
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1461 Session of
2015

INTRODUCED BY PASHINSKI, D. COSTA, SCHREIBER, THOMAS, COHEN,
CALTAGIRONE AND McCARTER, JULY 21, 2015

REFERRED TO COMMITTEE ON FINANCE, JULY 21, 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," providing for a vapor product tax; and
11 prescribing penalties.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XII-A

18 VAPOR PRODUCT TAX

19 PART I

20 PRELIMINARY PROVISIONS

21 Section 1201-A. Definitions.

22 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Article." This article and the rules and regulations
4 promulgated under this article.

5 "Consumable product." Any nicotine liquid solution or other
6 material containing nicotine that is depleted as a vapor product
7 is used.

8 "Dealer." Any wholesaler or retailer. Whenever, in the
9 provisions of this article, the word "dealer" is used, it shall
10 include both categories. Nothing contained in this article shall
11 preclude any person from being a wholesaler or retailer,
12 provided such person meets the requirements for each category of
13 dealer.

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

15 "Invoice or delivery ticket." Any invoice or delivery ticket
16 which shows the true name and complete and exact address of the
17 consignor or seller, the true name and complete and exact
18 address of the consignee or purchaser, the quantity and brands
19 of the vapor products transported, the correct date of purchase
20 or shipment and the true name and complete and exact address of
21 the person who shall assume the payment of the Pennsylvania
22 State tax or the tax, if any, of the state or foreign country at
23 the point of ultimate destination.

24 "Person." Any individual, unincorporated association,
25 company, corporation, joint stock company, group, agency,
26 syndicate, trust or trustee, receiver, fiduciary, partnership,
27 conservator and any political subdivision of the Commonwealth or
28 any other state. Whenever used in any of the provisions of this
29 article prescribing or imposing penalties, the word "person" as
30 applied to a partnership, unincorporated association or other

1 joint venture means the partners or members thereof, and as
2 applied to a corporation means all the officers and directors
3 thereof.

4 "Retailer." Any of the following:

5 (1) Any person who, in the usual course of business,
6 purchases or receives vapor products from any source
7 whatsoever for the purpose of sale to the ultimate consumer.

8 (2) Any person who, in the usual course of business,
9 owns, leases or otherwise operates one or more vending
10 machines for the purpose of sale of vapor products to the
11 ultimate consumer.

12 (3) Any person who buys, sells, transfers or deals in
13 vapor products for profit.

14 "Sale." Any transfer of ownership, custody or possession of
15 vapor products for a consideration; any exchange, barter or
16 gift; or any offer to sell or transfer the ownership, custody or
17 possession of vapor products for consideration.

18 "Vapor product." Any nonlighted, noncombustible product that
19 employs a mechanical heating element, battery or electronic
20 circuit regardless of shape or size and that can be used to
21 produce vapor from nicotine in a solution. The term includes any
22 vapor cartridge or other container of nicotine in a solution or
23 other form that is intended to be used with or in an electronic
24 cigarette, electronic cigar, electronic cigarillo, electronic
25 pipe or similar product or device. The term does not include any
26 product regulated by the United States Food and Drug
27 Administration under the Federal Food, Drug, and Cosmetic Act
28 (52 Stat. 1040, 21 U.S.C. § 301 et. seq.).

29 "Vending machine." Any mechanical device from which vapor
30 products are dispensed for a consideration.

1 "Vending machine operator." Any person who places or
2 services one or more vapor product vending machines, whether
3 owned, leased or otherwise operated by him, at locations from
4 which vapor products are sold to the ultimate consumer. The
5 owner or tenant of the premises upon which a vending machine is
6 placed shall not be considered a vending machine operator if his
7 sole remuneration from the vending machine is a flat rental fee
8 or commission based upon the number or value of vapor products
9 sold from the machine, unless the owner or tenant actually owns
10 the vending machine or leases the vending machine under an
11 agreement whereby the profits from the sale of vapor products
12 directly inure to his benefit.

13 "Wholesaler." Any of the following:

14 (1) Any person that meets all of the following:

15 (i) In the usual course of business, purchases,
16 receives, stores, sells and distributes within this
17 Commonwealth at least 75% of the vapor products purchased
18 by him to retail dealers or wholesale dealers or any
19 combination who buys the vapor products from him for the
20 purpose of resale to the ultimate consumer.

21 (ii) Maintains an established place of business for
22 the receiving, storage and distribution of vapor
23 products.

24 (2) Any person that meets all of the following:

25 (i) Is engaged in the business of distributing vapor
26 products through vending machines to the ultimate
27 consumer by means of placing the vapor product vending
28 machines, owned or leased by him, in various outlets
29 within this Commonwealth.

