
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. **1198** Session of
2015

INTRODUCED BY DUNBAR, BARRAR, GROVE, LAWRENCE, MILLARD, MURT,
MUSTIO, PEIFER, PETRI, REESE, GABLER, KORTZ, JOZWIAK, ADOLPH
AND BARBIN, MAY 13, 2015

SENATOR BROWNE, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, DECEMBER 18, 2015

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 TAX FOR EDUCATION, FURTHER PROVIDING FOR <--
11 CRIMES; AND, in corporate net income tax, providing for
12 amended reports.

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

15 ~~Section 1. The act of March 4, 1971 (P.L.6, No.2), known as~~ <--
16 ~~the Tax Reform Code of 1971, is amended by adding a section to~~
17 ~~read:~~

18 SECTION 1. SECTION 268(B) OF THE ACT OF MARCH 4, 1971 <--
19 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, AMENDED
20 JUNE 29, 2002 (P.L.559, NO.89), IS AMENDED AND THE SECTION IS
21 AMENDED BY ADDING SUBSECTIONS TO READ:

1 SECTION 268. CRIMES.--* * *

2 (B) OTHER CRIMES. (1) EXCEPT AS OTHERWISE PROVIDED BY
3 SUBSECTION (A) OF THIS SECTION, ANY PERSON WHO ADVERTISES OR
4 HOLDS OUT OR STATES TO THE PUBLIC OR TO ANY PURCHASER OR USER,
5 DIRECTLY OR INDIRECTLY, THAT THE TAX OR ANY PART THEREOF IMPOSED
6 BY THIS ARTICLE WILL BE ABSORBED BY SUCH PERSON, OR THAT IT WILL
7 NOT BE ADDED TO THE PURCHASE PRICE OF THE TANGIBLE PERSONAL
8 PROPERTY OR SERVICES DESCRIBED IN SUBCLAUSES (2), (3), (4) AND
9 (11) THROUGH (18) OF CLAUSE (K) OF SECTION 201 OF THIS ARTICLE
10 SOLD OR, IF ADDED, THAT THE TAX OR ANY PART THEREOF WILL BE
11 REFUNDED, OTHER THAN WHEN SUCH PERSON REFUNDS THE PURCHASE PRICE
12 BECAUSE OF SUCH PROPERTY BEING RETURNED TO THE VENDOR, AND ANY
13 PERSON SELLING OR LEASING TANGIBLE PERSONAL PROPERTY OR SAID
14 SERVICES THE SALE OR USE OF WHICH BY THE PURCHASER IS SUBJECT TO
15 TAX HEREUNDER, WHO SHALL WILFULLY FAIL TO COLLECT THE TAX FROM
16 THE PURCHASER AND TIMELY REMIT THE SAME TO THE DEPARTMENT, AND
17 ANY PERSON WHO SHALL WILFULLY FAIL OR NEGLECT TO TIMELY FILE ANY
18 RETURN OR REPORT REQUIRED BY THIS ARTICLE OR ANY TAXPAYER WHO
19 SHALL REFUSE TO TIMELY PAY ANY TAX, PENALTY OR INTEREST IMPOSED
20 OR PROVIDED FOR BY THIS ARTICLE, OR WHO SHALL WILFULLY FAIL TO
21 PRESERVE HIS BOOKS, PAPERS AND RECORDS AS DIRECTED BY THE
22 DEPARTMENT, OR ANY PERSON WHO SHALL REFUSE TO PERMIT THE
23 DEPARTMENT OR ANY OF ITS AUTHORIZED AGENTS TO EXAMINE HIS BOOKS,
24 RECORDS OR PAPERS, OR WHO SHALL KNOWINGLY MAKE ANY INCOMPLETE,
25 FALSE OR FRAUDULENT RETURN OR REPORT, OR WHO SHALL DO, OR
26 ATTEMPT TO DO, ANYTHING WHATEVER TO PREVENT THE FULL DISCLOSURE
27 OF THE AMOUNT OR CHARACTER OF TAXABLE SALES PURCHASES OR USE
28 MADE BY HIMSELF OR ANY OTHER PERSON, OR SHALL PROVIDE ANY PERSON
29 WITH A FALSE STATEMENT AS TO THE PAYMENT OF TAX WITH RESPECT TO
30 PARTICULAR TANGIBLE PERSONAL PROPERTY OR SAID SERVICES, OR SHALL

