

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1236 Session of  
2001

INTRODUCED BY CORMAN, MOWERY, LEMMOND, MUSTO, MURPHY AND  
BOSCOLA, DECEMBER 6, 2001

REFERRED TO FINANCE, DECEMBER 6, 2001

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 "sale at retail" and "use" to  
11 exclude certain sales and uses related to telecommunications  
12 equipment and machinery; and defining "providing, delivering  
13 or rendering telecommunications service" and "Internet  
14 service."

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

17 Section 1. Section 201(k) and (o) of the act of March 4,  
18 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
19 amended May 7, 1997 (P.L.85, No.7), and April 23, 1998 (P.L.239,  
20 No.45), are amended and the section is amended by adding clauses  
21 to read:

22 Section 201. Definitions.--The following words, terms and  
23 phrases when used in this Article II shall have the meaning

1 ascribed to them in this section, except where the context  
2 clearly indicates a different meaning:

3 \* \* \*

4 (k) "Sale at retail."

5 (1) Any transfer, for a consideration, of the ownership,  
6 custody or possession of tangible personal property, including  
7 the grant of a license to use or consume whether such transfer  
8 be absolute or conditional and by whatsoever means the same  
9 shall have been effected.

10 (2) The rendition of the service of printing or imprinting  
11 of tangible personal property for a consideration for persons  
12 who furnish, either directly or indirectly the materials used in  
13 the printing or imprinting.

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

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

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

20 (4) The rendition for a consideration of the service of  
21 repairing, altering, mending, pressing, fitting, dyeing,  
22 laundering, drycleaning or cleaning tangible personal property  
23 other than wearing apparel or shoes, or applying or installing  
24 tangible personal property as a repair or replacement part of  
25 other tangible personal property except wearing apparel or shoes  
26 for a consideration, whether or not the services are performed  
27 directly or by any means other than by coin-operated self-  
28 service laundry equipment for wearing apparel or household goods  
29 and whether or not any tangible personal property is transferred  
30 in conjunction therewith, except such services as are rendered

1 in the construction, reconstruction, remodeling, repair or  
2 maintenance of real estate: Provided, however, That this  
3 subclause shall not be deemed to impose tax upon such services  
4 in the preparation for sale of new items which are excluded from  
5 the tax under clause (26) of section 204, or upon diaper  
6 service.

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

12 The term "sale at retail" shall not include [(i)]:

13 (i) any such transfer of tangible personal property or  
14 rendition of services for the purpose of resale, or [(ii)]

15 (ii), such rendition of services or the transfer of tangible  
16 personal property including, but not limited to, machinery and  
17 equipment and parts therefor and supplies to be used or consumed  
18 by the purchaser directly in the operations of--

19 (A) The manufacture of tangible personal property.

20 (B) Farming, dairying, agriculture, horticulture or  
21 floriculture when engaged in as a business enterprise. The term  
22 "farming" shall include the propagation and raising of ranch  
23 raised fur-bearing animals and the propagation of game birds for  
24 commercial purposes by holders of propagation permits issued  
25 under 34 Pa.C.S. (relating to game) and the propagation and  
26 raising of horses to be used exclusively for commercial racing  
27 activities.

28 (C) The producing, delivering or rendering of a public  
29 utility service, or in constructing, reconstructing, remodeling,  
30 repairing or maintaining the facilities which are directly used

1 in producing, delivering or rendering such service.

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

3 The exclusions provided in paragraphs (A), (B), (C) and (D)  
4 shall not apply to any vehicle required to be registered under  
5 The Vehicle Code, except those vehicles used directly by a  
6 public utility engaged in business as a common carrier; to  
7 maintenance facilities; or to materials, supplies or equipment  
8 to be used or consumed in the construction, reconstruction,  
9 remodeling, repair or maintenance of real estate other than  
10 directly used machinery, equipment, parts or foundations  
11 therefor that may be affixed to such real estate.

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

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

29 The exclusions provided in paragraphs (A), (B), (C) and (D)  
30 shall not apply to the services enumerated in clauses (k)(11)

through (18) and (w) through (kk), except that the exclusion provided in this subclause for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

(iii) The rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed in the operations of providing, delivering or rendering telecommunications services.

This exclusion shall not apply to any vehicle required to be registered under "The Vehicle Code," except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

This exclusion shall not apply to tangible personal property or services to be used or consumed in managerial, sales or other nonoperational activities. The exclusion shall not apply to telecommunications services purchased by an Internet service provider to deliver Internet access to its customers.

