

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2429

Session of  
2002

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INTRODUCED BY McNAUGHTON, SAYLOR, TULLI AND BOYES,  
MARCH 14, 2002

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
APRIL 9, 2002

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## 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 defining "tangible personal property" and  
11 "telecommunications service"; defining "mobile  
12 telecommunications service"; further providing for rules  
13 relating to the sourcing of the sales and use tax relating to  
14 certain mobile telecommunications services AND FOR EXEMPTIONS <—  
15 FROM THE RETAIL SALES TAX; and providing for special rules <—  
16 for telecommunications services; FURTHER DEFINING <—  
17 "COMPENSATION" FOR PURPOSES OF PERSONAL INCOME TAXATION; AND  
18 FURTHER PROVIDING FOR SETTLEMENT AND RESETTLEMENT OF THE  
19 CORPORATE NET INCOME TAX.

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

22 Section 1. Section 201(m) and (rr) of the act of March 4,  
23 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
24 amended or added April 23, 1998 (P.L.239, No.45) and May 24,  
25 2000 (P.L.106, No.23), are amended and the section is amended by

1 adding a clause to read:

2 Section 201. Definitions.--The following words, terms and  
3 phrases when used in this Article II shall have the meaning  
4 ascribed to them in this section, except where the context  
5 clearly indicates a different meaning:

6 \* \* \*

7 (m) "Tangible personal property." Corporeal personal  
8 property including, but not limited to, goods, wares,  
9 merchandise, steam and natural and manufactured and bottled gas  
10 for non-residential use, electricity for non-residential use,  
11 prepaid telecommunications, premium cable or premium video  
12 programming service, spirituous or vinous liquor and malt or  
13 brewed beverages and soft drinks, interstate telecommunications  
14 service originating or terminating in this Commonwealth and  
15 charged to a service address in this Commonwealth (other than  
16 mobile telecommunications service), intrastate  
17 telecommunications service with the exception of (i) subscriber  
18 line charges and basic local telephone service for residential  
19 use and (ii) charges for telephone calls paid for by inserting  
20 money into a telephone accepting direct deposits of money to  
21 operate, provided further, the service address of any intrastate  
22 telecommunications service [is] (other than mobile  
23 telecommunications service) shall be deemed to be within this  
24 Commonwealth or within a political subdivision, regardless of  
25 how or where billed or paid[.], intrastate and interstate mobile  
26 telecommunications services which are deemed to be provided to a  
27 customer by a home service provider under 4 U.S.C. § 117(a)  
28 (relating to sourcing rules), subject to the specific exceptions  
29 in 4 U.S.C. § 116(c) (relating to rules for determining State  
30 and local government treatment of charges related to mobile

1 telecommunications services), if the place of primary use of  
2 that customer is located within this Commonwealth, without  
3 regard to whether individual transmissions originate or  
4 terminate within this Commonwealth. Mobile telecommunications  
5 services shall not include charges billed to a customer whose  
6 primary place of use is outside this Commonwealth. In the case  
7 of any [such] interstate or intrastate telecommunications  
8 service (other than mobile telecommunications services), any  
9 charge paid through a credit or payment mechanism which does not  
10 relate to a service address, such as a bank, travel, credit or  
11 debit card, but not including prepaid telecommunications, is  
12 deemed attributable to the address of origination of the  
13 telecommunications service.

14 \* \* \*

15 (rr) "Telecommunications service." Any one-way transmission  
16 or any two-way, interactive transmission of sounds, signals or  
17 other intelligence converted to like form which effects or is  
18 intended to effect meaningful communications by electronic or  
19 electromagnetic means via wire, cable, satellite, light waves,  
20 microwaves, radio waves or other transmission media. The term  
21 includes all types of telecommunication transmissions, such as  
22 local, toll, wide-area or any other type of telephone service;  
23 private line service; telegraph service; radio repeater service;  
24 wireless communication service; personal communications system  
25 service; cellular telecommunication service[;], including mobile  
26 telecommunications service; specialized mobile radio service;  
27 stationary two-way radio service; and paging service. The term  
28 does not include any of the following:

29 (1) Subscriber charges for access to a video dial tone  
30 system.

