

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 778

Session of
1985

INTRODUCED BY RYBAK, MAIALE, HOWLETT, GRUPPO, ARTY, GREENWOOD,
GEIST, DALEY, FATTAH, ACOSTA, WIGGINS, CARN, BOYES, BELARDI
AND STABACK, APRIL 9, 1985

REFERRED TO COMMITTEE ON FINANCE, APRIL 9, 1985

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for an amusement device tax.

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

13 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
14 the Tax Reform Code of 1971, is amended by adding an article to
15 read:

16 ARTICLE XI-D

17 AMUSEMENT DEVICE TAX

18 Section 1101-D. Definitions.--The following words, terms and
19 phrases when used in this article shall have the meaning
20 ascribed to them in this section, except where the context
21 clearly indicates a different meaning:

1 "Amusement device." Any electronic device, machine or
2 apparatus for the playing of games, amusement or entertainment,
3 whether operated manually or by coins, tokens, slugs, remote
4 control, pins, pegs, balls, electric batteries or other electric
5 current. The term "amusement device" shall not apply to any
6 machine or device which reproduces music, nor shall it apply to
7 any machine or device which dispenses tangible personal
8 property.

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

10 "Physically handicapped." An individual who is physically
11 impaired due to neuromuscular disorder or damage to the central
12 nervous system and is mentally alert.

13 "Proprietor." Any corporation, association, joint-stock
14 association, partnership, limited partnership, copartnership,
15 natural individual or individuals and any business owning or
16 operating an amusement device for profit.

17 "Secretary." The Secretary of Revenue of the Commonwealth.

18 Section 1102-D. Imposition of Tax.--(a) For the privilege
19 of doing business in this Commonwealth, every proprietor who
20 uses or permits the use for profit of any amusement device shall
21 pay an annual tax in the amount of one hundred dollars (\$100)
22 for each amusement device. Primary liability for the tax imposed
23 under this article shall be with the actual owner of the
24 amusement device; however, the department may, in assessing the
25 tax, seek payment from any lessee of any device.

26 (b) The tax imposed by this article is in addition to all
27 other taxes imposed by this act or any other statute and shall
28 not be permitted as a deduction in calculating any other tax
29 imposed by this Commonwealth.

30 (c) The tax imposed by this article shall automatically

1 preempt any similar mechanical amusement device tax levied
2 pursuant to the act of August 5, 1932 (Sp.Sess., P.L.45, No.45),
3 referred to as the Sterling Act, or the act of December 31, 1965
4 (P.L.1257, No.511), known as "The Local Tax Enabling Act." This
5 preemption shall apply to ordinances initiated, enacted and
6 effective prior to January 1, 1984, and shall include any
7 reenactments of said ordinances.

8 Section 1103-D. Proprietor's Report and Payment of Tax.--(a)
9 For the purpose of ascertaining the payment of the tax imposed
10 under this article, it shall be the duty of every proprietor, on
11 or before July 1 of each year, to transmit to the department,
12 upon a form prescribed, prepared and furnished by the
13 department, a report, under oath or affirmation, showing the
14 number of amusement devices in his possession, the serial number
15 of each device, a brief description of each and such other
16 information as the department shall prescribe. A proprietor
17 having more than one place of business within this Commonwealth
18 may combine, in a single report, all information required under
19 this subsection.

20 (b) Every proprietor, at the time of making every report
21 required by this section, shall compute and pay to the
22 department the tax due to the Commonwealth as a result of this
23 article.

24 (c) The report and payment of tax provided for under this
25 section will be considered to have been duly and timely filed if
26 such report and payment is postmarked in the United States mail
27 on or before July 1 of each year.

28 (d) Upon receipt of a proprietor's report and tax payment,
29 the department shall issue to said proprietor a label as
30 evidence of payment. Said label shall indicate the year for

1 which the tax payment is made. It shall be the duty of each
2 proprietor to conspicuously post said label on each amusement
3 device. Nothing in this act shall be construed as requiring the
4 department to issue said label when a proprietor fails to pay
5 the tax required by this article or upon receipt of a check
6 which proves uncollectible.

7 (e) The amount of tax due under the provisions of this
8 article shall be due and payable on July 1 and shall bear
9 interest at a rate of one and one-quarter per cent per month, or
10 fractional part thereof, from the date they are due until paid.

11 (f) If any proprietor shall neglect or refuse to make any
12 report and pay the tax required under this article, an
13 additional fifty per cent of the amount of the tax shall be
14 added by the department. The addition provided for under this
15 subsection shall be in addition to the interest provision of
16 subsection (e).

17 Section 1104-D. Reimbursement of Local Governments.--There
18 is hereby appropriated from the proceeds of the tax imposed
19 under this article an amount sufficient to reimburse all
20 political subdivisions and school districts for revenues lost as
21 a result of the elimination of local taxes under section 1102-
22 D(c). For any political subdivision or school district who
23 levied a similar tax, during calendar year 1984 or fiscal year
24 1984-1985, if appropriate and eliminated by section 1102-D(c),
25 the secretary shall, upon certification by the political
26 subdivision or school district, reimburse the political
27 subdivision for revenue foregone. Reimbursement shall be based
28 upon actual receipts for the calendar year 1984 or, if
29 appropriate, fiscal year 1984-1985 and shall be made by October
30 15 of each year. The department is hereby empowered to

1 promulgate all necessary rules and regulations for
2 administration of this section.