This exclusion shall not apply to the services enumerated in clauses (k)(11) through (18) and (w) through (kk).

(9) Where tangible personal property or services are utilized for purposes constituting a "sale at retail" and for purposes excluded from the definition of "sale at retail," it shall be presumed that such tangible personal property or services are utilized for purposes constituting a "sale at retail" and subject to tax unless the user thereof proves to the department that the predominant purposes for which such tangible

1 personal property or services are utilized do not constitute a  
2 "sale at retail."

3 (10) The term "sale at retail" with respect to "liquor" and  
4 "malt or brewed beverages" shall include the sale of "liquor" by  
5 any "Pennsylvania liquor store" to any person for any purpose,  
6 and the sale of "malt or brewed beverages" by a "manufacturer of  
7 malt or brewed beverages," "distributor" or "importing  
8 distributor" to any person for any purpose, except sales by a  
9 "manufacturer of malt or brewed beverages" to a "distributor" or  
10 "importing distributor" or sales by an "importing distributor"  
11 to a "distributor" within the meaning of the "Liquor Code." The  
12 term "sale at retail" shall not include any sale of "malt or  
13 brewed beverages" by a "retail dispenser" or any sale of  
14 "liquor" or "malt or brewed beverages" by a person holding a  
15 "retail liquor license" within the meaning of and pursuant to  
16 the provisions of the "Liquor Code," but shall include any sale  
17 of "liquor" or "malt or brewed beverages" other than pursuant to  
18 the provisions of the "Liquor Code."

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

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

22 (13) The rendition for a consideration of secretarial or  
23 editing services.

24 (14) The rendition for a consideration of disinfecting or  
25 pest control services, building maintenance or cleaning  
26 services.

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

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

30 (18) The rendition for a consideration of self-storage

1 service.

2 \* \* \*

3 (o) "Use."

4 (1) The exercise of any right or power incidental to the  
5 ownership, custody or possession of tangible personal property  
6 and shall include, but not be limited to transportation, storage  
7 or consumption.

8 (2) The obtaining by a purchaser of the service of printing  
9 or imprinting of tangible personal property when such purchaser  
10 furnishes, either directly or indirectly, the articles used in  
11 the printing or imprinting.

12 (3) The obtaining by a purchaser of the services of (i)  
13 washing, cleaning, waxing, polishing or lubricating of motor  
14 vehicles whether or not any tangible personal property is  
15 transferred to the purchaser in conjunction with such services,  
16 and (ii) inspecting motor vehicles pursuant to the mandatory  
17 requirements of "The Vehicle Code."

18 (4) The obtaining by a purchaser of the service of  
19 repairing, altering, mending, pressing, fitting, dyeing,  
20 laundering, drycleaning or cleaning tangible personal property  
21 other than wearing apparel or shoes or applying or installing  
22 tangible personal property as a repair or replacement part of  
23 other tangible personal property other than wearing apparel or  
24 shoes, whether or not the services are performed directly or by  
25 any means other than by means of coin-operated self-service  
26 laundry equipment for wearing apparel or household goods, and  
27 whether or not any tangible personal property is transferred to  
28 the purchaser in conjunction therewith, except such services as  
29 are obtained in the construction, reconstruction, remodeling,  
30 repair or maintenance of real estate: Provided, however, That

1 this subclause shall not be deemed to impose tax upon such  
2 services in the preparation for sale of new items which are  
3 excluded from the tax under clause (26) of section 204, or upon  
4 diaper service: And provided further, That the term "use" shall  
5 not include--

6 (A) Any tangible personal property acquired and kept,  
7 retained or over which power is exercised within this  
8 Commonwealth on which the taxing of the storage, use or other  
9 consumption thereof is expressly prohibited by the Constitution  
10 of the United States or which is excluded from tax under other  
11 provisions of this article.

12 (B) The use or consumption of tangible personal property,  
13 including but not limited to machinery and equipment and parts  
14 therefor, and supplies or the obtaining of the services  
15 described in subclauses (2), (3) and (4) of this clause directly  
16 in the operations of--

17 (i) The manufacture of tangible personal property.

18 (ii) 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 furbearing 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) and the propagation and  
24 raising of horses to be used exclusively for commercial racing  
25 activities.

26 (iii) The producing, delivering or rendering of a public  
27 utility service, or in constructing, reconstructing, remodeling,  
28 repairing or maintaining the facilities which are directly used  
29 in producing, delivering or rendering such service.

