

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**SENATE BILL**

**No. 920**      Session of  
1997

INTRODUCED BY HART, HELFRICK, THOMPSON, WENGER AND STOUT,  
APRIL 15, 1997

REFERRED TO FINANCE, APRIL 15, 1997

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," further providing for licenses.

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

13 Section 1. Section 208 of the act of March 4, 1971 (P.L.6,  
14 No.2), known as the Tax Reform Code of 1971, amended August 4,  
15 1991 (P.L.97, No.22), June 16, 1994 (P.L.279, No.48) and June  
16 30, 1995 (P.L.139, No.21), is amended to read:

17 Section 208. Licenses.--(a) Every person maintaining a  
18 place of business in this Commonwealth, selling or leasing  
19 services or tangible personal property, the sale or use of which  
20 is subject to tax and who has not hitherto obtained a license  
21 from the department, shall, prior to the beginning of business

1 thereafter, make application to the department, on a form  
2 prescribed by the department, for a license. If such person  
3 maintains more than one place of business in this Commonwealth,  
4 the license shall be issued for the principal place of business  
5 in this Commonwealth. The application shall identify each  
6 location at which the business will be operated and each  
7 location shall be identified in the license. No license shall be  
8 valid for a location not identified in the license.

9 (b) [The] Except as provided in subsection (b.1) of this  
10 section, the department shall, after the receipt of an  
11 application, issue the license applied for under subsection (a)  
12 of this section, [, provided said applicant shall have filed all  
13 required State tax reports and paid any State taxes not subject  
14 to a timely perfected administrative or judicial appeal or  
15 subject to a duly authorized deferred payment plan. Such license  
16 shall be nonassignable. All licensees as of the effective date  
17 of this subsection shall be required to file for renewal of said  
18 license on or before January 31, 1992. Licenses issued through  
19 April 30, 1992, shall be based on a staggered renewal system  
20 established by the department. Thereafter, any] A license issued  
21 under this section shall be valid for a period of five years.

22 [(b.1) If an applicant for a license or any person holding a  
23 license has not filed all required State tax reports and paid  
24 any State taxes not subject to a timely perfected administrative  
25 or judicial appeal or subject to a duly authorized deferred  
26 payment plan, the department may refuse to issue, may suspend or  
27 may revoke said license. The department shall notify the  
28 applicant or licensee of any refusal, suspension or revocation.  
29 Such notice shall be made by first class mail. An applicant or  
30 licensee aggrieved by the determination of the department may

1 file an appeal pursuant to the provisions for administrative  
2 appeals in this article. In the case of a suspension or  
3 revocation which is appealed, the license shall remain valid  
4 pending a final outcome of the appeals process.]

5 (b.1) (1) The department may refuse to issue or may suspend  
6 or revoke a license under this section for any of the following  
7 reasons:

8 (i) The license applicant, license holder or an affiliated  
9 person formerly applied for or held a license or permit under  
10 this section or a license under a similar law of another  
11 jurisdiction, which license was denied, suspended or revoked and  
12 not issued, reinstated or restored.

13 (ii) An affiliated person was or is an affiliated person of  
14 a corporation or association which formerly applied for or held  
15 a license or permit under this section or a license under a  
16 similar law of another jurisdiction, which license was denied,  
17 suspended or revoked and not issued, reinstated or restored.

18 (iii) The license applicant, license holder or affiliated  
19 person has not filed all required State tax reports or has not  
20 paid all State taxes not subject to a timely and perfected  
21 administrative or judicial appeal or subject to a duly  
22 authorized deferred payment plan.

23 (iv) The license applicant, license holder or affiliated  
24 person was convicted under the laws of this Commonwealth,  
25 another state or the United States of fraud, tax evasion,  
26 violation of the laws governing the reporting or payment of  
27 trust fund taxes or any other violation of the laws of this  
28 Commonwealth or the United States related thereto within three  
29 years from the date of the application.

30 (v) The license applicant or license holder is not the real

1 party in interest, but the real party in interest is a person  
2 described in subclause (i), (ii), (iii) or (iv) of this clause.

3 (2) The department shall notify the applicant or licensee of  
4 any refusal, suspension or revocation. The notice shall be made  
5 by first class mail. An applicant or licensee aggrieved by the  
6 determination of the department may file an appeal under 2  
7 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
8 Commonwealth agencies). In the case of a suspension or  
9 revocation which is appealed, the license shall remain valid  
10 pending final outcome of the appeal process.

11 (c) [Any] (1) Except as provided in clause (2) of this  
12 subsection, any person who[, upon the expiration of sixty days  
13 after the effective date of this article,] shall maintain a  
14 place of business in this Commonwealth for the purpose of  
15 selling or leasing services or tangible personal property, the  
16 sale or use of which is subject to tax, without having first  
17 been licensed by the department, shall be guilty of a summary  
18 offense, and upon conviction thereof in a summary proceeding,  
19 shall be sentenced to pay a fine of not less than [one hundred  
20 dollars (\$100)] three hundred dollars (\$300) nor more than [one  
21 thousand dollars (\$1,000)] one thousand five hundred dollars  
22 (\$1,500), and in default thereof, to undergo imprisonment of not  
23 less than [five] ten days nor more than thirty days.

