

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1041 Session of 2020

INTRODUCED BY K. WARD, LANGERHOLC, PITTMAN, REGAN, BARTOLOTTA, SCAVELLO, MASTRIANO, J. WARD, STEFANO, ARGALL, BAKER AND AUMENT, FEBRUARY 19, 2020

SENATOR HUTCHINSON, FINANCE, AS AMENDED, MAY 11, 2020

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 EXCLUSIONS FROM TAX. <--

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

14 Section 1. ~~Section 201(k) (8) and (o) (4) of the act of March <--~~
15 ~~4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are~~
16 ~~amended 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 * * *

22 (k) ~~"Sale at retail."~~

1 * * *

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

7 ~~The term "sale at retail" shall not include (i) any such~~
8 ~~transfer of tangible personal property or rendition of services~~
9 ~~for the purpose of resale, or (ii) such rendition of services or~~
10 ~~the transfer of tangible personal property including, but not~~
11 ~~limited to, machinery and equipment and parts therefor and~~
12 ~~supplies to be used or consumed by the purchaser directly in the~~
13 ~~operations of~~

14 ~~(A) The manufacture of tangible personal property.~~

15 ~~(B) Farming, dairying, agriculture, timbering, horticulture~~
16 ~~or floriculture when engaged in as a business enterprise. The~~
17 ~~term "farming" shall include the propagation and raising of~~
18 ~~ranch raised fur bearing animals and the propagation of game~~
19 ~~birds for commercial purposes by holders of propagation permits~~
20 ~~issued under 34 Pa.C.S. (relating to game) and the propagation~~
21 ~~and raising of horses to be used exclusively for commercial~~
22 ~~racing activities. The term "farming" shall further include the~~
23 ~~direct or incidental use of a "multipurpose agricultural~~
24 ~~vehicle," as defined in 75 Pa.C.S. § 102 (relating to~~
25 ~~definitions), in accordance with the provisions of 75 Pa.C.S. §~~
26 ~~1302(17) (relating to vehicles exempt from registration)~~
27 ~~operated for the benefit of or pursuant to the operation of a~~
28 ~~farm owned or operated by the owner of the vehicle or a business~~
29 ~~whose enterprises and activities are considered part of farming~~
30 ~~under this subclause. For the purpose of this subclause, the~~

~~1 "direct use" of a multipurpose agricultural vehicle shall
2 include repairing and maintaining buildings (including houses,
3 garages, barns, stables, greenhouses, mushroom houses and
4 storehouses), fences and stanchions permanently affixed to real
5 estate, as well as prefarming and postfarming activities as
6 defined in 61 Pa. Code § 32.33(a)(3)(iii) (relating to farming).~~

~~7 The term "timbering" shall include:~~

~~8 (1) The business of producing or harvesting trees from
9 forests, woodlots or tree farms for the purpose of the
10 commercial production of wood, paper or energy products derived
11 from wood by a company primarily engaged in the business of
12 harvesting trees.~~

~~13 (2) All operations prior to the transport of the harvested
14 product necessary for the removal of timber or forest products
15 from the site, in field processing of trees into logs or chips,
16 complying with environmental protection and safety requirements
17 applicable to the harvesting of forest products, loading of
18 forest products onto highway vehicles for transport to storage
19 or processing facilities and postharvesting site reclamation,
20 including those activities necessary to improve timber growth or
21 ensure natural or direct reforestation of the site. The term
22 shall not include the harvesting of trees for clearing land for
23 access roads.~~

~~24 (C) The producing, delivering or rendering of a public
25 utility service, or in constructing, reconstructing, remodeling,
26 repairing or maintaining the facilities which are directly used
27 in producing, delivering or rendering such service.~~

~~28 (D) Processing as defined in clause (d) of this section.~~

~~29 The exclusions provided in paragraphs (A), (B), (C) and (D)
30 shall not apply to any vehicle required to be registered under~~

1 ~~The Vehicle Code, except those vehicles used directly by a~~
2 ~~public utility engaged in business as a common carrier; to~~
3 ~~maintenance facilities; or to materials, supplies or equipment~~
4 ~~to be used or consumed in the construction, reconstruction,~~
5 ~~remodeling, repair or maintenance of real estate other than~~
6 ~~directly used machinery, equipment, parts or foundations~~
7 ~~therefor that may be affixed to such real estate.~~

8 ~~The exclusions provided in paragraphs (A), (B), (C) and (D)~~
9 ~~shall not apply to tangible personal property or services to be~~
10 ~~used or consumed in managerial sales or other nonoperational~~
11 ~~activities, nor to the purchase or use of tangible personal~~
12 ~~property or services by any person other than the person~~
13 ~~directly using the same in the operations described in~~
14 ~~paragraphs (A), (B), (C) and (D) herein.~~

15 ~~The exclusion provided in paragraph (C) shall not apply to~~
16 ~~(i) construction materials, supplies or equipment used to~~
17 ~~construct, reconstruct, remodel, repair or maintain facilities~~
18 ~~not used directly by the purchaser in the production, delivering~~
19 ~~or rendition of public utility service, (ii) construction~~
20 ~~materials, supplies or equipment used to construct, reconstruct,~~
21 ~~remodel, repair or maintain a building, road or similar~~
22 ~~structure, or (iii) tools and equipment used but not installed~~
23 ~~in the maintenance of facilities used directly in the~~
24 ~~production, delivering or rendition of a public utility service.~~

