

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2738 Session of 2010

INTRODUCED BY SEIP, KESSLER, GOODMAN, MAHONEY, MURPHY, GERGELY, SANTONI, MUNDY, HORNAMAN, HOUGHTON, GIBBONS, GRUCELA AND K. SMITH, SEPTEMBER 17, 2010

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 17, 2010

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; and providing for
12 interfund transfers.

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

15 Section 1. Section 201(cc) of the act of March 4, 1971
16 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
17 December 13, 1991 (P.L.373, No.40), is amended and clauses (k)
18 and (o) are amended by adding subclauses 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:

* * *

(k) "Sale at retail."

* * *

(20) (i) The rendition for a consideration of any service, other than (A) funeral parlors, crematories and death care services, (B) health services, including, but not limited to, physician or dental services, (C) professional and technical services, including, but not limited to, legal services, architectural services and specialized design services, (D) tuition, or (E) electrical, plumbing, heating and air conditioning service fees, when the primary objective of the purchaser is the receipt of any benefit of the service performed, as distinguished from the receipt of property. In determining what is a service, the intended use or stated objective of the contracting parties shall not necessarily be controlling.

(ii) Any service performed in this Commonwealth shall be subject to the tax imposed under this article unless specifically exempted in this article. With respect to services, other than telecommunications services, the services shall be considered to be performed in this Commonwealth if:

(A) performed completely in this Commonwealth;

(B) performed partially in this Commonwealth and partially outside this Commonwealth when the recipient or user of the service is located in this Commonwealth;

(C) performed partially in this Commonwealth and partially outside this Commonwealth if the recipient or user of the service is not located in this Commonwealth, but only to the extent of those services actually performed in this Commonwealth; or

1 (D) the place of performance cannot be determined if the
2 recipient or user of the service is located in this
3 Commonwealth.

4 (iii) With respect to services, other than
5 telecommunications services, the services performed partially in
6 this Commonwealth and partially outside this Commonwealth shall
7 be presumed to have been performed completely in this
8 Commonwealth unless the taxpayer can show the place of
9 performance by clear and convincing evidence.

10 (iv) With respect to interstate telecommunications services,
11 only those charges for interstate telecommunications which
12 originate or are terminated in this Commonwealth and which are
13 billed and charged to a service address in this Commonwealth
14 shall be subject to tax.

15 (v) With respect to services, other than telecommunications
16 services, that are performed in this Commonwealth for a
17 recipient or user of the services located in another state in
18 which the services, had they been performed in that state, would
19 not be subject to a sales or use tax under the laws of that
20 state, no tax may be imposed under this article.

21 (vi) The tax on the sale or use of services shall become due
22 at the time payment or other consideration is made for the
23 portion of services actually paid.

24 * * *

25 (o) "Use."

26 * * *

27 (19) (i) The obtaining by the purchaser of any service, not
28 otherwise set forth in this definition, other than (A) funeral
29 parlors, crematories and death care services, (B) health
30 services, including, but not limited to, physician or dental

services, (C) professional and technical services, including,
but not limited to, legal services, architectural services and
specialized design services, (D) tuition, or (E) electrical,
plumbing, heating and air conditioning service fees, when the
primary objective of the purchaser is the receipt of any benefit
of the service performed, as distinguished from the receipt of
property. In determining what is a service, the intended use or
stated objective of the contracting parties shall not
necessarily be controlling.

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

(A) performed completely in this Commonwealth;

(B) performed partially in this Commonwealth and partially
outside this Commonwealth when the recipient or user of the
service is located in this Commonwealth;

(C) performed partially in this Commonwealth and partially
outside this Commonwealth if the recipient or user of the
service is not located in this Commonwealth, but only to the
extent of those services actually performed in this
Commonwealth; or

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

(iii) With respect to services, other than telecommunication
services, such services performed partially in this Commonwealth
and partially outside this Commonwealth shall be presumed to
have been performed completely in this Commonwealth unless the

1 taxpayer shows the place of performance by clear and convincing
2 evidence.

3 (iv) With respect to interstate telecommunications services,
4 only those charges for interstate telecommunications which
5 originate or are terminated in this Commonwealth and which are
6 billed and charged to a service address in this Commonwealth
7 shall be subject to tax.

8 (v) With respect to services, other than telecommunications
9 services, that are performed in this Commonwealth for a
10 recipient or user of the services located in another state in
11 which the services, had they been performed in that state, would
12 not be subject to a sales or use tax under the laws of that
13 state, no tax may be imposed under this article.

