

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 70 Session of 2009

INTRODUCED BY PICCOLA, RAFFERTY, WAUGH AND O'PAKE,  
JANUARY 29, 2009

REFERRED TO FINANCE, JANUARY 29, 2009

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," in sales and use tax, further providing for  
11 definitions and for exclusions from tax.

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

14 Section 1. Section 201(k)(4), (m) and (o)(4) and (8) of the  
15 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
16 of 1971, amended May 7, 1997 (P.L.85, No.7), April 23, 1998  
17 (P.L.239, No.45) and May 24, 2000 (P.L.106, No.23), are amended  
18 and subsection (k) is amended by adding a clause to read:

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

1 \* \* \*

2 (k) "Sale at retail."

3 \* \* \*

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

22 \* \* \*

23 (20) (i) The rendition for a consideration of any service,  
24 other than a medical service, when the primary objective of the  
25 purchaser is the receipt of any benefit of the service  
26 performed, as distinguished from the receipt of property. In  
27 determining what is a service, the intended use or stated  
28 objective of the contracting parties shall not necessarily be  
29 controlling. "Medical service" means any service obtained at or  
30 through a health care facility as defined in section 103 of the

1 act of July 19, 1979 (P.L.130, No.48), known as the "Health Care  
2 Facilities Act."

3 (ii) Any service performed in this Commonwealth shall be  
4 subject to the tax imposed under this article unless  
5 specifically exempted in this article. With respect to services,  
6 other than telecommunication services, such services shall be  
7 considered to be performed in this Commonwealth if:

8 (A) performed completely in this Commonwealth;

9 (B) performed partially in this Commonwealth and partially  
10 outside of this Commonwealth when the recipient or user of the  
11 service is located in this Commonwealth and no sales or use tax  
12 equal in rate to that imposed under this article has been paid  
13 to another state for the service performed partially in that  
14 state; or

15 (C) the place of performance cannot be determined if the  
16 recipient or user of the service is located in this  
17 Commonwealth.

18 (iii) With respect to services, other than telecommunication  
19 services, such services performed partially in this Commonwealth  
20 and partially outside of this Commonwealth shall be presumed to  
21 have been performed completely in this Commonwealth unless the  
22 taxpayer can show the place of performance by clear and  
23 convincing evidence. With respect to interstate  
24 telecommunication services, only those charges for interstate  
25 telecommunications which originate or are received in this  
26 Commonwealth and which are billed and charged to a service  
27 address in this Commonwealth shall be subject to tax.

28 \* \* \*

29 (m) "Tangible personal property." Corporeal personal  
30 property including, but not limited to, goods, wares,

1 merchandise, steam and natural and manufactured and bottled gas  
2 [for non-residential use], electricity [for non-residential  
3 use], prepaid telecommunications, premium cable or premium video  
4 programming service, spirituous or vinous liquor and malt or  
5 brewed beverages and soft drinks, interstate telecommunications  
6 service originating or terminating in the Commonwealth and  
7 charged to a service address in this Commonwealth, [intrastate  
8 telecommunications service with the exception of (i) subscriber  
9 line charges and basic local telephone service for residential  
10 use and (ii) charges for telephone calls paid for by inserting  
11 money into a telephone accepting direct deposits of money to  
12 operate,] provided further, the service address of any  
13 intrastate telecommunications service is deemed to be within  
14 this Commonwealth or within a political subdivision, regardless  
15 of how or where billed or paid. In the case of any such  
16 interstate or intrastate telecommunications service, any charge  
17 paid through a credit or payment mechanism which does not relate  
18 to a service address, such as a bank, travel, credit or debit  
19 card, but not including prepaid telecommunications, is deemed  
20 attributable to the address of origination of the  
21 telecommunications service.

22 \* \* \*

23 (o) "Use."

24 \* \* \*

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] including, but not limited to, wearing apparel or  
29 shoes or applying or installing tangible personal property as a  
30 repair or replacement part of other tangible personal property

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

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

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

25 (i) The manufacture of tangible personal property.

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

1 under 34 Pa.C.S. (relating to game) and the propagation and  
2 raising of horses to be used exclusively for commercial racing  
3 activities.

4 (iii) The producing, delivering or rendering of a public  
5 utility service, or in constructing, reconstructing, remodeling,  
6 repairing or maintaining the facilities which are directly used  
7 in producing, delivering or rendering such service.

