

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 338 Session of
2003

INTRODUCED BY MANN, LEDERER, THOMAS, GEIST, S. MILLER,
YOUNGBLOOD, KIRKLAND, MARKOSEK, WATSON, COY, NAILOR,
HUTCHINSON, CORRIGAN, READSHAW, BAKER, FORCIER, CAPPELLI,
J. WILLIAMS, WILT, WALKO, LAUGHLIN, BARRAR, HERMAN, DALEY,
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CURRY, DALLY, MELIO, SEMMEL, BENNINGHOFF, SHANER, SOLOBAY,
MAHER, WASHINGTON, McCALL, CAWLEY AND PALLONE,
FEBRUARY 18, 2003

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 18, 2003

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," repealing certain provisions imposing sales and
11 use tax on employment agency services and help supply
12 services.

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

15 Section 1. Section 201(g)(6), (k), (o), (bb) and (cc) of the
16 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
17 of 1971, amended or added August 4, 1991 (P.L.97, No.22),
18 December 13, 1991 (P.L.373, No.40), May 7, 1997 (P.L.85, No.7)
19 and April 23, 1998 (P.L.239, No.45), are amended to read:

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

5 * * *

6 (g) "Purchase price."

7 * * *

8 [(6) The purchase price of employment agency services and
9 help supply services shall be the service fee paid by the
10 purchaser to the vendor or supplying entity. The term "service
11 fee," as used in this subclause, shall be the total charge or
12 fee of the vendor or supplying entity minus the costs of the
13 supplied employee which costs are wages, salaries, bonuses and
14 commissions, employment benefits, expense reimbursements and
15 payroll and withholding taxes, to the extent that these costs
16 are specifically itemized or that these costs in aggregate are
17 stated in billings from the vendor or supplying entity. To the
18 extent that these costs are not itemized or stated on the
19 billings, then the service fee shall be the total charge or fee
20 of the vendor or supplying entity.]

21 * * *

22 (k) "Sale at retail."

23 (1) Any transfer, for a consideration, of the ownership,
24 custody or possession of tangible personal property, including
25 the grant of a license to use or consume whether such transfer
26 be absolute or conditional and by whatsoever means the same
27 shall have been effected.

28 (2) The rendition of the service of printing or imprinting
29 of tangible personal property for a consideration for persons
30 who furnish, either directly or indirectly the materials used in

1 the printing or imprinting.

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

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

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

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

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

30 The term "sale at retail" shall not include (i) any such

1 transfer of tangible personal property or rendition of services
2 for the purpose of resale, or (ii) such rendition of services or
3 the transfer of tangible personal property including, but not
4 limited to, machinery and equipment and parts therefor and
5 supplies to be used or consumed by the purchaser directly in the
6 operations of--

7 (A) The manufacture of tangible personal property.

8 (B) Farming, dairying, agriculture, horticulture or
9 floriculture when engaged in as a business enterprise. The term
10 "farming" shall include the propagation and raising of ranch
11 raised fur-bearing animals and the propagation of game birds for
12 commercial purposes by holders of propagation permits issued
13 under 34 Pa.C.S. (relating to game) and the propagation and
14 raising of horses to be used exclusively for commercial racing
15 activities.

16 (C) The producing, delivering or rendering of a public
17 utility service, or in constructing, reconstructing, remodeling,
18 repairing or maintaining the facilities which are directly used
19 in producing, delivering or rendering such service.

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

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

30 The exclusions provided in paragraphs (A), (B), (C) and (D)

1 shall not apply to tangible personal property or services to be
2 used or consumed in managerial sales or other nonoperational
3 activities, nor to the purchase or use of tangible personal
4 property or services by any person other than the person
5 directly using the same in the operations described in
6 paragraphs (A), (B), (C) and (D) herein.

7 The exclusion provided in paragraph (C) shall not apply to
8 (i) construction materials, supplies or equipment used to
9 construct, reconstruct, remodel, repair or maintain facilities
10 not used directly by the purchaser in the production, delivering
11 or rendition of public utility service, (ii) construction
12 materials, supplies or equipment used to construct, reconstruct,
13 remodel, repair or maintain a building, road or similar
14 structure, or (iii) tools and equipment used but not installed
15 in the maintenance of facilities used directly in the
16 production, delivering or rendition of a public utility service.

