

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 729 Session of 1997

INTRODUCED BY L. I. COHEN, EGOLF, MARKOSEK, ORIE, FARGO, JADLOWIEC, McNAUGHTON, ROONEY, BROWN, HENNESSEY, BAKER, DENT, WALKO, HALUSKA, TRELLO, SHANER, DeLUCA, SATHER, RUBLEY, ARGALL, ALLEN, BATTISTO, MICHLOVIC, COLAFELLA, WOGAN, PLATTS, YOUNGBLOOD, SEMMEL, FLEAGLE, LYNCH, PHILLIPS, MELIO, SCHRODER, TRUE, ITKIN, FLICK, MAITLAND, THOMAS, E. Z. TAYLOR, BARD, STERN, SAYLOR, C. WILLIAMS, SEYFERT, BROWNE, ROSS, BOSCOLA AND GLADECK, MARCH 11, 1997

REFERRED TO COMMITTEE ON FINANCE, MARCH 11, 1997

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
9 and other entities; prescribing crimes, offenses and
10 penalties," further providing for the sales and use taxation
11 of certain computer services.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 201(i), (k), (o), (dd), (ee), (ff), (gg),
15 (hh) and (ii) of the act of March 4, 1971 (P.L.6, No.2), known
16 as the Tax Reform Code of 1971, amended or added August 4, 1991
17 (P.L.97, No.22), December 13, 1991 (P.L.373, No.40) and June 30,
18 1995 (P.L.139, No.21), are amended to read:

19 Section 201. Definitions.--The following words, terms and

phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(i) "Resale."

(1) Any transfer of ownership, custody or possession of tangible personal property or services for a consideration, including the grant of a license to use or consume and transactions where the possession of such property is transferred but where the transferor retains title only as security for payment of the selling price whether such transaction be designated as bailment lease, conditional sale or otherwise.

(2) The physical incorporation of tangible personal property as an ingredient or constituent into other tangible personal property, which is to be sold in the regular course of business or the performance of those services described in subclauses (2), (3) and (4) of clause (k) of this section upon tangible personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth. The term "resale" shall include telecommunications services purchased by a cable operator or video programmer that are used to transport or deliver cable or video programming services which are sold in the regular course of business.

(3) The term "resale" shall also include tangible personal property purchased or having a situs within this Commonwealth solely for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into tangible

1 personal property and thereafter transported outside this
2 Commonwealth for use exclusively outside this Commonwealth.

3 (4) The term "resale" shall not include any sale of "malt or
4 brewed beverages" by a "retail dispenser," or any sale of
5 "liquor" or "malt or brewed beverages" by a person holding a
6 "retail liquor license" within the meaning of the "Liquor Code."

7 (5) The physical incorporation of tangible personal property
8 as an ingredient or constituent in the construction of
9 foundations for machinery or equipment the sale or use of which
10 is excluded from tax under the provisions of paragraphs (A),
11 (B), (C) and (D) of subclause (8) of clause (k) and
12 subparagraphs (i), (ii), (iii) and (iv) of paragraph (B) of
13 subclause (4) of clause (o) of this section, whether such
14 foundations at the time of construction or transfer constitute
15 tangible personal property or real estate.

16 * * *

17 (k) "Sale at retail."

18 (1) Any transfer, for a consideration, of the ownership,
19 custody or possession of tangible personal property, including
20 the grant of a license to use or consume whether such transfer
21 be absolute or conditional and by whatsoever means the same
22 shall have been effected.

23 (2) The rendition of the service of printing or imprinting
24 of tangible personal property for a consideration for persons
25 who furnish, either directly or indirectly the materials used in
26 the printing or imprinting.

27 (3) The rendition for a consideration of the service of--

28 (i) Washing, cleaning, waxing, polishing or lubricating of
29 motor vehicles of another, whether or not any tangible personal
30 property is transferred in conjunction therewith; and

1 (ii) Inspecting motor vehicles pursuant to the mandatory
2 requirements of "The Vehicle Code."

