

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2082

Session of
1995

INTRODUCED BY TRUE, BARLEY, THOMAS, RYAN, E. Z. TAYLOR, PERZEL, MARKOSEK, LEDERER, FARMER, TIGUE, BELARDI, RUBLEY, MCGILL, HERSHEY, GRUPPO, VANCE, RUDY, COY, FICHTER, STRITTMATTER, MUNDY, CORRIGAN, BAKER, MCGEEHAN, ARMSTRONG, DeLUCA, BATTISTO, HERMAN, BARD, PLATTS, LEH, HALUSKA, ROHRER, DALEY, KAISER, COLAFELLA, BOSCOLA, BEBKO-JONES, CORNELL, MARSICO, ZIMMERMAN, JAROLIN, TRELLO, ROBINSON, CURRY, SHEEHAN, YOUNGBLOOD, HUTCHINSON, HESS, WALKO, MELIO, L. I. COHEN, GEORGE, BROWN, HENNESSEY, FAJT, PESCI, MANDERINO, JOSEPHS, TANGRETTI, ADOLPH, BROWNE, BUNT, STEELMAN, RAMOS, SAINATO, TRAVAGLIO, HABAY, WASHINGTON, MILLER AND SCHRODER, OCTOBER 17, 1995

SENATOR HART, FINANCE, IN SENATE, AS AMENDED, MAY 21, 1996

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 bakery products in relation
11 to the sales tax; repealing certain provisions imposing sales
12 and use tax on lawn care services; FURTHER PROVIDING FOR
13 EXCLUSION OF CERTAIN COMPUTER SERVICES FROM THE DEFINITIONS
14 OF "SALES AT RETAIL" AND "USE" FROM THE IMPOSITION OF SALES
15 AND USE TAX; FURTHER PROVIDING FOR SALES TAX RELATING TO FOOD
16 AND BEVERAGES; FURTHER DEFINING "COMPENSATION" FOR PERSONAL
17 INCOME TAX PURPOSES TO EXCLUDE CAFETERIA PLANS AND CERTAIN
18 OTHER BENEFITS; providing for an income tax refund checkoff
19 for breast and cervical cancer research; and making a repeal.

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

1 Section 1. Section 201(b)(2) and (3), (c), (d), (f), (g),
2 (k), (o) and (jj) of the act of March 4, 1971 (P.L.6, No.2),
3 known as the Tax Reform Code of 1971, amended or added August 4,
4 1991 (P.L.97, No.22), December 13, 1991 (P.L.373, No.40), June
5 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21),
6 are amended to read:

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

11 * * *

12 (b) "Maintaining a place of business in this Commonwealth."

13 * * *

14 (2) The engaging in any activity as a business within this
15 Commonwealth by any person, directly or by a subsidiary, in
16 connection with the lease, sale or delivery of tangible personal
17 property or the performance of services thereon for use, storage
18 or consumption or in connection with the sale or delivery for
19 use of the services described in subclauses (11) through (16)
20 and (18) of clause (k) of this section, including, but not
21 limited to, having, maintaining or using any office,
22 distribution house, sales house, warehouse or other place of
23 business, any stock of goods or any solicitor, salesman, agent
24 or representative under its authority, at its direction or with
25 its permission, regardless of whether the person or subsidiary
26 is authorized to do business in this Commonwealth.

27 (3) Regularly or substantially soliciting orders within this
28 Commonwealth in connection with the lease, sale or delivery of
29 tangible personal property to or the performance thereon of
30 services or in connection with the sale or delivery of the

1 services described in subclauses (11) through (16) and (18) of
2 clause (k) of this section for residents of this Commonwealth by
3 means of catalogues or other advertising, whether such orders
4 are accepted within or without this Commonwealth.

