

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 983 Session of 2013

INTRODUCED BY MENSCH, COSTA, HUGHES, WHITE, BREWSTER AND
ALLOWAY, JUNE 3, 2013

REFERRED TO FINANCE, JUNE 3, 2013

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," in cigarette sales and licensing, further
31 providing for definitions and for retention of records;
32 providing for property records; and further providing for
33 violations and penalties.

1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

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

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

10 * * *

11 "Cost of the Retailer" shall mean the basic cost of
12 cigarettes to the retailer plus the cost of doing business by
13 the retailer in excess of the basic cost of cigarettes,
14 expressed as a percentage and applied to the basic cost of
15 cigarettes. In the absence of filing of satisfactory proof of a
16 lesser or higher cost of doing business by the retailer making
17 the sale, the cost of doing business by the retailer shall be
18 presumed to be [six] eight per centum of the basic cost of
19 cigarettes to the retailer. When a retailer establishes a lesser
20 cost of doing business than the presumptive [six] eight per
21 centum cost of doing business, such lesser cost of doing
22 business may be used to compute the cost of the retailer for a
23 period of time no greater than twelve months, at the end of
24 which time the cost to the retailer shall be computed using the
25 presumptive [six] eight per centum cost of doing business,
26 unless the retailer again establishes a lesser cost of doing
27 business. Any fractional part of a cent in such cost per carton
28 shall be rounded off to the next higher cent. In the case of any
29 person who purchases cigarettes for sale at retail from any
30 manufacturer of cigarettes without resort to a wholesaler as

1 such, such person shall be deemed, for the purposes of this
2 article, to be engaged in the sale of cigarettes as a stamping
3 agent, wholesaler and retailer and as such shall be subject to
4 all mark-up provisions of this article in the order named.

5 "Cost of the Stamping Agent" shall mean the basic cost of
6 cigarettes plus the cost of doing business by the cigarette
7 stamping agent in excess of the basic cost of cigarettes,
8 expressed as a percentage and applied to the basic cost of
9 cigarettes. Any fractional part of a cent in the cost per carton
10 of cigarettes shall be rounded off to the next higher cent. In
11 the case of sales at retail by cigarette stamping agents, the
12 cost of the cigarette stamping agent shall be the same as the
13 cost of the retailer. There shall be determined a separate cost
14 of the cigarette stamping agent for sales to wholesale dealers
15 and for sales to retail dealers. In the absence of filing of
16 satisfactory proof of a lesser cost of doing business of the
17 cigarette stamping agent making the sale, the cost of doing
18 business shall be presumed to be [one and seven-tenths] two and
19 five-tenths per centum of the basic cost of cigarettes to the
20 stamper for sales to wholesale dealers and, with respect to
21 sales to retail dealers, the cost of the stamping agent plus the
22 cost of the wholesaler. When a cigarette stamping agent
23 establishes a lesser cost of doing business than the presumptive
24 costs contained herein, such lesser cost of doing business may
25 be used to compute the cost of the cigarette stamping agent for
26 a period of time no greater than twelve months, at the end of
27 which time the cost of the cigarette stamping agent shall be
28 computed using the presumptive costs contained herein, unless
29 the cigarette stamping agent again establishes a lesser cost of
30 doing business.

1 "Cost of the Wholesaler" shall mean the basic cost of
2 cigarettes to the wholesaler plus the cost of doing business by
3 the wholesaler in excess of the basic cost of cigarettes,
4 expressed as a percentage and applied to the basic cost of
5 cigarettes. Any fractional part of a cent in the cost to the
6 wholesaler per carton of cigarettes shall be rounded off to the
7 next higher cent. There shall be determined a separate cost of
8 the wholesaler for sale to retail dealers. In the absence of
9 filing satisfactory proof of a lesser cost of doing business by
10 the wholesaler with respect to sales to retail dealers, the cost
11 of doing business shall be presumed to be four and five-tenths
12 per centum of the basic cost of cigarettes. When a wholesaler
13 establishes a lesser cost of doing business than the presumptive
14 cost of doing business, such lesser cost of doing business may
15 be used to compute the cost of the wholesaler for a period of
16 time no greater than twelve months, at the end of which time the
17 cost of the wholesaler shall be computed using the presumptive
18 four per centum cost of doing business, unless the wholesaler
19 again establishes a lesser cost of doing business.

20 * * *

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

23 Section 214-A. [Retention of] Required Records.--(a) Every
24 licensed dealer shall keep and maintain for a period of four
25 years such records in such form as the department shall by
26 regulation prescribe. The records shall be maintained at the
27 location for which the license is issued.

28 (b) A contract of sale complying with the provisions of this
29 article shall be signed by the parties to a sale of cigarettes
30 and shall be kept on file by each party at the location for

1 which the license is issued. In the case of a dealer having more
2 than one location under common ownership, the contract of sale
3 shall be kept at the business or corporate headquarters. A
4 contract of sale shall include, but not be limited to, an actual
5 document or Internet or electronic evidence indicating that a
6 transaction for the sale of cigarettes has taken place.

7 Section 3. The act is amended by adding a section to read:

8 Section 216.1-A. Property Rights.--A purchasing dealer shall
9 not have any property rights in any cigarette package to which a
10 tax stamp is affixed until the purchasing dealer pays in full
11 for the package.

12 Section 4. Section 229-A of the act is amended by adding a
13 subsection to read:

14 Section 229-A. Violations and Penalties.--* * *

15 (g) Any licensee who fails to pay for cigarettes in full
16 upon delivery or according to the contract of sale, but in no
17 event more than ten days after delivery, violates this article
18 and the licensee's license shall be suspended until payment is
19 made in full. The licensee and any other person with an
20 equitable interest in the license shall be prohibited from
21 holding an interest in any other license issued pursuant to this
22 article. Payment on delivery by a check that is dishonored
23 constitutes a failure to pay in full upon delivery.

24 Section 5. This act shall take effect immediately.