

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1455 Session of
2002

INTRODUCED BY HUGHES, MUSTO, COSTA, A. WILLIAMS, C. WILLIAMS AND
BODACK, JUNE 7, 2002

REFERRED TO FINANCE, JUNE 7, 2002

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 the rate of the cigarette
11 and tobacco products tax, for the floor tax and for the
12 disposition of the cigarette and tobacco products tax.

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

15 Section 1. The heading of Article XII of the act of March 4,
16 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
17 December 21, 1981 (P.L.482, No.141), is amended to read:

18 ARTICLE XII

19 [CIGARETTE TAX] CIGARETTE AND TOBACCO PRODUCTS TAX

20 Section 2. The definition of "cigarette" in section 1201 of
21 the act, added December 21, 1981 (P.L.482, No.141), is amended
22 and the section is amended by adding definitions to read:

1 Section 1201. Definitions.--As used in this article:

2 * * *

3 "Cigarette." Any roll for smoking made wholly or in part of
4 tobacco, the wrapper or cover of which is made of any substance
5 or material other than tobacco regardless of the size or shape
6 of the roll and regardless of whether or not the tobacco is
7 flavored, adulterated or mixed with any other ingredient. The
8 term cigarette shall not include cigars, little cigars or
9 cigarillos.

10 * * *

11 "Smokeless tobacco." Snuff, chewing tobacco and any other
12 tobacco that is intended to be consumed by means other than
13 smoking.

14 "Tobacco products." All products containing tobacco for
15 consumption and including, but not limited to, cigars, little
16 cigars, cigarillos, pipe tobacco and smokeless tobacco. This
17 does not include cigarettes or any other product included under
18 the definition of "cigarette."

19 "Tobacco products distributor or wholesaler." Any entity
20 engaged in the business of selling tobacco products, who sells,
21 exchanges or distributes tobacco products to retailers,
22 consumers or other wholesalers or distributors in this State.
23 Any tobacco products manufacturer or distributor that has an
24 office, sales house, or any other place of business within this
25 State, that sells, exchanges or distributes tobacco products to
26 any retailer, consumer or other wholesaler or distributor in
27 this State, is also included under the above definition and
28 liable for the excise tax.

29 * * *

30 "Wholesale price." The price for which a tobacco

1 manufacturer sells a tobacco product to a distributor or
2 wholesaler of tobacco products, exclusive of any discount,
3 rebate or other reduction.

4 Section 3. Sections 1206 and 1206.1 of the act, amended or
5 added August 4, 1991 (P.L.97, No.22), are amended to read:

6 Section 1206. Incidence and Rate of Tax.--(a) An excise tax
7 is hereby imposed and assessed upon the sale or possession of
8 cigarettes within this Commonwealth at the rate of [one and
9 fifty-five hundredths of a cent] five and fifty-five hundredths
10 cents per cigarette.

11 (b) The proceeds of thirty-one hundred elevenths cents of
12 the tax levied under subsection (a) shall be paid to the
13 Pharmaceutical Assistance Contract for the Elderly (PACE)
14 program established under Chapter 5 of the act of August 26,
15 1971 (P.L.351, No.91), known as the "State Lottery Law," to
16 subsidize its prescription drug benefits program.

17 Section 1206.1. Floor Tax.--Any person who possesses
18 cigarettes on which the tax imposed by section 1206 of this
19 article has been paid as of the effective date of this section
20 shall pay an additional tax at a rate of [sixty-five hundredth]
21 four cents per cigarette. The tax shall be reported and paid on
22 a form prescribed by the department. In addition to the interest
23 and penalties provided in section 1278 of this article, failure
24 to file said report and pay said tax within sixty days of the
25 effective date of this section may result in a penalty of two
26 hundred fifty dollars (\$250). This penalty shall be added to the
27 tax and assessed and collected at the same time in the same
28 manner and as a part of the tax.

29 Section 4. The act is amended by adding a section to read:

30 Section 1206.2. Incidence and Rate of Tax on Tobacco

1 Products.--A tax is hereby imposed on all tobacco products sold
2 or held for sale in this State by a distributor or a wholesaler
3 to a retail dealer or consumer.

4 (1) The tax imposed by this section will be at a rate of
5 forty per cent of the wholesale price of tobacco products. Each
6 tobacco products distributor or wholesaler who brings tobacco
7 products, or causes tobacco products to be brought into this
8 State, is liable for the tax imposed by this section. The tax is
9 imposed at forty per cent of the tobacco product wholesale
10 price, regardless of the actual price at which the product is
11 sold. If the tobacco products are not sold, the tobacco products
12 are to be taxed at the same rate. It shall be presumed that all
13 tobacco products within this State are subject to tax. A person
14 claiming that a tobacco product is not taxable has the burden of
15 proof.

16 (2) This tax does not apply to any tobacco products which
17 the State is prohibited from taxing under the laws of the United
18 States.

19 (3) The tax imposed is to be paid by the purchase of stamps
20 as provided in this article. The stamp shall be affixed to or
21 impressed upon each package of tobacco product. The Department
22 of Revenue shall promulgate further regulations for enforcement
23 and administration of this section.

24 (4) From July 1, 2002, until June 30, 2003, all tobacco
25 products tax revenues shall be paid into the General Fund.
26 Beginning July 1, 2003, all tobacco products tax revenues shall
27 be paid to the Department of Public Welfare for the operation of
28 a special pharmaceutical benefit program for low-income persons
29 with disabilities.

30 Section 5. Section 1296 of the act, amended May 7, 1997

1 (P.L.85, No.7), is amended to read:

2 Section 1296. Disposition of Certain Funds.--All cigarette
3 tax revenues collected by the Department of Revenue under this
4 article and heretofore paid into the Parent Reimbursement Fund
5 in accordance with the act of August 27, 1971 (P.L.358, No.92),
6 known as the "Parent Reimbursement Act for Nonpublic Education,"
7 shall be transferred into the General Fund. [Beginning July 1,
8 1993] From July 1, 1993, to July 1, 2002, two thirty-firsts, and
9 beginning July 1, 2002, two one-hundred elevenths of cigarette
10 tax receipts shall be transferred into the Agricultural
11 Conservation Easement Purchase Fund[, and beginning January 1,
12 1997]. From January 1, 1997, to July 1, 2003, three thirty-
13 firsts, and beginning July 1, 2003, three one-hundred elevenths
14 of cigarette tax receipts shall be paid into a restricted
15 account to be known as the Children's Health Fund for health
16 care for indigent children[, and the]. Beginning July 1, 2003,
17 fifty one-hundred elevenths of cigarette tax receipts shall be
18 transferred into the Adult Basic Coverage Insurance Program
19 established under Chapter 13 of the act of June 26, 2001
20 (P.L.755, No.77), known as the "Tobacco Settlement Act." The
21 remainder shall be paid into the General Fund. Moneys in the
22 Children's Health Fund shall not be expended until the enactment
23 of legislation to implement a program of expanded access to
24 health care for children. The transfers required by this section
25 shall be made by July 15 for the preceding six months and by
26 January 15 for the preceding six months.

27 Section 6. This act shall take effect on July 1, 2002.