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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1321** Session of  
1991

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INTRODUCED BY EVANS, MAY 7, 1991

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SENATE AMENDMENTS TO HOUSE AMENDMENTS TO SENATE AMENDMENTS,  
DECEMBER 10, 1991

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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 scope of sales and use  
11 tax, for the definitions of "claimant," "dependent,"  
12 "household income," "total household income" and "poverty  
13 income" and for special tax provisions for poverty, for  
14 transfers to the Hazardous Sites Cleanup Fund and the Public  
15 Transportation Assistance Fund; further providing for reports  
16 by mutual thrift institutions; and making repeals.

17 The General Assembly of the Commonwealth of Pennsylvania

18 hereby enacts as follows:

19 Section 1. Section 201(g), (k)(8), (15), (16) and (18), (l),  
20 (m), (o)(4), (13) and (14), (z), (aa), (cc), (ii), (kk), (ll)  
21 and (mm) of the act of March 4, 1971 (P.L.6, No.2), known as the  
22 Tax Reform Code of 1971, amended or added August 4, 1991  
23 (P.L.97, No.22), are amended and the section is amended by

1 adding subclauses to read:

2 Section 201. Definitions.--The following words, terms and  
3 phrases when used in this Article II shall have the meaning  
4 ascribed to them in this section, except where the context  
5 clearly indicates a different meaning:

6 \* \* \*

7 (g) "Purchase price."

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

18 (2) There shall be deducted from the purchase price the  
19 value of any tangible personal property actually taken in trade  
20 or exchange in lieu of the whole or any part of the purchase  
21 price. For the purpose of this clause, the amount allowed by  
22 reason of tangible personal property actually taken in trade or  
23 exchange shall be considered the value of such property.

24 (3) In determining the purchase price on the sale or use of  
25 taxable tangible personal property or a service where, because  
26 of affiliation of interests between the vendor and purchaser, or  
27 irrespective of any such affiliation, if for any other reason  
28 the purchase price declared by the vendor or taxpayer on the  
29 taxable sale or use of such tangible personal property or  
30 service is, in the opinion of the department, not indicative of

1 the true value of the article or service or the fair price  
2 thereof, the department shall, pursuant to uniform and equitable  
3 rules, determine the amount of constructive purchase price upon  
4 the basis of which the tax shall be computed and levied. Such  
5 rules shall provide for a constructive amount of purchase price  
6 for each such sale or use which would naturally and fairly be  
7 charged in an arms-length transaction in which the element of  
8 common interest between the vendor or purchaser is absent or if  
9 no common interest exists, any other element causing a  
10 distortion of the price or value is likewise absent. For the  
11 purpose of this clause where a taxable sale or purchase at  
12 retail transaction occurs between a parent and a subsidiary,  
13 affiliate or controlled corporation of such parent corporation,  
14 there shall be a rebuttable presumption, that because of such  
15 common interest such transaction was not at arms-length.

16 (4) Where there is a transfer or retention of possession or  
17 custody, whether it be termed a rental, lease, service or  
18 otherwise, of tangible personal property including, but not  
19 limited to linens, aprons, motor vehicles, trailers, tires,  
20 industrial office and construction equipment, and business  
21 machines the full consideration paid or delivered to the vendor  
22 or lessor shall be considered the purchase price, even though  
23 such consideration be separately stated and be designated as  
24 payment for processing, laundering, service, maintenance,  
25 insurance, repairs, depreciation or otherwise. Where the vendor  
26 or lessor supplies or provides an employee to operate such  
27 tangible personal property, the value of the labor thus supplied  
28 may be excluded and shall not be considered as part of the  
29 purchase price if separately stated. There shall also be  
30 included as part of the purchase price the value of anything

1 paid or delivered, or promised to be paid or delivered by a  
2 lessee, whether it be money or otherwise, to any person other  
3 than the vendor or lessor by reason of the maintenance,  
4 insurance or repair of the tangible personal property which a  
5 lessee has the possession or custody of under a rental contract  
6 or lease arrangement.

