

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1534 Session of
1995

INTRODUCED BY CURRY, DeLUCA, FEESE, WAUGH, HERMAN, MARKOSEK,
MARSICO, STABACK, PISTELLA, COY, JAMES, HASAY, CARONE, LYNCH,
BROWNE, MELIO, L. I. COHEN, BUNT, FLICK, MILLER, WALKO AND
MERRY, MAY 3, 1995

REFERRED TO COMMITTEE ON FINANCE, MAY 3, 1995

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," repealing certain provisions imposing sales and
11 use tax on lawn care services.

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

14 Section 1. Section 201(b), (f), (g), (k), (o) and (jj) of
15 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
16 Code of 1971, amended or added August 4, 1991 (P.L.97, No.22)
17 and December 13, 1991 (P.L.373, No.40), are amended 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 (b) "Maintaining a place of business in this Commonwealth."

3 (1) Having or maintaining within this Commonwealth, directly
4 or by a subsidiary, an office, distribution house, sales house,
5 warehouse, service enterprise or other place of business, or any
6 agent of general or restricted authority irrespective of whether
7 the place of business or agent is located here permanently or
8 temporarily or whether the person or subsidiary maintaining such
9 place of business or agent is authorized to do business within
10 this Commonwealth; or

11 (2) The engaging in any activity as a business within this
12 Commonwealth by any person, directly or by a subsidiary, in
13 connection with the lease, sale or delivery of tangible personal
14 property or the performance of services thereon for use, storage
15 or consumption or in connection with the sale or delivery for
16 use of the services described in subclauses (11) through (16)
17 and (18) of clause (k) of this section, including, but not
18 limited to, having, maintaining or using any office,
19 distribution house, sales house, warehouse or other place of
20 business, any stock of goods or any solicitor, salesman, agent
21 or representative under its authority, at its direction or with
22 its permission, regardless of whether the person or subsidiary
23 is authorized to do business in this Commonwealth.

24 (3) Regularly or substantially soliciting orders within this
25 Commonwealth in connection with the lease, sale or delivery of
26 tangible personal property to or the performance thereon of
27 services or in connection with the sale or delivery of the
28 services described in subclauses (11) through (16) and (18) of
29 clause (k) of this section for residents of this Commonwealth by
30 means of catalogues or other advertising, whether such orders

1 are accepted within or without this Commonwealth.

2 * * *

3 (f) "Purchase at retail."

4 (1) The acquisition for a consideration of the ownership,
5 custody or possession of tangible personal property other than
6 for resale by the person acquiring the same when such
7 acquisition is made for the purpose of consumption or use,
8 whether such acquisition shall be absolute or conditional, and
9 by whatsoever means the same shall have been effected.

10 (2) The acquisition of a license to use or consume, and the
11 rental or lease of tangible personal property, other than for
12 resale regardless of the period of time the lessee has
13 possession or custody of the property.

14 (3) The obtaining for a consideration of those services
15 described in subclauses (2), (3) and (4) of clause (k) of this
16 section other than for resale.

17 (4) A retention after March 7, 1956, of possession, custody
18 or a license to use or consume pursuant to a rental contract or
19 other lease arrangement (other than as security), other than for
20 resale.

21 (5) The obtaining for a consideration of those services
22 described in subclauses (11) through (16) and (18) of clause (k)
23 of this section.

24 The term "purchase at retail" with respect to "liquor" and
25 "malt or brewed beverages" shall include the purchase of
26 "liquor" from any "Pennsylvania Liquor Store" by any person for
27 any purpose, and the purchase of "malt or brewed beverages" from
28 a "manufacturer of malt or brewed beverages," "distributor" or
29 "importing distributor" by any person for any purpose, except
30 purchases from a "manufacturer of malt or brewed beverages" by a

1 "distributor" or "importing distributor" or purchases from an
2 "importing distributor" by a "distributor" within the meaning of
3 the "Liquor Code." The term "purchase at retail" shall not
4 include any purchase of "malt or brewed beverages" from a
5 "retail dispenser" or any purchase of "liquor" or "malt or
6 brewed beverages" from a person holding a "retail liquor
7 license" within the meaning of and pursuant to the provisions of
8 the "Liquor Code," but shall include any purchase or acquisition
9 of "liquor" or "malt or brewed beverages" other than pursuant to
10 the provisions of the "Liquor Code."

