

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1240 Session of
1997

INTRODUCED BY CLYMER, HERMAN, FARGO, KENNEY, ROONEY, GODSHALL,
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BENNINGHOFF AND L. I. COHEN, APRIL 8, 1997

REFERRED TO COMMITTEE ON FINANCE, APRIL 8, 1997

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 lawn care 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 (jj) of
15 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
16 Code of 1971, amended or added August 4, 1991 (P.L.97, No.22),
17 December 13, 1991 (P.L.373, No.40) and June 30, 1995 (P.L.139,
18 No.21), are amended to read:

19 Section 201. Definitions.--The following words, terms and
20 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) through (16)
19 and (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) through (16) and (18) of

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

4 (4) The term "maintaining a place of business in this
5 Commonwealth" shall not include:

6 (i) Owning or leasing of tangible or intangible property by
7 a person who has contracted with an unaffiliated commercial
8 printer for printing, provided that:

9 (A) the property is for use by the commercial printer; and

10 (B) the property is located at the Pennsylvania premises of
11 the commercial printer.

12 (ii) Visits by a person's employes or agents to the premises
13 in this Commonwealth of an unaffiliated commercial printer with
14 whom the person has contracted for printing in connection with
15 said contract.

16 * * *

17 (f) "Purchase at retail."

18 (1) The acquisition for a consideration of the ownership,
19 custody or possession of tangible personal property other than
20 for resale by the person acquiring the same when such
21 acquisition is made for the purpose of consumption or use,
22 whether such acquisition shall be absolute or conditional, and
23 by whatsoever means the same shall have been effected.

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

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

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

5 (5) The obtaining for a consideration of those services
6 described in subclauses (11) through (16) and (18) of clause (k)
7 of this section.

8 The term "purchase at retail" with respect to "liquor" and
9 "malt or brewed beverages" shall include the purchase of
10 "liquor" from any "Pennsylvania Liquor Store" by any person for
11 any purpose, and the purchase of "malt or brewed beverages" from
12 a "manufacturer of malt or brewed beverages," "distributor" or
13 "importing distributor" by any person for any purpose, except
14 purchases from a "manufacturer of malt or brewed beverages" by a
15 "distributor" or "importing distributor" or purchases from an
16 "importing distributor" by a "distributor" within the meaning of
17 the "Liquor Code." The term "purchase at retail" shall not
18 include any purchase of "malt or brewed beverages" from a
19 "retail dispenser" or any purchase of "liquor" or "malt or
20 brewed beverages" from a person holding a "retail liquor
21 license" within the meaning of and pursuant to the provisions of
22 the "Liquor Code," but shall include any purchase or acquisition
23 of "liquor" or "malt or brewed beverages" other than pursuant to
24 the provisions of the "Liquor Code."

25 (g) "Purchase price."

26 (1) The total value of anything paid or delivered, or
27 promised to be paid or delivered, whether it be money or
28 otherwise, in complete performance of a sale at retail or
29 purchase at retail, as herein defined, without any deduction on
30 account of the cost or value of the property sold, cost or value

1 of transportation, cost or value of labor or service, interest
2 or discount paid or allowed after the sale is consummated, any
3 other taxes imposed by the Commonwealth of Pennsylvania or any
4 other expense except that there shall be excluded any gratuity
5 or separately stated deposit charge for returnable containers.

6 (2) There shall be deducted from the purchase price the
7 value of any tangible personal property actually taken in trade
8 or exchange in lieu of the whole or any part of the purchase
9 price. For the purpose of this clause, the amount allowed by
10 reason of tangible personal property actually taken in trade or
11 exchange shall be considered the value of such property.

12 (3) In determining the purchase price on the sale or use of
13 taxable tangible personal property or a service described in
14 subclauses (11) through (16) and (18) of clause (k) of this
15 section where, because of affiliation of interests between the
16 vendor and purchaser, or irrespective of any such affiliation,
17 if for any other reason the purchase price declared by the
18 vendor or taxpayer on the taxable sale or use of such tangible
19 personal property or service is, in the opinion of the
20 department, not indicative of the true value of the article or
21 service or the fair price thereof, the department shall,
22 pursuant to uniform and equitable rules, determine the amount of
23 constructive purchase price upon the basis of which the tax
24 shall be computed and levied. Such rules shall provide for a
25 constructive amount of purchase price for each such sale or use
26 which would naturally and fairly be charged in an arms-length
27 transaction in which the element of common interest between the
28 vendor or purchaser is absent or if no common interest exists,
29 any other element causing a distortion of the price or value is
30 likewise absent. For the purpose of this clause where a taxable

1 sale or purchase at retail transaction occurs between a parent
2 and a subsidiary, affiliate or controlled corporation of such
3 parent corporation, there shall be a rebuttable presumption,
4 that because of such common interest such transaction was not at
5 arms-length.

6 (4) Where there is a transfer or retention of possession or
7 custody, whether it be termed a rental, lease, service or
8 otherwise, of tangible personal property including, but not
9 limited to linens, aprons, motor vehicles, trailers, tires,
10 industrial office and construction equipment, and business
11 machines the full consideration paid or delivered to the vendor
12 or lessor shall be considered the purchase price, even though
13 such consideration be separately stated and be designated as
14 payment for processing, laundering, service, maintenance,
15 insurance, repairs, depreciation or otherwise. Where the vendor
16 or lessor supplies or provides an employee to operate such
17 tangible personal property, the value of the labor thus supplied
18 may be excluded and shall not be considered as part of the
19 purchase price if separately stated. There shall also be
20 included as part of the purchase price the value of anything
21 paid or delivered, or promised to be paid or delivered by a
22 lessee, whether it be money or otherwise, to any person other
23 than the vendor or lessor by reason of the maintenance,
24 insurance or repair of the tangible personal property which a
25 lessee has the possession or custody of under a rental contract
26 or lease arrangement.

