

No. 1984-69

AN ACT

HB 1004

To provide revenue for cities of the first class by authorizing and imposing a tax on persons engaging in certain businesses, professions, occupations, trades, vocations and commercial activities therein; providing for its levy and collection at the option of cities of the first class; conferring and imposing powers and duties on cities of the first class and the collector of city taxes in such cities; and prescribing penalties.

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

Section 1. Short title.

This act shall be known and may be cited as the First Class City Business Tax Reform Act.

Section 2. Definitions.

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

“Affiliated group.” One or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) Stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of each corporation, except the common parent corporation, is owned directly by one or more of the other corporations.

(2) The common parent corporation owns directly stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of at least one of the other corporations.

As used in this definition, "stock" does not include nonvoting stock which is limited and preferred as to dividends.

"Business." Carrying on or exercising, for gain or profit, within a city of the first class, any trade, business, including financial business as herein-after defined, profession, vocation or commercial activity or making sales to persons within such city of the first class. "Business" shall not include the following:

(1) Any business conducted by a nonprofit corporation or association organized for religious, charitable or educational purposes, the business of any political subdivision or of any authority created and organized under and pursuant to law of this Commonwealth.

(2) The specific business conducted by any public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission or conducted by a business subject to the jurisdiction of the Interstate Commerce Commission of furnishing or supplying service or services at the rates specified in its tariffs.

(3) The business of any insurance company, association or exchange, or any fraternal, benefit or beneficial society of any other state under the laws of which insurance companies, associations or exchanges or fraternal, benefit or beneficial societies of this Commonwealth doing business in such other state are subjected, by reason of the tax imposed by this act, to additional or further taxes, fines, penalties or license fees by such other state.

(4) Any employment for a wage or salary.

"Collector." The receiver of taxes in cities of the first class.

"Cost of goods." In the case of a retailer or wholesaler, the cost of goods, wares, commodities and merchandise purchased by the retailer or wholesaler and resold by him, such cost to include all freight-in charges.

"Cost of labor." In the case of a retailer or wholesaler, the cost of the labor of his employees used in receiving, storing, shipping and delivering the goods, wares, commodities or merchandise purchased for resale and the cost of the salaries or commissions paid to his employees for making the actual sales of the goods, wares, commodities or merchandise.

"Dividends." Any distribution made by a corporation to its shareholders in respect of its stock, whether ordinary, extraordinary or in liquidation.

"Financial business." Other than the business of any regulated industry, the services and transactions of private banks and bankers; building and loan associations; savings and loan associations; credit unions; savings banks; banks; bank and trust companies; trust companies; investment companies registered as such with the Federal Securities and Exchange Commission; holding companies; persons registered under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, including traders; dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks and monetary metals; factors and commission merchants.

"Manufacturer." A person whose business is the sale of goods, commodities, wares or merchandise of its own manufacture, growth or production.

“Net income.”

(1) Net income shall be, at the option of the taxpayer, which option shall not be revocable by the taxpayer, any one of the following:

(i) The taxable income from any business activity as returned to and ascertained by the Federal Government prior to giving effect to the exclusion for dividends received and net operating loss, subject to the following adjustments:

(A) A deduction for dividends, interest and royalty income and other receipts excluded from the definition of “receipts” under paragraphs (5) and (7) of that definition, but only to the extent that such dividends, interest, royalty and other receipts are included in taxable income as returned to and ascertained by the Federal Government as heretofore defined.

(B) A deduction for net income attributable to receipts that are excluded under paragraph (6) of the definition of “receipts” of this section.

(C) A deduction for income received from all obligations of the United States, including stocks, bonds and Treasury notes and other obligations of the United States.

(D) An increase for interest expense attributable to these stocks, bonds and Treasury notes and other obligations of the United States or any of its political subdivisions which is exempt from taxation of income under the laws of the United States or of the Commonwealth. The increase shall not exceed the deduction claimed in clause (C).

