

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1965 Session of  
2009

INTRODUCED BY SEIP, KESSLER, GOODMAN, MAHONEY, BUXTON, DERMODY,  
DeWEESE, GALLOWAY, GERGELY, GIBBONS, GRUCELA, HANNA,  
HOUGHTON, KORTZ, McILVAINE SMITH, MURPHY, P. COSTA, READSHAW,  
SANTONI, K. SMITH, YUDICHAK, COHEN, McCALL AND MUNDY,  
SEPTEMBER 10, 2009

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 10, 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; providing for  
12 special and interfund transfers; and establishing the  
13 Homestead Exclusion Fund.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Section 201(k) and (o) of the act of March 4,  
17 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are  
18 amended by adding clauses 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:

\* \* \*

(k) "Sale at retail."

\* \* \*

(20) (i) The rendition for a consideration of any service, other than (A) funeral parlors, crematories and death care services, (B) health services, including, but not limited to, physician or dental services, (C) professional and technical services, including, but not limited to, legal services, architectural services and specialized design services, (D) tuition, or (E) electrical, plumbing, heating and air conditioning service fees, when the primary objective of the purchaser is the receipt of any benefit of the service performed, as distinguished from the receipt of property. In determining what is a service, the intended use or stated objective of the contracting parties shall not necessarily be controlling.

(ii) Any service performed in this Commonwealth shall be subject to the tax imposed under this article unless specifically exempted in this article. With respect to services, other than telecommunications services, the services shall be considered to be performed in this Commonwealth if:

(A) performed completely in this Commonwealth;

(B) performed partially in this Commonwealth and partially outside this Commonwealth when the recipient or user of the service is located in this Commonwealth;

(C) performed partially in this Commonwealth and partially outside this Commonwealth if the recipient or user of the service is not located in this Commonwealth, but only to the extent of those services actually performed in this Commonwealth; or

1 (D) the place of performance cannot be determined if the  
2 recipient or user of the service is located in this  
3 Commonwealth.

4 (iii) With respect to services, other than  
5 telecommunications services, the services performed partially in  
6 this Commonwealth and partially outside this Commonwealth shall  
7 be presumed to have been performed completely in this  
8 Commonwealth unless the taxpayer can show the place of  
9 performance by clear and convincing evidence.

10 (iv) With respect to interstate telecommunications services,  
11 only those charges for interstate telecommunications which  
12 originate or are terminated in this Commonwealth and which are  
13 billed and charged to a service address in this Commonwealth  
14 shall be subject to tax.

15 (v) With respect to services, other than telecommunications  
16 services, that are performed in this Commonwealth for a  
17 recipient or user of the services located in another state in  
18 which the services, had they been performed in that state, would  
19 not be subject to a sales or use tax under the laws of that  
20 state, no tax may be imposed under this article.

21 (vi) The tax on the sale or use of services shall become due  
22 at the time payment or other consideration is made for the  
23 portion of services actually paid.

24 \* \* \*

25 (o) "Use."

26 \* \* \*

27 (19) (i) The obtaining by the purchaser of any service, not  
28 otherwise set forth in this definition, other than (A) funeral  
29 parlors, crematories and death care services, (B) health  
30 services, including, but not limited to, physician or dental

1 services, (C) professional and technical services, including,  
2 but not limited to, legal services, architectural services and  
3 specialized design services, (D) tuition, or (E) electrical,  
4 plumbing, heating and air conditioning service fees, when the  
5 primary objective of the purchaser is the receipt of any benefit  
6 of the service performed, as distinguished from the receipt of  
7 property. In determining what is a service, the intended use or  
8 stated objective of the contracting parties shall not  
9 necessarily be controlling.

