

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1041 Session of
2007

INTRODUCED BY PICCOLA, FOLMER, ORIE, RAFFERTY, WAUGH, O'PAKE AND
D. WHITE, AUGUST 1, 2007

REFERRED TO FINANCE, AUGUST 1, 2007

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," in sales and use tax, further providing for
11 definitions and for exclusions from tax.

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

14 Section 1. Section 201(k)(4), (m) and (o)(4) and (8) of the
15 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
16 of 1971, amended May 7, 1997 (P.L.85, No.7), April 23, 1998
17 (P.L.239, No.45) and May 24, 2000 (P.L.106, No.23), are amended
18 and subsection (k) is amended by adding a clause to read:

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

1 * * *

2 (k) "Sale at retail."

3 * * *

4 (4) The rendition for a consideration of the service of
5 repairing, altering, mending, pressing, fitting, dyeing,
6 laundering, drycleaning or cleaning tangible personal property
7 [other than] including, but not limited to, wearing apparel or
8 shoes, or applying or installing tangible personal property as a
9 repair or replacement part of other tangible personal property
10 [except] including, but not limited to, wearing apparel or shoes
11 for a consideration, whether or not the services are performed
12 directly or by any means other than by coin-operated self-
13 service laundry equipment for wearing apparel or household goods
14 and whether or not any tangible personal property is transferred
15 in conjunction therewith.[, except such services as are rendered
16 in the construction, reconstruction, remodeling, repair or
17 maintenance of real estate: Provided, however, That this
18 subclause shall not be deemed to impose tax upon such services
19 in the preparation for sale of new items which are excluded from
20 the tax under clause (26) of section 204, or upon diaper
21 service.]

22 * * *

23 (20) (i) The rendition for a consideration of any service,
24 other than a medical service, when the primary objective of the
25 purchaser is the receipt of any benefit of the service
26 performed, as distinguished from the receipt of property. In
27 determining what is a service, the intended use or stated
28 objective of the contracting parties shall not necessarily be
29 controlling. "Medical service" means any service obtained at or
30 through a health care facility as defined in section 103 of the

1 act of July 19, 1979 (P.L.130, No.48), known as the "Health Care
2 Facilities Act."

3 (ii) Any service performed in this Commonwealth shall be
4 subject to the tax imposed under this article unless
5 specifically exempted in this article. With respect to services,
6 other than telecommunication services, such services shall be
7 considered to be performed in this Commonwealth if:

8 (A) performed completely in this Commonwealth;

9 (B) performed partially in this Commonwealth and partially
10 outside of this Commonwealth when the recipient or user of the
11 service is located in this Commonwealth and no sales or use tax
12 equal in rate to that imposed under this article has been paid
13 to another state for the service performed partially in that
14 state; or

15 (C) the place of performance cannot be determined if the
16 recipient or user of the service is located in this
17 Commonwealth.

18 (iii) With respect to services, other than telecommunication
19 services, such services performed partially in this Commonwealth
20 and partially outside of this Commonwealth shall be presumed to
21 have been performed completely in this Commonwealth unless the
22 taxpayer can show the place of performance by clear and
23 convincing evidence. With respect to interstate
24 telecommunication services, only those charges for interstate
25 telecommunications which originate or are received in this
26 Commonwealth and which are billed and charged to a service
27 address in this Commonwealth shall be subject to tax.

28 * * *

29 (m) "Tangible personal property." Corporeal personal
30 property including, but not limited to, goods, wares,

1 merchandise, steam and natural and manufactured and bottled gas
2 [for non-residential use], electricity [for non-residential
3 use], prepaid telecommunications, premium cable or premium video
4 programming service, spirituous or vinous liquor and malt or
5 brewed beverages and soft drinks, interstate telecommunications
6 service originating or terminating in the Commonwealth and
7 charged to a service address in this Commonwealth, [intrastate
8 telecommunications service with the exception of (i) subscriber
9 line charges and basic local telephone service for residential
10 use and (ii) charges for telephone calls paid for by inserting
11 money into a telephone accepting direct deposits of money to
12 operate,] provided further, the service address of any
13 intrastate telecommunications service is deemed to be within
14 this Commonwealth or within a political subdivision, regardless
15 of how or where billed or paid. In the case of any such
16 interstate or intrastate telecommunications service, any charge
17 paid through a credit or payment mechanism which does not relate
18 to a service address, such as a bank, travel, credit or debit
19 card, but not including prepaid telecommunications, is deemed
20 attributable to the address of origination of the
21 telecommunications service.