3 Section 1105-D. Allocation of Proceeds.--The secretary shall
4 subtract the reimbursement to local governments from the total
5 annual revenues before remitting moneys to the Secretary of
6 Health. The secretary shall, on or before October 1 of each
7 year, remit to the Secretary of Health the remaining amount of
8 the revenues collected as a result of the tax imposed by this
9 article, less an amount which reasonably represents the cost of
10 collection. This appropriation shall be used to fund new or
11 existing programs for the physically handicapped and the
12 secretary shall, upon written certification by the Secretary of
13 Health, remit an additional amount of moneys to cover all costs
14 in administering such programs. The balance of the revenues
15 resulting from the tax imposed by this article shall be
16 deposited in the General Fund.

17 Section 1106-D. Confiscation and Forfeiture.--(a) No
18 property rights shall exist in any amusement device for which
19 the tax levied by section 1102-D has not been paid. The
20 amusement device shall be deemed contraband and shall be
21 confiscated at the discretion of the Secretary of Revenue, and
22 shall be forfeited to the Commonwealth as provided in
23 subsections (c) and (d). No such property, when in the custody
24 of the department, the police or other proper peace officers,
25 shall be seized or taken therefrom by any writ of replevin or
26 other judicial process unless a petition for forfeiture is not
27 timely filed.

28 (b) Upon said forfeiture or confiscation, the department
29 shall dispose of any forfeited amusement device and currency
30 therein in accordance with subsections (c) and (d).

1 (c) The department shall dispose of amusement devices
2 forfeited under the provisions of this article by the sale of
3 same through the Division of Escheats, Bureau of County
4 Collections, pursuant to regulations promulgated by the
5 Secretary of Revenue.

6 (d) The proceedings for the forfeiture of any amusement
7 device for which the tax imposed by section 1102-D has not been
8 paid shall be in rem. The Commonwealth shall be the plaintiff
9 and the property shall be the defendant. A petition shall be
10 filed within five days after confiscation in the court of common
11 pleas of the county in which the property was taken by agents of
12 the department, the police or other such authorized peace
13 officer, verified by oath or affirmation of any department
14 enforcement officer, police officer or other person. In the
15 event that such petition is not filed within the time prescribed
16 herein, such confiscated amusement device shall be immediately
17 returned to the person from whom confiscated or the owner
18 thereof.

19 (e) The petition shall contain the following:

20 (1) The description of the amusement device seized.

21 (2) A statement of the time when and place where seized.

22 (3) The name and address of the owner, if known.

23 (4) The name and address of the person in possession, if
24 known.

25 (5) The statement of the circumstances under which the
26 amusement device was found.

27 (6) A prayer for an order forfeiting said property to the
28 Commonwealth, unless cause be shown to the contrary.

29 (f) A copy of the petition shall be served in any manner
30 provided by law for service of process or complaint in an action

1 in assumpsit on the owner if he can be found within the
2 Commonwealth. If the owner cannot be found within the
3 Commonwealth, a copy of the petition shall be served on the
4 owner by registered mail or certified mail, return receipt
5 requested, addressed to the last known address of the owner. The
6 person in possession and all encumbrance holders having a
7 perfected security interest in the property confiscated shall be
8 notified in a like manner. The copies shall have endorsed
9 thereon a notice substantially similar to the following:

10 "To the claimant of the within property: You are required
11 to file an answer to this petition setting forth your
12 title in and right to possession of said property, within
13 twenty days from the service hereof, and you are also
14 notified that if you fail to file said answer, a decree
15 of forfeiture will be entered against said property."

16 (g) The notice shall be signed by the petitioner or his
17 attorney or the district attorney or Attorney General.

18 (h) If the owner of the property is unknown, notice of the
19 petition shall also be given by an advertisement in only one
20 newspaper of general circulation published in the county where
21 the property was seized, once a week for two successive weeks.
22 No other advertisement of any sort shall be necessary, any other
23 law to the contrary notwithstanding. The notice shall contain a
24 statement of the seizure of the property, with the description
25 thereof, the place and date of seizure, and shall direct any
26 claimants thereof to file a claim therefor, on or before a date
27 given in the notice, which shall not be less than ten days from
28 the date of the last publication.

29 (i) Upon the filing of any claim for the property setting
30 forth a right of possession thereof, the case shall be deemed at

1 issue and a hearing shall be held within five days thereof.

2 (j) At the time of the hearing, the Commonwealth shall have
3 the burden of proving by competent evidence that the tax as
4 imposed by section 1102-D on the amusement device in question
5 has not been paid.

6 (k) The claimant shall have the burden of proving that he is
7 not subject to this section, but the burden of proof shall be
8 upon the Commonwealth to prove all other facts necessary for the
9 forfeiture of an amusement device. In the event that the
10 Commonwealth has not met its burden by a preponderance of the
11 evidence, or the claimant has proved that he is not subject to
12 this section, the court shall order the amusement device
13 returned to the claimant; otherwise the court shall order the
14 same forfeited to the Commonwealth.

15 Section 1107-D. Construction.--Nothing in this act shall be
16 construed as authorizing, licensing or permitting any gambling
17 device, as prohibited by 18 Pa.C.S. §§ 5512 (relating to
18 lotteries, etc.) through 5514 (relating to pool selling and
19 bookmaking).

20 Section 2. This act shall apply to the tax year 1985 and to
21 each year thereafter.

22 Section 3. This act shall take effect immediately.