

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2150 Session of
1999

INTRODUCED BY DRUCE, TRELLO, RAYMOND, PESCI, STETLER, SAYLOR,
S. H. SMITH, CORNELL, CLARK, ZIMMERMAN, CORRIGAN, HANNA,
MARKOSEK, BENNINGHOFF, SATHER, PIPPY, DEMPSEY AND WILLIAMS,
DECEMBER 13, 1999

REFERRED TO COMMITTEE ON FINANCE, DECEMBER 13, 1999

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," providing for taxation of sale and use of
11 prebuilt housing.

12 The General Assembly finds as follows:

13 (1) The disparate treatment of prebuilt housing, as
14 personal property in some circumstances and as real property
15 in others, has caused substantial confusion among the
16 citizens of this Commonwealth with regard to the proper
17 taxation upon the sale of such housing.

18 (2) Citizens of this Commonwealth who choose to reside
19 in prebuilt housing should be taxed, as nearly as possible,
20 on the same basis as those who choose to reside in site-built
21 (conventional) housing.

(3) Inasmuch as sales or use tax is collected on the cost of materials used in the construction of new site-built housing, sales and use tax on prebuilt housing should be imposed on that portion of the manufacturer's selling price which approximates the cost of materials used in the construction of prebuilt housing. Sixty percent of the manufacturer's selling price is a reasonable approximation of the cost of materials used in the construction of prebuilt housing.

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

Section 1. Section 201 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding definitions to read:

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

* * *

(uu) "Prebuilt housing." Prebuilt, sectional or modular housing, including:

(1) Manufactured housing.

(2) Mobilehomes which bear a label as required under the act of November 17, 1982 (P.L.676, No.192), known as the "Manufactured Housing Construction and Safety Standards Authorization Act," which certifies that they meet or exceed Federal construction and safety standards adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383, 42 U.S.C. § 5401 et seq.).

(3) Industrialized housing as defined in the act of May 11,

1 1972 (P.L.286, No.70), known as the "Industrialized Housing
2 Act."

3 (vv) "Used prebuilt housing." Prebuilt housing which has
4 been occupied by a purchaser other than the manufacturer or
5 builder for residential, commercial or other purposes for any
6 period of time. The term does not include prebuilt housing which
7 has been purchased for purposes of retransfer of ownership,
8 custody or possession for a consideration.

9 (ww) "Prebuilt housing builder." A person who makes a final
10 sale of prebuilt housing for occupancy within this Commonwealth.
11 Occupancy shall include use for residential or commercial
12 purposes, including use as a rental unit by a landlord, but
13 shall not include temporary installation by a builder for
14 display purposes of a unit held for resale. The "person who
15 makes a final sale of prebuilt housing" shall be determined
16 without reference to whether the person is responsible for
17 installing the prebuilt housing to become a permanent part of
18 real estate.

19 Section 2. Section 202 of the act is amended by adding
20 subsections to read:

21 Section 202. Imposition of Tax.--* * *

22 (e) Notwithstanding any other provision of this article, the
23 tax with respect to the sale or use of new or used prebuilt
24 housing shall be determined, collected and reported as set forth
25 in this subsection.

26 (1) Tax with respect to final sales of prebuilt housing for
27 occupancy within this Commonwealth shall be paid by the prebuilt
28 housing builder. Invoices and purchase agreements for final sale
29 of prebuilt housing with respect to which the tax has or will be
30 paid by the prebuilt housing builder must bear the legend:

1 "Pennsylvania sales and use tax on material costs paid by
2 builder." In any case where a home is purchased for occupancy
3 within this Commonwealth and the invoice or purchase agreement
4 does not bear the legend: "Pennsylvania sales and use tax paid
5 on material costs by builder," the final purchaser must remit
6 the tax directly to the department.

7 (2) Except as otherwise provided in clause (3), the tax
8 provided for in clause (1) shall be imposed at the rate of six
9 per cent of sixty per cent of the manufacturer's selling price.

