

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 205 Session of  
1997

INTRODUCED BY TILGHMAN, JANUARY 23, 1997

REFERRED TO FINANCE, JANUARY 23, 1997

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 employment agency services or help supply  
12 services.

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

15 Section 1. Section 201(k), (o), (bb) and (cc) of the act of  
16 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
17 1971, amended or added August 4, 1991 (P.L.97, No.22) and  
18 December 13, 1991 (P.L.373, No.40), are amended 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:

1       \* \* \*

2       (k) "Sale at retail."

3       (1) Any transfer, for a consideration, of the ownership,  
4 custody or possession of tangible personal property, including  
5 the grant of a license to use or consume whether personal  
6 property, including the grant of a license to use or consume  
7 whether such transfer be absolute or conditional and by  
8 whatsoever means the same shall have been effected.

9       (2) The rendition of the service of printing or imprinting  
10 of tangible personal property for a consideration for persons  
11 who furnish, either directly or indirectly the materials used in  
12 the printing or imprinting.

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

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

17       (ii) Inspecting motor vehicles pursuant to the mandatory  
18 requirements of "The Vehicle Code."

19       (4) The rendition for a consideration of the service of  
20 repairing, altering, mending, pressing, fitting, dyeing,  
21 laundering, drycleaning or cleaning tangible personal property  
22 other than wearing apparel or shoes, or applying or installing  
23 tangible personal property as a repair or replacement part of  
24 other tangible personal property except wearing apparel or shoes  
25 for a consideration, whether or not the services are performed  
26 directly or by any means other than by coin-operated self-  
27 service laundry equipment for wearing apparel or household goods  
28 and whether or not any tangible personal property is transferred  
29 in conjunction therewith, except such services as are rendered  
30 in the construction, reconstruction, remodeling, repair or

1 maintenance of real estate: Provided, however, That this  
2 subclause shall not be deemed to impose tax upon such services  
3 in the preparation for sale of new items which are excluded from  
4 the tax under clause (26) of section 204, or upon diaper  
5 service.

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

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

18 (A) The manufacture of tangible personal property;

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

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

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

30 The exclusions provided in paragraphs (A), (B), (C) and (D)

1 shall not apply to any vehicle required to be registered under  
2 The Vehicle Code, except those vehicles used directly by a  
3 public utility engaged in business as a common carrier; to  
4 maintenance facilities; or to materials, supplies or equipment  
5 to be used or consumed in the construction, reconstruction,  
6 remodeling, repair or maintenance of real estate other than  
7 directly used machinery, equipment, parts or foundations  
8 therefor that may be affixed to such real estate.

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

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

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

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

10       (10) The term "sale at retail" with respect to "liquor" and  
11 "malt or brewed beverages" shall include the sale of "liquor" by  
12 any "Pennsylvania liquor store" to any person for any purpose,  
13 and the sale of "malt or brewed beverages" by a "manufacturer of  
14 malt or brewed beverages," "distributor" or "importing  
15 distributor" to any person for any purpose, except sales by a  
16 "manufacturer of malt or brewed beverages" to a "distributor" or  
17 "importing distributor" or sales by an "importing distributor"  
18 to a "distributor" within the meaning of the "Liquor Code." The  
19 term "sale at retail" shall not include any sale of "malt or  
20 brewed beverages" by a "retail dispenser" or any sale of  
21 "liquor" or "malt or brewed beverages" by a person holding a  
22 "retail liquor license" within the meaning of and pursuant to  
23 the provisions of the "Liquor Code," but shall include any sale  
24 of "liquor" or "malt or brewed beverages" other than pursuant to  
25 the provisions of the "Liquor Code."

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

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

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

1       (14) The rendition for a consideration of disinfecting or  
2 pest control services, building maintenance or cleaning  
3 services.

4       [(15) The rendition for a consideration of employment agency  
5 services or help supply services.]

