

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, NOVEMBER 13, 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 1. SECTION 201(K) (8), (O) (4) (B) AND (PP) OF THE ACT <--
19 OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF
20 1971, AMENDED OR ADDED APRIL 23, 1998 (P.L.239, NO.45), ARE
21 AMENDED TO READ:

1 Section 201. Definitions.--The following words, terms and
2 phrases when used in this Article II shall have the meaning
3 ascribed to them in this section, except where the context
4 clearly indicates a different meaning:

5 * * *

6 (k) "Sale at retail."

7 * * *

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

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

20 (A) The manufacture of tangible personal property.

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

29 (1) THE BUSINESS OF PRODUCING OR HARVESTING TREES FROM
30 FORESTS, WOODLOTS OR TREE FARMS FOR THE PURPOSE OF THE

1 COMMERCIAL PRODUCTION OF WOOD, PAPER OR ENERGY PRODUCTS.

2 (2) ALL OPERATIONS PRIOR TO THE TRANSPORT OF THE HARVESTED
3 PRODUCT NECESSARY FOR THE REMOVAL OF TIMBER OR FOREST PRODUCTS
4 FROM THE SITE, IN-FIELD PROCESSING OF TREES INTO LOGS OR CHIPS,
5 COMPLYING WITH ENVIRONMENTAL PROTECTION AND SAFETY REQUIREMENTS
6 APPLICABLE TO THE HARVEST OF FOREST PRODUCTS, CREATING ACCESS TO
7 THE HARVEST SITE, LOADING OF FOREST PRODUCTS ONTO HIGHWAY
8 VEHICLES FOR TRANSPORT TO STORAGE OR PROCESSING FACILITIES AND
9 POSTHARVEST SITE RECLAMATION, INCLUDING THOSE ACTIVITIES
10 NECESSARY TO IMPROVE TIMBER GROWTH OR ENSURE NATURAL OR DIRECT
11 REFORESTATION OF THE SITE.

12 (C) The producing, delivering or rendering of a public
13 utility service, or in constructing, reconstructing, remodeling,
14 repairing or maintaining the facilities which are directly used
15 in producing, delivering or rendering such service.

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

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

26 The exclusions provided in paragraphs (A), (B), (C) and (D)
27 shall not apply to tangible personal property or services to be
28 used or consumed in managerial sales or other nonoperational
29 activities, nor to the purchase or use of tangible personal
30 property or services by any person other than the person

1 directly using the same in the operations described in
2 paragraphs (A), (B), (C) and (D) herein.

3 The exclusion provided in paragraph (C) shall not apply to
4 (i) construction materials, supplies or equipment used to
5 construct, reconstruct, remodel, repair or maintain facilities
6 not used directly by the purchaser in the production, delivering
7 or rendition of public utility service, (ii) construction
8 materials, supplies or equipment used to construct, reconstruct,
9 remodel, repair or maintain a building, road or similar
10 structure, or (iii) tools and equipment used but not installed
11 in the maintenance of facilities used directly in the
12 production, delivering or rendition of a public utility service.

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

18 * * *

19 (o) "Use."

20 * * *

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

1 the purchaser in conjunction therewith, except such services as
2 are obtained in the construction, reconstruction, remodeling,
3 repair or maintenance of real estate: Provided, however, That
4 this subclause shall not be deemed to impose tax upon such
5 services in the preparation for sale of new items which are
6 excluded from the tax under clause (26) of section 204, or upon
7 diaper service: And provided further, That the term "use" shall
8 not include--

9 * * *

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

15 (i) The manufacture of tangible personal property.

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

24 (1) THE BUSINESS OF PRODUCING OR HARVESTING TREES FROM
25 FORESTS, WOODLOTS OR TREE FARMS FOR THE PURPOSE OF THE
26 COMMERCIAL PRODUCTION OF WOOD, PAPER OR ENERGY PRODUCTS.