(2) Charges to video programmers for the transport of video programming.

(3) Charges for access to the Internet. Access to the Internet does not include any of the following:

(A) The transport over the Internet or any proprietary network using the Internet protocol of telephone calls, facsimile transmissions or other telecommunications traffic to or from end users on the public switched telephone network if the signal sent from or received by an end user is not in an Internet protocol.

(B) Telecommunication services purchased by an Internet service provider to deliver access to the Internet to its customers.

\* \* \*

(aaa) "Mobile telecommunications service." Commercial mobile radio service, as defined in 47 CFR § 20.3 (relating to definitions). For purposes of applying the provisions of this article to mobile telecommunications services, words and phrases used in 4 U.S.C. § 124 (relating to definitions) shall have the meanings given to such words and phrases in that act.

SECTION 2. SECTION 204 OF THE ACT IS AMENDED BY ADDING CLAUSES TO READ:

SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY SECTION 202 SHALL NOT BE IMPOSED UPON

\* \* \*

(62) IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT, THE SALE AT RETAIL OR USE OF TANGIBLE PERSONAL PROPERTY DURING ANY PERIOD DESIGNATED BY THE SECRETARY OF REVENUE AT THE DIRECTION OF THE GOVERNOR.

(63) THE SALE AT RETAIL TO OR USE BY A PUBLIC SCHOOL

DISTRICT OR A CONSTRUCTION CONTRACTOR EMPLOYED BY A PUBLIC SCHOOL DISTRICT, OF ANY MATERIALS AND BUILDING SUPPLIES USED IN THE CONSTRUCTION, RECONSTRUCTION, REMODELING, REPAIRS AND MAINTENANCE OF ANY PUBLIC SCHOOL BUILDING, FACILITY OR STRUCTURE WITHIN THIS COMMONWEALTH.

(64) THE SALE AT RETAIL OR USE OF BOOKS.

Section ~~2~~ 3. The act is amended by adding a section to read: <—

Section 228. Special Rules for Mobile Telecommunications Services.--(a) The provisions and definitions of 4 U.S.C. §§ 116 (relating to rules for determining State and local government treatment of charges related to mobile telecommunications services) through 126 (relating to no inference) shall apply for purposes of this article to the sale or use of mobile telecommunications services.

(b) (1) If a customer believes that an amount of tax, charge, fee or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer and any other information that the home service provider reasonably requires to process the request.

(2) Within sixty days of receiving a notice under this section, the home service provider shall review its records. If the review shows that the amount of tax, charge, fee, assignment of place of primary use or taxing jurisdiction is in error, then the home service provider shall correct the error and refund or credit the amount of tax, charge or fee erroneously collected

1 from the customer for a period of up to two years from the date  
2 of the customer's written notice. If this review shows that the  
3 amount of tax, charge, fee, assignment of place of primary use  
4 or taxing jurisdiction is correct, then the home service  
5 provider shall provide a written explanation to the customer.

6 (3) The procedures in this section shall be the first course  
7 of remedy available to a customer who seeks correction of  
8 assignment of place of primary use or taxing jurisdiction or a  
9 refund of or other compensation for taxes, charges or fees  
10 erroneously collected by the home service provider, and no cause  
11 of action based upon a dispute arising from such taxes, charges  
12 or fees shall accrue to the extent otherwise permitted by law  
13 until a customer has exhausted the rights and procedures set  
14 forth in this section.

15 (c) For purposes of a tax imposed by a political  
16 subdivision, locality or other taxing authority subordinate to  
17 the Commonwealth, which tax is in whole or in part imposed on or  
18 measured by reference to mobile telecommunications services, the  
19 tax shall only be imposed on such mobile telecommunications  
20 services to the extent they are sitused to the taxing authority,  
21 in accordance with the provisions of this article.

