

UNOFFICIAL COPY:

Fireworks Provisions of the Tax Reform Code of 1971

The following is an unofficial copy of Article XXIV of the Tax Reform Code of 1971 (72 P.S. §§ 9401 – 9416.

This Article took effect on October 30, 2017, and was established by Act 43 of 2017.

The text below is “unofficial” because it has been downloaded from the internet. In the event of any discrepancy between the text of this document and the actual legislation, the text of the legislation shall control.

Section numbers below refer to section numbers of 72 P.S.



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Section 43. The act is amended by adding an article to read:

ARTICLE XXIV

FIREWORKS

Section 9401. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"APA 87-1." The American Pyrotechnics Association Standard 87-1: *Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics*, 2001 edition, or any subsequent edition.

"Consumer fireworks."

(1) Any combustible or explosive composition or any substance or combination of substances which is intended to produce visible or audible effects by combustion, is suitable for use by the public, complies with the construction, performance, composition and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (relating to commercial practices) or any successor regulation and complies with the

provisions for "consumer fireworks" as defined in APA 87-1 or any successor standard, the sale, possession and use of which shall be permitted throughout this Commonwealth.

(2) The term does not include devices as "ground and hand-held sparkling devices," "novelties" or "toy caps" in APA 87-1 or any successor standard, the sale, possession and use of which shall be permitted at all times throughout this Commonwealth.

"Display fireworks." Large fireworks to be used solely by professional pyrotechnicians and designed primarily to produce visible or audible effects by combustion, deflagration or detonation. The term includes, but is not limited to:

- (1) salutes that contain more than two grains or 130 milligrams of explosive materials;
- (2) aerial shells containing more than 60 grams of pyrotechnic compositions; and
- (3) other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334 or UN0335 under 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

"Municipality." A city, borough, incorporated town or township.

"NFPA 1124." The National Fire Protection Association Standard 1124, *Code for the Manufacture, Transportation and Storage of Fireworks and Pyrotechnic Articles*, 2006 edition, or any subsequent edition.

"Occupied structure." A structure, vehicle or place adapted for overnight accommodation of persons or for conducting business whether or not a person is actually present.

"Outdoor storage unit." A consumer fireworks building, trailer, semitrailer, metal shipping container or magazine meeting the specifications of NFPA 1124.

"Temporary structure." A structure, other than a permanent facility with fixed utility connections, which is in use or in place for a period of 20 consecutive calendar days or less and is dedicated to the storage and sale of consumer fireworks and related items. The term includes temporary retail sales stands, tents, canopies and membrane structures meeting the specifications of NFPA 1124. The term shall not include a facility that is not licensed to sell consumer fireworks under this article.

Section 9402. Permits.

(a) Permissible purposes.--Display fireworks may be possessed and used by a person holding a permit from a municipality at the display covered by the permit or when used as authorized by a permit for any of the following:

- (1) For agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.
- (2) By railroads or other transportation agencies for signal purposes or illumination.
- (3) In quarrying or for blasting or other industrial use.
- (4) In the sale or use of blank cartridges for a show or theater.
- (5) For signal or ceremonial purposes in athletics or sports.
- (6) By military organizations or organizations composed of veterans of the armed forces of the United States.

(b) Age limitation.--A display fireworks permit may not be issued to a person under 21 years of age.

(c) Bond.--The governing body of the municipality shall require a bond deemed adequate by it from the permittee in a sum not less than \$50,000 conditioned for the payment of all damages which may be caused to a person or property by reason of the display and arising from an act of the permittee or an agent, an employee or a subcontractor of the permittee.

Section 9403. Request for extension.

(a) Authorization.--If, because of unfavorable weather, the display for which a permit has been granted does not occur at the time authorized by the permit, the person to whom the permit was issued may within 24 hours apply for a request for extension to the municipality which granted the permit.

(b) Contents of request.--The request for extension shall state under oath that the display was not made, provide the reason that the display was not made and request a continuance of the permit for a date designated within the request, which shall be not later than one week after the date originally designated in the permit.