3 (4) The rendition for a consideration of the service of
4 repairing, altering, mending, pressing, fitting, dyeing,
5 laundering, drycleaning or cleaning tangible personal property
6 other than wearing apparel or shoes, or applying or installing
7 tangible personal property as a repair or replacement part of
8 other tangible personal property except wearing apparel or shoes
9 for a consideration, whether or not the services are performed
10 directly or by any means other than by coin-operated self-
11 service laundry equipment for wearing apparel or household goods
12 and whether or not any tangible personal property is transferred
13 in conjunction therewith, except such services as are rendered
14 in the construction, reconstruction, remodeling, repair or
15 maintenance of real estate: Provided, however, That this
16 subclause shall not be deemed to impose tax upon such services
17 in the preparation for sale of new items which are excluded from
18 the tax under clause (26) of section 204, or upon diaper
19 service.

20 (8) Any retention of possession, custody or a license to use
21 or consume tangible personal property or any further obtaining
22 of services described in subclauses (2), (3) and (4) of this
23 clause pursuant to a rental or service contract or other
24 arrangement (other than as security).

25 The term "sale at retail" shall not include (i) any such
26 transfer of tangible personal property or rendition of services
27 for the purpose of resale, or (ii) such rendition of services or
28 the transfer of tangible personal property including, but not
29 limited to, machinery and equipment and parts therefor and
30 supplies to be used or consumed by the purchaser directly in the

1 operations of--

2 (A) The manufacture of tangible personal property;

3 (B) Farming, dairying, agriculture, horticulture or
4 floriculture when engaged in as a business enterprise. The term
5 "farming" shall include the propagation and raising of ranch
6 raised fur-bearing animals and the propagation of game birds for
7 commercial purposes by holders of propagation permits issued
8 under 34 Pa.C.S. (relating to game);

9 (C) The producing, delivering or rendering of a public
10 utility service, or in constructing, reconstructing, remodeling,
11 repairing or maintaining the facilities which are directly used
12 in producing, delivering or rendering such service;

13 (D) Processing as defined in clause (d) of this section.

14 The exclusions provided in paragraphs (A), (B), (C) and (D)
15 shall not apply to any vehicle required to be registered under
16 The Vehicle Code, except those vehicles used directly by a
17 public utility engaged in business as a common carrier; to
18 maintenance facilities; or to materials, supplies or equipment
19 to be used or consumed in the construction, reconstruction,
20 remodeling, repair or maintenance of real estate other than
21 directly used machinery, equipment, parts or foundations
22 therefor that may be affixed to such real estate.

23 The exclusions provided in paragraphs (A), (B), (C) and (D)
24 shall not apply to tangible personal property or services to be
25 used or consumed in managerial sales or other nonoperational
26 activities, nor to the purchase or use of tangible personal
27 property or services by any person other than the person
28 directly using the same in the operations described in
29 paragraphs (A), (B), (C) and (D) herein.

30 The exclusion provided in paragraph (C) shall not apply to

1 (i) construction materials, supplies or equipment used to
2 construct, reconstruct, remodel, repair or maintain facilities
3 not used directly by the purchaser in the production, delivering
4 or rendition of public utility service, (ii) construction
5 materials, supplies or equipment used to construct, reconstruct,
6 remodel, repair or maintain a building, road or similar
7 structure, or (iii) tools and equipment used but not installed
8 in the maintenance of facilities used directly in the
9 production, delivering or rendition of a public utility service.

10 The exclusions provided in paragraphs (A), (B), (C) and (D)
11 shall not apply to the services enumerated in clauses (k)(11)
12 through (15), (17) and (18) and (w) through [(kk)] (cc) and (jj)
13 through (11), except that the exclusion provided in this
14 subclause for farming, dairying and agriculture shall apply to
15 the service enumerated in clause (z).

16 (9) Where tangible personal property or services are
17 utilized for purposes constituting a "sale at retail" and for
18 purposes excluded from the definition of "sale at retail," it
19 shall be presumed that such tangible personal property or
20 services are utilized for purposes constituting a "sale at
21 retail" and subject to tax unless the user thereof proves to the
22 department that the predominant purposes for which such tangible
23 personal property or services are utilized do not constitute a
24 "sale at retail."