10 (ii) Any service performed in this Commonwealth shall be  
11 subject to the tax imposed under this article unless  
12 specifically exempted in this article. With respect to services,  
13 other than telecommunications services, such services shall be  
14 considered to be performed in this Commonwealth if:

15 (A) performed completely in this Commonwealth;

16 (B) performed partially in this Commonwealth and partially  
17 outside this Commonwealth when the recipient or user of the  
18 service is located in this Commonwealth;

19 (C) performed partially in this Commonwealth and partially  
20 outside this Commonwealth if the recipient or user of the  
21 service is not located in this Commonwealth, but only to the  
22 extent of those services actually performed in this  
23 Commonwealth; or

24 (D) the place of performance cannot be determined if the  
25 recipient or user of the service is located in this  
26 Commonwealth.

27 (iii) With respect to services, other than telecommunication  
28 services, such services performed partially in this Commonwealth  
29 and partially outside this Commonwealth shall be presumed to  
30 have been performed completely in this Commonwealth unless the

1 taxpayer shows the place of performance by clear and convincing  
2 evidence.

3 (iv) With respect to interstate telecommunications services,  
4 only those charges for interstate telecommunications which  
5 originate or are terminated in this Commonwealth and which are  
6 billed and charged to a service address in this Commonwealth  
7 shall be subject to tax.

8 (v) With respect to services, other than telecommunications  
9 services, that are performed in this Commonwealth for a  
10 recipient or user of the services located in another state in  
11 which the services, had they been performed in that state, would  
12 not be subject to a sales or use tax under the laws of that  
13 state, no tax may be imposed under this article.

14 \* \* \*

15 Section 2. Sections 204(13), (30), (32), (33), (34), (35),  
16 (38), (41), (50), (51), (53), (61), (63) and (65) of the act,  
17 amended or added August 31, 1971 (P.L.362, No.93), October 27,  
18 1979 (P.L.242, No.79), October 22, 1981 (P.L.314, No.109),  
19 December 13, 1991 (P.L.373, No.40), June 16, 1994 (P.L.279,  
20 No.48), May 7, 1997 (P.L.85, No.7), April 23, 1998 (P.L.239,  
21 No.45), June 22, 2001 (P.L.353, No.23), June 29, 2002 (P.L.559,  
22 No.89) and July 6, 2006 (P.L.319, No.67), are amended and the  
23 section is amended by adding clauses to read:

24 Section 204. Exclusions from Tax.--The tax imposed by  
25 section 202 shall not be imposed upon any of the following:

26 \* \* \*

27 [(13) The sale at retail, or use of wrapping paper, wrapping  
28 twine, bags, cartons, tape, rope, labels, nonreturnable  
29 containers and all other wrapping supplies, when such use is  
30 incidental to the delivery of any personal property, except that

1 any charge for wrapping or packaging shall be subject to tax at  
2 the rate imposed by section 202.]

3 \* \* \*

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

14 \* \* \*

15 [(32) The sale at retail or use of flags of the United  
16 States of America and the Commonwealth of Pennsylvania.

17 (33) The sale at retail or use of textbooks for use in  
18 schools, colleges and universities, either public or private  
19 when purchased in behalf of or through such schools, colleges or  
20 universities provided such institutions of learning are  
21 recognized by the Department of Education.

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

25 (35) The sale at retail or use of mail order catalogs and  
26 direct mail advertising literature or materials, including  
27 electoral literature or materials, such as envelopes, address  
28 labels and a one-time license to use a list of names and mailing  
29 addresses for each delivery of direct mail advertising  
30 literature or materials, including electoral literature or

1 materials, through the United States Postal Service.]

2 \* \* \*

3 [(38) The sale at retail of horses, if at the time of  
4 purchase, the seller is directed to ship or deliver the horse to  
5 an out-of-State location, whether or not the charges for  
6 shipment are paid for by the seller or the purchaser; the seller  
7 shall obtain a bill of lading, either from the carrier or from  
8 the purchaser, who, in turn has obtained the bill of lading from  
9 the carrier, reflecting delivery to the out-of-State address to  
10 which the horse has been shipped. The seller shall execute a  
11 "Certificate of Delivery to Destination Outside of the  
12 Commonwealth" for each bill of lading reflecting out-of-State  
13 delivery. The seller shall be required to retain the certificate  
14 of delivery form to justify the noncollection of sales tax with  
15 respect to the transaction to which the form relates.

