

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 793 Session of 1993

INTRODUCED BY CLYMER, MARKOSEK, FARGO, GODSHALL, MAYERNIK, HECKLER, JADLOWIEC, HASAY, HESS, PITTS, FAIRCHILD, FLICK, B. SMITH, DEMPSEY, M. N. WRIGHT, SAURMAN, BUNT, E. Z. TAYLOR, REBER, LEH, TULLI, MARSICO, BARLEY, BROWN, CORNELL, LAUGHLIN, FARMER, PICCOLA, VANCE, DRUCE, WOGAN, PERZEL, SCHULER, GEIST, BIRMELIN, LYNCH, GERLACH, CLARK, GANNON, DENT, FAJT, KING, MERRY, TOMLINSON, L. I. COHEN, SERAFINI, REINARD, RAYMOND, STERN, ROHRER AND ADOLPH, MARCH 22, 1993

REFERRED TO COMMITTEE ON FINANCE, MARCH 22, 1993

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 provisions imposing sales and use tax
11 on secretarial or editing services.

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

14 Section 1. Section 201(b), (f), (g), (k), (o) and (y) of the
15 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
16 of 1971, amended or added August 4, 1991 (P.L.97, No.22) and
17 December 13, 1991 (P.L.373, No.40), are amended to read:

18 Section 201. Definitions.--The following words, terms and
19 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 (b) "Maintaining a place of business in this Commonwealth."

5 (1) Having or maintaining within this Commonwealth, directly
6 or by a subsidiary, an office, distribution house, sales house,
7 warehouse, service enterprise or other place of business, or any
8 agent of general or restricted authority irrespective of whether
9 the place of business or agent is located here permanently or
10 temporarily or whether the person or subsidiary maintaining such
11 place of business or agent is authorized to do business within
12 this Commonwealth; [or]

13 (2) The engaging in any activity as a business within this
14 Commonwealth by any person, directly or by a subsidiary, in
15 connection with the lease, sale or delivery of tangible personal
16 property or the performance of services thereon for use, storage
17 or consumption or in connection with the sale or delivery for
18 use of the services described in subclauses (11), (12) and (14)
19 through (18) of clause (k) of this section including, but not
20 limited to, having, maintaining or using any office,
21 distribution house, sales house, warehouse or other place of
22 business, any stock of goods or any solicitor, salesman, agent
23 or representative under its authority, at its direction or with
24 its permission, regardless of whether the person or subsidiary
25 is authorized to do business in this Commonwealth[.]; or

26 (3) Regularly or substantially soliciting orders within this
27 Commonwealth in connection with the lease, sale or delivery of
28 tangible personal property to or the performance thereon of
29 services or in connection with the sale or delivery of the
30 services described in subclauses (11), (12) and (14) through

1 (18) of clause (k) of this section for residents of this
2 Commonwealth by means of catalogues or other advertising,
3 whether such orders are accepted within or without this
4 Commonwealth.

5 * * *

6 (f) "Purchase at retail."

7 (1) The acquisition for a consideration of the ownership,
8 custody or possession of tangible personal property other than
9 for resale by the person acquiring the same when such
10 acquisition is made for the purpose of consumption or use,
11 whether such acquisition shall be absolute or conditional, and
12 by whatsoever means the same shall have been effected.

13 (2) The acquisition of a license to use or consume, and the
14 rental or lease of tangible personal property, other than for
15 resale regardless of the period of time the lessee has
16 possession or custody of the property.

17 (3) The obtaining for a consideration of those services
18 described in subclauses (2), (3) and (4) of clause (k) of this
19 section other than for resale.

20 (4) A retention after March 7, 1956, of possession, custody
21 or a license to use or consume pursuant to a rental contract or
22 other lease arrangement (other than as security), other than for
23 resale.

24 (5) The obtaining for a consideration of those services
25 described in subclauses (11), (12) and (14) through (18) of
26 clause (k) of this section.

