

thousand nine hundred and thirty-seven, and for the collection of taxes under section nineteen of this act, during the calendar years one thousand nine hundred and thirty-six and one thousand nine hundred and thirty-seven, on reports filed for the calendar years one thousand nine hundred and thirty-five and one thousand nine hundred and thirty-six, or for the fiscal years beginning in the calendar years one thousand nine hundred and thirty-five and one thousand nine hundred and thirty-six.

APPROVED—The 22d day of June, A. D. 1935.

GEORGE H. EARLE

No. 183

AN ACT

To provide revenue by imposing a State tax upon the privilege to attend or engage in amusements, including every form of entertainment, diversion, sport, recreation, and pastime; requiring persons, partnerships, associations, or corporations conducting places of amusement to secure permits; imposing duties, and conferring powers upon the Department of Revenue; prescribing the method and manner of collecting the tax, and the use of the proceeds thereof; permitting refunds of the tax in certain instances; providing certain exemptions; and providing penalties.

Section 1. Be it enacted, &c., That this act shall be known, and may be cited, as the "Amusement Tax Act." Revenue.

Section 2. The following words or phrases when used in this section, except where the context clearly indicates a different meaning. Definitions.

"Amusement." All manner and forms of entertainment, including, among others, theatrical or operatic performances, concerts, moving picture shows, vaudeville, circus, carnival, and side shows, all forms of entertainment at fair grounds and amusement parks, athletic contests, including wrestling matches, boxing and sparring exhibitions, football and baseball games, skating, golfing, tennis, hockey, bathing, dancing, and all other forms of diversion, sport, recreation, or pastime, shows, exhibitions, contests, displays, and games, and all other methods of obtaining admission charges, donations, contributions, or monetary charges of any character, from the general public, or a limited or selected number thereof, directly or indirectly, in return for other than tangible property, or specific personal or professional services.

"Association." Any partnership, limited partnership, or other forms of unincorporated enterprise, owned by two or more persons.

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

“Established price.” Regular monetary charge of any character whatever, including donations, contributions, and dues, or membership fees (periodical or otherwise), fixed and exacted, or in any manner received by producers, as herein defined, from the general public, or a limited or selected number thereof, directly or indirectly, for the privilege to attend or engage in amusements as herein defined. In the case of any amusement conducted at any roof garden, night club, cabaret, or other place where the charge for admission is wholly, or in part, included in the price paid for refreshment, service, or merchandise, the amount paid for admission to such amusement shall be deemed to be twenty (20) per centum of the amount paid for refreshment, service, and merchandise.

“Person.” Every natural person, copartnership, association, or corporation. Whenever used in any clause prescribing and imposing a penalty, or both, the term “person,” as applied to copartnerships or associations, shall mean the partners, or members thereof, and as applied to corporations the officers thereof.

“Place of Amusement.” Any place, indoors or outdoors, where the general public, or a limited or selected number thereof, may, upon payment of an established price, attend or engage in any amusement as herein defined, including, among others, theatres, opera houses, moving picture houses, amusement parks, stadiums, arenas, baseball parks, skating rinks, circus or carnival tents or grounds, fair grounds, social, sporting, athletic, riding, gun, and country clubs, golf courses, bathing and swimming places, dance halls, tennis courts, rifle or shotgun ranges, roof gardens, cabarets, night clubs, and other like places.

“Producer.” Any person, as herein defined, conducting any place of amusement, as herein defined, where the general public, or a limited or selected number thereof, may, upon the payment of an established price, attend or engage in any amusement.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

Unlawful to conduct amusements without a permit.

Section 3. (a) On and after the effective date of this act, it shall be unlawful for any producer to continue to conduct, or thereafter to begin to conduct any form of amusement at any permanent or temporary place of amusement, or any itinerant form of amusement within this Commonwealth, unless an amusement permit or permits shall have been issued to him as hereinafter prescribed.

Shall file an application for a permit.

(b) Every producer, desiring to continue to conduct or hereafter to begin to conduct any amusement within this Commonwealth, shall file an application for a permanent, temporary, or itinerant amusement permit or permits, as the case may be, with the department. Every

application for such permit or permits shall be made upon a form prescribed, prepared, and furnished by the department, and shall set forth the name under which the applicant conducts or intends to conduct an amusement, whether the applicant conducts or intends to conduct a permanent or temporary place, or an itinerant form of amusement, the location of the permanent or temporary place of amusement, whether or not the applicant is the holder of a mercantile license in effect when the application is made, and if so, the number of such license, and the county for which such license was issued, and such other information as the department may require. If the applicant has or intends to have more than one place of amusement within the Commonwealth, the application shall state the location of each place of amusement, and in the case of itinerant form of amusement, the date and length of time such amusement is to be conducted at each place. In the case of an application for a permit for a temporary place of amusement, the application shall state the name and address of the owner, lessee, or custodian of the premises upon which such amusement is to be conducted. If the applicant is an association or a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the department for purposes of identification. The application shall be signed and verified by oath or affirmation by the producer, if a natural person, and in the case of an association by a member or partner thereof, and in the case of a corporation by an executive officer thereof, or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

Form to be prescribed by the department.