1 MAKE, UTTER OR ISSUE A FALSE OR FRAUDULENT EXEMPTION
2 CERTIFICATE, SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
3 CONVICTION THEREOF, SHALL BE SENTENCED TO PAY A FINE NOT
4 EXCEEDING ONE THOUSAND DOLLARS (\$1000) AND COSTS OF PROSECUTION,
5 OR UNDERGO IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH:
6 PROVIDED, HOWEVER, THAT ANY PERSON MAINTAINING A PLACE OF
7 BUSINESS OUTSIDE THIS COMMONWEALTH MAY ABSORB THE TAX WITH
8 RESPECT TO TAXABLE SALES MADE IN THE NORMAL COURSE OF BUSINESS
9 TO CUSTOMERS PRESENT AT SUCH PLACE OF BUSINESS WITHOUT BEING
10 SUBJECT TO THE ABOVE PENALTY AND FINES: AND PROVIDED FURTHER,
11 THAT ADVERTISING TAX-INCLUDED PRICES SHALL BE PERMISSIBLE, IF
12 THE PREPAID SERVICES ARE SOLD BY THE SERVICE PROVIDER, FOR
13 PREPAID TELECOMMUNICATIONS SERVICES NOT EVIDENCED BY THE
14 TRANSFER OF TANGIBLE PERSONAL PROPERTY OR FOR PREPAID MOBILE
15 TELECOMMUNICATIONS SERVICES.

16 [(2) THE PENALTIES IMPOSED BY THIS SECTION SHALL BE IN
17 ADDITION TO ANY OTHER PENALTIES IMPOSED BY ANY PROVISION OF THIS
18 ARTICLE.]

19 (C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART,
20 ANY PERSON WHO PURCHASES, INSTALLS OR USES IN THIS COMMONWEALTH
21 AN AUTOMATED SALES SUPPRESSION DEVICE OR ZAPPER OR PHANTOMWARE
22 WITH THE INTENT TO DEFEAT OR EVADE THE DETERMINATION OF AN
23 AMOUNT DUE UNDER THIS PART COMMITS A MISDEMEANOR.

24 (I) ANY PERSON WHO, FOR COMMERCIAL GAIN, SELLS, PURCHASES,
25 INSTALLS, TRANSFERS OR POSSESSES IN THIS COMMONWEALTH AN
26 AUTOMATED SALES SUPPRESSION DEVICE OR ZAPPER OR PHANTOMWARE WITH
27 THE KNOWLEDGE THAT THE SOLE PURPOSE OF THE DEVICE IS TO DEFEAT
28 OR EVADE THE DETERMINATION OF AN AMOUNT DUE UNDER THIS PART
29 COMMITTS AN OFFENSE WHICH SHALL BE PUNISHABLE BY A FINE SPECIFIED
30 UNDER SUBPARAGRAPH (II) OR BY IMPRISONMENT FOR NOT MORE THAN ONE

1 YEAR, OR BY BOTH. A PERSON WHO USES AN AUTOMATED SALES
2 SUPPRESSION DEVICE OR ZAPPER OR PHANTOMWARE SHALL BE LIABLE FOR
3 ALL TAXES, INTEREST AND PENALTIES DUE AS A RESULT OF THE USE OF
4 THAT DEVICE.

5 (II) IF A PERSON IS GUILTY OF AN OFFENSE UNDER PARAGRAPH (1)
6 AND THE PERSON SOLD, INSTALLED, TRANSFERRED OR POSSESSED NOT
7 MORE THAN THREE AUTOMATED SALES SUPPRESSION DEVICES OR ZAPPERS
8 OR PHANTOMWARE, THE PERSON COMMITS AN OFFENSE PUNISHABLE BY A
9 FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS (\$5,000).

10 (III) IF A PERSON COMMITS AN OFFENSE UNDER PARAGRAPH (1) AND
11 THE PERSON SOLD, INSTALLED, TRANSFERRED OR POSSESSED MORE THAN
12 THREE AUTOMATED SALES SUPPRESSION DEVICES OR ZAPPERS OR
13 PHANTOMWARE, THE PERSON COMMITS AN OFFENSE PUNISHABLE BY A FINE
14 OF NOT MORE THAN TEN THOUSAND DOLLARS (\$10,000).