10 (3) The tax provided for in clause (1) shall be imposed on
11 the prebuilt housing builder at the time of the final sale and
12 shall be paid and reported by the prebuilt housing builder to
13 the department in the time and manner provided in this article;
14 Provided, however, That a manufacturer of prebuilt housing may,
15 at its option, precollect the tax from the prebuilt housing
16 builder at the time of the sale to the prebuilt housing builder.
17 If a manufacturer of prebuilt housing precollects the tax from
18 the prebuilt housing builder, the manufacturer shall have the
19 option to collect tax on sixty per cent of the selling price or
20 on the actual cost of the supplies and materials used in the
21 manufacture of the prebuilt housing.

22 (4) The sale or use of used prebuilt housing shall be exempt
23 from the tax imposed under this article.

24 (f) Notwithstanding any other provision contained in this
25 article or in any other statute, law or ordinance, whether
26 presently existing or hereafter enacted, including, but not
27 limited to, sections 3150-B through 3157-B of the act of July
28 28, 1953 (P.L.723, No.230), known as the "Second Class County
29 Code," sections 3011 through 3903 of the act of August 9, 1955
30 (P.L.323, No.130), known as "The County Code," and sections 501

1 through 509 of the act of June 5, 1991 (P.L.9, No.6), known as
2 the "Pennsylvania Intergovernmental Cooperation Authority Act
3 for Cities of the First Class," local taxes with respect to the
4 sale or use of new or used prebuilt housing, as defined in
5 section 201(uu) and (vv) of this article, shall be determined,
6 collected and reported as set forth in this subsection.

7 (1) Local taxes with respect to final sales of prebuilt
8 housing for occupancy within this Commonwealth shall be paid by
9 the prebuilt housing builder. Invoices and purchase agreements
10 for final sale of prebuilt housing with respect to which a local
11 tax has or will be paid by the prebuilt housing builder shall
12 bear the legend: "Pennsylvania and local sales and use tax on
13 material costs paid by builder." In any case where a home is
14 purchased for occupancy within this Commonwealth and the invoice
15 or purchase agreement does not bear the legend: "Pennsylvania
16 and local sales and use tax paid on material costs by builder,"
17 the final purchaser shall remit any local sales and use tax
18 payable on the purchase directly to the appropriate taxing
19 authority.

20 (2) Except as otherwise provided in clause (3), local taxes
21 provided for in clause (1) shall be imposed on sixty per cent of
22 the manufacturer's selling price.

23 (3) Local taxes provided for in clause (1) shall be imposed
24 on the prebuilt housing builder at the time of the final sale
25 and shall be paid and reported by the prebuilt housing builder
26 to the department in the time and manner provided by law for
27 such local taxes; Provided, however, That a manufacturer of
28 prebuilt housing may, at its option, precollect the local taxes
29 due hereunder from the prebuilt housing builder at the time of
30 the sale to the prebuilt housing builder. If a manufacturer of

1 prebuilt housing precollects the local taxes from the prebuilt
2 housing builder, the manufacturer shall have the option to
3 collect tax on sixty per cent of the selling price or on the
4 actual cost of the supplies and materials used in the
5 manufacture of the prebuilt housing.

6 (4) The sale or use of used prebuilt housing shall be exempt
7 from local tax.

8 Section 3. Section 237(b)(1) of the act, amended December
9 28, 1972 (P.L.1633, No.340), is amended to read:

10 Section 237. Collection of Tax.--* * *

11 (b) Collection by Persons Maintaining a Place of Business in
12 [the] this Commonwealth. (1) Every person maintaining a place
13 of business in this Commonwealth and selling or leasing tangible
14 personal property or services, [including the selling or leasing
15 as tangible personal property mobilehomes as defined in "The
16 Vehicle Code" whether or not a certificate of title is issued by
17 the department,] the sale or use of which is subject to tax
18 shall collect the tax from the purchaser or lessee at the time
19 of making the sale or lease, and shall remit the tax to the
20 department, unless collection and remittance is otherwise
21 provided for in this article.

22 * * *

23 Section 4. This act shall apply to transactions for which
24 purchase agreements are executed on or after the effective date
25 of this act.

26 Section 5. This act shall take effect in 30 days.