

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 777 Session of
1995INTRODUCED BY DELP, WENGER, BRIGHTBILL, PUNT, HECKLER, MADIGAN,
RHOADES, STAPLETON, STOUT AND PORTERFIELD, MARCH 17, 1995SENATOR MADIGAN, AGRICULTURE AND RURAL AFFAIRS, RE-REPORTED AS
AMENDED, JUNE 13, 1995

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 definition of "sale at~~
11 ~~retail"; exempting the sale of horses and certain services~~
12 ~~relating to horses in certain circumstances from the sales~~
13 ~~and use tax; and exempting feed and certain other equipment~~
14 ~~from the sales and use tax.~~

15 AMENDING THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), ENTITLED "AN <—
16 ACT RELATING TO TAX REFORM AND STATE TAXATION BY CODIFYING
17 AND ENUMERATING CERTAIN SUBJECTS OF TAXATION AND IMPOSING
18 TAXES THEREON; PROVIDING PROCEDURES FOR THE PAYMENT,
19 COLLECTION, ADMINISTRATION AND ENFORCEMENT THEREOF; PROVIDING
20 FOR TAX CREDITS IN CERTAIN CASES; CONFERRING POWERS AND
21 IMPOSING DUTIES UPON THE DEPARTMENT OF REVENUE, CERTAIN
22 EMPLOYERS, FIDUCIARIES, INDIVIDUALS, PERSONS, CORPORATIONS
23 AND OTHER ENTITIES; PRESCRIBING CRIMES, OFFENSES AND
24 PENALTIES," FURTHER PROVIDING FOR THE DEFINITION OF "SALE AT
25 RETAIL" AND "USE"; EXEMPTING HORSES, INTERESTS IN HORSES AND
26 CERTAIN SERVICES RELATING TO HORSES IN CERTAIN CIRCUMSTANCES
27 FROM THE SALES AND USE TAX; AND EXEMPTING FEED AND CERTAIN
28 OTHER EQUIPMENT FROM THE SALES AND USE TAX.

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

Section 1. ~~Section 201(k)(8) of the act of March 4, 1971~~
~~(P.L.6, No.2), known as the Tax Reform Code of 1971, amended~~
~~December 13, 1991 (P.L.373, No.40), is amended 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:~~

~~* * *~~

~~(k) "Sale at retail."~~

~~* * *~~

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

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

~~(A) The manufacture of tangible personal property;~~

~~(B) Farming, dairying, agriculture, horticulture or~~
~~floriculture when engaged in as a business enterprise. The term~~
~~"farming" shall include [the propagation and raising of ranch~~
~~raised fur bearing animals and the propagation of game birds for~~
~~commercial purposes by holders of propagation permits issued~~
~~under 34 Pa.C.S. (relating to game);] the breeding or raising of~~
~~horses for commercial purposes, including, but not limited to,~~

~~pleasure riding, drafting and racing; the boarding and training
of horses within this Commonwealth and the temporary use of
horses within this Commonwealth for purposes of racing,
exhibiting or performing;~~

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

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

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

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

~~The exclusion provided in paragraph (C) shall not apply to
(i) construction materials, supplies or equipment used to
construct, reconstruct, remodel, repair or maintain facilities
not used directly by the purchaser in the production, delivering
or rendition of public utility service, (ii) construction~~

~~materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or (iii) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.~~

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

~~* * *~~

~~Section 2. Section 204 of the act is amended by adding clauses to read:~~

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

~~* * *~~

~~(38.1) The sale at retail or use of horses, or interests or shares in horses, provided the purchase or use is made for breeding purposes only.~~

~~(38.2) The sale at retail or use of stallion services, including the trading, but not the sale thereof, provided the use or trading is made by the owner of the stallion or the owner of an interest or share in a stallion.~~

~~* * *~~

~~(52) The sale at retail or use of feed, tack, harnesses and other equipment for all horses and mules.~~

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

~~SECTION 1. SECTION 201(K)(8) AND (O)(4) OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, AMENDED DECEMBER 13, 1991 (P.L.373, NO.40), ARE AMENDED AND THE~~

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1 SECTION IS AMENDED BY ADDING A CLAUSE 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 (K) "SALE AT RETAIL."