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

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

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

1 facilities used directly in the production, delivering or  
2 rendition of a public utility service.

3 The exclusion provided in subparagraphs (i), (ii), (iii) and  
4 (iv) shall not apply to the services enumerated in clauses (o)  
5 (9) through (16) and (w) through (kk), except that the exclusion  
6 provided in subparagraph (ii) for farming, dairying and  
7 agriculture shall apply to the service enumerated in clause (z).

8 \* \* \*

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

12 \* \* \*

13 Section 2. Section 204 of the act, amended, added or  
14 repealed August 31, 1971 (P.L.362, No.93), July 20, 1974 (P.L.  
15 535, No.183), October 17, 1974 (P.L.756, No.255), December 14,  
16 1977 (P.L.322, No.93), October 27, 1979 (P.L.242, No.79),  
17 December 8, 1980 (P.L.1117, No.195), December 16, 1980 (P.L.  
18 1240, No.223), October 22, 1981 (P.L.314, No.109), June 23, 1982  
19 (P.L.610, No.172), December 9, 1982 (P.L.1047, No.246), July 21,  
20 1983 (P.L.63, No.29), December 19, 1985 (P.L.354, No.100), July  
21 13, 1987 (P.L.317, No.58), August 4, 1991 (P.L.97, No.22),  
22 December 13, 1991 (P.L.373, No.40), June 16, 1994 (P.L.279, No.  
23 48), June 30, 1995 (P.L.139, No.21), May 7, 1997 (P.L.85, No.7),  
24 April 23, 1998 (P.L.239, No.45), May 12, 1999 (P.L.26, No.4),  
25 May 24, 2000 (P.L.106, No.23), December 20, 2000 (P.L.841, No.  
26 119), June 22, 2001 (P.L.353, No.23), June 29, 2002 (P.L.559,  
27 No.89), December 23, 2003 (P.L.250, No.46), July 6, 2006 (P.L.  
28 319, No.67), November 29, 2006 (P.L.1630, No.189) and July 25,  
29 2007 (P.L.373, No.55), is amended to read:

30 Section 204. Exclusions from Tax.--The tax imposed by

1 section 202 shall not be imposed upon any of the following:

2 (1) The sale at retail or use of tangible personal property  
3 (other than motor vehicles, trailers, semi-trailers, motor  
4 boats, aircraft or other similar tangible personal property  
5 required under either Federal law or laws of this Commonwealth  
6 to be registered or licensed) or services sold by or purchased  
7 from a person not a vendor in an isolated transaction or sold by  
8 or purchased from a person who is a vendor but is not a vendor  
9 with respect to the tangible personal property or services sold  
10 or purchased in such transaction: Provided, That inventory and  
11 stock in trade so sold or purchased, shall not be excluded from  
12 the tax by the provisions of this subsection.

13 (2) The use of tangible personal property purchased by a  
14 nonresident person outside of, and brought into this  
15 Commonwealth for use therein for a period not to exceed seven  
16 days, or for any period of time when such nonresident is a  
17 tourist or vacationer and, in either case not consumed within  
18 the Commonwealth.

19 (3) The use of tangible personal property purchased outside  
20 this Commonwealth for use outside this Commonwealth by a then  
21 nonresident natural person or a business entity not actually  
22 doing business within this Commonwealth, who later brings such  
23 tangible personal property into this Commonwealth in connection  
24 with his establishment of a permanent business or residence in  
25 this Commonwealth: Provided, That such property was purchased  
26 more than six months prior to the date it was first brought into  
27 this Commonwealth or prior to the establishment of such business  
28 or residence, whichever first occurs. This exclusion shall not  
29 apply to tangible personal property temporarily brought into  
30 Pennsylvania for the performance of contracts for the

1 construction, reconstruction, remodeling, repairing and  
2 maintenance of real estate.

3 [(4) The sale at retail or use of disposable diapers; pre-  
4 moistened wipes; incontinence products; colostomy deodorants;  
5 toilet paper; sanitary napkins, tampons or similar items used  
6 for feminine hygiene; or toothpaste, toothbrushes or dental  
7 floss.

8 (5) The sale at retail or use of steam, natural and  
9 manufactured and bottled gas, fuel oil, electricity or  
10 intrastate subscriber line charges, basic local telephone  
11 service or telegraph service when purchased directly by the user  
12 thereof solely for his own residential use and charges for  
13 telephone calls paid for by inserting money into a telephone  
14 accepting direct deposits of money to operate.]

