

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2171 Session of
1980

INTRODUCED BY BURD, STEIGHNER, SPENCER, YOHN, DORR,
W. W. FOSTER, DeVERTER, BITTLE, NOYE, FEE, S. E. HAYES, JR.,
McCALL, McVERRY, TADDONIO, DAWIDA, KNEPPER, CESSAR, GALLEN,
ZORD, FISCHER, SCHMITT, WENGER, GOEBEL, MADIGAN, BOWSER,
GLADECK, LEVI, POTT, POLITE AND LIVENGOD, JANUARY 23, 1980

REFERRED TO COMMITTEE ON FINANCE, JANUARY 23, 1980

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," changing the definitions of certain terms.

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

13 Section 1. Clause (i) of section 201 act of March 4, 1971
14 (P.L.6, No.2), known as the "Tax Reform Code of 1971," is
15 amended by adding a subclause to read:

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

20 * * *

1 (i) "Resale."

2 * * *

3 (3) The physical incorporation of personal property as an
4 ingredient or constituent in the construction of foundations for
5 machinery or equipment the sale or use of which is excluded from
6 tax under the provisions of paragraphs (A), (B), (C) and (D) of
7 clause (k) and subparagraphs (i), (ii), (iii) and (iv) of clause
8 (o) of this section, whether such foundations at the time of
9 construction or transfer constitute personal property or real
10 estate.

11 * * *

12 Section 2. Clause (k) and subclause (4) of clause (o) of
13 section 201 of the act amended in part September 9, 1971
14 (P.L.437, No.105), and May 9, 1972 (P.L.273, No.66), are amended
15 to read:

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

20 (k) "Sale at retail."

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

26 (2) The rendition of the service of printing or imprinting
27 of tangible personal property for a consideration for persons
28 who furnish, either directly or indirectly the materials used in
29 the printing or imprinting.

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

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

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

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

23 (5) Any retention after March 7, 1956, of possession,
24 custody or a license to use or consume pursuant to a rental
25 contract or other lease arrangement (other than as security).

26 (6) Any retention of possession, custody or a license to use
27 or consume tangible personal property or any further obtaining
28 of services described in subclauses (2), (3) and (4) of this
29 clause after April 15, 1959, pursuant to a rental or service
30 contract or other arrangement (other than as security).

1 (7) Any retention of possession, custody or a license to use
2 or consume tangible personal property or any further obtaining
3 of services described in subclauses (2), (3) and (4) of this
4 clause after August 20, 1959, pursuant to a rental or service
5 contract or other arrangement (other than as security).

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

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

18 (A) The manufacture of personal property;

19 (B) Farming, dairying, agriculture, horticulture or
20 floriculture when engaged in as a business enterprise. The term
21 "farming" shall include the propagation and raising of ranch
22 raised fur-bearing animals and the propagation of game birds for
23 commercial purposes by holders of propagation permits issued
24 under the act of June 3, 1937, (P.L.1225, No.316), known as "The
25 Game Law";

26 (C) The producing, delivering or rendering of a public
27 utility service, or in constructing, reconstructing, remodeling,
28 repairing or maintaining the facilities which are directly used
29 in such service, whether or not such facilities constitute real
30 estate: Provided, however, "real estate" shall not include

1 buildings, roads, [foundations] or similar facilities;

2 (D) The processing of personal property as defined in clause
3 (d) of this section.

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

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

20 The exclusion provided in paragraph (C) shall not apply to
21 (i) construction materials used to construct, reconstruct,
22 remodel, repair or maintain facilities not used directly by the
23 purchaser in the production, delivering or rendition of public
24 utility service, or (ii) tools and equipment used but not
25 installed in the maintenance of facilities used in the
26 production, delivering or rendition of a public utility service.

27 (9) Where tangible personal property or services are
28 utilized for purposes constituting a "sale at retail" and for
29 purposes excluded from the definition of "sale at retail," it
30 shall be presumed that such property or services are utilized

1 for purposes constituting a "sale at retail" and subject to tax
2 unless the user thereof proves to the department that the
3 predominant purposes for which such property or services are
4 utilized do not constitute a "sale at retail."

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

21 * * *

22 (o) "Use."

23 * * *

24 (4) The obtaining by a purchaser of the service of
25 repairing, altering, mending, pressing, fitting, dyeing,
26 laundering, drycleaning or cleaning tangible personal property
27 other than wearing apparel or shoes or applying or installing
28 tangible personal property as a repair or replacement part of
29 other personal property other than wearing apparel or shoes,
30 whether or not the services are performed directly or by any

1 means other than by means of coin-operated self-service laundry
2 equipment for wearing apparel or household goods, and whether or
3 not any tangible personal property is transferred to the
4 purchaser in conjunction therewith, except such services as are
5 obtained in the construction, reconstruction, remodeling, repair
6 or maintenance of real estate: Provided, however, That this
7 subclause shall not be deemed to impose tax upon such services
8 in the preparation for sale of new items which are excluded from
9 the tax under clause (26) of section 204, or upon diaper
10 service: And provided further, That the term "use" shall not
11 include--

12 (A) Any tangible personal property acquired and kept,
13 retained or over which power is exercised within this
14 Commonwealth on which the taxing of the storage, use or other
15 consumption thereof is expressly prohibited by the Constitution
16 of the United States or which is excluded from tax under other
17 provisions of this article.

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

23 (i) The manufacture of personal property;

24 (ii) Farming, dairying, agriculture, horticulture or
25 floriculture when engaged in as a business enterprise;

26 (iii) The producing, delivering or rendering of a public
27 utility service, or in constructing, reconstructing, remodeling,
28 repairing or maintaining the facilities which are directly used
29 in such service, whether or not such facilities constitute real
30 estate: Provided, however, "real estate" shall not include

1 buildings, roads[, foundations] or similar facilities;

2 (iv) The processing of personal property as defined in
3 subclause (d) of this section.

4 The exclusions provided in subparagraphs (i), (ii), (iii) and
5 (iv) shall not apply to any vehicle required to be registered
6 under The Vehicle Code except vehicles directly used by a public
7 utility engaged in the business as a common carrier or
8 maintenance facilities, or to materials or supplies to be used
9 or consumed in any construction, reconstruction, remodeling,
10 repair or maintenance of real estate other than machinery,
11 equipment or parts or foundations therefor that may be affixed
12 to such real estate. The exclusions provided in subparagraphs
13 (i), (ii), (iii) and (iv) shall not apply to tangible personal
14 property or services to be used or consumed in managerial sales
15 or other nonoperational activities, nor to the purchase or use
16 of tangible personal property by any person other than the
17 person directly using the same in the aforesaid operations.

18 The exclusion provided in subparagraph (iii) shall not apply
19 to (A) construction materials used to construct, reconstruct,
20 remodel, repair or maintain facilities not used directly in the
21 production, delivering or rendition of public utility service,
22 or (B) tools and equipment used but not installed in the
23 maintenance of facilities used directly in the production,
24 delivering or rendition of a public utility service.

25 * * *

26 Section 3. This act shall take effect in 60 days.