8 * * *

9 (8) ANY RETENTION [OF] OR POSSESSION, CUSTODY OR A LICENSE
10 TO USE OR CONSUME TANGIBLE PERSONAL PROPERTY OR ANY FURTHER
11 OBTAINING OF SERVICES DESCRIBED IN SUBCLAUSES (2), (3) AND (4)
12 OF THIS CLAUSE PURSUANT TO A RENTAL OR SERVICE CONTRACT OR OTHER
13 ARRANGEMENT (OTHER THAN AS SECURITY).

14 THE TERM "SALE AT RETAIL" SHALL NOT INCLUDE (I) ANY SUCH
15 TRANSFER OF TANGIBLE PERSONAL PROPERTY OR RENDITION OF SERVICES
16 FOR THE PURPOSE OF RESALE, OR (II) SUCH RENDITION OF SERVICES OR
17 THE TRANSFER OF TANGIBLE PERSONAL PROPERTY INCLUDING, BUT NOT
18 LIMITED TO, MACHINERY AND EQUIPMENT AND PARTS THEREFOR AND
19 SUPPLIES TO BE USED OR CONSUMED BY THE PURCHASER DIRECTLY IN THE
20 OPERATIONS OF--

21 (A) THE MANUFACTURE OF TANGIBLE PERSONAL PROPERTY;

22 (B) FARMING[, DAIRYING, AGRICULTURE, HORTICULTURE OR
23 FLORICULTURE WHEN ENGAGED IN AS A BUSINESS ENTERPRISE. THE TERM
24 "FARMING" SHALL INCLUDE THE PROPAGATION AND RAISING OF RANCH
25 RAISED FUR-BEARING ANIMALS AND THE PROPAGATION OF GAME BIRDS FOR
26 COMMERCIAL PURPOSES BY HOLDERS OF PROPAGATION PERMITS ISSUED
27 UNDER 34 PA.C.S. (RELATING TO GAME)];

28 (C) THE PRODUCING, DELIVERING OR RENDERING OF A PUBLIC
29 UTILITY SERVICE, OR IN CONSTRUCTING, RECONSTRUCTING, REMODELING,
30 REPAIRING OR MAINTAINING THE FACILITIES WHICH ARE DIRECTLY USED

1 IN PRODUCING, DELIVERING OR RENDERING SUCH SERVICE;

2 (D) PROCESSING AS DEFINED IN CLAUSE (D) OF THIS SECTION.

3 THE EXCLUSIONS PROVIDED IN PARAGRAPHS (A), (B), (C) AND (D)
4 SHALL NOT APPLY TO ANY VEHICLE REQUIRED TO BE REGISTERED UNDER
5 THE VEHICLE CODE, EXCEPT THOSE VEHICLES USED DIRECTLY BY A
6 PUBLIC UTILITY ENGAGED IN BUSINESS AS A COMMON CARRIER; TO
7 MAINTENANCE FACILITIES; OR TO MATERIALS, SUPPLIES OR EQUIPMENT
8 TO BE USED OR CONSUMED IN THE CONSTRUCTION, RECONSTRUCTION,
9 REMODELING, REPAIR OR MAINTENANCE OF REAL ESTATE OTHER THAN
10 MACHINERY, EQUIPMENT, PARTS OR FOUNDATIONS THEREFOR THAT MAY BE
11 AFFIXED TO SUCH REAL ESTATE.

