

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1064 Session of 2009

INTRODUCED BY HUGHES, TARTAGLIONE, COSTA, FARNESE AND STOUT,
JULY 31, 2009

REFERRED TO FINANCE, JULY 31, 2009

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," adding provisions relating to the taxation of
11 tobacco products; and imposing penalties.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XII-A

18 TOBACCO PRODUCTS TAX

19 Section 1201-A. Definitions.

20 The following words and phrases when used in this article
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

1 "Cigar." Any roll of tobacco wrapped in tobacco.

2 "Cigarette." Includes any roll for smoking made wholly or in
3 part of tobacco, irrespective of size or shape, and whether or
4 not such tobacco is flavored, adulterated or mixed with any
5 other ingredient, the wrapper or cover of which is made of paper
6 or any other substance or material, excepting tobacco, and shall
7 not include cigars or roll your own tobacco.

8 "Cigarillo." A short, narrow cigar, wrapped in whole-leaf
9 tobacco. The term includes filtered cigarillos, which are
10 sometimes called little cigars.

11 "Consumer." An individual who purchases tobacco products for
12 personal use and not for resale.

13 "Contraband." Any tobacco product for which the tax imposed
14 by this article has not been paid.

15 "Dealer." A wholesaler or retailer. Nothing in this article
16 shall preclude any person from being a wholesaler or retailer,
17 provided the person meets the requirements for a license in each
18 category of dealer.

19 "Department." The Department of Revenue of the Commonwealth.

20 "Manufacturer." A person that produces tobacco products.

21 "Person." An individual, unincorporated association,
22 company, corporation, joint stock company, group, agency,
23 syndicate, trust or trustee, receiver, fiduciary, partnership,
24 conservator, any political subdivision of the Commonwealth or
25 any other state. Whenever used in any of the provisions of this
26 article prescribing or imposing penalties, the word "person" as
27 applied to a partnership, unincorporated association or other
28 joint venture, means the partners or members thereof, and as
29 applied to a corporation, means all the officers and directors
30 thereof.

1 "Purchase price." The total value of anything paid or
2 delivered, or promised to be paid or delivered, whether it be
3 money or otherwise, in complete performance of a sale or
4 purchase, without any deduction on account of the cost or value
5 of the property sold, cost or value of transportation, cost or
6 value of labor or service, interest or discount paid or allowed
7 after the sale is consummated, any other taxes imposed by the
8 Commonwealth or any other expense.

9 "Retailer." A person that purchases or receives tobacco
10 products from any source for the purpose of sale to a consumer,
11 or who owns, leases or otherwise operates one or more vending
12 machines for the purpose of sale of tobacco products to the
13 ultimate consumer. The term includes a vending machine operator
14 or a person that buys, sells, transfers or deals in tobacco
15 products and is not licensed as a tobacco products wholesaler
16 under this article.

17 "Roll-your-own tobacco." Any tobacco which, because of its
18 appearance, type, packaging or labeling, is suitable for use and
19 is likely to be offered to, or purchased by, consumers as
20 tobacco for making cigarettes. For purposes of reporting sales
21 of this product under the act of June 22, 2000 (P.L.394, No.54),
22 known as the Tobacco Settlement Agreement Act, 0.09 ounces of
23 tobacco shall constitute one individual unit sold.

24 "Sale." Any transfer of ownership, custody or possession of
25 tobacco products for consideration; any exchange, barter or
26 gift; or any offer to sell or transfer the ownership, custody or
27 possession of tobacco products for consideration.

28 "Taxpayer." Any person subject to tax under this article.

29 "Tobacco products." Cigars, cigarillos, cheroots, stogies,
30 periques, granulated, plug cut, crimp cut, ready rubbed and

other smoking tobacco, roll-your-own tobacco, snuff, dry snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or ingesting or for smoking in a pipe or otherwise, or both for chewing and smoking. The term does not include cigarettes.

"Unclassified importer." A person in this Commonwealth that acquires a tobacco product from any source on which the tax imposed by this article was not paid and that is not a person otherwise required to be licensed under the provisions of this article. The term includes, but is not limited to, consumers who purchase tobacco products using the Internet or mail order catalogs for personal possession or use in this Commonwealth.

"Vending machine operator." A person who places or services one or more tobacco product vending machines whether owned, leased or otherwise operated by the person at locations from which tobacco products are sold to the consumer. The owner or tenant of the premises upon which a vending machine is placed shall not be considered a vending machine operator if the owner's or tenant's sole remuneration therefrom is a flat rental fee or commission based upon the number or value of tobacco products sold from the machine, unless the owner or tenant actually owns the vending machine or leases the vending machine under an agreement whereby any profits from the sale of the tobacco products directly inure to the owner's or tenant's benefit.

