

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2556 Session of 2018

INTRODUCED BY SANKEY, C. QUINN, BENNINGHOFF, CAUSER, CUTLER, DIAMOND, DUNBAR, GREINER, GROVE, IRVIN, JAMES, LAWRENCE, MCGINNIS, OBERLANDER, PICKETT, RADER, ROTHMAN, RYAN, SAYLOR, TOPPER, TURZAI, WARD AND ZIMMERMAN, JULY 10, 2018

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 9, 2018

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 of the act of March 4, 1971 (P.L.6,
15 No.2), known as the Tax Reform Code of 1971, is amended by
16 adding definitions to read:

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

21 \* \* \*

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1 ~~(ddd) "Financial institution." A bank, bank and trust~~  
2 ~~company, trust company, savings bank, mutual banking~~  
3 ~~association, savings and loan association, finance company,~~  
4 ~~credit union or other similar institution.~~

5 ~~(eee) "Canned software." Computer software that is not~~  
6 ~~custom software.~~

7 ~~(fff) "Custom software." Computer software that is:~~

8 ~~(1) designed, created or developed for and to the~~  
9 ~~specifications of an original purchaser, or substantially~~

10 ~~modified for and to the specifications of the original or a~~  
11 ~~subsequent purchaser; or~~

12 ~~(2) designed, created or developed for sale to the general~~  
13 ~~public and substantially modified for and to the specifications~~  
14 ~~of a particular purchaser.~~

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15 ~~(DDD) "FINANCIAL INSTITUTION." AN INSTITUTION OR LICENSEE~~  
16 ~~AS DEFINED BY THE ACT OF MAY 15, 1933 (P.L.565, NO.111), KNOWN~~  
17 ~~AS THE DEPARTMENT OF BANKING AND SECURITIES CODE, OR A SIMILAR~~  
18 ~~INSTITUTION OR LICENSEE DOING BUSINESS IN PENNSYLVANIA SUBJECT~~  
19 ~~TO SUPERVISION BY A REGULATORY AUTHORITY OF THE FEDERAL~~  
20 ~~GOVERNMENT, ANOTHER STATE OR A FOREIGN COUNTRY.~~

21 ~~(EEE) "CANNED SOFTWARE." COMPUTER SOFTWARE THAT IS~~  
22 ~~AVAILABLE FOR SALE TO THE GENERAL PUBLIC, OR A SUBSTANTIAL AND~~  
23 ~~INDEFINITE CLASS OF SIMILARLY SITUATED PERSONS, THAT CAN BE USED~~  
24 ~~AS-IS WITHOUT THE PURCHASE OF PROFESSIONAL SERVICES, INCLUDING~~  
25 ~~BUT NOT LIMITED TO PROGRAMMING, SYSTEMS DESIGN, FACILITIES~~  
26 ~~MANAGEMENT, INFORMATION RETRIEVAL, DATA PREPARATION OR~~  
27 ~~PROCESSING, COMMUNICATION, DATA OR COMPUTER PROCESSING,~~  
28 ~~ACCOUNTING, APPRAISAL, LEGAL, ENGINEERING, ARCHITECTURAL OR~~  
29 ~~OTHER SERVICES FROM THE VENDOR THAT SUPPLIES THE SOFTWARE.~~

30 ~~(FFF) "CUSTOM SOFTWARE." COMPUTER SOFTWARE THAT IS NOT~~

1 CANNED SOFTWARE, INCLUDING MODIFICATIONS MADE TO CANNED SOFTWARE  
2 TO FACILITATE ITS USE BY A PURCHASER IF THERE IS A SEPARATELY  
3 STATED PURCHASE PRICE FOR THE MODIFICATIONS.

4 Section 2. Section 204 of the act is amended by adding  
5 clauses to read:

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

8 \* \* \*

9 (71) The sale at retail or use of canned software, or the  
10 maintenance, support or updating of canned software, WHICH IS <--  
11 acquired ~~incident~~ INCIDENTAL to the purchase at retail of <--  
12 computer programming, computer integrated systems design, data  
13 preparation or processing, computer facilities management,  
14 information retrieval and other computer or data processing  
15 services, including computer services that are part of  
16 electronic fund transfers, electronic financial transactions or  
17 services, banking or trust services or management or  
18 administrative services, including transfer agency, shareholder,  
19 custodial and portfolio accounting services, unless the  
20 predominant purpose of a transaction is to purchase or use  
21 canned software.