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



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

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

25       The exclusion provided in subparagraphs (i), (ii), (iii) and  
26 (iv) shall not apply to the services enumerated in clauses  
27 (o)(9) through (16) and (w) through (kk), except that the  
28 exclusion provided in subparagraph (ii) for farming, dairying  
29 and agriculture shall apply to the service enumerated in clause  
30 (z).

1     (C) The rendition of services or the transfer of tangible  
2 personal property including, but not limited to, machinery and  
3 equipment and parts therefor and supplies to be used or consumed  
4 in the operations of providing, delivering or rendering  
5 telecommunications service.

6     The exclusion shall not apply to any vehicle required to be  
7 registered under "The Vehicle Code," except those vehicles used  
8 directly by a public utility engaged in business as a common  
9 carrier; to maintenance facilities; or to materials, supplies or  
10 equipment to be used or consumed in the construction,  
11 reconstruction, remodeling, repair or maintenance of real estate  
12 other than machinery, equipment, parts or foundations therefor  
13 that may be affixed to such real estate.

14     The exclusion shall not apply to tangible personal property  
15 or services to be used or consumed in managerial, sales or other  
16 nonoperational activities. The exclusion shall not apply to  
17 telecommunication services purchased by an Internet service  
18 provider to deliver Internet access to its customers.

19     The exclusion shall not apply to the services enumerated in  
20 clauses (o)(9) through (16) and (w) through (kk).

21     (5) Where tangible personal property or services are  
22 utilized for purposes constituting a "use," as herein defined,  
23 and for purposes excluded from the definition of "use," it shall  
24 be presumed that such property or services are utilized for  
25 purposes constituting a "sale at retail" and subject to tax  
26 unless the user thereof proves to the department that the  
27 predominant purposes for which such property or services are  
28 utilized do not constitute a "sale at retail."

29     (6) The term "use" with respect to "liquor" and "malt or  
30 brewed beverages" shall include the purchase of "liquor" from

1 any "Pennsylvania liquor store" by any person for any purpose  
2 and the purchase of "malt or brewed beverages" from a  
3 "manufacturer of malt or brewed beverages," "distributor" or  
4 "importing distributor" by any person for any purpose, except  
5 purchases from a "manufacturer of malt or brewed beverages" by a  
6 "distributor" or "importing distributor," or purchases from an  
7 "importing distributor" by a "distributor" within the meaning of  
8 the "Liquor Code." The term "use" shall not include any purchase  
9 of "malt or brewed beverages" from a "retail dispenser" or any  
10 purchase of "liquor" or "malt or brewed beverages" from a person  
11 holding a "retail liquor license" within the meaning of and  
12 pursuant to the provisions of the "Liquor Code," but shall  
13 include the exercise of any right or power incidental to the  
14 ownership, custody or possession of "liquor" or "malt or brewed  
15 beverages" obtained by the person exercising such right or power  
16 in any manner other than pursuant to the provisions of the  
17 "Liquor Code."

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

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

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

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

28 (11) The obtaining by the purchaser of secretarial or  
29 editing services.

30 (12) The obtaining by the purchaser of disinfecting or pest

1 control services, building maintenance or cleaning services.

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

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

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

6 (17) The obtaining by a construction contractor of tangible  
7 personal property or services provided to tangible personal  
8 property which will be used pursuant to a construction contract  
9 whether or not the tangible personal property or services are  
10 transferred.

11 \* \* \*

12 (rr.1) "Providing, delivering or rendering  
13 telecommunications service." Shall include, but not be limited  
14 to, receiving, initiating, amplifying, processing, transmitting,  
15 retransmitting, switching, or monitoring of switching of  
16 telecommunications services and/or Internet services by a  
17 telecommunications provider, or by a person furnishing any such  
18 services or portion thereof directly or indirectly to a  
19 telecommunications provider, or to upgrade telecommunications  
20 systems or cable television systems to allow for the receiving,  
21 initiating, amplifying, processing, transmitting,  
22 retransmitting, switching, or monitoring of switching of  
23 telecommunications services, digital cable television services  
24 and/or Internet services by a telecommunications provider, or by  
25 a person furnishing any such services or portion thereof  
26 directly or indirectly to a telecommunications provider. A  
27 telecommunications provider means a provider of  
28 telecommunications services for a fee directly to the public or  
29 part thereof.

30 \* \* \*

1        (ss.1) "Internet service." The offering or provision of use  
2 of the Internet.

3        \* \* \*

4        Section 2. This act shall take effect August 1, 2002.