

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 535 Session of 2023

INTRODUCED BY FLOOD, HAMM, JAMES, IRVIN, SMITH, ZIMMERMAN, ROWE,  
MOUL, NEILSON, JOZWIAK AND GILLEN, MARCH 20, 2023

REFERRED TO COMMITTEE ON FINANCE, MARCH 20, 2023

AN ACT

1 Repealing the act of August 19, 1932 (Sp.Sess., P.L.92, No.53),  
2 entitled "An act to provide revenue by imposing an emergency  
3 sales tax for State purposes upon sales of tangible personal  
4 property by vendors, as herein defined; prescribing the  
5 method and manner of collecting such tax; and providing  
6 penalties."

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. The act of August 19, 1932 (Sp.Sess., P.L.92,  
10 No.53), known as the Emergency Relief Sales Tax Act, is  
11 repealed:

12 [AN ACT

13 To provide revenue by imposing an emergency sales tax for State  
14 purposes upon sales of tangible personal property by vendors,  
15 as herein defined; prescribing the method and manner of  
16 collecting such tax; and providing penalties.

17 Section 1. Short Title.--Be it enacted, &c., That this act  
18 shall be known, and may be cited, as the "Emergency Relief Sales  
19 Tax Act."

20 Section 2. Definitions.--The following words, terms, and

1 phrases, when used in this act, shall have the meanings ascribed  
2 to them in this section, except where the context clearly  
3 indicates a different meaning.

4 "Association." Any partnership, limited partnership, or  
5 other form of unincorporated enterprise owned by two or more  
6 persons.

7 "Department." The Department of Revenue of this  
8 Commonwealth.

9 "Gross Income." The value proceeding or accruing from the  
10 sale of tangible personal property, including all receipts, cash  
11 and credits, without any deduction on account of the cost of the  
12 property sold, the cost of materials used, labor or service  
13 cost, interest or discount paid, or any other expense  
14 whatsoever.

15 "Sale." Any transfer, exchange or barter, in any manner or  
16 by any means whatsoever, for a consideration.

17 "Vendor." Every natural person, association, or corporation  
18 who or which sells tangible personal property to a consumer or  
19 to any person for any purpose other than for resale; but the  
20 term "vendor" shall not include farmers who sell their own farm  
21 products. Whenever used in any clause prescribing a fine or  
22 imprisonment, or both, the term "vendor," as applied to  
23 associations, shall mean the partners or members thereof, and,  
24 as applied to corporations, the officers thereof.

25 The singular shall include the plural, and the masculine  
26 shall include the feminine and the neuter. Section headings  
27 shall not be deemed or construed to limit the text of the  
28 sections of this act.

29 Section 3. Imposition and Rate of Tax.--A State tax is  
30 hereby imposed and assessed upon sales of tangible personal

1 property, at the rate of one per centum upon each dollar of the  
2 gross income derived from the sales of such property, during the  
3 six months period ending February twenty-eighth, one thousand  
4 nine hundred thirty-three, or any part of such period, except  
5 such sales of tangible personal property made to the United  
6 States Government upon evidence satisfactory to the department,  
7 and except such sales as are not within the taxing power of this  
8 Commonwealth under the Commerce Clause of the Constitution of  
9 the United States. Such tax shall be paid at the time and in the  
10 manner hereinafter provided.

11 Section 4. Vendors to File Return.--For the purpose of  
12 ascertaining the amount of tax payable under this act, it shall  
13 be the duty of every vendor, on or before the first day of  
14 April, one thousand nine hundred thirty-three, to transmit to  
15 the department, upon a form prescribed, prepared, and furnished  
16 by the department, a return, under oath or affirmation, of the  
17 gross income arising from sales of tangible personal property  
18 during the preceding six months' period ending February twenty-  
19 eighth, one thousand nine hundred thirty-three. Such return  
20 shall show such further information as the department may  
21 prescribe.