25 (10) The term "sale at retail" with respect to "liquor" and
26 "malt or brewed beverages" shall include the sale of "liquor" by
27 any "Pennsylvania liquor store" to any person for any purpose,
28 and the sale of "malt or brewed beverages" by a "manufacturer of
29 malt or brewed beverages," "distributor" or "importing
30 distributor" to any person for any purpose, except sales by a

1 "manufacturer of malt or brewed beverages" to a "distributor" or
2 "importing distributor" or sales by an "importing distributor"
3 to a "distributor" within the meaning of the "Liquor Code." The
4 term "sale at retail" shall not include any sale of "malt or
5 brewed beverages" by a "retail dispenser" or any sale of
6 "liquor" or "malt or brewed beverages" by a person holding a
7 "retail liquor license" within the meaning of and pursuant to
8 the provisions of the "Liquor Code," but shall include any sale
9 of "liquor" or "malt or brewed beverages" other than pursuant to
10 the provisions of the "Liquor Code."

11 (11) The rendition for a consideration of lobbying services.

12 (12) The rendition for a consideration of adjustment
13 services, collection services or credit reporting services.

14 (13) The rendition for a consideration of secretarial or
15 editing services.

16 (14) The rendition for a consideration of disinfecting or
17 pest control services, building maintenance or cleaning
18 services.

19 (15) The rendition for a consideration of employment agency
20 services or help supply services.

21 (16) The rendition for a consideration of computer
22 programming services; computer-integrated systems design
23 services; [computer processing,] data preparation or processing
24 services; or information retrieval services[; computer
25 facilities management services; or other computer-related
26 services]. At a minimum, such services shall not include
27 services that are part of electronic fund transfers, electronic
28 financial transactions or services, banking or trust services,
29 or management or administrative services, including transfer
30 agency, shareholder, custodial and portfolio accounting

1 services, provided directly to any entity that duly qualifies to
2 be taxed as a regulated investment company or a real estate
3 investment trust under the provisions of the Internal Revenue
4 Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or to an
5 entity that provides such services to an entity so qualifying.

6 (17) The rendition for a consideration of lawn care service.

7 (18) The rendition for a consideration of self-storage
8 service.

9 * * *

10 (o) "Use."

11 (1) The exercise of any right or power incidental to the
12 ownership, custody or possession of tangible personal property
13 and shall include, but not be limited to transportation, storage
14 or consumption.

15 (2) The obtaining by a purchaser of the service of printing
16 or imprinting of tangible personal property when such purchaser
17 furnishes, either directly or indirectly, the articles used in
18 the printing or imprinting.

19 (3) The obtaining by a purchaser of the services of (i)
20 washing, cleaning, waxing, polishing or lubricating of motor
21 vehicles whether or not any tangible personal property is
22 transferred to the purchaser in conjunction with such services,
23 and (ii) inspecting motor vehicles pursuant to the mandatory
24 requirements of "The Vehicle Code."

25 (4) The obtaining by a purchaser of the service of
26 repairing, altering, mending, pressing, fitting, dyeing,
27 laundering, drycleaning or cleaning tangible personal property
28 other than wearing apparel or shoes or applying or installing
29 tangible personal property as a repair or replacement part of
30 other tangible personal property other than wearing apparel or

1 shoes, whether or not the services are performed directly or by
2 any means other than by means of coin-operated self-service
3 laundry equipment for wearing apparel or household goods, and
4 whether or not any tangible personal property is transferred to
5 the purchaser in conjunction therewith, except such services as
6 are obtained in the construction, reconstruction, remodeling,
7 repair or maintenance of real estate: Provided, however, That
8 this subclause shall not be deemed to impose tax upon such
9 services in the preparation for sale of new items which are
10 excluded from the tax under clause (26) of section 204, or upon
11 diaper service: And provided further, That the term "use" shall
12 not include--

13 (A) Any tangible personal property acquired and kept,
14 retained or over which power is exercised within this
15 Commonwealth on which the taxing of the storage, use or other
16 consumption thereof is expressly prohibited by the Constitution
17 of the United States or which is excluded from tax under other
18 provisions of this article.

19 (B) The use or consumption of tangible personal property,
20 including but not limited to machinery and equipment and parts
21 therefor, and supplies or the obtaining of the services
22 described in subclauses (2), (3) and (4) of this clause directly
23 in the operations of--

24 (i) The manufacture of tangible personal property;

25 (ii) Farming, dairying, agriculture, horticulture or
26 floriculture when engaged in as a business enterprise. The term
27 "farming" shall include the propagation and raising of ranch-
28 raised furbearing animals and the propagation of game birds for
29 commercial purposes by holders of propagation permits issued
30 under 34 Pa.C.S. (relating to game);

1 (iii) The producing, delivering or rendering of a public
2 utility service, or in constructing, reconstructing, remodeling,
3 repairing or maintaining the facilities which are directly used
4 in producing, delivering or rendering such service;

5 (iv) Processing as defined in subclause (d) of this section.