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

22 (6) The purchase price of employment agency services and  
23 help supply services shall be the service fee paid by the  
24 purchaser to the vendor or supplying entity. The term "service  
25 fee" as used in this subclause shall be the total charge or fee  
26 of the vendor or supplying entity minus the costs of the  
27 supplied employee which costs are wages, salaries, bonuses and  
28 commissions, employment benefits, expense reimbursements and  
29 payroll and withholding taxes, to the extent that these costs  
30 are specifically itemized or that these costs in aggregate are

1 stated in billings from the vendor or supplying entity. To the  
2 extent that these costs are not itemized or stated on the  
3 billings, then the service fee shall be the total charge or fee  
4 of the vendor or supplying entity.

5 (7) Unless the vendor separately states that portion of the  
6 billing which applies to premium cable service as defined in  
7 subsection (11), the total bill for the provision of all cable  
8 services shall be the purchase price.

9 \* \* \*

10 (k) "Sale at retail."

11 \* \* \*

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

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

24 (A) The manufacture of tangible personal property;

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

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

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

6 The exclusions provided in paragraphs (A), (B), (C) and (D)  
7 shall not apply to any vehicle required to be registered under  
8 The Vehicle Code, except those vehicles used directly by a  
9 public utility engaged in business as a common carrier; to  
10 maintenance facilities; or to materials, supplies or equipment  
11 to be used or consumed in the construction, reconstruction,  
12 remodeling, repair or maintenance of real estate other than  
13 directly used machinery, equipment, parts or foundations  
14 therefor that may be affixed to such real estate.

15 The exclusions provided in paragraphs (A), (B), (C) and (D)  
16 shall not apply to tangible personal property or services to be  
17 used or consumed in managerial sales or other nonoperational  
18 activities, nor to the purchase or use of tangible personal  
19 property or services by any person other than the person  
20 directly using the same in the operations described in  
21 paragraphs (A), (B), (C) and (D) herein.

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

1 production, delivering or rendition of a public utility service.

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

7 \* \* \*

8 (15) The rendition for a consideration of employment agency  
9 services[,] or help supply services [or other personnel supply  
10 services].

11 (16) [The rendition for a consideration of computer <—  
12 programming services for other computer-related services, <—  
13 including, but not limited to, providing computer integrated <—  
14 systems design, computer processing, data preparation or  
15 processing services, information retrieval services for, <—  
16 computer facilities management services ~~or other computer~~ <—  
17 ~~related services.~~] THE RENDITION FOR A CONSIDERATION OF <—  
18 COMPUTER PROGRAMMING SERVICES; COMPUTER INTEGRATED SYSTEMS  
19 DESIGN SERVICES; COMPUTER PROCESSING, DATA PREPARATION OR  
20 PROCESSING SERVICES; INFORMATION RETRIEVAL SERVICES; COMPUTER  
21 FACILITIES MANAGEMENT SERVICES; OR OTHER COMPUTER-RELATED  
22 SERVICES. AT A MINIMUM, SUCH SERVICES SHALL NOT INCLUDE SERVICES  
23 THAT ARE PART OF ELECTRONIC FUND TRANSFERS, ELECTRONIC FINANCIAL  
24 TRANSACTIONS OR SERVICES, BANKING OR TRUST SERVICES; OR  
25 MANAGEMENT OR ADMINISTRATIVE SERVICES, INCLUDING TRANSFER  
26 AGENCY, SHAREHOLDER, CUSTODIAL AND PORTFOLIO ACCOUNTING  
27 SERVICES, PROVIDED DIRECTLY TO ANY ENTITY THAT DULY QUALIFIES TO  
28 BE TAXED AS A REGULATED INVESTMENT COMPANY OR A REAL ESTATE  
29 INVESTMENT TRUST UNDER THE PROVISIONS OF THE INTERNAL REVENUE  
30 CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.), OR TO

1 AN ENTITY THAT PROVIDES SUCH SERVICES TO AN ENTITY SO  
2 QUALIFYING.

3 \* \* \*

4 (18) The rendition for a consideration of [storage] self-  
5 storage service.

6 (1) "Storage." Any keeping or retention of tangible  
7 personal property within this Commonwealth for any purpose  
8 including the interim keeping, retaining or exercising any right  
9 or power over such tangible personal property. This term is in  
10 no way limited to the provision of [storage] self-storage  
11 service.

