

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2788 Session of
1994

INTRODUCED BY DRUCE, CONTI, LAUB, SATHER, ZUG, L. I. COHEN,
CARONE, REBER, MAITLAND, M. N. WRIGHT, RAYMOND, MELIO,
DURHAM, ROHRER, GEIST, REINARD, BAKER, ARGALL, STABACK,
LYNCH, PLATTS, SAURMAN, STERN, PITTS, YANDRISEVITS,
HENNESSEY, RUBLEY, E. Z. TAYLOR, KING, WAUGH, KASUNIC, HANNA,
FICHTER, MILLER, ADOLPH, BUNT, STURLA, TOMLINSON, HASAY,
GERLACH, WOZNIAK AND MICOZZIE, MAY 18, 1994

REFERRED TO COMMITTEE ON FINANCE, MAY 18, 1994

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 providing for the definition of "sale at
11 retail."

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

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

18 Section 201. Definitions.--The following words, terms and
19 phrases when used in this Article II shall have the meaning
20 ascribed to them in this section, except where the context

1 clearly indicates a different meaning:

2 * * *

3 (k) "Sale at retail."

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

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

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

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

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

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

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

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

11 The term "sale at retail" shall not include (i) any such
12 transfer of tangible personal property or rendition of services
13 for the purpose of resale, or (ii) such rendition of services or
14 the transfer of tangible personal property including, but not
15 limited to, machinery and equipment and parts therefor and
16 supplies to be used or consumed by the purchaser directly in the
17 operations of--

18 (A) The manufacture of tangible personal property;

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

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

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

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

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

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

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

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

1 (8.1) The term "sale at retail" shall not include any sale
2 of construction materials or supplies used to construct,
3 reconstruct, remodel, repair or maintain facilities owned by a
4 school district.

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

14 (10) The term "sale at retail" with respect to "liquor" and
15 "malt or brewed beverages" shall include the sale of "liquor" by
16 any "Pennsylvania liquor store" to any person for any purpose,
17 and the sale of "malt or brewed beverages" by a "manufacturer of
18 malt or brewed beverages," "distributor" or "importing
19 distributor" to any person for any purpose, except sales by a
20 "manufacturer of malt or brewed beverages" to a "distributor" or
21 "importing distributor" or sales by an "importing distributor"
22 to a "distributor" within the meaning of the "Liquor Code." The
23 term "sale at retail" shall not include any sale of "malt or
24 brewed beverages" by a "retail dispenser" or any sale of
25 "liquor" or "malt or brewed beverages" by a person holding a
26 "retail liquor license" within the meaning of and pursuant to
27 the provisions of the "Liquor Code," but shall include any sale
28 of "liquor" or "malt or brewed beverages" other than pursuant to
29 the provisions of the "Liquor Code."

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

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

3 (13) The rendition for a consideration of secretarial or
4 editing services.

5 (14) The rendition for a consideration of disinfecting or
6 pest control services, building maintenance or cleaning
7 services.

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

10 (16) The rendition for a consideration of computer
11 programming services; computer-integrated systems design
12 services; computer processing, data preparation or processing
13 services; information retrieval services; computer facilities
14 management services; or other computer-related services. At a
15 minimum, such services shall not include services that are part
16 of electronic fund transfers, electronic financial transactions
17 or services, banking or trust services, or management or
18 administrative services, including transfer agency, shareholder,
19 custodial and portfolio accounting services, provided directly
20 to any entity that duly qualifies to be taxed as a regulated
21 investment company or a real estate investment trust under the
22 provisions of the Internal Revenue Code of 1986 (Public Law 99-
23 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such
24 services to an entity so qualifying.

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

26 (18) The rendition for a consideration of self-storage
27 service.

28 * * *

29 Section 2. This act shall take effect in 60 days.