(E) A deduction for net income of persons registered under the Pennsylvania Securities Act of 1972 other than the net income attributable to commissions and similar charges on account of transactions effected for persons residing or having their principal place of business within a city of the first class.

(ii) As defined by the council of any city of the first class.

(2) In the case of a corporation participating in the filing of a consolidated corporate return to the Federal Government, net income shall mean the income from any business activity which would have been returned to and ascertained by the Federal Government, if separate returns had been made to the Federal Government, subject, however to any correction thereof for fraud, evasion or error as finally ascertained by the Federal Government. Notwithstanding any other provision of this act, no taxpayer shall be required or permitted to participate in the filing of a consolidated or combined tax return under this act.

(3) The collector shall establish rules and regulations and methods of apportionment and allocation and evaluation so that only that part of such net income or net operating loss which is properly attributable and allocable to the doing of business in the city of the first class levying the tax shall be taxed hereunder. The collector may make an apportionment and allocation, with due regard to the nature of the business concerned, on the basis of mileage, the ratio of the taxable receipts of the taxpayer from within the city to the total receipts of the taxpayer, the ratio of the value of the tangi-

ble personal and real property of the taxpayer owned or leased and situated in the city levying the tax to the total tangible personal and real property of the taxpayer wherever owned and situated, the ratio of the wages, salaries, commissions and other compensation paid by the taxpayer within the city levying the tax to the total wages, salaries, commissions and other compensation paid by the taxpayer, and any other method or methods of apportionment and allocation, other than the foregoing, calculated to effect a fair and proper apportionment and allocation. The net income of a person which is described as being subject to a tax pursuant to Article VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be allocated and apportioned to a city of the first class in accordance with a fraction of which the numerator shall be "receipts" as defined and limited in this section and the denominator shall be receipts regardless of whether received in or apportionable to the city of the first class.

(4) After apportioning and allocating net income, apportioned and allocated net operating losses carried forward shall be deducted.

"Net operating loss."

(1) In the case of a person conducting its entire business within a city of the first class, any net losses incurred from the operation of its business as returned to and ascertained by the Federal Government prior to giving effect to the exclusion for dividends received and net operating loss subject to the same adjustments made applicable to net income in this section. In the case of a person conducting its business both within and without a city of the first class, any net operating loss incurred which is carried forward to another tax year shall be allocated and apportioned in the same manner as net income prior to its being deducted from apportioned and allocated net income in the subsequent tax year. Apportionment and allocation of net operating loss shall be based upon allocation and apportionment factors applicable to the year in which the net operating loss was incurred.

(2) Net operating losses incurred in another tax period may be carried over for three tax years following the year in which it was incurred. The earliest net loss shall be carried over to the earliest taxable year to which it may be carried.

"Person." Any individual, partnership, limited partnership, association, corporation, estate or trust. Whenever used in any provision prescribing or imposing a penalty, the term "person," as applied to associations, shall mean the partners or members thereof and, as applied to corporations, the officers thereof.

"Receipts." Cash, credits, property of any kind or nature, received from conducting any business or by reason of any sale made, including resales of goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares or merchandise or services rendered or commercial or business transactions, without deduction therefrom on account of the cost of property sold, materials used, labor, service or other cost, interest or discount paid or any other expense. For the purpose of determining receipts from the business of insurance, such receipts shall mean those from

premiums received from risks within the city of the first class, whether by mutual or stock companies, domestic or foreign, without any deductions therefrom for any cost or expenses whatsoever; except, premiums shall not include return premiums, dividends paid or credited to policyholders if such dividends are in the nature of an adjustment of the premiums charged, and premiums received for reinsurance. Receipts from a person engaged in the business of insurance shall also include receipts from rental real estate situated in cities of the first class but shall not include interest, dividend and capital gain receipts. Nothing in this definition shall preclude the taxation of other nonpremium business receipts of persons engaged in the business of insurance. Receipts of any business shall exclude:

(1) The amount of any allowance made for goods, wares or merchandise taken by a dealer as a trade-in or as part payment for other goods, wares and merchandise in the usual and ordinary course of his business.

