

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 926 Session of  
2013

INTRODUCED BY GAINY, MCGEEHAN, J. HARRIS, V. BROWN,  
SCHLOSSBERG, MAHONEY, FRANKEL, O'BRIEN, COHEN, THOMAS AND  
BISHOP, MARCH 11, 2013

REFERRED TO COMMITTEE ON FINANCE, MARCH 11, 2013

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," adding provisions relating to the taxation of  
11 tobacco products; and imposing penalties.

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

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

17 ARTICLE XII-A

18 TOBACCO PRODUCTS TAX

19 Section 1201-A. Definitions.

20 The following words and phrases when used in this article  
21 shall have the meanings given to them in this section unless the  
22 context clearly indicates otherwise:

1     "Cigar." Any roll of tobacco wrapped in tobacco.

2     "Cigarette." Includes any roll for smoking made wholly or in  
3 part of tobacco, irrespective of size or shape, and whether or  
4 not such tobacco is flavored, adulterated or mixed with any  
5 other ingredient, the wrapper or cover of which is made of paper  
6 or any other substance or material, excepting tobacco, and shall  
7 not include cigars or roll your own tobacco.

8     "Cigarillo." A short, narrow cigar, wrapped in whole-leaf  
9 tobacco. The term includes filtered cigarillos, which are  
10 sometimes called little cigars.

11    "Consumer." An individual who purchases tobacco products for  
12 personal use and not for resale.

13    "Contraband." Any tobacco product for which the tax imposed  
14 by this article has not been paid.

15    "Dealer." A wholesaler or retailer. Nothing in this article  
16 shall preclude any person from being a wholesaler or retailer,  
17 provided the person meets the requirements for a license in each  
18 category of dealer.

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

20    "Manufacturer." A person that produces tobacco products.

21    "Person." An individual, unincorporated association,  
22 company, corporation, joint stock company, group, agency,  
23 syndicate, trust or trustee, receiver, fiduciary, partnership,  
24 conservator, any political subdivision of the Commonwealth or  
25 any other state. Whenever used in any of the provisions of this  
26 article prescribing or imposing penalties, the word "person" as  
27 applied to a partnership, unincorporated association or other  
28 joint venture, means the partners or members thereof, and as  
29 applied to a corporation, means all the officers and directors  
30 thereof.

1     "Purchase price." The total value of anything paid or  
2 delivered, or promised to be paid or delivered, whether it be  
3 money or otherwise, in complete performance of a sale or  
4 purchase, without any deduction on account of the cost or value  
5 of the property sold, cost or value of transportation, cost or  
6 value of labor or service, interest or discount paid or allowed  
7 after the sale is consummated, any other taxes imposed by the  
8 Commonwealth or any other expense.

9     "Retailer." A person that purchases or receives tobacco  
10 products from any source for the purpose of sale to a consumer,  
11 or who owns, leases or otherwise operates one or more vending  
12 machines for the purpose of sale of tobacco products to the  
13 ultimate consumer. The term includes a vending machine operator  
14 or a person that buys, sells, transfers or deals in tobacco  
15 products and is not licensed as a tobacco products wholesaler  
16 under this article.

17     "Sale." Any transfer of ownership, custody or possession of  
18 tobacco products for consideration; any exchange, barter or  
19 gift; or any offer to sell or transfer the ownership, custody or  
20 possession of tobacco products for consideration.

21     "Taxpayer." Any person subject to tax under this article.

22     "Tobacco products." Cigars, cigarillos, cheroots, stogies,  
23 periques, granulated, plug cut, crimp cut, ready rubbed and  
24 other smoking tobacco, snuff, dry snuff, snuff flour, cavendish,  
25 plug and twist tobacco, fine-cut and other chewing tobaccos,  
26 shorts, refuse scraps, clippings, cuttings and sweepings of  
27 tobacco and other kinds and forms of tobacco, prepared in such  
28 manner as to be suitable for chewing or ingesting or for smoking  
29 in a pipe or otherwise, or both for chewing and smoking. The  
30 term does not include cigarettes.