30 (ii) Pays to the owner or lessee of the premises a

1 commission or rental for the use of the premises.

2 (iii) Operates at least 10 vending machines.

3 (3) Any person, including a franchisee, that meets all
4 of the following:

5 (i) Owns and operates no fewer than three retail
6 outlets in this Commonwealth, having 100% common
7 ownership.

8 (ii) Purchases vapor products from another
9 wholesaler for resale to the ultimate consumer.

10 (iii) Maintains complete and accurate records of all
11 purchases and sales in his main office and also in the
12 retail outlet.

13 PART III

14 IMPOSITION OF TAX

15 Section 1211-A. Incidence and rate of tax.

16 An excise tax is imposed and assessed upon the sale or
17 possession of vapor products within this Commonwealth at the
18 rate of 5¢ per fluid milliliter of consumable product. All
19 invoices for vapor products issued by a manufacturer must state
20 the amount of consumable product in milliliters.

21 Section 1212-A. Sales to Commonwealth and political
22 subdivisions.

23 The excise tax imposed by this article is hereby levied upon
24 the sale of vapor products to any person as defined under the
25 provisions of this article and to the Commonwealth or any other
26 state, or any department, board, commission, authority or agency
27 thereof.

28 Section 1213-A. Limitation of tax.

29 Only one sale shall be taxable and used in computing the
30 amount of tax due under this article whether the sale consists

1 of individual vapor products, packages, cartons or cases.

2 Section 1214-A. Exemptions from tax.

3 (a) General rule.--No tax imposed by this article shall be
4 levied upon the possession or sale of vapor products which this
5 Commonwealth is prohibited from taxing under the Constitution of
6 the United States or Federal law. In addition, when the seller
7 and purchaser have registered with the department and have
8 obtained exemption certificates in accordance with such
9 regulations as the department shall prescribe, the following
10 sales are exempt:

11 (1) Sales to veterans' organizations approved by the
12 department, if the vapor products are being purchased by the
13 organization for gratuitous issue to veteran patients in
14 Federal, State or State-aided hospitals.

15 (2) Sales to voluntary unincorporated organizations of
16 military forces personnel operating under regulations
17 promulgated by the United States Secretary of Defense or
18 departments under his jurisdiction.

19 (3) Sales to retail dealers located in Veterans'
20 Administration hospitals for sales to patients in such
21 hospitals.

22 (b) Regulations.--The department may otherwise promulgate
23 regulations to relieve manufacturers and dealers from payment of
24 tax on vapor products sold and delivered to points inside and
25 outside this Commonwealth for sale and use outside this
26 Commonwealth or sold to purchasers designated as exempt by the
27 provisions of this section. However, all sales shall be presumed
28 to be taxable and the burden shall be upon the person claiming
29 an exemption to prove his right to the exemption.

30 Section 1215-A. Liability for collection of tax.

1 Every person shall be liable to pay into the State Treasury,
2 through the department, the tax imposed by this article on all
3 vapor products received by him, the tax paid, or exempted by the
4 provisions of this article.

5 Section 1216-A. Method of tax.

6 The department shall, by regulation, provide for the method
7 of paying the tax imposed by this article.

8 PART V

9 REFUNDS AND ALLOWANCES

10 Section 1221-A. Refund of tax.

11 A refund of any tax imposed by this article shall be made to
12 a person on proof satisfactory to the department that the
13 claimant:

14 (1) Paid the tax on vapor products withdrawn by him from
15 the market.

16 (2) Shipped vapor products into another state for sale
17 or use therein under the conditions as provided by the
18 regulations promulgated by the department.

19 (3) Sold to persons exempt from the tax under the
20 provisions of this article or regulations prescribed.

21 (4) Had possession of vapor products which were lost,
22 other than by theft, or destroyed by fire, casualty or act of
23 God.

24 (5) Paid the tax in error.

25 Section 1222-A. Allowance for nonpayment of tax.

26 If the tax has not yet been paid on vapor products for which
27 a refund of the tax would be allowed under section 1221-A,
28 relief from the payment of the tax on such vapor products may be
29 given upon the filing of a claim for allowance in the same
30 manner as a claim for refund, or in any other manner provided by

1 regulations.

2 Section 1223-A. Limitations.

3 Claims for refund or allowance of tax imposed by this article
4 shall be filed under section 3003.1 and shall be in such form
5 and contain such information as the department shall, by
6 regulation, prescribe.

7 Section 1224-A. Procedures for claiming refund.

8 (a) General rule.--A dealer shall make a claim for a refund
9 of tax on a form and in the manner prescribed by the department.

