
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1004 Session of
1983

Report of the Committee of Conference

To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of
the House of Representatives and Senate for the purpose of
considering House Bill No. 1004, entitled:

"An act ~~Mandating revocation of mercantile license issued by any~~ <—
~~political subdivision upon certain convictions.~~

IMPOSING DUTIES AND LIMITATIONS ON CITIES OF THE FIRST CLASS," <—

respectfully submit the following bill as our report:

ROBERT W. O'DONNELL

DWIGHT EVANS

(Committee on the part of the House of Representatives.)

EDWARD L. HOWARD

VICENT J. FUMO

(Committee on the part of the Senate.)

AN ACT

1 To provide revenue for cities of the first class by authorizing
2 and imposing a tax on persons engaging in certain businesses,
3 professions, occupations, trades, vocations and commercial
4 activities therein; providing for its levy and collection at
5 the option of cities of the first class; conferring and
6 imposing powers and duties on cities of the first class and
7 the collector of city taxes in such cities; and prescribing
8 penalties.

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

26 Section 1. Short title.

27 This act shall be known and may be cited as the First Class
28 City Business Tax Reform Act.

29 Section 2. Definitions.

30 The following words and phrases when used in this act shall
31 have the meanings given to them in this section unless the
32 context clearly indicates otherwise:

1 "Affiliated group." One or more chains of corporations
2 connected through stock ownership with a common parent
3 corporation if:

4 (1) Stock possessing at least 80% of the voting power of
5 all classes of stock and at least 80% of each class of the
6 nonvoting stock of each corporation, except the common parent
7 corporation, is owned directly by one or more of the other
8 corporations.

9 (2) The common parent corporation owns directly stock
10 possessing at least 80% of the voting power of all classes of
11 stock and at least 80% of each class of the nonvoting stock
12 of at least one of the other corporations.

13 As used in this definition, "stock" does not include nonvoting
14 stock which is limited and preferred as to dividends.

15 "Business." Carrying on or exercising for gain or profit
16 within a city of the first class, any trade, business, including
17 financial business as hereinafter defined, profession, vocation
18 or commercial activity or making sales to persons within such
19 city of the first class. "Business" shall not include the
20 following:

21 (1) Any business conducted by a nonprofit corporation or
22 association organized for religious, charitable, or
23 educational purposes, the business of any political
24 subdivision, or of any authority created and organized under
25 and pursuant to law of this Commonwealth.

26 (2) The specific business conducted by any public
27 utility operating under the laws, rules and regulations
28 administered by the Pennsylvania Public Utility Commission or
29 conducted by a business subject to the jurisdiction of the
30 Interstate Commerce Commission of furnishing or supplying

1 service or services at the rates specified in its tariffs.

2 (3) The business of any insurance company, association
3 or exchange, or any fraternal, benefit or beneficial society
4 of any other state under the laws of which insurance
5 companies, associations or exchanges or fraternal, benefit or
6 beneficial societies of this Commonwealth doing business in
7 such other state are subjected, by reason of the tax imposed
8 by this act, to additional or further taxes, fines, penalties
9 or license fees by such other state.

10 (4) Any employment for a wage or salary.

11 "Collector." The receiver of taxes in cities of the first
12 class.

13 "Cost of goods." In the case of a retailer or wholesaler,
14 the cost of goods, wares, commodities, and merchandise purchased
15 by the retailer or wholesaler and resold by him, such cost to
16 include all freight-in charges.

17 "Cost of labor." In the case of a retailer or wholesaler,
18 the cost of the labor of his employees used in receiving,
19 storing, shipping, and delivering the goods, wares, commodities,
20 or merchandise purchased for resale and the cost of the salaries
21 or commissions paid to his employees for making the actual sales
22 of the goods, wares, commodities or merchandise.

23 "Dividends." Any distribution made by a corporation to its
24 shareholders in respect of its stock, whether ordinary,
25 extraordinary or in liquidation.