12 (m) "Tangible personal property." Corporeal personal  
13 property including, but not limited to, goods, wares,  
14 merchandise, steam and natural and manufactured and bottled gas  
15 for non-residential use, electricity for non-residential use,  
16 [pay television, except for minimum pay television] premium  
17 cable service, spirituous or vinous liquor and malt or brewed  
18 beverages and soft drinks, interstate telephone, telegraph and  
19 telecommunications service originating or terminating in the  
20 Commonwealth and charged to a service address in this  
21 Commonwealth, intrastate telephone, telegraph and  
22 telecommunications service with the exception of subscriber line  
23 charges and basic local telephone service for residential use,  
24 provided further, the service address of any intrastate  
25 telephone, telegraph or telecommunications service is deemed to  
26 be within this Commonwealth or within a political subdivision,  
27 regardless of how or where billed or paid. In the case of any  
28 such interstate or intrastate telephone, telegraph and  
29 telecommunications service, any charge paid through a credit or  
30 payment mechanism which does not relate to a service address,



1 such as a bank, travel, credit or debit card, is deemed  
2 attributable to the address of origination of the telephone,  
3 telegraph or telecommunications service.

4 \* \* \*

5 (o) "Use."

6 \* \* \*

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

25 (A) Any tangible personal property acquired and kept,  
26 retained or over which power is exercised within this  
27 Commonwealth on which the taxing of the storage, use or other  
28 consumption thereof is expressly prohibited by the Constitution  
29 of the United States or which is excluded from tax under other  
30 provisions of this article.

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

6 (i) The manufacture of tangible personal property;

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

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

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

18 The exclusions provided in subparagraphs (i), (ii), (iii) and  
19 (iv) shall not apply to any vehicle required to be registered  
20 under The Vehicle Code except those vehicles directly used by a  
21 public utility engaged in the business as a common carrier; to  
22 maintenance facilities; or to materials, supplies or equipment  
23 to be used or consumed in the construction, reconstruction,  
24 remodeling, repair or maintenance of real estate other than  
25 directly used machinery, equipment, parts or foundations  
26 therefor that may be affixed to such real estate. The exclusions  
27 provided in subparagraphs (i), (ii), (iii) and (iv) shall not  
28 apply to tangible personal property or services to be used or  
29 consumed in managerial sales or other nonoperational activities,  
30 nor to the purchase or use of tangible personal property or

1 services by any person other than the person directly using the  
2 same in the operations described in subparagraphs (i), (ii),  
3 (iii) and (iv).

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

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

18 \* \* \*

19 (13) The obtaining by the purchaser of employment agency  
20 services[,] or help supply services [or other personnel supply  
21 services].

22 (14) [The obtaining by the purchaser of computer programming <—  
23 services for other computer-related services, including, but not <—  
24 limited to], providing computer integrated systems design, <—  
25 computer processing, data preparation or processing services,  
26 information retrieval services for], computer facilities <—  
27 management services or other computer related services..] THE <—  
28 OBTAINING BY THE PURCHASER OF COMPUTER PROGRAMMING SERVICES;  
29 COMPUTER INTEGRATED SYSTEMS DESIGN SERVICES; COMPUTER  
30 PROCESSING, DATA PREPARATION OR PROCESSING SERVICES; INFORMATION

1 RETRIEVAL SERVICES; COMPUTER FACILITIES MANAGEMENT SERVICES; OR  
2 OTHER COMPUTER-RELATED SERVICES. AT A MINIMUM, SUCH SERVICES  
3 SHALL NOT INCLUDE SERVICES THAT ARE PART OF ELECTRONIC FUND  
4 TRANSFERS, ELECTRONIC FINANCIAL TRANSACTIONS OR SERVICES,  
5 BANKING OR TRUST SERVICES; OR MANAGEMENT OR ADMINISTRATIVE  
6 SERVICES, INCLUDING TRANSFER AGENCY, SHAREHOLDER, CUSTODIAL AND  
7 PORTFOLIO ACCOUNTING SERVICES, PROVIDED DIRECTLY TO ANY ENTITY  
8 THAT DULY QUALIFIES TO BE TAXED AS A REGULATED INVESTMENT  
9 COMPANY OR A REAL ESTATE INVESTMENT TRUST UNDER THE PROVISIONS  
10 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26  
11 U.S.C. § 1 ET SEQ.), OR TO AN ENTITY THAT PROVIDES SUCH SERVICES  
12 TO AN ENTITY SO QUALIFYING.