12 THE EXCLUSIONS PROVIDED IN PARAGRAPHS (A), (B), (C) AND (D)
13 SHALL NOT APPLY TO TANGIBLE PERSONAL PROPERTY OR SERVICES TO BE
14 USED OR CONSUMED IN MANAGERIAL SALES OR OTHER NONOPERATIONAL
15 ACTIVITIES, NOR TO THE PURCHASE OR USE OF TANGIBLE PERSONAL
16 PROPERTY OR SERVICES BY ANY PERSON OTHER THAN THE PERSON
17 DIRECTLY USING THE SAME IN THE OPERATIONS DESCRIBED IN
18 PARAGRAPHS (A), (B), (C) AND (D) HEREIN.

19 THE EXCLUSION PROVIDED IN PARAGRAPH (C) SHALL NOT APPLY TO
20 (I) CONSTRUCTION MATERIALS, SUPPLIES OR EQUIPMENT USED TO
21 CONSTRUCT, RECONSTRUCT, REMODEL, REPAIR OR MAINTAIN FACILITIES
22 NOT USED DIRECTLY BY THE PURCHASER IN THE PRODUCTION, DELIVERING
23 OR RENDITION OF PUBLIC UTILITY SERVICE, (II) CONSTRUCTION
24 MATERIALS, SUPPLIES OR EQUIPMENT USED TO CONSTRUCT, RECONSTRUCT,
25 REMODEL, REPAIR OR MAINTAIN A BUILDING, ROAD OR SIMILAR
26 STRUCTURE, OR (III) TOOLS AND EQUIPMENT USED BUT NOT INSTALLED
27 IN THE MAINTENANCE OF FACILITIES USED DIRECTLY IN THE
28 PRODUCTION, DELIVERING OR RENDITION OF A PUBLIC UTILITY SERVICE.

29 THE EXCLUSIONS PROVIDED IN PARAGRAPHS (A), (B), (C) AND (D)
30 SHALL NOT APPLY TO THE SERVICES ENUMERATED IN CLAUSES (K)(11)

1 THROUGH (18) AND (W) THROUGH (KK), EXCEPT THAT THE EXCLUSION
2 PROVIDED IN THIS SUBCLAUSE FOR FARMING[, DAIRYING AND
3 AGRICULTURE] SHALL APPLY TO THE SERVICE ENUMERATED IN CLAUSE
4 (Z).

5 * * *

6 (O) "USE."

7 * * *

8 (4) THE OBTAINING BY A PURCHASER OF THE SERVICE OF
9 REPAIRING, ALTERING, MENDING, PRESSING, FITTING, DYEING,
10 LAUNDERING, DRYCLEANING OR CLEANING TANGIBLE PERSONAL PROPERTY
11 OTHER THAN WEARING APPAREL OR SHOES OR APPLYING OR INSTALLING
12 TANGIBLE PERSONAL PROPERTY AS A REPAIR OR REPLACEMENT PART OF
13 OTHER TANGIBLE PERSONAL PROPERTY OTHER THAN WEARING APPAREL OR
14 SHOES, WHETHER OR NOT THE SERVICES ARE PERFORMED DIRECTLY OR BY
15 ANY MEANS OTHER THAN BY MEANS OF COIN-OPERATED SELF-SERVICE
16 LAUNDRY EQUIPMENT FOR WEARING APPAREL OR HOUSEHOLD GOODS, AND
17 WHETHER OR NOT ANY TANGIBLE PERSONAL PROPERTY IS TRANSFERRED TO
18 THE PURCHASER IN CONJUNCTION THEREWITH, EXCEPT SUCH SERVICES AS
19 ARE OBTAINED IN THE CONSTRUCTION, RECONSTRUCTION, REMODELING,
20 REPAIR OR MAINTENANCE OF REAL ESTATE: PROVIDED, HOWEVER, THAT
21 THIS SUBCLAUSE SHALL NOT BE DEEMED TO IMPOSE TAX UPON SUCH
22 SERVICES IN THE PREPARATION FOR SALE OF NEW ITEMS WHICH ARE
23 EXCLUDED FROM THE TAX UNDER CLAUSE (26) OF SECTION 204, OR UPON
24 DIAPER SERVICE: AND PROVIDED FURTHER, THAT THE TERM "USE" SHALL
25 NOT INCLUDE--

