

No. 1983-82

AN ACT

HB 92

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," providing for the registration of transient vendors.

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

Section 1. Section 201 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a definition to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(t) "*Transient vendor.*"

(1) *Any person who—*

(i) *Brings into the Commonwealth, by automobile, truck or other means of transportation, or purchases in the Commonwealth tangible personal property the sale or use of which is subject to the tax imposed by this article;*

(ii) *Offers or intends to offer such tangible personal property for sale at retail within the Commonwealth; and*

(iii) *Does not maintain an established office, distribution house, sales-house, warehouse, service enterprise, residence from which business is conducted or other place of business within the Commonwealth.*

(2) *The term shall not include a person who delivers tangible personal property within the Commonwealth pursuant to orders for such property which were solicited or placed by mail or other means.*

Section 2. The act is amended by adding sections to read:

Section 248. Registration of Transient Vendors.—(a) *Prior to conducting business or otherwise commencing operations within the Commonwealth, a transient vendor shall register with the department. The application for registration shall be in such form and contain such information as the department, by regulation, shall prescribe and shall set forth truthfully and accurately the information desired by the department. This registration shall be renewed and updated annually.*

(b) *Upon registration and the posting of the bond required by section 248.1, the department shall issue to the transient vendor a certificate, valid for one year. Upon renewal of registration, the department shall issue a new certificate, valid for one year, providing the department is satisfied that the transient vendor has complied with the provisions of this article.*

(c) *The transient vendor shall possess the certificate at all times when conducting business within the Commonwealth and shall exhibit the certificate upon demand by authorized employes of the department or any law enforcement officer.*

(d) *The certificate issued by the department shall state that the transient vendor named therein has registered with the department and shall provide notice to the transient vendor that:*

(1) *The transient vendor must notify the department, in writing, before it enters the Commonwealth to conduct business, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business;*

(2) *Failure to notify or giving false information to the department may result in suspension or revocation of the transient vendor's certificate; and*

(3) *Conducting business within the Commonwealth after a certificate has been suspended or revoked may result in criminal conviction and the imposition of fines or other penalties.*

Section 248.1. Bond.—(a) *Upon registration with the department, a transient vendor shall also post a bond with the department in the amount of five hundred dollars (\$500) as surety for compliance with the provisions of this article. After a period of demonstrated compliance with these provisions, the department may reduce the amount of bond required of a transient vendor or may eliminate the bond entirely.*

(b) *A transient vendor may file a request for voluntary suspension of certificate with the department. If the department is satisfied that the provisions of this article have been complied with and has possession of the transient vendor's certificate, it shall return the bond posted to the transient vendor.*

Section 248.2. Notification to Department; Inspection of Records.—

(a) *Prior to entering the Commonwealth to conduct business, a transient vendor shall notify the department, in writing, of the location or locations where it intends to conduct business and the date or dates on which it intends to conduct business.*

(b) *While conducting business within the Commonwealth, the transient vendor shall permit authorized employes of the department to inspect its sales records, including, but not limited to, sales receipts and inventory or price lists and to permit inspection of the tangible personal property offered for sale at retail.*

(c) *The department may suspend or revoke a certificate issued to a transient vendor if the transient vendor:*

(1) *Fails to notify the department as required by subsection (a);*

(2) *Provides the department with false information regarding the conduct of business within the Commonwealth;*

(3) *Fails to collect sales tax on all tangible personal property or services sold subject to the sales tax; or*

(4) *Fails to file with the department a tax return as required by section 217 of this act.*

(d) *The department shall promulgate the rules and regulations necessary to implement this section.*

Section 248.3. Seizure of Property.—(a) *If a transient vendor conducting business within the Commonwealth fails to exhibit a valid certificate upon demand by authorized employes of the department, those authorized employes shall have the authority to seize, without warrant, the tangible personal property and the automobile, truck or other means of transportation used to transport or carry that property. All property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation, except as otherwise provided by this section.*

(b) *Property seized pursuant to subsection (a) shall be released upon:*

(1) *Presentation of a valid certificate to authorized employes of the department; or*

(2) *Registration by the transient vendor with the department and the posting of a bond in the amount of five hundred dollars (\$500), either immediately or within fifteen days after the property is seized.*

Section 248.4. Fines.—*Any transient vendor conducting business within the Commonwealth while its certificate is suspended or revoked, as provided by sections 248.1(b) and 248.2(c), shall be guilty of a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500) for each offense.*

Section 248.5. Transient Vendors Subject to Article.—*Except as otherwise provided, a transient vendor shall be subject to the provisions of this article in the same manner as a vendor who maintains a place of business within the Commonwealth.*

Section 3. This act shall take effect in 60 days.

APPROVED—The 22nd day of December, A. D. 1983.

DICK THORNBURGH