
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1138 Session of
2013

INTRODUCED BY GABLER, AUMENT, BAKER, CALTAGIRONE, CAUSER,
CLYMER, CUTLER, DENLINGER, FLECK, GROVE, F. KELLER,
M. K. KELLER, MACKENZIE, MILLARD, MURT, PICKETT, RAPP AND
ROCK, APRIL 8, 2013

REFERRED TO COMMITTEE ON FINANCE, APRIL 8, 2013

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.

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

14 Section 1. Section 201(k)(8) and (o)(4)(B) of the act of
15 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
16 1971, amended April 23, 1998 (P.L.239, No.45), are amended to
17 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 (k) "Sale at retail."

3 * * *

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

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

16 (A) The manufacture of tangible personal property.

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

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 * * *

2 (o) "Use."

3 * * *

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

22 * * *

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

28 (i) The manufacture of tangible personal property.

29 (ii) Farming, dairying, agriculture, timbering, horticulture
30 or floriculture when engaged in as a business enterprise. The

1 term "farming" shall include the propagation and raising of
2 ranch-raised furbearing animals and the propagation of game
3 birds for commercial purposes by holders of propagation permits
4 issued under 34 Pa.C.S. (relating to game) and the propagation
5 and raising of horses to be used exclusively for commercial
6 racing activities.

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

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

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

28 The exclusion provided in subparagraph (iii) shall not apply
29 to (A) construction materials, supplies or equipment used to
30 construct, reconstruct, remodel, repair or maintain facilities

1 not used directly by the purchaser in the production, delivering
2 or rendition of public utility service or (B) tools and
3 equipment used but not installed in the maintenance of
4 facilities used directly in the production, delivering or
5 rendition of a public utility service.

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

11 * * *

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