10 (b) Certification to Board of Finance and Revenue.--If the
11 department is satisfied that the dealer is entitled to the
12 refund it shall certify the proposed amount of such refund to
13 the Board of Finance and Revenue for approval and, having
14 obtained approval from the Board of Finance and Revenue, it
15 shall issue to the dealer the proper refund.

16 (c) Department determination.--Claims for allowance for
17 nonpayment of tax shall be allowed by the department if the
18 department determines that the dealer is entitled to the
19 allowance.

20 PART VII

21 PENALTIES AND ENFORCEMENT

22 Section 1241-A. Failure to furnish information, returning false
23 information or failure to permit an inspection.

24 (a) General rule.--Any dealer who fails to keep or make any
25 record, return, report, inventory or statement, or keeps or
26 makes any false or fraudulent record, return, report, inventory
27 or statement required by this article shall be guilty of a
28 misdemeanor and, upon conviction, be sentenced to pay a fine of
29 \$500 and costs of prosecution or imprisonment for not more than
30 one year, or both. Notwithstanding any fine imposed by a court

1 of competent jurisdiction in accordance with this subsection,
2 the department may impose an administrative fine of not more
3 than \$5,000.

4 (b) Right to examine books and records.--The department is
5 authorized to examine the books and records, the stock of vapor
6 products and the premises and equipment of any dealer in order
7 to verify the accuracy of the payment of the tax imposed by this
8 article. Every such person is hereby directed and required to
9 give to the department or its duly authorized representative the
10 means, facilities and opportunity for such examinations. Willful
11 refusal to cooperate with or permit such examination to the
12 satisfaction of the department shall be sufficient grounds for
13 the suspension or revocation of any license issued under this
14 article and shall constitute a misdemeanor and, upon conviction,
15 be sentenced to pay a fine of \$500 and costs of prosecution or
16 imprisonment for not more than one year, or both.

17 Section 1242-A. Right of department to impound vending machines
18 and contents.

19 (a) General rule.--Whenever any vapor products are found or
20 are suspected to be in any vending machine in violation of the
21 provisions of this article, or whenever a vending machine is not
22 properly licensed or labeled, the duly authorized agents or
23 employees of the department shall seal the machine by the means
24 of impounding stickers to prevent sale or removal of any vapor
25 products from the machine until such time as the violation is
26 corrected in the presence of a duly authorized agent or employee
27 of the department.

28 (b) Penalty.--Anyone other than the duly authorized agents
29 or employees of the department who shall remove or otherwise
30 tamper with any impounding stickers placed on any vending

1 machine, contents, or other evidence shall be guilty of a
2 misdemeanor and subject to a fine of not more than \$1,000 and
3 costs of prosecution or imprisonment for not more than one year,
4 or both.

5 Section 1243-A. Other violations.

6 (a) The following shall apply:

7 (1) Any person who willfully omits, neglects or refuses
8 to comply with any duty imposed upon him by this article or
9 does anything prohibited by this article for which no
10 specific penalty is otherwise provided shall, upon
11 conviction, in a summary proceeding be sentenced to pay a
12 fine of not more than \$500 and costs of prosecution and, in
13 default of payment thereof, to undergo imprisonment for not
14 more than 30 days.

15 (2) Any person who willfully omits or neglects to file
16 any return required or pay any tax imposed by this article,
17 or attempts in any manner to evade or defeat the tax or
18 payment, shall, in addition to any other penalty provided in
19 this article, be liable to pay a penalty equal to the amount
20 of tax evaded or not paid, which penalty shall be added to
21 the tax and assessed and collected at the same time in the
22 same manner as a part of the tax.

23 (3) Any person who fails to file any required return or
24 pay tax at the time prescribed shall, in addition to any
25 other penalty provided in this article, be liable to a
26 penalty of 5% of the tax due but unpaid for each month or
27 fraction of a month the tax remains unpaid together with the
28 interest at the rate established pursuant to section 806 of
29 the act of April 9, 1929 (P.L.343, No.176), known as The
30 Fiscal Code, on the tax from the time the tax became due. The

1 penalties provided in this subsection shall be added to the
2 tax and assessed and collected at the same time in the same
3 manner and as a part of the tax.

