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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 508 Session of  
2017

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INTRODUCED BY BARTOLOTTA, SABATINA, YUDICHAK, KILLION, YAW,  
WHITE, FOLMER, VOGEL, WAGNER, EICHELBERGER AND WARD,  
MARCH 10, 2017

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REFERRED TO FINANCE, MARCH 10, 2017

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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 and for incidence and rate of tax; and imposing a  
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 to read:

19 Section 1201-A. Definitions.

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

1 \* \* \*

2 ["Electronic cigarettes." As follows:

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

7 (2) The term includes:

8 (i) A device as described in paragraph (1),  
9 notwithstanding whether the device is manufactured,  
10 distributed, marketed or sold as an e-cigarette, e-cigar  
11 and e-pipe or under any other product, name or  
12 description.

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

15 \* \* \*

16 "Tobacco products." As follows:

17 [(1) Electronic cigarettes.]

18 (2) Roll-your-own tobacco.

19 (3) Periques, granulated, plug cut, crimp cut, ready  
20 rubbed and other smoking tobacco, snuff, dry snuff, snuff  
21 flour, cavendish, plug and twist tobacco, fine-cut and other  
22 chewing tobaccos, shorts, refuse scraps, clippings, cuttings  
23 and sweepings of tobacco and other kinds and forms of  
24 tobacco, prepared in such manner as to be suitable for  
25 chewing or ingesting or for smoking in a pipe or otherwise,  
26 or any combination of chewing, ingesting or smoking.

27 (4) The term does not include:

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

29 (ii) Cigars.

30 \* \* \*

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

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

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

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

29 (b) Retailer.--A retailer may only purchase tobacco products  
30 from a licensed dealer. If the tax is not collected by the

1 seller from the retailer, the tax is imposed on the retailer at  
2 the time of purchase at the same rate as in [subsections (a) and  
3 (a.1)] subsection (a) based on the retailer's purchase price of  
4 the tobacco products. The retailer shall remit the tax to the  
5 department.

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

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

- 13 (1) are exported for sale outside this Commonwealth; or  
14 (2) are not subject to taxation by the Commonwealth  
15 pursuant to any laws of the United States.

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

17 ARTICLE XII-B

18 VAPOR PRODUCTS TAX

19 Section 1201-B. Definitions.

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

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

25 "Consumer." An individual who purchases a tobacco product  
26 for personal use and not for resale.

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

28 "E-liquid." A substance that contains nicotine and flavoring  
29 or other additives and is intended to be used in a vapor pen.

30 "Person." Any of the following:

1       (1) An individual, unincorporated association, company,  
2       corporation, joint stock company, group, agency, syndicate,  
3       trust or trustee, receiver, fiduciary, partnership,  
4       conservator or political subdivision of the Commonwealth or  
5       another state.

6       (2) If used in any of the provisions of this article  
7       prescribing or imposing a penalty, the term as applied to a  
8       partnership, unincorporated association or other joint  
9       venture shall mean the partners or members of the  
10       partnership, unincorporated association or other joint  
11       venture, and as applied to a corporation shall mean each  
12       officer and director of the corporation.

13       "Purchase price." The total value of anything paid or  
14       delivered, or promised to be paid or delivered, in complete  
15       performance of a sale or purchase, without a deduction for the  
16       cost or value of the property sold, cost or value of  
17       transportation, cost or value of labor or service, interest or  
18       discount paid or allowed after the sale is consummated, other  
19       taxes imposed by the Commonwealth or another expense.

20       "Retailer." A person that purchases or receives vapor  
21       products from a source for the purpose of sale to a consumer.

22       "Sale." The following:

23               (1) A transfer of ownership, custody or possession of  
24               vapor products for consideration.

25               (2) An exchange, barter or gift.

26               (3) An offer to sell or transfer the ownership, custody  
27               or possession of vapor products for consideration.

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

29       "Vapor pen." A powered vaporizer and any component parts  
30       intended to be used in a powered vaporizer that converts e-

1 liquid into vapor which is intended for inhalation.

2 "Vapor product." A nonlighted, noncombustible product that  
3 employs a mechanical heating element, battery or electronic  
4 circuit that provides a vapor of nicotine. The term includes a  
5 vapor cartridge, liquid solution or e-liquid that is intended to  
6 be used with or in an electronic cigarette, electronic cigar,  
7 electronic cigarillo, electronic pipe, vapor pen or similar  
8 product or device. The term does not include a product regulated  
9 by the United States Food and Drug Administration under Chapter  
10 V of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21  
11 U.S.C. § 301 et seq.).

12 Section 1202-B. Incidence and rate.

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

21 (b) Exceptions.--The tax may not be imposed on a vapor  
22 product that:

23 (1) is exported for sale outside this Commonwealth; or

24 (2) is not subject to taxation by the Commonwealth under  
25 any laws of the United States.

26 Section 1203-B. Remittance.

27 A retailer shall file a monthly report on a form prescribed  
28 by the department by the 20th day of the month following the  
29 retail sale of a vapor product. The tax shall be due at the time  
30 the report is due. The department may require the filing of

1 reports and payment of tax on a less frequent basis.

2 Section 1204-B. Refund.

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

7 Section 1205-B. Evasion.

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

15 Section 1206-B. Assessment.

16 The department may make inquiries, determinations and  
17 assessments of the tax imposed under this article, including  
18 interest, additions and penalties.

19 Section 1207-B. Report.

20 (a) Filing.--If a report under section 1203-B is not filed,  
21 the amount of the tax due may be assessed and collected at any  
22 time as to taxable transactions not reported.

23 (b) False or fraudulent report.--If a taxpayer willfully  
24 files a false or fraudulent report with intent to evade the tax  
25 imposed under this article, the amount of tax due may be  
26 assessed and collected at any time.