26 "Financial business." Other than the business of any
27 regulated industry, the services and transactions of private
28 banks and bankers; building and loan associations; savings and
29 loan associations; credit unions; savings banks; banks; bank and
30 trust companies; trust companies; investment companies

1 registered as such with the Federal Securities and Exchange
2 Commission; holding companies; persons registered under the act
3 of December 5, 1972 (P.L.1280, No.284), known as the
4 Pennsylvania Securities Act of 1972, including traders; dealers
5 and brokers in money, credits, commercial paper, bonds, notes,
6 securities and stocks, and monetary metals; factors and
7 commission merchants.

8 "Manufacturer." A person whose business is the sale of
9 goods, commodities, wares or merchandise of its own manufacture,
10 growth or production.

11 "Net income."

12 (1) Net income shall be, at the option of the taxpayer,
13 which option shall not be revocable by the taxpayer, any one
14 of the following:

15 (i) The taxable income from any business activity as
16 returned to and ascertained by the Federal Government
17 prior to giving effect to the exclusion for dividends
18 received and net operating loss, subject to the following
19 adjustments:

20 (A) A deduction for dividends, interest and
21 royalty income and other receipts excluded from the
22 definition of receipts under paragraphs (5) and (7)
23 of that definition, but only to the extent that such
24 dividends, interest, royalty and other receipts are
25 included in taxable income as returned to and
26 ascertained by the Federal Government as heretofore
27 defined.

28 (B) A deduction for net income attributable to
29 receipts that are excluded under paragraph (6) of the
30 definition of "receipts" of this section.

1 (C) A deduction for income received from all
2 obligations of the United States, including stocks,
3 bonds and Treasury notes and other obligations of the
4 United States.

5 (D) An increase for interest expense
6 attributable to these stocks, bonds and Treasury
7 notes and other obligations of the United States or
8 any of its political subdivisions which is exempt
9 from taxation of income under the laws of the United
10 States or of the Commonwealth. The increase shall not
11 exceed the deduction claimed in clause (C).

12 (E) A deduction for net income of persons
13 registered under the Pennsylvania Securities Act of
14 1972 other than the net income attributable to
15 commissions and similar charges on account of
16 transactions effected for persons residing or having
17 their principal place of business within a city of
18 the first class.

19 (ii) As defined by the council of any city of the
20 first class.

21 (2) In the case of a corporation participating in the
22 filing of a consolidated corporate return to the Federal
23 Government, net income shall mean the income from any
24 business activity which would have been returned to and
25 ascertained by the Federal Government, if separate returns
26 had been made to the Federal Government, subject, however to
27 any correction thereof for fraud, evasion or error as finally
28 ascertained by the Federal Government. Notwithstanding any
29 other provision of this act, no taxpayer shall be required or
30 permitted to participate in the filing of a consolidated or

1 combined tax return under this act.

2 (3) The collector shall establish rules and regulations
3 and methods of apportionment and allocation and evaluation so
4 that only that part of such net income or net operating loss
5 which is properly attributable and allocable to the doing of
6 business in the city of the first class levying the tax shall
7 be taxed hereunder. The collector may make an apportionment
8 and allocation with due regard to the nature of the business
9 concerned on the basis of mileage, the ratio of the taxable
10 receipts of the taxpayer from within the city to the total
11 receipts of the taxpayer, the ratio of the value of the
12 tangible personal and real property of the taxpayer owned or
13 leased and situated in the city levying the tax to the total
14 tangible personal and real property of the taxpayer wherever
15 owned and situated, the ratio of the wages, salaries,
16 commissions and other compensation paid by the taxpayer
17 within the city levying the tax to the total wages, salaries,
18 commissions and other compensation paid by the taxpayer, and
19 any other method or methods of apportionment and allocation
20 other than the foregoing, calculated to effect a fair and
21 proper apportionment and allocation. The net income of a
22 person which is described as being subject to a tax pursuant
23 to Articles VII, VIII, IX or XV of the act of March 4, 1971
24 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be
25 allocated, and apportioned to a city of the first class in
26 accordance with a fraction of which the numerator shall be
27 "receipts" as defined and limited in this section, and the
28 denominator shall be receipts regardless of whether received
29 in or apportionable to the city of the first class.

30 (4) After apportioning and allocating net income,

1 apportioned and allocated net operating losses carried
2 forward shall be deducted.

3 "Net operating loss."