15 (10) The sale at retail to, or use by (i) any charitable  
16 organization, volunteer firemen's organization or nonprofit  
17 educational institution, or (ii) a religious organization for  
18 religious purposes of tangible personal property or services  
19 other than pursuant to a construction contract: Provided,  
20 however, That the exclusion of this clause shall not apply with  
21 respect to any tangible personal property or services used in  
22 any unrelated trade or business carried on by such organization  
23 or institution or with respect to any materials, supplies and  
24 equipment used and transferred to such organization or  
25 institution in the construction, reconstruction, remodeling,  
26 renovation, repairs and maintenance of any real estate  
27 structure, other than building machinery and equipment, except  
28 materials and supplies when purchased by such organizations or  
29 institutions for routine maintenance and repairs.

30 (11) The sale at retail, or use of gasoline and other motor

1 fuels, the sales of which are otherwise subject to excise taxes  
2 under [the act of May 21, 1931 (P.L.194), known as the "Liquid  
3 Fuels Tax Act," and the act of January 14, 1952 (P.L.1965),  
4 known as the "Fuel Use Tax Act." ] 75 Pa.C.S. Ch. 90 (relating to  
5 liquid fuels and fuels tax).

6 (12) The sale at retail to, or use by the United States,  
7 this Commonwealth or its instrumentalities or political  
8 subdivisions of tangible personal property or services.

9 [(13) The sale at retail, or use of wrapping paper, wrapping  
10 twine, bags, cartons, tape, rope, labels, nonreturnable  
11 containers and all other wrapping supplies, when such use is  
12 incidental to the delivery of any personal property, except that  
13 any charge for wrapping or packaging shall be subject to tax at  
14 the rate imposed by section 202.

15 (14) Sale at retail or use of vessels designed for  
16 commercial use of registered tonnage of fifty tons or more when  
17 produced by the builders thereof upon special order of the  
18 purchaser.

19 (15) Sale at retail of tangible personal property or  
20 services used or consumed in building, rebuilding, repairing and  
21 making additions to or replacements in and upon vessels designed  
22 for commercial use of registered tonnage of fifty tons or more  
23 upon special order of the purchaser, or when rebuilt, repaired  
24 or enlarged, or when replacements are made upon order of or for  
25 the account of the owner.

26 (16) The sale at retail or use of tangible personal property  
27 or services to be used or consumed for ship cleaning or  
28 maintenance or as fuel, supplies, ships' equipment, ships'  
29 stores or sea stores on vessels designed for commercial use of  
30 registered tonnage of fifty tons or more to be operated

1 principally outside the limits of the Commonwealth.]

2 (17) The sale at retail or use of prescription [or non-  
3 prescription] medicines[, ] or drugs or prescription or  
4 nonprescription medical supplies, crutches and wheelchairs for  
5 the use of cripples and invalids, artificial limbs, artificial  
6 eyes and artificial hearing devices when designed to be worn on  
7 the person of the purchaser or user, false teeth and materials  
8 used by a dentist in dental treatment, eyeglasses when  
9 especially designed or prescribed by an ophthalmologist, oculist  
10 or optometrist for the personal use of the owner or purchaser  
11 and artificial braces and supports designed solely for the use  
12 of crippled persons or any other therapeutic, prosthetic or  
13 artificial device designed for the use of a particular  
14 individual to correct or alleviate a physical incapacity,  
15 including but not limited to hospital beds, iron lungs, and  
16 kidney machines.

17 [(18) The sale at retail or use of coal.]

18 (24) The sale at retail or use of motor vehicles, trailers  
19 and semi-trailers, or bodies attached to the chassis thereof,  
20 sold to a nonresident of Pennsylvania to be used outside of  
21 Pennsylvania and which are registered in a state other than  
22 Pennsylvania within twenty days after delivery to the vendee.

23 [(25) The sale at retail or use of water.]