22 SECTION 4. SECTION 301(D) OF THE ACT, AMENDED APRIL 23, 1998 <—  
23 (P.L.239, NO.45), IS AMENDED TO READ:

24 SECTION 301. DEFINITIONS.--THE FOLLOWING WORDS, TERMS AND  
25 PHRASES WHEN USED IN THIS ARTICLE SHALL HAVE THE MEANING  
26 ASCRIBED TO THEM IN THIS SECTION EXCEPT WHERE THE CONTEXT  
27 CLEARLY INDICATES A DIFFERENT MEANING. UNLESS SPECIFICALLY  
28 PROVIDED OTHERWISE, ANY REFERENCE IN THIS ARTICLE TO THE  
29 INTERNAL REVENUE CODE SHALL INCLUDE THE INTERNAL REVENUE CODE OF  
30 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.), AS AMENDED TO

1 JANUARY 1, 1997:

2 \* \* \*

3 (D) "COMPENSATION" MEANS AND SHALL INCLUDE SALARIES, WAGES,  
4 COMMISSIONS, BONUSES AND INCENTIVE PAYMENTS WHETHER BASED ON  
5 PROFITS OR OTHERWISE, FEES, TIPS AND SIMILAR REMUNERATION  
6 RECEIVED FOR SERVICES RENDERED, WHETHER DIRECTLY OR THROUGH AN  
7 AGENT, AND WHETHER IN CASH OR IN PROPERTY.

8 THE TERM "COMPENSATION" SHALL NOT MEAN OR INCLUDE: (I)  
9 PERIODIC PAYMENTS FOR SICKNESS AND DISABILITY OTHER THAN REGULAR  
10 WAGES RECEIVED DURING A PERIOD OF SICKNESS OR DISABILITY; OR  
11 (II) DISABILITY, RETIREMENT OR OTHER PAYMENTS ARISING UNDER  
12 WORKMEN'S COMPENSATION ACTS, OCCUPATIONAL DISEASE ACTS AND  
13 SIMILAR LEGISLATION BY ANY GOVERNMENT; OR (III) PAYMENTS  
14 COMMONLY RECOGNIZED AS OLD AGE OR RETIREMENT BENEFITS PAID TO  
15 PERSONS RETIRED FROM SERVICE AFTER REACHING A SPECIFIC AGE OR  
16 AFTER A STATED PERIOD OF EMPLOYMENT; OR (IV) PAYMENTS COMMONLY  
17 KNOWN AS PUBLIC ASSISTANCE, OR UNEMPLOYMENT COMPENSATION  
18 PAYMENTS BY ANY GOVERNMENTAL AGENCY; OR (V) PAYMENTS TO  
19 REIMBURSE ACTUAL EXPENSES; OR (VI) PAYMENTS MADE BY EMPLOYERS OR  
20 LABOR UNIONS, INCLUDING PAYMENTS MADE PURSUANT TO A CAFETERIA  
21 PLAN QUALIFYING UNDER SECTION 125 OF THE INTERNAL REVENUE CODE  
22 OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 125), FOR EMPLOYEE  
23 BENEFIT PROGRAMS COVERING HOSPITALIZATION, SICKNESS, DISABILITY  
24 OR DEATH, SUPPLEMENTAL UNEMPLOYMENT BENEFITS OR STRIKE BENEFITS:  
25 PROVIDED, THAT THE PROGRAM DOES NOT DISCRIMINATE IN FAVOR OF  
26 HIGHLY COMPENSATED INDIVIDUALS AS TO ELIGIBILITY TO PARTICIPATE,  
27 PAYMENTS OR PROGRAM BENEFITS; OR (VII) ANY COMPENSATION RECEIVED  
28 BY UNITED STATES SERVICEMEN SERVING IN A COMBAT ZONE; OR (VIII)  
29 PAYMENTS RECEIVED BY A FOSTER PARENT FOR IN-HOME CARE OF FOSTER  
30 CHILDREN FROM AN AGENCY OF THE COMMONWEALTH OR A POLITICAL