(c) Determination.--Upon receiving the request for extension, the municipality, if it believes that the facts stated within the request are true, shall extend the provisions of the permit to the date designated within the request, which shall be not later than one week after the date originally designated in the permit.

(d) Conditions.--The extension of time shall be granted without the payment of an additional fee and without requiring a bond other than the bond given for the original permit, the provisions of which shall extend to and cover all damages which may be caused by reason of the display occurring at the extended date and in the same manner and to the same extent as if the display had occurred at the date originally designated in the permit.

Section 9404. Use of consumer fireworks.

(a) Conditions.--A person who is at least 18 years of age and meets the requirements of this article may purchase, possess and use consumer fireworks.

(b) Prohibitions.--A person may not intentionally ignite or discharge:

(1) Consumer fireworks on public or private property without the express permission of the owner.


(2) Consumer fireworks or sparkling devices within, or throw consumer fireworks or sparkling devices from, a motor vehicle or building.

(3) Consumer fireworks or sparkling devices into or at a motor vehicle or building or at another person.

(4) Consumer fireworks or sparkling devices while the person is under the influence of alcohol, a controlled substance or another drug.

(5) Consumer fireworks within 150 feet of an occupied structure.

Section 9404.1. Use of display fireworks.

No display fireworks shall be ignited within 300 feet of a facility that meets the requirements of section 2407 or 2410. 

¹¹ 72 P.S. §§ 9407 and 9410.

Section 9405. Agricultural purposes.

(a) *Authorization.*--The governing body of a municipality may, under reasonable rules and regulations adopted by it, grant permits for the use of suitable fireworks for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage.

(b) *Duration of permit.*--A permit under this section shall remain in effect for the calendar year in which it was issued.

(c) *Conditions.*--After a permit under this section has been granted, sales, possession and use of fireworks of the type and for the purpose mentioned in the permit shall be lawful for that purpose only.

Section 9406. Rules and regulations by municipality.

(a) *Authorization.*--Permission shall be given by the governing body of a municipality under reasonable rules and regulations for displays of display fireworks to be held within the municipality.

(b) *Conditions.*--

(1) Each display shall be:

(i) handled by a competent operator; and

(ii) of a character and so located, discharged or fired as, in the opinion of the chief of the fire department or other appropriate officer as may be designated by the governing body of the municipality, after proper inspection, to not be hazardous to property or endanger any person.

(2) After permission is granted under this section, possession and use of display fireworks for display shall be lawful for that purpose only.

(3) A permit shall be transferable.

Section 9407. Sales locations.

Except as provided in section 2410,² consumer fireworks shall be sold only from facilities which are licensed by the Department of Agriculture and that meet the following criteria:

(1) The facility shall comply with the provisions of the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act.

(2) The facility shall be a stand-alone permanent structure.

(3) Storage areas shall be separated from wholesale or retail sales areas to which a purchaser may be admitted by appropriately rated fire separation.

(4) The facility shall be located no closer than 250 feet from a facility selling or dispensing gasoline, propane or other flammable products.

(5) The facility shall be located at least 1,500 feet from another facility licensed to sell consumer fireworks.

(6) The facility shall have a monitored burglar and fire alarm system.

(7) Quarterly fire drills and preplanning meetings shall be conducted as required by the primary fire department.

Section 9408. Fees, granting of licenses and inspections.

² 72 P.S. § 9410.

(a) Initial application fees.--

(1) An initial application for a license to sell consumer fireworks shall be submitted to the Department of Agriculture on forms prescribed and provided by the department with a nonrefundable application fee as follows:

(i) For a facility meeting the requirements of section 2407,³ the application shall be submitted with a nonrefundable application fee of \$2,500.

(ii) For a facility meeting the requirements of section 2410,⁴ the application shall be submitted with a nonrefundable application fee of \$1,000 no later than 60 days prior to the first day of sale.

(2) An application under paragraph (1)(i) or (ii) shall also be accompanied by the appropriate annual license fee as provided in subsection (b).

