

graph, rent and miscellaneous expenses, and generally for the purposes of carrying into effect the provisions of this act.

Section 6. This act shall become effective immediately upon final enactment.

Act effective immediately.

APPROVED—The 29th day of July, A. D. 1953.

JOHN S. FINE

No. 251

AN ACT

To amend the act, approved the thirteenth day of July, one thousand nine hundred fifty-three (Pamphlet Laws , Act No. 86), entitled "An act to provide revenue by imposing a tax on retail sales of tangible personal property to consumers; requiring sellers to file returns; providing for the assessment, collection and lien of the tax; imposing duties on prothonotaries; prescribing penalties; and providing for the use of the proceeds of such tax for public school purposes," by providing for registration of sellers; changing requirements as to returns; redefining "Sale at Retail"; providing for payment of the tax by consumers in certain cases; imposing additional duties on the Department of Revenue; and exempting sales of certain tangible personal property from the tax imposed by said act.

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

"Consumers Sales Tax Act."

Section 1. Clause (7) of section 102 of the act, approved the thirteenth day of July, one thousand nine hundred fifty-three (Pamphlet Laws , Act No. 86), entitled "An act to provide revenue by imposing a tax on retail sales of tangible personal property to consumers; requiring sellers to file returns; providing for the assessment, collection and lien of the tax; imposing duties on prothonotaries; prescribing penalties; and providing for the use of the proceeds of such tax for public school purposes," is hereby amended to read as follows:

Clause (7) of section 102, act of July 13, 1953, P. L. —, Act No. 86, amended.

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:

* * * * *

(7) "Sale at Retail." Any transaction by which the ownership of tangible personal property is transferred for a consideration, when such transfer is made [in the ordinary course of the transferor's business and is made] to the transferee for consumption or use. The term "sale at retail" includes any rental, bailment lease, condi-

tional sale and any other transaction, under whatever name or form, whereby title being retained for security is ultimately to pass to the purchaser or whereby possession is transferred in lieu of a transfer of title.

The term "sale at retail" does not include:

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

(b) Any isolated sale of tangible personal property, *other than motor vehicles, trailers and semi-trailers*, by one not a seller *and not made in the ordinary course of the transferor's business*.

(c) Any isolated sale of tangible personal property, *other than motor vehicles, trailers and semi-trailers*, by one who, though a seller, is not such a seller with respect to the article sold, but all sales by a seller shall be presumed to be sales at retail.

(d) Sales of intoxicating liquors, including malt and brewed beverages.

(e) Sales of cigarettes.

(f) Sales of gasoline and other motor fuels.

(g) Sales of utility services, the gross receipts from which are taxed by the Commonwealth.

(h) Sales to the Commonwealth or any of its agencies or political subdivisions or to authorities created by or pursuant to law.

(i) Sales to the United States or any of its agencies.

(j) Sales in interstate and foreign commerce, but only in the instances and to the extent that the Commonwealth is prohibited from taxing such sales by the Constitution of the United States.

(k) Sales of newspapers, magazines and other periodicals.

(l) Sales of medicine on prescription, sales of 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, sales of false teeth by a dentist and the materials used by a dentist in dental treatment, sales of eyeglasses when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser, and sales of artificial braces and supports designed solely for the use of crippled persons.

(m) Sales of 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 consump-

tion, 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.

(n) Sale of clothing and shoes, but not jewelry or any other object not worn primarily to cover the human body against nakedness or cold.

(o) Sales of 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 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.

(p) The performance of personal service.

(q) Sales of 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.

(r) *Sales of tangible personal property intended for use and used in a church for religious purposes.*

(s) *Sales of water by water companies, political subdivisions or authorities.*

Section 2. Sections 201 and 204 of said act are hereby amended to read as follows:

Section 201. Imposition.—A tax is hereby imposed upon each separate sale at retail within this Commonwealth, which tax shall be collected by the seller from the purchaser and shall be paid over to the Commonwealth as herein provided. *In the case of a sale at retail of motor vehicles, trailers or semi-trailers by one not a seller, the tax shall be paid by the ultimate consumer to the department upon application to the department for the issuance of a certificate of title. The department shall not issue a certificate of title until the tax has been paid or evidence satisfactory to the department has been given to show that no tax is due.*

Section 204. Total Amount Collected to be Remitted.—No profit other than the compensation provided for in section two hundred twelve shall accrue to

Sections 201 and 204, said act, amended.

a seller or other person from the collection of any tax imposed by this act. Any person collecting any such tax shall return and remit the total amount thereof to the department, as hereinafter provided. If the total amount of taxes so collected in any period shall be in excess of one per centum (1%) of the sale price of the sales by the person collecting such taxes during such period, such person shall nevertheless remit to the department the total amount of taxes collected without deducting the amount by which the taxes collected exceed one per centum (1%) of the sale price of his sales during such period and without making any other deduction other than the compensation allowed by section two hundred twelve of this act.