22 Section 5. Assessment and Payment of Tax.--Every vendor, at  
23 the time of making the return required under section four, shall  
24 compute and pay to the department the tax due to the  
25 Commonwealth by him for the preceding six months' period. The  
26 amount of all taxes imposed under the provisions of this act  
27 shall be due and payable at the time the return for such six  
28 months' period is required to be filed with the department by  
29 this act: Provided, however, That any vendor may, on or before  
30 the first day of April, one thousand nine hundred and thirty-

1 three, pay one-half of such tax concurrently with the filing of  
2 such report, and may pay the remaining one-half of the said tax  
3 in a single instalment on or before the fifteenth day of May,  
4 one thousand nine hundred and thirty-three, but the amount of  
5 the tax not paid on or before the first day of April, one  
6 thousand nine hundred and thirty-three, shall bear interest at  
7 the rate of six per centum per annum until the fifteenth day of  
8 May, one thousand nine hundred and thirty-three, and twelve per  
9 centum per annum thereafter.

10 Section 6. Retention of Records by Vendors.--Every vendor  
11 shall maintain and keep for a period of two years such record or  
12 records of tangible personal property sold within this  
13 Commonwealth by such vendor, together with invoices, bills of  
14 lading and other pertinent papers, as may be required by the  
15 department.

16 Section 7. Additional Assessment.--If the department is not  
17 satisfied with the return and payment of tax made by any vendor  
18 under the provisions of this act, it is hereby authorized and  
19 empowered to make an additional assessment of the tax due by  
20 such taxpayer, based upon the facts contained in the return or  
21 upon any information within its possession or that shall come  
22 into its possession. Promptly after the date of such additional  
23 assessment, the department shall give or send, by mail or  
24 otherwise, a notice thereof to the vendor, together with written  
25 notice of the time when and the place where the vendor may be  
26 heard on a petition for reassessment, as hereinafter provided.

27 Section 8. Estimated Assessment upon Failure to File  
28 Return.--If a vendor shall neglect or refuse to make any return  
29 and payment of tax required by this act, the department shall--  
30 if it deem it more conducive to the public interest, because of

1 the supposed smallness of the debt or for any other reason, not  
2 to compel the exhibition of the vendor's account--make an  
3 estimated assessment of the probable amount of the account of  
4 the delinquent, together with a penalty of ten per centum of the  
5 amount so assessed. The department shall promptly thereafter  
6 give or send, by mail or otherwise, notice of such estimated  
7 assessment and penalty to the vendor against whom the same was  
8 made. There shall be no right to petition for reassessment or to  
9 appeal from any such estimated assessment made on account of the  
10 neglect or refusal of such vendor to make any return and payment  
11 of tax within a time prescribed by this act, but the department  
12 may permit the required return to be filed and permit a tax to  
13 be paid on the basis of such return, subject to investigation as  
14 in other cases. There shall be no right to appeal from the  
15 refusal of the department to permit the filing of a return in  
16 such a case.

17 Section 9. Estimated Additional Assessments upon Refusal to  
18 Permit Examination of Books.--The department shall have the  
19 power to make an estimated additional assessment, to which shall  
20 be added a penalty of ten per centum of the assessment, against  
21 any vendor who has filed any return as required by this act but  
22 who refuses to permit the department, or any duly authorized  
23 agent thereof, to examine his books of account and papers  
24 pertaining to the business for which the return was made. The  
25 department shall promptly thereafter give or send, by mail or  
26 otherwise, notice of such estimated additional assessment and  
27 penalty to the vendor, together with written notice of the time  
28 when and the place where the vendor may be heard on a petition  
29 for reassessment, as hereinafter provided.

30 Section 10. Payment and Due Date of Taxes Assessed by the

1 Department.--All taxes and penalties resulting from any  
2 assessment made by the department shall be due and payable ten  
3 days after notice thereof is given or sent, by mail or  
4 otherwise, to the vendor against whom such assessment was made.

5 Section 11. Petition for Reassessment of Certain

6 Assessments; Notice.--Any vendor against whom an additional

7 assessment or estimated additional assessment shall be made by

8 the department may petition for a reassessment. Notice of an

9 intention to file such a petition or to appear and be heard

10 shall be given to the department prior to the time the amount

11 becomes due and payable, to wit, within ten days after notice of

12 such assessment is given to the vendor as provided in this act.

