

No. 85

AN ACT

To provide revenue by imposing a tax on the use and storage of tangible personal property within the Commonwealth; providing for the assessment, collection and lien of the tax; imposing duties on prothonotaries; requiring sellers maintaining a place of business in this Commonwealth to register, make returns and collect the tax; prescribing penalties; and providing for the use of the proceeds of such tax for public school purposes.

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

“Use and Storage
Tax Act.”

Article I

Short Title and Definitions

Section 101. Short Title.—This act shall be known and may be cited as the “Use and Storage Tax Act.”

Section 102. Definitions.—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Department.” The Department of Revenue of this Commonwealth.

(2) “Person.” Any natural person, firm, partnership, association, corporation, fiduciary, or other entity. Whenever used in any provision of this act which prescribes or imposes fine or imprisonment or both, the term “person,” as applied to a firm, partnership or association, shall include the members thereof, and, as applied to a corporation, the officers thereof: Provided, That a firm, partnership, association or a corporation may be subjected as an entity to the payment of a fine.

(3) “Storage.” Any keeping or retention in this Commonwealth for use or other consumption in this Commonwealth for any purpose, excepting as hereinafter provided.

(4) “Use.” The exercise of any right or power incidental to the ownership of tangible personal property.

The term “storage, use or other consumption” does not apply to:

(a) Any tangible personal property used for the purpose of resale in its original form.

(b) Any tangible personal property acquired through an isolated sale from one not a seller.

(c) Any tangible personal property acquired through an isolated purchase from one who, though a seller, is not such a seller with respect to the article purchased, but a use shall be presumed in the case of all purchases from sellers.

- (d) Cigarettes.
- (e) Gasoline and other motor fuels.
- (f) Utility services, the gross receipts from which are taxed by the Commonwealth.
- (g) Any tangible personal property acquired by the Commonwealth or any of its agencies or political subdivisions or by authorities created by or pursuant to law.
- (h) Any tangible personal property acquired by the United States or any of its agencies.
- (i) Any tangible personal property acquired outside this Commonwealth, the taxing of the storage, use or other consumption of which is prohibited by the Constitution of the United States.
- (j) Newspapers, magazines and other periodicals.
- (k) Medicine on prescription, crutches, wheelchairs for the use of cripples and invalids, and when designed to be worn on the person of the purchaser or user, artificial limbs, artificial eyes and artificial hearing devices, false teeth purchased from a dentist and the materials used by a dentist in dental treatment, eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser, and artificial braces and supports designed solely for the use of crippled persons.
- (l) Bakery products, milk, groceries and meat as food products for human consumption. For the purposes of this clause, (i) "milk" shall mean raw milk products from domestic animals or such milk when processed or canned; (ii) "groceries" shall mean all food products and all food ingredients for human consumption or for use in the preparation thereof for human consumption, ordinarily sold in grocery stores, except candies, confections, soft drinks, tobacco or tobacco products; (iii) "meat" shall include the flesh of animals, fish, sea food, poultry and game.
- (m) Clothing and shoes, but not jewelry or any other object not worn primarily to cover the human body against nakedness or cold.
- (n) Tangible personal property (i) which is to be used in fabricating, compounding or manufacturing tangible personal property or in producing public utility service to be sold ultimately at retail, or (ii) which is to be used in the process of farming, agriculture or horticulture and which, in either event, becomes an ingredient or component part of the fabricated, compounded or manufactured tangible personal property or public utility product or of the product of *farming, agriculture or horticulture, or is consumed in the process of fabrication, compounding, manufacturing or producing

* "framing" in original.

or in the process of farming, agriculture or horticulture, or (iii) which is to be used in the production or delivery of public utility service.

(o) The performance of personal service.

(p) Any tangible personal property upon which a tax is imposed under the provisions of the Consumers Sales Tax Act.

(q) Tangible personal property intended for incorporation and incorporated into a building, road, street, bridge, or other structure, provided such property is so incorporated pursuant to a contract entered into prior to the effective date of this act, and provided further that the person so incorporating such property submit to the department proof of the facts in such form as the department may require.

