

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 920 Session of
1997

INTRODUCED BY HART, HELFRICK, THOMPSON, WENGER AND STOUT,
APRIL 15, 1997

REFERRED TO FINANCE, APRIL 15, 1997

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 licenses.

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

13 Section 1. Section 208 of the act of March 4, 1971 (P.L.6,
14 No.2), known as the Tax Reform Code of 1971, amended August 4,
15 1991 (P.L.97, No.22), June 16, 1994 (P.L.279, No.48) and June
16 30, 1995 (P.L.139, No.21), is amended to read:

17 Section 208. Licenses.--(a) Every person maintaining a
18 place of business in this Commonwealth, selling or leasing
19 services or tangible personal property, the sale or use of which
20 is subject to tax and who has not hitherto obtained a license
21 from the department, shall, prior to the beginning of business

1 thereafter, make application to the department, on a form
2 prescribed by the department, for a license. If such person
3 maintains more than one place of business in this Commonwealth,
4 the license shall be issued for the principal place of business
5 in this Commonwealth. The application shall identify each
6 location at which the business will be operated and each
7 location shall be identified in the license. No license shall be
8 valid for a location not identified in the license.

9 (b) [The] Except as provided in subsection (b.1) of this
10 section, the department shall, after the receipt of an
11 application, issue the license applied for under subsection (a)
12 of this section,[, provided said applicant shall have filed all
13 required State tax reports and paid any State taxes not subject
14 to a timely perfected administrative or judicial appeal or
15 subject to a duly authorized deferred payment plan. Such license
16 shall be nonassignable. All licensees as of the effective date
17 of this subsection shall be required to file for renewal of said
18 license on or before January 31, 1992. Licenses issued through
19 April 30, 1992, shall be based on a staggered renewal system
20 established by the department. Thereafter, any] A license issued
21 under this section shall be valid for a period of five years.

22 [(b.1) If an applicant for a license or any person holding a
23 license has not filed all required State tax reports and paid
24 any State taxes not subject to a timely perfected administrative
25 or judicial appeal or subject to a duly authorized deferred
26 payment plan, the department may refuse to issue, may suspend or
27 may revoke said license. The department shall notify the
28 applicant or licensee of any refusal, suspension or revocation.
29 Such notice shall be made by first class mail. An applicant or
30 licensee aggrieved by the determination of the department may

1 file an appeal pursuant to the provisions for administrative
2 appeals in this article. In the case of a suspension or
3 revocation which is appealed, the license shall remain valid
4 pending a final outcome of the appeals process.]

5 (b.1) (1) The department may refuse to issue or may suspend
6 or revoke a license under this section for any of the following
7 reasons:

8 (i) The license applicant, license holder or an affiliated
9 person formerly applied for or held a license or permit under
10 this section or a license under a similar law of another
11 jurisdiction, which license was denied, suspended or revoked and
12 not issued, reinstated or restored.

13 (ii) An affiliated person was or is an affiliated person of
14 a corporation or association which formerly applied for or held
15 a license or permit under this section or a license under a
16 similar law of another jurisdiction, which license was denied,
17 suspended or revoked and not issued, reinstated or restored.

18 (iii) The license applicant, license holder or affiliated
19 person has not filed all required State tax reports or has not
20 paid all State taxes not subject to a timely and perfected
21 administrative or judicial appeal or subject to a duly
22 authorized deferred payment plan.

23 (iv) The license applicant, license holder or affiliated
24 person was convicted under the laws of this Commonwealth,
25 another state or the United States of fraud, tax evasion,
26 violation of the laws governing the reporting or payment of
27 trust fund taxes or any other violation of the laws of this
28 Commonwealth or the United States related thereto within three
29 years from the date of the application.

30 (v) The license applicant or license holder is not the real

1 party in interest, but the real party in interest is a person
2 described in subclause (i), (ii), (iii) or (iv) of this clause.

3 (2) The department shall notify the applicant or licensee of
4 any refusal, suspension or revocation. The notice shall be made
5 by first class mail. An applicant or licensee aggrieved by the
6 determination of the department may file an appeal under 2
7 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
8 Commonwealth agencies). In the case of a suspension or
9 revocation which is appealed, the license shall remain valid
10 pending final outcome of the appeal process.

11 (c) [Any] (1) Except as provided in clause (2) of this
12 subsection, any person who[, upon the expiration of sixty days
13 after the effective date of this article,] shall maintain a
14 place of business in this Commonwealth for the purpose of
15 selling or leasing services or tangible personal property, the
16 sale or use of which is subject to tax, without having first
17 been licensed by the department, shall be guilty of a summary
18 offense, and upon conviction thereof in a summary proceeding,
19 shall be sentenced to pay a fine of not less than [one hundred
20 dollars (\$100)] three hundred dollars (\$300) nor more than [one
21 thousand dollars (\$1,000)] one thousand five hundred dollars
22 (\$1,500), and in default thereof, to undergo imprisonment of not
23 less than [five] ten days nor more than thirty days.