13 Petitions for reassessment may be filed with the department on

14 or before the date designated in the notice of such assessment

15 when hearings on such petitions will be held. The department

16 shall hold such hearings in each county as may be necessary to

17 hear and determine petitions for reassessment. Such hearings

18 shall be held at the time and place indicated in the notice of

19 such assessment given to the vendor. All petitions filed with

20 the department shall set forth specifically and in detail the

21 grounds upon which it is claimed such assessment is erroneous or

22 unlawful, and shall be accompanied by an affidavit, under oath

23 or affirmation, certifying to the correctness of the facts

24 stated therein. If no petition for reassessment is filed with

25 the department, the vendor may, in lieu thereof, appear at the

26 hearing and present his petition orally, in which event all

27 testimony or statements of facts shall be made under oath or

28 affirmation.

29 If the vendor is still dissatisfied with the finding of the

30 department, he shall have the right to appeal to the court of

1 common pleas of the proper county within twenty days after  
2 notice of the determination of the petition is given to him by  
3 the department. If any vendor shall fail to give due notice of  
4 an intention to petition for reassessment or to file a petition  
5 for reassessment after due notice of his intention to do so, or  
6 to appeal to the court of common pleas, within the time and in  
7 the manner herein set forth, the right to do so shall be forever  
8 barred, and any such vendor so failing shall not thereafter be  
9 permitted, in a suit for the recovery of such tax, to set up any  
10 ground of defense which might have been determined either by the  
11 department or the court of common pleas as aforesaid: Provided,  
12 That nothing contained in this section shall be construed to  
13 grant to any such vendor the right to petition for reassessment  
14 or to appeal from estimated assessments made by the department  
15 for neglect or refusal to make a return within the time  
16 prescribed by this act: And provided further, That every appeal  
17 to the court of common pleas under this section shall specify  
18 all the objections to the assessment, and any objection not  
19 specified in the appeal shall not be considered by the court. In  
20 all cases of petitions for reassessment and appeals, the burden  
21 of proof shall be on the petitioner or appellant, as the case  
22 may be.

23 Section 12. Enforcement; Rules and Regulations.--The  
24 department is hereby charged with the enforcement of the  
25 provisions of this act, and is hereby authorized and empowered  
26 to prescribe, adopt, promulgate, and enforce rules and  
27 regulations relating to any matter or thing pertaining to the  
28 administration and enforcement of the provisions of this act,  
29 and the collection of taxes, penalties and interest imposed by  
30 this act.

1 Section 13. Inquisitorial Powers of Department.--The  
2 department, or any agent authorized in writing by it, is hereby  
3 authorized to examine the books, papers, records and equipment,  
4 and to investigate the character of the business of any vendor,  
5 in order to verify the accuracy of any return made, or, if no  
6 return was made by such vendor, to ascertain and assess the tax  
7 imposed by this act. Every such vendor is hereby directed and  
8 required to give to the department, or its duly authorized  
9 agent, the means, facilities and opportunity for such  
10 examinations and investigations as are hereby provided and  
11 required. Any information gained by the department, as a result  
12 of any returns, investigations or verifications required to be  
13 made by this act, shall be confidential except for official  
14 purposes, and any person divulging such information shall be  
15 guilty of a misdemeanor, and, upon conviction thereof, shall be  
16 sentenced to pay a fine of not less than one hundred dollars  
17 (\$100.00) or more than five hundred dollars (\$500.00), and costs  
18 of prosecution, or to undergo imprisonment for not more than six  
19 months, or both.

20 Section 14. Department to Prepare and Furnish Returns.--The  
21 department is hereby authorized to prepare and have printed  
22 proper forms for returns to be distributed, upon request, to  
23 vendors.

24 Section 15. Collection of Delinquent Taxes.--The department  
25 shall call upon the Department of Justice to collect any taxes  
26 or penalties imposed under the provisions of this act which are  
27 not paid within thirty days from--

28 (1) The date the taxes are due and payable, if a return was  
29 filed.