17 The exclusions provided in paragraphs (A), (B), (C) and (D)
18 shall not apply to the services enumerated in clauses (k)(11)
19 through (18) and (w) through (kk), except that the exclusion
20 provided in this subclause for farming, dairying and agriculture
21 shall apply to the service enumerated in clause (z).

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

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

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

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

20 (13) The rendition for a consideration of secretarial or
21 editing services.

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

25 [(15) The rendition for a consideration of employment agency
26 services or help supply services.]

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

28 (18) The rendition for a consideration of self-storage
29 service.

30 * * *

1 (o) "Use."

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

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

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

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

1 excluded from the tax under clause (26) of section 204, or upon
2 diaper service: And provided further, That the term "use" shall
3 not include--

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

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

15 (i) The manufacture of tangible personal property.

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

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

29 The exclusions provided in subparagraphs (i), (ii), (iii) and
30 (iv) shall not apply to any vehicle required to be registered

1 under The Vehicle Code except those vehicles directly used by a
2 public utility engaged in the 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 directly used machinery, equipment, parts or foundations
7 therefor that may be affixed to such real estate. The exclusions
8 provided in subparagraphs (i), (ii), (iii) and (iv) shall not
9 apply to tangible personal property or services to be used or
10 consumed in managerial sales or other nonoperational activities,
11 nor to the purchase or use of tangible personal property or
12 services by any person other than the person directly using the
13 same in the operations described in subparagraphs (i), (ii),
14 (iii) and (iv).

15 The exclusion provided in subparagraph (iii) shall not apply
16 to (A) 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 or (B) tools and
20 equipment used but not installed in the maintenance of
21 facilities used directly in the production, delivering or
22 rendition of a public utility service.

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

29 (5) Where tangible personal property or services are
30 utilized for purposes constituting a "use," as herein defined,

1 and for purposes excluded from the definition of "use," it shall
2 be presumed that such property or services are utilized for
3 purposes constituting a "sale at retail" and subject to tax
4 unless the user thereof proves to the department that the
5 predominant purposes for which such property or services are
6 utilized do not constitute a "sale at retail."

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

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

30 (8) The term "use" shall not include the providing of a

1 motor vehicle to a nonprofit private or public school to be used
2 by such a school for the sole purpose of driver education.

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

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

6 (11) The obtaining by the purchaser of secretarial or
7 editing services.

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

10 [(13) The obtaining by the purchaser of employment agency
11 services or help supply services.]

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

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

14 (17) The obtaining by a construction contractor of tangible
15 personal property or services provided to tangible personal
16 property which will be used pursuant to a construction contract
17 whether or not the tangible personal property or services are
18 transferred.

19 * * *

20 [(bb) "Employment agency services." Providing employment
21 services to a prospective employer or employe other than
22 employment services provided by theatrical employment agencies
23 and motion picture casting bureaus. Such services shall include,
24 but are not limited to, services of the type provided by
25 employment agencies, executive placing services and labor
26 contractor employment agencies other than farm labor.

27 (cc) "Help supply services." Providing temporary or
28 continuing help where the help supplied is on the payroll of the
29 supplying person or entity, but is under the supervision of the
30 individual or business to which help is furnished. Such services

1 include, but are not limited to, service of a type provided by
2 labor and manpower pools, employe leasing services, office help
3 supply services, temporary help services, usher services,
4 modeling services or fashion show model supply services. Such
5 services shall not include providing farm labor services. The
6 term shall not include human health-related services, including
7 nursing, home health care and personal care. As used in this
8 clause, "personal care" shall include providing at least one of
9 the following types of assistance to persons with limited
10 ability for self-care:

- 11 (1) dressing, bathing or feeding;
- 12 (2) supervising self-administered medication;
- 13 (3) transferring a person to or from a bed or wheelchair; or
- 14 (4) routine housekeeping chores when provided in conjunction
15 with and supplied by the same provider of the assistance listed
16 in subclause (1), (2) or (3).]

17 * * *

18 Section 2. This act shall take effect July 1, 2003.