(b) Annual license fees.--The annual license fee for a facility licensed to sell consumer fireworks shall be as follows:

(1) \$7,500 for a location up to 10,000 square feet;

(2) \$10,000 for a location greater than 10,000 and up to 15,000 square feet;

(3) \$20,000 for a location greater than 15,000 square feet; and

(4) \$3,000 for a temporary structure.

(c) Time limitations and inspections.--

(1) A facility meeting the requirements of section 2407⁵ shall be inspected by the Department of Agriculture within 30 days of receipt of a complete application for a license. The Department of Agriculture shall issue or deny a license within 14 days of completing the inspection.

(2) The Department of Agriculture shall issue or deny a license for a facility meeting the requirements of section 2410⁶ no later than 10 days prior to the first day of sale. The facility shall be available for inspection by the Department of Agriculture for compliance with NFPA 1124 at all times during the licensed selling period.

(d) Term of license.--A license issued for the sale of consumer fireworks shall be effective for one year from the date the license is issued.

(e) License renewal and inspections.--License renewal shall be automatic upon payment of the appropriate annual license fee under subsection (b), but each facility shall be subject to annual inspections by the Department of Agriculture and at other times as the department may deem appropriate.

(f) Condition.--No license may be issued to a convicted felon or to an entity in which a convicted felon owns a percentage of the equity interest.

Section 9409. Conditions for facilities.

A facility licensed by the Department of Agriculture shall be exclusively dedicated to the storage and sale of consumer fireworks and related items, and the facility shall operate in accordance with the following rules:

(1) There shall be security personnel on the premises for the seven days preceding and including July 4 and for the three days preceding and including January 2.

(2) No smoking shall be permitted in the facility.

(3) No cigarettes or tobacco products, matches, lighters or any other flame-producing

³ 72 P.S. § 9407.

⁴ 72 P.S. § 9410.

⁵ 72 P.S. § 9407.

⁶ 72 P.S. § 9410.

devices shall be permitted to be taken into the facility.

(4) No minors shall be permitted in the facility unless accompanied by an adult, and each minor shall stay with the adult in the facility.

(5) All facilities shall carry at least \$2,000,000 in public and product liability insurance.

(6) A licensee shall provide its employees with documented training in the area of operational safety of a facility. The licensee shall provide to the Department of Agriculture written documentation that each employee has received the training.

(7) No display fireworks shall be stored or located at a facility.

(8) No person who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the facility, and no liquor, beer or wine shall be permitted in the facility.

(9) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the facility.

Section 9410. Temporary structures.

(a) Conditions.--Notwithstanding section 2407⁷ or any other provision of law, a temporary structure may be licensed by the Department of Agriculture to sell consumer fireworks if the temporary structure meets all of the following requirements:

(1) The temporary structure is located no closer than 250 feet from a facility storing, selling or dispensing gasoline, propane or other flammable products.

(2) An evacuation plan is posted in a conspicuous location for a temporary structure in accordance with NFPA 1124.

(3) The outdoor storage unit, if any, is separated from the wholesale or retail sales area to which a purchaser may be admitted by appropriately rated fire separation.

(4) The temporary structure complies with NFPA 1124 as it relates to retail sales of consumer fireworks in temporary structures.

(5) The temporary structure is located one of the following distances from a permanent facility licensed to sell consumer fireworks under the act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, at the time of the effective date of this article:

(i) Prior to January 1, 2023, at least five miles.

(ii) Beginning January 1, 2023, at least two miles.

(6) The temporary structure does not exceed 2,500 square feet.

(7) The temporary structure is secured at all times during which consumer fireworks are displayed within the structure.

(8) The temporary structure has a minimum of \$2,000,000 in public and product liability insurance.

(9) The sales period is limited to June 15 through July 8 and December 21 through January 2 of each year.

(10) Consumer fireworks not on display for retail sale are stored in an outdoor storage unit.

(b) Limitations.--The sale of consumer fireworks from the temporary structure is limited to the following:

(1) Helicopter, Aerial Spinner (APA 87-1, 3.1.2.3).

⁷ 72 P.S. § 9407.

