

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 601 Session of 2009

INTRODUCED BY BROWNE, ORIE, ALLOWAY, FOLMER, WAUGH AND LEACH,
MARCH 12, 2009

REFERRED TO FINANCE, MARCH 12, 2009

AN ACT

1 Amending the act of December 31, 1965 (P.L.1257, No.511),
2 entitled "An act empowering cities of the second class,
3 cities of the second class A, cities of the third class,
4 boroughs, towns, townships of the first class, townships of
5 the second class, school districts of the second class,
6 school districts of the third class and school districts of
7 the fourth class including independent school districts, to
8 levy, assess, collect or to provide for the levying,
9 assessment and collection of certain taxes subject to maximum
10 limitations for general revenue purposes; authorizing the
11 establishment of bureaus and the appointment and compensation
12 of officers, agencies and employes to assess and collect such
13 taxes; providing for joint collection of certain taxes,
14 prescribing certain definitions and other provisions for
15 taxes levied and assessed upon earned income, providing for
16 annual audits and for collection of delinquent taxes, and
17 permitting and requiring penalties to be imposed and
18 enforced, including penalties for disclosure of confidential
19 information, providing an appeal from the ordinance or
20 resolution levying such taxes to the court of quarter
21 sessions and to the Supreme Court and Superior Court,"
22 further providing for delegation of taxing powers and
23 restrictions.

24 The General Assembly finds and declares as follows:

25 (1) On December 27, 2007, the Pennsylvania Supreme
26 Court, in the case of V.L. Rendina, Inc. v. the City of
27 Harrisburg and the Harrisburg School District, 938 A.2d 988
28 (Pa. 2007), concluded that The Local Tax Enabling Act did not

1 require a permanent base of operations in the taxing
2 jurisdiction before a business privilege tax could be
3 imposed.

4 (2) As a result of the Rendina decision, the long-
5 standing rule of base of operations, which was construed as a
6 place of business, is no longer needed for business privilege
7 taxation under The Local Tax Enabling Act.

8 (3) By eliminating the rule requiring a base of
9 operations, the business privilege tax becomes a transaction
10 tax, which may otherwise have been unauthorized under The
11 Local Tax Enabling Act.

12 (4) It is the intent of the General Assembly to clarify
13 that the maintenance of a permanent place of business or base
14 of operations, within a municipality used to conduct business
15 both within and outside the municipality, is required to
16 subject a company to business privilege taxation within the
17 municipality.

18 (5) It is the legislative intent of the General Assembly
19 to clarify existing law and repeal the Rendina decision by
20 virtue of this legislation.

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

23 Section 1. Section 301.1(f)(12) of the act of December 31,
24 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act,
25 amended October 15, 2008 (P.L.1615, No.130), is amended to read:

26 Section 301.1. Delegation of Taxing Powers and Restrictions
27 Thereon.--* * *

28 (f) Such local authorities shall not have authority by
29 virtue of this act:

30 * * *

1 (12) To levy, assess and collect a mercantile or business
2 privilege tax on gross receipts or part thereof which are: (i)
3 discounts allowed to purchasers as cash discounts for prompt
4 payment of their bills; (ii) charges advanced by a seller for
5 freight, delivery or other transportation for the purchaser in
6 accordance with the terms of a contract of sale; (iii) received
7 upon the sale of an article of personal property which was
8 acquired by the seller as a trade-in to the extent that the
9 gross receipts in the sale of the article taken in trade does
10 not exceed the amount of trade-in allowance made in acquiring
11 such article; (iv) refunds, credits or allowances given to a
12 purchaser on account of defects in goods sold or merchandise
13 returned; (v) Pennsylvania sales tax; (vi) based on the value of
14 exchanges or transfers between one seller and another seller who
15 transfers property with the understanding that property of an
16 identical description will be returned at a subsequent date;
17 however, when sellers engaged in similar lines of business
18 exchange property and one of them makes payment to the other in
19 addition to the property exchanged, the additional payment
20 received may be included in the gross receipts of the seller
21 receiving such additional cash payments; (vii) of sellers from
22 sales to other sellers in the same line where the seller
23 transfers the title or possession at the same price for which
24 the seller acquired the merchandise; or (viii) transfers between
25 one department, branch or division of a corporation or other
26 business entity of goods, wares and merchandise to another
27 department, branch or division of the same corporation or
28 business entity and which are recorded on the books to reflect
29 such interdepartmental transactions. A mercantile or business
30 privilege tax on gross receipts or on the privilege of doing

1 business within or from a location within a local taxing
2 jurisdiction may be imposed by a local taxing jurisdiction only
3 if the privilege of doing business is exercised through a base
4 of operations in the local taxing jurisdiction. In the case of a
5 tax on the privilege of doing business within or from a location
6 within a local taxing jurisdiction, no tax shall be imposed on
7 gross receipts from activities which are also subject to a tax
8 imposed by another local taxing jurisdiction on business
9 transacted within that other jurisdiction. The taxpayer may
10 exclude the gross receipts that are taxed or taxable in the
11 other local jurisdiction. For purposes of this section, the term
12 "base of operations" shall mean an actual, physical and
13 permanent place of business from which a taxpayer manages,
14 directs and controls its business activities at that location.
15 For purposes of this section, the term "permanent" shall mean a
16 building or other structure owned or rented or used by the
17 taxpayer that is permanently attached to the ground via a fixed
18 foundation or similar construction and which cannot be removed
19 without demolition or dismantling.

20 * * *

21 Section 2. The amendment of section 301.1(f)(12) of the act
22 is intended as a clarification of existing law and is not
23 intended to establish new rights or enlarge existing rights of
24 local taxing jurisdictions or establish new obligations or
25 enlarge existing obligations of taxpayers.

26 Section 3. The amendment of section 301.1(f)(12) of the act
27 shall apply retroactively to December 27, 2007.

28 Section 4. This act shall take effect in 60 days.