

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1477 Session of 2017

INTRODUCED BY WHEELAND, DEAN, TOEPEL, JAMES, OBERLANDER, PICKETT, SANKEY, KAUFFMAN, MURT, PHILLIPS-HILL, DIAMOND, KEEFER, GROVE, SAINATO, A. HARRIS, D. COSTA, STAATS, DEASY, WARD, MULLERY, GOODMAN, COX, KORTZ, GODSHALL, BARRAR, IRVIN, GABLER, SAYLOR, F. KELLER, NELSON, ZIMMERMAN, MOUL, DUSH, WATSON, HAHN, CAUSER, SACCONI, QUIGLEY, FRITZ, BOBACK, GILLESPIE AND SIMMONS, JUNE 1, 2017

REFERRED TO COMMITTEE ON FINANCE, JUNE 1, 2017

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, further providing for
 11 definitions, for incidence and rate of tax; and providing for
 12 vapor products tax.

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

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

20 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 liquid solution or other material
6 containing nicotine that is depleted as a vapor product is used.

7 * * *

8 ["Electronic cigarettes." As follows:

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

13 (2) The term includes:

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

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

21 "E-liquid." A substance that contains nicotine and flavoring
22 or other additive and is intended to be used in a vapor pen.

23 * * *

24 "Tobacco products." As follows:

25 [(1) Electronic cigarettes.]

26 (2) Roll-your-own tobacco.

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

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

5 (4) The term does not include:

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

7 (ii) Cigars.

8 (iii) Vapor products.

9 * * *

10 "Vapor pen." A powered vaporizer and any other component
11 parts intended to be used in a powered vaporizer that converts
12 e-liquid into vapor, which is intended for inhalation.

13 "Vapor product." As follows:

14 (1) A nonlighted, noncombustible product that employs a
15 mechanical heating element, battery or electronic circuit
16 regardless of shape or size which provides a vapor of
17 nicotine.

18 (2) The term includes any vapor cartridge, e-liquid or
19 liquid solution that is intended to be used with or in an
20 electronic cigarette, electronic cigar, electronic cigarillo,
21 electronic pipe, vapor pen or similar product or device.

22 (3) The term does not include any product regulated by
23 the United States Food and Drug Administration under Ch. 9
24 Subch. V of the Federal Food, Drug, and Cosmetic Act, (52
25 Stat. 1040, 21 U.S.C. § 301 et seq.).

26 * * *

27 Section 2. Section 1202-A of the act, added July 13, 2016
28 (P.L.526, No.84), is amended to read:

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

30 (a) Imposition of tax on certain tobacco products.--A

1 tobacco products tax is imposed on the dealer or manufacturer at
2 the time the tobacco product is first sold to a retailer in this
3 Commonwealth at the rate of 55¢ per ounce for the purchase of
4 any tobacco product [other than electronic cigarettes]. The tax
5 rate shall include a proportionate tax at the rate of 55¢ per
6 ounce on all fractional parts of an ounce. The tax imposed on
7 tobacco products [other than electronic cigarettes] that weigh
8 less than 1.2 ounces per container is equal to the amount of the
9 tax imposed on tobacco products other than electronic cigarettes
10 that weigh 1.2 ounces. The tax shall be collected from the
11 retailer by whomever sells the tobacco product to the retailer
12 and remitted to the department. Any person required to collect
13 this tax shall separately state the amount of tax on an invoice
14 or other sales document.

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

25 (b) Retailer.--A retailer may only purchase tobacco products
26 from a licensed dealer. If the tax is not collected by the
27 seller from the retailer, the tax is imposed on the retailer at
28 the time of purchase at the same rate as in [subsections (a) and
29 (a.1)] subsection (a) based on the retailer's purchase price of
30 the tobacco products. The retailer shall remit the tax to the

1 department.

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

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

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

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

12 Section 3. The act is amended by adding an article to read:

13 ARTICLE XII-B

14 VAPOR PRODUCTS TAX

15 Section 1201-B. Definitions.

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

19 "Consumable product." A liquid solution or other material
20 containing nicotine that is depleted as a vapor product is used.

21 "Consumer." An individual who purchases vapor products for
22 personal use and not for resale.

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

24 "E-liquid." A substance that contains nicotine and flavoring
25 or other additive and is intended to be used in a vapor pen.

26 "Person." As follows:

27 (1) An individual, unincorporated association, company,
28 corporation, joint stock company, group, agency, syndicate,
29 trust or trustee, receiver, fiduciary, partnership,
30 conservator or a political subdivision of the Commonwealth or

1 any other state.