27 (2) ALL OPERATIONS PRIOR TO THE TRANSPORT OF THE HARVESTED
28 PRODUCT NECESSARY FOR THE REMOVAL OF TIMBER OR FOREST PRODUCTS
29 FROM THE SITE, IN-FIELD PROCESSING OF TREES INTO LOGS OR CHIPS,
30 COMPLYING WITH ENVIRONMENTAL PROTECTION AND SAFETY REQUIREMENTS

1 APPLICABLE TO THE HARVEST OF FOREST PRODUCTS, CREATING ACCESS TO
2 THE HARVEST SITE, LOADING OF FOREST PRODUCTS ONTO HIGHWAY
3 VEHICLES FOR TRANSPORT TO STORAGE OR PROCESSING FACILITIES AND
4 POSTHARVEST SITE RECLAMATION, INCLUDING THOSE ACTIVITIES
5 NECESSARY TO IMPROVE TIMBER GROWTH OR ENSURE NATURAL OR DIRECT
6 REFORESTATION OF THE SITE.

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 (PP) "BUILDING MACHINERY AND EQUIPMENT." GENERATION <--
13 EQUIPMENT, STORAGE EQUIPMENT, CONDITIONING EQUIPMENT,
14 DISTRIBUTION EQUIPMENT AND TERMINATION EQUIPMENT, WHICH SHALL BE
15 LIMITED TO THE FOLLOWING:

16 (1) AIR CONDITIONING LIMITED TO HEATING, COOLING,
17 PURIFICATION, HUMIDIFICATION, DEHUMIDIFICATION AND VENTILATION;

18 (2) ELECTRICAL;

19 (3) PLUMBING;

20 (4) COMMUNICATIONS LIMITED TO VOICE, VIDEO, DATA, SOUND,
21 MASTER CLOCK AND NOISE ABATEMENT;

22 (5) ALARMS LIMITED TO FIRE, SECURITY AND DETECTION;

23 (6) CONTROL SYSTEM LIMITED TO ENERGY MANAGEMENT, TRAFFIC AND
24 PARKING LOT AND BUILDING ACCESS;

25 (7) MEDICAL SYSTEM LIMITED TO DIAGNOSIS AND TREATMENT
26 EQUIPMENT, MEDICAL GAS, NURSE CALL AND DOCTOR PAGING;

27 (8) LABORATORY SYSTEM;

28 (9) CATHODIC PROTECTION SYSTEM; OR

29 (10) FURNITURE, CABINETS AND KITCHEN EQUIPMENT.

30 THE TERM SHALL INCLUDE BOILERS, CHILLERS, AIR CLEANERS,

1 HUMIDIFIERS, FANS, SWITCHGEAR, PUMPS, TELEPHONES, SPEAKERS,
2 HORNS, MOTION DETECTORS, DAMPERS, ACTUATORS, GRILLS, REGISTERS,
3 TRAFFIC SIGNALS, TRAFFIC SIGNAL FOUNDATIONS, POLES AND MAST
4 ARMS, SENSORS, CARD ACCESS DEVICES, GUARDRAILS, MEDIAL DEVICES,
5 FLOOR TROUGHS AND GRATES AND LAUNDRY EQUIPMENT, TOGETHER WITH
6 INTEGRAL COVERINGS AND ENCLOSURES, WHETHER OR NOT THE ITEM
7 CONSTITUTES A FIXTURE OR IS OTHERWISE AFFIXED TO THE REAL
8 ESTATE, WHETHER OR NOT DAMAGE WOULD BE DONE TO THE ITEM OR ITS
9 SURROUNDINGS UPON REMOVAL OR WHETHER OR NOT THE ITEM IS
10 PHYSICALLY LOCATED WITHIN A REAL ESTATE STRUCTURE. THE TERM
11 "BUILDING MACHINERY AND EQUIPMENT" SHALL NOT INCLUDE GUARDRAIL
12 POSTS, PIPES, FITTINGS, PIPE SUPPORTS AND HANGERS, VALVES,
13 UNDERGROUND TANKS, WIRE, CONDUIT, RECEPTACLE AND JUNCTION BOXES,
14 INSULATION, DUCTWORK AND COVERINGS THEREOF.

15 * * *

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