5 * * *

6 (c) "Manufacture." The performance of manufacturing,
7 fabricating, compounding, processing or other operations,
8 engaged in as a business, which place any tangible personal
9 property in a form, composition or character different from that
10 in which it is acquired whether for sale or use by the
11 manufacturer, and shall include, but not be limited to--

12 (1) Every operation commencing with the first production
13 stage and ending with the completion of tangible personal
14 property having the physical qualities (including packaging, if
15 any, passing to the ultimate consumer) which it has when
16 transferred by the manufacturer to another;

17 (2) The publishing of books, newspapers, magazines and other
18 periodicals and printing;

19 (3) Refining, blasting, exploring, mining and quarrying for,
20 or otherwise extracting from the earth or from waste or stock
21 piles or from pits or banks any natural resources, minerals and
22 mineral aggregates including blast furnace slag;

23 (4) Building, rebuilding, repairing and making additions to,
24 or replacements in or upon vessels designed for commercial use
25 of registered tonnage of fifty tons or more when produced upon
26 special order of the purchaser, or when rebuilt, repaired or
27 enlarged, or when replacements are made upon order of, or for
28 the account of the owner;

29 (5) Research having as its objective the production of a new
30 or an improved (i) product or utility service, or (ii) method of

1 producing a product or utility service, but in either case not
2 including market research or research having as its objective
3 the improvement of administrative efficiency.

4 (6) Remanufacture for wholesale distribution by a
5 remanufacturer of motor vehicle parts from used parts acquired
6 in bulk by the remanufacturer using an assembly line process
7 which involves the complete disassembly of such parts and
8 integration of the components of such parts with other used or
9 new components of parts, including the salvaging, recycling or
10 reclaiming of used parts by the remanufacturer.

11 (7) Remanufacture or retrofit by a manufacturer or
12 remanufacturer of aircraft, armored vehicles, other defense-
13 related vehicles having a finished value of at least fifty
14 thousand dollars (\$50,000). Remanufacture or retrofit involves
15 the disassembly of such aircraft, vehicles, parts or components,
16 including electric or electronic components, the integration of
17 those parts and components with other used or new parts or
18 components, including the salvaging, recycling or reclaiming of
19 the used parts or components and the assembly of the new or used
20 aircraft, vehicles, parts or components. For purposes of this
21 clause, the following terms or phrases have the following
22 meanings:

23 (i) "aircraft" means fixed-wing aircraft, helicopters,
24 powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned
25 aircraft and gliders;

26 (ii) "armored vehicles" means tanks, armed personnel
27 carriers and all other armed track or semitrack vehicles; or

28 (iii) "other defense-related vehicles" means trucks, truck-
29 tractors, trailers, jeeps and other utility vehicles, including
30 any unmanned vehicles.

1 The term "manufacture[,]" shall not include constructing,
2 altering, servicing, repairing or improving real estate or
3 repairing, servicing or installing tangible personal property,
4 nor the cooking[,], or freezing [or baking] of fruits,
5 vegetables, mushrooms, fish, seafood, meats[,], or poultry [or
6 bakery products].

7 * * *

8 (d) "Processing." The performance of the following
9 activities when engaged in as a business enterprise:

10 (1) The filtering or heating of honey, the cooking[, baking]
11 or freezing of fruits, vegetables, mushrooms, fish, seafood,
12 meats[,], or poultry [or bakery products], when the person
13 engaged in such business packages such property in sealed
14 containers for wholesale distribution.

15 (1.1) The processing of vegetables by cleaning, cutting,
16 coring or chopping and treating to preserve, sterilize or purify
17 and substantially extend the useful shelf life of the
18 vegetables, when the person engaged in such activity packages
19 such property in sealed containers for wholesale distribution.

20 (2) The scouring, carbonizing, cording, combing, throwing,
21 twisting or winding of natural or synthetic fibers, or the
22 spinning, bleaching, dyeing, printing or finishing of yarns or
23 fabrics, when such activities are performed prior to sale to the
24 ultimate consumer.

25 (3) The electroplating, galvanizing, enameling, anodizing,
26 coloring, finishing, impregnating or heat treating of metals or
27 plastics for sale or in the process of manufacturing.

28 (4) The rolling, drawing or extruding of ferrous and non-
29 ferrous metals.

30 (5) The fabrication for sale of ornamental or structural

1 metal or of metal stairs, staircases, gratings, fire escapes or
2 railings (not including fabrication work done at the
3 construction site).