26 (A) ANY TANGIBLE PERSONAL PROPERTY ACQUIRED AND KEPT,
27 RETAINED OR OVER WHICH POWER IS EXERCISED WITHIN THIS
28 COMMONWEALTH ON WHICH THE TAXING OF THE STORAGE, USE OR OTHER
29 CONSUMPTION THEREOF IS EXPRESSLY PROHIBITED BY THE CONSTITUTION
30 OF THE UNITED STATES OR WHICH IS EXCLUDED FROM TAX UNDER OTHER

1 PROVISIONS OF THIS ARTICLE.

2 (B) THE USE OR CONSUMPTION OF TANGIBLE PERSONAL PROPERTY,
3 INCLUDING BUT NOT LIMITED TO MACHINERY AND EQUIPMENT AND PARTS
4 THEREFOR, AND SUPPLIES OR THE OBTAINING OF THE SERVICES
5 DESCRIBED IN SUBCLAUSES (2), (3) AND (4) OF THIS CLAUSE DIRECTLY
6 IN THE OPERATIONS OF--

7 (I) THE MANUFACTURE OF TANGIBLE PERSONAL PROPERTY;

8 (II) FARMING[, DAIRYING, AGRICULTURE, HORTICULTURE OR
9 FLORICULTURE WHEN ENGAGED IN AS A BUSINESS ENTERPRISE. THE TERM
10 "FARMING" SHALL INCLUDE THE PROPAGATION AND RAISING OF RANCH-
11 RAISED FURBEARING ANIMALS AND THE PROPAGATION OF GAME BIRDS FOR
12 COMMERCIAL PURPOSES BY HOLDERS OF PROPAGATION PERMITS ISSUED
13 UNDER 34 PA.C.S. (RELATING TO GAME)];

14 (III) THE PRODUCING, DELIVERING OR RENDERING OF A PUBLIC
15 UTILITY SERVICE, OR IN CONSTRUCTING, RECONSTRUCTING, REMODELING,
16 REPAIRING OR MAINTAINING THE FACILITIES WHICH ARE DIRECTLY USED
17 IN PRODUCING, DELIVERING OR RENDERING SUCH SERVICE;

18 (IV) PROCESSING AS DEFINED IN SUBCLAUSE (D) OF THIS SECTION.

19 THE EXCLUSIONS PROVIDED IN SUBPARAGRAPHS (I), (II), (III) AND
20 (IV) SHALL NOT APPLY TO ANY VEHICLE REQUIRED TO BE REGISTERED
21 UNDER THE VEHICLE CODE EXCEPT THOSE VEHICLES DIRECTLY USED BY A
22 PUBLIC UTILITY ENGAGED IN THE BUSINESS AS A COMMON CARRIER; TO
23 MAINTENANCE FACILITIES; OR TO MATERIALS, SUPPLIES OR EQUIPMENT
24 TO BE USED OR CONSUMED IN THE CONSTRUCTION, RECONSTRUCTION,
25 REMODELING, REPAIR OR MAINTENANCE OF REAL ESTATE OTHER THAN
26 DIRECTLY USED MACHINERY, EQUIPMENT, PARTS OR FOUNDATIONS
27 THEREFOR THAT MAY BE AFFIXED TO SUCH REAL ESTATE. THE EXCLUSIONS
28 PROVIDED IN SUBPARAGRAPHS (I), (II), (III) AND (IV) SHALL NOT
29 APPLY TO TANGIBLE PERSONAL PROPERTY OR SERVICES TO BE USED OR
30 CONSUMED IN MANAGERIAL SALES OR OTHER NONOPERATIONAL ACTIVITIES,

1 NOR TO THE PURCHASE OR USE OF TANGIBLE PERSONAL PROPERTY OR
2 SERVICES BY ANY PERSON OTHER THAN THE PERSON DIRECTLY USING THE
3 SAME IN THE OPERATIONS DESCRIBED IN SUBPARAGRAPHS (I), (II),
4 (III) AND (IV).