27 (5) With respect to the tax imposed by subsection (b) of
28 section 202 upon any tangible personal property originally
29 purchased by the user of such property six months or longer
30 prior to the first taxable use of such property within the

1 Commonwealth, such user may elect to pay tax on a substituted
2 base determined by considering the purchase price of such
3 property for tax purposes to be equal to the prevailing market
4 price of similar tangible personal property at the time and
5 place of such first use within the Commonwealth. Such election
6 must be made at the time of filing a tax return with the
7 department and reporting such tax liability and paying the
8 proper tax due plus all accrued penalties and interest, if there
9 be any, within six months of the due date of such report and
10 payment, as provided for by subsections (a) and (c) of section
11 217 of this article.

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

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

29 * * *

30 (k) "Sale at retail."

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

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

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

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

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

16 (4) The rendition for a consideration 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 except wearing apparel or shoes
22 for a consideration, whether or not the services are performed
23 directly or by any means other than by coin-operated self-
24 service laundry equipment for wearing apparel or household goods
25 and whether or not any tangible personal property is transferred
26 in conjunction therewith, except such services as are rendered
27 in the construction, reconstruction, remodeling, repair or
28 maintenance of real estate: Provided, however, That this
29 subclause shall not be deemed to impose tax upon such services
30 in the preparation for sale of new items which are excluded from

1 the tax under clause (26) of section 204, or upon diaper
2 service.

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

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

15 (A) The manufacture of tangible personal property;

16 (B) 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 fur-bearing 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);

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

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

27 The exclusions provided in paragraphs (A), (B), (C) and (D)
28 shall not apply to any vehicle required to be registered under
29 The Vehicle Code, except those vehicles used directly by a
30 public utility engaged in business as a common carrier; to

1 maintenance facilities; or to materials, supplies or equipment
2 to be used or consumed in the construction, reconstruction,
3 remodeling, repair or maintenance of real estate other than
4 directly used machinery, equipment, parts or foundations
5 therefor that may be affixed to such real estate.

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

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

23 The exclusions provided in paragraphs (A), (B), (C) and (D)
24 shall not apply to the services enumerated in clauses (k)(11)
25 through (16) and (18) and (w) through (ii) and (kk), except that
26 the exclusion provided in this subclause for farming, dairying
27 and agriculture shall apply to the service enumerated in clause
28 (z).

29 (9) Where tangible personal property or services are
30 utilized for purposes constituting a "sale at retail" and for

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

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

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

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

27 (13) The rendition for a consideration of secretarial or
28 editing services.

29 (14) The rendition for a consideration of disinfecting or
30 pest control services, building maintenance or cleaning

1 services.

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

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

19 [(17) The rendition for a consideration of lawn care
20 service.]

21 (18) The rendition for a consideration of self-storage
22 service.

23 * * *

24 (o) "Use."

25 (1) The exercise of any right or power incidental to the
26 ownership, custody or possession of tangible personal property
27 and shall include, but not be limited to transportation, storage
28 or consumption.

29 (2) The obtaining by a purchaser of the service of printing
30 or imprinting of tangible personal property when such purchaser

1 furnishes, either directly or indirectly, the articles used in
2 the printing or imprinting.

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

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

27 (A) Any tangible personal property acquired and kept,
28 retained or over which power is exercised within this
29 Commonwealth on which the taxing of the storage, use or other
30 consumption thereof is expressly prohibited by the Constitution

1 of the United States or which is excluded from tax under other
2 provisions of this article.

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

8 (i) The manufacture of tangible personal property;

9 (ii) Farming, dairying, agriculture, horticulture or
10 floriculture when engaged in as a business enterprise. The term
11 "farming" shall include the propagation and raising of ranch
12 raised furbearing animals and the propagation of game birds for
13 commercial purposes by holders of propagation permits issued
14 under 34 Pa.C.S. (relating to game);

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

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

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

1 consumed in managerial sales or other nonoperational activities,
2 nor to the purchase or use of tangible personal property or
3 services by any person other than the person directly using the
4 same in the operations described in subparagraphs (i), (ii),
5 (iii) and (iv).

6 The exclusion provided in subparagraph (iii) shall not apply
7 to (A) construction materials, supplies or equipment used to
8 construct, reconstruct, remodel, repair or maintain facilities
9 not used directly by the purchaser in the production, delivering
10 or rendition of public utility service or (B) tools and
11 equipment used but not installed in the maintenance of
12 facilities used directly in the production, delivering or
13 rendition of a public utility service.

14 The exclusion provided in subparagraphs (i), (ii), (iii) and
15 (iv) shall not apply to the services enumerated in clauses
16 (o)(9) through (14) and (16) and (w) through (kk), except that
17 the exclusion provided in subparagraph (ii) for farming,
18 dairying and agriculture shall apply to the service enumerated
19 in clause (z).

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

28 (6) The term "use" with respect to "liquor" and "malt or
29 brewed beverages" shall include the purchase of "liquor" from
30 any "Pennsylvania liquor store" by any person for any purpose

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

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

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

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

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

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

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

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

3 (14) The obtaining by the purchaser of computer programming
4 services or other computer-related services, including, but not
5 limited to, providing computer integrated systems design,
6 computer processing, data preparation or processing services,
7 information retrieval services or computer facilities management
8 services.

9 [(15) The obtaining by the purchaser of lawn care service.]

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

11 * * *

12 [(jj) "Lawn care service." Providing services for lawn
13 upkeep including, but not limited to, fertilizing, lawn mowing,
14 shrubbery trimming or other lawn treatment services.]

15 * * *

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

18 Section 3. This act shall take effect immediately.