4 (6) The preparation of animal feed or poultry feed for sale.

5 (7) The production, processing and bottling of non-alcoholic
6 beverages for wholesale distribution.

7 (8) The operation of a saw mill or planing mill for the
8 production of lumber or lumber products for sale.

9 (9) The milling for sale of flour or meal from grains.

10 (10) The slaughtering and dressing of animals for meat to be
11 sold or to be used in preparing meat products for sale, and the
12 preparation of meat products including lard, tallow, grease,
13 cooking and inedible oils for wholesale distribution.

14 (11) The processing of used lubricating oils.

15 (12) The broadcasting of radio and television programs of
16 licensed commercial or educational stations.

17 * * *

18 (f) "Purchase at retail."

19 (1) The acquisition for a consideration of the ownership,
20 custody or possession of tangible personal property other than
21 for resale by the person acquiring the same when such
22 acquisition is made for the purpose of consumption or use,
23 whether such acquisition shall be absolute or conditional, and
24 by whatsoever means the same shall have been effected.

25 (2) The acquisition of a license to use or consume, and the
26 rental or lease of tangible personal property, other than for
27 resale regardless of the period of time the lessee has
28 possession or custody of the property.

29 (3) The obtaining for a consideration of those services
30 described in subclauses (2), (3) and (4) of clause (k) of this

1 section other than for resale.

2 (4) A retention after March 7, 1956, of possession, custody
3 or a license to use or consume pursuant to a rental contract or
4 other lease arrangement (other than as security), other than for
5 resale.

6 (5) The obtaining for a consideration of those services
7 described in subclauses (11) through (16) and (18) of clause (k)
8 of this section.

9 The term "purchase at retail" with respect to "liquor" and
10 "malt or brewed beverages" shall include the purchase of
11 "liquor" from any "Pennsylvania Liquor Store" by any person for
12 any purpose, and the purchase of "malt or brewed beverages" from
13 a "manufacturer of malt or brewed beverages," "distributor" or
14 "importing distributor" by any person for any purpose, except
15 purchases from a "manufacturer of malt or brewed beverages" by a
16 "distributor" or "importing distributor" or purchases from an
17 "importing distributor" by a "distributor" within the meaning of
18 the "Liquor Code." The term "purchase at retail" shall not
19 include any purchase of "malt or brewed beverages" from a
20 "retail dispenser" or any purchase of "liquor" or "malt or
21 brewed beverages" from a person holding a "retail liquor
22 license" within the meaning of and pursuant to the provisions of
23 the "Liquor Code," but shall include any purchase or acquisition
24 of "liquor" or "malt or brewed beverages" other than pursuant to
25 the provisions of the "Liquor Code."

26 (g) "Purchase price."

27 (1) The total value of anything paid or delivered, or
28 promised to be paid or delivered, whether it be money or
29 otherwise, in complete performance of a sale at retail or
30 purchase at retail, as herein defined, without any deduction on

1 account of the cost or value of the property sold, cost or value
2 of transportation, cost or value of labor or service, interest
3 or discount paid or allowed after the sale is consummated, any
4 other taxes imposed by the Commonwealth of Pennsylvania or any
5 other expense except that there shall be excluded any gratuity
6 or separately stated deposit charge for returnable containers.

7 (2) There shall be deducted from the purchase price the
8 value of any tangible personal property actually taken in trade
9 or exchange in lieu of the whole or any part of the purchase
10 price. For the purpose of this clause, the amount allowed by
11 reason of tangible personal property actually taken in trade or
12 exchange shall be considered the value of such property.