1     "Unclassified importer." A person in this Commonwealth that  
2 acquires a tobacco product from any source on which the tax  
3 imposed by this article was not paid and that is not a person  
4 otherwise required to be licensed under the provisions of this  
5 article. The term includes, but is not limited to, consumers who  
6 purchase tobacco products using the Internet or mail order  
7 catalogs for personal possession or use in this Commonwealth.

8     "Vending machine operator." A person who places or services  
9 one or more tobacco product vending machines whether owned,  
10 leased or otherwise operated by the person at locations from  
11 which tobacco products are sold to the consumer. The owner or  
12 tenant of the premises upon which a vending machine is placed  
13 shall not be considered a vending machine operator if the  
14 owner's or tenant's sole remuneration therefrom is a flat rental  
15 fee or commission based upon the number or value of tobacco  
16 products sold from the machine, unless the owner or tenant  
17 actually owns the vending machine or leases the vending machine  
18 under an agreement whereby any profits from the sale of the  
19 tobacco products directly inure to the owner's or tenant's  
20 benefit.

21     "Wholesaler." A person engaged in the business of selling  
22 tobacco products that receives, stores, sells, exchanges or  
23 distributes tobacco products to retailers or other wholesalers  
24 in this Commonwealth or retailers who purchase from a  
25 manufacturer or from another wholesaler who has not paid the tax  
26 imposed by this article.

27 Section 1202-A. Incidence and rate of tax.

28     (a) Imposition.--A tobacco products tax is hereby imposed on  
29 the dealer, manufacturer or any person at the time the tobacco  
30 product is first sold to a retailer in this Commonwealth at the

1 rate of 25% on the purchase price charged to the retailer for  
2 the purchase of any tobacco product. The tax shall be collected  
3 from the retailer by whomever sells the tobacco product to the  
4 retailer and remitted to the department. Any person required to  
5 collect this tax shall separately state the amount of tax on an  
6 invoice or other sales document.

7 (b) Retailer.--If the tax is not collected by the seller  
8 from the retailer, the tax is imposed on the retailer at the  
9 time of purchase at the same rate as in subsection (a) based on  
10 the retailer's purchase price of the tobacco products. The  
11 retailer shall remit the tax to the department.

12 (c) Unclassified importer.--The tax is imposed on an  
13 unclassified importer at the time of purchase at the same rate  
14 as in subsection (a) based on the unclassified importer's  
15 purchase price of the tobacco products. The unclassified  
16 importer shall remit the tax to the department.

17 (d) Exceptions.--The tax shall not be imposed on any tobacco  
18 products that:

19 (1) are exported for sale outside this Commonwealth; or

20 (2) are not subject to taxation by the Commonwealth  
21 pursuant to any laws of the United States.

22 Section 1203-A. Floor tax.

23 (a) Payment.--Any retailer that, as of the effective date of  
24 this article, possesses tobacco products subject to the tax  
25 imposed by section 1202-A, shall pay the tax on the tobacco  
26 products in accordance with the rates specified in section 1202-  
27 A. The tax shall be paid and reported on a form prescribed by  
28 the department within 90 days of the effective date of this  
29 section.

30 (b) Administrative penalty; license.--If a retailer fails to

1 file the report required by subsection (a) or fails to pay the  
2 tax imposed by subsection (a), the department may, in addition  
3 to the interest and penalties provided in section 1215-A, do any  
4 of the following:

5 (1) Impose an administrative penalty equal to the amount  
6 of tax evaded or not paid. The penalty shall be added to the  
7 tax evaded or not paid and assessed and collected at the same  
8 time and in the same manner as the tax.

9 (2) Suspend, revoke or refuse to issue the retailer's  
10 license.

11 (c) Criminal penalty.--In addition to any penalty imposed  
12 under subsection (b), a person that willfully omits, neglects or  
13 refuses to comply with a duty imposed under subsection (a)  
14 commits a misdemeanor and shall, if convicted, be sentenced to  
15 pay a fine of not less than \$2,500 nor more than \$5,000, to  
16 serve a term of imprisonment not to exceed 30 days, or both.  
17 Section 1204-A. Remittance of tax to department.

