
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 14 Session of
2011

INTRODUCED BY PASHINSKI, BRENNAN, BRIGGS, CALTAGIRONE, CARROLL,
DAVIS, DeLUCA, FABRIZIO, HARKINS, HORNAMAN, JOSEPHS,
W. KELLER, KOTIK, MAHONEY, MARSHALL, MILLARD, MOUL, MURPHY,
MURT, QUINN, READSHAW, SABATINA, K. SMITH, STABACK, STURLA
AND THOMAS, OCTOBER 3, 2011

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 3, 2011

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 definition of
11 "maintaining a place of business in this Commonwealth" and
12 for the collection of tax.

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

15 Section 1. Section 201(b) of the act of March 4, 1971
16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
17 June 29, 2002 (P.L.559, No.89), is amended to read:

18 Section 201. Definitions.--The following words, terms and
19 phrases when used in this Article II shall have the meaning
20 ascribed to them in this section, except where the context
21 clearly indicates a different meaning:

1 * * *

2 (b) "Maintaining a place of business in this Commonwealth."

3 (1) Having, maintaining or using within this Commonwealth,
4 either directly or through a subsidiary, representative or an
5 agent, an office, distribution house, sales house, warehouse,
6 service enterprise or other place of business; or any agent of
7 general or restricted authority, or representative, irrespective
8 of whether the place of business, representative or agent is
9 located here, permanently or temporarily, or whether the person
10 or subsidiary maintaining the place of business, representative
11 or agent is authorized to do business within this Commonwealth.

12 (2) Engaging in any activity as a business within this
13 Commonwealth by any person, either directly or through a
14 subsidiary, representative or an agent, in connection with the
15 lease, sale or delivery of tangible personal property or the
16 performance of services thereon for use, storage or consumption
17 or in connection with the sale or delivery for use of the
18 services described in subclauses (11) through (18) of clause (k)
19 of this section, including, but not limited to, having,
20 maintaining or using any office, distribution house, sales
21 house, warehouse or other place of business, any stock of goods
22 or any solicitor, canvasser, salesman, representative or agent
23 under its authority, at its direction or with its permission,
24 regardless of whether the person or subsidiary is authorized to
25 do business in this Commonwealth.

26 (3) Regularly or substantially soliciting orders within this
27 Commonwealth in connection with the lease, sale or delivery of
28 tangible personal property to or the performance thereon of
29 services or in connection with the sale or delivery of the
30 services described in subclauses (11) through (18) of clause (k)

1 of this section for residents of this Commonwealth by means of
2 catalogues or other advertising, whether the orders are accepted
3 within or without this Commonwealth.

4 (4) Regularly or substantially soliciting orders within this
5 Commonwealth for the sale of tangible personal property or
6 services for taxable use within this Commonwealth through
7 referral by an independent contractor or other representative.
8 The following shall apply:

9 (i) A person making sales of tangible personal property or
10 services taxable under this article shall be presumed to be
11 regularly or substantially soliciting orders through an
12 independent contractor or other representative if the person
13 enters into an agreement with a resident of this Commonwealth
14 under which the resident, for a commission or other
15 consideration, directly or indirectly refers potential
16 customers, whether by a link on an Internet website or
17 otherwise, to the person, if the cumulative gross receipts from
18 sales by the person to customers in this Commonwealth who are
19 referred to the person by all residents with this type of an
20 agreement with the person is in excess of ten thousand dollars
21 (\$10,000) during the preceding twelve months.

22 (ii) The presumption under subparagraph (i) may be rebutted
23 by proof that the residents with whom the person has an
24 agreement did not engage in any activity within this
25 Commonwealth that was significantly associated with the
26 person's ability to establish or maintain the person's market in
27 this Commonwealth during the preceding twelve months. Proof may
28 consist of written statements from all of the residents with
29 whom the person has an agreement stating that they did not
30 engage in any solicitation in this Commonwealth on behalf of the

1 person during the preceding twelve months provided that the
2 statements were provided and obtained in good faith. Nothing in
3 this subparagraph shall be construed to narrow the scope of the
4 terms "independent contractor" or "other representative" for
5 purposes of this subclause.

6 [(3.1)] (5) Entering this Commonwealth by any person to
7 provide assembly, service or repair of tangible personal
8 property, either directly or through a subsidiary,
9 representative or an agent.

10 [(3.2)] (6) Delivering tangible personal property to
11 locations within this Commonwealth if the delivery includes the
12 unpacking, positioning, placing or assembling of the tangible
13 personal property.

14 [(3.3)] (7) Having any contact within this Commonwealth
15 which would allow the Commonwealth to require a person to
16 collect and remit tax under the Constitution of the United
17 States.

18 [(3.4)] (8) Providing a customer's mobile telecommunications
19 service deemed to be provided by the customer's home service
20 provider under the Mobile Telecommunications Sourcing Act (4
21 U.S.C. § 116). For purposes of this clause, words and phrases
22 used in this clause shall have the meanings given to them in the
23 Mobile Telecommunications Sourcing Act.

24 (9) A person which is part of a group of persons conducting
25 an integrated business enterprise shall be deemed to be
26 "maintaining a place of business in this Commonwealth" if any
27 member of the group either directly or through an agent or other
28 representative maintains or uses an office, distribution house,
29 sales house, warehouse, service enterprise or other place of
30 business within this Commonwealth as part of the integrated

1 enterprise, or if any member of the group directly or through an
2 agent or other representative regularly or substantially
3 solicits orders within this Commonwealth in connection with the
4 sales of tangible personal property or services by the
5 integrated business enterprise for taxable use within this
6 Commonwealth.