6 The exclusions provided in subparagraphs (i), (ii), (iii) and
7 (iv) shall not apply to any vehicle required to be registered
8 under The Vehicle Code except those vehicles directly used by a
9 public utility engaged in the business as a common carrier; to
10 maintenance facilities; or to materials, supplies or equipment
11 to be used or consumed in the construction, reconstruction,
12 remodeling, repair or maintenance of real estate other than
13 directly used machinery, equipment, parts or foundations
14 therefor that may be affixed to such real estate. The exclusions
15 provided in subparagraphs (i), (ii), (iii) and (iv) shall not
16 apply to tangible personal property or services to be used or
17 consumed in managerial sales or other nonoperational activities,
18 nor to the purchase or use of tangible personal property or
19 services by any person other than the person directly using the
20 same in the operations described in subparagraphs (i), (ii),
21 (iii) and (iv).

22 The exclusion provided in subparagraph (iii) shall not apply
23 to (A) construction materials, supplies or equipment used to
24 construct, reconstruct, remodel, repair or maintain facilities
25 not used directly by the purchaser in the production, delivering
26 or rendition of public utility service or (B) tools and
27 equipment used but not installed in the maintenance of
28 facilities used directly in the production, delivering or
29 rendition of a public utility service.

30 The exclusion provided in subparagraphs (i), (ii), (iii) and

1 (iv) shall not apply to the services enumerated in clauses
2 (o)(9) through (13), (15) and (16) and (w) through [(kk)] (cc)
3 and (jj) through (ll), except that the exclusion provided in
4 subparagraph (ii) for farming, dairying and agriculture shall
5 apply to the service enumerated in clause (z).

6 (5) Where tangible personal property or services are
7 utilized for purposes constituting a "use," as herein defined,
8 and for purposes excluded from the definition of "use," it shall
9 be presumed that such property or services are utilized for
10 purposes constituting a "sale at retail" and subject to tax
11 unless the user thereof proves to the department that the
12 predominant purposes for which such property or services are
13 utilized do not constitute a "sale at retail."

14 (6) The term "use" with respect to "liquor" and "malt or
15 brewed beverages" shall include the purchase of "liquor" from
16 any "Pennsylvania liquor store" by any person for any purpose
17 and the purchase of "malt or brewed beverages" from a
18 "manufacturer of malt or brewed beverages," "distributor" or
19 "importing distributor" by any person for any purpose, except
20 purchases from a "manufacturer of malt or brewed beverages" by a
21 "distributor" or "importing distributor," or purchases from an
22 "importing distributor" by a "distributor" within the meaning of
23 the "Liquor Code." The term "use" shall not include any purchase
24 of "malt or brewed beverages" from a "retail dispenser" or any
25 purchase of "liquor" or "malt or brewed beverages" from a person
26 holding a "retail liquor license" within the meaning of and
27 pursuant to the provisions of the "Liquor Code," but shall
28 include the exercise of any right or power incidental to the
29 ownership, custody or possession of "liquor" or "malt or brewed
30 beverages" obtained by the person exercising such right or power

1 in any manner other than pursuant to the provisions of the
2 "Liquor Code."

3 (7) The use of tangible personal property purchased at
4 retail upon which the services described in subclauses (2), (3)
5 and (4) of this clause have been performed shall be deemed to be
6 a use of said services by the person using said property.

7 (8) The term "use" shall not include the providing of a
8 motor vehicle to a nonprofit private or public school to be used
9 by such a school for the sole purpose of driver education.

10 (9) The obtaining by the purchaser of lobbying services.

11 (10) The obtaining by the purchaser of adjustment services,
12 collection services or credit reporting services.

13 (11) The obtaining by the purchaser of secretarial or
14 editing services.

15 (12) The obtaining by the purchaser of disinfecting or pest
16 control services, building maintenance or cleaning services.

17 (13) The obtaining by the purchaser of employment agency
18 services or help supply services.