(5) "Purchase." Acquiring tangible personal property for a consideration, whether the transaction was effected by a transfer of title or of possession or of both, or a license to use or consume, whether such transfer shall have been absolute or conditional and by whatsoever means the same shall have been effected and whether such consideration be a price or rental in money or by way of exchange or barter. "Purchase" shall include production even though the article produced is used, stored or consumed by the producer thereof.

(6) "Seller." The person from whom a purchase is made and every person engaged in this Commonwealth or elsewhere in the business of selling tangible personal property for storage, use or other consumption in this Commonwealth. When, in the opinion of the department, it is necessary for the efficient administration of this act to regard any salesman, representative, peddler or canvasser as the agent of a dealer, distributor, supervisor or employer under whom he operates or from whom he obtains tangible personal property sold by him for storage, use or other consumption in this Commonwealth, irrespective of whether or not he is making such sales on his own behalf or on behalf of such dealer, distributor, supervisor or employer, the department may so regard him and may regard such dealer, distributor, supervisor or employer as the "seller" for the purpose of this act.

(7) "Seller Maintaining a Place of Business in This Commonwealth." Any seller having or maintaining within this Commonwealth, directly or through a subsidiary, an office, distribution house, saleshouse, warehouse, or other place of business, or any agent operating wholly within this Commonwealth under the authority of the seller or its subsidiary, irrespective of whether such place of business or agent is located permanently or temporarily in this Commonwealth or whether such seller or subsidiary is authorized to do business within this Commonwealth.

(8) "Consumer." The *person who has purchased tangible personal property for storage, use or other consumption in this Commonwealth.

(9) "Price." The amount paid in money, credits, property or other consideration for purchases, without deduction on account of the cost of property purchased, amounts paid for interest, discounts, losses or any other expenses or burdens. Credit actually given or refund actually paid for goods returned may be deducted.

(10) "Tangible Personal Property." Corporeal personal property including, but not restricted to, goods, wares and merchandise. The term "tangible personal property" does not include money, deposits in banks, shares of stock, bonds, notes, credits, or evidences of an interest in property or evidences of debt.

(11) "Tax." Any tax, interest or penalty imposed or levied under the provisions of this act.

Article II

Imposition and Collection of Tax

Section 201. Imposition.—A tax is hereby levied on the storage, use or other consumption in this Commonwealth of tangible personal property purchased for storage, use or other consumption in this Commonwealth.

Section 202. Amount of Tax.—(a) The rate of tax shall be one per centum (1%) of the price of each purchase of tangible personal property purchased for storage, use or other consumption in this Commonwealth.

(b) As to any tangible personal property purchased for storage, use or other consumption in this Commonwealth, the tax shall be computed as follows:

(1) Where its price is ten cents or less, no tax shall be collected.

(2) Where its price is from eleven cents to one dollar, both inclusive, the tax shall be one cent.

(3) Where its price is in excess of one dollar, the tax on each additional dollar or fraction thereof shall be one cent.

(c) If any person who causes tangible personal property to be brought into this Commonwealth has already paid a tax in another state in respect to the sale or use of such property or an occupation tax in respect thereto in an amount less than the tax imposed by this act, the provisions of this act shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax on the sale or use or occupation tax was computed.

Section 203. Payment.—Each consumer storing, using or otherwise consuming in this Commonwealth

* "persons" in original.

tangible personal property purchased for such purpose or purposes shall be liable for the tax imposed by this act and such liability shall not be extinguished until the tax has been paid to this Commonwealth.

It shall be presumed that tangible personal property purchased on or after the effective date of this act by any person for delivery in this Commonwealth is purchased for storage, use or other consumption in this Commonwealth.

Section 204. Collection by Sellers Maintaining Place of Business in Commonwealth.—Every seller maintaining a place of business in this Commonwealth and making sales of tangible personal property for storage, use or other consumption in this Commonwealth, if not otherwise exempted, shall, at the time of making the sales or, if the storage, use or consumption is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the consumer.

