

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 2472** Session of  
1998

INTRODUCED BY FARGO, MARCH 25, 1998

REFERRED TO COMMITTEE ON FINANCE, MARCH 25, 1998

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," adding definitions relating to contractors,  
11 construction, buildings and building machinery and equipment;  
12 further providing for an exclusion from sales tax for certain  
13 charitable organizations and for refunds; and providing an  
14 exclusion from sales tax for sales of building machinery and  
15 equipment.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Section 201(o) of the act of March 4, 1971  
19 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
20 December 13, 1991 (P.L.373, No.40) and May 7, 1997 (P.L.85,  
21 No.7), is amended by adding a subclause and the section is  
22 amended by adding clauses to read:

23 Section 201. Definitions.--The following words, terms and  
24 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 (o) "Use."

5 \* \* \*

6 (17) The obtaining by a construction contractor of tangible  
7 personal property or services provided to tangible personal  
8 property which will be used pursuant to a construction contract  
9 whether or not the tangible personal property or services are  
10 transferred.

11 \* \* \*

12 (nn) "Construction contract." A written or oral contract or  
13 agreement for the construction, reconstruction, remodeling,  
14 renovation or repair of any real estate structure. The term  
15 shall not apply to services which are taxable under section  
16 201(k)(14) and (o)(12).

17 (oo) "Construction contractor." A person who performs an  
18 activity pursuant to a construction contract, including a  
19 subcontractor.

20 (pp) "Building machinery and equipment." Generation  
21 equipment, storage equipment, air conditioning equipment,  
22 distribution equipment and termination equipment which shall be  
23 limited to the following:

24 (1) air conditioning limited to heating, cooling,  
25 purification, humidification, dehumidification and ventilation;

26 (2) electrical;

27 (3) plumbing;

28 (4) communications limited to voice, video, data, sound,  
29 master clock and noise abatement;

30 (5) alarms limited to fire, security and detection;

- 1     (6) control system limited to energy management, traffic and
- 2 parking lot and building access;
- 3     (7) medical system limited to diagnosis and treatment
- 4 equipment, medical gas, nurse call and doctor paging;
- 5     (8) laboratory system;
- 6     (9) cathodic protection system; or
- 7     (10) furniture, cabinetry and kitchen equipment.

8 The term shall include boilers, chillers, air cleaners,  
9 humidifiers, fans, switchgear, pumps, telephones, speakers,  
10 horns, motion detectors, dampers, actuators, grills, registers,  
11 traffic signals, sensors, card access devices, guardrails,  
12 medial devices, floor troughs and grates, and laundry equipment,  
13 together with integral coverings and enclosures, whether or not  
14 the item constitutes a fixture or is otherwise affixed to the  
15 real estate; whether or not damage would be done to the item or  
16 its surroundings upon removal; or whether or not the item is  
17 physically located within a real estate structure. The term  
18 "building machinery and equipment" shall not include guardrail  
19 posts, pipes, fittings, pipe supports and hangers, valves,  
20 underground tanks, wire, conduit, receptacle and junction boxes,  
21 insulation, ductwork and coverings thereof.

22     (qq) "Real estate structure." The term includes building  
23 machinery and equipment, developed or undeveloped land, streets,  
24 roads, highways, parking lots, stadiums and stadium seating,  
25 recreational courts, sidewalks, foundations, structural  
26 supports, walls, floors, ceilings, roofs, doors, canopies,  
27 millwork, elevators, windows and window coverings, outdoor  
28 advertising boards or signs, airport runways, bridges, dams,  
29 dikes, traffic control devices including traffic signs,  
30 satellite dishes, antennas, guardrail posts, pipes, fittings,

1 pipe supports and hangers, valves, underground tanks, wire,  
2 conduit, receptacle and junction boxes, insulation, ductwork and  
3 coverings thereof; and any structure similar to any of the  
4 foregoing, whether or not the item constitutes a fixture or is  
5 affixed to the real estate; or whether or not damage would be  
6 done to the item or its surroundings upon removal.

7 Section 2. Section 204(10) of the act is amended and the  
8 section is amended by adding a clause to read:

9 Section 204. Exclusions from Tax.--The tax imposed by  
10 section 202 shall not be imposed upon

11 \* \* \*

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

26 \* \* \*

27 (55) The sale at retail to or use by a construction  
28 contractor of building machinery and equipment and services  
29 thereto pursuant to a construction contract for any charitable  
30 organization, volunteer firemen's organization, nonprofit

1 educational institution, or religious organization for religious  
2 purposes, provided that the building machinery and equipment and  
3 services thereto are not used in any unrelated trade or  
4 business; or to the United States or the Commonwealth or its  
5 instrumentalities or political subdivisions.

6 Section 3. Section 252 of the act, amended August 4, 1991  
7 (P.L.97, No.22), is amended to read:

8 Section 252. Refunds.--The department shall, pursuant to the  
9 provisions of sections 253 and 254, refund all taxes, interest  
10 and penalties paid to the Commonwealth under the provisions of  
11 this article and to which the Commonwealth is not rightfully  
12 entitled. Such refunds shall be made to the person, his heirs,  
13 successors, assigns or other personal representatives, who  
14 actually paid the tax[, except a refund granted for tax paid in  
15 conjunction with a contract with a charitable organization,  
16 volunteer firemen's organization, nonprofit educational  
17 institution, religious organization, the United States, this  
18 Commonwealth or its instrumentalities or political subdivisions  
19 shall be made to the aforementioned entities]: Provided, That no  
20 refund shall be made under this section with respect to any  
21 payment made by reason of an assessment with respect to which a  
22 taxpayer has filed a petition for reassessment pursuant to  
23 section 232 of this article to the extent that said petition has  
24 been determined adversely to the taxpayer by a decision which is  
25 no longer subject to further review or appeal: Provided further,  
26 That nothing contained herein shall be deemed to prohibit a  
27 taxpayer who has filed a timely petition for reassessment from  
28 amending it to a petition for refund where the petitioner has  
29 paid the tax assessed.

30 Section 4. This act shall not apply to fixed price

1 construction contracts entered into prior to the effective date  
2 of this act or entered into under the obligation of an  
3 unalterable, formal written bid issued prior to the effective  
4 date of this act.

5 Section 5. This act shall take effect immediately.