5 THE EXCLUSION PROVIDED IN SUBPARAGRAPH (III) SHALL NOT APPLY
6 TO (A) CONSTRUCTION MATERIALS, SUPPLIES OR EQUIPMENT USED TO
7 CONSTRUCT, RECONSTRUCT, REMODEL, REPAIR OR MAINTAIN FACILITIES
8 NOT USED DIRECTLY BY THE PURCHASER IN THE PRODUCTION, DELIVERING
9 OR RENDITION OF PUBLIC UTILITY SERVICE OR (B) TOOLS AND
10 EQUIPMENT USED BUT NOT INSTALLED IN THE MAINTENANCE OF
11 FACILITIES USED DIRECTLY IN THE PRODUCTION, DELIVERING OR
12 RENDITION OF A PUBLIC UTILITY SERVICE.

13 THE EXCLUSION PROVIDED IN SUBPARAGRAPHS (I), (II), (III) AND
14 (IV) SHALL NOT APPLY TO THE SERVICES ENUMERATED IN CLAUSES
15 (O)(9) THROUGH (16) AND (W) THROUGH (KK), EXCEPT THAT THE
16 EXCLUSION PROVIDED IN SUBPARAGRAPH (II) FOR FARMING[, DAIRYING
17 AND AGRICULTURE] SHALL APPLY TO THE SERVICE ENUMERATED IN CLAUSE
18 (Z).

19 * * *

20 (NN) "FARMING." THE SCIENCE OR ART OF CULTIVATING THE SOIL,
21 PRODUCING CROPS AND RAISING LIVESTOCK AND, IN VARYING DEGREES,
22 THE PREPARING OF THESE PRODUCTS FOR MAN'S USE AND THEIR DISPOSAL
23 (AS BY MARKETING). THE TERM SHALL INCLUDE: (I) DAIRYING,
24 AGRICULTURE, HORTICULTURE OR FLORICULTURE WHEN ENGAGED IN AS A
25 BUSINESS ENTERPRISE, (II) THE BREEDING OR RAISING OF HORSES FOR
26 COMMERCIAL PURPOSES, INCLUDING, BUT NOT LIMITED TO, PLEASURE
27 RIDING, DRAFTING AND RACING, (III) THE PROPAGATION AND RAISING
28 OF RANCH-RAISED FUR BEARING ANIMALS AND (IV) THE PROPAGATION OF
29 GAME BIRDS FOR COMMERCIAL PURPOSES BY HOLDERS OF PROPAGATION
30 PERMITS ISSUED UNDER 34 PA.C.S. (RELATING TO GAME).

1 SECTION 2. SECTION 204 OF THE ACT IS AMENDED BY ADDING
2 CLAUSES TO READ:

3 SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY
4 SECTION 202 SHALL NOT BE IMPOSED UPON

5 * * *

6 (38.1) THE SALE AT RETAIL OR USE OF HORSES, OR INTERESTS IN
7 HORSES, BY THE PURCHASER OR USER FOR BREEDING, RACING,
8 COMMERCIAL OR INVESTMENT PURPOSES.

9 (38.2) THE SALE AT RETAIL OR USE OF STALLION SERVICES.

10 * * *

11 (52) THE SALE AT RETAIL OR USE OF FEED, TACK, HARNESSSES,
12 SUPPLIES, EQUIPMENT, FARMING IMPLEMENTS AND FARMING EQUIPMENT
13 USED OR CONSUMED IN THE CARE, FEEDING, BREEDING, RAISING AND
14 SELLING OF ALL HORSES AND MULES.

15 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.