11 (g) "Purchase price."

12 (1) The total value of anything paid or delivered, or
13 promised to be paid or delivered, whether it be money or
14 otherwise, in complete performance of a sale at retail or
15 purchase at retail, as herein defined, without any deduction on
16 account of the cost or value of the property sold, cost or value
17 of transportation, cost or value of labor or service, interest
18 or discount paid or allowed after the sale is consummated, any
19 other taxes imposed by the Commonwealth of Pennsylvania or any
20 other expense except that there shall be excluded any gratuity
21 or separately stated deposit charge for returnable containers.

22 (2) There shall be deducted from the purchase price the
23 value of any tangible personal property actually taken in trade
24 or exchange in lieu of the whole or any part of the purchase
25 price. For the purpose of this clause, the amount allowed by
26 reason of tangible personal property actually taken in trade or
27 exchange shall be considered the value of such property.

28 (3) In determining the purchase price on the sale or use of
29 taxable tangible personal property or a service described in
30 subclauses (11) through (16) and (18) of clause (k) of this

1 section where, because of affiliation of interests between the
2 vendor and purchaser, or irrespective of any such affiliation,
3 if for any other reason the purchase price declared by the
4 vendor or taxpayer on the taxable sale or use of such tangible
5 personal property or service is, in the opinion of the
6 department, not indicative of the true value of the article or
7 service or the fair price thereof, the department shall,
8 pursuant to uniform and equitable rules, determine the amount of
9 constructive purchase price upon the basis of which the tax
10 shall be computed and levied. Such rules shall provide for a
11 constructive amount of purchase price for each such sale or use
12 which would naturally and fairly be charged in an arms-length
13 transaction in which the element of common interest between the
14 vendor or purchaser is absent or if no common interest exists,
15 any other element causing a distortion of the price or value is
16 likewise absent. For the purpose of this clause where a taxable
17 sale or purchase at retail transaction occurs between a parent
18 and a subsidiary, affiliate or controlled corporation of such
19 parent corporation, there shall be a rebuttable presumption,
20 that because of such common interest such transaction was not at
21 arms-length.

22 (4) Where there is a transfer or retention of possession or
23 custody, whether it be termed a rental, lease, service or
24 otherwise, of tangible personal property including, but not
25 limited to linens, aprons, motor vehicles, trailers, tires,
26 industrial office and construction equipment, and business
27 machines the full consideration paid or delivered to the vendor
28 or lessor shall be considered the purchase price, even though
29 such consideration be separately stated and be designated as
30 payment for processing, laundering, service, maintenance,

1 insurance, repairs, depreciation or otherwise. Where the vendor
2 or lessor supplies or provides an employe to operate such
3 tangible personal property, the value of the labor thus supplied
4 may be excluded and shall not be considered as part of the
5 purchase price if separately stated. There shall also be
6 included as part of the purchase price the value of anything
7 paid or delivered, or promised to be paid or delivered by a
8 lessee, whether it be money or otherwise, to any person other
9 than the vendor or lessor by reason of the maintenance,
10 insurance or repair of the tangible personal property which a
11 lessee has the possession or custody of under a rental contract
12 or lease arrangement.

13 (5) With respect to the tax imposed by subsection (b) of
14 section 202 upon any tangible personal property originally
15 purchased by the user of such property six months or longer
16 prior to the first taxable use of such property within the
17 Commonwealth, such user may elect to pay tax on a substituted
18 base determined by considering the purchase price of such
19 property for tax purposes to be equal to the prevailing market
20 price of similar tangible personal property at the time and
21 place of such first use within the Commonwealth. Such election
22 must be made at the time of filing a tax return with the
23 department and reporting such tax liability and paying the
24 proper tax due plus all accrued penalties and interest, if there
25 be any, within six months of the due date of such report and
26 payment, as provided for by subsections (a) and (c) of section
27 217 of this article.