24 (26) The sale at retail or use of all vesture, wearing  
25 apparel, raiments, garments, footwear and other articles of  
26 clothing, including clothing patterns and items that are to be a  
27 component part of clothing, worn or carried on or about the  
28 human body but all accessories, ornamental wear, formal day or  
29 evening apparel, and articles made of fur on the hide or pelt or  
30 any material imitative of fur and articles of which such fur,

1 real, imitation or synthetic, is the component material of chief  
2 value, but only if such value is more than three times the value  
3 of the next most valuable component material, and sporting goods  
4 and clothing not normally used or worn when not engaged in  
5 sports shall not be excluded from the tax.

6 (28) The sale at retail or use of religious publications  
7 sold by religious groups and Bibles and religious articles.]

8 (29) The sale at retail or use of food and beverages for  
9 human consumption, except that this exclusion shall not apply  
10 with respect to--

11 (i) Soft drinks;

12 (ii) Malt and brewed beverages and spirituous and vinous  
13 liquors;

14 (iii) Food or beverages, whether sold for consumption on or  
15 off the premises or on a "take-out" or "to go" basis or  
16 delivered to the purchaser or consumer, when purchased (A) from  
17 persons engaged in the business of catering; or (B) from persons  
18 engaged in the business of operating establishments from which  
19 ready-to-eat food and beverages are sold, including, but not  
20 limited to, restaurants, cafes, lunch counters, private and  
21 social clubs, taverns, dining cars, hotels, night clubs, fast  
22 food operations, pizzerias, fairs, carnivals, lunch carts, ice  
23 cream stands, snack bars, cafeterias, employe cafeterias,  
24 theaters, stadiums, arenas, amusement parks, carryout shops,  
25 coffee shops and other establishments whether mobile or  
26 immobile. For purposes of this clause, a bakery, a pastry shop,  
27 a donut shop, a delicatessen, a grocery store, a supermarket, a  
28 farmer's market, a convenience store or a vending machine shall  
29 not be considered an establishment from which food or beverages  
30 ready to eat are sold except for the sale of meals, sandwiches,

1 food from salad bars, hand-dipped or hand-served iced based  
2 products including ice cream and yogurt, hot soup, hot pizza and  
3 other hot food items, brewed coffee and hot beverages. For  
4 purposes of this subclause, beverages shall not include malt and  
5 brewed beverages and spirituous and vinous liquors but shall  
6 include soft drinks. The sale at retail of food and beverages at  
7 or from a school or church in the ordinary course of the  
8 activities of such organization is not subject to tax.

9 [(30) The sale at retail or use of newspapers. For purposes  
10 of this section, the term "newspaper" shall mean a "legal  
11 newspaper" or a publication containing matters of general  
12 interest and reports of current events which qualifies as a  
13 "newspaper of general circulation" qualified to carry a "legal  
14 advertisement" as those terms are defined in 45 Pa.C.S. § 101  
15 (relating to definitions), not including magazines. This  
16 exclusion shall also include any printed advertising materials  
17 circulated with such newspaper regardless of where or by whom  
18 such printed advertising material was produced.

19 (31) The sale at retail or use of caskets and burial vaults  
20 for human remains and markers and tombstones for human graves.]

21 (32) The sale at retail or use of flags of the United States  
22 of America and the Commonwealth of Pennsylvania.

23 [(33) The sale at retail or use of textbooks for use in  
24 schools, colleges and universities, either public or private  
25 when purchased in behalf of or through such schools, colleges or  
26 universities provided such institutions of learning are  
27 recognized by the Department of Education.

28 (34) The sale at retail, or use of motion picture film  
29 rented or licensed from a distributor for the purpose of  
30 commercial exhibition.

1 (35) The sale at retail or use of mail order catalogs and  
2 direct mail advertising literature or materials, including  
3 electoral literature or materials, such as envelopes, address  
4 labels and a one-time license to use a list of names and mailing  
5 addresses for each delivery of direct mail advertising  
6 literature or materials, including electoral literature or  
7 materials, through the United States Postal Service.

8 (36) The sale at retail or use of rail transportation  
9 equipment used in the movement of personalty.

10 (37) The sale at retail of buses to be used under contract  
11 with school districts that are replacements for buses destroyed  
12 or lost in the flood of 1977 for a period ending December 31,  
13 1977 in the counties of Armstrong, Bedford, Cambria, Indiana,  
14 Jefferson, Somerset and Westmoreland, or the use of such buses.