27 Section 1208-B. Limitation period.

28 Notwithstanding any other provision of this article, if,  
29 before the expiration of the period prescribed for the  
30 assessment of a tax, a taxpayer has consented in writing to an

1 extension of the period, the amount of tax due may be assessed  
2 at any time within the extended period. The extended period may  
3 be extended further by subsequent consents in writing made  
4 before the expiration of the extended period.

5 Section 1209-B. Information and inspection.

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

12 (b) Examination and penalties.--The following apply:

13 (1) The department may examine the books and records,  
14 the stock of vapor products and the premises and equipment of  
15 a taxpayer in order to verify the accuracy of the payment of  
16 the tax imposed under this article. The person subject to an  
17 examination shall give to the department or the department's  
18 duly authorized representative the means, facilities and  
19 opportunity for the examination.

20 (2) A person who willfully refuses to cooperate with or  
21 permit an examination to the satisfaction of the department:

22 (i) may be subject to license suspension or  
23 revocation; and

24 (ii) commits a misdemeanor and shall, upon  
25 conviction, be sentenced to pay costs of prosecution and  
26 a fine of \$500 or to imprisonment for not more than one  
27 year, or both.

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

1 (d) Reports.--A retailer shall file reports in a manner  
2 prescribed by the department.

3 Section 1210-B. Licensing of retailers.

4 (a) Prohibition.--Unless the sale of a vapor product is  
5 exempt from a vapor products tax imposed under the laws of this  
6 Commonwealth, a person may not sell at retail the vapor product  
7 in this Commonwealth without obtaining or renewing a license as  
8 provided under this article.

9 (b) Application.--An applicant for a retailer's license  
10 shall complete and file an application with the department. The  
11 application shall be in a form determined by the department and  
12 shall set forth truthfully and accurately the information  
13 required by the department.

14 (c) Requirements.--An applicant for a retail license or  
15 renewal of a retail license:

16 (1) Must disclose all material information required by  
17 the department.

18 (2) May not make materially false statements in the  
19 application.

20 (3) May not violate any provision of this article.

21 (4) Must have filed required State tax reports and paid  
22 State taxes not subject to a timely perfected administrative  
23 or judicial appeal or subject to a duly authorized deferred  
24 payment plan.

25 Section 1211-B. Electronic filing.

26 (a) Requirement.--The department may require the electronic  
27 filing of a form or information required under this article.

28 (b) Penalty.--

29 (1) A taxpayer that fails to electronically file as  
30 directed by the department may be assessed a penalty of 5% of

1 the tax due on the report. The penalty under this paragraph  
2 shall be at least \$10 and not more than \$1,000.

3 (2) The penalty shall be assessed at any time and  
4 collected in the manner provided under this article for  
5 remittance of the tax.

6 (3) The penalty shall be in addition to any civil  
7 penalty imposed under this article for failure to furnish  
8 information or file a report.

9 (4) The criminal penalty for failure to file a report  
10 electronically shall be the same as the criminal penalty for  
11 failure to furnish information or file a report under section  
12 1209-B(a).

13 Section 1212-B. Expiration of license.

14 (a) Expiration.--Unless the department suspends, requires  
15 surrender of or revokes a license, a license shall expire on the  
16 last day of February next succeeding the date of issuance of the  
17 license.

18 (b) Violation.--

19 (1) A retailer may not directly or indirectly engage in  
20 the business for which a license was issued after suspension,  
21 surrender, revocation or expiration of the license.

22 (2) A licensee who, after the expiration date of the  
23 license, engages in the business previously conducted by the  
24 licensee by way of purchase, sale, distribution or in any  
25 other manner directly or indirectly engaged in the business  
26 of dealing with vapor products for profit shall be in  
27 violation of this article and shall be subject to the  
28 penalties provided in this article.

29 Section 1213-B. Administrative powers and duties.

30 (a) Department.--The administration of this article is

1 vested in the department. The department shall adopt rules and  
2 regulations for the enforcement of this article. The department  
3 may impose fees necessary to cover the costs incurred in  
4 administering this section.

5 (b) Joint administration.--The department may jointly  
6 administer this article with other provisions of this act.

7 Section 1214-B. Sales without license.

8 (a) Penalty.--A person who directly or indirectly engages in  
9 the retail sale of a vapor product for profit without a license  
10 commits a summary offense and shall, upon conviction, be  
11 sentenced to pay costs of prosecution and a fine of not less  
12 than \$250 nor more than \$1,000, or to imprisonment for not more  
13 than 30 days, or both.

14 (b) Prima facie evidence.--Open display of a vapor product  
15 shall be prima facie evidence that the person displaying the  
16 vapor product is engaging in the business of dealing with a  
17 vapor product for profit.

18 Section 1215-B. Violations and penalties.

19 (a) Suspension.--Except as provided under subsection (c),  
20 the license of a person who violates this article may be  
21 suspended after due notice and opportunity for a hearing for a  
22 period of not less than five days nor more than 30 days for a  
23 first violation and shall be revoked or suspended for a  
24 subsequent violation.

25 (b) Fine.--Except as provided under subsection (c), and in  
26 addition to a suspension or revocation under subsection (a), the  
27 person shall be fined at least \$2,500 and not more than \$5,000  
28 for a first violation. For a second or subsequent violation, the  
29 person shall be fined at least \$5,000 and not more than \$15,000.

30 (c) Civil penalty.--A person who violates section 1209-B(b)

1 (2), (c) or (d) shall be subject to a civil penalty not to  
2 exceed \$300 per violation but shall not be subject to  
3 subsections (a) and (b).

4 Section 1216-B. Information exchange.

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

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