

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1352 Session of
1999

INTRODUCED BY CLYMER, ADOLPH, ARMSTRONG, BARRAR, BELFANTI, BUNT, CALTAGIRONE, CAWLEY, CHADWICK, CLARK, COLAFELLA, CORRIGAN, COY, DeLUCA, DEMPSEY, DRUCE, FLICK, FORCIER, FREEMAN, GANNON, GODSHALL, KENNEY, LAUGHLIN, MELIO, METCALFE, S. MILLER, NAILOR, ORIE, PESCI, PETRARCA, ROHRER, ROSS, RUBLEY, SEYFERT, SOLOBAY, STEELMAN, STERN, STEVENSON, E. Z. TAYLOR, TRELLO, TULLI, WILT, WOGAN AND YOUNGBLOOD, APRIL 20, 1999

REFERRED TO COMMITTEE ON FINANCE, APRIL 20, 1999

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 certain provisions imposing sales and
11 use tax on disinfecting or pest control services and building
12 maintenance or cleaning services.

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

15 Section 1. Section 201(k), (o), (z) and (aa) of the act of
16 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
17 1971, amended or added August 4, 1991 (P.L.97, No.22), December
18 13, 1991 (P.L.373, No.40), May 7, 1997 (P.L.85, No.7) and April
19 23, 1998 (P.L.239, No.45), are amended to read:

20 Section 201. Definitions.--The following words, terms and

1 phrases when used in this Article II shall have the meaning
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 * * *

5 (k) "Sale at retail."

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

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

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

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

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

21 (4) The rendition for a consideration of the service of
22 repairing, altering, mending, pressing, fitting, dyeing,
23 laundering, drycleaning or cleaning tangible personal property
24 other than wearing apparel or shoes, or applying or installing
25 tangible personal property as a repair or replacement part of
26 other tangible personal property except wearing apparel or shoes
27 for a consideration, whether or not the services are performed
28 directly or by any means other than by coin-operated self-
29 service laundry equipment for wearing apparel or household goods
30 and whether or not any tangible personal property is transferred

1 in conjunction therewith, except such services as are rendered
2 in the construction, reconstruction, remodeling, repair or
3 maintenance of real estate: Provided, however, That this
4 subclause shall not be deemed to impose tax upon such services
5 in the preparation for sale of new items which are excluded from
6 the tax under clause (26) of section 204, or upon diaper
7 service.

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

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

20 (A) The manufacture of tangible personal property.

21 (B) Farming, dairying, agriculture, horticulture or
22 floriculture when engaged in as a business enterprise. The term
23 "farming" shall include the propagation and raising of ranch
24 raised fur-bearing animals and the propagation of game birds for
25 commercial purposes by holders of propagation permits issued
26 under 34 Pa.C.S. (relating to game) and the propagation and
27 raising of horses to be used exclusively for commercial racing
28 activities.

29 (C) The producing, delivering or rendering of a public
30 utility service, or in constructing, reconstructing, remodeling,

1 repairing or maintaining the facilities which are directly used
2 in producing, delivering or rendering such service.

3 (D) Processing as defined in clause (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; to
8 maintenance facilities; or to materials, supplies or equipment
9 to be used or consumed in the construction, reconstruction,
10 remodeling, repair or maintenance of real estate other than
11 directly used machinery, equipment, parts or foundations
12 therefor that may be affixed to such real 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, supplies or equipment used to
22 construct, reconstruct, remodel, repair or maintain facilities
23 not used directly by the purchaser in the production, delivering
24 or rendition of public utility service, (ii) construction
25 materials, supplies or equipment used to construct, reconstruct,
26 remodel, repair or maintain a building, road or similar
27 structure, or (iii) tools and equipment used but not installed
28 in the maintenance of facilities used directly in the
29 production, delivering or rendition of a public utility service.

30 The exclusions provided in paragraphs (A), (B), (C) and (D)

1 shall not apply to the services enumerated in clauses (k)(11)
2 through (18) and (w) through (kk), except that the exclusion
3 provided in this subclause for farming, dairying and agriculture
4 shall apply to the service enumerated in clause (z).

5 (9) Where tangible personal property or services are
6 utilized for purposes constituting a "sale at retail" and for
7 purposes excluded from the definition of "sale at retail," it
8 shall be presumed that such tangible personal property or
9 services are utilized for purposes constituting a "sale at
10 retail" and subject to tax unless the user thereof proves to the
11 department that the predominant purposes for which such tangible
12 personal property or services are utilized do not constitute a
13 "sale at retail."

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

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

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

3 (13) The rendition for a consideration of secretarial or
4 editing services.

5 [(14) The rendition for a consideration of disinfecting or
6 pest control services, building maintenance or cleaning
7 services.]

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

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

11 (18) The rendition for a consideration of self-storage
12 service.

13 * * *

14 (o) "Use."

15 (1) The exercise of any right or power incidental to the
16 ownership, custody or possession of tangible personal property
17 and shall include, but not be limited to transportation, storage
18 or consumption.

19 (2) The obtaining by a purchaser of the service of printing
20 or imprinting of tangible personal property when such purchaser
21 furnishes, either directly or indirectly, the articles used in
22 the printing or imprinting.

23 (3) The obtaining by a purchaser of the services of (i)
24 washing, cleaning, waxing, polishing or lubricating of motor
25 vehicles whether or not any tangible personal property is
26 transferred to the purchaser in conjunction with such services,
27 and (ii) inspecting motor vehicles pursuant to the mandatory
28 requirements of "The Vehicle Code."

29 (4) The obtaining by a purchaser of the service of
30 repairing, altering, mending, pressing, fitting, dyeing,

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

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

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

28 (i) The manufacture of tangible personal property.