13 (3) In determining the purchase price on the sale or use of
14 taxable tangible personal property or a service described in
15 subclauses (11) through (16) and (18) of clause (k) of this
16 section where, because of affiliation of interests between the
17 vendor and purchaser, or irrespective of any such affiliation,
18 if for any other reason the purchase price declared by the
19 vendor or taxpayer on the taxable sale or use of such tangible
20 personal property or service is, in the opinion of the
21 department, not indicative of the true value of the article or
22 service or the fair price thereof, the department shall,
23 pursuant to uniform and equitable rules, determine the amount of
24 constructive purchase price upon the basis of which the tax
25 shall be computed and levied. Such rules shall provide for a
26 constructive amount of purchase price for each such sale or use
27 which would naturally and fairly be charged in an arms-length
28 transaction in which the element of common interest between the
29 vendor or purchaser is absent or if no common interest exists,
30 any other element causing a distortion of the price or value is

1 likewise absent. For the purpose of this clause where a taxable
2 sale or purchase at retail transaction occurs between a parent
3 and a subsidiary, affiliate or controlled corporation of such
4 parent corporation, there shall be a rebuttable presumption,
5 that because of such common interest such transaction was not at
6 arms-length.

7 (4) Where there is a transfer or retention of possession or
8 custody, whether it be termed a rental, lease, service or
9 otherwise, of tangible personal property including, but not
10 limited to linens, aprons, motor vehicles, trailers, tires,
11 industrial office and construction equipment, and business
12 machines the full consideration paid or delivered to the vendor
13 or lessor shall be considered the purchase price, even though
14 such consideration be separately stated and be designated as
15 payment for processing, laundering, service, maintenance,
16 insurance, repairs, depreciation or otherwise. Where the vendor
17 or lessor supplies or provides an employee to operate such
18 tangible personal property, the value of the labor thus supplied
19 may be excluded and shall not be considered as part of the
20 purchase price if separately stated. There shall also be
21 included as part of the purchase price the value of anything
22 paid or delivered, or promised to be paid or delivered by a
23 lessee, whether it be money or otherwise, to any person other
24 than the vendor or lessor by reason of the maintenance,
25 insurance or repair of the tangible personal property which a
26 lessee has the possession or custody of under a rental contract
27 or lease arrangement.

28 (5) With respect to the tax imposed by subsection (b) of
29 section 202 upon any tangible personal property originally
30 purchased by the user of such property six months or longer

1 prior to the first taxable use of such property within the
2 Commonwealth, such user may elect to pay tax on a substituted
3 base determined by considering the purchase price of such
4 property for tax purposes to be equal to the prevailing market
5 price of similar tangible personal property at the time and
6 place of such first use within the Commonwealth. Such election
7 must be made at the time of filing a tax return with the
8 department and reporting such tax liability and paying the
9 proper tax due plus all accrued penalties and interest, if there
10 be any, within six months of the due date of such report and
11 payment, as provided for by subsections (a) and (c) of section
12 217 of this article.

13 (6) The purchase price of employment agency services and
14 help supply services shall be the service fee paid by the
15 purchaser to the vendor or supplying entity. The term "service
16 fee," as used in this subclause, shall be the total charge or
17 fee of the vendor or supplying entity minus the costs of the
18 supplied employee which costs are wages, salaries, bonuses and
19 commissions, employment benefits, expense reimbursements and
20 payroll and withholding taxes, to the extent that these costs
21 are specifically itemized or that these costs in aggregate are
22 stated in billings from the vendor or supplying entity. To the
23 extent that these costs are not itemized or stated on the
24 billings, then the service fee shall be the total charge or fee
25 of the vendor or supplying entity.

26 (7) Unless the vendor separately states that portion of the
27 billing which applies to premium cable service as defined in
28 clause (11) of this section, the total bill for the provision of
29 all cable services shall be the purchase price.

30 * * *

(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 ~~(16)~~ (15) and (18) and (w) through (ii) and (kk), except <—
27 that the exclusion provided in this subclause for farming,
28 dairying and agriculture shall apply to the service enumerated
29 in clause (z).

30 (9) Where tangible personal property or services are

1 utilized for purposes constituting a "sale at retail" and for
2 purposes excluded from the definition of "sale at retail," it
3 shall be presumed that such tangible personal property or
4 services are utilized for purposes constituting a "sale at
5 retail" and subject to tax unless the user thereof proves to the
6 department that the predominant purposes for which such tangible
7 personal property or services are utilized do not constitute a
8 "sale at retail."

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

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

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

28 (13) The rendition for a consideration of secretarial or
29 editing services.