18 Wholesalers, retailers, unclassified importers and  
19 manufacturers shall file monthly reports on a form prescribed by  
20 the department by the 20th day of the month following the sale  
21 or purchase of tobacco products from any other source on which  
22 the tax levied by this article has not been paid. The tax is due  
23 at the time the report is due. The department may required the  
24 filing of reports and payment of tax on a less frequent basis at  
25 its discretion.

26 Section 1205-A. Deposit of tax.

27 The tax imposed by and collected under this article shall be  
28 deposited into the State Treasury as follows:

29 (1) Fifty percent of the tax shall be deposited into the  
30 Public Transportation Trust Fund and shall be allocated for

1 mass transit.

2 (2) Fifty percent of the tax shall be deposited into the  
3 Motor License Fund and shall be allocated for roads and  
4 bridges.

5 Section 1206-A. Procedures for claiming refund.

6 A petition for a refund of tax imposed by this article, under  
7 Article XXVII and section 3003.1 shall be in the form and  
8 contain the information prescribed by the department by  
9 regulation.

10 Section 1207-A. Sales or possession of tobacco product when tax  
11 not paid.

12 (a) Sales or possession.--Any person who sells or possesses  
13 any tobacco product for which the proper tax has not been paid  
14 commits a summary offense and shall, upon conviction, be  
15 sentenced to pay costs of prosecution and a fine of not less  
16 than \$100 not more than \$1,000 or to imprisonment for not more  
17 than 60 days, or both, at the discretion of the court. Any  
18 tobacco products purchased from a wholesaler properly licensed  
19 under this article shall be presumed to have the proper taxes  
20 paid.

21 (b) Tax evasion.--Any person that shall falsely or  
22 fraudulently, maliciously, intentionally or willfully with  
23 intent to evade the payment of the tax imposed by this article  
24 sells or possesses any tobacco product for which the proper tax  
25 has not been paid commits a felony and shall, upon conviction,  
26 be sentenced to pay costs of prosecution and a fine of not more  
27 than \$15,000 or to imprisonment for not more than five years, or  
28 both, at the discretion of the court.

29 Section 1208-A. Assessment.

30 The department is authorized to make the inquiries,

determinations and assessments of the tax, including interest,  
additions and penalties, imposed by this article.

Section 1209-A. (Reserved).

Section 1210-A. (Reserved).

Section 1211-A. Failure to file return.

Where no return is filed, the amount of the tax due may be  
assessed and collected at any time as to taxable transactions  
not reported.

Section 1212-A. False or fraudulent return.

Where the taxpayer willfully files a false or fraudulent  
return with intent to evade the tax imposed by this article, the  
amount of tax due may be assessed and collected at any time.

Section 1213-A. Extension of limitation period.

Notwithstanding any other provision of this article, where,  
before the expiration of the period prescribed for the  
assessment of a tax, a taxpayer has consented, in writing, that  
the period be extended, the amount of tax due may be assessed at  
any time within the extended period. The period so extended may  
be extended further by subsequent consents, in writing, made  
before the expiration of the extended period.

Section 1214-A. Failure to furnish information, returning false  
information or failure to permit inspection.

(a) Penalty.--Any taxpayer who fails to keep or make any  
record, return, report, inventory or statement, or keeps or  
makes any false or fraudulent record, return, report, inventory  
or statement required by this article commits a misdemeanor and  
shall, upon conviction, be sentenced to pay costs of prosecution  
and a fine of \$500 and to imprisonment for not more than one  
year, or both, at the discretion of the court.