25 ~~The exclusions provided in paragraphs (A), (B), (C) and (D)~~
26 ~~shall not apply to the services enumerated in clauses (k) (11)~~
27 ~~through (18) and (w) through (kk), except that the exclusion~~
28 ~~provided in this subclause for farming, dairying and agriculture~~
29 ~~shall apply to the service enumerated in clause (z).~~

30 ~~***~~

1 ~~(e) "Use."~~

2 ~~* * *~~

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

21 ~~* * *~~

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

27 ~~(i) The manufacture of tangible personal property.~~

28 ~~(ii) Farming, dairying, agriculture, timbering, horticulture~~
29 ~~or floriculture when engaged in as a business enterprise. The~~
30 ~~term "farming" shall include the propagation and raising of~~

1 ~~ranch raised furbearing animals and the propagation of game~~
2 ~~birds for commercial purposes by holders of propagation permits~~
3 ~~issued under 34 Pa.C.S. (relating to game) and the propagation~~
4 ~~and raising of horses to be used exclusively for commercial~~
5 ~~racing activities. The term "farming" shall further include the~~
6 ~~direct or incidental use of a "multipurpose agricultural~~
7 ~~vehicle," as defined in 75 Pa.C.S. § 102, in accordance with the~~
8 ~~provisions of 75 Pa.C.S. § 1302(17) operated for the benefit of~~
9 ~~or pursuant to the operation of a farm owned or operated by the~~
10 ~~owner of the vehicle or a business whose enterprises and~~
11 ~~activities are considered part of farming under this subclause.~~
12 ~~For the purpose of this subclause, the "direct use" of a~~
13 ~~multipurpose agricultural vehicle shall include repairing and~~
14 ~~maintaining buildings (including houses, garages, barns,~~
15 ~~stables, greenhouses, mushroom houses and storehouses), fences~~
16 ~~and stanchions permanently affixed to real estate, as well as~~
17 ~~prefarming and postfarming activities as defined in 61 Pa. Code~~
18 ~~§ 32.33(a)(3)(iii). The term "timbering" shall include:~~

19 ~~(1) The business of producing or harvesting trees from~~
20 ~~forests, woodlots or tree farms for the purpose of the~~
21 ~~commercial production of wood, paper or energy products derived~~
22 ~~from wood by a company primarily engaged in the business of~~
23 ~~harvesting trees.~~

24 ~~(2) All operations prior to the transport of the harvested~~
25 ~~product necessary for the removal of timber or forest products~~
26 ~~from the site, in field processing of trees into logs or chips,~~
27 ~~complying with environmental protection and safety requirements~~
28 ~~applicable to the harvesting of forest products, loading of~~
29 ~~forest products onto highway vehicles for transport to storage~~
30 ~~or processing facilities and postharvesting site reclamation,~~

1 ~~including those activities necessary to improve timber growth or~~
2 ~~ensure natural or direct reforestation of the site. The term~~
3 ~~shall not include the harvesting of trees for clearing land for~~
4 ~~access roads.~~

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

9 ~~(iv) Processing as defined in subelause (d) of this section.~~

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

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

1 ~~equipment used but not installed in the maintenance of~~
2 ~~facilities used directly in the production, delivering or~~
3 ~~rendition of a public utility service.~~

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

9 * * *

10 SECTION 1. SECTION 204 OF THE ACT OF MARCH 4, 1971 (P.L.6, <--
11 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, IS AMENDED BY
12 ADDING A PARAGRAPH TO READ:

13 SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY
14 SECTION 202 SHALL NOT BE IMPOSED UPON ANY OF THE FOLLOWING:

15 * * *

16 (74) THE SALE AT RETAIL OR USE OF A "MULTIPURPOSE
17 AGRICULTURAL VEHICLE," AS DEFINED IN 75 PA.C.S. § 102 (RELATING
18 TO DEFINITIONS), IN ACCORDANCE WITH 75 PA.C.S. § 1302(17)
19 (RELATING TO VEHICLES EXEMPT FROM REGISTRATION) OPERATED FOR THE
20 BENEFIT OF OR PURSUANT TO THE OPERATION OF A FARM OWNED OR
21 OPERATED BY THE OWNER OF THE VEHICLE OR A BUSINESS WHOSE
22 ENTERPRISES AND ACTIVITIES ARE CONSIDERED PART OF FARMING. FOR
23 THE PURPOSE OF THIS SUBSECTION, THE USE OF A MULTIPURPOSE
24 AGRICULTURAL VEHICLE IN FARMING INCLUDES REPAIRING AND
25 MAINTAINING BUILDINGS, INCLUDING HOUSES, GARAGES, BARNs,
26 STABLES, GREENHOUSES, MUSHROOM HOUSES AND STOREHOUSES, FENCES
27 AND STANCHIONS PERMANENTLY AFFIXED TO REAL ESTATE, AS WELL AS
28 TRANSPORTING FARMING PERSONNEL, COLLECTING, CONVEYING OR
29 TRANSPORTING PROPERTY TO BE USED IN FARMING, AND TRANSPORTING OR
30 CONVEYING THE FARM PRODUCT AFTER THE FINAL FARMING OPERATION

1 WHICH INCLUDES BUT DOES NOT EXTEND BEYOND THE OPERATION OF
2 PACKAGING FOR THE ULTIMATE CONSUMER AND STORAGE.

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