22 * * *

23 (o) "Use."

24 * * *

25 (4) The obtaining by a purchaser of the service of
26 repairing, altering, mending, pressing, fitting, dyeing,
27 laundering, drycleaning or cleaning tangible personal property
28 [other than] including, but not limited to, wearing apparel or
29 shoes or applying or installing tangible personal property as a
30 repair or replacement part of other tangible personal property

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

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

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

25 (i) The manufacture of tangible personal property.

26 (ii) Farming, dairying, agriculture, horticulture or
27 floriculture when engaged in as a business enterprise. The term
28 "farming" shall include the propagation and raising of ranch-
29 raised furbearing animals and the propagation of game birds for
30 commercial purposes by holders of propagation permits issued

1 under 34 Pa.C.S. (relating to game) and the propagation and
2 raising of horses to be used exclusively for commercial racing
3 activities.

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

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

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

25 The exclusion provided in subparagraph (iii) shall not apply
26 to (A) construction materials, supplies or equipment used to
27 construct, reconstruct, remodel, repair or maintain facilities
28 not used directly by the purchaser in the production, delivering
29 or rendition of public utility service or (B) tools and
30 equipment used but not installed in the maintenance of

1 facilities used directly in the production, delivering or
2 rendition of a public utility service.

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

9 * * *

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

13 * * *

14 Section 2. Section 204 of the act, amended, added or
15 repealed August 31, 1971 (P.L.362, No.93), July 20, 1974
16 (P.L.535, No.183), October 17, 1974 (P.L.756, No.255), December
17 14, 1977 (P.L.322, No.93), October 27, 1979 (P.L.242, No.79),
18 December 8, 1980 (P.L.1117, No.195), December 16, 1980
19 (P.L.1240, No.223), October 22, 1981 (P.L.314, No.109), June 23,
20 1982 (P.L.610, No.172), December 9, 1982 (P.L.1047, No.246),
21 July 21, 1983 (P.L.63, No.29), December 19, 1985 (P.L.354,
22 No.100), July 13, 1987 (P.L.317, No.58), August 4, 1991 (P.L.97,
23 No.22), December 13, 1991 (P.L.373, No.40), June 16, 1994
24 (P.L.279, No.48), June 30, 1995 (P.L.139, No.21), May 7, 1997
25 (P.L.85, No.7), April 23, 1998 (P.L.239, No.45), May 12, 1999
26 (P.L.26, No.4), May 24, 2000 (P.L.106, No.23), December 20, 2000
27 (P.L.841, No.119), June 22, 2001 (P.L.353, No.23), June 29, 2002
28 (P.L.559, No.89), December 23, 2003 (P.L.250, No.46), July 6,
29 2006 (P.L.319, No.67) and November 29, 2006 (P.L.1630, No.189),
30 is amended to read:

Section 204. Exclusions from Tax.--The tax imposed by section 202 shall not be imposed upon any of the following:

(1) The sale at retail or use of tangible personal property (other than motor vehicles, trailers, semi-trailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed) or services sold by or purchased from a person not a vendor in an isolated transaction or sold by or purchased from a person who is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in such transaction: Provided, That inventory and stock in trade so sold or purchased, shall not be excluded from the tax by the provisions of this subsection.

(2) The use of tangible personal property purchased by a nonresident person outside of, and brought into this Commonwealth for use therein for a period not to exceed seven days, or for any period of time when such nonresident is a tourist or vacationer and, in either case not consumed within the Commonwealth.

(3) The use of tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then nonresident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible personal property into this Commonwealth in connection with his establishment of a permanent business or residence in this Commonwealth: Provided, That such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such business or residence, whichever first occurs. This exclusion shall not apply to tangible personal property temporarily brought into

1 Pennsylvania for the performance of contracts for the
2 construction, reconstruction, remodeling, repairing and
3 maintenance of real estate.