"Wholesaler." A person engaged in the business of selling tobacco products that receives, stores, sells, exchanges or distributes tobacco products to retailers or other wholesalers

in this Commonwealth or retailers who purchase from a
manufacturer or from another wholesaler who has not paid the tax
imposed by this article.

Section 1202-A. Incidence and rate of tax.

(a) Imposition.--A tobacco products tax is hereby imposed on
the dealer, manufacturer or any person at the time the tobacco
product is first sold to a retailer in this Commonwealth at the
rate of 30% on the purchase price charged to the retailer for
the purchase of any tobacco product. The tax shall be collected
from the retailer by whomever sells the tobacco product to the
retailer and remitted to the department. Any person required to
collect this tax shall separately state the amount of tax on an
invoice or other sales document.

(b) Retailer.--If the tax is not collected by the seller
from the retailer, the tax is imposed on the retailer at the
time of purchase at the same rate as in subsection (a) based on
the retailer's purchase price of the tobacco products. The
retailer shall remit the tax to the department.

(c) Unclassified importer.--The tax is imposed on an
unclassified importer at the time of purchase at the same rate
as in subsection (a) based on the unclassified importer's
purchase price of the tobacco products. The unclassified
importer shall remit the tax to the department.

(d) Exceptions.--The tax shall not be imposed on any tobacco
products that:

(1) are exported for sale outside this Commonwealth; or

(2) are not subject to taxation by the Commonwealth

pursuant to any laws of the United States.

Section 1203-A. Floor tax.

(a) Payment.--Any retailer that, as of the effective date of

1 this article, possesses tobacco products subject to the tax
2 imposed by section 1202-A, shall pay the tax on the tobacco
3 products in accordance with the rates specified in section 1202-
4 A. The tax shall be paid and reported on a form prescribed by
5 the department within 90 days of the effective date of this
6 section.

7 (b) Administrative penalty; license.--If a retailer fails to
8 file the report required by subsection (a) or fails to pay the
9 tax imposed by subsection (a), the department may, in addition
10 to the interest and penalties provided in section 1215-A, do any
11 of the following:

12 (1) Impose an administrative penalty equal to the amount
13 of tax evaded or not paid. The penalty shall be added to the
14 tax evaded or not paid and assessed and collected at the same
15 time and in the same manner as the tax.

16 (2) Suspend, revoke or refuse to issue the retailer's
17 license.

18 (c) Criminal penalty.--In addition to any penalty imposed
19 under subsection (b), a person that willfully omits, neglects or
20 refuses to comply with a duty imposed under subsection (a)
21 commits a misdemeanor and shall, if convicted, be sentenced to
22 pay a fine of not less than \$2,500 nor more than \$5,000, to
23 serve a term of imprisonment not to exceed 30 days, or both.

24 Section 1204-A. Remittance of tax to department.

25 Wholesalers, retailers, unclassified importers and
26 manufacturers shall file monthly reports on a form prescribed by
27 the department by the 20th day of the month following the sale
28 or purchase of tobacco products from any other source on which
29 the tax levied by this article has not been paid. The tax is due
30 at the time the report is due. The department may required the

filing of reports and payment of tax on a less frequent basis at
its discretion.

Section 1205-A. (Reserved).

Section 1206-A. Procedures for claiming refund.

A claim for a refund of tax imposed by this article under
section 3003.1 and Article XXVII shall be in the form and
contain the information prescribed by the department by
regulation.

Section 1207-A. Sales or possession of tobacco product when tax
not paid.

(a) Sales or possession.--Any person who sells or possesses
any tobacco product for which the proper tax has not been paid
commits a summary offense and shall, upon conviction, be
sentenced to pay costs of prosecution and a fine of not less
than \$100 not more than \$1,000 or to imprisonment for not more
than 60 days, or both, at the discretion of the court. Any
tobacco products purchased from a wholesaler properly licensed
under this article shall be presumed to have the proper taxes
paid.

(b) Tax evasion.--Any person that shall falsely or
fraudulently, maliciously, intentionally or willfully with
intent to evade the payment of the tax imposed by this article
sells or possesses any tobacco product for which the proper tax
has not been paid commits a felony and shall, upon conviction,
be sentenced to pay costs of prosecution and a fine of not more
than \$15,000 or to imprisonment for not more than five years, or
both, at the discretion of the court.