13 \* \* \*

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

15 \* \* \*

16 (z) "Disinfecting or pest control services." Providing  
17 disinfecting, termite control, insect control, rodent control or  
18 other pest control services. Such services include, but are not  
19 limited to, deodorant servicing of rest rooms, washroom  
20 sanitation service, rest room cleaning service, extermination  
21 service or fumigating service. As used in this clause, the term  
22 "fumigating service" shall not include the fumigation of  
23 agricultural commodities or containers used for agricultural  
24 commodities. As used in this clause, the term "insect control"  
25 shall not include the spraying of trees which are harvested for  
26 commercial purposes for gypsy moth control.

27 (aa) "Building maintenance or cleaning services." Providing  
28 services which include, but are not limited to, janitorial, maid  
29 or housekeeping service, office or interior building cleaning or  
30 maintenance service, window cleaning service, floor waxing

1 service, lighting maintenance service such as bulb replacement,  
2 cleaning, chimney cleaning service, acoustical tile cleaning  
3 service, venetian blind cleaning, cleaning and maintenance of  
4 telephone booths or cleaning and degreasing of service stations.  
5 This term shall not include repairs on buildings and other  
6 structures; nor shall this term include the maintenance or  
7 repair of boilers, furnaces or parts thereof; the painting,  
8 wallpapering or applying other like coverings to interior walls,  
9 ceilings or floors; or the exterior painting of buildings.

10 \* \* \*

11 (cc) "Help supply services." Providing temporary or  
12 continuing help where the help supplied is on the payroll of the  
13 supplying person or entity, but is under the supervision of the  
14 individual or business to which help is furnished. Such services  
15 include, but are not limited to, service of a type provided by  
16 labor and manpower pools, employe leasing services, office help  
17 supply services, temporary help services, usher services,  
18 modeling services or fashion show model supply services. Such  
19 services shall not include providing farm labor services. The  
20 term shall not include human health-related services, including  
21 nursing, home health care and personal care. As used in this  
22 clause, "personal care" shall include providing at least one of  
23 the following types of assistance to persons with limited  
24 ability for self-care:

- 25 (1) dressing, bathing or feeding;  
26 (2) supervising self-administered medication;  
27 (3) transferring a person to or from a bed or wheelchair; or  
28 (4) routine housekeeping chores when provided in conjunction  
29 with and supplied by the same provider of the assistance listed  
30 in subclause (1), (2) or (3).

1       \* \* \*

2       (ii) "Other computer-related services." Supplying computer-  
3 related services not described elsewhere in clauses (dd) through  
4 (hh). Such services include, but are not limited to, computer  
5 consulting services; data base development and data processing  
6 consulting services; disk, diskette or tape conversion services;  
7 disk, diskette or tape recertification services; computer  
8 hardware and software requirement analysis services; software  
9 documentation services; software installation services; software  
10 training services if provided in conjunction with the purchase  
11 of software; or reformatting or editing services.

12       \* \* \*

13       (kk) "[Storage] Self-storage service." [A] Providing a  
14 building [or portion of], a room in a building or [similar  
15 structure for purposes] a secured area within a building with  
16 separate access provided for each purchaser of self-storage  
17 service, primarily for the purpose of storing [corporeal]  
18 personal property[, including, but not limited to, goods, wares  
19 or merchandise, spiritous or vinous liquor and malt or brewed  
20 beverages, furniture and household goods, automobiles, furs,  
21 textiles, perishable goods under refrigeration, farm products,  
22 cotton compresses or tobacco]. The term excludes providing:

23       (1) safe deposit boxes by financial institutions;

24       (2) storage [of such property which is unloaded from  
25 maritime vessels and then later stored or which is stored and  
26 then later loaded on maritime vessels when such storage or  
27 loading takes place within twenty-five miles of a "port  
28 district," as defined by the act of July 10, 1989 (P.L.291,  
29 No.50), known as the "Philadelphia Regional Port Authority  
30 Act." ] in refrigerator or freezer units;

1     (3) storage in commercial warehouses;  
2     (4) facilities for goods distribution; and  
3     (5) lockers in airports, bus stations, museums and other  
4 public places.

