

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 599

Session of
1985

INTRODUCED BY FLICK, TRELLO, HERMAN, LAUGHLIN, RYBAK, VROON,
HALUSKA, STEWART, GODSHALL, HAGARTY, DONATUCCI, BURD, REBER,
E. Z. TAYLOR, PETRONE, WOGAN, SEMMEL, DeLUCA, WOZNIAK,
SIRIANNI, TELEK, POTT, FREIND, FARGO, BOWSER, PRATT, TIGUE,
L. E. SMITH, NAHILL, BATTISTO, DISTLER, NOYE, AFFLERBACH,
BARLEY, PETRARCA, CAWLEY, GEIST, CIVERA, GANNON, HERSHEY,
MICOZZIE, HALUSKA, CARN AND MORRIS, MARCH 20, 1985

REFERRED TO COMMITTEE ON FINANCE, MARCH 20, 1985

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 collection of tax on
11 vehicles.

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

14 Section 1. Section 205(a) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 June 9, 1978 (P.L.463, No.62), is amended to read:

17 Section 205. Alternate Imposition of Tax; Credits.--(a) If
18 any person actively and principally engaged in the business of
19 selling new or used motor vehicles, trailers or semi-trailers,
20 and registered with the [department] Department of

1 Transportation in the "dealer's class," acquires a motor
2 vehicle, trailer or semi-trailer for the purpose of resale, and
3 prior to such resale, uses the motor vehicle, trailer or semi-
4 trailer for a taxable use under this act during a period not
5 exceeding one year from the date of acquisition to the date of
6 resale, such person may, upon notice to the department within
7 ten days of the commencement of such use, elect to pay a tax
8 equal to six per cent of the fair rental value of the motor
9 vehicle, trailer or semi-trailer during such use. Should such
10 motor vehicle, trailer or semi-trailer be used for a taxable use
11 after a period of one year, the taxpayer shall be liable for a
12 tax on the fair market value of such motor vehicle, trailer or
13 semi-trailer at the time of acquisition, but shall be allowed a
14 credit equal to the tax paid pursuant to the election provided
15 for in this section. This section shall not apply to the use of
16 a vehicle as a wrecker, parts truck, delivery truck or courtesy
17 car.

18 * * *

19 Section 2. Section 208 of the act, amended September 9, 1971
20 (P.L.437, No.105), is amended to read:

21 Section 208. Licenses.--(a) Every person maintaining a
22 place of business in this Commonwealth, selling or leasing
23 services or tangible personal property, the sale or use of which
24 is subject to tax and who has not hitherto obtained a license
25 from the department shall prior to the beginning of business or
26 the collection of tax thereafter, make application to the
27 department, on a form prescribed by the department, for a
28 license. If such person maintains more than one place of
29 business in this Commonwealth, the license shall be issued for
30 the principal place of business in this Commonwealth.

1 (b) The department shall, after the receipt of an
2 application, issue the license applied for under subsection (a)
3 of this section. The license shall be nonassignable and of
4 permanent duration.

5 (c) Any person who, upon the expiration of sixty days after
6 the effective date of this article, shall maintain a place of
7 business in this Commonwealth for the purpose of selling or
8 leasing services or tangible personal property, the sale or use
9 of which is subject to tax, or who shall collect tax under color
10 of this section, without having first been licensed by the
11 department, shall be guilty of a summary offense, and upon
12 conviction thereof in a summary proceeding, shall be sentenced
13 to pay a fine of not less than one hundred dollars (\$100) nor
14 more than three hundred dollars (\$300), and in default thereof,
15 to undergo imprisonment of not less than five days nor more than
16 thirty days. The penalties imposed by this section shall be in
17 addition to any other penalties imposed by this article.

18 (d) Failure of any person to obtain a license shall not
19 relieve him of liability to pay the tax imposed by this article.

20 Section 3. Section 227 of the act is amended to read:

21 Section 227. Discount.--[If] Except with respect to taxes
22 collected under color of section 238(b), if a return is filed by
23 a licensee and the tax shown to be due thereon less any discount
24 is paid all within the time prescribed, the licensee shall be
25 entitled to credit and apply against the tax payable by him a
26 discount of one per cent of the amount of the tax collected by
27 him on and after the effective date of this article, as
28 compensation for the expense of collecting and remitting the
29 same and as a consideration of the prompt payment thereof.