19 (14) The obtaining by the purchaser of computer programming
20 services; computer-integrated systems design services; [computer
21 processing,] data preparation or processing services; or
22 information retrieval services[; computer facilities management
23 services; or other computer-related services]. At a minimum,
24 such services shall not include services that are part of
25 electronic fund transfers, electronic financial transactions or
26 services, banking or trust services, or management or
27 administrative services, including transfer agency, shareholder,
28 custodial and portfolio accounting services, provided directly
29 to any entity that duly qualifies to be taxed as a regulated
30 investment company or a real estate investment trust under the

1 provisions of the Internal Revenue Code of 1986 (Public Law 99-
2 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such
3 services to an entity so qualifying.

4 (15) The obtaining by the purchaser of lawn care service.

5 (16) The obtaining by the purchaser of self-storage service.

6 * * *

7 [(dd) "Computer programming services." Providing computer
8 programming or computer software design and analysis. Such
9 services include, but are not limited to, services of the type
10 provided by or through computer programming services, customer
11 computer programming services, computer code authors and free-
12 lance computer software writers, software modification, custom
13 software programming, custom computer programs or system
14 software development, custom computer software systems analysis
15 and design, custom applications software programming, computer
16 code authors or free-lance computer software writers.

17 (ee) "Computer integrated systems design." Developing or
18 modifying computer software and packaging or bundling the
19 software with computer hardware (computers and computer
20 peripheral equipment) to create and market an integrated system
21 for specific application. A business is providing such services
22 under this clause only if it provides each of the following
23 services:

24 (1) the development or modification of the computer
25 software;

26 (2) the marketing of computer hardware; and

27 (3) involvement in all phases of systems development from
28 design through installation.

29 Such services under this clause include, but are not limited to,
30 computer systems integration, computer network systems

1 integration, local area network (LAN) systems integration,
2 office automation, computer systems value-added resellers,
3 computer systems turnkey vendors, computer-aided design (CAD)
4 systems services, computer-aided engineering (CAE) systems
5 services or computer-aided manufacturing (CAM) systems
6 services.]

7 (ff) ["Computer processing, data] Data preparation or
8 processing services." Such services include, [but are not] and
9 are limited to, providing [processing and preparation of reports
10 from data supplied by the customer or a specialized service,
11 such as] data entry; [making data processing equipment available
12 on an hourly, time-sharing or other basis; computer timesharing
13 and leasing or rental of computer time; computer tabulating and
14 calculating services; data entry, processing or verification
15 services;] keypunch services; [or] and optical scanning data
16 services.

17 (gg) ["Information retrieval services." Providing computer
18 on-line information retrieval services. Such services include,
19 but are not limited to, data base information retrieval
20 services, on-line information retrieval services, on-line data
21 base information retrieval services or remote data base
22 information retrieval services.

23 (hh) "Computer facilities management services." Providing
24 onsite management or controlling the operation of data
25 processing facilities or similar services.

26 (ii) "Other computer-related services." Supplying computer-
27 related services not described elsewhere in clauses (dd) through
28 (hh). Such services include, but are not limited to, computer
29 consulting services; data base development and data processing
30 consulting services; disk, diskette or tape conversion services;

1 disk, diskette or tape recertification services; computer
2 hardware and software requirement analysis services; software
3 documentation services; software installation services; software
4 training services if provided in conjunction with the purchase
5 of software; or reformatting or editing services.]

6 * * *

7 Section 2. Section 204 of the act is amended by adding a
8 clause to read:

9 Section 204. Exclusions from Tax.--The tax imposed by
10 section 202 shall not be imposed upon

11 * * *

12 (53) The sale at retail or use of computer programming
13 services purchased solely to permit computers and computer
14 software to accommodate the year 2000 into existing computer
15 operations, provided that the costs for such services are
16 specifically itemized in billings from the vendor or supplying
17 entity and are incurred and paid by the purchaser before April
18 1, 2000.

19 Section 3. This act shall take effect as follows:

20 (1) The deletions of section 201(hh) and (ii), the
21 addition of section 204(53) and this section shall take
22 effect immediately.

23 (2) The amendments of section 201(k)(16), (o)(14) and
24 (ff) shall take effect January 1, 1998.

25 (3) The remainder of this act shall take effect January
26 1, 1999.