5     [(11) "Pay television." Cable television; community antenna  
6 television; or any other distribution of television, video or  
7 radio services, with or without the use of wires, to subscribers  
8 or paying customers or users, including, but not limited to,  
9 installation and repair services, single-event video service or  
10 any service having any connection with such services.]

11     (11) "Premium cable service." That portion of cable  
12 television services; community antenna television services; or  
13 any other distribution of television, video, audio or radio  
14 services which meets all of the following criteria:

15     (1) is transmitted with or without the use of wires to  
16 purchasers; and

17     (2) which consists substantially of programming  
18 uninterrupted by paid commercial advertising which includes, but  
19 it is not limited to, programming primarily composed of  
20 uninterrupted full-length motion pictures or sporting events,  
21 pay-per-view, paid programming or like audio or radio  
22 broadcasting.

23     If a purchaser receives or agrees to receive premium cable  
24 service, then the following charges are included in the purchase  
25 price: charges for installation or repair of any premium cable  
26 service; upgrade to include additional premium cable service;  
27 downgrade to exclude all or some premium cable service;  
28 additional premium cable outlets in excess of ten; or any other  
29 charge or fee related to premium cable services. The term shall  
30 not apply to transmissions by public television, public radio

1 services or official Federal, State or local government cable  
2 services. Nor, shall the term apply to local origination  
3 programming which provides a variety of public service programs  
4 unique to the community; programming which provides coverage of  
5 public affairs issues which are presented without commentary or  
6 analysis, including United States Congressional proceedings; or  
7 programming which is substantially related to religious  
8 subjects.

9 [(mm) "Minimum pay television." That portion of pay  
10 television for which a periodic minimum fee is paid to receive  
11 pay television on an ongoing basis.]

12 Section 2. Section 204(4), (29) and (30) of the act, amended  
13 August 4, 1991 (P.L.97, No.22), are amended to read:

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

16 \* \* \*

17 (4) The sale at retail or use of disposable diapers, pre-  
18 moistened wipes; incontinence products[,]; colostomy deodorants;  
19 toilet paper[,]; sanitary napkins, tampons or similar items used  
20 for feminine hygiene; or toothpaste, toothbrushes or dental  
21 floss.

22 \* \* \*

23 (29) The sale at retail or use of food and beverages for  
24 human consumption including candy and gum, except that this  
25 exclusion shall not apply with respect to--

26 (i) Soft drinks;

27 (ii) Malt and brewed beverages and spirituous and vinous  
28 liquors;

29 (iii) Food or beverages [ready to eat], whether sold for  
30 consumption on or off the premises or on a "take-out" or "to go"



1 basis or delivered to the purchaser or consumer, when purchased  
2 [(i)] (A) from persons engaged in the business of catering[, or  
3 (ii)]; or (B) from persons engaged in the business of operating  
4 establishments from which ready to eat food and beverages are  
5 sold, including, but not limited to, restaurants, cafes, lunch  
6 counters, private and social clubs, taverns, dining cars,  
7 hotels, night clubs, fast food operations, pizzerias, fairs,  
8 carnivals, lunch carts, ice cream stands, [vending machines,]  
9 snack bars, cafeterias, employe cafeterias, theaters, stadiums,  
10 arenas, amusement parks, carryout shops, coffee shops[, bakery,  
11 pastry and donut shops] and other establishments whether mobile  
12 or immobile [from which food or beverages ready to eat are  
13 sold]. For purposes of this clause, a bakery, a pastry shop, a  
14 donut shop, a delicatessen, grocery store, supermarket, farmer's  
15 market or a convenience store shall not be considered an  
16 establishment from which food or beverages ready to eat are sold  
17 except for the sale of meals, [cooked chicken,] sandwiches,  
18 [prepared salads,] food from salad bars, [prepared desserts,]  
19 hand-dipped or hand-served iced based products including ice  
20 cream and yogurt, hot soup, hot pizza and other hot food items,  
21 brewed coffee and hot beverages. For purposes of this subclause,  
22 beverages shall not include malt and brewed beverages and  
23 spirituous and vinous liquors but shall include soft drinks. The  
24 sale at retail of food and beverages at or from a school or  
25 church in the ordinary course of the activities of such  
26 organization is not subject to tax.

