

## No. 1985-13

## AN ACT

## SB 423

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," clarifying the definition of "transient vendor"; adding definitions relating to promoters; providing for the licensing of promoters; requiring the filing of certain reports; and reducing the bond for transient vendors.

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

Section 1. Section 201(t) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added December 22, 1983 (P.L.300, No.82), is amended and the section is amended by adding clauses 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.

(3) *The term shall not include a person who handcrafts items for sale at special events, including, but not limited to, fairs, carnivals, art and craft shows and other festivals and celebrations within this Commonwealth.*

(u) *"Promoter." A person who either, directly or indirectly, rents, leases or otherwise operates or grants permission to any person to use space at a show for the display for sale or for the sale of tangible personal property or services subject to tax under section 202 of this article.*

(v) *"Show." An event, the primary purpose of which involves the display or exhibition of any tangible personal property or services for sale, including, but not limited to, a flea market, antique show, coin show, stamp*

*show, comic book show, hobby show, automobile show, fair or any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax under section 202 of this article.*

Section 2. Section 248.1 of the act, added December 22, 1983 (P.L.300, No.82), is amended to read:

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, *or, if the transient vendor provides the license number of a promoter who has notified the department of a show, in accordance with the provisions of section 248.6(a)*, 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 3. The act is amended by adding sections to read:

*Section 248.6. Promoters.—(a) A promoter of a show or shows within this Commonwealth may annually file with the department an application for a promoter's license stating the location and dates of such show or shows. The application shall be filed at least thirty days prior to the opening of the first show and shall be in such form as the department may prescribe.*

*(b) Except as herein provided, the department shall, within fifteen days after receipt of an application for a license, issue to the promoter without charge a license to operate such shows. If application for a license under this section has been timely filed and if the license has not been received by the promoter prior to the opening of the show, the authorization contained in this section with respect to the obtaining of a promoter's license shall be deemed to have been complied with, unless or until the promoter receives notice from the department denying the application for a promoter's license.*

*(c) Any promoter who is a vendor under the provisions of section 201 of this article shall comply with all the provisions of this article applicable to vendors and with the provisions of this section applicable to promoters.*

*(d) No licensed promoter shall permit any person to display for sale or to sell tangible personal property or services subject to tax under section 202 of this article at a show unless such person is licensed under section 208 and provides to the promoter the information required under section 271.1.*

*(e) Any licensed promoter who permits any person to display for sale or to sell tangible personal property or service without first having been licensed under section 208 of this article, fails to maintain records of a show under section 271.1, knowingly maintains false records or fails to comply with any provision contained in this section or any regulation promulgated by the department pertaining to shows shall be subject to denial of a license or the revocation of any existing license issued pursuant to this section. In addition, the department may deny such promoter a license certificate to operate a*

*show for a period of not more than six months from the date of such denial. Such penalty shall be in addition to any other penalty imposed by this article. Within twenty days of notice of denial or revocation of a license by the department, the promoter may petition the department for a hearing, pursuant to Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

*Section 271.1. Reports and Records of Promoters.—Every licensed promoter shall keep a record of the date and place of each show and the name, address, sales, use and hotel occupancy license number of every person whom he permits to display for sale or to sell tangible personal property or services subject to tax under section 202 at such show. Such records shall be open for inspection and examination at any reasonable time by the department or a duly authorized representative, and such records shall, unless the department consents in writing to an earlier destruction, be preserved for three years after the date the report was filed or the date it was due, whichever occurs later, except that the department may by regulation require that they be kept for a longer period of time.*

Section 4. This act shall take effect immediately.

APPROVED—The 2nd day of May, A. D. 1985.

DICK THORNBURGH