- (2) Roman Candle (APA 87-1, 3.1.2.4).
- (3) Mine and shell devices not exceeding 500 grams.

Section 9411. Attorney General.

(a) **Registration.**--Any business entity which performs, provides or supervises fireworks displays or exhibitions for profit shall register annually with the Attorney General.

(b) **Rules.**--The Attorney General shall promulgate rules to implement this section.

Section 9412. Consumer fireworks tax.

(a) **Imposition.**--In addition to any other tax imposed by law, a tax is imposed on each separate sale at retail of consumer fireworks, which tax shall be collected by the retailer from the purchaser at the time of sale and shall be paid over to the Commonwealth as provided in this section. A tax imposed under this subsection on each separate sale at retail shall be paid to and received by the Department of Revenue and, along with interest and penalties, shall be deposited into the General Fund.

(b) **Rate.**--The tax authorized under subsection (a) shall be imposed and collected at the rate of 12% of the purchase price per item sold. The purchase price shall include State and local sales taxes.

(c) **Collection and administration.**--The provisions of Part VI of Article II shall apply to the tax authorized under subsection (a). No additional fee shall be charged for a license or license renewal other than the license or renewal fee required under section 2408⁸ and the license or renewal fee authorized and imposed under Article II.

Section 9413. Disposition of certain funds.

(a) **Transfer.**--One-sixth of the tax collected under this article in a fiscal year, not to exceed \$2,000,000, shall be transferred annually for use as follows:

(1) Seventy-five percent of the amount transferred under this subsection shall be used for the purpose of making grants under 35 Pa.C.S. Ch. 78 Subch. C (relating to Emergency Medical Services Grant Program).

(2) Twenty-five percent of the amount transferred under this subsection shall be deposited into a special account in the State Treasury designated as the Online Training Educator and Training Reimbursement Account for the purposes of developing, delivering and sustaining training programs for volunteer firefighters in this Commonwealth.

(3) The Office of the State Fire Commissioner shall establish guidelines for use of the money deposited under paragraph (2). By December 31, 2018, and each December 31 thereafter, the Office of the State Fire Commissioner shall provide a written report detailing the use of the money received from the prior fiscal year to the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate, the chairperson and minority chairperson of the Veterans Affairs and Emergency Preparedness Committee of the Senate, the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives and the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives.

(b) **Payments.**--The transfer required under subsection (a) shall be made by September 15,

⁸ 72 P.S. § 9408.

2018, and each September 15 thereafter.

Section 9414. Penalties.

The following shall apply:

(1) A person using consumer fireworks in violation of the provisions of this article commits a summary offense and, upon conviction, shall be punished by a fine of not more than \$100.

(2) A person selling consumer fireworks in violation of the provisions of this act commits a misdemeanor of the second degree.

(3) A person selling display fireworks in violation of the provisions of this act commits a felony of the third degree.

(4) A person selling federally illegal explosives such as devices as described in 49 CFR 173.54 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80," "M-100," "blockbuster," "cherry bomb" or "quarter or half stick" explosive devices, in violation of the provisions of this act commits a felony of the third degree.

Section 9415. Removal, storage and destruction.

The Pennsylvania State Police, a sheriff or police officer shall take, remove or cause to be removed at the expense of the owner all stocks of consumer fireworks or display fireworks or combustibles offered or exposed for sale, stored or held in violation of this article. The owner shall also be responsible for the storage and, if deemed necessary, the destruction of these fireworks.

Section 9416. Transition.

A person who, on the effective date of this section, holds a license under the act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, may continue the activity permitted by the license for a period of 90 days following the effective date of this section or the date the license expires by the terms of the license, whichever is sooner. After the expiration of the 90-day period or the license, whichever is sooner, the person must obtain the license required under this article to continue the permitted activity, if applicable.

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Section 48. Repeals are as follows:

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(4) The act of May 15, 1939 (P.L.134, No.65), referred to as the Fireworks Law, is repealed.

Section 49. This act shall take effect as follows:

* * * * *

- (6) The following provisions shall take effect immediately:
 - (i) This section.
 - (ii) The remainder of this act.