

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2163 Session of  
1991

INTRODUCED BY E. Z. TAYLOR, FLICK, GERLACH, HERSHEY, PITTS AND  
VROON, NOVEMBER 13, 1991

REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 13, 1991

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," repealing provisions imposing sales tax on  
11 various services.

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

14 Section 1. Section 201(k), (l) and (kk) of the act of March  
15 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,  
16 amended or added August 4, 1991 (P.L.97, No.22), are amended to  
17 read:

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

22 \* \* \*

(k) "Sale at retail."

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

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

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

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

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

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services

1 in the preparation for sale of new items which are excluded from  
2 the tax under clause (26) of section 204, or upon diaper  
3 service.

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

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

16 (A) The manufacture of tangible personal property;

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

23 (C) The producing, delivering or rendering of a public  
24 utility service, or in constructing, reconstructing, remodeling,  
25 repairing or maintaining the facilities which are directly used  
26 in producing, delivering or rendering such service;

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

28 The exclusions provided in paragraphs (A), (B), (C) and (D)  
29 shall not apply to any vehicle required to be registered under  
30 The Vehicle Code, except those vehicles used directly by a

1 public utility engaged in business as a common carrier; to  
2 maintenance facilities; or to materials, supplies or equipment  
3 to be used or consumed in the construction, reconstruction,  
4 remodeling, repair or maintenance of real estate other than  
5 directly used machinery, equipment, parts or foundations  
6 therefor that may be affixed to such real estate.

7 The exclusions provided in paragraphs (A), (B), (C) and (D)  
8 shall not apply to tangible personal property or services to be  
9 used or consumed in managerial sales or other nonoperational  
10 activities, nor to the purchase or use of tangible personal  
11 property or services by any person other than the person  
12 directly using the same in the operations described in  
13 paragraphs (A), (B), (C) and (D) herein.

14 The exclusion provided in paragraph (C) shall not apply to  
15 (i) construction materials, supplies or equipment used to  
16 construct, reconstruct, remodel, repair or maintain facilities  
17 not used directly by the purchaser in the production, delivering  
18 or rendition of public utility service, (ii) construction  
19 materials, supplies or equipment used to construct, reconstruct,  
20 remodel, repair or maintain a building, road or similar  
21 structure, or (iii) tools and equipment used but not installed  
22 in the maintenance of facilities used directly in the  
23 production, delivering or rendition of a public utility service.

24 The exclusions provided in paragraphs (A), (B), (C) and (D)  
25 shall not apply to the services enumerated in clauses (k)(11)  
26 through (18), (w) through (kk).

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 tangible personal property or

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

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

22 (11) The rendition for a consideration of lobbying services.

23 (12) The rendition for a consideration of adjustment  
24 services, collection services or credit reporting services.

25 (13) The rendition for a consideration of secretarial or  
26 editing services.

27 (14) The rendition for a consideration of disinfecting or  
28 pest control services, building maintenance or cleaning  
29 services.

30 (15) The rendition for a consideration of employment agency

1 services, help supply services or other personnel supply  
2 services.

3 (16) The rendition for a consideration of computer  
4 programming services or other computer-related services,  
5 including, but not limited to, providing computer integrated  
6 systems design, computer processing, data preparation or  
7 processing services, information retrieval services or computer  
8 facilities management services.

9 (17) The rendition for a consideration of lawn care service.

10 [(18) The rendition for a consideration of storage service.

11 (1) "Storage." Any keeping or retention of tangible  
12 personal property within this Commonwealth for any purpose  
13 including the interim keeping, retaining or exercising any right  
14 or power over such tangible personal property. This term is in  
15 no way limited to the provision of storage service.]

16 \* \* \*

17 [(kk) "Storage service." A building or portion of a  
18 building or similar structure for purposes of storing corporeal  
19 personal property, including, but not limited to, goods, wares  
20 or merchandise, spiritous or vinous liquor and malt or brewed  
21 beverages, furniture and household goods, automobiles, furs,  
22 textiles, perishable goods under refrigeration, farm products,  
23 cotton compresses or tobacco. The term excludes storage of such  
24 property which is unloaded from maritime vessels and then later  
25 stored or which is stored and then later loaded on maritime  
26 vessels when such storage or loading takes place within twenty-  
27 five miles of a "port district," as defined by the act of July  
28 10, 1989 (P.L.291, No.50), known as the "Philadelphia Regional  
29 Port Authority Act."]

30 \* \* \*

1       Section 2.   The amendment of section 201(k), (l) and (kk) of  
2 the act shall be retroactive to October 1, 1991.  
3       Section 3.   This act shall take effect immediately.