27 (30) [The sale at retail or use of periodicals and  
28 publications which are published at regular intervals not  
29 exceeding three months, and which are circulated among the  
30 general public and containing matters of general interest and

1 reports of current events published for the purpose of  
2 disseminating information of a public character or devoted to  
3 literature, the sciences, art or some special industry. This  
4 exclusion shall also include any printed advertising material  
5 circulated with such periodical or publication regardless of  
6 where or by whom such printed advertising material was  
7 produced.] The sale at retail or use of newspapers. For purposes  
8 of this section the term "newspaper" shall mean a "legal  
9 newspaper" or a publication containing matters of general  
10 interest and reports of current events which qualifies as a  
11 "newspaper of general circulation" qualified to carry a "legal  
12 advertisement" as those terms are defined in 45 Pa.C.S. § 101  
13 (relating to definitions) not including magazines. This  
14 exclusion shall also include any printed advertising materials  
15 circulated with such newspaper regardless of where or by whom  
16 such printed advertising material was produced.

17 \* \* \*

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

19 Section 281.2. Transfers to Public Transportation Assistance  
20 Fund.--(a) All revenues received on or after July 1, 1992, from  
21 the imposition of the tax on periodicals shall be transferred to  
22 the Public Transportation Assistance Fund according to the  
23 formula set forth in subsection (b).

24 (b) Within 30 days of the close of any calendar month, .44  
25 per cent (.0044) of the taxes received in the previous month  
26 under this article, less any amounts collected in that previous  
27 calendar month under former 74 Pa.C.S. § 1314(d) (relating to  
28 Public Assistance Transportation Fund), shall be transferred to  
29 the Public Assistance Transportation Fund established under 74  
30 Pa.C.S. § 1314(a).

1     (c) In fiscal year 1991-1992, the Secretary of Revenue will  
2     ensure that ten million dollars (\$10,000,000) is deposited in  
3     the Public Assistance Transportation Fund from the combination  
4     of revenues received under former 74 Pa.C.S. § 1314(d) and  
5     transfers of periodical taxes received under this article.

6     Section 4. Sections 301(c.2), (e.1), (i.1), (i.2) and (o.2)  
7     and 304 of the act, amended or added August 4, 1991 (P.L.97,  
8     No.22), are amended to read:

9     Section 301. Definitions.--The following words, terms and  
10    phrases when used in this article shall have the meaning  
11    ascribed to them in this section except where the context  
12    clearly indicates a different meaning. Any reference in this  
13    article to the Internal Revenue Code shall include the Internal  
14    Revenue Code of 1954, as amended to the date on which this  
15    article is effective:

16       \* \* \*

17       (c.2) "Claimant" means a person[:

18       (1)] who is subject to the tax imposed under this article,  
19     is not a dependent of another person, but is entitled to claim  
20     against such tax the poverty tax provisions as provided by this  
21     act[;

22       (2) who has a taxable year of not less than twelve months;  
23     and

24       (3) with respect to whom no deduction under section 151 of  
25     the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
26     § 1 et seq.), as amended, is allowable to any nonhousehold  
27     member for a taxable year beginning in the calendar year in  
28     which the claimant's taxable year begins].

29       \* \* \*

30       (e.1) "Dependent" means [any nonhousehold member with

1 respect to whom a deduction under section 151 of the Internal  
2 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.),  
3 as amended, is allowable to the claimant for the claimant's  
4 taxable year or to a household member for the claimant's taxable  
5 year] a spouse or child who derives more than one-half of his  
6 total support during the entire taxable year from a claimant  
7 entitled to claim the poverty exemption. Any person who is a  
8 dependent pursuant to the provisions of the Internal Revenue  
9 Code during a taxable year shall prima facie be deemed a  
10 dependent for purposes of this act.

11 \* \* \*

12 [(i.1) "Total household income" means all poverty income  
13 received by a claimant and every other household member for the  
14 taxable year of the claimant.

15 (i.2) "Household member" means any individual who, for more  
16 than one-half of the taxable year of the claimant, has as his  
17 principal place of abode the same home as the claimant and is a  
18 member of the same household as the claimant.]