4 [(4) The sale at retail or use of disposable diapers; pre-
5 moistened wipes; incontinence products; colostomy deodorants;
6 toilet paper; sanitary napkins, tampons or similar items used
7 for feminine hygiene; or toothpaste, toothbrushes or dental
8 floss.

9 (5) The sale at retail or use of steam, natural and
10 manufactured and bottled gas, fuel oil, electricity or
11 intrastate subscriber line charges, basic local telephone
12 service or telegraph service when purchased directly by the user
13 thereof solely for his own residential use and charges for
14 telephone calls paid for by inserting money into a telephone
15 accepting direct deposits of money to operate.]

16 (10) The sale at retail to, or use by (i) any charitable
17 organization, volunteer firemen's organization or nonprofit
18 educational institution, or (ii) a religious organization for
19 religious purposes of tangible personal property or services
20 other than pursuant to a construction contract: Provided,
21 however, That the exclusion of this clause shall not apply with
22 respect to any tangible personal property or services used in
23 any unrelated trade or business carried on by such organization
24 or institution or with respect to any materials, supplies and
25 equipment used and transferred to such organization or
26 institution in the construction, reconstruction, remodeling,
27 renovation, repairs and maintenance of any real estate
28 structure, other than building machinery and equipment, except
29 materials and supplies when purchased by such organizations or
30 institutions for routine maintenance and repairs.

1 (11) The sale at retail, or use of gasoline and other motor
2 fuels, the sales of which are otherwise subject to excise taxes
3 under [the act of May 21, 1931 (P.L.194), known as the "Liquid
4 Fuels Tax Act," and the act of January 14, 1952 (P.L.1965),
5 known as the "Fuel Use Tax Act."] 75 Pa.C.S. Ch. 90 (relating to
6 liquid fuels and fuels tax).

7 (12) The sale at retail to, or use by the United States,
8 this Commonwealth or its instrumentalities or political
9 subdivisions of tangible personal property or services.

10 [(13) The sale at retail, or use of wrapping paper, wrapping
11 twine, bags, cartons, tape, rope, labels, nonreturnable
12 containers and all other wrapping supplies, when such use is
13 incidental to the delivery of any personal property, except that
14 any charge for wrapping or packaging shall be subject to tax at
15 the rate imposed by section 202.

16 (14) Sale at retail or use of vessels designed for
17 commercial use of registered tonnage of fifty tons or more when
18 produced by the builders thereof upon special order of the
19 purchaser.

20 (15) Sale at retail of tangible personal property or
21 services used or consumed in building, rebuilding, repairing and
22 making additions to or replacements in and upon vessels designed
23 for commercial use of registered tonnage of fifty tons or more
24 upon special order of the purchaser, or when rebuilt, repaired
25 or enlarged, or when replacements are made upon order of or for
26 the account of the owner.

27 (16) The sale at retail or use of tangible personal property
28 or services to be used or consumed for ship cleaning or
29 maintenance or as fuel, supplies, ships' equipment, ships'
30 stores or sea stores on vessels designed for commercial use of

1 registered tonnage of fifty tons or more to be operated
2 principally outside the limits of the Commonwealth.]

3 (17) The sale at retail or use of prescription [or non-
4 prescription] medicines[,] or drugs or prescription or
5 nonprescription medical supplies, crutches and wheelchairs for
6 the use of cripples and invalids, artificial limbs, artificial
7 eyes and artificial hearing devices when designed to be worn on
8 the person of the purchaser or user, false teeth and materials
9 used by a dentist in dental treatment, eyeglasses when
10 especially designed or prescribed by an ophthalmologist, oculist
11 or optometrist for the personal use of the owner or purchaser
12 and artificial braces and supports designed solely for the use
13 of crippled persons or any other therapeutic, prosthetic or
14 artificial device designed for the use of a particular
15 individual to correct or alleviate a physical incapacity,
16 including but not limited to hospital beds, iron lungs, and
17 kidney machines.

18 [(18) The sale at retail or use of coal.]

19 (24) The sale at retail or use of motor vehicles, trailers
20 and semi-trailers, or bodies attached to the chassis thereof,
21 sold to a nonresident of Pennsylvania to be used outside of
22 Pennsylvania and which are registered in a state other than
23 Pennsylvania within twenty days after delivery to the vendee.