1 SUBDIVISION THEREOF OR AN ORGANIZATION EXEMPT FROM FEDERAL TAX  
2 UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1954  
3 WHICH IS LICENSED BY THE COMMONWEALTH OR A POLITICAL SUBDIVISION  
4 THEREOF AS A PLACEMENT AGENCY; OR (IX) PAYMENTS MADE BY  
5 EMPLOYERS OR LABOR UNIONS FOR EMPLOYEE BENEFIT PROGRAMS COVERING  
6 SOCIAL SECURITY OR RETIREMENT; OR (X) PERSONAL USE OF AN  
7 EMPLOYER'S OWNED OR LEASED PROPERTY OR OF EMPLOYER-PROVIDED  
8 SERVICES[.]; OR (XI) RECEIPT OF FOOD AND/OR MEDICINE NOT  
9 EXCEEDING FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200) PER YEAR  
10 FROM A LAWFUL PROMOTION FROM A PERSON DOING BUSINESS IN THIS  
11 COMMONWEALTH THAT IS NOT RESOLD AND WHICH IS UTILIZED FOR  
12 PERSONAL AND/OR FAMILY USE.

13 \* \* \*

14 SECTION 5. SECTION 407(D) OF THE ACT, AMENDED AUGUST 4, 1991  
15 (P.L.97, NO.22), IS AMENDED TO READ:

16 SECTION 407. SETTLEMENT AND RESETTLEMENT.--\* \* \*

17 (D) (1) IF ANY CORPORATION SHALL NEGLECT OR REFUSE TO MAKE  
18 ANY REPORT AND PAYMENT OF TAX REQUIRED BY THIS ARTICLE, THE  
19 DEPARTMENT SHALL ESTIMATE THE TAX DUE BY SUCH CORPORATION AND  
20 SUBJECT TO AUDIT AND APPROVAL BY THE DEPARTMENT OF THE AUDITOR  
21 GENERAL, SETTLE THE AMOUNT DUE BY IT FOR TAXES, PENALTIES, AND  
22 INTEREST THEREON AS PRESCRIBED HEREIN, FROM WHICH SETTLEMENT  
23 THERE SHALL BE NO RIGHT OF REVIEW OR APPEAL, BUT THE DEPARTMENT,  
24 WITH THE APPROVAL OF THE DEPARTMENT OF THE AUDITOR GENERAL, MAY  
25 REQUIRE A REPORT TO BE FILED, AND THEREUPON MAKE A SETTLEMENT  
26 BASED UPON SUCH REPORT AND CANCEL THE ESTIMATED SETTLEMENT.

27 (2) IF THE DEPARTMENT FINDS THAT A CORPORATION DESIGNS  
28 QUICKLY TO DEPART FROM THIS COMMONWEALTH, REMOVE PROPERTY FROM  
29 THIS COMMONWEALTH OR DO ANY OTHER ACT THAT MAY PREJUDICE OR  
30 RENDER WHOLLY OR PARTLY INEFFECTUAL AN ACTION TO COLLECT ANY