15 (2) THIS SUBSECTION SHALL NOT APPLY TO A CORPORATION THAT
16 POSSESSES AN AUTOMATED SALES SUPPRESSION DEVICE OR ZAPPER OR
17 PHANTOMWARE FOR THE SOLE PURPOSE OF DEVELOPING HARDWARE OR
18 SOFTWARE TO COMBAT THE EVASION OF TAXES BY USE OF AUTOMATED
19 SALES SUPPRESSION DEVICES OR ZAPPERS OR PHANTOMWARE.

20 (3) FOR PURPOSES OF THIS SUBSECTION:

21 "AUTOMATED SALES SUPPRESSION DEVICE" OR "ZAPPER" MEANS A
22 SOFTWARE PROGRAM CARRIED ON A MEMORY STICK OR REMOVABLE COMPACT
23 DISC, ACCESSED THROUGH AN INTERNET LINK OR THROUGH ANY OTHER
24 MEANS, THAT FALSIFIES THE ELECTRONIC RECORDS OF ELECTRONIC CASH
25 REGISTERS AND OTHER POINT-OF-SALE SYSTEMS, INCLUDING, BUT NOT
26 LIMITED TO, TRANSACTION DATA AND TRANSACTION REPORTS.

27 "ELECTRONIC CASH REGISTER" MEANS A DEVICE THAT KEEPS A
28 REGISTER OR SUPPORTING DOCUMENT THROUGH THE MEANS OF AN
29 ELECTRONIC DEVICE OR COMPUTER SYSTEM DESIGNED TO RECORD
30 TRANSACTION DATA FOR THE PURPOSE OF COMPUTING, COMPILING OR

1 PROCESSING RETAIL SALES TRANSACTION DATA IN WHATEVER MANNER.

2 "PHANTOMWARE" MEANS A HIDDEN PROGRAMMING OPTION, WHICH IS
3 EITHER PREINSTALLED OR INSTALLED AT A LATER TIME, EMBEDDED IN
4 THE OPERATING SYSTEM OF AN ELECTRONIC CASH REGISTER OR HARDWIRED
5 INTO THE ELECTRONIC CASH REGISTER THAT CAN BE USED TO CREATE A
6 VIRTUAL SECOND TILL OR MAY ELIMINATE OR MANIPULATE A TRANSACTION
7 RECORD THAT MAY OR MAY NOT BE PRESERVED IN DIGITAL FORMATS TO
8 REPRESENT THE TRUE OR MANIPULATED RECORD OF TRANSACTIONS IN THE
9 ELECTRONIC CASH REGISTER.

10 "TRANSACTION DATA" INCLUDES INFORMATION REGARDING ITEMS
11 PURCHASED BY A CUSTOMER, THE PRICE FOR EACH ITEM, A TAXABILITY
12 DETERMINATION FOR EACH ITEM, A SEGREGATED TAX AMOUNT FOR EACH OF
13 THE TAXED ITEMS, THE AMOUNT OF CASH OR CREDIT TENDERED, THE NET
14 AMOUNT RETURNED TO THE CUSTOMER IN CHANGE, THE DATE AND TIME OF
15 THE PURCHASE, THE NAME, ADDRESS AND IDENTIFICATION NUMBER OF THE
16 VENDOR AND THE RECEIPT OR INVOICE NUMBER OF THE TRANSACTION.

17 (D) THIS SECTION SHALL NOT PRECLUDE PROSECUTION UNDER ANY
18 OTHER LAW.

19 (E) THE PENALTIES IMPOSED BY THIS SECTION SHALL BE IN
20 ADDITION TO ANY OTHER PENALTIES IMPOSED BY ANY PROVISION OF THIS
21 ARTICLE.

22 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

23 Section 406.1. Amended Reports.--(a) Except in instances
24 where either section 406 or subsection (b) applies, a taxpayer
25 may file an amended report on a form prescribed by the
26 department and under oath or affirmation to bring to the
27 attention of the department a correction to the original report
28 and provide additional information that the taxpayer requests
29 the department to consider, within three years after the filing
30 of the original report, including extensions.

