

CHAPTER 39. TRANSIENT VENDORS

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Authority

The provisions of this Chapter 39 issued under sections 248.2 and 270 of the Tax Reform Code of 1971 (72 P. S. §§ 7270 and 7248.2), unless otherwise noted.

Source

The provisions of this Chapter 39 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2266, unless otherwise noted.

§ 39.1. Definition.

The term “transient vendor” has the following meaning when used in this chapter:

- (1) A person who:
 - (i) Brings into this Commonwealth, by automobile, truck or other means of transportation, or purchases in this Commonwealth, tangible personal property, the sale of or use of which is subject to tax imposed by Article II of the TRC (72 P. S. §§ 7201—7282).
 - (ii) Offers or intends to offer the tangible personal property for sale at retail within this Commonwealth.
 - (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 this Commonwealth.
- (2) The term does not include a person who does one of the following:
 - (i) Delivers tangible personal property within this Commonwealth under orders for the property which were solicited or placed by mail or by telephone.

(ii) Handcrafts items. A handcrafted item is one predominately made or created by hand. It generally consists of giving new shapes, new qualities or new combinations to matter.

Source

The provisions of this § 39.1 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2266; amended April 24, 1987, effective April 25, 1987, 17 Pa.B. 1665. Immediately preceding text appears at serial pages (91027) to (91028).

§ 39.2. Registration.

(a) Registration as a transient vendor shall be in addition to the registration requirements of section 208 of the TRC (72 P. S. § 7208).

(b) A person who is a transient vendor shall be required to apply for and obtain a transient vendor certificate from the Department prior to conducting business or otherwise commencing operations within this Commonwealth. Application for a transient vendor certificate shall be a supplement to the Application for Sales, Use, and Hotel Occupancy Tax License Form which may be obtained from the Department. In addition to fully completing the license application form—see § 34.1 (relating to registration)—and any other information the Department might require, a transient vendor shall supply the following information:

- (1) A description of the security under § 39.4 (relating to surety bond or other security) that accompanies the application.
- (2) The location of intended sales in this Commonwealth.

§ 39.3. Transient vendor certificates.

(a) *General.* Upon receipt of an application for a transient vendor certificate and the acceptance by the Department of the bond as required under § 39.4 (relating to surety bond or other security), the Department will issue a transient vendor certificate. The certificate shall be prominently displayed by the vendor while conducting sales or other business within this Commonwealth.

(b) *Expiration of transient vendor certificate.* Certificates shall expire on the last day of January each year except that the initial certificate issued will not expire until the second succeeding January. For example, a certificate initially issued in July 1984, will expire on January 31, 1986.

(c) *Renewal.* Prior to the annual expiration of the transient vendor certificate, the Department will send an application for renewal to the transient vendor. Upon receiving an application for renewal of the transient vendor certificate and the acceptance by the Department of the bond as required by § 39.4, the Department will issue a new transient vendor certificate unless the Department finds the applicant in violation of Article II of the TRC (72 P. S. §§ 7201—7282).

(d) *Surrender of transient vendor certificate.* A transient vendor may file a request for the voluntary surrender of its transient vendor certificate with the

Department. If the Department is satisfied that the transient vendor has complied with Article II of the TRC and the Department has possession of the transient vendor's certificate, it shall return the posted bond to the transient vendor.

§ 39.4. Surety bond or other security.

(a) At the time of filing for a transient vendor certificate, a transient vendor shall file a surety bond with the Department which is subject to approval by the Department. In lieu of the surety bond, the Department may accept other equivalent security, such as letters of credit or cash.

(b) The bond or other security shall be in the amount of \$500 and shall be executed by the transient vendor as the principal and by a corporate surety authorized to engage in business in this Commonwealth.

(c) The bond or other security may be reduced or eliminated entirely if either of the following applies:

(1) Upon review of the annual application, the Department finds that there has been at least a 12-month period of compliance by the transient vendor with Article II of the TRC (72 P. S. §§ 7201—7282). In making this determination, the Department will consider the period of compliance prior to passage of sections 201(t), 248 and 248.1—248.5 of the TRC (72 P. S. §§ 7201(t), 7248 and 7248.1—7248.5), and will consider, among other factors, the timely filing and remittance of sales tax, the maintenance of records and the displaying of licenses, if applicable.

(2) If the transient vendor provides the license number of a promoter who has notified the Department of a show, under section 248.6(a) of the TRC (72 P. S. § 7248.6(a)).

Source

The provisions of this § 39.4 adopted June 29, 1984, effective June 30, 1984, 14 Pa.B. 2266; amended April 24, 1987, effective April 25, 1987, 17 Pa.B. 1665. Immediately preceding text appears at serial page (91029).

Cross References

This section cited in 61 Pa. Code § 39.2 (relating to registration); 61 Pa. Code § 39.3 (relating to transient vendor certificates); and 61 Pa. Code § 39.4a (relating to application of cash security to liability of transient vendors).

§ 39.4a. Application of cash security to liability of transient vendors.

(a) The Department, upon the written request of a transient vendor, may apply a cash security under § 39.4 (relating to surety bond or other security) to the vendor's liability for sales and use tax.

(b) The Department's application of the transient vendor's security, under subsection (a), will occur as of the date of receipt by the Department of the transient vendor's request for application.

(c) The Department may, without request, apply a transient vendor's cash security against his liability for sales and use tax, interest and penalties, if it is determined that the vendor is delinquent. For purposes of this subsection, delinquent means that the transient vendor has failed to collect or timely remit the sales tax due on tangible personal property or services subject to the sales tax, or the transient vendor has failed to timely file a tax return as provided by section 217 of the TRC (72 P. S. § 7217).