Section 1208-A. Assessment.

The department is authorized to make the inquiries,
determinations and assessments of the tax, including interest,

1 additions and penalties, imposed by this article.

2 Section 1209-A. (Reserved).

3 Section 1210-A. (Reserved).

4 Section 1211-A. Failure to file return.

5 Where no return is filed, the amount of the tax due may be
6 assessed and collected at any time as to taxable transactions
7 not reported.

8 Section 1212-A. False or fraudulent return.

9 Where the taxpayer willfully files a false or fraudulent
10 return with intent to evade the tax imposed by this article, the
11 amount of tax due may be assessed and collected at any time.

12 Section 1213-A. Extension of limitation period.

13 Notwithstanding any other provision of this article, where,
14 before the expiration of the period prescribed for the
15 assessment of a tax, a taxpayer has consented, in writing, that
16 the period be extended, the amount of tax due may be assessed at
17 any time within the extended period. The period so extended may
18 be extended further by subsequent consents, in writing, made
19 before the expiration of the extended period.

20 Section 1214-A. Failure to furnish information, returning false
21 information or failure to permit inspection.

22 (a) Penalty.--Any taxpayer who fails to keep or make any
23 record, return, report, inventory or statement, or keeps or
24 makes any false or fraudulent record, return, report, inventory
25 or statement required by this article commits a misdemeanor and
26 shall, upon conviction, be sentenced to pay costs of prosecution
27 and a fine of \$500 and to imprisonment for not more than one
28 year, or both, at the discretion of the court.

29 (b) Examination.--The department is authorized to examine
30 the books and records, the stock of tobacco products and the

premises and equipment of any taxpayer in order to verify the accuracy of the payment of the tax imposed by this article. The person subject to an examination shall give to the department or its duly authorized representative, the means, facilities and opportunity for the examination. Willful refusal to cooperate with or permit an examination to the satisfaction of the department shall be sufficient grounds for the suspension or revocation of a taxpayer's license. In addition, a person who willfully refuses to cooperate with or permit an examination to the satisfaction of the department commits a misdemeanor and shall, upon conviction, be sentenced to pay costs of prosecution and a fine of \$500 or to imprisonment for not more than one year, or both, at the discretion of the court.

(c) Records; dealer or manufacturer.--A dealer or manufacturer shall keep and maintain for a period of four years records in the form prescribed by the department. The records shall be maintained at the location for which the license is issued.

(d) Reports.--A dealer or manufacturer shall file reports at times and in the form prescribed by the department.

(e) Records; manufacturer or wholesaler.--A manufacturer or wholesaler located or doing business in this Commonwealth who sells tobacco products to a wholesale license holder in this Commonwealth shall keep records showing:

(1) The number and kind of tobacco products sold.

(2) The date the tobacco products were sold.

(3) The name and license number of the dealer the tobacco products were sold to.

(4) The total weight of each of the tobacco products sold to the license holder.

1 (5) The place where the tobacco products were shipped.

2 (6) The name of the common carrier.

3 (f) Manufacturer or wholesaler.--A manufacturer or
4 wholesaler shall file with the department, on or before the 20th
5 of each month, a report showing the information listed in
6 subsection (e) for the previous month.

7 Section 1215-A. Other violations; peace officers; fines.

8 Sections 1278, 1279, 1280 and 1291 are incorporated by
9 reference into and shall apply to the tax imposed by this
10 article.

11 Section 1216-A. (Reserved).

12 Section 1217-A. (Reserved).

13 Section 1218-A. (Reserved).

14 Section 1219-A. Records of shipments and receipts of tobacco
15 products required.

16 The department may, in its discretion, require reports from
17 any common or contract carrier who transports tobacco products
18 to any point or points within this Commonwealth, and from any
19 bonded warehouseman or bailee who has in the possession of the
20 warehouseman or bailee any tobacco products. The reports shall
21 contain the information concerning shipments of tobacco products
22 that the department determines to be necessary for the
23 administration of this article. All common and contract
24 carriers, bailees and warehousemen shall permit the examination
25 by the department or its authorized agents of any records
26 relating to the shipment or receipt of tobacco products.