15 (38) The sale at retail of horses, if at the time of  
16 purchase, the seller is directed to ship or deliver the horse to  
17 an out-of-State location, whether or not the charges for  
18 shipment are paid for by the seller or the purchaser; the seller  
19 shall obtain a bill of lading, either from the carrier or from  
20 the purchaser, who, in turn has obtained the bill of lading from  
21 the carrier, reflecting delivery to the out-of-State address to  
22 which the horse has been shipped. The seller shall execute a  
23 "Certificate of Delivery to Destination Outside of the  
24 Commonwealth" for each bill of lading reflecting out-of-State  
25 delivery. The seller shall be required to retain the certificate  
26 of delivery form to justify the noncollection of sales tax with  
27 respect to the transaction to which the form relates.

28 In transactions where a horse is sold by the seller and  
29 delivered to a domiciled person, agent or corporation prior to  
30 its being delivered to an out-of-State location, the

1 "Certificate of Delivery to Destination Outside of the  
2 Commonwealth" form must have attached to it bills of lading both  
3 for the transfer to the domiciled person, agent or corporation  
4 and from the aforementioned to the out-of-State location.

5 (39) The sale at retail or use of fish feed purchased by or  
6 on behalf of sportsmen's clubs, fish cooperatives or nurseries  
7 approved by the Pennsylvania Fish Commission.

8 (40) The sale at retail of supplies and materials to tourist  
9 promotion agencies, which receive grants from the Commonwealth,  
10 for distribution to the public as promotional material or the  
11 use of such supplies and materials by said agencies for said  
12 purposes.

13 (41) The sale at retail of supplies and materials to tourist  
14 promotion agencies, which receive grants from the Commonwealth,  
15 for distribution to the public as promotional material or the  
16 use of such supplies and materials by said agencies for said  
17 purposes.

18 (42) The sale or use of brook trout (*salvelinus fontinalis*),  
19 brown trout (*Salmo trutta*) or rainbow trout (*Salmo gairdneri*).

20 (43) The sale at retail or use of buses to be used  
21 exclusively for the transportation of children for school  
22 purposes.

23 (44) The sale at retail or use of firewood. For the purpose  
24 of this clause, firewood shall mean the product of trees when  
25 severed from the land and cut into proper lengths for burning  
26 and pellets made from pure wood sawdust if used for fuel for  
27 cooking, hot water production or to heat residential dwellings.

28 (45) The sale at retail or use of materials used in the  
29 construction and erection of objects purchased by not-for-profit  
30 organizations for purposes of commemoration and memorialization

1 of historical events, provided that the object is erected upon  
2 publicly owned property or property to be conveyed to a public  
3 entity upon the commemoration or memorialization of the  
4 historical event.]

5 (46) The sale at retail or use of tangible personal property  
6 purchased in accordance with the Food Stamp Act of 1977, as  
7 amended (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

8 [(47) The net purchase price of the sale at retail or use of  
9 electric vehicles, hybrid electric vehicles and zero emission  
10 vehicles as defined in 75 Pa.C.S. § 102 (relating to  
11 definitions). "Net purchase price" shall mean the difference  
12 between the purchase price of an electric vehicle, hybrid  
13 electric vehicle or zero emission vehicle and the average retail  
14 list price of a comparable vehicle. "Comparable vehicle" shall  
15 mean, in the case of a passenger car, the overall average list  
16 price of a passenger car in the United States; in the case of a  
17 passenger truck, the overall average list price of a passenger  
18 truck in the United States; and, in the case of a van, the  
19 overall average retail list price of a van in the United States.  
20 The Department of Revenue shall promulgate rules and regulations  
21 to enforce this exemption and determine the average retail list  
22 price as defined under "comparable vehicle" on an annual basis.  
23 In the event that a qualified motor vehicle is something other  
24 than a passenger car, passenger truck or van, the Department of  
25 Revenue shall determine the average list price of a comparable  
26 vehicle classification. This clause shall expire December 31,  
27 1999.

28 (48) The sale at retail or use of power units for vehicles  
29 that are exempt under clause (47). This clause shall expire  
30 December 31, 1999.]