(2) In the case of a financial business or a person which is described as being subject to a tax imposed pursuant to Article VII, VIII or XV of the Tax Reform Code of 1971, the cost of securities and other property sold, exchanged, paid at maturity or redeemed; moneys or credits received in repayment of the principal amount of deposits, advances, credits, loans and other obligations; interest received on account of deposits, advances, credits, loans and other obligations made to persons resident or having their principal place of business outside such city; interest received on account of other deposits, advances, credits, loans and other obligations but only to the extent of interest expense attributable to such deposits, advances, credits, loans and other obligations and shall also exclude payments received on account of shares purchased by shareholders.

(3) In the case of a broker, any commissions paid by him to another broker on account of a purchase or sales contract initiated, executed or cleared in conjunction with such other broker, except where either is an employee of the other.

(4) Receipts by dealers from sales to other dealers in the same line, where the dealer transfers title or possession at the same price for which he acquired the goods, wares or merchandise.

(5) Dividends, interest and royalties received by one corporation from:

(i) a corporation of the same affiliated group; or

(ii) a corporation of which the receiving corporation owns at least 20% of the voting power of all classes of stock and at least 20% of each class of nonvoting stock.

(6) Receipts from the specific business conducted by any public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission or conducted by a business subject to the jurisdiction of the Interstate Commerce Commission of furnishing or supplying service or services at the rates specified in its tariffs.

(7) Receipts by a corporation which is a member of an affiliated group from other members of the same affiliated group.

(8) Commissions and similar charges received by persons registered under the Pennsylvania Securities Act of 1972 on account of transactions effected for persons resident and having their principal place of business outside the city of the first class.

(9) All or a portion of such other allowances, costs, moneys or credits as are specifically excluded by a city council of a city of the first class and which would otherwise be includable within this definition.

“Regulated industry.” A person subject to a tax pursuant to Article VII, VIII, IX or XV of the Tax Reform Code of 1971 or any public utility operating under the laws, rules and regulations administered by the Pennsylvania Public Utility Commission, all or a portion of the activities of which is to furnish or supply service or services at the rates specified in its tariffs.

“Retailer.” A person whose business is the sale of goods, commodities, wares or merchandise to persons who are not dealers or vendors of those goods, commodities, wares or merchandise.

“Sale.” Transfer of title to goods, wares, commodities or merchandise, regardless of where accomplished, the delivery of which is made by the seller within a city of the first class. “Sale” shall not include any intra-company transfers.

“Taxable receipts.”

(1) Receipts, as defined and limited in this section, within the limits of a city of the first class.

(2) Taxable receipts shall exclude the following:

(i) Receipts or portion of receipts attributable to any sale involving the bona fide delivery of goods, commodities, wares or merchandise to a location regularly maintained by the other party to the transaction outside the limits of a city of the first class and not for the purpose of evading or avoiding payment of the tax, or any portion thereof, imposed under this act.

(ii) Receipts or portion of receipts received for any services actually performed outside the limits of a city of the first class and not for the purpose of evading or avoiding payment of the tax, or any portion of it imposed, under this act.

(3) Taxable receipts of persons making sales or rendering services both inside and outside a city of the first class, or both, are to be segregated.

(4) In the event, and only in the event, taxable receipts as defined in this definition are incapable of segregation, the collector shall establish rules and regulations and methods of allocation and apportionment and evaluation so that only that part of such taxable receipts which is properly attributable to the doing of business within a city of the first class levying this tax shall be taxed hereunder.

“Tax year.” A 12-month period from January 1 to December 31.

“Wholesaler.” A person whose business is the sale of goods, commodities, wares or merchandise to dealers or vendors of those goods, commodities, wares or merchandise.

Section 3. Authority to levy and collect tax; use of tax.

For the tax year 1985, and annually thereafter, if authorized by the city council of a city of the first class, every city of the first class shall levy and collect an annual tax as provided in this act. This tax shall be in addition to any other tax a city of the first class is empowered to levy and collect under any existing law. The taxes and penalties collected under the provisions of this act shall be used by the city for general revenue purposes of the city.