27 Section 1220-A. Licensing of dealers and manufacturers.

28 (a) Prohibition.--No person, unless all sales of tobacco
29 products are exempt from Pennsylvania tobacco products tax,
30 shall sell, transfer or deliver any tobacco products in this

1 Commonwealth without first obtaining the proper license provided
2 for in this article.

3 (b) Application.--An applicant for a dealer's or
4 manufacturer's license shall complete and file an application
5 with the department. The application shall be in the form and
6 contain information prescribed by the department and shall set
7 forth truthfully and accurately the information desired by the
8 department. If the application is approved, the department shall
9 license the dealer or manufacturer for a period of one year and
10 the license may be renewed annually thereafter.

11 Section 1221-A. Licensing of manufacturers.

12 Any manufacturer doing business within this Commonwealth
13 shall first obtain a license to sell tobacco products by
14 submitting an application to the department containing the
15 information requested by the department and designating a
16 process agent. If a manufacturer designates no process agent,
17 the manufacturer shall be deemed to have made the Secretary of
18 State its agent for the service of process in this Commonwealth.

19 Section 1222-A. Licensing of wholesalers.

20 (a) Requirements.--Applicants for a wholesale license or
21 renewal of that license shall meet the following requirements:

22 (1) The premises on which the applicant proposes to
23 conduct business are adequate to protect the revenue.

24 (2) The applicant is a person of reasonable financial
25 stability and reasonable business experience.

26 (3) The applicant, or any shareholder controlling more
27 than 10% of the stock if the applicant is a corporation or
28 any officer or director if the applicant is a corporation,
29 shall not have been convicted of any crime involving moral
30 turpitude.

1 (4) The applicant shall not have failed to disclose any
2 material information required by the department, including
3 information that the applicant has complied with this article
4 by providing a signed statement under penalty of perjury.

5 (5) The applicant shall not have made any material false
6 statement in the application.

7 (6) The applicant shall not have violated any provision
8 of this article.

9 (7) The applicant shall have filed all required State
10 tax reports and paid any State taxes not subject to a timely
11 perfected administrative or judicial appeal or subject to a
12 duly authorized deferred payment plan.

13 (b) Multiple locations.--The wholesale license shall be
14 valid for one specific location only. Wholesalers with more than
15 one location shall obtain a license for each location.

16 Section 1223-A. Licensing of retailers.

17 Applicants for retail license or renewal of that license
18 shall meet the following requirements:

19 (1) The premises in which the applicant proposes to
20 conduct business are adequate to protect the revenues.

21 (2) The applicant shall not have failed to disclose any
22 material information required by the department.

23 (3) The applicant shall not have any material false
24 statement in the application.

25 (4) The applicant shall not have violated any provision
26 of this article.

27 (5) The applicant shall have filed all required State
28 tax reports and paid any State taxes not subject to a timely
29 perfected administrative or judicial appeal or subject to a
30 duly authorized deferred payment plan.

1 Section 1224-A. License for tobacco products vending machines.

2 Each tobacco products vending machine shall have a current
3 retail license which shall be conspicuously and visibly placed
4 on the machine. There shall be conspicuously and visibly placed
5 on every tobacco products vending machine the name and address
6 of the owner and the name and address of the operator.

7 Section 1225-A. License fees and issuance and display of
8 license.

9 (a) At the time of making any application or license renewal
10 application:

11 (1) An applicant for a tobacco products manufacturers
12 license shall pay the department a license fee of \$1,500.

13 (2) An applicant for a wholesale tobacco products
14 dealer's license shall pay to the department a license fee of
15 \$1,500.

16 (3) An applicant for a retail tobacco products dealer's
17 license shall pay to the department a license fee of \$25.

18 (4) An applicant for a vending machine tobacco products
19 dealer's license shall pay to the department a license fee of
20 \$25.

21 (b) Proration.--Fees shall not be prorated.

22 (c) Issuance and display.--On approval of the application
23 and payment of the fees, the department shall issue the proper
24 license which must be conspicuously displayed at the location
25 for which it has been issued.

26 Section 1226-A. Electronic filing.

27 The department may at its discretion require that any or all
28 returns, reports or registrations that are required to be filed
29 under this article be filed electronically. Failure to
30 electronically file any return, report, registration or other

information the department may direct to be filed electronically
shall subject the taxpayer to a penalty of 5% of the tax due on
the return, up to a maximum of \$1,000, but not less than \$10.
This penalty shall be assessed at any time and collected in the
manner provided in this article. This penalty shall be in
addition to any civil penalty imposed in this article for
failure to furnish information or file a return. The criminal
penalty for failure to file a return electronically shall be the
same as the criminal penalty for failure to furnish information
or file a return under this article.

Section 1227-A. Expiration of license.