28 (6) The purchase price of employment agency services and
29 help supply services shall be the service fee paid by the
30 purchaser to the vendor or supplying entity. The term "service

1 fee," as used in this subclause, shall be the total charge or
2 fee of the vendor or supplying entity minus the costs of the
3 supplied employe which costs are wages, salaries, bonuses and
4 commissions, employment benefits, expense reimbursements and
5 payroll and withholding taxes, to the extent that these costs
6 are specifically itemized or that these costs in aggregate are
7 stated in billings from the vendor or supplying entity. To the
8 extent that these costs are not itemized or stated on the
9 billings, then the service fee shall be the total charge or fee
10 of the vendor or supplying entity.

11 (7) Unless the vendor separately states that portion of the
12 billing which applies to premium cable service as defined in
13 clause (11) of this section, the total bill for the provision of
14 all cable services shall be the purchase price.

15 * * *

16 (k) "Sale at retail."

17 (1) Any transfer, for a consideration, of the ownership,
18 custody or possession of tangible personal property, including
19 the grant of a license to use or consume whether such transfer
20 be absolute or conditional and by whatsoever means the same
21 shall have been effected.

22 (2) The rendition of the service of printing or imprinting
23 of tangible personal property for a consideration for persons
24 who furnish, either directly or indirectly the materials used in
25 the printing or imprinting.

26 (3) The rendition for a consideration of the service of--

27 (i) Washing, cleaning, waxing, polishing or lubricating of
28 motor vehicles of another, whether or not any tangible personal
29 property is transferred in conjunction therewith; and

30 (ii) Inspecting motor vehicles pursuant to the mandatory

1 requirements of "The Vehicle Code."

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

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

24 The term "sale at retail" shall not include (i) any such
25 transfer of tangible personal property or rendition of services
26 for the purpose of resale, or (ii) such rendition of services or
27 the transfer of tangible personal property including, but not
28 limited to, machinery and equipment and parts therefor and
29 supplies to be used or consumed by the purchaser directly in the
30 operations of--

1 (A) The manufacture of tangible personal property;

2 (B) Farming, dairying, agriculture, horticulture or
3 floriculture when engaged in as a business enterprise. The term
4 "farming" shall include the propagation and raising of ranch
5 raised fur-bearing animals and the propagation of game birds for
6 commercial purposes by holders of propagation permits issued
7 under 34 Pa.C.S. (relating to game);

8 (C) The producing, delivering or rendering of a public
9 utility service, or in constructing, reconstructing, remodeling,
10 repairing or maintaining the facilities which are directly used
11 in producing, delivering or rendering such service;

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

13 The exclusions provided in paragraphs (A), (B), (C) and (D)
14 shall not apply to any vehicle required to be registered under
15 The Vehicle Code, except those vehicles used directly by a
16 public utility engaged in business as a common carrier; to
17 maintenance facilities; or to materials, supplies or equipment
18 to be used or consumed in the construction, reconstruction,
19 remodeling, repair or maintenance of real estate other than
20 directly used machinery, equipment, parts or foundations
21 therefor that may be affixed to such real estate.

22 The exclusions provided in paragraphs (A), (B), (C) and (D)
23 shall not apply to tangible personal property or services to be
24 used or consumed in managerial sales or other nonoperational
25 activities, nor to the purchase or use of tangible personal
26 property or services by any person other than the person
27 directly using the same in the operations described in
28 paragraphs (A), (B), (C) and (D) herein.

29 The exclusion provided in paragraph (C) shall not apply to
30 (i) construction materials, supplies or equipment used to

1 construct, reconstruct, remodel, repair or maintain facilities
2 not used directly by the purchaser in the production, delivering
3 or rendition of public utility service, (ii) construction
4 materials, supplies or equipment used to construct, reconstruct,
5 remodel, repair or maintain a building, road or similar
6 structure, or (iii) tools and equipment used but not installed
7 in the maintenance of facilities used directly in the
8 production, delivering or rendition of a public utility service.