2 (2) The term as applied to a partnership, unincorporated
3 association or other joint venture, shall mean the partners
4 or members of the partnership, unincorporated association or
5 other joint venture, and as applied to a corporation, shall
6 mean each officer and director of the corporation regarding
7 the prescription and imposition of penalties.

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

16 "Retailer." A person that purchases or receives vapor
17 products for sale to a consumer.

18 "Sale." A transfer of ownership, custody or possession of
19 vapor products for consideration, including an exchange, barter
20 or gift or an offer to sell or transfer the ownership, custody
21 or possession of vapor products for consideration.

22 "Taxpayer." A person subject to tax under this article.

23 "Vapor pen." A powered vaporizer and any other component
24 parts intended to be used in a powered vaporizer that converts
25 e-liquid into vapor, which is intended for inhalation.

26 "Vapor product." As follows:

27 (1) A nonlighted, noncombustible product that employs a
28 mechanical heating element, battery or electronic circuit,
29 regardless of shape or size, which provides a vapor of
30 nicotine.

1 (2) The term includes any vapor cartridge, e-liquid or
2 liquid solution that is intended to be used with or in an
3 electronic cigarette, electronic cigar, electronic cigarillo,
4 electronic pipe, vapor pen or similar product or device.

5 (3) The term does not include any product regulated by
6 the United States Food and Drug Administration under Ch. 9
7 Subch. V of the Federal Food, Drug, and Cosmetic Act, (52
8 Stat. 1040, 21 U.S.C. § 301 et seq.).

9 Section 1202-B. Imposition and rate of tax.

10 (a) Imposition of tax on vapor products.--An excise tax is
11 imposed on vapor products at the point of retail sale in this
12 Commonwealth at the rate of 5¢ per fluid milliliter of
13 consumable product. The tax shall be collected by the retailer
14 and remitted to the department. A person required to collect
15 this tax shall clearly provide notice of the assessment of the
16 tax to the consumer either through advertising or separate
17 listing on a sales receipt or invoice.

18 (b) Exceptions.--The tax may not be imposed on any vapor
19 products that:

20 (1) are exported for sale outside of this Commonwealth;

21 or

22 (2) are not subject to taxation by the Commonwealth
23 under any laws of the United States.

24 Section 1203-B. Remittance of tax to department.

25 Each retailer shall file monthly reports on a form prescribed
26 by the department by the 20th day of the month following the
27 retail sale of vapor products. The tax is due at the time the
28 report is due. The department may require the filing of reports
29 and payment of tax on a less frequent basis in the department's
30 discretion.

1 Section 1204-B. Procedures for claiming refund.

2 A claim for a refund under section 3003.1 or Article XXVII of
3 the tax imposed by this article shall be in the form and contain
4 the information prescribed by the department by regulation.

5 Section 1205-B. Tax Evasion.

6 A person who falsely or fraudulently, maliciously,
7 intentionally or willfully with intent to evade the payment of
8 the tax imposed by this article, sells or possesses a vapor
9 product for which the proper tax has not been paid commits a
10 felony and shall, upon conviction, be sentenced to pay costs of
11 prosecution and a fine of not more than \$5,000 or to
12 imprisonment for not more than five years, or both.

13 Section 1206-B. Assessment.

14 The department is authorized to make the inquiries,
15 determinations and assessments of the tax, including interest,
16 additions and penalties imposed by this article.

17 Section 1207-B. Failure to file return.

18 If no return is filed, the amount of the tax due may be
19 assessed and collected at any time as a taxable transaction not
20 reported.

21 Section 1208-B. False or fraudulent return.

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

25 Section 1209-B. Extension of limitation period.

26 Notwithstanding any other provision of this article, if,
27 before the expiration of the period prescribed for the
28 assessment of a tax a taxpayer has consented in writing that the
29 period be extended, the amount of tax due may be assessed at any
30 time within the extended period. The period so extended may be

1 extended further by subsequent consents, in writing, made before
2 the expiration of the extended period.

3 Section 1210-B. Failure to furnish information, returning false
4 information or failure to permit inspection.

5 (a) Penalty.--A retailer who fails to keep or make a record,
6 return, report, inventory or statement, or keeps or makes a
7 false or fraudulent record, return, report, inventory or
8 statement required by this article commits a misdemeanor and
9 shall, upon conviction, be sentenced to pay costs of prosecution
10 and a fine of \$500 or to imprisonment for not more than one
11 year, or both.