27 The term "purchase at retail" with respect to "liquor" and
28 "malt or brewed beverages" shall include the purchase of
29 "liquor" from any "Pennsylvania Liquor Store" by any person for
30 any purpose, and the purchase of "malt or brewed beverages" from

1 a "manufacturer of malt or brewed beverages," "distributor" or
2 "importing distributor" by any person for any purpose, except
3 purchases from a "manufacturer of malt or brewed beverages" by a
4 "distributor" or "importing distributor" or purchases from an
5 "importing distributor" by a "distributor" within the meaning of
6 the "Liquor Code." The term "purchase at retail" shall not
7 include any purchase of "malt or brewed beverages" from a
8 "retail dispenser" or any purchase of "liquor" or "malt or
9 brewed beverages" from a person holding a "retail liquor
10 license" within the meaning of and pursuant to the provisions of
11 the "Liquor Code," but shall include any purchase or acquisition
12 of "liquor" or "malt or brewed beverages" other than pursuant to
13 the provisions of the "Liquor Code."

14 (g) "Purchase price."

15 (1) The total value of anything paid or delivered, or
16 promised to be paid or delivered, whether it be money or
17 otherwise, in complete performance of a sale at retail or
18 purchase at retail, as herein defined, without any deduction on
19 account of the cost or value of the property sold, cost or value
20 of transportation, cost or value of labor or service, interest
21 or discount paid or allowed after the sale is consummated, any
22 other taxes imposed by the Commonwealth of Pennsylvania or any
23 other expense except that there shall be excluded any gratuity
24 or separately stated deposit charge for returnable containers.

25 (2) There shall be deducted from the purchase price the
26 value of any tangible personal property actually taken in trade
27 or exchange in lieu of the whole or any part of the purchase
28 price. For the purpose of this clause, the amount allowed by
29 reason of tangible personal property actually taken in trade or
30 exchange shall be considered the value of such property.

1 (3) In determining the purchase price on the sale or use of
2 taxable tangible personal property or a service described in
3 subclauses (11), (12) and (14) through (18) of clause (k) of
4 this section where, because of affiliation of interests between
5 the vendor and purchaser, or irrespective of any such
6 affiliation, if for any other reason the purchase price declared
7 by the vendor or taxpayer on the taxable sale or use of such
8 tangible personal property or service is, in the opinion of the
9 department, not indicative of the true value of the article or
10 service or the fair price thereof, the department shall,
11 pursuant to uniform and equitable rules, determine the amount of
12 constructive purchase price upon the basis of which the tax
13 shall be computed and levied. Such rules shall provide for a
14 constructive amount of purchase price for each such sale or use
15 which would naturally and fairly be charged in an arms-length
16 transaction in which the element of common interest between the
17 vendor or purchaser is absent or if no common interest exists,
18 any other element causing a distortion of the price or value is
19 likewise absent. For the purpose of this clause where a taxable
20 sale or purchase at retail transaction occurs between a parent
21 and a subsidiary, affiliate or controlled corporation of such
22 parent corporation, there shall be a rebuttable presumption,
23 that because of such common interest such transaction was not at
24 arms-length.

25 (4) Where there is a transfer or retention of possession or
26 custody, whether it be termed a rental, lease, service or
27 otherwise, of tangible personal property including, but not
28 limited to linens, aprons, motor vehicles, trailers, tires,
29 industrial office and construction equipment, and business
30 machines the full consideration paid or delivered to the vendor

1 or lessor shall be considered the purchase price, even though
2 such consideration be separately stated and be designated as
3 payment for processing, laundering, service, maintenance,
4 insurance, repairs, depreciation or otherwise. Where the vendor
5 or lessor supplies or provides an employee to operate such
6 tangible personal property, the value of the labor thus supplied
7 may be excluded and shall not be considered as part of the
8 purchase price if separately stated. There shall also be
9 included as part of the purchase price the value of anything
10 paid or delivered, or promised to be paid or delivered by a
11 lessee, whether it be money or otherwise, to any person other
12 than the vendor or lessor by reason of the maintenance,
13 insurance or repair of the tangible personal property which a
14 lessee has the possession or custody of under a rental contract
15 or lease arrangement.

