

AMENDMENTS TO HOUSE BILL NO. 2150

Sponsor: REPRESENTATIVE BRIGGS

Printer's No. 3338

1 Amend Bill, page 1, line 11, by striking out "AND,"

2 Amend Bill, page 1, line 12, by inserting after "tax"

3 ; and providing for a tobacco products tax

4 Amend Bill, page 13, by inserting between lines 24 and 25

5 Section 4. The act is amended by adding an article to read:

6 ARTICLE XII-A

7 TOBACCO PRODUCTS TAX

8 Section 1201-A. Definitions.

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

12 "Cigar." Any roll of tobacco wrapped in tobacco, not
13 including little cigars.

14 "Cigarette." Includes any roll for smoking made wholly or in
15 part of tobacco, irrespective of size or shape, and whether or
16 not such tobacco is flavored, adulterated or mixed with any
17 other ingredient, the wrapper or cover of which is made of paper
18 or any other substance or material, excepting tobacco, and shall
19 not include cigars or roll your own tobacco. The term shall
20 include little cigars.

21 "Consumer." An individual who purchases tobacco products for
22 personal use and not for resale.

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

25 "Dealer." A wholesaler or retailer. Nothing in this article
26 shall preclude any person from being a wholesaler or retailer,
27 provided the person meets the requirements for a license in each
28 category of dealer.

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

30 "Little cigar." Any roll for smoking that weighs not more
31 than four pounds per thousand, where the wrapper or cover is
32 made of natural leaf tobacco or any substance containing
33 tobacco.

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

35 "Person." An individual, unincorporated association,
36 company, corporation, joint stock company, group, agency,

1 syndicate, trust or trustee, receiver, fiduciary, partnership,
2 conservator, any political subdivision of the Commonwealth or
3 any other state. Whenever used in any of the provisions of this
4 article prescribing or imposing penalties, the word "person" as
5 applied to a partnership, unincorporated association or other
6 joint venture, means the partners or members thereof, and as
7 applied to a corporation, means all the officers and directors
8 thereof.

9 "Purchase price." The total value of anything paid or
10 delivered, or promised to be paid or delivered, whether it be
11 money or otherwise, in complete performance of a sale or
12 purchase, without any deduction on account of the cost or value
13 of the property sold, cost or value of transportation, cost or
14 value of labor or service, interest or discount paid or allowed
15 after the sale is consummated, any other taxes imposed by the
16 Commonwealth or any other expense.

17 "Retailer." A person that purchases or receives tobacco
18 products from any source for the purpose of sale to a consumer,
19 or who owns, leases or otherwise operates one or more vending
20 machines for the purpose of sale of tobacco products to the
21 ultimate consumer. The term includes a vending machine operator
22 or a person that buys, sells, transfers or deals in tobacco
23 products and is not licensed as a tobacco products wholesaler
24 under this article.

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

32 "Sale." Any transfer of ownership, custody or possession of
33 tobacco products for consideration; any exchange, barter or
34 gift; or any offer to sell or transfer the ownership, custody or
35 possession of tobacco products for consideration.

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

37 "Tobacco products." Cigars, cheroots, stogies, periques,
38 granulated, plug cut, crimp cut, ready rubbed and other smoking
39 tobacco, roll-your-own tobacco, snuff, dry snuff, snuff flour,
40 cavendish, plug and twist tobacco, fine-cut and other chewing
41 tobaccos, shorts, refuse scraps, clippings, cuttings and
42 sweepings of tobacco and other kinds and forms of tobacco,
43 prepared in such manner as to be suitable for chewing or
44 ingesting or for smoking in a pipe or otherwise, or both for
45 chewing and smoking. The term does not include cigarettes.

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

1 catalogs for personal possession or use in this Commonwealth.

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

15 "Wholesaler." A person engaged in the business of selling
16 tobacco products that receives, stores, sells, exchanges or
17 distributes tobacco products to retailers or other wholesalers
18 in this Commonwealth or retailers who purchase from a
19 manufacturer or from another wholesaler who has not paid the tax
20 imposed by this article.

21 Section 1202-A. Incidence and rate of tax.

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

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

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

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

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

44 (2) are not subject to taxation by the Commonwealth
45 pursuant to any laws of the United States.

46 (e) Article II.--Unless otherwise specifically noted, the
47 provisions of Article II shall apply to the returns, payment,
48 penalties, enforcement, collections and appeals of the tax
49 imposed on other tobacco products.

50 Section 1203-A. Floor tax.

51 (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
31 filing of reports and payment of tax on a less frequent basis at
32 its discretion.

33 Section 1205-A. (Reserved).

34 Section 1206-A. Procedures for claiming refund.

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

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

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

50 (b) Tax evasion.--Any person that shall falsely or
51 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,
additions and penalties, imposed by this article.

Section 1209-A. (Reserved).

Section 1210-A. (Reserved).

Section 1211-A. Failure to file return.

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

Section 1212-A. False or fraudulent return.

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

Section 1213-A. Extension of limitation period.

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

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

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

(b) Examination.--The department is authorized to examine
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

1 year, or both, at the discretion of the court.

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

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

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

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

14 (2) The date the tobacco products were sold.

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

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

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

20 (6) The name of the common carrier.

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

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

26 Sections 1278, 1279, 1280 and 1291 are incorporated by
27 reference into and shall apply to the tax imposed by this
28 article.