4 (1) In the case of a person conducting its entire
5 business within a city of the first class, any net losses
6 incurred from the operation of its business as returned to
7 and ascertained by the Federal Government prior to giving
8 effect to the exclusion for dividends received and net
9 operating loss subject to the same adjustments made
10 applicable to net income in this section. In the case of a
11 person conducting its business both within and without a city
12 of the first class, any net operating loss incurred which is
13 carried forward to another tax year shall be allocated and
14 apportioned in the same manner as net income prior to its
15 being deducted from apportioned and allocated net income in
16 the subsequent tax year. Apportionment and allocation of net
17 operating loss shall be based upon allocation and
18 apportionment factors applicable to the year in which the net
19 operating loss was incurred.

20 (2) Net operating losses incurred in another tax period
21 may be carried over for three tax years following the year in
22 which it was incurred. The earliest net loss shall be carried
23 over to the earliest taxable year to which it may be carried.

24 "Person." Any individual, partnership, limited partnership,
25 association, corporation, estate or trust. Whenever used in any
26 provision prescribing or imposing a penalty, the term "person,"
27 as applied to associations, shall mean the partners or members
28 thereof, and as applied to corporations, the officers thereof.

29 "Receipts." Cash, credits, property of any kind or nature,
30 received from conducting any business or by reason of any sale

1 made, including resales of goods, wares or merchandise taken by
2 a dealer as a trade-in or as part payment for other goods, wares
3 or merchandise or services rendered or commercial or business
4 transactions, without deduction therefrom on account of the cost
5 of property sold, materials used, labor, service or other cost,
6 interest or discount paid or any other expense. For the purpose
7 of determining receipts from the business of insurance, such
8 receipts shall mean those from premiums received from risks
9 within the city of the first class, whether by mutual or stock
10 companies, domestic or foreign, without any deductions therefrom
11 for any cost or expenses whatsoever; except, premiums shall not
12 include return premiums, dividends paid or credited to
13 policyholders if such dividends are in the nature of an
14 adjustment of the premiums charged, and premiums received for
15 reinsurance. Receipts from a person engaged in the business of
16 insurance shall also include receipts from rental real estate
17 situated in cities of the first class, but shall not include
18 interest, dividend and capital gain receipts. Nothing in this
19 definition shall preclude the taxation of other nonpremium
20 business receipts of persons engaged in the business of
21 insurance. Receipts of any business shall exclude:

22 (1) The amount of any allowance made for goods, wares or
23 merchandise taken by a dealer as a trade-in or as part
24 payment for other goods, wares and merchandise in the usual
25 and ordinary course of his business.

26 (2) In the case of a financial business or a person
27 which is described as being subject to a tax imposed pursuant
28 to Article VII, VIII or XV of the Tax Reform Code of 1971,
29 the cost of securities and other property sold, exchanged,
30 paid at maturity, or redeemed; moneys or credits received in

1 repayment of the principal amount of deposits, advances,
2 credits, loans and other obligations; interest received on
3 account of deposits, advances, credits, loans and other
4 obligations made to persons resident or having their
5 principal place of business outside such city; interest
6 received on account of other deposits, advances, credits,
7 loans and other obligations but only to the extent of
8 interest expense attributable to such deposits, advances,
9 credits, loans and other obligations and shall also exclude
10 payments received on account of shares purchased by
11 shareholders.

12 (3) In the case of a broker, any commissions paid by him
13 to another broker on account of a purchase or sales contract
14 initiated, executed or cleared in conjunction with such other
15 broker, except where either is an employee of the other.

16 (4) Receipts by dealers from sales to other dealers in
17 the same line, where the dealer transfers title or possession
18 at the same price for which he acquired the goods, wares or
19 merchandise.

20 (5) Dividends, interest and royalties received by one
21 corporation from:

- 22 (i) a corporation of the same affiliated group, or
- 23 (ii) a corporation of which the receiving
24 corporation owns at least 20% of the voting power of all
25 classes of stock and at least 20% of each class of
26 nonvoting stock.

27 (6) Receipts from the specific business conducted by any
28 public utility operating under the laws, rules and
29 regulations administered by the Pennsylvania Public Utility
30 Commission or conducted by a business subject to the

1 jurisdiction of the Interstate Commerce Commission of
2 furnishing or supplying service or services at the rates
3 specified in its tariffs.