9 The exclusions provided in paragraphs (A), (B), (C) and (D)
10 shall not apply to the services enumerated in clauses (k)(11)
11 through (16) and (18) and (w) through (ii) and (kk), except that
12 the exclusion provided in this subclause for farming, dairying
13 and agriculture shall apply to the service enumerated in clause
14 (z).

15 (9) Where tangible personal property or services are
16 utilized for purposes constituting a "sale at retail" and for
17 purposes excluded from the definition of "sale at retail," it
18 shall be presumed that such tangible personal property or
19 services are utilized for purposes constituting a "sale at
20 retail" and subject to tax unless the user thereof proves to the
21 department that the predominant purposes for which such tangible
22 personal property or services are utilized do not constitute a
23 "sale at retail."

24 (10) The term "sale at retail" with respect to "liquor" and
25 "malt or brewed beverages" shall include the sale of "liquor" by
26 any "Pennsylvania liquor store" to any person for any purpose,
27 and the sale of "malt or brewed beverages" by a "manufacturer of
28 malt or brewed beverages," "distributor" or "importing
29 distributor" to any person for any purpose, except sales by a
30 "manufacturer of malt or brewed beverages" to a "distributor" or

1 "importing distributor" or sales by an "importing distributor"
2 to a "distributor" within the meaning of the "Liquor Code." The
3 term "sale at retail" shall not include any sale of "malt or
4 brewed beverages" by a "retail dispenser" or any sale of
5 "liquor" or "malt or brewed beverages" by a person holding a
6 "retail liquor license" within the meaning of and pursuant to
7 the provisions of the "Liquor Code," but shall include any sale
8 of "liquor" or "malt or brewed beverages" other than pursuant to
9 the provisions of the "Liquor Code."

10 (11) The rendition for a consideration of lobbying services.

11 (12) The rendition for a consideration of adjustment
12 services, collection services or credit reporting services.

13 (13) The rendition for a consideration of secretarial or
14 editing services.

15 (14) The rendition for a consideration of disinfecting or
16 pest control services, building maintenance or cleaning
17 services.

18 (15) The rendition for a consideration of employment agency
19 services or help supply services.

20 (16) The rendition for a consideration of computer
21 programming services; computer-integrated systems design
22 services; computer processing, data preparation or processing
23 services; information retrieval services; computer facilities
24 management services; or other computer-related services. At a
25 minimum, such services shall not include services that are part
26 of electronic fund transfers, electronic financial transactions
27 or services, banking or trust services, or management or
28 administrative services, including transfer agency, shareholder,
29 custodial and portfolio accounting services, provided directly
30 to any entity that duly qualifies to be taxed as a regulated

1 investment company or a real estate investment trust under the
2 provisions of the Internal Revenue Code of 1986 (Public Law 99-
3 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such
4 services to an entity so qualifying.

5 [(17) The rendition for a consideration of lawn care
6 service.]

7 (18) The rendition for a consideration of self-storage
8 service.

9 * * *

10 (o) "Use."

11 (1) The exercise of any right or power incidental to the
12 ownership, custody or possession of tangible personal property
13 and shall include, but not be limited to transportation, storage
14 or consumption.

15 (2) The obtaining by a purchaser of the service of printing
16 or imprinting of tangible personal property when such purchaser
17 furnishes, either directly or indirectly, the articles used in
18 the printing or imprinting.

19 (3) The obtaining by a purchaser of the services of (i)
20 washing, cleaning, waxing, polishing or lubricating of motor
21 vehicles whether or not any tangible personal property is
22 transferred to the purchaser in conjunction with such services,
23 and (ii) inspecting motor vehicles pursuant to the mandatory
24 requirements of "The Vehicle Code."

