

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1456 Session of
2013

INTRODUCED BY HENNESSEY, M. K. KELLER, V. BROWN, DeLUCA,
DENLINGER, GERGELY, GIBBONS, GINGRICH, GODSHALL, HARKINS,
COHEN, KOTIK, LONGIETTI, MARSICO, R. MILLER, SAINATO, SAYLOR,
SCHLOSSBERG, SONNEY, STERN, STURLA, TAYLOR AND BIZZARRO,
MAY 30, 2013

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, SEPTEMBER 22, 2014

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,
29 every State depository and every debtor or creditor of the
30 Commonwealth," further providing for definitions and

1 retention of records; providing for property rights; and
2 further providing for violations and penalties.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 ~~Section 1. The definitions of "cost of the retailer," "cost~~ <--
6 ~~of the stamping agent," and "cost of the wholesaler" in section~~
7 ~~202-A of the act of April 9, 1929 (P.L.343, No.176), known as~~
8 ~~The Fiscal Code, amended or added July 2, 1993 (P.L.250, No.46)~~
9 ~~and December 23, 2003 (P.L.243, No.45), are amended to read:~~

10 SECTION 1. THE DEFINITION OF "COST OF THE RETAILER" IN <--
11 SECTION 202-A OF THE ACT OF APRIL 9, 1929 (P.L.343, NO.176),
12 KNOWN AS THE FISCAL CODE, ADDED JULY 2, 1993 (P.L.250, NO.46) IS
13 AMENDED TO READ:

14 Section 202-A. Definitions.--As used in this article--

15 * * *

16 "Cost of the Retailer" shall mean the basic cost of
17 cigarettes to the retailer plus the cost of doing business by
18 the retailer in excess of the basic cost of cigarettes,
19 expressed as a percentage and applied to the basic cost of
20 cigarettes. In the absence of filing of satisfactory proof of a
21 lesser or higher cost of doing business by the retailer making
22 the sale, the cost of doing business by the retailer shall be
23 presumed to be [six] ~~eight~~ SEVEN per centum of the basic cost of <--
24 cigarettes to the retailer. When a retailer establishes a lesser
25 cost of doing business than the presumptive [six] ~~eight~~ SEVEN <--
26 per centum cost of doing business, such lesser cost of doing
27 business may be used to compute the cost of the retailer for a
28 period of time no greater than twelve months, at the end of
29 which time the cost to the retailer shall be computed using the
30 presumptive [six] ~~eight~~ SEVEN per centum cost of doing business, <--
31 unless the retailer again establishes a lesser cost of doing

1 business. Any fractional part of a cent in such cost per carton
2 shall be rounded off to the next higher cent. In the case of any
3 person who purchases cigarettes for sale at retail from any
4 manufacturer of cigarettes without resort to a wholesaler as
5 such, such person shall be deemed, for the purposes of this
6 article, to be engaged in the sale of cigarettes as a stamping
7 agent, wholesaler and retailer and as such shall be subject to
8 all mark-up provisions of this article in the order named.

9 ~~"Cost of the Stamping Agent" shall mean the basic cost of~~ <--
10 ~~cigarettes plus the cost of doing business by the cigarette~~
11 ~~stamping agent in excess of the basic cost of cigarettes,~~
12 ~~expressed as a percentage and applied to the basic cost of~~
13 ~~cigarettes. Any fractional part of a cent in the cost per carton~~
14 ~~of cigarettes shall be rounded off to the next higher cent. In~~
15 ~~the case of sales at retail by cigarette stamping agents, the~~
16 ~~cost of the cigarette stamping agent shall be the same as the~~
17 ~~cost of the retailer. There shall be determined a separate cost~~
18 ~~of the cigarette stamping agent for sales to wholesale dealers~~
19 ~~and for sales to retail dealers. In the absence of filing of~~
20 ~~satisfactory proof of a lesser cost of doing business of the~~
21 ~~cigarette stamping agent making the sale, the cost of doing~~
22 ~~business shall be presumed to be [one and seven tenths] two and~~
23 ~~five tenths per centum of the basic cost of cigarettes to the~~
24 ~~stamper for sales to wholesale dealers and, with respect to~~
25 ~~sales to retail dealers, the cost of the stamping agent plus the~~
26 ~~cost of the wholesaler. When a cigarette stamping agent~~
27 ~~establishes a lesser cost of doing business than the presumptive~~
28 ~~[costs contained herein] two and five tenths per centum cost of~~
29 ~~doing business, such lesser cost of doing business may be used~~
30 ~~to compute the cost of the cigarette stamping agent for a period~~