14 * * *

15 (cc) "Help supply services." Providing temporary or
16 continuing help where the help supplied is on the payroll of the
17 supplying person or entity, but is under the supervision of the
18 individual or business to which help is furnished. Such services
19 include, but are not limited to, service of a type provided by
20 labor and manpower pools, employe leasing services, office help
21 supply services, temporary help services, usher services,
22 modeling services or fashion show model supply services. Such
23 services shall not include providing farm labor services. The
24 term shall not include human health-related services, including
25 nursing[,] and home health care [and personal care. As used in
26 this clause, "personal care" shall include providing at least
27 one of the following types of assistance to persons with limited
28 ability for self-care:

29 (1) dressing, bathing or feeding;

30 (2) supervising self-administered medication;

1 (3) transferring a person to or from a bed or wheelchair; or
2 (4) routine housekeeping chores when provided in conjunction
3 with and supplied by the same provider of the assistance listed
4 in subclause (1), (2) or (3)].

5 Section 2. Section 204(34), (35), (50), (53) and (65) of the
6 act, amended or added August 31, 1971 (P.L.362, No.93), June 16,
7 1994 (P.L.279, No.48), May 7, 1997 (P.L.85, No.7), April 23,
8 1998 (P.L.239, No.45) and July 6, 2006 (P.L.319, No.67), are
9 amended and the section is amended by adding clauses to read:

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

12 * * *

13 [(34) The sale at retail, or use of motion picture film
14 rented or licensed from a distributor for the purpose of
15 commercial exhibition.

16 (35) The sale at retail or use of mail order catalogs and
17 direct mail advertising literature or materials, including
18 electoral literature or materials, such as envelopes, address
19 labels and a one-time license to use a list of names and mailing
20 addresses for each delivery of direct mail advertising
21 literature or materials, including electoral literature or
22 materials, through the United States Postal Service.]

23 * * *

24 [(50) The sale at retail or use of subscriptions for
25 magazines. The term "magazine" refers to a periodical published
26 at regular intervals not exceeding three months and which are
27 circulated among the general public, containing matters of
28 general interest and reports of current events published for the
29 purpose of disseminating information of a public character or
30 devoted to literature, the sciences, art or some special

1 industry. This exclusion shall also include any printed
2 advertising material circulated with the periodical or
3 publication regardless of where or by whom the printed
4 advertising material was produced.]

5 * * *

6 [(53) The sale at retail or use of candy or gum regardless
7 of the location from which the candy or gum is sold.]

8 * * *

9 [(65) The sale at retail or use of investment metal bullion
10 and investment coins. "Investment metal bullion" means any
11 elementary precious metal which has been put through a process
12 of smelting or refining, including, but not limited to, gold,
13 silver, platinum and palladium, and which is in such state or
14 condition that its value depends upon its content and not its
15 form. "Investment metal bullion" does not include precious metal
16 which has been assembled, fabricated, manufactured or processed
17 in one or more specific and customary industrial, professional,
18 aesthetic or artistic uses. "Investment coins" means numismatic
19 coins or other forms of money and legal tender manufactured of
20 gold, silver, platinum, palladium or other metal and of the
21 United States or any foreign nation with a fair market value
22 greater than any nominal value of such coins. "Investment coins"
23 does not include jewelry or works of art made of coins, nor does
24 it include commemorative medallions.]

25 * * *

26 (69) The sale at retail of medical goods or services by a
27 hospital, as defined in the act of December 20, 1985 (P.L.457,
28 No.112), known as the "Medical Practice Act of 1985."

29 (70) The sale at retail of medical or dental services,
30 including, but not limited to, charges for office visits.

1 (71) The sale at retail or use of goods or services that are
2 part of a Medicare Part B transaction.

3 (72) The sale at retail of medical, dental and vision
4 insurance premiums.

5 (73) The sale at retail to or use of home health care,
6 nursing care and other ambulatory health care services.

7 (74) The sale at retail to or use of funeral parlors,
8 crematories and death care services.

9 (75) The sale at retail to or use of social services,
10 including, but not limited to, day care.

11 (76) The sale at retail of tuition.

12 (77) The sale at retail to or use of any of the following
13 professional services:

14 (i) Legal services.

15 (ii) Accounting, auditing and bookkeeping services.

16 (iii) Architectural and engineering services.

17 (78) The sale at retail to or use of electrical, plumbing,
18 heating and air conditioning service fees.

19 Section 3. The act is amended by adding a section to read:

20 Section 281.3. Interfund Transfers.--Within thirty days of
21 the close of the 2010-2011 fiscal year and each fiscal year
22 thereafter, the amount of one billion dollars (\$1,000,000,000)
23 shall be transferred to the Property Tax Relief Fund.

24 Section 4. This act shall take effect in 60 days.