Source

The provisions of this § 39.4a adopted April 24, 1987, effective April 25, 1987, 17 Pa.B. 1665.

§ 39.5. Suspension or revocation of transient vendor certificate.

The Department may suspend or revoke a transient vendor certificate if the transient vendor does one of the following:

- (1) Fails to notify the Department upon entering this Commonwealth to conduct business under § 39.7 (relating to notice prior to entering Commonwealth).
- (2) Provides the Department with false information regarding the conduct of business within this Commonwealth.
- (3) Fails to collect and remit to the Department sales tax on tangible personal property or services sold subject to the sales tax.
- (4) Fails to file with the Department a tax return as provided by section 217 of the TRC (72 P. S. § 7217).

§ 39.6. Appeal from rejection of application, suspension or revocation of transient vendor certificate.

(a) If the Department rejects the application for renewal or suspends or revokes a certificate, the Department will provide written notice of its decision, mailed to the last known address of the transient vendor.

(b) The transient vendor may appeal the decision by filing a petition to show cause why a certificate should be issued or remain valid. The petition shall be filed with the Department within 30 days of the mailing date of the Department's decision. Unless the parties mutually agree to waive the time requirements, the Department shall schedule a hearing, to be held not less than 15 days, nor more than 45 days after the filing of the petition, at a specific time and location to be set by the Department. The hearing shall be conducted in accordance with 2 Pa.C.S. §§ 101—106 and 501—508 (relating to general provisions and practice and procedure of Commonwealth agencies). Transient vendors aggrieved by the final decision of the Department shall have the right to appeal under 2 Pa.C.S. §§ 701—704 (relating to judicial review of Commonwealth agency action).

§ 39.7. Notice prior to entering Commonwealth.

(a) Prior to conducting business in this Commonwealth, the Department shall receive written notice from the transient vendor as to where he intends to conduct business, and the approximate dates of operation. The county, political subdivision and street locations, if known, should be provided. The transient vendor may include this information with his annual application. For example:

Farm Show Building, Harrisburg, Dauphin County, week of January 8, 1984
Jones Flea Market, State College, Centre County, all weekends between Memorial Day and Labor Day

(b) Notice or changes in notice previously submitted shall be mailed to the following address:

Pennsylvania Department of Revenue
Strawberry Square
Harrisburg, Pennsylvania 17105
Attention: Licensing and Bonding

Cross References

This section cited in 61 Pa. Code § 39.5 (relating to suspension or revocation of transient vendor certificate).

§ 39.8. Inspection of records.

While conducting business within this Commonwealth, the transient vendor shall permit authorized employees of the Department to inspect its sales records, including but not limited to, sales receipts and inventory or price lists and to permit inspection of the tangible personal property offered for sale at retail.

§ 39.9. Seizure of property.

(a) If a transient vendor conducting business within this Commonwealth fails to exhibit a valid transient vendor certificate upon demand by the Department, the Department will have the authority to seize without warrant, the tangible personal property, automobile, truck or other means of transportation used to transport or carry that property.

(b) The Department's representative making the seizure shall issue a receipt to the transient vendor signed by the representative and the transient vendor. If the transient vendor refuses to sign the receipt, another individual may witness the inventory and sign the receipt. The receipt shall contain an inventory of the property seized from the transient vendor and the name and address of the Department's representative making the seizure.

(c) Property seized shall be deemed contraband and shall be subject to immediate forfeiture proceedings instituted by the Department under § 39.11 (relating to forfeiture proceedings).

§ 39.10. Release of seized property.

(a) Property seized shall be released to a transient vendor upon the occurrence of any of the following:

(1) The transient vendor presents a valid transient vendor certificate to the Department's representative who made the seizure or to the district administrator for the district in which the seizure occurred. The certificate shall have been issued under an application filed prior to the date upon which the property was seized.

(2) The transient vendor registers with the Department and posts a bond in the amount of \$500, either immediately or within 15 days after the property is seized.

(3) The court issues an order directing the release of the seized property.

(b) The district administrator of the area in which the property was seized shall have the authority to release the property to the person from whom it was seized, if presented with satisfactory evidence that the person is not subject to this chapter.

§ 39.11. Forfeiture proceedings.

In order to institute the proceedings to secure an order of forfeiture of the seized property, the Department will within 30 days after confiscation, file a civil complaint in the court of common pleas of the county in which the property was taken. In the event the complaint is not filed within the prescribed time, the tangible personal property seized shall be returned to the person from whom it was seized or its owner.

Cross References

This section cited in 61 Pa. Code § 39.9 (relating to seizure of property).

§ 39.12. Unclaimed property.

If the court orders property returned to the owner or claimant and the owner or claimant fails to remove the property from Commonwealth property, the Department will give the owner or claimant notice of the court order by mailing it to his last known address. Should the owner or claimant fail to remove the property within 90 days from the mailing date of the notice, the property shall be disposed of under the Disposition of Abandoned and Unclaimed Property Act (72 P. S. §§ 1301.1—1301.29), without regard to any other period of limitations.

§ 39.13. Fines.

A transient vendor who conducts business within this Commonwealth while his certificate is suspended or revoked shall be guilty of a misdemeanor of the third degree. Charges can be initiated by the Department or a law enforcement officer. Upon conviction, a transient vendor shall be sentenced to pay a fine not exceeding \$2,500 for each offense.

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