

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

No. **405** Session of  
2011

INTRODUCED BY BROWNE, FOLMER, ORIE, ALLOWAY, M. WHITE, FONTANA,  
LEACH AND YUDICHAK, FEBRUARY 4, 2011

REFERRED TO FINANCE, FEBRUARY 4, 2011

AN ACT

1 Amending the act of December 31, 1965 (P.L.1257, No.511),  
2 entitled "An act empowering cities of the second class,  
3 cities of the second class A, cities of the third class,  
4 boroughs, towns, townships of the first class, townships of  
5 the second class, school districts of the second class,  
6 school districts of the third class and school districts of  
7 the fourth class including independent school districts, to  
8 levy, assess, collect or to provide for the levying,  
9 assessment and collection of certain taxes subject to maximum  
10 limitations for general revenue purposes; authorizing the  
11 establishment of bureaus and the appointment and compensation  
12 of officers, agencies and employes to assess and collect such  
13 taxes; providing for joint collection of certain taxes,  
14 prescribing certain definitions and other provisions for  
15 taxes levied and assessed upon earned income, providing for  
16 annual audits and for collection of delinquent taxes, and  
17 permitting and requiring penalties to be imposed and  
18 enforced, including penalties for disclosure of confidential  
19 information, providing an appeal from the ordinance or  
20 resolution levying such taxes to the court of quarter  
21 sessions and to the Supreme Court and Superior Court,"  
22 further providing for delegation of taxing powers and  
23 restrictions.

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

26 Section 1. Section 301.1(f)(12) of the act of December 31,  
27 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,  
28 amended October 15, 2008 (P.L.1615, No.130), is amended to read:

1 Section 301.1. Delegation of Taxing Powers and Restrictions  
2 Thereon.--\* \* \*

3 (f) Such local authorities shall not have authority by  
4 virtue of this act:

5 \* \* \*

6 (12) To levy, assess and collect a mercantile or business  
7 privilege tax on gross receipts or part thereof which are: (i)  
8 discounts allowed to purchasers as cash discounts for prompt  
9 payment of their bills; (ii) charges advanced by a seller for  
10 freight, delivery or other transportation for the purchaser in  
11 accordance with the terms of a contract of sale; (iii) received  
12 upon the sale of an article of personal property which was  
13 acquired by the seller as a trade-in to the extent that the  
14 gross receipts in the sale of the article taken in trade does  
15 not exceed the amount of trade-in allowance made in acquiring  
16 such article; (iv) refunds, credits or allowances given to a  
17 purchaser on account of defects in goods sold or merchandise  
18 returned; (v) Pennsylvania sales tax; (vi) based on the value of  
19 exchanges or transfers between one seller and another seller who  
20 transfers property with the understanding that property of an  
21 identical description will be returned at a subsequent date;  
22 however, when sellers engaged in similar lines of business  
23 exchange property and one of them makes payment to the other in  
24 addition to the property exchanged, the additional payment  
25 received may be included in the gross receipts of the seller  
26 receiving such additional cash payments; (vii) of sellers from  
27 sales to other sellers in the same line where the seller  
28 transfers the title or possession at the same price for which  
29 the seller acquired the merchandise; or (viii) transfers between  
30 one department, branch or division of a corporation or other

1 business entity of goods, wares and merchandise to another  
2 department, branch or division of the same corporation or  
3 business entity and which are recorded on the books to reflect  
4 such interdepartmental transactions. A mercantile or business  
5 privilege tax on gross receipts or on the privilege of doing  
6 business within or from a location within a local taxing  
7 jurisdiction may be imposed by a local taxing jurisdiction only  
8 if the privilege of doing business is exercised through a base  
9 of operations in the local taxing jurisdiction. In the case of a  
10 tax on the privilege of doing business within or from a location  
11 within a local taxing jurisdiction, no tax shall be imposed on  
12 gross receipts from activities which are also subject to a tax  
13 imposed by another local taxing jurisdiction on the privilege of  
14 doing business or on business receipts within that other  
15 jurisdiction. The taxpayer may exclude the gross receipts that  
16 are taxed or taxable in the other local jurisdiction. For  
17 purposes of this section, the term "base of operations" shall  
18 mean an actual, physical and permanent place of business from  
19 which a taxpayer manages, directs and controls its business  
20 activities at that location and shall not include a structure  
21 which is utilized in a municipality for the purpose of  
22 overseeing construction for the duration of the construction  
23 project.

24 \* \* \*

25 Section 2. The amendment of section 301.1(f)(12) of the act  
26 is intended as a clarification of existing law and is not  
27 intended to establish new rights or enlarge existing rights of  
28 local taxing jurisdictions or establish new obligations or  
29 enlarge existing obligations of taxpayers.

30 Section 4. This act shall take effect immediately.