Section 205. Seller's Registration.—Every seller maintaining a place of business in this Commonwealth selling tangible personal property for storage, use or consumption in this Commonwealth shall register with the department and give the name and address of all agents operating in this Commonwealth, the location of all distribution or saleshouses or offices or other places of business in this Commonwealth and such other information as the department may require.

Article III

Returns and Payment

Section 301. Monthly Returns and Payment.—(a) The taxes imposed by this act shall be due and payable in monthly installments on or before the twentieth day of the calendar month succeeding the month during which the purchase of tangible personal property on the storage, use or other consumption of which the tax is being paid is made.

(b) Each taxpayer or seller maintaining a place of business in this Commonwealth shall make out and sign a return for the preceding calendar month. Such return shall be mailed to the department in time so that it will reach the department, in the ordinary course of the mails, on or before the twentieth day of the month succeeding the month during which the purchase of tangible personal property on the storage, use or other consumption of which the tax is being paid is made. The return shall be on a form prescribed by the department.

(c) Each such return shall show:

(1) The price of each such purchase of tangible personal property by such person during such preceding

monthly period, the storage, use or consumption of which is subject to tax;

(2) The amount of tax due;

(3) Such other information as the department may deem necessary for the proper administration of this act.

(d) Any such return may be signed by a duly authorized agent of the taxpayer with the same effect as if signed by the taxpayer himself. Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to. A remittance for the amount of the tax shall accompany each return.

Section 302. Other Times for Returns and Payment.—The department may, upon written request, authorize a taxpayer whose books and records are not kept on a calendar month basis to file returns at other times than those specified in the preceding section and in lieu of such returns. Except as to the time of filing and the period covered, all the provisions as to monthly returns made by section three hundred one shall be applicable to returns made under this section and a remittance for the tax shall accompany any return made under this section.

Article IV

Procedure

Section 401. Department of Revenue to Administer.—The Department of Revenue shall administer and enforce this act and collect the tax hereby imposed.

Section 402. Examination of Returns; Assessment of Tax Credits.—(a) As soon as practicable after any return is filed, the department shall examine it. If the return shows a greater tax due than the amount of the remittance sent with such return, the department shall forthwith assess the difference. Such difference shall be paid to the department within ten days after notice of its assessment. If so paid, there shall be no interest or penalty; if not so paid, there shall be added to such amount five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month or fraction thereof from the date of such notice to the date of payment. No taxpayer shall have any right of appeal from such an assessment.

(b) If the department determines that any return or returns of any taxpayer understates the amount of tax due, the department shall assess the proper amount and shall determine the difference between the amount of tax shown in the return and the amount assessed, such difference being hereafter sometimes referred to as the "deficiency." Such deficiency shall be paid to the department within ten days after a notice of the assessment

thereof shall be mailed to the taxpayer by the department. In such case, if such understatement of the tax in the return or returns was made in good faith, there shall be no interest or penalty because of such understatement: Provided, That the deficiency be paid or notice of an intention to file a petition for a reassessment or to appear and be heard, as herein provided, shall be given within ten days after notice of the assessment of such deficiency be mailed to the taxpayer. If such payment is not made within ten days and if no notice of an intention to file a petition for a reassessment or to appear and be heard is given to the department within ten days, as herein provided, there shall be added to the amount of the deficiency five per centum thereof and, in addition, interest at the rate of one-half of one per centum per month for each month or fraction thereof from the date of such notice to the date of payment. If any understatement in any of such returns is false or fraudulent with intent to evade the tax, the deficiency resulting from such understatement shall be doubled and, in addition thereto, an additional one-half of one per centum of such doubled deficiency shall be added for each such month or fraction of a month from the date the tax was originally due to the date of payment.

(c) If the amount of the tax as assessed by the department shall be less than the amount already paid by the taxpayer, the department shall so notify the taxpayer and the amount so overpaid may be taken by such taxpayer as a credit on the tax shown as due in any subsequent return or returns filed in accordance with the provisions of this act.