29 Section 1216-A. (Reserved).

30 Section 1217-A. (Reserved).

31 Section 1218-A. (Reserved).

32 Section 1219-A. Records of shipments and receipts of tobacco
33 products required.

34 The department may, in its discretion, require reports from
35 any common or contract carrier who transports tobacco products
36 to any point or points within this Commonwealth, and from any
37 bonded warehouseman or bailee who has in the possession of the
38 warehouseman or bailee any tobacco products. The reports shall
39 contain the information concerning shipments of tobacco products
40 that the department determines to be necessary for the
41 administration of this article. All common and contract
42 carriers, bailees and warehousemen shall permit the examination
43 by the department or its authorized agents of any records
44 relating to the shipment or receipt of tobacco products.
45 Section 1220-A. Licensing of dealers and manufacturers.

46 (a) Prohibition.--No person, unless all sales of tobacco
47 products are exempt from Pennsylvania tobacco products tax,
48 shall sell, transfer or deliver any tobacco products in this
49 Commonwealth without first obtaining the proper license provided
50 for in this article.

51 (b) Application.--An applicant for a dealer's or

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

8 Section 1221-A. Licensing of manufacturers.

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

16 Section 1222-A. Licensing of wholesalers.

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

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

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

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

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

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

34 (6) The applicant shall not have violated any provision
35 of this article.

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

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

43 Section 1223-A. Licensing of retailers.

44 Applicants for retail license or renewal of that license
45 shall meet the following requirements:

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

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

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

1 (4) The applicant shall not have violated any provision
2 of this article.

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

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

8 Each tobacco products vending machine shall have a current
9 retail license which shall be conspicuously and visibly placed
10 on the machine. There shall be conspicuously and visibly placed
11 on every tobacco products vending machine the name and address
12 of the owner and the name and address of the operator.

13 Section 1225-A. License fees and issuance and display of
14 license.

15 (a) At the time of making any application or license renewal
16 application:

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

19 (2) An applicant for a wholesale tobacco products
20 dealer's license shall pay to the department a license fee of
21 \$1,500.

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

24 (4) An applicant for a vending machine tobacco products
25 dealer's license shall pay to the department a license fee of
26 \$25.

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

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

32 Section 1226-A. Electronic filing.

33 The department may at its discretion require that any or all
34 returns, reports or registrations that are required to be filed
35 under this article be filed electronically. Failure to
36 electronically file any return, report, registration or other
37 information the department may direct to be filed electronically
38 shall subject the taxpayer to a penalty of 5% of the tax due on
39 the return, up to a maximum of \$1,000, but not less than \$10.
40 This penalty shall be assessed at any time and collected in the
41 manner provided in this article. This penalty shall be in
42 addition to any civil penalty imposed in this article for
43 failure to furnish information or file a return. The criminal
44 penalty for failure to file a return electronically shall be the
45 same as the criminal penalty for failure to furnish information
46 or file a return under this article.

47 Section 1227-A. Expiration of license.

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

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

12 Section 1228-A. Administration powers and duties.

13 (a) Department.--The administration of this article is
14 hereby vested in the department. The department shall adopt
15 rules and regulations for the enforcement of this article. The
16 department may impose fees as may be necessary to cover the
17 costs incurred in administering this section.

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

23 Section 1229-A. Sales without license.

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

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

38 Section 1230-A. Violations and penalties.

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

44 (b) Fine.--In addition to the provisions of subsection (a),
45 upon adjudication of a first violation, the person shall be
46 fined not less than \$2,500 nor more than \$5,000. For subsequent
47 violations, the person shall, upon adjudication thereof, be
48 fined not less than \$5,000 nor more than \$15,000.

49 (c) Civil penalty.--A person who violates section 1214-A
50 (b), (c), or (d), or 1225-A(c), shall be subject to a civil
51 penalty not to exceed \$300 per violation but shall not be

1 subject to subsections (a) and (b).

2 Section 1231-A. Property rights.

3 (a) Incorporation.--Subject to subsection (b), section 1285
4 is incorporated by reference into and shall apply to this
5 article.

6 (b) Alterations.--

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

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

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

15 Section 1232-A. Sample of tobacco products.

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

19 (b) Construction.--Nothing in this article or the
20 regulations promulgated under this article shall prohibit the
21 bringing into this Commonwealth by a manufacturer samples of
22 tobacco products to be delivered and distributed only through
23 licensed dealers or the manufacturers or their sales
24 representatives. The tax shall be paid by the manufacturer
25 provided all such packs bear the legend "all applicable State
26 taxes have been paid." Under no circumstances shall any untaxed
27 tobacco products be sold within this Commonwealth.

28 Section 1233-A. Labeling and packaging.

29 It shall be unlawful to knowingly possess, sell, give,
30 transfer or deliver to any person, any tobacco product where the
31 packaging of which has been modified or altered by a person
32 other than the original manufacturer. Modification or alteration
33 shall include the placement of a sticker, writing or mark to
34 cover information on the packages. For purposes of this section,
35 a tobacco product package shall not be construed to have been
36 modified or altered by a person other than the manufacturer if
37 the most recent modification or alteration was made by the
38 manufacturer or person authorized by the manufacturer and
39 approved by the department.

40 Section 1234-A. Information exchange.

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

44 Amend Bill, page 13, line 25, by striking out "4" and
45 inserting