24 (2) Any person who, after being sentenced under clause (1)
25 of this subsection, shall maintain a place of business in this
26 Commonwealth for the purpose of selling or leasing services or
27 tangible personal property, the sale or use of which is subject
28 to tax, without having first been licensed by the department,
29 shall be guilty of a misdemeanor of the second degree, and upon
30 conviction thereof, shall be sentenced to pay a fine of not less

1 than two thousand five hundred dollars (\$2,500) nor more than
2 five thousand dollars (\$5,000), and in default thereof, to
3 undergo imprisonment of not less than two years.

4 (3) The penalties imposed by this section shall be in
5 addition to any other penalties imposed by this article.

6 (d) Failure of any person to obtain a license shall not
7 relieve that person of liability to pay the tax imposed by this
8 article.

9 (e) For purposes of this section, "affiliated person" shall
10 mean and include every natural person, association or
11 corporation having a twenty-five percent or more equity interest
12 in the licensee or entity for which a license has been applied,
13 and, as applied to an association, shall mean the partners or
14 members thereof.

15 Section 2. Section 248.6 of the act, added May 2, 1985
16 (P.L.28, No.13), is amended to read:

17 Section 248.6. Promoters.--(a) A promoter of a show or
18 shows within this Commonwealth [may] shall annually file with
19 the department an application for a promoter's license stating
20 the location and dates of such show or shows. The application
21 shall be filed at least thirty days prior to the opening of the
22 first show and shall be in such form as the department may
23 prescribe.

24 (b) Except as [herein] provided in this section, the
25 department shall, within fifteen days after receipt of an
26 application for a license, issue to the promoter without charge
27 a license to operate such shows. If application for a license
28 under this section has been timely filed and if the license has
29 not been received by the promoter prior to the opening of the
30 show, the authorization contained in this section with respect

1 to the obtaining of a promoter's license shall be deemed to have
2 been complied with, unless or until the promoter receives notice
3 from the department denying the application for a promoter's
4 license.

5 (c) Any promoter who is a vendor under the provisions of
6 section 201 of this article shall comply with all the provisions
7 of this article applicable to vendors and with the provisions of
8 this section applicable to promoters.

9 (d) No licensed promoter shall permit any person to display
10 for sale or to sell tangible personal property or services
11 subject to tax under section 202 of this article at a show
12 unless such person is licensed under section 208 and provides to
13 the promoter the information required under section 271.1.

14 (e) Any licensed promoter who permits any person to display
15 for sale or to sell tangible personal property or service
16 without first having been licensed under section 208 of this
17 article, fails to maintain records of a show under section
18 271.1, knowingly maintains false records or fails to comply with
19 any provision contained in this section or any regulation
20 promulgated by the department pertaining to shows shall be
21 subject to denial of a license or the revocation of any existing
22 license issued pursuant to this section. In addition, the
23 department may deny such promoter a license certificate to
24 operate a show for a period of not more than six months from the
25 date of such denial. Such penalty shall be in addition to any
26 other penalty imposed by this article. Within twenty days of
27 notice of denial or revocation of a license by the department,
28 the promoter may petition the department for a hearing, pursuant
29 to Title 2 of the Pennsylvania Consolidated Statutes (relating
30 to administrative law and procedure).

1 (f) The department may refuse to issue or may suspend or
2 revoke a license under this section for any of the following
3 reasons:

4 (1) The license applicant, license holder or an affiliated
5 person formerly applied for or held a license or permit under
6 this section or a license under a similar law of another
7 jurisdiction, which license was denied, suspended or revoked and
8 not issued, reinstated or restored.

9 (2) An affiliated person was or is an affiliated person of a
10 corporation or association which formerly applied for or held a
11 license or permit under this section or a license under a
12 similar law of another jurisdiction, which license was denied,
13 suspended or revoked and not issued, reinstated or restored.

14 (3) The license applicant, license holder or affiliated
15 person has not filed all required State tax reports or has not
16 paid all State taxes not subject to a timely and perfected
17 administrative or judicial appeal or subject to a duly
18 authorized deferred payment plan.

19 (4) The license applicant, license holder or affiliated
20 person was convicted under the laws of this Commonwealth,
21 another state or the United States of fraud, tax evasion,
22 violation of the laws governing the reporting or payment of
23 trust fund taxes or any other violation of the laws of this
24 Commonwealth or the United States related thereto within three
25 years from the date of the application.

26 (5) The license applicant or license holder is not the real
27 party in interest, but the real party in interest is a person
28 described in clause (1), (2), (3) or (4) of this subsection.

29 (g) The department shall notify the applicant or licensee of
30 any refusal, suspension or revocation. The notice shall be made

1 by first class mail. An applicant or licensee aggrieved by the
2 determination of the department may file an appeal under 2
3 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
4 Commonwealth agencies). In the case of a suspension or
5 revocation which is appealed, the license shall remain valid
6 pending final outcome of the appeal process.

7 (h) For purposes of this section, "affiliated person" shall
8 mean and include every natural person, association or
9 corporation having a twenty-five percent or more equity interest
10 in the licensee or entity for which a license has been applied,
11 and, as applied to an association, shall mean the partners or
12 members thereof.

13 Section 4. This act shall take effect immediately.