

AN ACT

To reenact and amend the title and the act, approved the fourteenth day of June, one thousand nine hundred thirty-five (Pamphlet Laws, three hundred forty-one), entitled "An act to provide revenue by imposing a State tax upon sales of cigarettes by dealers as herein defined; requiring persons engaged in the sale of cigarettes at wholesale and retail to secure permits; prescribing the method and manner of collecting such tax; conferring powers and imposing duties on the Department of Revenue, and persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; making an appropriation; and providing penalties," by extending the provisions of the act for a further period of time; and by making further provision for penalties.

Section 1. Be it enacted, &c., That the title and all the sections of the act, approved the fourteenth day of June, one thousand nine hundred thirty-five (Pamphlet Laws, three hundred forty-one), entitled "An act to provide revenue by imposing a State tax upon sales of cigarettes by dealers as herein defined; requiring persons engaged in the sale of cigarettes at wholesale and retail to secure permits; prescribing the method and manner of collecting such tax; conferring powers and imposing duties on the Department of Revenue, and persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; making an appropriation; and providing penalties," are hereby reenacted and amended as follows:

AN ACT

To provide revenue by imposing a State tax upon sales of cigarettes by dealers as herein defined; requiring persons engaged in the sale of cigarettes at wholesale and retail to secure permits; prescribing the method and manner of collecting such tax; conferring powers and imposing duties on the Department of Revenue, and persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; [making an appropriation] and providing penalties.

Section 1. Be it enacted, &c., That this act shall be known, and may be cited as, the "Cigarette Tax Act."

Section 2. The following words, terms, and phrases, when used in this act, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

"Association." Any partnership, limited partnership or other form of unincorporated enterprise owned by two or more persons.

"Dealer." Any wholesale dealer, and, in the cases hereinafter prescribed, retail dealers. The term "wholesale dealer" shall include any person, who or which sells, within Pennsylvania, cigarettes to retail dealers, or for

"Cigarette
Tax Act."

Definitions.

purposes of resale, or who or which purchases cigarettes directly from any manufacturer for purposes of resale. The term "retail dealer" shall include every person, other than a wholesale dealer, who or which receives from any source whatsoever, cigarettes for the purpose of sale to consumers in Pennsylvania, or for any other purpose than that of resale, whenever the packages of cigarettes, so received, do not have affixed to them the stamps evidencing the payment of the tax imposed by this act.

"Department." The Department of Revenue of this Commonwealth.

"Package." The individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

"Person." Every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person," as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

"Cigarettes." Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material excepting tobacco.

"Sale." Any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

Section 3. (a) On and after the effective date of this act, it shall be unlawful for any person to continue to engage in, or thereafter to begin to engage in, the sale of cigarettes at wholesale or at retail within this Commonwealth, unless a cigarette permit or permits shall have been issued to him as hereinafter prescribed.

(b) Every person, desiring to continue to engage in, or hereafter to begin to engage in, the sale of cigarettes at wholesale or retail within this Commonwealth, shall file an application for a cigarette permit or permits with the department. Every application for a cigarette permit shall be made upon a form prescribed, prepared, and furnished by the department, and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business within this Commonwealth, whether or not the applicant is the holder of a mercantile license in effect when the application is made, and if so, the number of such license and the county for which such license was issued, and such other information as the department may re-

Unlawful to sell cigarettes without a permit.

Application for a permit.

Form to be prescribed by the department.

Contents.

- quire. If the applicant has or intends to have more than one place of business within the Commonwealth, the application shall state the location of each place of business. If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person, and in the case of an association, by a member or partner thereof, and in the case of a corporation, by an executive officer thereof, or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.
- Associations.**
- Corporations.**
- Affidavit.**
- Fee.** At the time of making such application, the applicant shall pay to the department a permit fee of one dollar (\$1.00) for each permit.
- Permit.** Upon approval of the application and the payment of the permit fee or fees herein required, the department shall grant and issue to each applicant a cigarette permit for each place of business within the Commonwealth set forth in his application. Cigarette permits shall not be assignable and shall be valid only for the persons in whose names issued, and for the transaction of business at the places designated therein, and shall at all times be conspicuously displayed at the places for which issued.
- Permits not assignable.**
- Expiration.** All permits shall expire on the thirty-first day of December next succeeding the date upon which they are issued, unless sooner suspended, surrendered or revoked for cause by the department.
- Renewal.** (c) Permits issued, under the provisions of this act, may be renewed annually before the first day of January, upon application made to the department and the payment of a renewal fee of one dollar (\$1.00).
- Duplicate may be issued, when the original is lost.** Whenever any permit, issued under the provisions of this act, is defaced, destroyed or lost, the department may issue a duplicate permit to the holder of the defaced, destroyed or lost permit, upon the payment of a fee of fifty cents (\$.50).
- Department may suspend permits for violation of act or rules.** (d) The department may suspend, or, after hearing, revoke a cigarette permit whenever it finds that the holder thereof has failed to comply with any of the provisions of this act, or any rules or regulations of the department prescribed, adopted, and promulgated under this act. Upon suspending or revoking any cigarette permit, the department shall request the holder thereof to surrender to it immediately all permits, or duplicates thereof, issued to him, and the holder shall surrender promptly all such permits to the department as re-

quested. Whenever the department suspends a cigarette permit, it shall notify the holder immediately and afford him a hearing, if desired, and if a hearing has not already been afforded. After such hearing, the department shall either rescind its order of suspension, or good cause appearing therefor, shall continue the suspension or revoke the permit.