Section 4. Imposition and rate of tax.

(a) Imposition on businesses generally.—Notwithstanding a contrary provision of law of the Commonwealth, including, but not limited to, the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and, unless otherwise exempted or excluded from the payment of tax by an ordinance of the city council of a city of the first class taking advantage of this authorization to tax, every person engaging in any business in a city of the first class, beginning with the tax year 1985, and annually thereafter, shall pay an annual tax at the rate or rates specified by the city council of the city of the first class. The rate or rates determined for regulated industries shall be based upon taxable receipts: Provided, That the amount payable shall not exceed a percent of net income established by the city council: And provided further, That any rates of tax set by the city council for regulated industries based on receipts or net income shall be set at the same millage or net income rates set for other businesses. All other businesses other than regulated industries shall pay at rates determined by city council which shall be applicable to taxable receipts, net income or any combination of the two: Provided, That, if a city of the first class imposing the tax as provided in this act already imposes or hereafter imposes a tax based on or measured by net profit or gain, after provision for all allowable costs and expenses incurred and as either paid or accrued in accordance with the accounting system used, without deduction of taxes based on income, from the operation of a business, profession or enterprise carried on by any individual, copartnership, fiduciary or association, as owner or proprietor, either individually or in association with some other individual, copartnership, fiduciary or association, a credit in an amount of 60% of the tax liability based upon net income under this act shall be granted to and applied against the tax based on net profit or gain as provided therein except that the city council of the city of the first class may provide for a credit in excess of the 60% provided herein: And provided further, That the tax authorized by this act and imposed by a city of the first class on persons registered under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, shall in no event be less than the sum of 4.6 mills on the person's taxable receipts determined in accordance with this authorization without regard to the exclusion from receipts as defined in paragraph (8) of the definition of "receipts" in section 2 plus the lesser of:

(1) 2.3 mills on the person's taxable receipts determined in accordance with this authorization without regard to the exclusion from receipts as defined in paragraph (8) of the definition of "receipts" in section 2; or

(2) 2.3% of the person's net income determined in accordance with this authorization without regard to the deduction as defined in paragraph (1)(i)(E) of the definition of "net income" in section 2.

(b) Optional calculation of portion of tax for manufacturers.—Alternatively, a manufacturer, other than a regulated industry, subject to the tax on receipts, shall, at his option, be permitted to compute the tax on receipts on manufacturing sales, at the rate established by the council of the said city of the first class, on receipts from manufacturing sales after deducting cost of goods sold as determined under the rules prescribed by the Federal Internal Revenue Code.

(c) Optional calculation of portion of tax for wholesalers.—Alternatively, a wholesaler, other than a regulated industry, subject to the tax on receipts, shall, at his option, be permitted to compute the tax on receipts on wholesale sales, at the rate established by the council of said city of the first class, on receipts from wholesale sales after deducting the applicable cost of goods and the applicable cost of labor.

(d) Optional calculation of portion of tax for retailers.—Alternatively, a retailer, other than a regulated industry, subject to the tax on receipts, shall, at his option, be permitted to compute the tax on receipts on retail sales, at the rate established by the council of a city of the first class, on receipts from retail sales after deducting the applicable cost of goods and the applicable cost of labor.

Section 5. Period used in computation of tax.

(a) Ongoing businesses.—Every person subject to the payment of the tax hereby imposed who has commenced his business at least one full year prior to the beginning of any tax year shall compute his annual receipts upon the actual receipts received by him during the preceding calendar year.

(b) Partial tax year.—Every person subject to the payment of the tax imposed hereunder, who has commenced his business subsequent to the beginning of any tax year, shall compute his annual receipts for such tax year upon the actual receipts received by him during the part of such tax year remaining.

(c) New businesses.—Every person subject to the payment of the tax imposed hereunder, who has commenced his business less than one full year prior to the beginning of any tax year, shall compute his annual receipts for such tax year upon the actual receipts received by him during his first 365 days in business.