4 (7) Receipts by a corporation which is a member of an
5 affiliated group from other members of the same affiliated
6 group.

7 (8) Commissions and similar charges received by persons
8 registered under the Pennsylvania Securities Act of 1972, on
9 account of transactions effected for persons resident and
10 having their principal place of business outside the city of
11 the first class.

12 (9) All or a portion of such other allowances, costs,
13 moneys or credits as are specifically excluded by a city
14 council of a city of the first class and which would
15 otherwise be includable within this definition.

16 "Regulated industry." A person subject to a tax pursuant to
17 Articles VII, VIII, IX or XV of the Tax Reform Code of 1971 or
18 any public utility operating under the laws, rules and
19 regulations administered by the Pennsylvania Public Utility
20 Commission, all or a portion of the activities of which is to
21 furnish or supply service or services at the rates specified in
22 its tariffs.

23 "Retailer." A person whose business is the sale of goods,
24 commodities, wares or merchandise to persons who are not dealers
25 or vendors of those goods, commodities, wares or merchandise.

26 "Sale." Transfer of title to goods, wares, commodities or
27 merchandise, regardless of where accomplished, the delivery of
28 which is made by the seller within a city of the first class.

29 "Sale" shall not include any intra-company transfers.

30 "Taxable receipts."

1 (1) Receipts, as defined and limited in this section,
2 within the limits of a city of the first class.

3 (2) Taxable receipts shall exclude the following:

4 (i) receipts or portion of receipts attributable to
5 any sale involving the bona fide delivery of goods,
6 commodities, wares or merchandise to a location regularly
7 maintained by the other party to the transaction outside
8 the limits of a city of the first class, and not for the
9 purpose of evading or avoiding payment of the tax, or any
10 portion thereof, imposed under this act;

11 (ii) receipts or portion of receipts received for
12 any services actually performed outside the limits of a
13 city of the first class and not for the purpose of
14 evading or avoiding payment of the tax, or any portion of
15 it imposed, under this act.

16 (3) Taxable receipts of persons making sales or
17 rendering services both inside and outside a city of the
18 first class, or both, are to be segregated.

19 (4) In the event, and only in the event, taxable
20 receipts as defined in this paragraph are incapable of
21 segregation, the collector shall establish rules and
22 regulations and methods of allocation and apportionment and
23 evaluation so that only that part of such taxable receipts
24 which is properly attributable to the doing of business
25 within a city of the first class levying this tax shall be
26 taxed hereunder.

27 "Tax year." A 12-month period from January 1 to December 31.

28 "Wholesaler." A person whose business is the sale of goods,
29 commodities, wares or merchandise to dealers or vendors of those
30 goods, commodities, wares or merchandise.

1 Section 3. Authority to levy and collect tax; use of tax.

2 For the tax year 1985, and annually thereafter, if authorized
3 by the city council of a city of the first class, every city of
4 the first class shall levy and collect an annual tax as provided
5 in this act. This tax shall be in addition to any other tax a
6 city of the first class is empowered to levy and collect under
7 any existing law. The taxes and penalties collected under the
8 provisions of this act shall be used by the city for general
9 revenue purposes of the city.

10 Section 4. Imposition and rate of tax.

11 (a) Imposition on businesses generally.--Notwithstanding a
12 contrary provision of law of the Commonwealth, including, but
13 not limited to, the act of March 4, 1971 (P.L.6, No.2), known as
14 the Tax Reform Code of 1971, and unless otherwise exempted or
15 excluded from the payment of tax by an ordinance of the city
16 council of a city of the first class taking advantage of this
17 authorization to tax, every person engaging in any business in a
18 city of the first class, beginning with the tax year 1985, and
19 annually thereafter, shall pay an annual tax at the rate or
20 rates specified by the city council of the city of the first
21 class. The rate or rates determined for regulated industries
22 shall be based upon taxable receipts: Provided, That the amount
23 payable shall not exceed a percent of net income established by
24 the city council: And provided further, That any rates of tax
25 set by the city council for regulated industries based on
26 receipts or net income shall be set at the same millage or net
27 income rates set for other businesses. All other businesses
28 other than regulated industries shall pay at rates determined by
29 city council which shall be applicable to taxable receipts, net
30 income, or any combination of the two: Provided, That if a city