Section 4. A State excise tax is hereby imposed and assessed upon sales of cigarettes by dealers at the rate of one cent per ten cigarettes, or fraction thereof, except such sales of cigarettes as are not within the taxing power of this Commonwealth under the commerce clause of the Constitution of the United States: Provided, That only one sale of the same package of cigarettes shall be used in computing the amount of tax due hereunder.

Except as hereinafter provided, dealers shall be liable to the Commonwealth as taxpayers for the payment of the tax imposed by this act, and shall pay the tax into the State Treasury, through the department, by purchasing from the department adhesive stamps of such design and denominations as may be prescribed by the department.

Manufacturers of cigarettes, located either within or outside of this Commonwealth, and wholesale dealers in cigarettes located outside of this Commonwealth, may purchase stamps from the department and affix such stamps, in the manner hereinafter prescribed, to packages of cigarettes to be sold within this Commonwealth, in which case the dealer within this Commonwealth, receiving such stamped packages of cigarettes, will not be required to purchase and affix stamps on such packages of cigarettes.

Section 5. Each dealer shall affix, within the time hereinafter prescribed, to each package of cigarettes, stamps furnished by and purchased from the department, evidencing the payment of the tax imposed by this act, and shall cancel such stamps before such cigarettes are offered for sale, or before they are otherwise disposed of, unless stamps have been affixed to such packages of cigarettes before such dealer received them. Each wholesale dealer in this Commonwealth shall affix such stamps to each package of cigarettes, unless such stamps shall have been previously affixed thereto, and shall cancel the same, in the manner prescribed by the department, prior to the delivery of such packages to any retail dealer in this Commonwealth.

Each retail dealer in this Commonwealth shall, immediately upon the receipt of any cigarettes at his place of business, so affix such stamps to each package of cigarettes, unless such stamps shall have been previously affixed thereto, and shall cancel the same in the manner prescribed by the department, or shall immediately mark

Excise tax.

Proviso.

Stamps.

Manufacturers.

Dealers.

Wholesale dealer.

Retail dealer.

in ink on each unopened box, carton or other container of such cigarettes, the word "received," and the month, day, and year of such receipt, and shall affix his signature thereto. The retail dealer shall, in any event, open such box, carton or other container, and immediately affix such stamps to each package therein, and cancel the same, in the manner prescribed by the department, within twenty-four hours after such receipt, and prior to the sale of such cigarettes.

When cigarettes found without stamps affixed, presumption that cigarettes kept in violation of the act.

Whenever any cigarettes are found in the place of business of such retail dealer without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, as required by this section, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this act.

Amount of stamps to be affixed.

Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner that they will be visible to the purchaser. Upon affixing stamps to a package of cigarettes, the person affixing them shall cancel them by such method or in such manner as may be prescribed by the department.

Cancellation.

Department to prepare and furnish stamps.

Section 6. The department shall prescribe, prepare, and furnish adhesive stamps of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this act. The department shall make provisions for the sale of such stamps in such places and at such times as it may deem necessary.

Agents for sale of the stamps.

The department shall appoint wholesale dealers in cigarettes within this Commonwealth, and may appoint any other persons, within or without the Commonwealth, as agents to affix the stamps to be used in paying the tax herein imposed upon sales of cigarettes, but a wholesale dealer shall at all times have the right to appoint the person who is to affix the stamps to any cigarettes under his control, and whenever the department shall sell, consign or deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his services and expenses as such agent in affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a commission of seven and one-half per centum on the par value thereof, if, and when such agent has purchased the stamps affixed by him directly from the department. The department is hereby authorized and required to allow such commission or compensation in the settlement of the accounts of such agent, upon payment by him into the State Treasury, through the department, of any moneys which may be, or become due, to the Commonwealth by reason

Commission on sales.

of the sale, delivery or consignment to such agent of such stamps.

Section 7. Every person engaged in the sale of cigarettes at wholesale or at retail within this Commonwealth shall maintain and keep, for a period of two years, such record or records of cigarettes received, sold, and delivered within this Commonwealth by him, together with invoices, bills of lading, and other pertinent papers as may be required by the department.

Dealers must retain records of sales for two years.

