

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3041 Session of
1994

INTRODUCED BY GERLACH, SEPTEMBER 27, 1994

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 27, 1994

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," further providing for the definition of "purchase
11 price."

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

14 Section 1. Section 201(g) of the act of March 4, 1971
15 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended
16 December 13, 1991 (P.L.373, No.40), is 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 (g) "Purchase price."

1 (1) The total value of anything paid or delivered, or
2 promised to be paid or delivered, whether it be money or
3 otherwise, in complete performance of a sale at retail or
4 purchase at retail, as herein defined, without any deduction on
5 account of the cost or value of the property sold, cost or value
6 of transportation, cost or value of labor or service, interest
7 or discount paid or allowed after the sale is consummated, any
8 other taxes imposed by the Commonwealth of Pennsylvania or any
9 other expense except that there shall be excluded any gratuity
10 or separately stated deposit charge for returnable containers.
11 Notwithstanding any other provision of this section, postage
12 shall not be considered part of the purchase price.

13 (2) There shall be deducted from the purchase price the
14 value of any tangible personal property actually taken in trade
15 or exchange in lieu of the whole or any part of the purchase
16 price. For the purpose of this clause, the amount allowed by
17 reason of tangible personal property actually taken in trade or
18 exchange shall be considered the value of such property.

19 (3) In determining the purchase price on the sale or use of
20 taxable tangible personal property or a service where, because
21 of affiliation of interests between the vendor and purchaser, or
22 irrespective of any such affiliation, if for any other reason
23 the purchase price declared by the vendor or taxpayer on the
24 taxable sale or use of such tangible personal property or
25 service is, in the opinion of the department, not indicative of
26 the true value of the article or service or the fair price
27 thereof, the department shall, pursuant to uniform and equitable
28 rules, determine the amount of constructive purchase price upon
29 the basis of which the tax shall be computed and levied. Such
30 rules shall provide for a constructive amount of purchase price

1 for each such sale or use which would naturally and fairly be
2 charged in an arms-length transaction in which the element of
3 common interest between the vendor or purchaser is absent or if
4 no common interest exists, any other element causing a
5 distortion of the price or value is likewise absent. For the
6 purpose of this clause where a taxable sale or purchase at
7 retail transaction occurs between a parent and a subsidiary,
8 affiliate or controlled corporation of such parent corporation,
9 there shall be a rebuttable presumption, that because of such
10 common interest such transaction was not at arms-length.

11 (4) Where there is a transfer or retention of possession or
12 custody, whether it be termed a rental, lease, service or
13 otherwise, of tangible personal property including, but not
14 limited to linens, aprons, motor vehicles, trailers, tires,
15 industrial office and construction equipment, and business
16 machines the full consideration paid or delivered to the vendor
17 or lessor shall be considered the purchase price, even though
18 such consideration be separately stated and be designated as
19 payment for processing, laundering, service, maintenance,
20 insurance, repairs, depreciation or otherwise. Where the vendor
21 or lessor supplies or provides an employee to operate such
22 tangible personal property, the value of the labor thus supplied
23 may be excluded and shall not be considered as part of the
24 purchase price if separately stated. There shall also be
25 included as part of the purchase price the value of anything
26 paid or delivered, or promised to be paid or delivered by a
27 lessee, whether it be money or otherwise, to any person other
28 than the vendor or lessor by reason of the maintenance,
29 insurance or repair of the tangible personal property which a
30 lessee has the possession or custody of under a rental contract

1 or lease arrangement.

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

17 (6) The purchase price of employment agency services and
18 help supply services shall be the service fee paid by the
19 purchaser to the vendor or supplying entity. The term "service
20 fee," as used in this subclause, shall be the total charge or
21 fee of the vendor or supplying entity minus the costs of the
22 supplied employee which costs are wages, salaries, bonuses and
23 commissions, employment benefits, expense reimbursements and
24 payroll and withholding taxes, to the extent that these costs
25 are specifically itemized or that these costs in aggregate are
26 stated in billings from the vendor or supplying entity. To the
27 extent that these costs are not itemized or stated on the
28 billings, then the service fee shall be the total charge or fee
29 of the vendor or supplying entity.

30 (7) Unless the vendor separately states that portion of the

1 billing which applies to premium cable service as defined in
2 clause (11) of this section, the total bill for the provision of
3 all cable services shall be the purchase price.

4 * * *

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