30 (14) The rendition for a consideration of disinfecting or

1 pest control services, building maintenance or cleaning
2 services.

3 (15) The rendition for a consideration of employment agency
4 services or help supply services.

5 (16) The rendition for a consideration of computer
6 programming services; computer-integrated systems design
7 services; computer processing, data preparation or processing
8 services; information retrieval services; computer facilities
9 management services; or other computer-related services. At a
10 minimum, such services shall not include services that are part
11 of electronic fund transfers, electronic financial transactions
12 or services, banking or trust services, or management or
13 administrative services, including transfer agency, shareholder,
14 custodial and portfolio accounting services, provided directly
15 to any entity that duly qualifies to be taxed as a regulated
16 investment company or a real estate investment trust under the
17 provisions of the Internal Revenue Code of 1986 (Public Law 99-
18 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such
19 services to an entity so qualifying.

20 [(17) The rendition for a consideration of lawn care
21 service.]

22 (18) The rendition for a consideration of self-storage
23 service.

24 * * *

25 (o) "Use."

26 (1) The exercise of any right or power incidental to the
27 ownership, custody or possession of tangible personal property
28 and shall include, but not be limited to transportation, storage
29 or consumption.

30 (2) The obtaining by a purchaser of the service of printing

1 or imprinting of tangible personal property when such purchaser
2 furnishes, either directly or indirectly, the articles used in
3 the printing or imprinting.

4 (3) The obtaining by a purchaser of the services of (i)
5 washing, cleaning, waxing, polishing or lubricating of motor
6 vehicles whether or not any tangible personal property is
7 transferred to the purchaser in conjunction with such services,
8 and (ii) inspecting motor vehicles pursuant to the mandatory
9 requirements of "The Vehicle Code."

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

28 (A) Any tangible personal property acquired and kept,
29 retained or over which power is exercised within this
30 Commonwealth on which the taxing of the storage, use or other

1 consumption thereof is expressly prohibited by the Constitution
2 of the United States or which is excluded from tax under other
3 provisions of this article.

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

9 (i) The manufacture of tangible personal property;

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

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

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

21 The exclusions provided in subparagraphs (i), (ii), (iii) and
22 (iv) shall not apply to any vehicle required to be registered
23 under The Vehicle Code except those vehicles directly used by a
24 public utility engaged in the business as a common carrier; to
25 maintenance facilities; or to materials, supplies or equipment
26 to be used or consumed in the construction, reconstruction,
27 remodeling, repair or maintenance of real estate other than
28 directly used machinery, equipment, parts or foundations
29 therefor that may be affixed to such real estate. The exclusions
30 provided in subparagraphs (i), (ii), (iii) and (iv) shall not

1 apply to tangible personal property or services to be used or
2 consumed in managerial sales or other nonoperational activities,
3 nor to the purchase or use of tangible personal property or
4 services by any person other than the person directly using the
5 same in the operations described in subparagraphs (i), (ii),
6 (iii) and (iv).

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

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

21 (5) Where tangible personal property or services are
22 utilized for purposes constituting a "use," as herein defined,
23 and for purposes excluded from the definition of "use," it shall
24 be presumed that such property or services are utilized for
25 purposes constituting a "sale at retail" and subject to tax
26 unless the user thereof proves to the department that the
27 predominant purposes for which such property or services are
28 utilized do not constitute a "sale at retail."

29 (6) The term "use" with respect to "liquor" and "malt or
30 brewed beverages" shall include the purchase of "liquor" from

1 any "Pennsylvania liquor store" by any person for any purpose
2 and the purchase of "malt or brewed beverages" from a
3 "manufacturer of malt or brewed beverages," "distributor" or
4 "importing distributor" by any person for any purpose, except
5 purchases from a "manufacturer of malt or brewed beverages" by a
6 "distributor" or "importing distributor," or purchases from an
7 "importing distributor" by a "distributor" within the meaning of
8 the "Liquor Code." The term "use" shall not include any purchase
9 of "malt or brewed beverages" from a "retail dispenser" or any
10 purchase of "liquor" or "malt or brewed beverages" from a person
11 holding a "retail liquor license" within the meaning of and
12 pursuant to the provisions of the "Liquor Code," but shall
13 include the exercise of any right or power incidental to the
14 ownership, custody or possession of "liquor" or "malt or brewed
15 beverages" obtained by the person exercising such right or power
16 in any manner other than pursuant to the provisions of the
17 "Liquor Code."