Contents.

Affirmation.

Fee.

At the time of making such application, the applicant shall pay to the department a permit fee of one dollar (\$1.00) for each permit.

Upon approval of the application and the payment of any permit fee or fees herein required, the department shall grant and issue to each applicant a permanent, temporary, or itinerant amusement permit for each place of amusement within the Commonwealth set forth in his application. Amusement permits shall not be assignable, and shall be valid only for the persons in whose names issued, and for the conduct of amusements at the places designated therein, and shall at all times be conspicuously displayed at the places for which issued. All permits for permanent places of amusement shall expire on the thirty-first day of December next succeeding the date upon which they are issued, unless sooner suspended, surrendered, or revoked for cause by the department. Permits for temporary places of amusement or for forms of itinerant amusement shall expire at the time specified therein. The holder of an itinerant amusement permit

Permits not assignable.

Expiration date.

shall notify the department promptly of any change in the original contemplated itinerary, either as to date, or time of, the conduct of the amusement at each place.

Renewal.

(c) Permits issued for permanent places of amusement, under the provisions of this act, may be renewed annually before the first day of January, upon application made to the department, and the payment of a renewal fee of one dollar (\$1.00).

Duplicate may be issued when the original has been lost, defaced, etc.

Whenever any permit, issued under the provisions of this act, is defaced, destroyed, or lost, the department may issue a duplicate permit to the holder of the defaced, destroyed, or lost permit upon the payment of a fee of fifty cents (50c).

Permits may be suspended.

(d) The department may suspend, or, after hearing, revoke an amusement permit whenever it finds that the holder thereof has failed to comply with any of the provisions of this act, or any rules or regulations of the department prescribed, adopted, and promulgated under this act. Upon suspending or revoking any amusement permit, the department shall request the holder thereof to surrender to it immediately, all permits, or duplicates thereof, issued to him, and the holder shall surrender promptly all such permits to the department as requested. Whenever the department suspends an amusement permit, it shall notify the holder immediately, and afford him a hearing, if desired, and if a hearing has not already been afforded. After such hearing, the department shall either rescind its order of suspension, or good cause appearing therefor, shall continue the suspension or revoke the permit.

Tax.

Section 4. (a) A State tax is hereby imposed upon the privilege to attend or engage in any amusement at the rate of one cent (1c) for each twenty-five cents (25c), or fraction thereof, of the established price charged the general public, or a limited or selected group thereof, by any producer for such privilege, which shall be paid by the person acquiring such privilege.

Rate.

Rate where people admitted free or at a reduced rate.

(b) In the case of persons (except bona fide employes of a producer, or municipal or State officers on official business) admitted free or at reduced rates to any place of amusement, at a time when and under circumstances under which an established price is charged to other persons, the tax, imposed by this act, shall be computed on the established price charged to such other persons of the same class for the same or similar accommodations, to be paid by the person so admitted.

Rate for holders of box seats.

(c) In the case of persons having the permanent use of boxes or seats in any place of amusement, or a lease for the use of such box or seat in such place of amusement, the tax, imposed by this act, shall be computed on the established price for which a similar box or seat is sold for each performance or exhibition at which the

box or seat is used or reserved by or for the lessee or holder, such tax to be paid by the lessee or holder.

Section 5. (a) Producers shall collect the tax imposed by this act, and shall be liable to the Commonwealth as taxpayers for the payment of the same into the State Treasury through the department, as hereinafter provided in this act.

Producers to collect the tax.

(b) Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees, or custodians of the places where the amusements are to be conducted, or where the temporary amusement is permitted by the owner, lessee, or custodian of any place, to be conducted without the procurement of a permit or permits required by this act, the tax, imposed by this act, shall be paid by the owner, lessee, or custodian (except the Commonwealth or any political subdivision thereof) of such place where such temporary amusement is held or conducted, unless paid by the producer conducting the amusement.

In case of temporary amusements, tax to be paid by owner, lessee, etc., of place where amusement is conducted.