4 Section 1244-A. Peace officers and powers.

5 Such employees of the department as are officially designated
6 by the Secretary of Revenue as field investigators of the
7 department, and who carry identification of such capacity, are
8 declared to be peace officers and they, as well as other peace
9 officers of the Commonwealth are given police powers and
10 authority throughout this Commonwealth to arrest on view, except
11 in private homes, without warrant, any person actually engaged
12 in the unlawful sale of vapor products, or any person unlawfully
13 having in his possession vapor products contrary to the
14 provisions of this article. The peace officer shall have the
15 power and authority upon reasonable and probable cause to search
16 for and seize without warrant or process, except in private
17 homes, any vapor products which are unlawfully possessed.

18 Section 1245-A. Fines and penalties payable to Commonwealth.

19 All fines and penalties imposed and collected under the
20 provisions of this article shall be payable to the Commonwealth
21 and are hereby appropriated to the department to be used in
22 enforcing this article.

23 PART IX

24 CONFISCATION AND FORFEITURE

25 Section 1251-A. Property rights.

26 The following shall apply:

27 (1) No property rights shall exist in any vending
28 machine in which vapor products which are unlawfully offered
29 for sale are found, nor shall any property rights exist in
30 any vehicle containing 2,000 or more vapor products which are

1 unlawfully possessed or containing more than 200 vapor
2 products which are unlawfully possessed if the owner has been
3 previously convicted of the illegal sale, possession or
4 transportation of vapor products which are unlawfully
5 possessed in this or any other jurisdiction. The vending
6 machine, all vapor products contained in the vending machine
7 and the vehicle which contained the vapor products shall be
8 deemed contraband and shall be confiscated at the discretion
9 of the Secretary of Revenue, and shall be forfeited to the
10 Commonwealth as provided in paragraphs (5) and (6). No such
11 property, when in the custody of the department, the police
12 or other authorized peace officer shall be seized or taken
13 therefrom by any judicial process unless a petition for
14 forfeiture is not timely filed.

15 (2) Upon the forfeiture or confiscation, the department
16 shall dispose of any forfeited vending machine or forfeited
17 vapor products in accordance with paragraphs (5) and (6).

18 (3) No property rights shall exist in any vapor products
19 sold or offered for sale by any person without a proper
20 license or any vapor products sold or offered for sale by any
21 person not possessing proper documentation showing legal
22 purchase of vapor products and all vapor products shall be
23 deemed contraband, shall be confiscated and shall be
24 forfeited to the Commonwealth without further proceedings and
25 shall be delivered to the agents of the department at the
26 time of conviction by the judge or magisterial district
27 judge.

28 (4) No property rights shall exist in any machinery,
29 equipment, fixtures or other paraphernalia designed or used
30 to counterfeit vapor products nor shall any property rights

1 exist in any vapor products confiscated in connection with
2 the operation of any counterfeiting or other scheme designed
3 to evade the payment of proper tax under this article. The
4 machinery, equipment, fixtures or other paraphernalia and
5 vapor products shall be confiscated and, at the discretion of
6 the Secretary of Revenue, shall be forfeited to the
7 Commonwealth in accordance with the provisions of this
8 article.

9 (5) The department shall dispose of vapor products
10 forfeited under the provisions of this article by the sale or
11 destruction of vapor products pursuant to regulations
12 promulgated by the Secretary of Revenue.

13 (6) The proceedings for the forfeiture of any vending
14 machine or motor vehicle, in which are found unlawful vapor
15 products shall be in rem. The Commonwealth shall be the
16 plaintiff and the property shall be the defendant. A petition
17 shall be filed within 10 days after confiscation in the court
18 of common pleas of the county in which the property or
19 vehicle was taken by agents of the department, the police or
20 other authorized peace officer, verified by oath or
21 affirmation of any enforcement officer, police officer or
22 other person. In the event that such petition is not filed
23 within the time prescribed by this paragraph, the confiscated
24 vending machine or motor vehicle shall be immediately
25 returned to the person from whom confiscated or the owner.

26 (7) The petition must contain the following:

27 (i) The description of the property or vehicle
28 seized.

29 (ii) A statement of the time when and place where
30 seized.

1 (iii) The name and address of the owner, if known.

2 (iv) The name and address of the person in
3 possession, if known.

4 (v) The statement of the circumstances under which
5 the property was found and the number and description of
6 all unlawful vapor products found.

7 (vi) A request for an order forfeiting the property
8 to the Commonwealth, unless cause be shown to the
9 contrary.

