

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 307 Session of  
1997

INTRODUCED BY MAITLAND, CARONE, MILLER, ZUG, PETTIT, STEELMAN,  
MASLAND, LYNCH, SATHER, NICKOL AND HENNESSEY,  
FEBRUARY 5, 1997

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 5, 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 definition of "sale at  
11 retail" and "use"; exempting horses, interests in horses and  
12 certain services relating to horses in certain circumstances  
13 from the sales and use tax; and exempting feed and certain  
14 other equipment from the sales and use tax.

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

17 Section 1. Section 201(k)(8) and (o)(4) of the act of March  
18 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
19 amended December 13, 1991 (P.L.373, No.40), are amended and the  
20 section is amended by adding a clause to read:

21 Section 201. Definitions.--The following words, terms and  
22 phrases when used in this Article II shall have the meaning  
23 ascribed to them in this section, except where the context

1 clearly indicates a different meaning:

2 \* \* \*

3 (k) "Sale at retail."

4 \* \* \*

5 (8) Any retention [of] or possession, custody or a license  
6 to use or consume tangible personal property or any further  
7 obtaining of services described in subclauses (2), (3) and (4)  
8 of this clause pursuant to a rental or service contract or other  
9 arrangement (other than as security).

10 The term "sale at retail" shall not include (i) any such  
11 transfer of tangible personal property or rendition of services  
12 for the purpose of resale, or (ii) such rendition of services or  
13 the transfer of tangible personal property including, but not  
14 limited to, machinery and equipment and parts therefor and  
15 supplies to be used or consumed by the purchaser directly in the  
16 operations of--

17 (A) The manufacture of tangible personal property;

18 (B) Farming[, dairying, agriculture, horticulture or  
19 floriculture when engaged in as a business enterprise. The term  
20 "farming" shall include the propagation and raising of ranch  
21 raised fur-bearing animals and the propagation of game birds for  
22 commercial purposes by holders of propagation permits issued  
23 under 34 Pa.C.S. (relating to game)];

24 (C) The producing, delivering or rendering of a public  
25 utility service, or in constructing, reconstructing, remodeling,  
26 repairing or maintaining the facilities which are directly used  
27 in producing, delivering or rendering such service;

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

29 The exclusions provided in paragraphs (A), (B), (C) and (D)  
30 shall not apply to any vehicle required to be registered under

1 The Vehicle Code, except those vehicles used directly by a  
2 public utility engaged in business as a common carrier; to  
3 maintenance facilities; or to materials, supplies or equipment  
4 to be used or consumed in the construction, reconstruction,  
5 remodeling, repair or maintenance of real estate other than  
6 machinery, equipment, parts or foundations therefor that may be  
7 affixed to such real estate.

8 The exclusions provided in paragraphs (A), (B), (C) and (D)  
9 shall not apply to tangible personal property or services to be  
10 used or consumed in managerial sales or other nonoperational  
11 activities, nor to the purchase or use of tangible personal  
12 property or services by any person other than the person  
13 directly using the same in the operations described in  
14 paragraphs (A), (B), (C) and (D) herein.

15 The exclusion provided in paragraph (C) shall not apply to  
16 (i) construction materials, supplies or equipment used to  
17 construct, reconstruct, remodel, repair or maintain facilities  
18 not used directly by the purchaser in the production, delivering  
19 or rendition of public utility service, (ii) construction  
20 materials, supplies or equipment used to construct, reconstruct,  
21 remodel, repair or maintain a building, road or similar  
22 structure, or (iii) tools and equipment used but not installed  
23 in the maintenance of facilities used directly in the  
24 production, delivering or rendition of a public utility service.

25 The exclusions provided in paragraphs (A), (B), (C) and (D)  
26 shall not apply to the services enumerated in clauses (k)(11)  
27 through (18) and (w) through (kk), except that the exclusion  
28 provided in this subclause for farming[, dairying and  
29 agriculture] shall apply to the service enumerated in clause  
30 (z).

1       \* \* \*

2       (o)   "Use."

3       \* \* \*

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

22       (A)   Any tangible personal property acquired and kept,  
23   retained or over which power is exercised within this  
24   Commonwealth on which the taxing of the storage, use or other  
25   consumption thereof is expressly prohibited by the Constitution  
26   of the United States or which is excluded from tax under other  
27   provisions of this article.

28       (B)   The use or consumption of tangible personal property,  
29   including but not limited to machinery and equipment and parts  
30   therefor, and supplies or the obtaining of the services

1 described in subclauses (2), (3) and (4) of this clause directly  
2 in the operations of--

3 (i) The manufacture of tangible personal property;

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

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

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

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

1       The exclusion provided in subparagraph (iii) shall not apply  
2 to (A) construction materials, supplies or equipment used to  
3 construct, reconstruct, remodel, repair or maintain facilities  
4 not used directly by the purchaser in the production, delivering  
5 or rendition of public utility service or (B) tools and  
6 equipment used but not installed in the maintenance of  
7 facilities used directly in the production, delivering or  
8 rendition of a public utility service.

9       The exclusion provided in subparagraphs (i), (ii), (iii) and  
10 (iv) shall not apply to the services enumerated in clauses  
11 (o)(9) through (16) and (w) through (kk), except that the  
12 exclusion provided in subparagraph (ii) for farming[, dairying  
13 and agriculture] shall apply to the service enumerated in clause  
14 (z).

15       \* \* \*

16       ~~(nn) "Farming." The science or art of cultivating the soil,~~  
17 ~~producing crops and raising livestock and, in varying degrees,~~  
18 ~~the preparing of these products for man's use and their disposal~~  
19 ~~(as by marketing). The term shall include: (i) dairying,~~  
20 ~~agriculture, horticulture or floriculture when engaged in as a~~  
21 ~~business enterprise, (ii) the breeding or raising of horses for~~  
22 ~~commercial purposes, including, but not limited to, pleasure~~  
23 ~~riding, drafting and racing, (iii) the propagation and raising~~  
24 ~~of ranch-raised fur bearing animals and (iv) the propagation of~~  
25 ~~game birds for commercial purposes by holders of propagation~~  
26 ~~permits issued under 34 Pa.C.S. (relating to game).~~

27       Section 2. Section 204 of the act is amended by adding  
28 clauses to read:

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

1       \* \* \*

2       (38.1) The sale at retail or use of horses, or interests in  
3 horses, by the purchaser or user for breeding, racing,  
4 commercial or investment purposes.

5       (38.2) The sale at retail or use of stallion services.

6       \* \* \*

7       (53) The sale at retail or use of feed, tack, harnesses,  
8 supplies, equipment, farming implements and farming equipment  
9 used or consumed in the care, feeding, breeding, raising and  
10 selling of all horses and mules.

11       Section 3. This act shall take effect in 60 days.