

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2342 Session of 2015

INTRODUCED BY WHEELAND, JAMES, SAINATO, GIBBONS, SAYLOR, PHILLIPS-HILL, RAPP, DAVIS, WARD, KAUFER, HELM, WATSON, GROVE, D. PARKER, SANKEY, CAUSER, MASSER, MCGINNIS, ZIMMERMAN, PICKETT, HARHAI, GABLER, QUIGLEY, OBERLANDER, HANNA, MULLERY, WARNER, MURT, DIAMOND, DUSH, COX, FLYNN, BLOOM, MAHER, METCALFE, SIMMONS, DEAN, GALLOWAY, DRISCOLL, GILLESPIE, HAHN, BARRAR, TOEPEL, BENNINGHOFF, MUSTIO, RADER AND MARSHALL, SEPTEMBER 19, 2016

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 19, 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, providing for taxation
 11 of vapor products.

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

14 Section 1. The definitions of "electronic cigarettes" and
 15 "tobacco products" in section 1201-A of the act of March 4, 1971
 16 (P.L.6, No.2), known as the Tax Reform Code of 1971, added July
 17 13, 2016 (P.L.526, No.84), are amended and the section is
 18 amended by adding definitions to read:

19 Section 1201-A. Definitions.

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

4 * * *

5 "Consumable product." A nicotine liquid solution or other
6 material containing nicotine that is depleted as a vapor product
7 is used.

8 * * *

9 ["Electronic cigarettes." As follows:

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

14 (2) The term includes:

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

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

22 * * *

23 "Tobacco products." As follows:

24 (1) [Electronic cigarettes] Vapor products.

25 (2) Roll-your-own tobacco.

26 (3) Periques, granulated, plug cut, crimp cut, ready
27 rubbed and other smoking tobacco, snuff, dry snuff, snuff
28 flour, cavendish, plug and twist tobacco, fine-cut and other
29 chewing tobaccos, shorts, refuse scraps, clippings, cuttings
30 and sweepings of tobacco and other kinds and forms of

1 tobacco, prepared in such manner as to be suitable for
2 chewing or ingesting or for smoking in a pipe or otherwise,
3 or any combination of chewing, ingesting or smoking.

4 (4) The term does not include:

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

6 (ii) Cigars.

7 * * *

8 "Vapor product." A nonlighted, noncombustible product that
9 employs a mechanical heating element, battery or electronic
10 circuit notwithstanding shape or size and that can be used to
11 produce vapor from nicotine in a solution. The term includes a
12 vapor cartridge or other container of nicotine in a solution or
13 other form that is intended to be used with or in an electronic
14 cigarette, electronic cigar, electronic cigarillo, electronic
15 pipe or similar product or device. The term does not include a
16 product regulated by the United States Food and Drug
17 Administration under Chapter 9, Subchapter V of the Federal
18 Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 351 et
19 seq.).

20 * * *

21 Section 2. Sections 1202-A(a) and (a.1) and 1203-A(a)(1) of
22 the act, added July 13, 2016 (P.L.526, No.84), are amended to
23 read:

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

25 (a) Imposition of tax on certain tobacco products.--A
26 tobacco products tax is imposed on the dealer or manufacturer at
27 the time the tobacco product is first sold to a retailer in this
28 Commonwealth at the rate of 55¢ per ounce for the purchase of
29 any tobacco product other than [electronic cigarettes] vapor
30 products. The tax rate shall include a proportionate tax at the

1 rate of 55¢ per ounce on all fractional parts of an ounce. The
2 tax imposed on tobacco products other than [electronic
3 cigarettes] vapor products that weigh less than 1.2 ounces per
4 container is equal to the amount of the tax imposed on tobacco
5 products other than electronic cigarettes that weigh 1.2 ounces.
6 The tax shall be collected from the retailer by whomever sells
7 the tobacco product to the retailer and remitted to the
8 department. Any person required to collect this tax shall
9 separately state the amount of tax on an invoice or other sales
10 document.

11 (a.1) Imposition of tax on [electronic cigarettes] vapor
12 products.--A tobacco products tax is imposed on [the dealer or
13 manufacturer at the time the electronic cigarette is first sold
14 to a retailer in this Commonwealth at the rate of 40% on the
15 purchase price charged to the retailer for the purchase of
16 electronic cigarettes] vapor products at the point of retail
17 sale in this Commonwealth at the rate of 5¢ per fluid milliliter
18 of consumable product. The tax shall be collected [for] by the
19 retailer [by whomever sells the electronic cigarette to the
20 retailer] and remitted to the department. Any person required to
21 collect this tax shall separately state the amount of tax on an
22 invoice or other sales document.

23 * * *

24 Section 1203-A. Floor tax.

25 (a) Payment.--

26 (1) Any retailer that, as of the effective date of this
27 paragraph, possesses tobacco products subject to the tax
28 imposed by section 1202-A other than roll-your-own tobacco
29 and vapor products shall pay the tax in accordance with the
30 rates specified in section 1202-A. The tax shall be paid and

1 reported on a form prescribed by the department within 90
2 days of the effective date of this paragraph.

3 * * *

4 Section 3. If this act takes effect after October 1, 2016,
5 the following provisions of the act shall apply retroactively to
6 October 1, 2016:

7 (1) The amendment or addition of the definitions of
8 "consumable product," "electronic cigarettes," "tobacco
9 products" and "vapor product" in section 1201-A.

10 (2) The amendment of section 1202-A(a) and (a.1) and
11 1203-A(a) (1).

12 Section 4. This act shall take effect October 1, 2016, or
13 immediately, whichever is later.