22 (72) As follows: <--

23 (i) The sale at retail or use of systems, devices and  
24 equipment, and their components, installed in a building and  
25 utilized by a financial institution for its protection or  
26 convenience in conducting financial transactions, provided the  
27 systems, devices, equipment or components:

28 (A) are installed by a contractor or the contractor's  
29 designee;

30 (B) after installation are repaired, altered or maintained

1 ~~on site by a contractor; or~~

2 ~~(C) are removed from the installation site by a contractor~~  
3 ~~for repair or maintenance and returned to the installation site~~  
4 ~~by the contractor.~~

5 ~~(ii) A contractor engaged in the installation, repair or~~  
6 ~~maintenance of systems, devices, equipment or components that is~~  
7 ~~subject to the exclusion under this paragraph shall be deemed to~~  
8 ~~be a construction contractor pursuant to a construction contract~~  
9 ~~engaged in the use of tangible personal property or services~~  
10 ~~under section 201(o)(17) regardless of the method, or~~  
11 ~~permanence, of attachment of the systems, devices, equipment or~~  
12 ~~components, to real property.~~

13 (72) THE SALE AT RETAIL OR USE OF SYSTEMS, DEVICES AND <--  
14 EQUIPMENT, AND THEIR COMPONENTS, INSTALLED IN A BUILDING AND  
15 UTILIZED BY A FINANCIAL INSTITUTION FOR ITS PROTECTION OR  
16 CONVENIENCE IN CONDUCTING FINANCIAL TRANSACTIONS, PROVIDED THAT  
17 BOTH OF THE FOLLOWING ARE SATISFIED:

18 (I) THE SYSTEMS, DEVICES, EQUIPMENT OR COMPONENTS:

19 (A) ARE INSTALLED BY A CONTRACTOR OR THE CONTRACTOR'S  
20 DESIGNEE; OR

21 (B) AFTER INSTALLATION ARE REPAIRED, ALTERED OR MAINTAINED  
22 ON-SITE BY A CONTRACTOR; OR

23 (C) ARE REMOVED FROM THE INSTALLATION SITE BY A CONTRACTOR  
24 FOR REPAIR OR MAINTENANCE AND RETURNED TO THE INSTALLATION SITE  
25 BY THE CONTRACTOR.

26 (II) THE SYSTEMS, DEVICES, EQUIPMENT OR COMPONENTS ARE  
27 ATTACHED OR AFFIXED TO REAL ESTATE BY MEANS OF:

28 (A) A HOOK, BOLT, SCREW, NAIL OR OTHER SIMILAR METHOD; OR

29 (B) INSERTION THROUGH A BUILDING WALL OR FLOOR, OR MOUNTING  
30 IT UPON A SPECIALLY PREPARED FOUNDATION, THE REMOVAL OF WHICH

1 MAY RESULT IN DAMAGE TO THE REAL ESTATE; OR

2 (C) WIRE WHICH IS INTEGRATED INTO AN ELECTRICAL SYSTEM.

3 A CONTRACTOR ENGAGED IN THE INSTALLATION, REPAIR OR MAINTENANCE

4 OF SYSTEMS, DEVICES, EQUIPMENT OR COMPONENTS THAT IS SUBJECT TO

5 THE EXCLUSION UNDER THIS PARAGRAPH SHALL BE DEEMED TO BE A

6 CONSTRUCTION CONTRACTOR PURSUANT TO A CONSTRUCTION CONTRACT

7 ENGAGED IN THE USE OF TANGIBLE PERSONAL PROPERTY OR SERVICES

8 UNDER SECTION 201(O) (17) REGARDLESS OF THE METHOD, OR

9 PERMANENCE, OF ATTACHMENT OF THE SYSTEMS, DEVICES, EQUIPMENT OR

10 COMPONENTS, TO REAL PROPERTY.

11 (73) Fees charged by a financial institution for a financial

12 service, regardless of whether tangible personal property is

13 provided to a customer incidental to the provision of the

14 financial service, unless the predominant purpose of a

15 transaction is to purchase or use tangible personal property.

16 SECTION 3. THIS ACT IS INTENDED TO CLARIFY AND NOT CHANGE <--  
17 CURRENT LAW, AND TO RATIFY THE TREATMENT OF SECURITY EQUIPMENT  
18 USED BY FINANCIAL INSTITUTIONS AS PROVIDED UNDER 61 PA. CODE §  
19 46.9.

20 Section 3 4. This act shall take effect immediately. <--