Section 6. For the purpose of ascertaining the amount of tax payable by producers to the Commonwealth it shall be the duty of,

(a) Every producer, except as hereinafter provided, conducting a place of amusement, on or before the tenth day of each month, to transmit to the department on a form prescribed and prepared by the department, a report, under oath or affirmation, of the amount of tax collected by him during the preceding month.

Producer must file report.

(b) Every producer, conducting a temporary place of amusement or itinerant form of amusement, shall file a report with the department, or any duly authorized agent thereof, promptly after each performance where only one performance is conducted at one place on one day, and in the event that more than one performance is conducted at one place on one day, the report shall be made at the conclusion of the last performance conducted on such day. Where performances are conducted at the same place for a period of more than one day and less than thirty days, the report shall be made immediately after the termination of such period.

Report of producer conducting a temporary place of amusement.

All reports required under this section shall show such information as the department shall prescribe.

Every producer, at the time of making every report required by this section, shall compute and pay to the department the taxes collected by him and due to the Commonwealth during the period for which the report is made, less a two per centum discount if the report is filed and the tax paid on time. The amount of all taxes, imposed under the provisions of this act, shall in the case of places of permanent amusement be due and payable on the tenth day of the next succeeding month, and in the case of temporary or itinerant forms of amusement, it shall be due and payable on the day the reports

Producer shall pay taxes collected by him at time he makes his report.

When payable.

in such cases are required to be made under this section, and all such taxes shall bear interest at the rate of one per cent per month, or fractional part of a month, from the date they are due and payable until paid.

Penalty for failure to make report.

If any producer shall neglect or refuse to make any report and payment as herein required, an additional ten per centum of the amount of the tax shall be added by the department and collected, as hereinafter provided in this act.

Department may make personal demand upon a producer conducting temporary place of amusement.

Section 7. In the case of a producer conducting a temporary place of amusement or any form of itinerant amusement, the department may, through its duly authorized agent, make personal demand upon such producer, liable as a taxpayer, for any taxes required to be collected by him under this act, and require the report and payment thereof immediately upon the termination of any performance after which the taxes shall become due and payable by such producer. Upon failure of such producer to make a proper report and pay the taxes due and payable, the department may issue its warrant to its duly authorized agent, authorizing and directing such agent to collect such tax by distraint and sale of the goods, chattels, and effects of such producer. In any such case, the authorized agent of the department shall make or cause to be made an account of the goods, chattels, and effects distrained, a copy of which shall be left with such producer, and shall, forthwith, cause notice of the time and place of the sale to be publicly posted upon the premises in which the distrained goods, chattels, or effects are located, and in two other public places in the vicinity. The time of sale shall not be less than ten, nor more than twenty days from the date of such distraint. It shall be unlawful for such producer to remove, molest, or otherwise intermeddle with, the goods, chattels, and effects so distrained, at any time after such distraint and before the sale thereof. Upon any sale under a distraint, as authorized under this section, the amount of the tax shall, after deducting the expenses of such sale and all prior liens upon the property, be first appropriated out of the proceeds thereof to the payment of the tax. In any case of distraint for the payment of any taxes under this act, the goods, chattels, or effects so distrained shall be restored to such producer, if prior to the sale, payment of the amount due is made to the duly authorized agent of the department. Upon any such sale, the bill of sale of the agent conducting the same shall be prima facie evidence of the right of the agent to make such sale, and conclusive of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent producer in and to the property sold.

Department may collect tax by distraint and sale of goods.

Notice of sale.

Time of sale.

Distribution of the proceeds.

Producer may pay tax before the sale.

Buyer of distrained goods receives all right, title and interest of the producer.

Section 8. (a) If the department is not satisfied with the report and payment of tax made by any producer under the provisions of this act, it is hereby authorized and empowered to make a determination of the tax due by such producer, based upon the facts contained in the report, or upon any information within its possession, or that shall come into its possession.

Department, if unsatisfied with report, may determine amount of the tax.

(b) Promptly after the date of any such determination, the department shall send or furnish a copy thereof to such producer by mail or otherwise. Within ten (10) days after the date of any such determination, such producer may file with the department a petition for redetermination of such tax. Every petition for redetermination shall state, specifically, the reasons which the petitioner believes entitle him to such redetermination, and shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. It shall be the duty of the department, within ninety (90) days after the date of any determination, to dispose of any petition for redetermination. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

Shall give notice.

Producer may petition for a redetermination.

Contents of petition.

Department must dispose of petition within 90 days after date of determination.

Shall give notice of decision.

Producer may appeal from decision.