10 (8) A copy of the petition shall be served in any manner
11 provided by law for service of process or complaint in a
12 civil action on the owner if he can be found within this
13 Commonwealth. If the owner cannot be found within this
14 Commonwealth, a copy of the petition shall be served on the
15 owner by registered mail or certified mail, return receipt
16 requested, addressed to the last known address of the owner.
17 The person in possession and all encumbrance holders having a
18 perfected security interest in the property confiscated shall
19 be notified in a like manner. The copies shall have endorsed
20 thereon a notice substantially similar to the following:

21 "To the claimant of the property described in the
22 petition: You are required to file an answer to this
23 petition stating your title in and right to possession of
24 the property, within 20 days from the service, and you
25 are also notified that if you fail to file an answer, a
26 decree of forfeiture will be entered against the
27 property."

28 (9) The notice shall be signed by the petitioner or his
29 attorney or the district attorney or Attorney General.

30 (10) If the owner of the property is unknown, notice of

1 the petition shall also be given by an advertisement in only
2 one newspaper of general circulation published in the county
3 where the property was seized, once a week for two successive
4 weeks. No other advertisement of any sort shall be necessary,
5 any other law to the contrary notwithstanding. The notice
6 shall contain a statement of the seizure of the property with
7 the description thereof, the place and date of seizure and
8 shall direct any claimants to file a claim therefor, on or
9 before a date given in the notice, which shall not be less
10 than 10 days from the date of the last publication.

11 (11) Upon the filing of any claim for the property
12 setting forth a right of possession thereof, the case shall
13 be deemed at issue and a hearing shall be held within 10
14 days.

15 (12) At the time of the hearing, if the Commonwealth
16 proves by competent evidence to the satisfaction of the court
17 that the vending machine or motor vehicle in question was
18 found to contain unlawful vapor products then and in that
19 event the claimant shall show that he is the owner of the
20 vending machine or other equipment, motor vehicle or vapor
21 products, and that all vapor products found in the vending
22 machine, or any other place from which the vapor products
23 were seized, contained lawful vapor products or that he is
24 otherwise not subject to the provisions of this section as
25 the result of any exemption or allowance provided for in
26 other sections of this article.

27 (13) The claimant shall have the burden of proving that
28 he is not subject to the provisions of this section, but the
29 burden of proof shall be upon the Commonwealth to prove all
30 other facts necessary for the forfeiture of a vending machine

1 or motor vehicle. In the event that the Commonwealth has not
2 met its burden by a preponderance of the evidence, or the
3 claimant has proved that he is not subject to the provisions
4 of this section, the court shall order the vending machine,
5 motor vehicle or other equipment returned to the claimant;
6 otherwise, the court shall order the same forfeited to the
7 Commonwealth. In the case of a motor vehicle, should the
8 claimant prove to the satisfaction of the court that he is
9 the registered owner of the motor vehicle and that he did not
10 know, nor had reason to know, that it was being used to carry
11 unlawful vapor products, the court in its discretion, may
12 order the same returned to the claimant.

13 (14) In the case of a motor vehicle, if the claimant
14 proves that he holds a valid encumbrance upon the motor
15 vehicle, notice of which encumbrance has been duly noted on
16 the certificate of title to the motor vehicle in accordance
17 with the provisions of 75 Pa.C.S. (relating to vehicles),
18 such forfeiture shall be subject to such encumbrance as of
19 the date of the seizure less prepaid or unearned interest and
20 before the motor vehicle may be sold, exchanged or otherwise
21 transferred or retained for use by the Commonwealth, the
22 outstanding amount of such encumbrance shall be paid to the
23 claimant; or possession of the motor vehicle shall be turned
24 over to the claimant who shall expose the same to public sale
25 and shall pay over to the Commonwealth any amount realized in
26 excess of the outstanding amount of such encumbrance less the
27 reasonable costs incurred by claimant in conducting such
28 sale.

29 Section 1252-A. Disposition of unclaimed motor vehicles.

30 If the court orders a motor vehicle returned to the owner or

1 claimant and the owner or claimant fails to remove the vehicle
2 from Commonwealth property, the department shall give the owner
3 or claimant notice, in the manner provided in section 1251-A for
4 service of notice of the petition, to remove the vehicle within
5 90 days. Should the owner or claimant fail to remove the vehicle
6 within 90 days from the date notice was given, the vehicle
7 shall, without regard to any other period of limitations, be
8 disposed of as provided in Article XIII.1 of the act of April 9,
9 1929 (P.L.343, No.176), known as The Fiscal Code.

10 PART XI

11 ENFORCEMENT AND REGULATIONS

12 Section 1261-A. Enforcement and regulations.

13 The department shall enforce the provisions of this article
14 and may promulgate regulations relating to the administration
15 and enforcement of the provisions of this article. The violation
16 of a regulation promulgated under the authority of this article
17 shall be considered to be a violation of the article.

18 PART XIII

19 MISCELLANEOUS PROVISIONS

20 (Reserved)

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