Section 403. Estimated Assessment.—(a) If any person believed by the department to be liable for tax under the provisions of this act shall have failed to file a return in accordance with and within the time prescribed by this act, and if the department shall deem it more conducive to the public interest because of the supposed smallness of the tax or for any other reason not to proceed to compel the exhibition of the accounts of such person, it may make an estimated assessment of the probable amount of tax owing by such person; but in every such case the department shall add to such estimated assessment a penalty of fifty per centum (50%) thereof and the department shall proceed to collect such estimated tax and penalty as in other cases if the amount is not paid when due as hereinafter provided.

(b) The estimated assessment thus determined, together with the penalty of fifty per centum (50%) specified above and interest at the rate of one-half of one per centum per month or fractional part thereof until paid, shall be due and payable ten days after notice of such

settlement shall have been mailed by the department to the person against whom the estimated assessment has been made.

Section 404. Limitation of Assessments.—(a) Any additional assessment or estimated assessment shall be made by the department within five years of the date when the return required by section three hundred one or authorized by section three hundred two hereof should have been filed, as prescribed in this act, whether the date originally prescribed or pursuant to any extensions of the time for filing such return duly granted by the department and not after. Any such additional assessment or estimated assessment may be made at any time during such period, notwithstanding that the department may have made one or more previous additional assessments or estimated assessments or both against the taxpayer for the year in question or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

(b) If the taxpayer shall have died, any taxes, interest and penalties due under this act for years prior to his death or for the year of his death and whether based on original assessments, additional or estimated assessments or otherwise, may be presented by the department at audit of his estate in the orphans' court. Such court shall give full effect to the priorities and equitable interest given to the Commonwealth by this act.

Section 405. Reassessment; Review; Appeal; Refund.—(a) Any taxpayer against whom an additional or estimated assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition or to appear and be heard shall be given to the department prior to the time the additional or estimated assessment becomes due and payable. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly notified the department of an intention to file a petition for reassessment or to appear and be heard shall be notified by the department of the time when and the place where such hearing in his case will be held. A petition for reassessment, if filed, shall set forth explicitly and in detail the grounds upon which the taxpayer claims that the additional or estimated assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit under oath or affirmation certifying to the facts stated in the petition. If no petition for reassessment has been filed with the department but the taxpayer has given due notice of an intention to appear and be heard, the taxpayer may appear at the hearing and present his petition orally, in which event all statements of fact at the hearing shall be made under oath or affirmation.

(b) Within sixty days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment 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 reasons on which the petitioner relies or shall incorporate by reference the petition for reassessment in which the reasons are stated. 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 act finally in disposing of petitions filed with it, within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for reassessment shall be sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment or it may reassess the tax due on such basis as it deems according to law and equity. The board shall give notice of its action by mail to the department and to the petitioner.

(c) Any person or the Commonwealth aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may, within sixty days, appeal to the Court of Common Pleas of Dauphin County from the decision of the board 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 settlements.

(d) Refunds of taxes paid under this act shall be made under the provisions of section five hundred three of the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 343), known as "The Fiscal Code" and its amendments.

Section 406. Rules and Regulations; Inquisitorial Powers of the Department.—(a) The department shall have the authority to prescribe, adopt, promulgate and enforce rules and regulations in conformity with this act and relating to any matter or thing pertaining to the administration of the taxes imposed by this act. The department may from time to time alter or amend such rules and regulations in any manner it considers advisable.

(b) The department or any of its authorized agents is hereby authorized to examine the books, papers and records of any taxpayer or supposed taxpayer, including his bank accounts or similar items, in order to verify the accuracy and completeness of any return made, or, if no return was made, to ascertain and assess the tax imposed by this act. The department may require the preservation of all such books, papers and records for any period deemed proper by it, not to exceed, however,

six years from the end of the calendar year to which the records relate. Every such taxpayer is hereby required to give to the department or its agent the means, facilities and opportunity for such examinations and investigations. The department is further authorized to examine any person under oath concerning the taxable storage, use or other consumption of tangible personal property by any taxpayer or concerning any other matter relating to the enforcement or administration of this act; and to this end may compel the production of books, papers and records and the attendance of all persons, whether as parties or witnesses, whom it believes to have knowledge of such matters. The procedure for such hearings or examinations shall be the same as that provided by the Fiscal Code relating to inquisitorial powers of fiscal officers.