12 (b) Examination.--The department is authorized to examine
13 the books and records, the stock of vapor products and the
14 premises and equipment of a retailer in order to verify the
15 accuracy of the payment of the tax imposed by this article. The
16 person subject to an examination shall give to the department or
17 its duly authorized representative the means, facilities and
18 opportunity for the examination. Willful refusal to cooperate
19 with or permit an examination to the satisfaction of the
20 department shall be sufficient grounds for the suspension or
21 revocation of the retailer's license. In addition, a person who
22 willfully refuses to cooperate with or permit an examination to
23 the satisfaction of the department commits a misdemeanor and
24 shall, upon conviction, be sentenced to pay costs of prosecution
25 and a fine of \$500 or to imprisonment for not more than one
26 year, or both.

27 (c) Retailer records.--A retailer shall keep and maintain
28 for a period of four years records in the form prescribed by the
29 department.

30 (d) Reports.--A retailer shall file reports at times and in

1 the form prescribed by the department.

2 Section 1211-B. Retailer's license.

3 (a) Prohibition.--No person, unless all sales of vapor
4 products are exempt from the Commonwealth's vapor products tax,
5 shall sell at retail vapor products in this Commonwealth without
6 first obtaining the license required under this section.

7 (b) Application.--An applicant for a retailer's license
8 shall complete and file an application with the department. The
9 application shall be in the form and contain information
10 prescribed by the department.

11 (c) Requirements.--An applicant for a retailer's license or
12 renewal of license shall meet the following requirements:

13 (1) The premises on which the applicant proposes to
14 conduct business are adequate to protect the revenues.

15 (2) The applicant must have disclosed all material
16 information required by the department.

17 (3) Completed the application under subsection (b)
18 truthfully and accurately.

19 (4) The applicant may not have violated any provision of
20 this article.

21 (5) The applicant shall have filed all required State
22 tax reports, paid any State taxes and not be subject to a
23 timely perfected administrative or judicial appeal or a duly
24 authorized deferred payment plan.

25 Section 1212-B. Electronic filing.

26 The department may, at its discretion, require that returns,
27 reports or registrations that are required to be filed under
28 this article be filed electronically. Failure to electronically
29 file a return, report, registration or other information the
30 department may direct to be filed electronically shall subject

1 the taxpayer to a penalty of 5% of the tax due on the return, up
2 to a maximum of \$1,000, but not less than \$10. This penalty
3 shall be assessed at any time and collected in the manner
4 provided in this article. This penalty shall be in addition to
5 any civil penalty imposed in this article for failure to furnish
6 information or file a return. The criminal penalty for failure
7 to file a return electronically shall be the same as the
8 criminal penalty for failure to furnish information or file a
9 return under this article.

10 Section 1213-B. Expiration of license.

11 (a) Expiration.--A retailer's license shall expire on the
12 last day of February next succeeding the date upon which it was
13 issued unless the department at an earlier date suspends, seizes
14 or revokes the license.

15 (b) Violation.--After the expiration date of a retailer's
16 license or sooner, if the license is suspended, surrendered or
17 revoked, it shall be illegal for any retailer to engage directly
18 or indirectly in the business for which the license was issued.
19 A licensee who, after the expiration date of the license,
20 continues to engage in the business either by way of purchase,
21 sale, distribution or in any other manner directly or indirectly
22 engaged in the business of dealing with vapor products for
23 profit shall be in violation of this article and be subject to
24 the penalties provided in this article.

25 Section 1214-B. Violations and penalties.

26 (a) Suspension.--A retailer license may be suspended after
27 due notice and an opportunity for a hearing for a period of not
28 less than 5 days nor more than 30 days for a first violation of
29 this article and shall be revoked or suspended for any
30 subsequent violation.

1 (b) Fine.--In addition to the provisions of subsection (a),
2 upon adjudication of a first violation, a licensee shall be
3 fined no less than \$2,500 nor more than \$5,000. For subsequent
4 violations, the licensee shall, upon adjudication, be fined no
5 less than \$5,000 nor more than \$15,000.

6 (c) Civil penalty.--A licensee who violates section 1210-B
7 (b), (c) or (d) shall be subject to a civil penalty not to
8 exceed \$300 per violation but shall not be subject to
9 subsections (a) and (b).

10 Section 1215-B. Information exchange.

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

14 Section 4. This act shall take effect in 60 days.