29 (ii) Farming, dairying, agriculture, horticulture or
30 floriculture when engaged in as a business enterprise. The term

1 "farming" shall include the propagation and raising of ranch-
2 raised furbearing animals and the propagation of game birds for
3 commercial purposes by holders of propagation permits issued
4 under 34 Pa.C.S. (relating to game) and the propagation and
5 raising of horses to be used exclusively for commercial racing
6 activities.

7 (iii) The producing, delivering or rendering of a public
8 utility service, or in constructing, reconstructing, remodeling,
9 repairing or maintaining the facilities which are directly used
10 in producing, delivering or rendering such service.

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

12 The exclusions provided in subparagraphs (i), (ii), (iii) and
13 (iv) shall not apply to any vehicle required to be registered
14 under The Vehicle Code except those vehicles directly used by a
15 public utility engaged in the business as a common carrier; to
16 maintenance facilities; or to materials, supplies or equipment
17 to be used or consumed in the construction, reconstruction,
18 remodeling, repair or maintenance of real estate other than
19 directly used machinery, equipment, parts or foundations
20 therefor that may be affixed to such real estate. The exclusions
21 provided in subparagraphs (i), (ii), (iii) and (iv) shall not
22 apply to tangible personal property or services to be used or
23 consumed in managerial sales or other nonoperational activities,
24 nor to the purchase or use of tangible personal property or
25 services by any person other than the person directly using the
26 same in the operations described in subparagraphs (i), (ii),
27 (iii) and (iv).

28 The exclusion provided in subparagraph (iii) shall not apply
29 to (A) construction materials, supplies or equipment used to
30 construct, reconstruct, remodel, repair or maintain facilities

1 not used directly by the purchaser in the production, delivering
2 or rendition of public utility service or (B) tools and
3 equipment used but not installed in the maintenance of
4 facilities used directly in the production, delivering or
5 rendition of a public utility service.

6 The exclusion provided in subparagraphs (i), (ii), (iii) and
7 (iv) shall not apply to the services enumerated in clauses
8 (o)(9) through (16) and (w) through (kk), except that the
9 exclusion provided in subparagraph (ii) for farming, dairying
10 and agriculture shall apply to the service enumerated in clause
11 (z).

12 (5) Where tangible personal property or services are
13 utilized for purposes constituting a "use," as herein defined,
14 and for purposes excluded from the definition of "use," it shall
15 be presumed that such property or services are utilized for
16 purposes constituting a "sale at retail" and subject to tax
17 unless the user thereof proves to the department that the
18 predominant purposes for which such property or services are
19 utilized do not constitute a "sale at retail."

20 (6) The term "use" with respect to "liquor" and "malt or
21 brewed beverages" shall include the purchase of "liquor" from
22 any "Pennsylvania liquor store" by any person for any purpose
23 and the purchase of "malt or brewed beverages" from a
24 "manufacturer of malt or brewed beverages," "distributor" or
25 "importing distributor" by any person for any purpose, except
26 purchases from a "manufacturer of malt or brewed beverages" by a
27 "distributor" or "importing distributor," or purchases from an
28 "importing distributor" by a "distributor" within the meaning of
29 the "Liquor Code." The term "use" shall not include any purchase
30 of "malt or brewed beverages" from a "retail dispenser" or any

1 purchase of "liquor" or "malt or brewed beverages" from a person
2 holding a "retail liquor license" within the meaning of and
3 pursuant to the provisions of the "Liquor Code," but shall
4 include the exercise of any right or power incidental to the
5 ownership, custody or possession of "liquor" or "malt or brewed
6 beverages" obtained by the person exercising such right or power
7 in any manner other than pursuant to the provisions of the
8 "Liquor Code."

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

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

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

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

19 (11) The obtaining by the purchaser of secretarial or
20 editing services.

21 [(12) The obtaining by the purchaser of disinfecting or pest
22 control services, building maintenance or cleaning services.]

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

25 (15) The obtaining by the purchaser of lawn care service.

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

27 (17) The obtaining by a construction contractor of tangible
28 personal property or services provided to tangible personal
29 property which will be used pursuant to a construction contract
30 whether or not the tangible personal property or services are

1 transferred.

2 * * *

3 [(z) "Disinfecting or pest control services." Providing
4 disinfecting, termite control, insect control, rodent control or
5 other pest control services. Such services include, but are not
6 limited to, deodorant servicing of rest rooms, washroom
7 sanitation service, rest room cleaning service, extermination
8 service or fumigating service. As used in this clause, the term
9 "fumigating service" shall not include the fumigation of
10 agricultural commodities or containers used for agricultural
11 commodities. As used in this clause, the term "insect control"
12 shall not include the spraying of trees which are harvested for
13 commercial purposes for gypsy moth control.

14 (aa) "Building maintenance or cleaning services." Providing
15 services which include, but are not limited to, janitorial, maid
16 or housekeeping service, office or interior building cleaning or
17 maintenance service, window cleaning service, floor waxing
18 service, lighting maintenance service such as bulb replacement,
19 cleaning, chimney cleaning service, acoustical tile cleaning
20 service, venetian blind cleaning, cleaning and maintenance of
21 telephone booths or cleaning and degreasing of service stations.
22 This term shall not include repairs on buildings and other
23 structures; nor shall this term include the maintenance or
24 repair of boilers, furnaces or parts thereof; the painting,
25 wallpapering or applying other like coverings to interior walls,
26 ceilings or floors; or the exterior painting of buildings.]

27 * * *

28 Section 2. The amendment of section 201(k), (o), (z) and
29 (aa) of the act shall be retroactive to October 1, 1991.

30 Section 3. This act shall take effect immediately.