(9 reenacted May 12, 1949, P.L.1238, No.374 and amended May 10, 1956, 1955 P.L.1559, No.519)

Section 10. Penalties.--

(a) Whoever wilfully makes any false or untrue statement on his return shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than two thousand dollars (\$2000), or to undergo imprisonment for not more than one (1) year, or both.

(b) Whoever wilfully fails or refuses to appear before the collector in person with his books, records or accounts, for examination when required under the provisions of this act to do so, or who wilfully refuses to permit inspection of the books, records or accounts of any business in his custody or control, when the right to make such inspection by the collector is requested, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500), or to undergo imprisonment for not more than six (6) months, or both.

(c) Whoever wilfully fails or refuses to file a return required by this act and containing the information required by this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500), or to undergo imprisonment for not more than six (6) months, or both.

(d) Whoever being required under the provisions of this act to procure a mercantile license, and who wilfully fails or refuses to do so, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500), or to undergo imprisonment for not more than six (6) months, or both.

(e) Whoever being required under the provisions of this act to keep his license conspicuously posted at his place of business for which issued and fails to do so, shall, upon summary conviction thereof, pay a fine of not more than one hundred dollars (\$100) and costs of prosecution or in default of

payment thereof, shall undergo imprisonment for not more than thirty (30) days.

Section 11. Compensation; Employees.--

(a) The collector, and such of his assistants and employees as he shall designate, shall be paid by the school district such compensation for their services in the administration and enforcement of this act as the board of public education shall fix, which said compensation shall be in addition to such other salary or compensation each shall, or hereafter may, be entitled to receive for the performance of any other duties performed or to be performed by him.

(b) The collector shall appoint such assistants and employees, including legal counsel, as the collector shall require to aid him in the administration and enforcement of this act, at such salaries or compensation, as the board of public education shall fix, which shall be paid by the school district.

Section 12. Saving Clauses.--

(a) The validity of any ordinance or part of any ordinance providing for or relating to the imposition, levy or collection of any tax passed by the council of a city coextensive with a school district of the first class in effect on the effective date of this act, and any amendments or supplements thereto, which may be hereafter passed by such council shall not be affected or impaired by anything contained in this act.

(b) Nothing contained in this act shall be construed to empower any school district of the first class to levy and collect the taxes hereby imposed on any person or on any business or any portion of any business not within the taxing power of this Commonwealth under the Constitution of the United States.

(c) If the tax, or any portion of the tax, imposed upon any person, or, if any exception from the imposition of the tax, or any portion of the tax imposed upon any person under the provisions of this act shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States, or of the Commonwealth of Pennsylvania, the decision of the court shall not affect or impair the right to impose the taxes, or the validity of taxes so imposed upon other persons as herein provided, or to impose the taxes so excepted from imposition. It is the intent of the General Assembly that the taxes imposed or excepted, so held to be unconstitutional, were not to be imposed or excepted, but that the remainder of said taxes imposed hereunder were to be imposed and collected and the taxes so excepted were to be imposed.

Section 13. (13 repealed May 14, 1982, P.L.426, No.125)

Section 14. Repeal.--All acts or parts of acts inconsistent herewith are hereby repealed.

Section 15. Effective Date.--The provisions of this act shall become effective immediately upon final enactment.