1 (49) The sale at retail or use of [food and beverages]  
2 tangible personal property or services by a nonprofit  
3 [associations] association which support [sports programs] the  
4 charitable purposes of the nonprofit association. For purposes  
5 of this clause, the phrases:

6 (i) "nonprofit association" means an entity which is  
7 organized as a nonprofit corporation or nonprofit unincorporated  
8 association under the laws of this Commonwealth or the United  
9 States or any entity which is authorized to do business in this  
10 Commonwealth as a nonprofit corporation or unincorporated  
11 association under the laws of this Commonwealth, including, but  
12 not limited to, youth or athletic associations, volunteer fire,  
13 ambulance, religious, charitable, fraternal, veterans, civic, or  
14 any separately chartered auxiliary of the foregoing, if  
15 organized and operated on a nonprofit basis; and

16 [(iv) "sports program" means baseball (including softball),  
17 football, basketball, soccer and any other competitive sport  
18 formally recognized as a sport by the United States Olympic  
19 Committee as specified by and under the jurisdiction of the  
20 Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371  
21 et seq.), the Amateur Athletic Union or the National Collegiate  
22 Athletic Association. The term shall be limited to a program or  
23 that portion of a program that is organized for recreational  
24 purposes and whose activities are substantially for such  
25 purposes and which is primarily for participants who are 18  
26 years of age or younger or whose 19th birthday occurs during the  
27 year of participation or the competitive season, whichever is  
28 longer. There shall, however, be no age limitation for programs  
29 operated for persons with physical handicaps or persons with  
30 mental retardation;

1 (v) "support" means the funds raised from sales are used to  
2 pay the expenses of a sports program or the nonprofit  
3 association sells the food and beverages at a location where a  
4 sports program is being conducted under this act.

5 (50) The sale at retail or use of subscriptions for  
6 magazines. The term "magazine" refers to a periodical published  
7 at regular intervals not exceeding three months and which are  
8 circulated among the general public, containing matters of  
9 general interest and reports of current events published for the  
10 purpose of disseminating information of a public character or  
11 devoted to literature, the sciences, art or some special  
12 industry. This exclusion shall also include any printed  
13 advertising material circulated with the periodical or  
14 publication regardless of where or by whom the printed  
15 advertising material was produced.

16 (51) The sale at retail or use of interior office building  
17 cleaning services but only as relates to the costs of the  
18 supplied employe, which costs are wages, salaries, bonuses and  
19 commissions, employment benefits, expense reimbursements, and  
20 payroll and withholding taxes, to the extent that these costs  
21 are specifically itemized or that these costs in aggregate are  
22 stated in billings from the vender or supplying entity.

23 (53) The sale at retail or use of candy or gum regardless of  
24 the location from which the candy or gum is sold.

25 (55) The sale at retail or use of horses to be used  
26 exclusively for commercial racing activities and the sale at  
27 retail and use of feed, bedding, grooming supplies, riding tack,  
28 farrier services, portable stalls and sulkies for horses used  
29 exclusively for commercial racing activities.]

30 (56) The sale at retail or use of tangible personal property

1 or services used, transferred or consumed in installing or  
2 repairing equipment or devices designed to assist persons in  
3 ascending or descending a stairway when:

4 (i) The equipment or devices are used by a person who, by  
5 virtue of a physical disability, is unable to ascend or descend  
6 stairs without the aid of such equipment or device.

7 (ii) The equipment or device is installed or used in such  
8 person's place of residence.

9 (iii) A physician has certified the physical disability of  
10 the person in whose residence the equipment or device is  
11 installed or used.

12 (57) The sale at retail to or use by a construction  
13 contractor of building machinery and equipment and services  
14 thereto that are:

15 (i) transferred pursuant to a construction contract for any  
16 charitable organization, volunteer firemen's organization,  
17 nonprofit educational institution or religious organization for  
18 religious purposes, provided that the building machinery and  
19 equipment and services thereto are not used in any unrelated  
20 trade or business; or

21 (ii) transferred to the United States or the Commonwealth or  
22 its instrumentalities or political subdivisions[; or].