7 (10) (i) A person shall be presumed to be "maintaining a
8 place of business in this Commonwealth" if an affiliated person
9 is subject to sales and use tax jurisdiction of this
10 Commonwealth and if:

11 (A) the person sells a similar line of products as the
12 affiliated person and does so under the same or a similar
13 business name;

14 (B) the affiliated person uses its in-State employes or in-
15 State facilities to advertise, promote or facilitate sales by
16 the person to consumers;

17 (C) the affiliated person maintains an office, distribution
18 facility, warehouse or storage place, or similar place of
19 business to facilitate the delivery of property or services sold
20 by the person to the person's consumers;

21 (D) the affiliated person uses trademarks, service marks, or
22 trade names in this Commonwealth that are the same or
23 substantially similar to those used by the person; or

24 (E) the affiliated person delivers, installs, assembles or
25 performs maintenance services for the person's purchasers within
26 this Commonwealth.

27 (ii) For the purposes of this subclause, the term
28 "affiliated person" means any person that is a member of the
29 same "controlled group of corporations" as defined in section
30 1563(a) of the Internal Revenue Code of 1986 (Public Law 99-514,

1 26 U.S.C. § 1563(a)) as the retailer or any entity that,
2 notwithstanding its form of organization, bears the same
3 ownership relationship to the retailer as a corporation that is
4 a member of the same controlled group of corporations.

5 (11) The presumption in subclause (10) may be rebutted by
6 demonstrating that the affiliated person's activities in this
7 Commonwealth are not significantly associated with the
8 retailer's ability to establish or maintain a market in this
9 Commonwealth for the retailer's sales.

10 [(4)] (12) The term "maintaining a place of business in this
11 Commonwealth" shall not include:

12 (i) Owning or leasing of tangible or intangible property by
13 a person who has contracted with an unaffiliated commercial
14 printer for printing, provided that:

15 (A) the property is for use by the commercial printer; and

16 (B) the property is located at the Pennsylvania premises of
17 the commercial printer.

18 (ii) Visits by a person's employes or agents to the premises
19 in this Commonwealth of an unaffiliated commercial printer with
20 whom the person has contracted for printing in connection with
21 said contract.

22 * * *

23 Section 2. Section 237 of the act is amended by adding
24 subsections to read:

25 Section 237. Collection of Tax.--* * *

26 (b.1) Notification of Purchaser's Duty to Self-Remit Tax.

27 (1) Every person making sales of tangible personal property or
28 services for taxable use in this Commonwealth that is not
29 required by law to collect tax shall provide notification on its
30 retail Internet website, retail catalog, telemarketing script or

1 other similar marketing tool and on its invoices and receipts
2 provided to its customers, stating that tax must be paid by the
3 purchaser, unless otherwise exempt or not subject to tax, on the
4 use of the tangible personal property or services in this
5 Commonwealth.

6 (2) The notification required in paragraph (1) shall be made
7 to the purchaser prior to the completion of the sale including
8 the provisions of, and in a form substantially similar to, the
9 notification under paragraph (3). The notification requirements
10 shall not be satisfied unless the purchaser is required to
11 acknowledge that he or she has read and understood the
12 notification prior to the completion of the purchase. The
13 retailer shall retain evidence of the acknowledgment in a form
14 and for a period of time prescribed by the department.

15 (3) The notification shall read substantially as follows:

16 The Commonwealth of Pennsylvania requires the payment of
17 a sales or use tax on purchases of tangible personal
18 property (for example, furniture, books, jewelry or
19 household goods). While a retailer may collect that tax
20 on the purchaser's behalf, [Name of Online Company] does
21 not collect and remit sales tax for Pennsylvania
22 residents. Accordingly, the Commonwealth of Pennsylvania
23 requires you to remit the tax directly to the
24 Pennsylvania Department of Revenue on applicable
25 purchases. You can find information on how to pay this
26 tax at www.revenue.state.pa.us. Failure to pay this tax
27 on applicable purchases is a violation of State law and
28 could result in fines, penalties and interest for each
29 purchase.

30 I acknowledge that I have read and understand this sales

1 and use tax notice.

2 (4) Every person that makes sales for taxable use in this
3 Commonwealth but is not required to collect tax shall annually
4 send a form, on or before January 31, to all purchasers with
5 shipping addresses in this Commonwealth that made over five
6 hundred dollars (\$500) in purchases from the retailer in the
7 previous calendar year.

8 (i) The form shall include a description of the type of item
9 purchased by the purchaser from the retailer for the prior year,
10 including the dates of the purchases and the amounts of each
11 purchase. The listing shall not include the product name, title
12 or other identifying information which would disclose the
13 expressive content of the items purchased.

14 (ii) The retailer shall send copies of the forms sent to
15 each purchaser to the department on or before January 31.

16 (b.2) Advertisement. No retailer shall advertise that
17 purchases made from the retailer for taxable use in this
18 Commonwealth are not subject to sales tax, are tax-free or other
19 similar language.

20 * * *

21 Section 3. On or before March 31, 2012, and on or before
22 March 31 of each year through 2017, the Department of Revenue
23 shall provide the Finance Committee of the Senate and the
24 Finance Committee of the House of Representatives with a report
25 describing the activities undertaken by the department to
26 enforce the provisions of this act, the amount of additional
27 taxes collected as a result of this act and recommendations to
28 improve the uniform enforcement of tax on all sales of tangible
29 personal property and taxable services for use within this
30 Commonwealth. A copy of the report shall be posted on the

1 department's Internet website within ten days after it is
2 provided to the Finance Committees.

3 Section 4. This act shall take effect in 90 days.