18 (7) The use of tangible personal property purchased at
19 retail upon which the services described in subclauses (2), (3)
20 and (4) of this clause have been performed shall be deemed to be
21 a use of said services by the person using said property.

22 (8) The term "use" shall not include the providing of a
23 motor vehicle to a nonprofit private or public school to be used
24 by such a school for the sole purpose of driver education.

25 (9) The obtaining by the purchaser of lobbying services.

26 (10) The obtaining by the purchaser of adjustment services,
27 collection services or credit reporting services.

28 (11) The obtaining by the purchaser of secretarial or
29 editing services.

30 (12) The obtaining by the purchaser of disinfecting or pest

1 control services, building maintenance or cleaning services.

2 (13) The obtaining by the purchaser of employment agency
3 services or help supply services.

4 (14) The obtaining by the purchaser of computer programming
5 services; computer-integrated systems design services; computer
6 processing, data preparation or processing services; information
7 retrieval services; computer facilities management services; or
8 other computer-related services. At a minimum, such services
9 shall not include services that are part of electronic fund
10 transfers, electronic financial transactions or services,
11 banking or trust services, or management or administrative
12 services, including transfer agency, shareholder, custodial and
13 portfolio accounting services, provided directly to any entity
14 that duly qualifies to be taxed as a regulated investment
15 company or a real estate investment trust under the provisions
16 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
17 U.S.C. § 1 et seq.) or to an entity that provides such services
18 to an entity so qualifying.

19 [(15) The obtaining by the purchaser of lawn care service.]

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

21 * * *

22 [(jj) "Lawn care service." Providing services for lawn
23 upkeep, including, but not limited to, fertilizing, lawn mowing,
24 shrubbery trimming or other lawn treatment services.]

25 * * *

26 SECTION 2. SECTION 204(29) OF THE ACT, AMENDED DECEMBER 13, <—
27 1991 (P.L.373, NO.40), IS AMENDED TO READ:

28 SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY
29 SECTION 202 SHALL NOT BE IMPOSED UPON

30 * * *

1 (29) THE SALE AT RETAIL OR USE OF FOOD AND BEVERAGES FOR
2 HUMAN CONSUMPTION, INCLUDING CANDY AND GUM, EXCEPT THAT THIS
3 EXCLUSION SHALL NOT APPLY WITH RESPECT TO--
4 (I) SOFT DRINKS;
5 (II) MALT AND BREWED BEVERAGES AND SPIRITUOUS AND VINOUS
6 LIQUORS;
7 (III) FOOD OR BEVERAGES, WHETHER SOLD FOR CONSUMPTION ON OR
8 OFF THE PREMISES OR ON A "TAKE-OUT" OR "TO GO" BASIS OR
9 DELIVERED TO THE PURCHASER OR CONSUMER, WHEN PURCHASED (A) FROM
10 PERSONS ENGAGED IN THE BUSINESS OF CATERING; OR (B) FROM PERSONS
11 ENGAGED IN THE BUSINESS OF OPERATING ESTABLISHMENTS FROM WHICH
12 READY-TO-EAT FOOD AND BEVERAGES ARE SOLD, INCLUDING, BUT NOT
13 LIMITED TO, RESTAURANTS, CAFES, LUNCH COUNTERS, PRIVATE AND
14 SOCIAL CLUBS, TAVERNS, DINING CARS, HOTELS, NIGHT CLUBS, FAST
15 FOOD OPERATIONS, PIZZERIAS, FAIRS, CARNIVALS, LUNCH CARTS, ICE
16 CREAM STANDS, SNACK BARS, CAFETERIAS, EMPLOYE CAFETERIAS,
17 THEATERS, STADIUMS, ARENAS, AMUSEMENT PARKS, CARRYOUT SHOPS,
18 COFFEE SHOPS AND OTHER ESTABLISHMENTS WHETHER MOBILE OR
19 IMMOBILE. FOR PURPOSES OF THIS CLAUSE, A BAKERY, A PASTRY SHOP,
20 A DONUT SHOP, A DELICATESSEN, GROCERY STORE, SUPERMARKET,
21 FARMER'S MARKET [OR], A CONVENIENCE STORE OR VENDING MACHINE
22 SHALL NOT BE CONSIDERED AN ESTABLISHMENT FROM WHICH FOOD OR
23 BEVERAGES READY TO EAT ARE SOLD EXCEPT FOR THE SALE OF MEALS,
24 SANDWICHES, FOOD FROM SALAD BARS, HAND-DIPPED OR HAND-SERVED
25 ICED BASED PRODUCTS INCLUDING ICE CREAM AND YOGURT, HOT SOUP,
26 HOT PIZZA AND OTHER HOT FOOD ITEMS, BREWED COFFEE AND HOT
27 BEVERAGES. FOR PURPOSES OF THIS SUBCLAUSE, BEVERAGES SHALL NOT
28 INCLUDE MALT AND BREWED BEVERAGES AND SPIRITUOUS AND VINOUS
29 LIQUORS BUT SHALL INCLUDE SOFT DRINKS. THE SALE AT RETAIL OF
30 FOOD AND BEVERAGES AT OR FROM A SCHOOL OR CHURCH IN THE ORDINARY

