

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 321 Session of  
1997

INTRODUCED BY WAGNER, COSTA, AFFLERBACH, WOZNIAK, GERLACH,  
ARMSTRONG, MUSTO, BELL, MURPHY, O'PAKE, DELP, ROBBINS,  
KASUNIC AND BELAN, JANUARY 31, 1997

REFERRED TO FINANCE, JANUARY 31, 1997

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 sales and use taxation  
11 of computer programming services, computer integrated systems  
12 design, computer processing, data preparation and processing  
13 services, information retrieval services, computer facilities  
14 management services and other computer-related services.

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

17 Section 1. Section 201(b)(3), (f)(5), (k)(8) and (16),  
18 (o)(4) and (14), (dd), (ee), (ff), (gg), (hh) and (ii) of the  
19 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
20 of 1971, amended or added August 4, 1991 (P.L.97, No.22) and  
21 December 13, 1991 (P.L.373, No.40), are amended to read:

22 Section 201. Definitions.--The following words, terms and  
23 phrases when used in this Article II shall have the meaning

1 ascribed to them in this section, except where the context  
2 clearly indicates a different meaning:

3 \* \* \*

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

5 \* \* \*

6 (3) Regularly or substantially soliciting orders within this  
7 Commonwealth in connection with the lease, sale or delivery of  
8 tangible personal property to or the performance thereon of  
9 services or in connection with the sale or delivery of the  
10 services described in subclauses (11) through (15) and (17) and  
11 (18) of clause (k) of this section for residents of this  
12 Commonwealth by means of catalogues or other advertising,  
13 whether such orders are accepted within or without this  
14 Commonwealth.

15 \* \* \*

16 (f) "Purchase at retail."

17 \* \* \*

18 (5) The obtaining for a consideration of those services  
19 described in subclauses (11) through (15) and (17) and (18) of  
20 clause (k) of this section.

21 \* \* \*

22 (k) "Sale at retail."

23 \* \* \*

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

29 The term "sale at retail" shall not include (i) any such  
30 transfer of tangible personal property or rendition of services

1 for the purpose of resale, or (ii) such rendition of services or  
2 the transfer of tangible personal property including, but not  
3 limited to, machinery and equipment and parts therefor and  
4 supplies to be used or consumed by the purchaser directly in the  
5 operations of--

6 (A) The manufacture of tangible personal property;

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

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

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

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

27 The exclusions provided in paragraphs (A), (B), (C) and (D)  
28 shall not apply to tangible personal property or services to be  
29 used or consumed in managerial sales or other nonoperational  
30 activities, nor to the purchase or use of tangible personal

1 property or services by any person other than the person  
2 directly using the same in the operations described in  
3 paragraphs (A), (B), (C) and (D) herein.

4 The exclusion provided in paragraph (C) shall not apply to  
5 (i) construction materials, supplies or equipment used to  
6 construct, reconstruct, remodel, repair or maintain facilities  
7 not used directly by the purchaser in the production, delivering  
8 or rendition of public utility service, (ii) construction  
9 materials, supplies or equipment used to construct, reconstruct,  
10 remodel, repair or maintain a building, road or similar  
11 structure, or (iii) tools and equipment used but not installed  
12 in the maintenance of facilities used directly in the  
13 production, delivering or rendition of a public utility service.

14 The exclusions provided in paragraphs (A), (B), (C) and (D)  
15 shall not apply to the services enumerated in clauses (k)(11)  
16 through (15) and (17) and (18) and (w) through (cc) and (jj) and  
17 (kk), except that the exclusion provided in this subclause for  
18 farming, dairying and agriculture shall apply to the service  
19 enumerated in clause (z).

20 \* \* \*

21 [(16) The rendition for a consideration of computer  
22 programming services; computer-integrated systems design  
23 services; computer processing, data preparation or processing  
24 services; information retrieval services; computer facilities  
25 management services; or other computer-related services. At a  
26 minimum, such services shall not include services that are part  
27 of electronic fund transfers, electronic financial transactions  
28 or services, banking or trust services, or management or  
29 administrative services, including transfer agency, shareholder,  
30 custodial and portfolio accounting services, provided directly

1 to any entity that duly qualifies to be taxed as a regulated  
2 investment company or a real estate investment trust under the  
3 provisions of the Internal Revenue Code of 1986 (Public Law 99-  
4 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such  
5 services to an entity so qualifying.]