~~of time no greater than twelve months, at the end of which time the cost of the cigarette stamping agent shall be computed using the presumptive [costs contained herein] two and five tenths per centum cost of doing business, unless the cigarette stamping agent again establishes a lesser cost of doing business.~~

~~"Cost of the Wholesaler" shall mean the basic cost of cigarettes to the wholesaler plus the cost of doing business by the wholesaler in excess of the basic cost of cigarettes, expressed as a percentage and applied to the basic cost of cigarettes. Any fractional part of a cent in the cost to the wholesaler per carton of cigarettes shall be rounded off to the next higher cent. There shall be determined a separate cost of the wholesaler for sale to retail dealers. In the absence of filing satisfactory proof of a lesser cost of doing business by the wholesaler with respect to sales to retail dealers, the cost of doing business shall be presumed to be four and five tenths per centum of the basic cost of cigarettes. When a wholesaler establishes a lesser cost of doing business than the presumptive four and five tenths per centum cost of doing business, such lesser cost of doing business may be used to compute the cost of the wholesaler for a period of time no greater than twelve months, at the end of which time the cost of the wholesaler shall be computed using the presumptive four and five tenths per centum cost of doing business, unless the wholesaler again establishes a lesser cost of doing business.~~

~~* * *~~

Section 2. Section 214-A of the act, added July 2, 1993 (P.L.250, No.46), is amended to read:

Section 214-A. [Retention of] Required Records.--~~(a)~~ Every licensed dealer shall keep and maintain for a period of four

1 years such records in such form as the department shall by
2 regulation prescribe. The records shall be maintained at the
3 location for which the license is issued.

4 (b) A contract of sale complying with this article shall be
5 signed by the parties to a sale of cigarettes and shall be kept
6 on file by each party at the location for which the license is
7 issued. In the case of a dealer having more than one location
8 under common ownership, a party shall be in compliance with this
9 subsection if the documents are kept at the business or
10 corporate headquarters. Contract of sale documents include
11 actual documents, Internet or electronic evidence indicating
12 that a transaction has taken place.

13 ~~Section 3. The act is amended by adding a section to read:~~ <--

14 ~~Section 216.1 A. Property Rights. A purchasing dealer shall~~
15 ~~not have any property rights in a cigarette package to which a~~
16 ~~tax stamp is affixed until the purchasing dealer pays in full~~
17 ~~for the package.~~

18 ~~Section 4 3. Section 229-A of the act is amended by adding a~~ <--
19 ~~subsection to read:~~

20 ~~Section 229-A. Violations and Penalties.--* * *~~

21 ~~(g) A licensee who fails to pay for cigarettes in full upon~~ <--
22 ~~delivery or according to the contract of sale, but not more than~~
23 ~~ten days after delivery, violates this article and the~~
24 ~~licensee's license shall be suspended until payment is made in~~
25 ~~full. The licensee and any other person with an equitable~~
26 ~~interest in the license shall be prohibited from holding an~~
27 ~~interest in any other license issued under this article. Payment~~
28 ~~on delivery by a check that is dishonored constitutes a failure~~
29 ~~to pay in full upon delivery.~~

30 ~~(G) A LICENSEE WHO FAILS TO PAY FOR CIGARETTES IN FULL UPON~~ <--

1 DELIVERY BY CASH, CHECK OR ELECTRONIC FUND TRANSFER OR ACCORDING
2 TO THE CONTRACT OF SALE, REQUIRING FULL PAYMENT NO LATER THAN
3 FOURTEEN DAYS AFTER DELIVERY, IN ADDITION TO ANY OTHER
4 VIOLATIONS PROVIDED BY LAW, SHALL BE IN VIOLATION OF THIS
5 ARTICLE.

6 Section 5 4. This act shall take effect immediately.

<--