24 (2) Any person who, after being sentenced under clause (1)  
25 of this subsection, shall maintain a place of business in this  
26 Commonwealth for the purpose of selling or leasing services or  
27 tangible personal property, the sale or use of which is subject  
28 to tax, without having first been licensed by the department,  
29 shall be guilty of a misdemeanor of the second degree, and upon  
30 conviction thereof, shall be sentenced to pay a fine of not less

1 than two thousand five hundred dollars (\$2,500) nor more than  
2 five thousand dollars (\$5,000), and in default thereof, to  
3 undergo imprisonment of not less than two years.

4 (3) The penalties imposed by this section shall be in  
5 addition to any other penalties imposed by this article.

6 (d) Failure of any person to obtain a license shall not  
7 relieve that person of liability to pay the tax imposed by this  
8 article.

9 (e) For purposes of this section, "affiliated person" shall  
10 mean and include every natural person, association or  
11 corporation having a twenty-five percent or more equity interest  
12 in the licensee or entity for which a license has been applied,  
13 and, as applied to an association, shall mean the partners or  
14 members thereof.

15 Section 2. Section 248.6 of the act, added May 2, 1985  
16 (P.L.28, No.13), is amended to read:

17 Section 248.6. Promoters.--(a) A promoter of a show or  
18 shows within this Commonwealth [may] shall annually file with  
19 the department an application for a promoter's license stating  
20 the location and dates of such show or shows. The application  
21 shall be filed at least thirty days prior to the opening of the  
22 first show and shall be in such form as the department may  
23 prescribe.

24 (b) Except as [herein] provided in this section, the  
25 department shall, within fifteen days after receipt of an  
26 application for a license, issue to the promoter without charge  
27 a license to operate such shows. If application for a license  
28 under this section has been timely filed and if the license has  
29 not been received by the promoter prior to the opening of the  
30 show, the authorization contained in this section with respect

1 to the obtaining of a promoter's license shall be deemed to have  
2 been complied with, unless or until the promoter receives notice  
3 from the department denying the application for a promoter's  
4 license.

5 (c) Any promoter who is a vendor under the provisions of  
6 section 201 of this article shall comply with all the provisions  
7 of this article applicable to vendors and with the provisions of  
8 this section applicable to promoters.

9 (d) No licensed promoter shall permit any person to display  
10 for sale or to sell tangible personal property or services  
11 subject to tax under section 202 of this article at a show  
12 unless such person is licensed under section 208 and provides to  
13 the promoter the information required under section 271.1.

14 (e) Any licensed promoter who permits any person to display  
15 for sale or to sell tangible personal property or service  
16 without first having been licensed under section 208 of this  
17 article, fails to maintain records of a show under section  
18 271.1, knowingly maintains false records or fails to comply with  
19 any provision contained in this section or any regulation  
20 promulgated by the department pertaining to shows shall be  
21 subject to denial of a license or the revocation of any existing  
22 license issued pursuant to this section. In addition, the  
23 department may deny such promoter a license certificate to  
24 operate a show for a period of not more than six months from the  
25 date of such denial. Such penalty shall be in addition to any  
26 other penalty imposed by this article. Within twenty days of  
27 notice of denial or revocation of a license by the department,  
28 the promoter may petition the department for a hearing, pursuant  
29 to Title 2 of the Pennsylvania Consolidated Statutes (relating  
30 to administrative law and procedure).

1       (f) The department may refuse to issue or may suspend or  
2 revoke a license under this section for any of the following  
3 reasons:

4       (1) The license applicant, license holder or an affiliated  
5 person formerly applied for or held a license or permit under  
6 this section or a license under a similar law of another  
7 jurisdiction, which license was denied, suspended or revoked and  
8 not issued, reinstated or restored.

9       (2) An affiliated person was or is an affiliated person of a  
10 corporation or association which formerly applied for or held a  
11 license or permit under this section or a license under a  
12 similar law of another jurisdiction, which license was denied,  
13 suspended or revoked and not issued, reinstated or restored.

14       (3) The license applicant, license holder or affiliated  
15 person has not filed all required State tax reports or has not  
16 paid all State taxes not subject to a timely and perfected  
17 administrative or judicial appeal or subject to a duly  
18 authorized deferred payment plan.

19       (4) The license applicant, license holder or affiliated  
20 person was convicted under the laws of this Commonwealth,  
21 another state or the United States of fraud, tax evasion,  
22 violation of the laws governing the reporting or payment of  
23 trust fund taxes or any other violation of the laws of this  
24 Commonwealth or the United States related thereto within three  
25 years from the date of the application.

26       (5) The license applicant or license holder is not the real  
27 party in interest, but the real party in interest is a person  
28 described in clause (1), (2), (3) or (4) of this subsection.

29       (g) The department shall notify the applicant or licensee of  
30 any refusal, suspension or revocation. The notice shall be made

1 by first class mail. An applicant or licensee aggrieved by the  
2 determination of the department may file an appeal under 2  
3 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
4 Commonwealth agencies). In the case of a suspension or  
5 revocation which is appealed, the license shall remain valid  
6 pending final outcome of the appeal process.

7 (h) For purposes of this section, "affiliated person" shall  
8 mean and include every natural person, association or  
9 corporation having a twenty-five percent or more equity interest  
10 in the licensee or entity for which a license has been applied,  
11 and, as applied to an association, shall mean the partners or  
12 members thereof.

13 Section 4. This act shall take effect immediately.