6       (16) The rendition for a consideration of computer  
7 programming services; computer-integrated systems design  
8 services; computer processing, data preparation or processing  
9 services; information retrieval services; computer facilities  
10 management services; or other computer-related services. At a  
11 minimum, such services shall not include services that are part  
12 of electronic fund transfers, electronic financial transactions  
13 or services, banking or trust services, or management or  
14 administrative services, including transfer agency, shareholder,  
15 custodial and portfolio accounting services, provided directly  
16 to any entity that duly qualifies to be taxed as a regulated  
17 investment company or a real estate investment trust under the  
18 provisions of the Internal Revenue Code of 1986 (Public Law 99-  
19 514, 26 U.S.C. § 1 et seq.) or to an entity that provides such  
20 services to an entity so qualifying.

21       (17) The rendition for a consideration of lawn care service.

22       (18) The rendition for a consideration of self-storage  
23 service.

24       \* \* \*

25       (o) "Use."

26       (1) The exercise of any right or power incidental to the  
27 ownership, custody or possession of tangible personal property  
28 and shall include, but not be limited to transportation, storage  
29 or consumption.

30       (2) The obtaining by a purchaser of the service of printing

1 or imprinting of tangible personal property when such purchaser  
2 furnishes, either directly or indirectly, the articles used in  
3 the printing or imprinting.

4 (3) The obtaining by a purchaser of the services of (i)  
5 washing, cleaning, waxing, polishing or lubricating of motor  
6 vehicles whether or not any tangible personal property is  
7 transferred to the purchaser in conjunction with such services,  
8 and (ii) inspecting motor vehicles pursuant to the mandatory  
9 requirements of "The Vehicle Code."

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

28 (A) Any tangible personal property acquired and kept,  
29 retained or over which power is exercised within this  
30 Commonwealth on which the taxing of the storage, use or other

1 consumption thereof is expressly prohibited by the Constitution  
2 of the United States or which is excluded from tax under other  
3 provisions of this article.

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

9 (i) The manufacture of tangible personal property;

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

16 (iii) The producing, delivering or rendering of a public  
17 utility service, or in constructing, reconstructing, remodeling,  
18 repairing or maintaining the facilities which are directly used  
19 in producing, delivering or rendering such service;

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

21 The exclusions provided in subparagraphs (i), (ii), (iii) and  
22 (iv) shall not apply to any vehicle required to be registered  
23 under The Vehicle Code except those vehicles directly used by a  
24 public utility engaged in the business as a common carrier; to  
25 maintenance facilities; or to materials, supplies or equipment  
26 to be used or consumed in the construction, reconstruction,  
27 remodeling, repair or maintenance of real estate other than  
28 directly used machinery, equipment, parts or foundations  
29 therefor that may be affixed to such real estate. The exclusions  
30 provided in subparagraphs (i), (ii), (iii) and (iv) shall not



1 apply to tangible personal property or services to be used or  
2 consumed in managerial sales or other nonoperational activities,  
3 nor to the purchase or use of tangible personal property or  
4 services by any person other than the person directly using the  
5 same in the operations described in subparagraphs (i), (ii),  
6 (iii) and (iv).

7 The exclusion provided in subparagraph (iii) shall not apply  
8 to (A) construction materials, supplies or equipment used to  
9 construct, reconstruct, remodel, repair or maintain facilities  
10 not used directly by the purchaser in the production, delivering  
11 or rendition of public utility service or (B) tools and  
12 equipment used but not installed in the maintenance of  
13 facilities used directly in the production, delivering or  
14 rendition of a public utility service.

15 The exclusion provided in subparagraphs (i), (ii), (iii) and  
16 (iv) shall not apply to the services enumerated in clauses  
17 (o)(9) through (16) and (w) through (kk), except that the  
18 exclusion provided in subparagraph (ii) for farming, dairying  
19 and agriculture shall apply to the service enumerated in clause  
20 (z).