24 [(25) The sale at retail or use of water.

25 (26) The sale at retail or use of all vesture, wearing
26 apparel, raiments, garments, footwear and other articles of
27 clothing, including clothing patterns and items that are to be a
28 component part of clothing, worn or carried on or about the
29 human body but all accessories, ornamental wear, formal day or
30 evening apparel, and articles made of fur on the hide or pelt or

1 any material imitative of fur and articles of which such fur,
2 real, imitation or synthetic, is the component material of chief
3 value, but only if such value is more than three times the value
4 of the next most valuable component material, and sporting goods
5 and clothing not normally used or worn when not engaged in
6 sports shall not be excluded from the tax.

7 (28) The sale at retail or use of religious publications
8 sold by religious groups and Bibles and religious articles.]

9 (29) The sale at retail or use of food and beverages for
10 human consumption, except that this exclusion shall not apply
11 with respect to--

12 (i) Soft drinks;

13 (ii) Malt and brewed beverages and spirituous and vinous
14 liquors;

15 (iii) Food or beverages, whether sold for consumption on or
16 off the premises or on a "take-out" or "to go" basis or
17 delivered to the purchaser or consumer, when purchased (A) from
18 persons engaged in the business of catering; or (B) from persons
19 engaged in the business of operating establishments from which
20 ready-to-eat food and beverages are sold, including, but not
21 limited to, restaurants, cafes, lunch counters, private and
22 social clubs, taverns, dining cars, hotels, night clubs, fast
23 food operations, pizzerias, fairs, carnivals, lunch carts, ice
24 cream stands, snack bars, cafeterias, employe cafeterias,
25 theaters, stadiums, arenas, amusement parks, carryout shops,
26 coffee shops and other establishments whether mobile or
27 immobile. For purposes of this clause, a bakery, a pastry shop,
28 a donut shop, a delicatessen, a grocery store, a supermarket, a
29 farmer's market, a convenience store or a vending machine shall
30 not be considered an establishment from which food or beverages

1 ready to eat are sold except for the sale of meals, sandwiches,
2 food from salad bars, hand-dipped or hand-served iced based
3 products including ice cream and yogurt, hot soup, hot pizza and
4 other hot food items, brewed coffee and hot beverages. For
5 purposes of this subclause, beverages shall not include malt and
6 brewed beverages and spirituous and vinous liquors but shall
7 include soft drinks. The sale at retail of food and beverages at
8 or from a school or church in the ordinary course of the
9 activities of such organization is not subject to tax.

10 [(30) The sale at retail or use of newspapers. For purposes
11 of this section, the term "newspaper" shall mean a "legal
12 newspaper" or a publication containing matters of general
13 interest and reports of current events which qualifies as a
14 "newspaper of general circulation" qualified to carry a "legal
15 advertisement" as those terms are defined in 45 Pa.C.S. § 101
16 (relating to definitions), not including magazines. This
17 exclusion shall also include any printed advertising materials
18 circulated with such newspaper regardless of where or by whom
19 such printed advertising material was produced.

20 (31) The sale at retail or use of caskets and burial vaults
21 for human remains and markers and tombstones for human graves.]

22 (32) The sale at retail or use of flags of the United States
23 of America and the Commonwealth of Pennsylvania.

24 [(33) The sale at retail or use of textbooks for use in
25 schools, colleges and universities, either public or private
26 when purchased in behalf of or through such schools, colleges or
27 universities provided such institutions of learning are
28 recognized by the Department of Education.

29 (34) The sale at retail, or use of motion picture film
30 rented or licensed from a distributor for the purpose of

1 commercial exhibition.

2 (35) The sale at retail or use of mail order catalogs and
3 direct mail advertising literature or materials, including
4 electoral literature or materials, such as envelopes, address
5 labels and a one-time license to use a list of names and mailing
6 addresses for each delivery of direct mail advertising
7 literature or materials, including electoral literature or
8 materials, through the United States Postal Service.

9 (36) The sale at retail or use of rail transportation
10 equipment used in the movement of personalty.