(c) Any information gained by the department as a result of any return, investigation, hearing or verification required or authorized by this act shall be confidential except for official purposes and except in accordance with proper judicial order or as otherwise provided by law; and any person unlawfully divulging such information shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not in excess of one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than one year, or both, in the discretion of the court.

Notwithstanding the foregoing provisions of this subsection (c), the department may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any other state now or hereafter imposing a tax upon the storage, use or other consumption of tangible personal property or classes of such property, or the authorized representative of such Commissioner or officer, to inspect any returns or reports of investigations filed or made under the provisions of this act, or may furnish to such Commissioner or officer or his authorized representative an abstract of any such return, or supply him with information concerning any items contained in any such return or report; but such permission shall be granted or such information furnished to such Commissioner or officer only if the statutes of the United States or of such other state, as the case may be, grant equal privileges to the officers of this Commonwealth charged with the administration of this act.

Section 407. Records of Non-Residents.—A non-resident person, including a foreign corporation, who is engaged in one or more businesses in this Commonwealth, shall keep adequate records of such business or businesses and of the taxes due with respect thereto, which records shall at all times be retained within this Commonwealth.

Any person violating or assisting in the violation of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding one (1) year, or both.

Section 408. Priority of Tax.—In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes imposed by this act which are due and unpaid shall be paid from the first money available for distribution in priority to all other claims and liens, except in so far as the laws of the United States may give a prior claim to the Federal government. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes imposed by this act which are accrued and unpaid and are chargeable against the person whose property or estate is being administered or distributed.

Section 409. Lien of Taxes.—All taxes imposed by this act, together with all penalties and interest, shall be considered a public account, after being assessed in the manner provided in this act, and as such shall be a lien upon all real estate within the Commonwealth of any taxpayer, resident or non-resident, but only after the same has been entered and docketed of record by the prothonotary of the county where such real estate is situated, as hereinafter provided.

The department may at any time transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this act and penalties and interest. It shall be the duty of each prothonotary receiving such lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to and be fully paid and satisfied out of the judicial sale of said real estate before any other obligation, judgment, claim, lien or estate with which said real estate may subsequently become charged or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time such tax lien is recorded, save and except the costs of sale and of the writ upon which it is made and real estate taxes imposed or assessed upon said property. The lien of said taxes, interest and penalties shall continue for five years from the date of entry and may be revived and continued in the manner now or hereafter provided for renewal of judgments; and it shall be lawful for a writ of scire facias to issue and be prosecuted to judgment in the manner in which such written writs are ordinarily employed.

Any wilful failure of any prothonotary to carry out any duty imposed upon him by this section shall be a misdemeanor and, upon conviction, he shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment not exceeding one year, or both, in the discretion of the court.

Section 410. Penalties.—Any person who shall wilfully fail, neglect or refuse to make any return or report required by this act, or any taxpayer who shall refuse to pay any tax, penalty or interest imposed or provided for by this act, or who shall wilfully fail to preserve his books, papers and records as directed by the department, in accordance with section four hundred six hereof, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do or attempt to do anything whatever to prevent the full disclosure of the amount or character of the taxable storage, use or other consumption of tangible personal property, by himself or any other person, shall be guilty of a misdemeanor and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both, in the discretion of the court. The penalties imposed by this section shall be in addition to any penalties imposed by any provisions of this act.

Article V

Disposition of Tax, Penalties, Interest

Section 501. Disposition of Proceeds.—All taxes collected under the provisions of this act, together with any penalties and interest thereon, shall be used for public school purposes, in so far as permitted by the requirements of the Constitution of Pennsylvania.

Article VI

Miscellaneous

Section 601. Saving Clause.—Nothing contained in this act shall be construed to repeal any other law of this Commonwealth imposing any tax for any purpose.

Section 602. Effective Date.—This act shall become effective on the first day of the second calendar month after the month in which it is finally enacted; and all taxable storage, use or other consumption pursuant to purchases made during that month and for a period of two years thereafter shall be subject to tax hereunder.

APPROVED—The 13th day of July, A. D. 1953.

JOHN S. FINE