30 (2) Ten days after notice of an additional or estimated



1 additional assessment is given or sent to the vendor, as  
2 heretofore provided, if no notice of an intention to petition  
3 for reassessment or if no petition for reassessment is filed  
4 with the department.

5 (3) Ten days after notice of an estimated assessment is  
6 given or sent to the vendor, as heretofore provided.

7 (4) The date of the determination of a petition for  
8 reassessment by the department, if an appeal is not taken to the  
9 court of common pleas.

10 Section 16. Interest.--The tax imposed by this act shall  
11 bear interest at the rate of twelve per centum per annum from  
12 the date such tax is due and payable, except that any tax found  
13 due as the result of an appeal to the court of common pleas, or  
14 any appellate court, shall bear interest at the rate of six per  
15 centum per annum from the date the tax was originally due and  
16 payable. In cases of petitions to the department for  
17 reassessment, any balance finally found due by the department  
18 shall bear interest at the rate of twelve per centum per annum  
19 from ten days after notice of the additional or estimated  
20 additional assessment was given to the vendor by the department.

21 Section 17. Penalties.--(a) Any vendor who shall  
22 intentionally neglect or refuse to make the return to the  
23 department, as required by this act, shall be guilty of a  
24 misdemeanor, and, upon conviction thereof, shall be sentenced to  
25 pay a fine of not less than one hundred dollars (\$100.00) or not  
26 more than five hundred dollars (\$500.00), and costs of  
27 prosecution, or to undergo imprisonment for not more than six  
28 months, or both, in the discretion of the court.

29 (b) Any vendor who shall refuse to permit the department, or  
30 any agent appointed in writing by it, to examine his books,

1 papers, invoices and other records, in and upon any premises  
2 where the same are kept, to the extent necessary to verify any  
3 return made or to ascertain and assess the tax imposed by this  
4 act if no return was made, or who shall fail or refuse to  
5 maintain and keep for two years such records, invoices, bills of  
6 lading and other papers pertaining to the sale of tangible  
7 personal property as may be required by the department, shall be  
8 guilty of a misdemeanor, and, upon conviction thereof, shall be  
9 sentenced to pay a fine of not less than one hundred dollars  
10 (\$100.00) or more than five hundred dollars (\$500.00), or to  
11 suffer imprisonment of not more than six months, or both, in the  
12 discretion of the court.

13 Section 18. Disposition of Tax, Fines and Penalties.--All  
14 taxes, fees, interest, fines and penalties imposed by this act  
15 shall be paid into the State Treasury, through the department,  
16 and credited to the General Fund.

17 Section 19. Continuance of Existing Powers.--The powers  
18 conferred by this act upon the department relating to the  
19 administration or enforcement of this act shall be in addition  
20 to, but not exclusive of, any other powers heretofore or  
21 hereafter conferred upon the department by law.

22 Section 20. Purpose of Act to Provide Relief Funds.--The  
23 purpose of this act is to provide revenue to meet any  
24 appropriations for unemployment relief made by the extraordinary  
25 session of the General Assembly of one thousand nine hundred  
26 thirty-two.

27 Section 21. Vendors May Add Price of Tax to Retail Price of  
28 Property Sold.--Vendors may add to the retail price of any  
29 tangible personal property, the sale of which is subject to a  
30 tax hereunder, one per centum of the retail price, provided the

1 retail price and the one per centum, representing the tax  
2 imposed by this act, be separately stated on price display  
3 signs, tickets and tags, and bills rendered in connection with  
4 the sale of such property.

5 Section 22. Emergency Tax in Addition to Existing Taxes.--  
6 The tax imposed by this act shall be in addition to any taxes  
7 now imposed by law upon vendors.

8 Section 23. Constitutionality.--It is the intention of the  
9 General Assembly, that, if this act cannot take effect in its  
10 entirety because of the judgment of any court of competent  
11 jurisdiction holding unconstitutional any part or parts thereof,  
12 the remaining provisions of the act shall be given full force  
13 and effect as completely as if the part or parts held  
14 unconstitutional had not been included herein.

15 Section 24. Effective Date.--This act shall become effective  
16 immediately upon its passage, and approval by the Governor.]

17 Section 2. This act shall take effect in 60 days.