(b) Examination.--The department is authorized to examine



1 the books and records, the stock of tobacco products and the  
2 premises and equipment of any taxpayer in order to verify the  
3 accuracy of the payment of the tax imposed by this article. The  
4 person subject to an examination shall give to the department or  
5 its duly authorized representative, the means, facilities and  
6 opportunity for the examination. Willful refusal to cooperate  
7 with or permit an examination to the satisfaction of the  
8 department shall be sufficient grounds for the suspension or  
9 revocation of a taxpayer's license. In addition, a person who  
10 willfully refuses to cooperate with or permit an examination to  
11 the satisfaction of the department commits a misdemeanor and  
12 shall, upon conviction, be sentenced to pay costs of prosecution  
13 and a fine of \$500 or to imprisonment for not more than one  
14 year, or both, at the discretion of the court.

15 (c) Records; dealer or manufacturer.--A dealer or  
16 manufacturer shall keep and maintain for a period of four years  
17 records in the form prescribed by the department. The records  
18 shall be maintained at the location for which the license is  
19 issued.

20 (d) Reports.--A dealer or manufacturer shall file reports at  
21 times and in the form prescribed by the department.

22 (e) Records; manufacturer or wholesaler.--A manufacturer or  
23 wholesaler located or doing business in this Commonwealth who  
24 sells tobacco products to a wholesale license holder in this  
25 Commonwealth shall keep records showing:

26 (1) The number and kind of tobacco products sold.

27 (2) The date the tobacco products were sold.

28 (3) The name and license number of the dealer the  
29 tobacco products were sold to.

30 (4) The total weight of each of the tobacco products

1 sold to the license holder.

2 (5) The place where the tobacco products were shipped.

3 (6) The name of the common carrier.

4 (f) Manufacturer or wholesaler.--A manufacturer or  
5 wholesaler shall file with the department, on or before the 20th  
6 of each month, a report showing the information listed in  
7 subsection (e) for the previous month.

8 Section 1215-A. Other violations; peace officers; fines.

9 Sections 1278, 1279, 1280 and 1291 are incorporated by  
10 reference into and shall apply to the tax imposed by this  
11 article.

12 Section 1216-A. (Reserved).

13 Section 1217-A. (Reserved).

14 Section 1218-A. (Reserved).

15 Section 1219-A. Records of shipments and receipts of tobacco  
16 products required.

17 The department may, in its discretion, require reports from  
18 any common or contract carrier who transports tobacco products  
19 to any point or points within this Commonwealth, and from any  
20 bonded warehouseman or bailee who has in the possession of the  
21 warehouseman or bailee any tobacco products. The reports shall  
22 contain the information concerning shipments of tobacco products  
23 that the department determines to be necessary for the  
24 administration of this article. All common and contract  
25 carriers, bailees and warehousemen shall permit the examination  
26 by the department or its authorized agents of any records  
27 relating to the shipment or receipt of tobacco products.

28 Section 1220-A. Licensing of dealers and manufacturers.

29 (a) Prohibition.--No person, unless all sales of tobacco  
30 products are exempt from Pennsylvania tobacco products tax,

1 shall sell, transfer or deliver any tobacco products in this  
2 Commonwealth without first obtaining the proper license provided  
3 for in this article.

4 (b) Application.--An applicant for a dealer's or  
5 manufacturer's license shall complete and file an application  
6 with the department. The application shall be in the form and  
7 contain information prescribed by the department and shall set  
8 forth truthfully and accurately the information desired by the  
9 department. If the application is approved, the department shall  
10 license the dealer or manufacturer for a period of one year and  
11 the license may be renewed annually thereafter.

12 Section 1221-A. Licensing of manufacturers.

13 Any manufacturer doing business within this Commonwealth  
14 shall first obtain a license to sell tobacco products by  
15 submitting an application to the department containing the  
16 information requested by the department and designating a  
17 process agent. If a manufacturer designates no process agent,  
18 the manufacturer shall be deemed to have made the Secretary of  
19 State its agent for the service of process in this Commonwealth.

20 Section 1222-A. Licensing of wholesalers.

21 (a) Requirements.--Applicants for a wholesale license or  
22 renewal of that license shall meet the following requirements:

23 (1) The premises on which the applicant proposes to  
24 conduct business are adequate to protect the revenue.

25 (2) The applicant is a person of reasonable financial  
26 stability and reasonable business experience.