Article II, said act, amended by adding, at end thereof, a new section numbered 213.

Section 3. Article II of said act is *hereby amended by adding, at the end thereof, a new section to read as follows:

*Section 213. Registration of Sellers.—** Each person desiring to continue to engage or begin to engage in the business of seller, as herein defined, shall, on or before the effective date of this act or prior to the beginning business thereafter, make application to the department for a certificate of registration upon a form prescribed by it. Upon receipt of such application, the department shall promptly issue to each such applicant such a certificate, with duplicates thereof for each additional place of business of the applicant within this Commonwealth. Each certificate or duplicate shall, in addition to the seller's name and principal place of business, state the place of business to which it is applicable, and shall be prominently displayed at such place of business. A seller who has no regular place of business shall display his certificate upon his cart, stand, truck or other merchandising device. Certificates of registration and duplicates thereof shall be non-assignable and non-transferable and shall be surrendered to the department immediately upon the seller's ceasing to do business at the place stated therein. Any seller who shall wilfully fail to obtain and display a certificate of registration or duplicates thereof at such of his places of business shall, upon conviction therefor in a summary proceeding, be sentenced to pay a fine of not more than one hundred dollars (\$100) and costs of prosecution, and, in default of payment thereof, shall be imprisoned for a period not exceeding thirty days. The failure of any seller to procure the certificate of registration as herein required shall not relieve him from the duty of collecting and remitting the tax as required by this act.*

Section 4. Sections 301, 302, 303 and 304 of said act are hereby amended to read as follows:

Sections 301, 302, 303 and 304, said act, amended.

* "herby" in original.

** "fee" deleted from original.

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] *November, February, May and August, for the periods ending the last day of October, January, April and July, respectively*, during which the sales at retail subject to the tax were made.

(b) Each taxpayer shall [each month], *on or before the twentieth day of November, February, May and August*, make out and sign a return for the preceding [calendar month] *tax period*. 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] *period* with respect to which the return is made.

(c) The return shall be on a form prescribed by the department. The department shall distribute return forms to taxpayers but no taxpayer shall be excused from liability for failure to file a return or pay the tax because he has failed to receive a form.

Each such return shall show:

(1) The total gross proceeds of the business of the taxpayer for the [month] *period* with respect to which the return is filed;

(2) The amount of sales at retail of such business with respect to which the tax is computed;

(3) The amount of tax due;

(4) Such other information with respect to the business, the amount of sales at retail or related matters as the department may reasonably require.

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.

(d) A remittance for the amount of the tax shall accompany each [monthly] *quarterly* 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] *this act* and in lieu of such returns. In no event shall the taxpayer be permitted to make less than one return during a [calendar month, except as provided in section three hundred three] *three-month period*. Except as to the time of filing and the period covered, all the provisions as to [monthly] returns required by [section] *sections three hundred one and three hundred four* shall

be applicable to returns made under this section and a remittance for the tax shall accompany any return made under this section.

Section 303. [Quarterly Returns.—When the total tax for which any taxpayer is liable does not exceed ten dollars (\$10) per month, he may, in lieu of monthly returns, make quarterly returns. Each such quarterly return shall be filed with the department by mailing in time so as to reach the department, in the ordinary course of the mails, on or before the twentieth day of the first month succeeding the end of the quarter with respect to which the return is filed. Except as to the time of filing and the period covered, all the provisions as to monthly returns prescribed in 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.] *Consolidation of Use Tax Returns.—Any sellers liable for the collection or payment of the taxes imposed by the Use and Storage Tax Act may elect, under regulations promulgated by the department, to report and pay the taxes due under said act at the same time as they file returns and pay the taxes due under this act.*

Section 304. Annual Returns.—(a) On or before the [thirty-first] last day of [January] February in each year, every taxpayer shall file with the department, in the manner heretofore specified for [monthly or] quarterly returns, an annual return covering the entire preceding calendar year or such part thereof as the taxpayer was engaged in a business as a retail dealer. Such return shall be in addition to and not in lieu of returns required to be filed under the provisions of sections three hundred one or three hundred two [or three hundred three].

(b) Each such annual return shall include all items required for [monthly] returns in section three hundred one hereof for the entire calendar year with respect to which it is made and shall be signed by the taxpayer or his authorized agent. Any person making a false return shall be guilty of perjury to the same extent as though the return had been sworn to.

(c) If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by him in connection with his [monthly,] quarterly or other returns, he shall send with such annual return a remittance for the unpaid amount of tax for the year.

APPROVED—The 29th day of July, A. D. 1953.

JOHN S. FINE