1 of the first class imposing the tax as provided in this act
2 already imposes or hereafter imposes a tax based on or measured
3 by net profit or gain, after provision for all allowable costs
4 and expenses incurred and as either paid or accrued in
5 accordance with the accounting system used, without deduction of
6 taxes based on income, from the operation of a business,
7 profession or enterprise carried on by any individual,
8 copartnership, fiduciary or association, as owner or proprietor,
9 either individually or in association with some other
10 individual, copartnership, fiduciary or association, a credit in
11 an amount of 60% of the tax liability based upon net income
12 under this act shall be granted to and applied against the tax
13 based on net profit or gain as provided therein except that the
14 city council of the city of the first class may provide for a
15 credit in excess of the 60% provided herein: And provided
16 further, That the tax authorized by this act and imposed by a
17 city of the first class on persons registered under the act of
18 December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania
19 Securities Act of 1972, shall in no event be less than the sum
20 of 4.6 mills on the person's taxable receipts determined in
21 accordance with this authorization without regard to the
22 exclusion from receipts as defined in paragraph (8) of the
23 definition of "receipts" in section 2 plus the lesser of:

24 (1) 2.3 mills on the person's taxable receipts
25 determined in accordance with this authorization without
26 regard to the exclusion from receipts as defined in paragraph
27 (8) of the definition of "receipts" in section 2; or

28 (2) 2.3% of the person's net income determined in
29 accordance with this authorization without regard to the
30 deduction as defined in paragraph (1)(i)(E) of the definition

of "net income" in section 2.

(b) Optional calculation of portion of tax for manufacturers.--Alternatively, a manufacturer, other than a regulated industry, subject to the tax on receipts, shall at his option be permitted to compute the tax on receipts on manufacturing sales, at the rate established by the council of the said city of the first class, on receipts from manufacturing sales after deducting cost of goods sold as determined under the rules prescribed by the Federal Internal Revenue Code.

(c) Optional calculation of portion of tax for wholesalers.--Alternatively, a wholesaler, other than a regulated industry, subject to the tax on receipts, shall at his option be permitted to compute the tax on receipts on wholesale sales, at the rate established by the council of said city of the first class, on receipts from wholesale sales after deducting the applicable cost of goods and the applicable cost of labor.

(d) Optional calculation of portion of tax for retailers.--Alternatively, a retailer, other than a regulated industry, subject to the tax on receipts, shall at his option be permitted to compute the tax on receipts on retail sales, at the rate established by the council of a city of the first class, on receipts from retail sales after deducting the applicable cost of goods and the applicable cost of labor.

Section 5. Period used in computation of tax.

(a) Ongoing businesses.--Every person subject to the payment of the tax hereby imposed who has commenced his business at least one full year prior to the beginning of any tax year shall compute his annual receipts upon the actual receipts received by him during the preceding calendar year.

1 (b) Partial tax year.--Every person subject to the payment
2 of the tax imposed hereunder, who has commenced his business
3 subsequent to the beginning of any tax year, shall compute his
4 annual receipts for such tax year upon the actual receipts
5 received by him during the part of such tax year remaining.

6 (c) New businesses.--Every person subject to the payment of
7 the tax imposed hereunder, who has commenced his business less
8 than one full year prior to the beginning of any tax year, shall
9 compute his annual receipts for such tax year upon the actual
10 receipts received by him during his first 365 days in business.

11 (d) Seasonal businesses.--Every person subject to the
12 payment of the tax hereby imposed who engages in a business,
13 temporary, seasonal or itinerant by its nature, shall compute
14 his annual receipts upon the actual receipts received by him
15 during such license year.

16 Section 6. Returns.

17 (a) Verified form required.--Every return shall be made upon
18 a form furnished by the collector. Every person making a return
19 shall certify the correctness thereof.