The department, or any agent appointed, in writing, by it, is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and equipment of any such wholesale or retail dealer pertaining to the sale and delivery of cigarettes taxable under this act, to verify the accuracy of the payment of the tax imposed and assessed by this act. Every such person is hereby directed and required to give to the Secretary of Revenue, or his duly authorized representative, the means, facilities, and opportunity for such examinations as are hereby provided and required.

Department or agent authorized to examine records.

Section 8. The department is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to:

Department to make rules for enforcement of this act.

(a) The method and the means to be used in the cancellation of stamps.

(b) The denominations and sale of stamps.

(c) Any other matter or thing pertaining to the administration and enforcement of the provisions of this act.

Section 9. The tax imposed by this act shall be in lieu of the mercantile license tax heretofore imposed upon the business of selling cigarettes.

Section 10. Whenever any cigarettes, upon which stamps have been placed by a dealer, have been sold and shipped by him into another state for sale or use therein, or have become unfit for use and consumption or unsaleable or have been destroyed, such dealer shall be entitled to a refund of the actual amount of tax paid by him with respect to such cigarette. If the department is satisfied that any dealer is entitled to a refund, it shall certify the proposed amount of such refund to the Board of Finance and Revenue for approval, and thereafter shall issue to such dealer stamps of sufficient value to cover the refund as approved by the board. The department is hereby authorized to adopt, prescribe, and promulgate such rules and regulations with regard to the presentation and proof of claim for refunds, as it may deem advisable.

Refunds permitted in certain cases.

When
cigarettes sold
outside of the
State.

The department may promulgate rules and regulations to relieve manufacturers and dealers from affixing the stamps on such cigarettes as are sold and shipped to points outside the Commonwealth for use outside the Commonwealth.

Persons de-
livering cigar-
ettes must have
invoices.

Section 11. Every person, other than a common carrier, or the employes thereof, who shall possess or transport any cigarettes upon the public highways, roads or streets of this Commonwealth, for the purpose of delivery, sale or disposition, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this Commonwealth and subject to the provisions of this act.

Penal section.

Section 12. (a) Any person who shall sell cigarettes without being the holder of a cigarette permit or permits, as required by this act, [or] shall, upon conviction in a summary proceeding, be sentenced to pay a fine of twenty-five dollars (\$25.00) and costs of prosecution, and in default of payment thereof, to undergo imprisonment for not more than ten (10) days.

(b) Any person who shall sell cigarettes without purchasing and affixing stamps to each package thereof, as required by this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00), or to suffer imprisonment for a term not exceeding six (6) months, or both, in the discretion of the court, and in the case of a conviction of a second or subsequent offense hereunder, shall be sentenced to pay a fine of not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000.00) and to suffer imprisonment for a term not less than six (6) months or more than three (3) years.

[(b)] (c) Any person who shall fail, neglect or refuse to comply with or shall violate the rules and regulations prescribed, adopted, and promulgated by the department under the provisions of this act, or who shall refuse to permit the department, or any agent appointed by it, in writing, to examine his books, papers, invoices, and other records, his stock of cigarettes in and upon any premises where the same are prepared, stored, and sold, and his equipment pertaining to the sale of cigarettes taxable under this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or to suffer imprisonment of not more than six (6) months, or both, in the discretion of the court.

[(c)] (d) Any person who falsely or fraudulently makes, forges, alters or counterfeits any stamp prescribed by the department, under the provisions of this act, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp, or knowingly and wilfully utters, publishes, passes or tenders, as true, any such false, altered, forged or counterfeited stamp, or uses more than once any stamp provided for and required by this act, for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to suffer imprisonment for a term of not less than two (2) years or more than five (5) years.

Section 13. [All taxes and penalties received, collected or recovered under the provisions of this act before June first, one thousand nine hundred and thirty-six, shall be paid into the State Treasury, by and through the department, and shall be used only for unemployment relief purposes, and for such purposes are hereby appropriated, and all such taxes and penalties paid into the State Treasury on and after June first, one thousand nine hundred and thirty-six, shall be credited to the General Fund.

Section 14.] The provisions of this act are severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

Constitutional
provision.

Section [15] 14. This act shall become effective thirty days after its final enactment, and shall continue in effect until, and including, the thirty-first day of May, one thousand nine hundred [thirty-seven] *thirty-nine*.

Effective date.

Section 2. This act shall become effective immediately upon its final enactment.

When effective.

APPROVED—The 8th day of April A. D. 1937.

GEORGE H. EARLE

No. 54

AN ACT

To reenact and amend the title and the act, approved the sixteenth day of May, one thousand nine hundred thirty-five (Pamphlet Laws, two hundred eight), entitled "An act to provide revenue for State purposes by imposing an excise tax, for a limited period of time, on the net incomes of certain corporations, joint-stock associations, and limited partnerships; providing for the assessment and collection of the tax, and appeals to courts; conferring powers, and imposing duties on certain persons, corporations, joint-stock associations, limited