

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2339 Session of
2015

INTRODUCED BY PETRARCA, SEPTEMBER 15, 2016

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 15, 2016

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," in tobacco products tax, eliminating the tax on
11 electronic cigarettes.

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

14 Section 1. Sections 1201-A and 1202-A of the act of March 4,
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
16 July 13, 2016 (P.L.526, No.84), are amended to read:

17 Section 1201-A. Definitions.

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

21 "Cigar." Any roll for smoking that weighs more than four
22 pounds per thousand and the wrapper or cover is made of natural
23 leaf tobacco or of any substance containing tobacco.

1 "Cigarette." As defined in section 1201.

2 "Consumer." An individual who purchases tobacco products for
3 personal use and not for resale.

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

6 "Dealer." A wholesaler or retailer. Nothing in this article
7 shall preclude any person from being a wholesaler or retailer,
8 provided the person meets the requirements for a license in each
9 category of dealer.

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

11 ["Electronic cigarettes." As follows:

12 (1) An electronic oral device, such as one composed of a
13 heating element and battery or electronic circuit, or both,
14 which provides a vapor of nicotine or any other substance and
15 the use or inhalation of which simulates smoking.

16 (2) The term includes:

17 (i) A device as described in paragraph (1),
18 notwithstanding whether the device is manufactured,
19 distributed, marketed or sold as an e-cigarette, e-cigar
20 and e-pipe or under any other product, name or
21 description.

22 (ii) A liquid or substance placed in or sold for use
23 in an electronic cigarette.]

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

25 "Person." An individual, unincorporated association,
26 company, corporation, joint stock company, group, agency,
27 syndicate, trust or trustee, receiver, fiduciary, partnership,
28 conservator, any political subdivision of the Commonwealth or
29 any other state. If used in any of the provisions of this
30 article prescribing or imposing penalties, the term "person" as

1 applied to a partnership, unincorporated association or other
2 joint venture, shall mean the partners or members of the
3 partnership, unincorporated association or other joint venture,
4 and as applied to a corporation, shall mean each officer and
5 director of the corporation.

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

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

22 "Roll-your-own tobacco." Any tobacco which, because of the
23 tobacco's appearance, type, packaging or labeling, is suitable
24 for use and is likely to be offered to, or purchased by,
25 consumers as tobacco for making cigarettes.

26 "Sale." Any transfer of ownership, custody or possession of
27 tobacco products for consideration; any exchange, barter or
28 gift; or any offer to sell or transfer the ownership, custody or
29 possession of tobacco products for consideration.

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

1 "Tobacco products." As follows:

2 [(1) Electronic cigarettes.]

3 (2) Roll-your-own tobacco.

4 (3) Periques, granulated, plug cut, crimp cut, ready
5 rubbed and other smoking tobacco, snuff, dry snuff, snuff
6 flour, cavendish, plug and twist tobacco, fine-cut and other
7 chewing tobaccos, shorts, refuse scraps, clippings, cuttings
8 and sweepings of tobacco and other kinds and forms of
9 tobacco, prepared in such manner as to be suitable for
10 chewing or ingesting or for smoking in a pipe or otherwise,
11 or any combination of chewing, ingesting or smoking.

12 (4) The term does not include:

13 (i) Any item subject to the tax under section 1206.

14 (ii) Cigars.

15 "Unclassified importer." A consumer who purchases tobacco
16 products using the Internet or mail-order catalogs for personal
17 possession or use in this Commonwealth from persons that are not
18 licensed.

19 "Vending machine operator." A person who places or services
20 one or more tobacco product vending machines whether owned,
21 leased or otherwise operated by the person at locations from
22 which tobacco products are sold to the consumer. The owner or
23 tenant of the premises upon which a vending machine is placed
24 shall not be considered a vending machine operator if the
25 owner's or tenant's sole remuneration therefrom is a flat rental
26 fee or commission based upon the number or value of tobacco
27 products sold from the machine, unless the owner or tenant
28 actually owns the vending machine or leases the vending machine
29 under an agreement whereby any profits from the sale of the
30 tobacco products directly inure to the owner's or tenant's

1 benefit.

2 "Wholesaler." A person engaged in the business of selling
3 tobacco products that receives, stores, sells, exchanges or
4 distributes tobacco products to retailers or other wholesalers
5 in this Commonwealth or retailers who purchase from a
6 manufacturer or from another wholesaler who has not paid the tax
7 imposed by this article.

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

9 (a) Imposition of tax on certain tobacco products.--A
10 tobacco products tax is imposed on the dealer or manufacturer at
11 the time the tobacco product is first sold to a retailer in this
12 Commonwealth at the rate of 55¢ per ounce for the purchase of
13 any tobacco product [other than electronic cigarettes]. The tax
14 rate shall include a proportionate tax at the rate of 55¢ per
15 ounce on all fractional parts of an ounce. The tax imposed on
16 tobacco products [other than electronic cigarettes] that weigh
17 less than 1.2 ounces per container is equal to the amount of the
18 tax imposed on tobacco products [other than electronic
19 cigarettes] that weigh 1.2 ounces. The tax shall be collected
20 from the retailer by whomever sells the tobacco product to the
21 retailer and remitted to the department. Any person required to
22 collect this tax shall separately state the amount of tax on an
23 invoice or other sales document.

24 [(a.1) Imposition of tax on electronic cigarettes.--A
25 tobacco products tax is imposed on the dealer or manufacturer at
26 the time the electronic cigarette is first sold to a retailer in
27 this Commonwealth at the rate of 40% on the purchase price
28 charged to the retailer for the purchase of electronic
29 cigarettes. The tax shall be collected for the retailer by
30 whomever sells the electronic cigarette to the retailer and

1 remitted to the department. Any person required to collect this
2 tax shall separately state the amount of tax on an invoice or
3 other sales document.]

4 (b) Retailer.--A retailer may only purchase tobacco products
5 from a licensed dealer. If the tax is not collected by the
6 seller from the retailer, the tax is imposed on the retailer at
7 the time of purchase at the same rate as in [subsections (a) and
8 (a.1)] subsection (a) based on the retailer's purchase price of
9 the tobacco products. The retailer shall remit the tax to the
10 department.

11 (c) Unclassified importer.--The tax is imposed on an
12 unclassified importer at the time of purchase at the same rate
13 as in [subsections (a) and (a.1)] subsection (a) based on the
14 unclassified importer's purchase price of the tobacco products.
15 The unclassified importer shall remit the tax to the department.

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

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

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

21 Section 2. If this act takes effect after October 1, 2016,
22 the amendment of sections 1202-A and 1203-A of the act shall
23 apply retroactively to October 1, 2016.

24 Section 3. This act shall take effect immediately.