1 COURSE OF THE ACTIVITIES OF SUCH ORGANIZATION IS NOT SUBJECT TO
2 TAX.

3 * * *

4 SECTION 3. SECTION 301(D) OF THE ACT, AMENDED JUNE 30, 1995
5 (P.L.139, NO.21), IS AMENDED TO READ:

6 SECTION 301. DEFINITIONS.--THE FOLLOWING WORDS, TERMS AND
7 PHRASES WHEN USED IN THIS ARTICLE SHALL HAVE THE MEANING
8 ASCRIBED TO THEM IN THIS SECTION EXCEPT WHERE THE CONTEXT
9 CLEARLY INDICATES A DIFFERENT MEANING. ANY REFERENCE IN THIS
10 ARTICLE TO THE INTERNAL REVENUE CODE SHALL INCLUDE THE INTERNAL
11 REVENUE CODE OF 1954, AS AMENDED TO THE DATE ON WHICH THIS
12 ARTICLE IS EFFECTIVE:

13 * * *

14 (D) "COMPENSATION" MEANS AND SHALL INCLUDE SALARIES, WAGES,
15 COMMISSIONS, BONUSES AND INCENTIVE PAYMENTS WHETHER BASED ON
16 PROFITS OR OTHERWISE, FEES, TIPS AND SIMILAR REMUNERATION
17 RECEIVED FOR SERVICES RENDERED, WHETHER DIRECTLY OR THROUGH AN
18 AGENT, AND WHETHER IN CASH OR IN PROPERTY.

19 THE TERM "COMPENSATION" SHALL NOT MEAN OR INCLUDE: (I)
20 PERIODIC PAYMENTS FOR SICKNESS AND DISABILITY OTHER THAN REGULAR
21 WAGES RECEIVED DURING A PERIOD OF SICKNESS OR DISABILITY; OR
22 (II) DISABILITY, RETIREMENT OR OTHER PAYMENTS ARISING UNDER
23 WORKMEN'S COMPENSATION ACTS, OCCUPATIONAL DISEASE ACTS AND
24 SIMILAR LEGISLATION BY ANY GOVERNMENT; OR (III) PAYMENTS
25 COMMONLY RECOGNIZED AS OLD AGE OR RETIREMENT BENEFITS PAID TO
26 PERSONS RETIRED FROM SERVICE AFTER REACHING A SPECIFIC AGE OR
27 AFTER A STATED PERIOD OF EMPLOYMENT; OR (IV) PAYMENTS COMMONLY
28 KNOWN AS PUBLIC ASSISTANCE, OR UNEMPLOYMENT COMPENSATION
29 PAYMENTS BY ANY GOVERNMENTAL AGENCY; OR (V) PAYMENTS TO
30 REIMBURSE ACTUAL EXPENSES; OR (VI) PAYMENTS MADE BY EMPLOYERS OR