27 (3) The applicant, or any shareholder controlling more  
28 than 10% of the stock if the applicant is a corporation or  
29 any officer or director if the applicant is a corporation,  
30 shall not have been convicted of any crime involving moral

1 turpitude.

2 (4) The applicant shall not have failed to disclose any  
3 material information required by the department, including  
4 information that the applicant has complied with this article  
5 by providing a signed statement under penalty of perjury.

6 (5) The applicant shall not have made any material false  
7 statement in the application.

8 (6) The applicant shall not have violated any provision  
9 of this article.

10 (7) The applicant shall have filed all required State  
11 tax reports and paid any State taxes not subject to a timely  
12 perfected administrative or judicial appeal or subject to a  
13 duly authorized deferred payment plan.

14 (b) Multiple locations.--The wholesale license shall be  
15 valid for one specific location only. Wholesalers with more than  
16 one location shall obtain a license for each location.

17 Section 1223-A. Licensing of retailers.

18 Applicants for retail license or renewal of that license  
19 shall meet the following requirements:

20 (1) The premises in which the applicant proposes to  
21 conduct business are adequate to protect the revenues.

22 (2) The applicant shall not have failed to disclose any  
23 material information required by the department.

24 (3) The applicant shall not have any material false  
25 statement in the application.

26 (4) The applicant shall not have violated any provision  
27 of this article.

28 (5) The applicant shall have filed all required State  
29 tax reports and paid any State taxes not subject to a timely  
30 perfected administrative or judicial appeal or subject to a

1 duly authorized deferred payment plan.

2 Section 1224-A. License for tobacco products vending machines.

3 Each tobacco products vending machine shall have a current  
4 retail license which shall be conspicuously and visibly placed  
5 on the machine. There shall be conspicuously and visibly placed  
6 on every tobacco products vending machine the name and address  
7 of the owner and the name and address of the operator.

8 Section 1225-A. License fees and issuance and display of  
9 license.

10 (a) At the time of making any application or license renewal  
11 application:

12 (1) An applicant for a tobacco products manufacturers  
13 license shall pay the department a license fee of \$1,500.

14 (2) An applicant for a wholesale tobacco products  
15 dealer's license shall pay to the department a license fee of  
16 \$1,500.

17 (3) An applicant for a retail tobacco products dealer's  
18 license shall pay to the department a license fee of \$25.

19 (4) An applicant for a vending machine tobacco products  
20 dealer's license shall pay to the department a license fee of  
21 \$25.

22 (b) Proration.--Fees shall not be prorated.

23 (c) Issuance and display.--On approval of the application  
24 and payment of the fees, the department shall issue the proper  
25 license which must be conspicuously displayed at the location  
26 for which it has been issued.

27 Section 1226-A. Electronic filing.

28 The department may at its discretion require that any or all  
29 returns, reports or registrations that are required to be filed  
30 under this article be filed electronically. Failure to

electronically file any return, report, registration or other  
information the department may direct to be filed electronically  
shall subject the taxpayer to a penalty of 5% of the tax due on  
the return, up to a maximum of \$1,000, but not less than \$10.  
This penalty shall be assessed at any time and collected in the  
manner provided in this article. This penalty shall be in  
addition to any civil penalty imposed in this article for  
failure to furnish information or file a return. The criminal  
penalty for failure to file a return electronically shall be the  
same as the criminal penalty for failure to furnish information  
or file a return under this article.

Section 1227-A. Expiration of license.

(a) Expiration.--A license shall expire on the last day of  
June next succeeding the date upon which it was issued unless  
the department at an earlier date suspends, surrenders or  
revokes the license.

(b) Violation.--After the expiration date of the license or  
sooner if the license is suspended, surrendered or revoked, it  
shall be illegal for any dealer to engage directly or indirectly  
in the business heretofore conducted by the dealer for which the  
license was issued. Any licensee who shall, after the expiration  
date of the license, engage in the business theretofore  
conducted by the licensee either by way of purchase, sale,  
distribution or in any other manner directly or indirectly  
engaged in the business of dealing with tobacco products for  
profit shall be in violation of this article and be subject to  
the penalties provided in this article.