16 (5) With respect to the tax imposed by subsection (b) of
17 section 202 upon any tangible personal property originally
18 purchased by the user of such property six months or longer
19 prior to the first taxable use of such property within the
20 Commonwealth, such user may elect to pay tax on a substituted
21 base determined by considering the purchase price of such
22 property for tax purposes to be equal to the prevailing market
23 price of similar tangible personal property at the time and
24 place of such first use within the Commonwealth. Such election
25 must be made at the time of filing a tax return with the
26 department and reporting such tax liability and paying the
27 proper tax due plus all accrued penalties and interest, if there
28 be any, within six months of the due date of such report and
29 payment, as provided for by subsections (a) and (c) of section
30 217 of this article.

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

14 (7) Unless the vendor separately states that portion of the
15 billing which applies to premium cable service as defined in
16 clause (11) of this section, the total bill for the provision of
17 all cable services shall be the purchase price.

18 * * *

19 (k) "Sale at retail."

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

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

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

30 (i) Washing, cleaning, waxing, polishing or lubricating of

1 motor vehicles of another, whether or not any tangible personal
2 property is transferred in conjunction therewith; and

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

5 (4) The rendition for a consideration of the service of
6 repairing, altering, mending, pressing, fitting, dyeing,
7 laundering, drycleaning or cleaning tangible personal property
8 other than wearing apparel or shoes, or applying or installing
9 tangible personal property as a repair or replacement part of
10 other tangible personal property except 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 (8) Any retention of possession, custody or a license to use
23 or consume tangible personal property or any further obtaining
24 of services described in subclauses (2), (3) and (4) of this
25 clause pursuant to a rental or service contract or other
26 arrangement (other than as security).

27 The term "sale at retail" shall not include (i) any such
28 transfer of tangible personal property or rendition of services
29 for the purpose of resale, or (ii) such rendition of services or
30 the transfer of tangible personal property including, but not

1 limited to, machinery and equipment and parts therefor and
2 supplies to be used or consumed by the purchaser directly in the
3 operations of--

4 (A) The manufacture of tangible personal property;

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

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

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

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

25 The exclusions provided in paragraphs (A), (B), (C) and (D)
26 shall not apply to tangible personal property or services to be
27 used or consumed in managerial sales or other nonoperational
28 activities, nor to the purchase or use of tangible personal
29 property or services by any person other than the person
30 directly using the same in the operations described in

1 paragraphs (A), (B), (C) and (D) herein.

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

12 The exclusions provided in paragraphs (A), (B), (C) and (D)
13 shall not apply to the services enumerated in clauses (k)(11),
14 (12) and (14) through (18) and (w), (x) and (z) through (kk),
15 except that the exclusion provided in this subclause for
16 farming, dairying and agriculture shall apply to the service
17 enumerated in clause (z).

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

27 (10) The term "sale at retail" with respect to "liquor" and
28 "malt or brewed beverages" shall include the sale of "liquor" by
29 any "Pennsylvania liquor store" to any person for any purpose,
30 and the sale of "malt or brewed beverages" by a "manufacturer of

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

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

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

16 [(13) The rendition for a consideration of secretarial or
17 editing services.]

18 (14) The rendition for a consideration of disinfecting or
19 pest control services, building maintenance or cleaning
20 services.

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

23 (16) The rendition for a consideration of computer
24 programming services; computer-integrated systems design
25 services; computer processing, data preparation or processing
26 services; information retrieval services; computer facilities
27 management services; or other computer-related services. At a
28 minimum, such services shall not include services that are part
29 of electronic fund transfers, electronic financial transactions
30 or services, banking or trust services, or management or

1 administrative services, including transfer agency, shareholder,
2 custodial and portfolio accounting services, provided directly
3 to any entity that duly qualifies to be taxed as a regulated
4 investment company or a real estate investment trust under the
5 provisions of the Internal Revenue Code of 1986 (Public Law 99-
6 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such
7 services to an entity so qualifying.