21 (5) Where tangible personal property or services are  
22 utilized for purposes constituting a "use," as herein defined,  
23 and for purposes excluded from the definition of "use," it shall  
24 be presumed that such property or services are utilized for  
25 purposes constituting a "sale at retail" and subject to tax  
26 unless the user thereof proves to the department that the  
27 predominant purposes for which such property or services are  
28 utilized do not constitute a "sale at retail."

29 (6) The term "use" with respect to "liquor" and "malt or  
30 brewed beverages" shall include the purchase of "liquor" from

1 any "Pennsylvania liquor store" by any person for any purpose  
2 and the purchase of "malt or brewed beverages" from a  
3 "manufacturer of malt or brewed beverages," "distributor" or  
4 "importing distributor" by any person for any purpose, except  
5 purchases from a "manufacturer of malt or brewed beverages" by a  
6 "distributor" or "importing distributor," or purchases from an  
7 "importing distributor" by a "distributor" within the meaning of  
8 the "Liquor Code." The term "use" shall not include any purchase  
9 of "malt or brewed beverages" from a "retail dispenser" or any  
10 purchase of "liquor" or "malt or brewed beverages" from a person  
11 holding a "retail liquor license" within the meaning of and  
12 pursuant to the provisions of the "Liquor Code," but shall  
13 include the exercise of any right or power incidental to the  
14 ownership, custody or possession of "liquor" or "malt or brewed  
15 beverages" obtained by the person exercising such right or power  
16 in any manner other than pursuant to the provisions of the  
17 "Liquor Code."

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

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

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

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

28 (11) The obtaining by the purchaser of secretarial or  
29 editing services.

30 (12) The obtaining by the purchaser of disinfecting or pest

1 control services, building maintenance or cleaning services.

2 [(13) The obtaining by the purchaser of employment agency  
3 services or help supply services.]

4 (14) The obtaining by the purchaser of computer programming  
5 services; computer-integrated systems design services; computer  
6 processing, data preparation or processing services; information  
7 retrieval services; computer facilities management services; or  
8 other computer-related services. At a minimum, such services  
9 shall not include services that are part of electronic fund  
10 transfers, electronic financial transactions or services,  
11 banking or trust services, or management or administrative  
12 services, including transfer agency, shareholder, custodial and  
13 portfolio accounting services, provided directly to any entity  
14 that duly qualifies to be taxed as a regulated investment  
15 company or a real estate investment trust under the provisions  
16 of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
17 U.S.C. § 1 et seq.) or to an entity that provides such services  
18 to an entity so qualifying.

19 (15) The obtaining by the purchaser of lawn care service.

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

21 \* \* \*

22 [(bb) "Employment agency services." Providing employment  
23 services to a prospective employer or employee other than  
24 employment services provided by theatrical employment agencies  
25 and motion picture casting bureaus. Such services shall include,  
26 but are not limited to, services of the type provided by  
27 employment agencies, executive placing services and labor  
28 contractor employment agencies other than farm labor.

29 (cc) "Help supply services." Providing temporary or  
30 continuing help where the help supplied is on the payroll of the

1 supplying person or entity, but is under the supervision of the  
2 individual or business to which help is furnished. Such services  
3 include, but are not limited to, service of a type provided by  
4 labor and manpower pools, employe leasing services, office help  
5 supply services, temporary help services, usher services,  
6 modeling services or fashion show model supply services. Such  
7 services shall not include providing farm labor services. The  
8 term shall not include human health-related services, including  
9 nursing, home health care and personal care. As used in this  
10 clause, "personal care" shall include providing at least one of  
11 the following types of assistance to persons with limited  
12 ability for self-care:

- 13 (1) dressing, bathing or feeding;
- 14 (2) supervising self-administered medication;
- 15 (3) transferring a person to or from a bed or wheelchair; or
- 16 (4) routine housekeeping chores when provided in conjunction  
17 with and supplied by the same provider of the assistance listed  
18 in subclause (1), (2) or (3).]

19 \* \* \*

20 Section 2. This act shall take effect immediately.