

TAX REFORM CODE OF 1971 - IMPOSITION OF TAX AND ESTABLISHING
THE TOURISM PROMOTION FUND

Act of Oct. 24, 2018, P.L. 707, No. 109

Cl. 72

Session of 2018

No. 2018-109

HB 1511

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in hotel occupancy tax, further providing for definitions and for imposition of tax and establishing the Tourism Promotion Fund.

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

Section 1. Sections 209(a) and 210 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended to read:

Section 209. Definitions.--(a) For the purposes of this part V only, the following words, terms and phrases shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

[(1) "Hotel." A building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term "hotel" shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.]

(1.1) "Accommodation fee." The amount by which the rent exceeds the discount room charge, if any.

(1.2) "Booking agent." A person or entity which facilitates or collects payment for hotel accommodations on behalf of or for an operator. The term "booking agent" shall not include a person who merely publishes advertisements for accommodations.

(1.3) "Discount room charge." The amount charged by an operator to a booking agent in connection with the sale of an accommodation by the booking agent.

(1.4) "Hotel." A building or buildings in which the public may, for consideration, obtain sleeping accommodations. The term "hotel" shall not include any charitable, educational or religious institution summer camp for children, hospital or nursing home.

(2) "Occupant." A person (other than a "permanent resident," as defined herein,) who, for a consideration, uses, possesses or has a right to use or possess any room or rooms in a hotel under any lease, concession, permit, right of access, license or agreement.

(3) "Occupancy." The use or possession or the right to the use or possession by any person (other than a "permanent resident,") of any room or rooms in a hotel for any purpose or the right to the use or possession of the furnishings or to the

services and accommodations accompanying the use and possession of the room or rooms.

(4) "Operator." Any person operating a hotel **or acting as a booking agent.**

(5) "Permanent resident." Any occupant who has occupied or has the right to occupancy of any room or rooms in a hotel for at least thirty consecutive days.

(6) "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, [and also] **accommodation fees and** any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever, **including any amount charged by a booking agent.** The term "rent" shall not include a gratuity.

* * *

Section 210. Imposition of Tax.--(a) There is hereby imposed an excise tax of six per cent of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth as herein provided. **If a booking agent, acting for an operator, collects payment for rent, the booking agent must collect and remit the following:**

(1) The tax imposed under this section.

(2) Any additional or optional hotel tax imposed under:

(i) The act of June 5, 1991 (P.L.9, No.6), known as the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class";

(ii) The act of December 21, 1998 (P.L.1307, No.174), known as the "Community and Economic Improvement Act";

(iii) 64 Pa.C.S. Ch. 60 (relating to Pennsylvania Convention Center Authority);

(iv) Articles XVII and XXIII of the act of August 9, 1955 (P.L.323, No.130), known as "The County Code"; or

(v) The act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code."

(b) Notwithstanding any provision of law to the contrary, the following shall apply:

(1) The collected and remitted tax imposed under subsection (a)(1) shall be deposited into the Tourism Promotion Fund established under section 212.

(2) The collected and remitted tax imposed under subsection (a)(2) shall be deposited in accordance with a county ordinance.

(c) An operator shall not be liable for tax owed regarding an accommodation fee.

(d) A booking agent shall not be required to separately disclose to an occupant the amount of the tax imposed that relates to a discount room charge versus an accommodation fee.

Section 2. The act is amended by adding a section to read:

Section 212. Tourism Promotion Fund.--(a) A restricted revenue account is established within the Treasury Department to be known as the Tourism Promotion Fund.

(b) The tax collected by a booking agent on accommodation fees under section 210 shall be deposited into the fund and disbursed upon appropriation for the purpose of promoting tourism in this Commonwealth.

(c) The department shall promulgate guidelines, rules and regulations as necessary to achieve the purpose of promoting tourism in this Commonwealth.

(c.1) Money from the fund may not be used for the promotion or marketing operations of a tourism entity or for special events or grants until thirty days after the publication of the

guidelines, rules and regulations under subsection (c) in the Pennsylvania Bulletin.

(c.2) The following shall apply:

(1) No more than fifty per cent of the funds available for disbursement under subsection (b) may be distributed for the purposes of promotion or marketing operations of a tourism entity or for special events or grants.

(2) Funding for the promotion or marketing operations of a tourism entity, special events or grants shall require a fifty per cent cash or in-kind match.

(3) A single recipient of funding under paragraph (2) may not be awarded more than fifteen per cent of the total funds available for disbursement under subsection (b). This paragraph shall not apply to contracts entered into by the department for Statewide tourism promotion or marketing.

(c.3) Funds available for disbursement under subsection (b) may not be used for capital projects or for the design, construction, rehabilitation, repair, installation or purchase of any building, structure or sign in this Commonwealth.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Department." The Department of Community and Economic Development of the Commonwealth.

"Fund." The Tourism Promotion Fund established under subsection (a).

"Promoting tourism." Activities and expenditures designed to increase tourism, including, but not limited to, the following:

(1) Advertising, publicizing or otherwise distributing information for the purpose of attracting and welcoming tourists.

(2) Developing strategies to expand tourism.

(3) Funding the promotion or marketing operations of a tourism entity.

(4) Funding marketing and operations of special events and festivals designed to attract tourists.

"Tourism entity." A "tourism promotion agency" as defined in section 2 of the act of July 4, 2008 (P.L.621, No.50), known as the "Tourism Promotion Act," destination marketing organization or regional attractions marketing agency.

Section 3. This act shall take effect in 90 days.

APPROVED--The 24th day of October, A.D. 2018.

TOM WOLF