6 \* \* \*

7 (o) "Use."

8 \* \* \*

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

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

1 of the United States or which is excluded from tax under other  
2 provisions of this article.

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

8 (i) The manufacture of tangible personal property;

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

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

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

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

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

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

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

20 \* \* \*

21 [(14) The obtaining by the purchaser of computer programming  
22 services; computer-integrated systems design services; computer  
23 processing, data preparation or processing services; information  
24 retrieval services; computer facilities management services; or  
25 other computer-related services. At a minimum, such services  
26 shall not include services that are part of electronic fund  
27 transfers, electronic financial transactions or services,  
28 banking or trust services, or management or administrative  
29 services, including transfer agency, shareholder, custodial and  
30 portfolio accounting services, provided directly to any entity

1 that duly qualifies to be taxed as a regulated investment  
2 company or a real estate investment trust under the provisions  
3 of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
4 U.S.C. § 1 et seq.) or to an entity that provides such services  
5 to an entity so qualifying.]

6 \* \* \*

7 [(dd) "Computer programming services." Providing computer  
8 programming or computer software design and analysis. Such  
9 services include, but are not limited to, services of the type  
10 provided by or through computer programming services, customer  
11 computer programming services, computer code authors and free-  
12 lance computer software writers, software modification, custom  
13 software programming, custom computer programs or system  
14 software development, custom computer software systems analysis  
15 and design, custom applications software programming, computer  
16 code authors or free-lance computer software writers.

17 (ee) "Computer integrated systems design." Developing or  
18 modifying computer software and packaging or bundling the  
19 software with computer hardware (computers and computer  
20 peripheral equipment) to create and market an integrated system  
21 for specific application. A business is providing such services  
22 under this clause only if it provides each of the following  
23 services:

24 (1) the development or modification of the computer  
25 software;

26 (2) the marketing of computer hardware; and

27 (3) involvement in all phases of systems development from  
28 design through installation.

29 Such services under this clause include, but are not limited to,  
30 computer systems integration, computer network systems



1 integration, local area network (LAN) systems integration,  
2 office automation, computer systems value-added resellers,  
3 computer systems turnkey vendors, computer-aided design (CAD)  
4 systems services, computer-aided engineering (CAE) systems  
5 services or computer-aided manufacturing (CAM) systems services.

6 (ff) "Computer processing, data preparation or processing  
7 services." Such services include, but are not limited to,  
8 providing processing and preparation of reports from data  
9 supplied by the customer or a specialized service, such as data  
10 entry; making data processing equipment available on an hourly,  
11 time-sharing or other basis; computer timesharing and leasing or  
12 rental of computer time; computer tabulating and calculating  
13 services; data entry, processing or verification services;  
14 keypunch services; or optical scanning data services.

15 (gg) "Information retrieval services." Providing computer  
16 on-line information retrieval services. Such services include,  
17 but are not limited to, data base information retrieval  
18 services, on-line information retrieval services, on-line data  
19 base information retrieval services or remote data base  
20 information retrieval services.

21 (hh) "Computer facilities management services." Providing  
22 onsite management or controlling the operation of data  
23 processing facilities or similar services.

24 (ii) "Other computer-related services." Supplying computer-  
25 related services not described elsewhere in clauses (dd) through  
26 (hh). Such services include, but are not limited to, computer  
27 consulting services; data base development and data processing  
28 consulting services; disk, diskette or tape conversion services;  
29 disk, diskette or tape recertification services; computer  
30 hardware and software requirement analysis services; software

1 documentation services; software installation services; software  
2 training services if provided in conjunction with the purchase  
3 of software; or reformatting or editing services.]

4 \* \* \*

5 Section 2. This act shall take effect immediately.