Section 9. Within ten (10) days after notice by the department of the action taken on any petition for redetermination filed with it, the producer, against whom such determination was made, may by petition request the Board of Finance and Revenue to review such action. Every petition for review, filed hereunder, shall state, specifically, the reason upon which the petitioner relies, and shall be in such form as the Board of Finance and Revenue shall prescribe. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. The Board of Finance and Revenue shall dispose of such petitions filed with it within ninety (90) days after they have been received, and in the event of the failure of said board to dispose of any such petition within ninety (90) days, the action taken by the department upon the petition for redetermination shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for redetermination, or it may redetermine the tax due, upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.

Contents of petition.

Affidavit.

Board shall dispose of petition within 90 days after they have received it.

Powers of board.

Shall give notice of decision.

Section 10. The department, or any person aggrieved by the decision of the Board of Finance and Revenue, or by the board's failure to act upon its petition for review within ninety (90) days, may, within sixty (60) days, appeal to the court of common pleas of the county in which the place of amusement, where the tax in controversy was collected, is located, from the decision of

Upon failure of board to give its decision within prescribed time, an appeal may be taken to court of common pleas.

the Board of Finance and Revenue or from the decision of the department, as the case may be, in the manner now or hereafter provided by law for appeals in the case of tax settlement.

Upon failure to make report, the department may estimate tax, and the producer has no right of review.

Section 11. If any producer shall neglect or refuse to make any report and payment of tax required by this act, the department shall estimate the tax due by such producer, and determine the amount due by him for taxes, penalties and interest thereon, as prescribed herein, from which determination there shall be no right of review or appeal.

Department may examine books, etc.

Section 12. The department or any agent appointed, in writing, by it is hereby authorized to examine the books, papers, tickets, ticket stubs, and records of any producer, taxable under this act, to verify the accuracy of any report or payment made under the provisions of this act, or to ascertain whether or not the taxes imposed by this act have been paid, but any information gained by the department as the result of the reports, investigations, or verifications, herein required to be made, shall be confidential, and any person divulging such information shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) and costs of prosecution or to undergo imprisonment of not more than one year or both, in the discretion of the court.

Department may make rules for the administration of this act.

Section 13.—A. The department may, from time to time, make such regulations, not inconsistent with this act, as it may deem necessary for the efficient administration of this act, including the allowance of exemptions under this act. The department shall cause such regulations to be disseminated through the Commonwealth, in such manner as it shall deem necessary and advisable. Such regulations, adopted by the department, shall have the same force as if they formed a part of this act.

Regulating powers of the department.

B. Subject to the provisions of this act and without limiting the general power conferred by the preceding subsection, the department may make regulations regarding,

(a) the form of and the manner of collecting tickets, passes, or admission cards to be used for admission to places of amusement;

(b) the records to be kept by producers to show fully the amount of taxes required to be collected by them under this act, which records shall be kept by such producers for a period of two years;

(c) the establishment of places within the Commonwealth where reports and payment of taxes, collected by producers under this act, may be filed or made;

(d) the return of any tax collected by a producer where a refund is made by him of the established price charged at any place of amusement, the amount of tax

so returned to be credited against the amount of tax reported in any subsequent report.

Section 14. (a) All taxes herein imposed, due, and unpaid, together with the interest and penalties thereon, shall be considered a public account after being determined in the manner prescribed in this act, and as such shall be a lien upon the franchises or property, both real and personal, of any producer, after the same has been entered and indexed of record by the prothonotary of the county where the producer's franchises or property are situated.

Unpaid taxes are a lien on real estate, etc.

(b) The department may at any time transmit, through the prothonotaries of the respective counties of the Commonwealth, to be by them entered of record, certified copies of all liens for taxes collected or required to be collected by producers under the provisions of this act, and penalties and interest thereon, upon which record it shall be lawful for writs of scire facias to issue, and be prosecuted to judgment and execution in the same manner as such writs are ordinarily employed.

To file unpaid taxes with prothonotaries.

Section 15. Should any producer attempt to conduct a place of amusement without obtaining a permit as required by this act, or continue to conduct any place of amusement after his permit therefor shall have been suspended or revoked; then the department may, through the Department of Justice, bring an action to restrain such person from conducting such place of amusement. Such action shall be brought in the name of the Commonwealth of Pennsylvania, and shall be brought and tried as an action in equity, and may be brought in any court, having jurisdiction to hear and determine equity cases, within the county where the place of amusement is located. If it is made to appear by affidavit or otherwise to the satisfaction of the court that the producer is violating the provisions of this act in the manner aforesaid, a temporary writ of injunction shall forthwith issue, restraining the producer from conducting the place of amusement until the terms of this act are fully complied with. No bond shall be required in instituting such proceedings. If such producer shall refuse to obtain a permit and otherwise comply with the provisions of this act within a time to be fixed by the court, the court may make such injunction permanent until such time as the producer shall comply with the provisions of this act.