11 (37) The sale at retail of buses to be used under contract
12 with school districts that are replacements for buses destroyed
13 or lost in the flood of 1977 for a period ending December 31,
14 1977 in the counties of Armstrong, Bedford, Cambria, Indiana,
15 Jefferson, Somerset and Westmoreland, or the use of such buses.

16 (38) The sale at retail of horses, if at the time of
17 purchase, the seller is directed to ship or deliver the horse to
18 an out-of-State location, whether or not the charges for
19 shipment are paid for by the seller or the purchaser; the seller
20 shall obtain a bill of lading, either from the carrier or from
21 the purchaser, who, in turn has obtained the bill of lading from
22 the carrier, reflecting delivery to the out-of-State address to
23 which the horse has been shipped. The seller shall execute a
24 "Certificate of Delivery to Destination Outside of the
25 Commonwealth" for each bill of lading reflecting out-of-State
26 delivery. The seller shall be required to retain the certificate
27 of delivery form to justify the noncollection of sales tax with
28 respect to the transaction to which the form relates.

29 In transactions where a horse is sold by the seller and
30 delivered to a domiciled person, agent or corporation prior to

1 its being delivered to an out-of-State location, the
2 "Certificate of Delivery to Destination Outside of the
3 Commonwealth" form must have attached to it bills of lading both
4 for the transfer to the domiciled person, agent or corporation
5 and from the aforementioned to the out-of-State location.

6 (39) The sale at retail or use of fish feed purchased by or
7 on behalf of sportsmen's clubs, fish cooperatives or nurseries
8 approved by the Pennsylvania Fish Commission.

9 (40) The sale at retail of supplies and materials to tourist
10 promotion agencies, which receive grants from the Commonwealth,
11 for distribution to the public as promotional material or the
12 use of such supplies and materials by said agencies for said
13 purposes.

14 (41) The sale at retail of supplies and materials to tourist
15 promotion agencies, which receive grants from the Commonwealth,
16 for distribution to the public as promotional material or the
17 use of such supplies and materials by said agencies for said
18 purposes.

19 (42) The sale or use of brook trout (*salvelinus fontinalis*),
20 brown trout (*Salmo trutta*) or rainbow trout (*Salmo gairdneri*).

21 (43) The sale at retail or use of buses to be used
22 exclusively for the transportation of children for school
23 purposes.

24 (44) The sale at retail or use of firewood. For the purpose
25 of this clause, firewood shall mean the product of trees when
26 severed from the land and cut into proper lengths for burning
27 and pellets made from pure wood sawdust if used for fuel for
28 cooking, hot water production or to heat residential dwellings.

29 (45) The sale at retail or use of materials used in the
30 construction and erection of objects purchased by not-for-profit

1 organizations for purposes of commemoration and memorialization
2 of historical events, provided that the object is erected upon
3 publicly owned property or property to be conveyed to a public
4 entity upon the commemoration or memorialization of the
5 historical event.]

6 (46) The sale at retail or use of tangible personal property
7 purchased in accordance with the Food Stamp Act of 1977, as
8 amended (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

9 [(47) The net purchase price of the sale at retail or use of
10 electric vehicles, hybrid electric vehicles and zero emission
11 vehicles as defined in 75 Pa.C.S. § 102 (relating to
12 definitions). "Net purchase price" shall mean the difference
13 between the purchase price of an electric vehicle, hybrid
14 electric vehicle or zero emission vehicle and the average retail
15 list price of a comparable vehicle. "Comparable vehicle" shall
16 mean, in the case of a passenger car, the overall average list
17 price of a passenger car in the United States; in the case of a
18 passenger truck, the overall average list price of a passenger
19 truck in the United States; and, in the case of a van, the
20 overall average retail list price of a van in the United States.
21 The Department of Revenue shall promulgate rules and regulations
22 to enforce this exemption and determine the average retail list
23 price as defined under "comparable vehicle" on an annual basis.
24 In the event that a qualified motor vehicle is something other
25 than a passenger car, passenger truck or van, the Department of
26 Revenue shall determine the average list price of a comparable
27 vehicle classification. This clause shall expire December 31,
28 1999.

