

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 777 Session of
2003

INTRODUCED BY HUGHES, KITCHEN, SCHWARTZ AND ERICKSON,
JUNE 6, 2003

REFERRED TO FINANCE, JUNE 6, 2003

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 the tax on cigarettes; and
11 providing for a tax on other tobacco products.

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

14 Section 1. The definition of "cigarette" in section 1201 of
15 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
16 Code of 1971, added December 21, 1981 (P.L.482, No.141), is
17 amended and the section is amended by adding definitions to
18 read:

19 Section 1201. Definitions.--As used in this article:

20 * * *

21 "Cigarette." Any roll for smoking made wholly or in part of
22 tobacco, the wrapper or cover of which is made of any substance

1 or material other than tobacco regardless of the size or shape
2 of the roll and regardless of whether or not the tobacco is
3 flavored, adulterated or mixed with any other ingredient. The
4 term does not include cigars, little cigars or cigarillos.

5 * * *

6 "Smokeless tobacco." Snuff, chewing tobacco and any other
7 tobacco that is intended to be consumed by means other than
8 smoking.

9 "Tobacco products." All products containing tobacco for
10 consumption and including, but not limited to, cigars,
11 cigarillos, pipe tobacco and smokeless tobacco. This does not
12 include cigarettes or any other product included under the
13 definition of "cigarette."

14 "Tobacco products distributor or wholesaler." Any entity
15 engaged in the business of selling tobacco products, who sells,
16 exchanges or distributes tobacco products to retailers,
17 consumers or other wholesalers or distributors in this
18 Commonwealth. Any tobacco products manufacturer or distributor
19 that has an office, sales house, or any other place of business
20 within this Commonwealth, that sells, exchanges or distributes
21 tobacco products to any retailer, consumer or other wholesaler
22 or distributor in this Commonwealth, is also included and liable
23 for the excise tax.

24 * * *

25 Section 2. Sections 1206 and 1206.1 of the act, amended June
26 29, 2002 (P.L.559, No.89), are amended to read:

27 Section 1206. Incidence and Rate of Tax.--An excise tax is
28 hereby imposed and assessed upon the sale or possession of
29 cigarettes within this Commonwealth at the rate of [five] ten
30 cents per cigarette.

1 Section 1206.1. Floor Tax.--(a) A person who possesses
2 cigarettes on which the tax imposed by section 1206 has been
3 paid as of the effective date of this section shall pay an
4 additional tax at a rate of [three and forty-five hundredths]
5 five cents per cigarette. The tax shall be paid and reported on
6 a form prescribed by the department within ninety days of the
7 effective date of this section.

8 (b) If a cigarette dealer fails to file the report required
9 by subsection (a) or fails to pay the tax imposed by subsection
10 (a), the department may, in addition to the interest and
11 penalties provided in section 1278, do any of the following:

12 (1) Impose an administrative penalty equal to the amount of
13 tax evaded or not paid. The penalty shall be added to the tax
14 evaded or not paid and assessed and collected at the same time
15 and in the same manner as the tax.

16 (2) Suspend or revoke a cigarette dealer's license.

17 (c) In addition to any penalty imposed under subsection (b),
18 a person who wilfully omits, neglects or refuses to comply with
19 a duty imposed under subsection (a) commits a misdemeanor and
20 shall, upon conviction, be sentenced to pay a fine of not less
21 than two thousand five hundred dollars (\$2,500) nor more than
22 five thousand dollars (\$5,000), to serve a term of imprisonment
23 not to exceed thirty days or both.

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

25 Section 1206.2. Incidence and Rate of Tax on Tobacco
26 Products.--A tax is hereby imposed on all tobacco products sold
27 or held for sale in this Commonwealth by a distributor or a
28 wholesaler to a retail dealer or consumer.

29 (1) The tax imposed by this section shall be at a rate of
30 forty per cent of the wholesale price of tobacco products

1 distributor or wholesaler who brings tobacco products, or causes
2 tobacco products to be brought into this Commonwealth, is liable
3 for the tax imposed by this section. The tax is imposed at forty
4 per cent of the tobacco product wholesale regardless of the
5 actual price at which the product is sold. If the tobacco
6 products are not sold, the tobacco products are to be taxed at
7 the same rate. It shall be presumed that all tobacco products
8 within this Commonwealth are subject to tax. A person claiming
9 that a tobacco product is not taxable has the burden of proof.

10 (2) This tax does not apply to any tobacco products which
11 the Commonwealth is prohibited from taxing under laws of the
12 United States.

13 (3) The tax imposed is to be paid by the purchase of stamps
14 as provided in this article. The stamp shall be affixed to or
15 impressed upon each package of tobacco product. The Department
16 of Revenue shall promulgate further regulations for enforcement
17 and administration of this section.

18 (4) Beginning July 1, 2003, all tobacco products tax
19 revenues shall be paid to the Department of Public Welfare for
20 the operation of a special pharmaceutical benefit program for
21 low-income persons with disabilities.

22 Section 4. Section 1296 of the act, amended June 29, 2002
23 (P.L.559, No.89), is amended to read:

24 Section 1296. Disposition of Certain Funds.--Receipts from
25 the tax imposed by this article shall be deposited into the
26 General Fund. Twenty million four hundred eighty-five thousand
27 dollars (\$20,485,000) of the receipts deposited into the General
28 Fund in accordance with this section shall be transferred
29 annually to the Agricultural Conservation Easement Purchase
30 Fund. Thirty million seven hundred thirty thousand dollars

1 (\$30,730,000) of the receipts deposited into the General Fund in
2 accordance with this section shall be transferred annually to
3 the Children's Health Fund for health care for indigent
4 children. Beginning July 1, 2003, one-half of the receipts
5 deposited into the General Fund in accordance with this section
6 shall be transferred annually to the adult basic coverage
7 insurance program established under Chapter 13 of the act of
8 June 26, 2001 (P.L.755, No.77), known as the "Tobacco Settlement
9 Act." The transfers required by this section shall be made in
10 two equal payments by July 15 and January 15.

11 Section 5. This act shall take effect July 1, 2003, or
12 immediately, whichever is later.