

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 426 Session of 2021

INTRODUCED BY DAY, R. MACKENZIE, FREEMAN, CIRESI, COOK, COX, SCHLEGEL CULVER, DAVANZO, T. DAVIS, FARRY, GALLOWAY, HAMM, HICKERNELL, HILL-EVANS, HOHENSTEIN, JONES, LEWIS DELROSSO, M. MACKENZIE, MERCURI, MERSKI, METCALFE, METZGAR, MILLARD, MIZGORSKI, MOUL, OWLETT, PICKETT, POLINCHOCK, PYLE, ROWE, SANCHEZ, SANKEY, SNYDER, STAATS, STAMBAUGH, STEPHENS, THOMAS, WEBSTER, WHEELAND, HENNESSEY, ECKER, ROTHMAN, RYAN, RAPP AND KAUFFMAN, FEBRUARY 8, 2021

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 8, 2021

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 sales and use tax, further providing for  
 11 definitions, for time for filing returns, for payment and for  
 12 tax held in trust for the Commonwealth, providing for COVID-  
 13 19 public eating or drinking place restriction order grants  
 14 and making an editorial change.

15 The General Assembly of the Commonwealth of Pennsylvania  
 16 hereby enacts as follows:

17 Section 1. Section 201 of the act of March 4, 1971 (P.L.6,  
 18 No.2), known as the Tax Reform Code of 1971, is amended by  
 19 adding definitions to read:

20 Section 201. Definitions.--The following words, terms and  
 21 phrases when used in this Article II shall have the meaning

1 ascribed to them in this section, except where the context  
2 clearly indicates a different meaning:

3 \* \* \*

4 (mmm) "Public eating or drinking place." A licensee which  
5 is a place located in this Commonwealth where food or drink is  
6 served to or provided for the public with or without charge. The  
7 term does not include dining cars operated by a railroad company  
8 in interstate commerce or a bed and breakfast homestead or inn.

9 (nnn) "COVID-19 public eating or drinking place restriction  
10 order." Any of the following which requires a public eating or  
11 drinking place to operate at less than 100% seating capacity:

12 (1) An executive order, proclamation or regulation of the  
13 Governor under 35 Pa.C.S. Ch. 73 Subch. A (relating to the  
14 Governor and disaster emergencies) which relates to the novel  
15 coronavirus known as "COVID-19."

16 (2) An order or directive of the Secretary of Health under  
17 sections 2102(a) and 2106(b) of the act of April 9, 1929  
18 (P.L.177, No.175), known as "The Administrative Code of 1929,"  
19 section 8(a) of the act of April 27, 1905 (P.L.312, No.218)  
20 entitled "An act creating a Department of Health, and defining  
21 its powers and duties" or section 5 of the act of April 23, 1956  
22 (1955 P.L.1510, No.500), known as the "Disease Prevention and  
23 Control Law of 1955," which relates to the novel coronavirus  
24 known as "COVID-19."

25 Section 2. Section 217 of the act is amended by adding a  
26 subsection to read:

27 Section 217. Time for Filing Returns.--\* \* \*

28 (e) Public Eating or Drinking Places. A public eating or  
29 drinking place may submit an application under section 257(a)  
30 for any portion of a time period under this section for which

1 the return has not previously been filed.

2 Section 3. Sections 221 and 225 of the act are amended to  
3 read:

4 Section 221. Payment.--(a) When a return of tax is required  
5 under this part, the person required to make the return shall  
6 pay the tax to the department.

7 (b) For an amount required to be paid under this section by  
8 a public eating or drinking place for a time period determined  
9 under section 217, the amount which is required to be paid to  
10 the department under this section shall be reduced by the amount  
11 approved under section 257(b).

12 Section 225. Tax Held in Trust for the Commonwealth.--All  
13 taxes collected by any person from purchasers in accordance with  
14 this article and all taxes collected by any person from  
15 purchasers under color of this article, including all taxes paid  
16 by any person who advertises or holds out or states, directly or  
17 indirectly, that such person will pay the tax for the purchaser,  
18 which have not been properly refunded by such person to the  
19 purchaser shall constitute a trust fund for the Commonwealth,  
20 and such trust shall be enforceable against such person, his  
21 representatives and any person (other than a purchaser to whom a  
22 refund has been made properly) receiving any part of such fund  
23 without consideration, or knowing that the taxpayer is  
24 committing a breach of trust: Provided, however, That any person  
25 receiving payment of a lawful obligation of the taxpayer from  
26 such fund shall be presumed to have received the same in good  
27 faith and without any knowledge of the breach of trust. Any  
28 person, other than a taxpayer, against whom the department makes  
29 any claim under this section shall have the same right to  
30 petition and appeal as is given taxpayers by any provisions of

1 this part. This section shall not apply to an amount of tax  
2 collected by a public eating or drinking place for food and  
3 beverages which is approved as a grant under section 257.

4 Section 4. The heading of Chapter V of Part VI of Article II  
5 of the act is amended to read:

6 Chapter V

7 Refunds [and], Credits and Grants

8 Section 5. The act is amended by adding a section to read:

9 Section 257. COVID-19 Public Eating or Drinking Place  
10 Restriction Order Grants.--(a) A public eating or drinking  
11 place may submit to the department an application for a grant  
12 under subsection (b) on an application form prescribed by the  
13 department.

14 (b) Upon receipt of an application under subsection (a), the  
15 department shall approve the public eating or drinking place for  
16 a grant equal to the amount of tax collected by the public  
17 eating or drinking place for food and beverages under section  
18 204(29) (i), (ii) and (iii) which are sold at retail during a  
19 time period in which the public eating or drinking place is  
20 subject to a COVID-19 public eating or drinking place  
21 restriction order.

22 (c) (1) Upon approval of an application under subsection  
23 (b), the amount subject to the approval may be transferred from  
24 the licensee's trust account under section 225 to an account  
25 available to the public eating or drinking place.

26 (2) Any amount transferred under paragraph (1) shall not be  
27 considered from funds of a public body under the act of August  
28 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing  
29 Wage Act.

30 (d) Amounts approved under subsection (b) are appropriated

1 to the department for purposes of this section.

2 Section 6. This act shall take effect immediately.