1 LABOR UNIONS [FOR], INCLUDING PAYMENTS MADE PURSUANT TO A
2 CAFETERIA PLAN QUALIFYING UNDER SECTION 125 OF THE INTERNAL
3 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 125 ET
4 SEQ.), FOR EMPLOYE BENEFIT PROGRAMS COVERING HOSPITALIZATION,
5 SICKNESS, DISABILITY OR DEATH, SUPPLEMENTAL UNEMPLOYMENT
6 BENEFITS[,] OR STRIKE BENEFITS[, SOCIAL SECURITY AND
7 RETIREMENT], PROVIDED THAT THE PROGRAM DOES NOT DISCRIMINATE IN
8 FAVOR OF HIGHLY COMPENSATED INDIVIDUALS AS TO ELIGIBILITY TO
9 PARTICIPATE, PAYMENTS OR PROGRAM BENEFITS; OR (VII) ANY
10 COMPENSATION RECEIVED BY UNITED STATES SERVICEMEN SERVING IN A
11 COMBAT ZONE; OR (VIII) PAYMENTS RECEIVED BY A FOSTER PARENT FOR
12 IN-HOME CARE OF FOSTER CHILDREN FROM AN AGENCY OF THE
13 COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF OR AN
14 ORGANIZATION EXEMPT FROM FEDERAL TAX UNDER SECTION 501(C)(3) OF
15 THE INTERNAL REVENUE CODE OF 1954 WHICH IS LICENSED BY THE
16 COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF AS A PLACEMENT
17 AGENCY[.]; OR (IX) PAYMENTS MADE BY EMPLOYERS OR LABOR UNIONS
18 FOR EMPLOYE BENEFIT PROGRAMS COVERING SOCIAL SECURITY OR
19 RETIREMENT.

20 * * *

21 Section 2 4. The act is amended by adding a section to read: <—

22 Section 315.1. Space on Form for Contributions to Breast and
23 Cervical Cancer Research.--(a) The department shall provide a
24 space on the face of the individual income tax return form
25 whereby an individual may voluntarily designate a contribution
26 of any amount desired to be utilized for breast and cervical
27 cancer research in the Department of Health.

28 (b) The amount so designated on the individual income tax
29 return form shall be deducted from the tax refund to which the
30 individual is entitled and shall not constitute a charge against

1 the income tax revenues due to the Commonwealth.

2 (c) The department shall determine annually the total amount
3 designated under this section, less reasonable administrative
4 costs, and shall report the amount to the State Treasurer, who
5 shall transfer the amount from the General Fund to the
6 Pennsylvania Cancer Control, Prevention and Research Advisory
7 Board within the Department of Health.

8 (d) The department shall provide adequate information
9 concerning the checkoff for breast and cervical cancer research
10 in its instructions which accompany State income tax return
11 forms. The information concerning the checkoff shall include the
12 listing of an address furnished by the Department of Health, to
13 which contributions may be sent by taxpayers wishing to
14 contribute to this effort, but who do not receive refunds.
15 Additionally, the Department of Health shall be charged with the
16 duty to conduct a public information campaign on the
17 availability of this opportunity to Pennsylvania taxpayers.

18 (e) The Department of Health shall report annually to the
19 respective committees of the Senate and the House of
20 Representatives which have jurisdiction over health matters on
21 the amount received via the checkoff plan and how the funds were
22 utilized.

23 (f) The General Assembly may, from time to time, appropriate
24 funds for breast and cervical cancer research within the
25 Department of Health.

26 Section 3 5. Section 12 of the act of June 23, 1982 <—
27 (P.L.597, No.170), known as the Wild Resource Conservation Act,
28 is repealed insofar as it is inconsistent with this act.

29 ~~Section 4. The addition of section 315.1 of the act shall~~ <—
30 ~~apply to taxable years beginning on or after January 1, 1996.~~