23 [(58) The sale at retail or use of a personal computer, a  
24 peripheral device or an Internet access device, or a service  
25 contract or single-user licensed software purchased in  
26 conjunction with a personal computer, peripheral device or  
27 Internet access device, during the exclusion period by an  
28 individual purchaser for nonbusiness use. The exclusion does not  
29 include a sale at retail or use of, leasing, rental or repair of  
30 a personal computer, peripheral device or Internet access

1 device; mainframe computers; network servers; local area network  
2 hubs; routers and network cabling; network operating systems;  
3 multiple-user licensed software; minicomputers; hand-held  
4 computers; personal digital assistants without Internet access;  
5 hardware word processors; graphical calculators; video game  
6 consoles; telephones; digital cameras; pagers; compact discs  
7 encoded with music or movies; and digital versatile discs  
8 encoded with music or movies. For purposes of this clause, the  
9 phrase "exclusion period" means the period of time from August  
10 5, 2001, to and including August 12, 2001, and from February 17,  
11 2002, to and including February 24, 2002. For purposes of this  
12 clause, "purchaser" means an individual who places an order and  
13 pays the purchase price by cash or credit during the exclusion  
14 period even if delivery takes place after the exclusion period.]

15 (59) The sale at retail or use of molds and related mold  
16 equipment used directly and predominantly in the manufacture of  
17 products, regardless of whether the person that holds title to  
18 the equipment manufactures a product.

19 (60) The sale or use of used prebuilt housing.

20 [(61) The sale at retail to or use of food and nonalcoholic  
21 beverages by an airline which will transfer the food or  
22 nonalcoholic beverages to passengers in connection with the  
23 rendering of the airline service.]

24 (62) The sale at retail or use of tangible personal property  
25 or services which are directly used in farming, dairying or  
26 agriculture when engaged in as a business enterprise whether or  
27 not the sale is made to the person directly engaged in the  
28 business enterprise or to a person contracting with the person  
29 directly engaged in the business enterprise for the production  
30 of food.

1 [(63) The sale at retail or use of separately stated fees  
2 paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).]

3 (64) The sale at retail to or use by a construction  
4 contractor, employed by a public school district pursuant to a  
5 construction contract, of any materials and building supplies  
6 which, during construction or reconstruction, are made part of  
7 any public school building utilized for instructional classroom  
8 education within this Commonwealth, if the construction or  
9 reconstruction:

10 (i) is necessitated by a disaster emergency, as defined in  
11 35 Pa.C.S. § 7102 (relating to definitions); and

12 (ii) takes place during the period when there is a  
13 declaration of disaster emergency under 35 Pa.C.S. § 7301(c)  
14 (relating to general authority of Governor).

15 (65) The sale at retail or use of investment metal bullion  
16 and investment coins. "Investment metal bullion" means any  
17 elementary precious metal which has been put through a process  
18 of smelting or refining, including, but not limited to, gold,  
19 silver, platinum and palladium, and which is in such state or  
20 condition that its value depends upon its content and not its  
21 form. "Investment metal bullion" does not include precious metal  
22 which has been assembled, fabricated, manufactured or processed  
23 in one or more specific and customary industrial, professional,  
24 aesthetic or artistic uses. "Investment coins" means numismatic  
25 coins or other forms of money and legal tender manufactured of  
26 gold, silver, platinum, palladium or other metal and of the  
27 United States or any foreign nation with a fair market value  
28 greater than any nominal value of such coins. "Investment coins"  
29 does not include jewelry or works of art made of coins, nor does  
30 it include commemorative medallions.

1 (66) The sale at retail or use of copies of an official  
2 document sold by a government agency or a court. For the  
3 purposes of this clause, the following terms or phrases shall  
4 have the following meanings:

5 (i) "court" includes:

6 (A) an "appellate court" as defined in 42 Pa.C.S. § 102  
7 (relating to definitions);

8 (B) a "court of common pleas" as defined in 42 Pa.C.S. §  
9 102;

10 (C) the "minor judiciary" as defined in 42 Pa.C.S. § 102;

11 (ii) "government agency" means an "agency" as defined in  
12 section 1 of the act of June 21, 1957 (P.L.390, No.212),  
13 referred to as the "Right-to-Know Law";

14 (iii) "official document" means a "record" as defined in  
15 section 1 of the "Right-to-Know Law." The term shall include  
16 notes of court testimony, deposition transcripts, driving  
17 records, accident reports, birth and death certificates, deeds,  
18 divorce decrees and other similar documents.

19 (67) The sale at retail of medical goods or services by a  
20 hospital.

21 (68) The sale at retail of medical, dental or hospice  
22 services.

23 (69) The sale at retail or use of goods or services  
24 involving Medicare Part B transactions.

25 (70) The sale or rental of real property.

26 Section 3. This act shall apply to sales and uses occurring  
27 or commencing 120 days after the effective date of this section.

28 Section 4. This act shall take effect immediately.