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 wearing apparel or shoes or applying or installing
29 tangible personal property as a repair or replacement part of
30 other tangible personal property other than wearing apparel or

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

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

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

24 (i) The manufacture of tangible personal property;

25 (ii) Farming, dairying, agriculture, horticulture or
26 floriculture when engaged in as a business enterprise. The term
27 "farming" shall include the propagation and raising of ranch-
28 raised furbearing animals and the propagation of game birds for
29 commercial purposes by holders of propagation permits issued
30 under 34 Pa.C.S. (relating to game);

1 (iii) The producing, delivering or rendering of a public
2 utility service, or in constructing, reconstructing, remodeling,
3 repairing or maintaining the facilities which are directly used
4 in producing, delivering or rendering such service;

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

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

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

30 The exclusion provided in subparagraphs (i), (ii), (iii) and

1 (iv) shall not apply to the services enumerated in clauses
2 (o)(9) through (14) and (16) and (w) through (ii) and (kk),
3 except that the exclusion provided in subparagraph (ii) for
4 farming, dairying and agriculture shall apply to the service
5 enumerated in clause (z).

6 (5) Where tangible personal property or services are
7 utilized for purposes constituting a "use," as herein defined,
8 and for purposes excluded from the definition of "use," it shall
9 be presumed that such property or services are utilized for
10 purposes constituting a "sale at retail" and subject to tax
11 unless the user thereof proves to the department that the
12 predominant purposes for which such property or services are
13 utilized do not constitute a "sale at retail."

14 (6) The term "use" with respect to "liquor" and "malt or
15 brewed beverages" shall include the purchase of "liquor" from
16 any "Pennsylvania liquor store" by any person for any purpose
17 and the purchase of "malt or brewed beverages" from a
18 "manufacturer of malt or brewed beverages," "distributor" or
19 "importing distributor" by any person for any purpose, except
20 purchases from a "manufacturer of malt or brewed beverages" by a
21 "distributor" or "importing distributor," or purchases from an
22 "importing distributor" by a "distributor" within the meaning of
23 the "Liquor Code." The term "use" shall not include any purchase
24 of "malt or brewed beverages" from a "retail dispenser" or any
25 purchase of "liquor" or "malt or brewed beverages" from a person
26 holding a "retail liquor license" within the meaning of and
27 pursuant to the provisions of the "Liquor Code," but shall
28 include the exercise of any right or power incidental to the
29 ownership, custody or possession of "liquor" or "malt or brewed
30 beverages" obtained by the person exercising such right or power

1 in any manner other than pursuant to the provisions of the
2 "Liquor Code."

3 (7) The use of tangible personal property purchased at
4 retail upon which the services described in subclauses (2), (3)
5 and (4) of this clause have been performed shall be deemed to be
6 a use of said services by the person using said property.

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

10 (9) The obtaining by the purchaser of lobbying services.

11 (10) The obtaining by the purchaser of adjustment services,
12 collection services or credit reporting services.

13 (11) The obtaining by the purchaser of secretarial or
14 editing services.

15 (12) The obtaining by the purchaser of disinfecting or pest
16 control services, building maintenance or cleaning services.

17 (13) The obtaining by the purchaser of employment agency
18 services or help supply services.

19 (14) The obtaining by the purchaser of computer programming
20 services; computer-integrated systems design services; computer
21 processing, data preparation or processing services; information
22 retrieval services; computer facilities management services; or
23 other computer-related services. At a minimum, such services
24 shall not include services that are part of electronic fund
25 transfers, electronic financial transactions or services,
26 banking or trust services, or management or administrative
27 services, including transfer agency, shareholder, custodial and
28 portfolio accounting services, provided directly to any entity
29 that duly qualifies to be taxed as a regulated investment
30 company or a real estate investment trust under the provisions

1 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
2 U.S.C. § 1 et seq.) or to an entity that provides such services
3 to an entity so qualifying.

4 [(15) The obtaining by the purchaser of lawn care service.]

5 (16) The obtaining by the purchaser of self-storage service.

6 * * *

7 [(jj) "Lawn care service." Providing services for lawn
8 upkeep, including, but not limited to, fertilizing, lawn mowing,
9 shrubbery trimming or other lawn treatment services.]

10 * * *

11 Section 2. This act shall take effect immediately.