19 \* \* \*

20 (o.2) "Poverty income" means for the purpose of determining  
21 eligibility for special tax provisions [all taxable and  
22 nontaxable income from whatever source derived, including, but  
23 not limited to, salaries, wages, bonuses, commissions, income  
24 from self-employment, alimony, support money, cash public  
25 assistance and relief, the gross amount of any pensions or  
26 annuities including railroad retirement benefits, all benefits  
27 received under the Social Security Act (Public Law 74-271, 42  
28 U.S.C. § 301 et seq.) except Medicare benefits, all benefits  
29 received under State unemployment insurance laws and veterans'  
30 disability payments, all interest received from the Federal or

1 any State government, or any instrumentality or political  
2 subdivision thereof, realized capital gains, rentals, workmen's  
3 compensation and the gross amount of loss of time insurance  
4 benefits, life insurance benefits and proceeds, except the first  
5 five thousand dollars (\$5,000) of the total of death benefit  
6 payments, and gifts of cash or property, other than transfers by  
7 gift between members of a household, in excess of a total value  
8 of three hundred dollars (\$300), but shall not include surplus  
9 food or other relief in kind supplied by a governmental agency  
10 or property tax or rent rebate or inflation dividend] all moneys  
11 or property (including interest, gains or income derived from  
12 obligations which are statutorily free from State or local  
13 taxation under any other act of the General Assembly of the  
14 Commonwealth of Pennsylvania or under the laws of the United  
15 States) received of whatever nature and from whatever source  
16 derived but not including (i) periodic payments for sickness and  
17 disability other than regular wages received during a period of  
18 sickness or disability; or (ii) disability, retirement or other  
19 payments arising under workmen's compensation acts, occupational  
20 disease acts and similar legislation by any government; or (iii)  
21 payments commonly recognized as old age or retirement benefits  
22 paid to persons retired from service after reaching a specific  
23 age or after a stated period of employment; or (iv) payments  
24 commonly known as public assistance, or unemployment  
25 compensation payments by any governmental agency; or (v)  
26 payments to reimburse actual expenses; or (vi) payments made by  
27 employers or labor unions for programs covering hospitalization,  
28 sickness, disability or death, supplemental unemployment  
29 benefits, strike benefits, social security and retirement; or  
30 (vii) any compensation received by United States servicemen

1 serving in a combat zone.

2 \* \* \*

3 Section 304. Special Tax Provisions for Poverty.--(a) The  
4 General Assembly, in recognition of the powers contained in  
5 section 2(b)(ii) of Article VIII of the Constitution of the  
6 Commonwealth of Pennsylvania which provides therein for the  
7 establishing as a class or classes of subjects of taxation the  
8 property or privileges of persons who, because of poverty are  
9 determined to be in need of special tax provisions hereby  
10 declares as its legislative intent and purpose to implement such  
11 power under such constitutional provision by establishing  
12 special tax provisions as hereinafter provided in this act.

13 (b) The General Assembly having determined that there are  
14 persons within this Commonwealth whose incomes are such that  
15 imposition of a tax thereon would deprive them and their  
16 dependents of the bare necessities of life and having further  
17 determined that poverty is a relative concept inextricably  
18 joined with actual income and the number of people dependent  
19 upon such income deems it to be a matter of public policy to  
20 provide special tax provisions for that class of persons  
21 hereinafter designated to relieve their economic burden.

22 (c) For the taxable year [1991] 1974 and each year  
23 thereafter any claimant who meets the following standards of  
24 eligibility established by this act as the test for poverty  
25 shall be deemed a separate class of subject of taxation, and, as  
26 such, shall be entitled to the benefit of the special provisions  
27 of this act.

28 (d) Any claim for special tax provisions hereunder shall be  
29 determined in accordance with the following:

30 (1) If [total household income is seven thousand dollars

1 (\$7,000)] the poverty income of the claimant during an entire  
2 taxable year is six thousand three hundred dollars (\$6,300) or  
3 less, the claimant shall be entitled to a refund or forgiveness  
4 of any moneys which have been paid over to (or would except for  
5 the provisions of this act be payable to) the Commonwealth under  
6 the provisions of this article, with an additional income  
7 allowance of [two thousand dollars (\$2,000) for each dependent  
8 and household member] one thousand five hundred dollars (\$1,500)  
9 for the first additional dependent and an additional income  
10 allowance of one thousand dollars (\$1,000) for each additional  
11 dependent of the claimant.