Section 1228-A. Administration powers and duties.

(a) Department.--The administration of this article is  
hereby vested in the department. The department shall adopt

rules and regulations for the enforcement of this article. The department may impose fees as may be necessary to cover the costs incurred in administering this section.

(b) Joint administration.--The department is authorized to jointly administer this article with other provisions of this act, including joint reporting of information, forms, returns, statements, documents or other information submitted to the department.

Section 1229-A. Sales without license.

(a) Penalty.--Any person who shall, without being the holder of a proper unexpired dealer's license, engage in purchasing, selling, distributing or in any other manner directly or indirectly engaging in the business of dealing with tobacco products for profit commits a summary offense and shall, upon conviction, be sentenced to pay costs of prosecution and a fine of not less than \$250 nor more than \$1,000, or to imprisonment for not more than 30 days, or both, at the discretion of the court.

(b) Prima facie evidence.--Open display of tobacco products in any manner shall be prima facie evidence that the person displaying such tobacco products is directly or indirectly engaging in the business of dealing with tobacco products for profit.

Section 1230-A. Violations and penalties.

(a) Suspension.--The license of any person who violates this article may be suspended after due notice and opportunity for a hearing for a period of not less than five days or more than 30 days for a first violation and shall be revoked or suspended for any subsequent violation.

(b) Fine.--In addition to the provisions of subsection (a),

1 upon adjudication of a first violation, the person shall be  
2 fined not less than \$2,500 nor more than \$5,000. For subsequent  
3 violations, the person shall, upon adjudication thereof, be  
4 fined not less than \$5,000 nor more than \$15,000.

5 (c) Civil penalty.--A person who violates section 1214-A  
6 (b), (c), or (d), or 1225-A(c), shall be subject to a civil  
7 penalty not to exceed \$300 per violation but shall not be  
8 subject to subsections (a) and (b).

9 Section 1231-A. Property rights.

10 (a) Incorporation.--Subject to subsection (b), section 1285  
11 is incorporated by reference into and shall apply to this  
12 article.

13 (b) Alterations.--

14 (1) References in section 1285 to cigarettes shall apply  
15 to tobacco products in this article.

16 (2) References in section 1285 to 2,000 or more  
17 unstamped cigarettes shall apply to tobacco products worth at  
18 least \$500 in this article.

19 (3) References in section 1285 to more than 200  
20 unstamped cigarettes shall apply to tobacco products worth at  
21 least \$50 in this article.

22 Section 1232-A. Sample of tobacco products.

23 (a) Samples.--The department shall, by regulation, govern  
24 the receipt, distribution of and payment of tax on sample  
25 tobacco products issued for free distribution.

26 (b) Construction.--Nothing in this article or the  
27 regulations promulgated under this article shall prohibit the  
28 bringing into this Commonwealth by a manufacturer samples of  
29 tobacco products to be delivered and distributed only through  
30 licensed dealers or the manufacturers or their sales



representatives. The tax shall be paid by the manufacturer  
provided all such packs bear the legend "all applicable State  
taxes have been paid." Under no circumstances shall any untaxed  
tobacco products be sold within this Commonwealth.

Section 1233-A. Labeling and packaging.

It shall be unlawful to knowingly possess, sell, give,  
transfer or deliver to any person, any tobacco product where the  
packaging of which has been modified or altered by a person  
other than the original manufacturer. Modification or alteration  
shall include the placement of a sticker, writing or mark to  
cover information on the packages. For purposes of this section,  
a tobacco product package shall not be construed to have been  
modified or altered by a person other than the manufacturer if  
the most recent modification or alteration was made by the  
manufacturer or person authorized by the manufacturer and  
approved by the department.

Section 1234-A. Information exchange.

The department is authorized to exchange information with any  
other Federal, State or local enforcement agency for purposes of  
enforcing this article.

Section 2. This act shall take effect October 1, 2013, or  
immediately, whichever is later.