20 (b) Manner of filing.--Every person subject to the tax
21 imposed and authorized by this act shall file a return at such
22 time or times and in such manner as provided for by the city
23 council of a city of the first class. Such provisions may permit
24 reasonable extensions of time for filing returns, provided an
25 estimated return is filed on or before the due date and is filed
26 in the manner and paid in the amount prescribed by the
27 collector. No penalties shall be imposed for underestimates of
28 tax owed provided the estimated payments are made as prescribed
29 by the collector.

30 Section 7. Payment at the time of filing the return.

1 The person making the return shall pay the amount of tax
2 shown as due to the collector.

3 Section 8. Collection of tax.

4 The ordinance authorizing the tax shall provide for its
5 collection. The taxes shall be collected in accordance with all
6 provisions, restrictions, limitations, rights of notice and
7 appeal as are applicable to other taxes imposed for city
8 purposes.

9 Section 9. Penalties.

10 In addition to any other penalties or enforcement proceedings
11 provided for by ordinance of city council of cities of the first
12 class for the collection and enforcement of taxes:

13 (1) Whoever willfully makes any false or untrue
14 statement on his return shall be guilty of a misdemeanor of
15 the second degree and, upon conviction, shall be sentenced to
16 pay a fine of not more than \$2,000, or to undergo
17 imprisonment for not more than two years, or both.

18 (2) Whoever willfully fails or refuses to appear before
19 the collector in person with his books, records or accounts
20 for examination when required under the provisions of this
21 act or ordinance of a city of the first class to do so, or
22 who willfully refuses to permit inspection of the books,
23 records or accounts of any business in his custody or control
24 when the right to make such inspection by the collector is
25 requested, shall be guilty of a misdemeanor, and shall be
26 sentenced to pay a fine of not more than \$500, or to undergo
27 imprisonment for not more than six months, or both.

28 (3) Whoever willfully fails or refuses to file a return
29 required by this act shall be guilty of a misdemeanor of the
30 third degree, and, upon conviction, shall be sentenced to pay

1 a fine of not more than \$1,000, or to undergo imprisonment
2 for not more than one year, or both.

3 Section 10. Saving provisions.

4 (a) Tax ordinances.--The validity of any ordinance or part
5 of any ordinance providing for or relating to the imposition,
6 levy or collection of any tax passed by the council of a city of
7 the first class, and any amendments or supplements thereto,
8 shall not be affected or impaired by anything contained in this
9 act.

10 (b) Constraints.--Nothing contained in this act shall be
11 construed to empower a city of the first class to levy and
12 collect the taxes hereby imposed not within the taxing power of
13 this Commonwealth under the Constitution of the United States.

14 Section 11. Other receipts taxes.

15 Notwithstanding anything contained in any law to the
16 contrary, and except when specifically authorized by the General
17 Assembly, no city council of a city of the first class may levy,
18 assess, or collect, for city purposes, any tax, based on or
19 measured by gross receipts, for the privilege of doing business
20 in the city if the city already provides for the imposition,
21 levy and collection of the tax imposed and authorized by this
22 act.

23 Section 12. Severability.

24 In the event that all or any part of the provisions of this
25 act are declared by a court to be unconstitutional, the decision
26 of the court shall not affect or impair any of the remaining
27 provisions. It is hereby declared as the legislative intent that
28 the remainder of this act would have been adopted had such
29 unconstitutional provision or part of such provision not been
30 included herein.

1 Section 13. Applicability.

2 (a) Applicability of act at option of city.--At its option,
3 a city of the first class may elect to impose and collect taxes
4 under this act or under the act of May 27, 1949 (P.L.1669,
5 No.508), entitled, as reenacted and amended, "An act to provide
6 revenue for school districts of the first class by imposing a
7 tax on persons engaging in certain businesses, professions,
8 occupations, trades, vocations and commercial activities
9 therein; providing for its levy and collection; conferring and
10 imposing powers and duties on the Board of Public Education,
11 receiver of school taxes and school treasurer in such districts;
12 and prescribing penalties," but not under both.

13 (b) Applicability of section 11.--Section 11 shall take
14 effect with respect to any tax year after tax year 1984 to fund
15 the fiscal year of a city of the first class commencing July 1,
16 1984, and for subsequent fiscal years.

17 Section 14. Effective date.

18 This act shall take effect immediately.