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

9 (18) The rendition for a consideration of self-storage
10 service.

11 * * *

12 (o) "Use."

13 (1) The exercise of any right or power incidental to the
14 ownership, custody or possession of tangible personal property
15 and shall include, but not be limited to transportation, storage
16 or consumption.

17 (2) The obtaining by a purchaser of the service of printing
18 or imprinting of tangible personal property when such purchaser
19 furnishes, either directly or indirectly, the articles used in
20 the printing or imprinting.

21 (3) The obtaining by a purchaser of the services of (i)
22 washing, cleaning, waxing, polishing or lubricating of motor
23 vehicles whether or not any tangible personal property is
24 transferred to the purchaser in conjunction with such services,
25 and (ii) inspecting motor vehicles pursuant to the mandatory
26 requirements of "The Vehicle Code."

27 (4) The obtaining by a purchaser of the service of
28 repairing, altering, mending, pressing, fitting, dyeing,
29 laundering, drycleaning or cleaning tangible personal property
30 other than wearing apparel or shoes or applying or installing

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

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

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

26 (i) The manufacture of tangible personal property;

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

1 commercial purposes by holders of propagation permits issued
2 under 34 Pa.C.S. (relating to game);

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

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

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

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

1 rendition of a public utility service.

2 The exclusion provided in subparagraphs (i), (ii), (iii) and
3 (iv) shall not apply to the services enumerated in clauses
4 (o)(9), (10) and (12) through (16) and (w), (x) and (z) through
5 (kk), except that the exclusion provided in subparagraph (ii)
6 for farming, dairying and agriculture shall apply to the service
7 enumerated in clause (z).

8 (5) Where tangible personal property or services are
9 utilized for purposes constituting a "use," as herein defined,
10 and for purposes excluded from the definition of "use," it shall
11 be presumed that such property or services are utilized for
12 purposes constituting a "sale at retail" and subject to tax
13 unless the user thereof proves to the department that the
14 predominant purposes for which such property or services are
15 utilized do not constitute a "sale at retail."

16 (6) The term "use" with respect to "liquor" and "malt or
17 brewed beverages" shall include the purchase of "liquor" from
18 any "Pennsylvania liquor store" by any person for any purpose
19 and the purchase of "malt or brewed beverages" from a
20 "manufacturer of malt or brewed beverages," "distributor" or
21 "importing distributor" by any person for any purpose, except
22 purchases from a "manufacturer of malt or brewed beverages" by a
23 "distributor" or "importing distributor," or purchases from an
24 "importing distributor" by a "distributor" within the meaning of
25 the "Liquor Code." The term "use" shall not include any purchase
26 of "malt or brewed beverages" from a "retail dispenser" or any
27 purchase of "liquor" or "malt or brewed beverages" from a person
28 holding a "retail liquor license" within the meaning of and
29 pursuant to the provisions of the "Liquor Code," but shall
30 include the exercise of any right or power incidental to the

1 ownership, custody or possession of "liquor" or "malt or brewed
2 beverages" obtained by the person exercising such right or power
3 in any manner other than pursuant to the provisions of the
4 "Liquor Code."

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

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

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

15 [(11) The obtaining by the purchaser of secretarial or
16 editing services.]

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

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

21 (14) The obtaining by the purchaser of computer programming
22 services or other computer-related services, including, but not
23 limited to, providing computer integrated systems design,
24 computer processing, data preparation or processing services,
25 information retrieval services or computer facilities management
26 services.

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

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

29 * * *

30 [(y) "Secretarial or editing services." Providing services

1 which include, but are not limited to, editing, letter writing,
2 proofreading, resume writing, typing or word processing. Such
3 services shall not include court reporting and stenographic
4 services.]

5 * * *

6 Section 2. The amendment of section 201(b), (f), (g), (k),
7 (o) and (y) of the act shall be retroactive to October 1, 1991.

8 Section 3. This act shall take effect immediately.