16 In transactions where a horse is sold by the seller and  
17 delivered to a domiciled person, agent or corporation prior to  
18 its being delivered to an out-of-State location, the  
19 "Certificate of Delivery to Destination Outside of the  
20 Commonwealth" form must have attached to it bills of lading both  
21 for the transfer to the domiciled person, agent or corporation  
22 and from the aforementioned to the out-of-State location.]

23 \* \* \*

24 [(41) The sale at retail of supplies and materials to  
25 tourist promotion agencies, which receive grants from the  
26 Commonwealth, for distribution to the public as promotional  
27 material or the use of such supplies and materials by said  
28 agencies for said purposes.]

29 \* \* \*

30 [(50) The sale at retail or use of subscriptions for

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

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

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

20 \* \* \*

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

25 \* \* \*

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

28 \* \* \*

29 [(65) The sale at retail or use of investment metal bullion  
30 and investment coins. "Investment metal bullion" means any



1 elementary precious metal which has been put through a process  
2 of smelting or refining, including, but not limited to, gold,  
3 silver, platinum and palladium, and which is in such state or  
4 condition that its value depends upon its content and not its  
5 form. "Investment metal bullion" does not include precious metal  
6 which has been assembled, fabricated, manufactured or processed  
7 in one or more specific and customary industrial, professional,  
8 aesthetic or artistic uses. "Investment coins" means numismatic  
9 coins or other forms of money and legal tender manufactured of  
10 gold, silver, platinum, palladium or other metal and of the  
11 United States or any foreign nation with a fair market value  
12 greater than any nominal value of such coins. "Investment coins"  
13 does not include jewelry or works of art made of coins, nor does  
14 it include commemorative medallions.]

15 \* \* \*

16 (67) The sale at retail of medical goods or services by a  
17 hospital, as defined in the act of December 20, 1985 (P.L.457,  
18 No.112), known as the "Medical Practice Act of 1985."

19 (68) The sale at retail of medical or dental services,  
20 including, but not limited to, charges for office visits.

21 (69) The sale at retail or use of goods or services that are  
22 part of a Medicare Part B transaction.

23 (70) The sale at retail of medical, dental and vision  
24 insurance premiums.

25 (71) The sale at retail to or use of home health care,  
26 nursing care and other ambulatory health care services.

27 (72) The sale at retail to or use of funeral parlors,  
28 crematories and death care services.

29 (73) The sale at retail to or use of social services,  
30 including, but not limited to, day care.

1     (74) The sale at retail of tuition.

2     (75) The sale at retail to or use of any of the following  
3 professional services:

4     (i) Legal services.

5     (ii) Accounting, auditing and bookkeeping services.

6     (iii) Architectural and engineering services.

7     (76) The sale at retail to or use of electrical, plumbing,  
8 heating and air conditioning service fees.

9     Section 3. The act is amended by adding a section to read:

10     Section 281.3. Special and Interfund Transfers.--(a) Within  
11 30 days of the close of the 2009-2010 fiscal year, 2010-2011  
12 fiscal year and 2011-2012 fiscal year, one hundred million  
13 dollars (\$100,000,000) shall be transferred to each city of the  
14 first class.

15     (b) Within 30 days of the close of the 2010-2011 fiscal  
16 year, 2011-2012 fiscal year and 2012-2013 fiscal year, three  
17 billion five hundred million dollars (\$3,500,000,000) shall be  
18 transferred to the Property Tax Relief Fund.

19     (c) (1) Within 30 days of the close of the 2010-2011 fiscal  
20 year, 2011-2012 fiscal year and 2012-2013 fiscal year, one  
21 billion dollars (\$1,000,000,000) shall be transferred to the  
22 Homestead Exclusion Fund, which fund is hereby established in  
23 the State Treasury.

24     (2) Except as otherwise provided in subclause (3), no funds  
25 may be transferred or disbursed from the Homestead Exclusion  
26 Fund.

27     (3) On July 1, 2013, the balance of the Homestead Exclusion  
28 Fund shall be transferred to the Property Tax Relief Fund.

29     Section 4. This act shall take effect in 60 days.