12 (2) If [total household income does not exceed the] the  
13 poverty income of the claimant during an entire taxable year  
14 does not exceed the poverty income limitations prescribed by  
15 clause (1) by more than the dollar category contained in  
16 subclauses (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or  
17 (ix) of this clause, the claimant shall be entitled to a refund  
18 or forgiveness based on the per centage prescribed in such  
19 subclauses of any moneys which have been paid over to (or would  
20 except for the provisions herein be payable to) the Commonwealth  
21 under this article:

22 (i) Ninety per cent if not in excess of one hundred dollars  
23 (\$100).

24 (ii) Eighty per cent if not in excess of two hundred dollars  
25 (\$200).

26 (iii) Seventy per cent if not in excess of three hundred  
27 dollars (\$300).

28 (iv) Sixty per cent if not in excess of four hundred dollars  
29 (\$400).

30 (v) Fifty per cent if not in excess of five hundred dollars

1 (\$500).

2 (vi) Forty per cent if not in excess of six hundred dollars  
3 (\$600).

4 (vii) Thirty per cent if not in excess of seven hundred  
5 dollars (\$700).

6 (viii) Twenty per cent if not in excess of eight hundred  
7 dollars (\$800).

8 (ix) Ten per cent if not in excess of nine hundred dollars  
9 (\$900).

10 Section 5. Section 602.3 of the act is amended by adding a  
11 subsection to read:

12 Section 602.3. Deposit of Proceeds; Appropriation.--\* \* \*

13 (c) The transfer of any proceeds resulting from the one-half  
14 mill tax imposed pursuant to this article to the Hazardous Site  
15 Cleanup Fund as authorized in subsection (a) shall not be  
16 applicable to fiscal year 1991-1992. In lieu of the 1991-1992  
17 fiscal year transfer, the Governor shall authorize the transfer  
18 of proceeds in excess of seventeen million dollars (\$17,000,000)  
19 from the revenue resulting from the one-half mill tax imposed  
20 pursuant to this article to the Hazardous Site Cleanup Fund  
21 pursuant to the transfer schedule set forth in subsection (a).  
22 The Governor may transfer any unexpended portion of the  
23 seventeen million dollars (\$17,000,000) to the Hazardous Site  
24 Cleanup Fund.

25 Section 6. Section 1502.5 of the act, added October 14, 1988  
26 (P.L.737, No.106), is amended to read:

27 [Section 1502.5. Sunset.--The provisions regarding  
28 apportionment, credits and additional filing requirements in  
29 accordance with sections 1502.1, 1502.2 and 1502.3 of this  
30 article shall not be applicable for calendar year 1992 and each



1 calendar year thereafter and fiscal years beginning in 1992 and  
2 each fiscal year thereafter.]

3 Section 7. The provisions of 74 Pa.C.S. § 1314(d) are  
4 repealed.

5 Section 8. The Secretary of Revenue shall facilitate the  
6 transfer of funds under section 281.2 of the act.

7 Section 9. It is the intent of the General Assembly that the  
8 Department of Revenue levy, assess and collect the tax imposed  
9 by section 202 of this act on retail sales from vending machines  
10 in the same manner and on the same taxable item as was in effect  
11 prior to August 4, 1991.

12 Section 10. The amendment of sections 301 and 304 of the act  
13 shall be retroactive to January 1, 1991.

14 Section 11. This act shall take effect as follows:

15 (1) The amendment or addition of sections 201(g),  
16 (k)(8), (15), (16) and (18), (l), (m), (o)(4), (13), (14) and  
17 (16), (z), (aa), (cc), (ii), (kk), (ll) and (mm), ~~204(4),~~ <—  
18 ~~(29) and (30)~~ 204(30) and 281.2 of the act shall take effect  
19 January 1, 1992.

20 (2) Sections 7 and 8 of this act shall take effect  
21 January 1, 1992.

22 (3) The remainder of this act shall take effect  
23 immediately.