29 (48) The sale at retail or use of power units for vehicles
30 that are exempt under clause (47). This clause shall expire

1 December 31, 1999.]

2 (49) The sale at retail or use of [food and beverages]
3 tangible personal property or services by a nonprofit
4 [associations] association which support [sports programs] the
5 charitable purposes of the nonprofit association. For purposes
6 of this clause, the phrases:

7 (i) "nonprofit association" means an entity which is
8 organized as a nonprofit corporation or nonprofit unincorporated
9 association under the laws of this Commonwealth or the United
10 States or any entity which is authorized to do business in this
11 Commonwealth as a nonprofit corporation or unincorporated
12 association under the laws of this Commonwealth, including, but
13 not limited to, youth or athletic associations, volunteer fire,
14 ambulance, religious, charitable, fraternal, veterans, civic, or
15 any separately chartered auxiliary of the foregoing, if
16 organized and operated on a nonprofit basis; and

17 [(iv) "sports program" means baseball (including softball),
18 football, basketball, soccer and any other competitive sport
19 formally recognized as a sport by the United States Olympic
20 Committee as specified by and under the jurisdiction of the
21 Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. § 371
22 et seq.), the Amateur Athletic Union or the National Collegiate
23 Athletic Association. The term shall be limited to a program or
24 that portion of a program that is organized for recreational
25 purposes and whose activities are substantially for such
26 purposes and which is primarily for participants who are 18
27 years of age or younger or whose 19th birthday occurs during the
28 year of participation or the competitive season, whichever is
29 longer. There shall, however, be no age limitation for programs
30 operated for persons with physical handicaps or persons with

1 mental retardation;

2 (v) "support" means the funds raised from sales are used to
3 pay the expenses of a sports program or the nonprofit
4 association sells the food and beverages at a location where a
5 sports program is being conducted under this act.

6 (50) The sale at retail or use of subscriptions for
7 magazines. The term "magazine" refers to a periodical published
8 at regular intervals not exceeding three months and which are
9 circulated among the general public, containing matters of
10 general interest and reports of current events published for the
11 purpose of disseminating information of a public character or
12 devoted to literature, the sciences, art or some special
13 industry. This exclusion shall also include any printed
14 advertising material circulated with the periodical or
15 publication regardless of where or by whom the printed
16 advertising material was produced.

17 (51) The sale at retail or use of interior office building
18 cleaning services but only as relates to the costs of the
19 supplied employee, which costs are wages, salaries, bonuses and
20 commissions, employment benefits, expense reimbursements, and
21 payroll and withholding taxes, to the extent that these costs
22 are specifically itemized or that these costs in aggregate are
23 stated in billings from the vender or supplying entity.

24 (53) The sale at retail or use of candy or gum regardless of
25 the location from which the candy or gum is sold.

26 (54) The sale at retail to or use by a producer of
27 commercial motion pictures of any tangible personal property
28 directly used in the production of a feature-length commercial
29 motion picture distributed to a national audience: Provided,
30 however, That the production of any motion picture for which the

1 property will be used does not violate any Federal or State law;
2 and Provided further That the purchaser shall furnish to the
3 vendor a certificate substantially in the form as the Department
4 of Community and Economic Development may, by regulation,
5 prescribe, stating that the sale is exempt from tax pursuant to
6 this clause.

7 (55) The sale at retail or use of horses to be used
8 exclusively for commercial racing activities and the sale at
9 retail and use of feed, bedding, grooming supplies, riding tack,
10 farrier services, portable stalls and sulkies for horses used
11 exclusively for commercial racing activities.]

12 (56) The sale at retail or use of tangible personal property
13 or services used, transferred or consumed in installing or
14 repairing equipment or devices designed to assist persons in
15 ascending or descending a stairway when:

16 (i) The equipment or devices are used by a person who, by
17 virtue of a physical disability, is unable to ascend or descend
18 stairs without the aid of such equipment or device.

19 (ii) The equipment or device is installed or used in such
20 person's place of residence.

21 (iii) A physician has certified the physical disability of
22 the person in whose residence the equipment or device is
23 installed or used.

24 (57) The sale at retail to or use by a construction
25 contractor of building machinery and equipment and services
26 thereto that are:

27 (i) transferred pursuant to a construction contract for any
28 charitable organization, volunteer firemen's organization,
29 nonprofit educational institution or religious organization for
30 religious purposes, provided that the building machinery and

1 equipment and services thereto are not used in any unrelated
2 trade or business; or

3 (ii) transferred to the United States or the Commonwealth or
4 its instrumentalities or political subdivisions[; or].