30 Section 4. Sections 237(b)(1) and 238 of the act, amended

1 December 28, 1972 (P.L.1633, No.340), are amended to read:

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

3 (b) Collection by Persons Maintaining a Place of Business in
4 the Commonwealth. (1) Every person maintaining a place of
5 business in this Commonwealth and selling or leasing tangible
6 personal property or services, including the selling or leasing
7 as tangible personal property mobilehomes as defined in ["The
8 Vehicle Code"] the act of July 25, 1977 (P.L.95, No.35), known
9 as the "Mobile Home Titling Act," whether or not a certificate
10 of title is issued by the [department] Department of
11 Transportation, the sale or use of which is subject to tax shall
12 collect the tax from the purchaser or lessee at the time of
13 making the sale or lease, and shall remit the tax to the
14 department.

15 * * *

16 Section 238. Collection of Tax on [Motor] Vehicles[,
17 Trailers and Semi-Trailers].--

18 [Notwithstanding the provisions of clause (1) of subsection
19 (b) of section 237 of this article, tax due on the sale at
20 retail or use of a motor vehicle, trailer or semi-trailer,
21 except mobilehomes as defined in "The Vehicle Code," required by
22 law to be registered with the department under the provisions of
23 "The Vehicle Code" shall be paid by the purchaser or user
24 directly to the department upon application to the department
25 for an issuance of a certificate of title upon such motor
26 vehicle, trailer or semi-trailer. The department shall not issue
27 a certificate of title until the tax has been paid, or evidence
28 satisfactory to the department has been given to establish that
29 tax is not due. The department may cancel or suspend any record
30 of certificate of title or registration of a motor vehicle,

1 trailer or semi-trailer when the check received in payment of
2 the tax on such vehicle is not paid upon demand. Such tax shall
3 be considered as a first encumbrance against such vehicle and
4 the vehicle may not be transferred without first payment in full
5 of such tax and any interest additions or penalties which shall
6 accrue thereon in accordance with this article.]

7 (a) Payment directly to the Commonwealth. Notwithstanding
8 the provisions of clause (1) of subsection (b) of section 237 of
9 this article, and except as provided in subsection (b) of this
10 section, tax due on the sale at retail or use of a vehicle
11 required by law to be titled by the Department of Transportation
12 under the provisions of Title 75 of the Pennsylvania
13 Consolidated Statutes (relating to vehicles) or by the act of
14 July 25, 1977 (P.L.95, No.35), known as the "Mobile Home Titling
15 Act," shall be paid by the purchaser or user within ten days of
16 the date of purchase or taxable use directly to the Commonwealth
17 upon application to the Department of Transportation for an
18 issuance of a certificate of title upon such vehicle. The
19 Department of Transportation shall not issue a certificate of
20 title until the tax has been paid or evidence satisfactory to
21 the Commonwealth has been given to establish that tax is not
22 due. Unpaid tax shall be a first encumbrance against such
23 vehicle and the vehicle may not be transferred without first
24 payment in full of the tax, interest, additions and penalties
25 which shall accrue thereon in accordance with this article.

26 (b) Collection by dealers and other authorized persons. (1)
27 A manufacturer or dealer licensed by the State Board of Motor
28 Vehicle Manufacturers, Dealers and Salespersons of the
29 Department of State under the act of December 22, 1983 (P.L.306,
30 No.84), known as the "Board of Vehicles Act," or a manufacturer

1 or dealer, not regulated under the "Board of Vehicles Act,"
2 because of the type of vehicles manufactured or sold, which the
3 Department of Transportation certifies as meeting the
4 requirements of its regulations pertaining to special
5 registration plates for manufacturers and dealers, or a sales
6 finance company or bank licensed under the provisions of the act
7 of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle
8 Sales Finance Act," or a full agent designated by the Department
9 of Transportation under 67 Pa. Code, Chapter 43, or a messenger
10 service authorized by the Department of Transportation under 67
11 Pa. Code, Chapter 253, is hereby authorized, subject to the
12 provisions of this section and the rules and regulations
13 promulgated thereunder, to collect on behalf of the Commonwealth
14 tax and fees due and payable upon the sale or use and transfer
15 of any new or used vehicle.