(a) Expiration.--A license shall expire on the last day of
June next succeeding the date upon which it was issued unless
the department at an earlier date suspends, surrenders or
revokes the license.

(b) Violation.--After the expiration date of the license or
sooner if the license is suspended, surrendered or revoked, it
shall be illegal for any dealer to engage directly or indirectly
in the business heretofore conducted by the dealer for which the
license was issued. Any licensee who shall, after the expiration
date of the license, engage in the business theretofore
conducted by the licensee either by way of purchase, sale,
distribution or in any other manner directly or indirectly
engaged in the business of dealing with tobacco products for
profit shall be in violation of this article and be subject to
the penalties provided in this article.

Section 1228-A. Administration powers and duties.

(a) Department.--The administration of this article is
hereby vested in the department. The department shall adopt
rules and regulations for the enforcement of this article. The

department may impose fees as may be necessary to cover the costs incurred in administering this section.

(b) Joint administration.--The department is authorized to jointly administer this article with other provisions of this act, including joint reporting of information, forms, returns, statements, documents or other information submitted to the department.

Section 1229-A. Sales without license.

(a) Penalty.--Any person who shall, without being the holder of a proper unexpired dealer's license, engage in purchasing, selling, distributing or in any other manner directly or indirectly engaging in the business of dealing with tobacco products for profit commits a summary offense and shall, upon conviction, be sentenced to pay costs of prosecution and a fine of not less than \$250 nor more than \$1,000, or to imprisonment for not more than 30 days, or both, at the discretion of the court.

(b) Prima facie evidence.--Open display of tobacco products in any manner shall be prima facie evidence that the person displaying such tobacco products is directly or indirectly engaging in the business of dealing with tobacco products for profit.

Section 1230-A. Violations and penalties.

(a) Suspension.--The license of any person who violates this article may be suspended after due notice and opportunity for a hearing for a period of not less than five days or more than 30 days for a first violation and shall be revoked or suspended for any subsequent violation.

(b) Fine.--In addition to the provisions of subsection (a), upon adjudication of a first violation, the person shall be

1 fined not less than \$2,500 nor more than \$5,000. For subsequent
2 violations, the person shall, upon adjudication thereof, be
3 fined not less than \$5,000 nor more than \$15,000.

4 (c) Civil penalty.--A person who violates section 1214-A
5 (b), (c), or (d), or 1225-A(c), shall be subject to a civil
6 penalty not to exceed \$300 per violation but shall not be
7 subject to subsections (a) and (b).

8 Section 1231-A. Property rights.

9 (a) Incorporation.--Subject to subsection (b), section 1285
10 is incorporated by reference into and shall apply to this
11 article.

12 (b) Alterations.--

13 (1) References in section 1285 to cigarettes shall apply
14 to tobacco products in this article.

15 (2) References in section 1285 to 2,000 or more
16 unstamped cigarettes shall apply to tobacco products worth at
17 least \$500 in this article.

18 (3) References in section 1285 to more than 200
19 unstamped cigarettes shall apply to tobacco products worth at
20 least \$50 in this article.

21 Section 1232-A. Sample of tobacco products.

22 (a) Samples.--The department shall, by regulation, govern
23 the receipt, distribution of and payment of tax on sample
24 tobacco products issued for free distribution.

25 (b) Construction.--Nothing in this article or the
26 regulations promulgated under this article shall prohibit the
27 bringing into this Commonwealth by a manufacturer samples of
28 tobacco products to be delivered and distributed only through
29 licensed dealers or the manufacturers or their sales
30 representatives. The tax shall be paid by the manufacturer

1 provided all such packs bear the legend "all applicable State
2 taxes have been paid." Under no circumstances shall any untaxed
3 tobacco products be sold within this Commonwealth.

4 Section 1233-A. Labeling and packaging.

5 It shall be unlawful to knowingly possess, sell, give,
6 transfer or deliver to any person, any tobacco product where the
7 packaging of which has been modified or altered by a person
8 other than the original manufacturer. Modification or alteration
9 shall include the placement of a sticker, writing or mark to
10 cover information on the packages. For purposes of this section,
11 a tobacco product package shall not be construed to have been
12 modified or altered by a person other than the manufacturer if
13 the most recent modification or alteration was made by the
14 manufacturer or person authorized by the manufacturer and
15 approved by the department.

16 Section 1234-A. Information exchange.

17 The department is authorized to exchange information with any
18 other Federal, State or local enforcement agency for purposes of
19 enforcing this article.

20 Section 2. This act shall take effect October 1, 2009.