Proceedings to be brought against producer operating without permit or operating after permit has been revoked.

Section 16. All taxes, interest and penalties received, collected, or recovered under the provisions of this act, during the first year after the effective date of this act, shall be used only for unemployment relief purposes, and for such purposes are hereby appropriated, and all taxes, interest and penalties collected during the remaining effective period of this act, shall be credited to the General Fund.

Money collected during first year to be used for unemployment relief purposes.

After first year to be credited to the General Fund.

Penalties.

Section 17. Any person who shall continue to conduct or shall hereafter begin to conduct a permanent or temporary place of amusement, or any form of itinerant amusement, without first obtaining an amusement permit or permits as required by this act, or who shall fail to collect the tax required by this act to be paid by persons attending or engaging in the amusement conducted by such person, or who shall knowingly submit any false or fraudulent report required under this act, or who shall fail to make any report and payment of tax required by this act, or who shall otherwise violate any of the provisions of this act or any rule or regulation of the department adopted and promulgated under this act, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) and costs of prosecution, or to undergo imprisonment for not more than six months, or both, in the discretion of the court.

Exceptions to the act.

Section 18. (a) The State tax imposed by this act shall not apply to, or be imposed upon, the privilege to attend any amusement the proceeds of which, after payment of reasonable expenses, inure:

(1) Exclusively to the benefit of religious, educational, and charitable institutions, societies, or organizations, societies or organizations for the prevention of cruelty to children or animals, or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, or societies or organizations conducted and maintained for the purpose of improving any municipal corporation, or for the purpose of maintaining a coöperative or community center, moving picture theatre, or swimming pool: Provided, That no part of the net earnings of the institutions, societies, or organizations inure to the benefit of any private shareholder or person: Provided, That the exemptions, allowed by this paragraph, shall not apply to athletic games or contests between universities or colleges, or to wrestling matches, boxing, sparring or other pugilistic matches or exhibitions.

(2) Exclusively to the benefit of organizations or persons in the military or naval forces of the United States, or of national guard organizations, reserve officers associations, or organizations, posts, or organizations of war veterans, or auxiliary units or societies of such posts or organizations, if such posts, organizations, units, or societies are organized in the Commonwealth of Pennsylvania, and if no part of their net earnings inure to the benefit of any private shareholder or person.

(3) Exclusively to the benefit of organizations or associations created and maintained for the purpose of benefiting the members, or the dependents of, or the heirs of,

members of police, or paid or volunteer fire department of any political subdivision of the Commonwealth of Pennsylvania.

(b) The State tax imposed by this act shall not apply to, or be imposed upon, the privilege to attend any agricultural fair if no part of the net earnings thereof inures to the benefit of any shareholders, or members of the association, or to the benefit of any person, association, or corporation conducting the same, or upon the privilege to attend any exhibit, entertainment, or other pay feature conducted by such association as part of any such fair, if the proceeds therefrom are used exclusively for the improvement, maintenance, and operation of such agricultural fair.

(c) In no event shall any exemption be allowed under this section unless the producer thereof shall comply with the provisions of this act, and the rules and regulations of the department with respect to the application for, and approval of, exemptions.

Section 19. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

Constitutional provision.

Section 20. This act shall become effective thirty days after its final enactment, and shall continue in effect for two years after said effective date.

When effective.

APPROVED—The 22d day of June, A. D. 1935.

GEORGE H. EARLE

No. 184

AN ACT

To amend the act, approved the sixteenth day of May, one thousand nine hundred and thirty-five (Act Number ninety), (Pamphlet Laws, two hundred three), entitled "An act to provide revenue by imposing a State stamp tax upon certain documents and obligations; prescribing and regulating the method and manner of evidencing the payment of such tax; conferring powers and imposing duties upon certain persons, partnerships, associations, and corporations, county officers, and the Department of Revenue; making an appropriation, and providing penalties," by further defining taxable documents, and persons, associations, and corporations subject to pay the tax.

Section 1. Be it enacted, &c., That section two of the act, approved the sixteenth day of May, one thousand nine hundred and thirty-five (Act Number ninety), (Pamphlet Laws, two hundred three), entitled "An act to provide revenue by imposing a State stamp tax upon

Taxation.

Section 2, act of May 16, 1935 (Act No. 90), (P. L. 203), amended.