1 TAX, PENALTY OR INTEREST DUE UNDER THIS ARTICLE, WHEREBY IT  
2 BECOMES IMPORTANT THAT SUCH PROCEEDINGS BE BROUGHT WITHOUT  
3 DELAY, THE DEPARTMENT MAY IMMEDIATELY MAKE AN ESTIMATED  
4 ASSESSMENT OF TAXES, PENALTIES AND INTEREST DUE UNDER THIS  
5 ARTICLE WHETHER OR NOT ANY REPORT IS THEN DUE BY LAW AND MAY  
6 PROCEED UNDER SUCH ESTIMATED ASSESSMENT TO COLLECT THE TAX,  
7 PENALTIES AND INTEREST, OR COMPEL SECURITY FOR THE SAME, AND  
8 THEREAFTER SHALL CAUSE NOTICE OF SUCH FINDING TO BE GIVEN TO  
9 SUCH CORPORATION, TOGETHER WITH A DEMAND FOR AN IMMEDIATE REPORT  
10 AND IMMEDIATE PAYMENT OF SUCH TAX, PENALTIES AND INTEREST. IF  
11 THE CORPORATION RECEIVING AN ESTIMATED ASSESSMENT FILES ALL  
12 REQUIRED REPORTS, THE ESTIMATED ASSESSMENT SHALL BE CANCELED  
13 AFTER SUCH REPORTS HAVE BEEN SETTLED UNDER THIS SECTION AND THE  
14 CORPORATION HAS PAID THE TAXES, PENALTIES AND INTEREST DUE UNDER  
15 SUCH SETTLEMENT.

16 \* \* \*

17 Section 3 6. The amendment or addition of sections 201 and <—  
18 228 of the act shall not affect the interpretation of those  
19 sections with respect to any issue other than the imposition of  
20 tax on a sale or use of mobile telecommunications service  
21 purchased at retail.

22 SECTION 7. THE DEPARTMENT OF REVENUE SHALL PROMULGATE <—  
23 REGULATIONS TO REQUIRE REPORTS FROM PERSONS REQUIRED TO COLLECT  
24 THE TAX UNDER ARTICLE II OF THE ACT. THE REPORTS SHALL STATE THE  
25 AMOUNT OF TAX WHICH WOULD HAVE BEEN COLLECTED BUT FOR THE  
26 ADDITION OF SECTION 204(62) OF THE ACT.

27 SECTION 8. FOR PURPOSES OF DETERMINING ELIGIBILITY FOR THE  
28 PHARMACEUTICAL ASSISTANCE CONTRACT FOR THE ELDERLY AND THE  
29 PHARMACEUTICAL ASSISTANCE CONTRACT FOR THE ELDERLY NEEDS  
30 ENHANCEMENT TIER, RECEIPT OF FOOD AND/OR MEDICINE NOT EXCEEDING

1 \$5,200 PER YEAR FROM A LAWFUL PROMOTION FROM A PERSON DOING  
2 BUSINESS IN THIS COMMONWEALTH THAT IS NOT RESOLD AND WHICH IS  
3 UTILIZED FOR PERSONAL AND/OR FAMILY USE SHALL NOT BE DEEMED  
4 INCOME.

5 Section 4 9. If a court of competent jurisdiction enters a <—  
6 final judgment on the merits that is based on Federal law, is no  
7 longer subject to appeal and substantially limits or impairs the  
8 essential elements of 4 U.S.C. §§ 116 through 126, then the  
9 provisions of this act CONCERNING THE AMENDMENT OR ADDITION OF <—  
10 SECTIONS 201(M), (RR) AND (AAA) AND 228 OF THE ACT shall be  
11 invalid and have no legal effect as of the date of entry of such  
12 judgment.

13 ~~Section 5. The provisions of this act shall apply to~~ <—  
14 ~~customer bills issued after August 1, 2002.~~

15 ~~Section 6. This act shall take effect immediately.~~

16 SECTION 10. THE FOLLOWING PROVISIONS SHALL APPLY TO CUSTOMER <—  
17 BILLS ISSUED AFTER AUGUST 1, 2002:

18 (1) THE AMENDMENT OR ADDITION OF SECTIONS 201 AND 228 OF  
19 THE ACT.

20 (2) SECTIONS 6 AND 9 OF THIS ACT.

21 SECTION 11. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

22 (1) THE AMENDMENT OF SECTION 204(64) OF THE ACT SHALL  
23 TAKE EFFECT IN 60 DAYS.

24 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT  
25 IMMEDIATELY.