5 [(58) The sale at retail or use of a personal computer, a
6 peripheral device or an Internet access device, or a service
7 contract or single-user licensed software purchased in
8 conjunction with a personal computer, peripheral device or
9 Internet access device, during the exclusion period by an
10 individual purchaser for nonbusiness use. The exclusion does not
11 include a sale at retail or use of, leasing, rental or repair of
12 a personal computer, peripheral device or Internet access
13 device; mainframe computers; network servers; local area network
14 hubs; routers and network cabling; network operating systems;
15 multiple-user licensed software; minicomputers; hand-held
16 computers; personal digital assistants without Internet access;
17 hardware word processors; graphical calculators; video game
18 consoles; telephones; digital cameras; pagers; compact discs
19 encoded with music or movies; and digital versatile discs
20 encoded with music or movies. For purposes of this clause, the
21 phrase "exclusion period" means the period of time from August
22 5, 2001, to and including August 12, 2001, and from February 17,
23 2002, to and including February 24, 2002. For purposes of this
24 clause, "purchaser" means an individual who places an order and
25 pays the purchase price by cash or credit during the exclusion
26 period even if delivery takes place after the exclusion period.]

27 (59) The sale at retail or use of molds and related mold
28 equipment used directly and predominantly in the manufacture of
29 products, regardless of whether the person that holds title to
30 the equipment manufactures a product.

(60) The sale or use of used prebuilt housing.

[(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.]

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

[(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).]

(64) The sale at retail to or use by a construction contractor, employed by a public school district pursuant to a construction contract, of any materials and building supplies which, during construction or reconstruction, are made part of any public school building utilized for instructional classroom education within this Commonwealth, if the construction or reconstruction:

(i) is necessitated by a disaster emergency, as defined in 35 Pa.C.S. § 7102 (relating to definitions); and

(ii) takes place during the period when there is a declaration of disaster emergency under 35 Pa.C.S. § 7301(c) (relating to general authority of Governor).

(65) The sale at retail or use of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal which has been put through a process of smelting or refining, including, but not limited to, gold,

1 silver, platinum and palladium, and which is in such state or
2 condition that its value depends upon its content and not its
3 form. "Investment metal bullion" does not include precious metal
4 which has been assembled, fabricated, manufactured or processed
5 in one or more specific and customary industrial, professional,
6 aesthetic or artistic uses. "Investment coins" means numismatic
7 coins or other forms of money and legal tender manufactured of
8 gold, silver, platinum, palladium or other metal and of the
9 United States or any foreign nation with a fair market value
10 greater than any nominal value of such coins. "Investment coins"
11 does not include jewelry or works of art made of coins, nor does
12 it include commemorative medallions.

13 (66) The sale at retail or use of copies of an official
14 document sold by a government agency or a court. For the
15 purposes of this clause, the following terms or phrases shall
16 have the following meanings:

17 (i) "court" includes:

18 (A) an "appellate court" as defined in 42 Pa.C.S. § 102
19 (relating to definitions);

20 (B) a "court of common pleas" as defined in 42 Pa.C.S. §
21 102;

22 (C) the "minor judiciary" as defined in 42 Pa.C.S. § 102;

23 (ii) "government agency" means an "agency" as defined in
24 section 1 of the act of June 21, 1957 (P.L.390, No.212),
25 referred to as the "Right-to-Know Law";

26 (iii) "official document" means a "record" as defined in
27 section 1 of the "Right-to-Know Law." The term shall include
28 notes of court testimony, deposition transcripts, driving
29 records, accident reports, birth and death certificates, deeds,
30 divorce decrees and other similar documents.

1 (67) The sale at retail of medical goods or services by a
2 hospital.

3 (68) The sale at retail of medical, dental or hospice
4 services.

5 (69) The sale at retail or use of goods or services
6 involving Medicare Part B transactions.

7 (70) The sale or rental of real property.

8 Section 3. This act shall apply to sales and uses occurring
9 or commencing 120 days after the effective date of this section.

10 Section 4. This act shall take effect immediately.