

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 579 Session of  
2003

INTRODUCED BY GREENLEAF, C. WILLIAMS, CORMAN, LEMMOND, FUMO,  
WAGNER, KASUNIC, TOMLINSON, RAFFERTY, PILEGGI, WAUGH,  
SCHWARTZ, M. WHITE, ROBBINS, ORIE, TARTAGLIONE AND COSTA,  
APRIL 7, 2003

REFERRED TO FINANCE, APRIL 7, 2003

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."

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

14 Section 1. Section 201(k)(8) of the act of March 4, 1971  
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended  
16 April 23, 1998 (P.L.239, No.45), is amended and the section is  
17 amended by adding clauses to read:

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

1       \* \* \*

2       (k) "Sale at retail."

3       \* \* \*

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, including resale of items purchased  
12 for resale by schools, school-related organizations and  
13 nonprofit associations supporting or sponsoring sports programs,  
14 or (ii) such rendition of services or the transfer of tangible  
15 personal property including, but not limited to, machinery and  
16 equipment and parts therefor and supplies to be used or consumed  
17 by the purchaser directly in the operations of--

18       (A) The manufacture of tangible personal property.

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

27       (C) The producing, delivering or rendering of a public  
28 utility service, or in constructing, reconstructing, remodeling,  
29 repairing or maintaining the facilities which are directly used  
30 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 directly used 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).

\* \* \*

(ddd) "Nonprofit association." An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, county fair or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis.

(eee) "Sports program." Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes and which is primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There shall, however, be no age limitation for programs operated for persons who are physically handicapped or mentally retarded.

Section 2. This act shall take effect in 60 days.