

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2789 Session of 2020

INTRODUCED BY DAY, MACKENZIE, PICKETT, SCHMITT, FREEMAN, ROWE, READSHAW, JONES, SAPPEY, MERSKI, SHUSTERMAN, ROTHMAN, DRISCOLL, BARRAR, HOWARD, POLINCHOCK, KAUFFMAN, STAATS, SAINATO, KNOWLES, EMRICK, MALONEY, BERNSTINE, KULIK, BOBACK, THOMAS, OWLETT, ECKER, HEFFLEY, RYAN, JOZWIAK, HENNESSEY, RAPP, FRITZ, COX, RADER, BROWN, MIZGORSKI, MULLERY, GREEN, DUSH, HAHN, MILLARD, SIMMONS, SCHLEGEL CULVER, KEEFER AND GLEIM, AUGUST 13, 2020

REFERRED TO COMMITTEE ON FINANCE, AUGUST 13, 2020

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
 2 act relating to tax reform and State taxation by codifying
 3 and enumerating certain subjects of taxation and imposing
 4 taxes thereon; providing procedures for the payment,
 5 collection, administration and enforcement thereof; providing
 6 for tax credits in certain cases; conferring powers and
 7 imposing duties upon the Department of Revenue, certain
 8 employers, fiduciaries, individuals, persons, corporations and
 9 and other entities; prescribing crimes, offenses and
 10 penalties," in sales and use tax, further providing for
 11 definitions, for time for filing returns, for payment and for
 12 tax held in trust for the Commonwealth and providing for
 13 COVID-19 public eating or drinking place restriction order
 14 grants; and making an editorial change.

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

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

20 Section 201. Definitions.--The following words, terms and
 21 phrases when used in this Article II shall have the meaning

1 ascribed to them in this section, except where the context
2 clearly indicates a different meaning:

3 * * *

4 (mmm) "Public eating or drinking place." A licensee which
5 is a place located in this Commonwealth where food or drink is
6 served to or provided for the public with or without charge. The
7 term does not include dining cars operated by a railroad company
8 in interstate commerce or a bed and breakfast homestead or inn.

9 (nnn) "COVID-19 public eating or drinking place restriction
10 order." Any of the following which requires a public eating or
11 drinking place to operate at less than 100% seating capacity:

12 (1) An executive order, proclamation or regulation of the
13 Governor under 35 Pa.C.S. Ch. 73 Subch. A (relating to the
14 Governor and disaster emergencies) which relates to the novel
15 coronavirus known as "COVID-19."

16 (2) An order or directive of the Secretary of Health under
17 sections 2102(a) and 2106(b) of the act of April 9, 1929
18 (P.L.177, No.175), known as "The Administrative Code of 1929,"
19 section 8(a) of the act of April 27, 1905 (P.L.312, No.218)
20 entitled "An act creating a Department of Health, and defining
21 its powers and duties" or section 5 of the act of April 23, 1956
22 (1955 P.L.1510, No.500), known as the "Disease Prevention and
23 Control Law of 1955," which relates to the novel coronavirus
24 known as "COVID-19."

25 Section 2. Section 217 of the act is amended by adding a
26 subsection to read:

27 Section 217. Time for Filing Returns.--* * *

28 (e) Public Eating or Drinking Places. A public eating or
29 drinking place may submit an application under section 257(a)
30 for any portion of a time period under this section for which

1 the return has not previously been filed.

2 Section 3. Section 221 of the act is amended to read:

3 Section 221. Payment.--(a) When a return of tax is required
4 under this part, the person required to make the return shall
5 pay the tax to the department.

6 (b) For an amount required to be paid under this section by
7 a public eating or drinking place for a time period determined
8 under section 217, the amount which is required to be paid to
9 the department under this section shall be reduced by the amount
10 approved under section 257(b).

11 Section 4. Section 225 of the act, amended June 28, 2019
12 (P.L.50, No.13), is amended to read:

13 Section 225. Tax Held in Trust for the Commonwealth.--All
14 taxes collected by any person from purchasers in accordance with
15 this article and all taxes collected by any person from
16 purchasers under color of this article, including all taxes paid
17 by any person who advertises or holds out or states, directly or
18 indirectly, that such person will pay the tax for the purchaser,
19 which have not been properly refunded by such person to the
20 purchaser shall constitute a trust fund for the Commonwealth,
21 and such trust shall be enforceable against such person, his
22 representatives and any person (other than a purchaser to whom a
23 refund has been made properly) receiving any part of such fund
24 without consideration, or knowing that the taxpayer is
25 committing a breach of trust: Provided, however, That any person
26 receiving payment of a lawful obligation of the taxpayer from
27 such fund shall be presumed to have received the same in good
28 faith and without any knowledge of the breach of trust. Any
29 person, other than a taxpayer, against whom the department makes
30 any claim under this section shall have the same right to

1 petition and appeal as is given taxpayers by any provisions of
2 this part. This section shall not apply to an amount of tax
3 collected by a public eating or drinking place for food and
4 beverages which is approved as a grant under section 257.

5 Section 5. The heading of Chapter V of Article II of the act
6 is amended to read:

7 Chapter V

8 Refunds [and], Credits and Grants

9 Section 6. The act is amended by adding a section to read:

10 Section 257. COVID-19 Public Eating or Drinking Place
11 Restriction Order Grants.--(a) A public eating or drinking
12 place may submit to the department an application for a grant
13 under subsection (b) on an application form prescribed by the
14 department.

15 (b) Upon receipt of an application under subsection (a), the
16 department shall approve the public eating or drinking place for
17 a grant equal to the amount of tax collected by the public
18 eating or drinking place for food and beverages under section
19 204(29) (i), (ii) and (iii) which are sold at retail during a
20 time period in which the public eating or drinking place is
21 subject to a COVID-19 public eating or drinking place
22 restriction order.

23 (c) (1) Upon approval of an application under subsection
24 (b), the amount subject to the approval may be transferred from
25 the licensee's trust account under section 225 to an account
26 available to the public eating or drinking place.

27 (2) Any amount transferred under paragraph (1) shall not be
28 considered from funds of a public body under the act of August
29 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing
30 Wage Act.

1 (d) Amounts approved under subsection (b) are appropriated
2 to the department for purposes of this section.

3 Section 7. This act shall take effect immediately.