1 (b) (1) except in instances where a taxpayer would be
2 entitled to an adjustment of its tax liability, a taxpayer may
3 not file an amended report in lieu of a timely appeal of an
4 assessment.

5 (2) A taxpayer may file an amended report prior to the
6 actual receipt of an assessment or, if a petition raising other
7 issues is pending, during the administrative or judicial appeal.

8 (3) The department may issue proposed regulations within six
9 months of the effective date of this section that provide
10 guidance as to when a taxpayer may file an amended report in
11 lieu of a timely appeal of an assessment.

12 (c) (1) In order for the department to consider an amended
13 report, a taxpayer must consent in writing, on a form prescribed
14 by the department, to the extension of the assessment period for
15 the tax year to one year from the date of the filing of the
16 amended report or three years from the filing of the original
17 report, whichever period last expires.

18 (2) At any time before the expiration of the applicable
19 statute of limitations, a taxpayer may consent to extend the
20 period for the department to consider an amended report.

21 (3) A taxpayer shall maintain records until the end of the
22 extended assessment period.

23 (d) An amended report filed with the department must contain
24 the following:

25 (1) An agreement to the extension of the assessment period
26 as described in subsection (c).

27 (2) The calculation of the amended tax liability.

28 (3) Revised Pennsylvania supporting schedules, if
29 applicable.

30 (4) An explanation of the changes being made and the reason

1 for the changes.

2 (5) Other information that the department may request to
3 support the calculation of the amended tax liability.

4 (e) (1) The department shall review an amended report filed
5 prior to the issuance of an assessment.

6 (2) If the department subsequently issues an assessment, any
7 appeal of the taxpayer must be filed in accordance with section
8 2703 and include any issues raised in the amended report with
9 which the taxpayer disagrees with the action of the department.

10 (3) If the department does not issue an assessment and the
11 taxpayer disagrees with the department's action on the amended
12 report, the taxpayer may file an appeal pursuant to subsection
13 (h).

14 (f) An amended report involving a tax year under appeal
15 shall be forwarded to the appropriate administrative appeal
16 board or to the Office of Attorney General to be included in the
17 appeal.

18 (g) (1) Unless the taxpayer has requested or consented to
19 an extension, the department shall review an amended report and
20 advise the taxpayer in writing within one year of the filing
21 date of the amended report whether the department accepts the
22 amended report. The notice shall provide an explanation of the
23 department's action.

24 (2) If the department fails to provide timely notice, the
25 amended report shall be deemed accepted as filed and the
26 department shall adjust its records accordingly.

27 (h) (1) Except where:

28 (i) an amended report has been incorporated into an
29 administrative or judicial proceeding;

30 (ii) an assessment is issued after consideration of an

1 amended report;

2 (iii) an amended report is filed in lieu of a petition for
3 reassessment; or

4 (iv) an amended report requesting a refund or credit was
5 filed more than three years from the date the applicable tax was
6 paid or deemed paid.

7 A taxpayer who disagrees with the action of the department may
8 file an appeal with the board of appeals within ninety days of
9 the mailing date of the written notice required in subsection
10 (g).

11 (2) A taxpayer may not appeal the department's action on an
12 amended report:

13 (i) filed in lieu of a petition for reassessment; or

14 (ii) requesting a refund or credit filed more than three
15 years from the date the applicable tax was paid or deemed paid.

16 (3) If a taxpayer disagrees with the action of the
17 department, in the instance where:

18 (i) an amended report was filed in lieu of a petition for
19 reassessment; or

20 (ii) the taxpayer had the right to pay the assessed tax,
21 interest and penalty and file a petition for refund or credit
22 instead of an amended report.

23 The taxpayer may pay the tax, interest and penalty due and file
24 a petition for refund in accordance with section 3003.1.

25 (i) This section applies to all taxes that incorporate by
26 reference Part III of this article.

27 Section 2 3. The addition of section 406.1 of the act shall <--
28 apply to amended reports filed on or after the effective date of
29 this section.

30 Section 3 4. This act shall take effect immediately. <--