

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2886 Session of
2022

INTRODUCED BY FLOOD, RYAN, HENNESSEY, SCHLEGEL CULVER, TWARDZIK,
JAMES, HAMM, MILLARD, BERNSTINE, NEILSON AND JOZWIAK,
OCTOBER 20, 2022

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 20, 2022

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11 repealed: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."

1 Section 2. Definitions.--The following words, terms, and
2 phrases, when used in this act, shall have the meanings ascribed
3 to them in this section, except where the context clearly
4 indicates a different meaning.

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

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

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

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

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

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

30 Section 3. Imposition and Rate of Tax.--A State tax is

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

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

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

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

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

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

28 Section 8. Estimated Assessment upon Failure to File
29 Return.--If a vendor shall neglect or refuse to make any return
30 and payment of tax required by this act, the department shall--

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

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

1 Section 10. Payment and Due Date of Taxes Assessed by the
2 Department.--All taxes and penalties resulting from any
3 assessment made by the department shall be due and payable ten
4 days after notice thereof is given or sent, by mail or
5 otherwise, to the vendor against whom such assessment was made.

6 Section 11. Petition for Reassessment of Certain
7 Assessments; Notice.--Any vendor against whom an additional
8 assessment or estimated additional assessment shall be made by
9 the department may petition for a reassessment. Notice of an
10 intention to file such a petition or to appear and be heard
11 shall be given to the department prior to the time the amount
12 becomes due and payable, to wit, within ten days after notice of
13 such assessment is given to the vendor as provided in this act.
14 Petitions for reassessment may be filed with the department on
15 or before the date designated in the notice of such assessment
16 when hearings on such petitions will be held. The department
17 shall hold such hearings in each county as may be necessary to
18 hear and determine petitions for reassessment. Such hearings
19 shall be held at the time and place indicated in the notice of
20 such assessment given to the vendor. All petitions filed with
21 the department shall set forth specifically and in detail the
22 grounds upon which it is claimed such assessment is erroneous or
23 unlawful, and shall be accompanied by an affidavit, under oath
24 or affirmation, certifying to the correctness of the facts
25 stated therein. If no petition for reassessment is filed with
26 the department, the vendor may, in lieu thereof, appear at the
27 hearing and present his petition orally, in which event all
28 testimony or statements of facts shall be made under oath or
29 affirmation.

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

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

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

1 this act.

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

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

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

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

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

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

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

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

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

30 (b) Any vendor who shall refuse to permit the department, or

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

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

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

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

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

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

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

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

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

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