(d) Seasonal businesses.—Every person subject to the payment of the tax hereby imposed, who engages in a business, temporary, seasonal or itinerant by its nature, shall compute his annual receipts upon the actual receipts received by him during such license year.

Section 6. Returns.

(a) Verified form required.—Every return shall be made upon a form furnished by the collector. Every person making a return shall certify the correctness thereof.

(b) Manner of filing.—Every person subject to the tax imposed and authorized by this act shall file a return at such time or times and in such

manner as provided for by the city council of a city of the first class. Such provisions may permit reasonable extensions of time for filing returns, provided an estimated return is filed on or before the due date and is filed in the manner and paid in the amount prescribed by the collector. No penalties shall be imposed for underestimates of tax owed provided the estimated payments are made as prescribed by the collector.

Section 7. Payment at the time of filing the return.

The person making the return shall pay the amount of tax shown as due to the collector.

Section 8. Collection of tax.

The ordinance authorizing the tax shall provide for its collection. The taxes shall be collected in accordance with all provisions, restrictions, limitations, rights of notice and appeal as are applicable to other taxes imposed for city purposes.

Section 9. Penalties.

In addition to any other penalties or enforcement proceedings provided for by ordinance of city council of cities of the first class for the collection and enforcement of taxes:

(1) Whoever willfully makes any false or untrue statement on his return shall be guilty of a misdemeanor of the second degree and, upon conviction, shall be sentenced to pay a fine of not more than \$2,000 or to undergo imprisonment for not more than two years, or both.

(2) Whoever willfully fails or refuses to appear before the collector in person with his books, records or accounts for examination when required under the provisions of this act or ordinance of a city of the first class to do so, or who willfully refuses to permit inspection of the books, records or accounts of any business in his custody or control when the right to make such inspection by the collector is requested, shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than \$500 or to undergo imprisonment for not more than six months, or both.

(3) Whoever willfully fails or refuses to file a return required by this act shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not more than \$1,000 or to undergo imprisonment for not more than one year, or both.

Section 10. Savings provisions.

(a) Tax ordinances.—The validity of any ordinance or part of any ordinance providing for or relating to the imposition, levy or collection of any tax passed by the council of a city of the first class, and any amendments or supplements thereto, shall not be affected or impaired by anything contained in this act.

(b) Constraints.—Nothing contained in this act shall be construed to empower a city of the first class to levy and collect the taxes hereby imposed not within the taxing power of this Commonwealth under the Constitution of the United States.

Section 11. Other receipts taxes.

Notwithstanding anything contained in any law to the contrary, and except when specifically authorized by the General Assembly, no city council

of a city of the first class may levy, assess or collect, for city purposes, any tax, based on or measured by gross receipts, for the privilege of doing business in the city if the city already provides for the imposition, levy and collection of the tax imposed and authorized by this act.

Section 12. Severability.

In the event that all or any part of the provisions of this act are declared by a court to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared as the legislative intent that the remainder of this act would have been adopted had such unconstitutional provision or part of such provision not been included herein.

Section 13. Applicability.

(a) **Applicability of act at option of city.**—At its option, a city of the first class may elect to impose and collect taxes under this act or under the act of May 27, 1949 (P.L.1669, No.508), entitled, as reenacted and amended, “An act to provide revenue for school districts of the first class by imposing a tax on persons engaging in certain businesses, professions, occupations, trades, vocations and commercial activities therein; providing for its levy and collection; conferring and imposing powers and duties on the Board of Public Education, receiver of school taxes and school treasurer in such districts; and prescribing penalties,” but not under both.

(b) **Applicability of section 11.**—Section 11 shall take effect with respect to any tax year after tax year 1984 to fund the fiscal year of a city of the first class commencing July 1, 1984, and for subsequent fiscal years.

Section 14. Effective date.

This act shall take effect immediately.

APPROVED—The 30th day of May, A. D. 1984.

DICK THORNBURGH