16 (2) Each such collection of tax and fees shall be evidenced
17 by the issuance to the taxpayer of a true copy of the tax report
18 relating to the transaction. Production by the taxpayer of such
19 report or other credible evidence of payment to such a tax
20 collector shall be presumptive evidence of the time and amount
21 of the payment, rebuttable, inter alia, by evidence that the
22 taxpayer's check to the collector was returned as uncollectible.

23 (3) Each such collection of tax and fees shall be remitted
24 by the collector to the Commonwealth within ten days of the date
25 of purchase if the collector is the seller, and in all other
26 cases, within ten days of the date of collection from the
27 taxpayer, together with the tax report and such other reports or
28 documents as the Commonwealth may prescribe.

29 (4) A collector under this subsection shall be entitled to
30 assert a lien against any vehicle for any tax or fees pertaining

1 to the vehicle if a check in payment for such tax or fees is
2 returned to the collector as uncollectible.

3 (5) A collector who collects, reports and remits sales tax
4 at the time and in the manner authorized and required by this
5 subsection shall be entitled to a commission of one-half of one
6 per cent of the amount of tax so collected as compensation for
7 the expense of collecting, reporting and remitting the same.

8 Section 5. Sections 268(b) and 271(b) of the act are amended
9 to read:

10 Section 268. Crimes.--* * *

11 (b) Other Crimes. Except as otherwise provided by subsection
12 (a) of this section, any person maintaining a place of business
13 in this Commonwealth, who advertises or holds out or states to
14 the public or to any purchaser or user, directly or indirectly,
15 that the tax or any part thereof imposed by this article will be
16 absorbed by such person, or that it will not be added to the
17 purchase price of the tangible personal property or services
18 described in subclauses (2), (3) and (4) of clause (k) of
19 section 201 of this article sold or, if added, that the tax or
20 any part thereof will be refunded, other than when such person
21 refunds the purchase price because of such property being
22 returned to the vendor, and any person maintaining a place of
23 business in this Commonwealth and selling or leasing tangible
24 personal property or said services the sale or use of which by
25 the purchaser is subject to tax hereunder, who shall wilfully
26 fail or refuse to collect the tax from the purchaser and remit
27 the same to the department, and any person who shall wilfully
28 fail, neglect or refuse to file any return or report required by
29 this article or any taxpayer who shall refuse to pay any tax,
30 penalty or interest imposed or provided for by this article, or

1 who shall wilfully fail to preserve his books, papers and
2 records as directed by the department, or any person who shall
3 refuse to permit the department or any of its authorized agents
4 to examine his books, records or papers, or who shall knowingly
5 make any incomplete, false or fraudulent return or report, or
6 who shall do, or attempt to do, anything whatever to prevent the
7 full disclosure of the amount or character of taxable sales
8 purchases or use made by himself or any other person, or shall
9 provide any person with a false statement as to the payment of
10 tax with respect to particular tangible personal property or
11 said services, or shall make, utter or issue a false or
12 fraudulent exemption certificate, or shall falsely represent
13 himself as a collector of tax and fees on vehicles, or shall
14 issue a false or fraudulent receipt or tax report for tax or
15 fees collected, or shall fail to provide a true copy of the tax
16 report to the purchaser, or shall fail to remit at the time and
17 in the manner provided by law, any tax or fees collected by him,
18 shall be guilty of a misdemeanor, and, upon conviction thereof,
19 shall be sentenced to pay a fine not exceeding one thousand
20 dollars (\$1000) and costs of prosecution, or undergo
21 imprisonment not exceeding one year, or both: Provided, however,
22 That any person maintaining a place of business outside this
23 Commonwealth may absorb the tax with respect to taxable sales
24 made in the normal course of business to customers present at
25 such place of business without being subject to the above
26 penalty and fines. The penalties imposed by this section shall
27 be in addition to any other penalties imposed by any provision
28 of this article.

29 Section 271. Keeping of Records.--* * *

30 (b) Persons Collecting Tax from Others. Any person [liable]

1 authorized or required to collect tax from another person under
2 the provisions of this article shall file reports, keep records,
3 make payments and be subject to interest and penalties as
4 provided for under this article, in the same manner as if he
5 were directly subject to the tax.

6 * * *

7 Section 6. This act shall take effect January 1, 1986.