

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 19 Session of 2019

INTRODUCED BY SANKEY, BERNSTINE, DUNBAR, GREINER, GROVE,
MACKENZIE, METZGAR, PICKETT, RAPP, ROTHMAN, RYAN, SAYLOR,
SIMMONS AND LAWRENCE, JANUARY 28, 2019

REFERRED TO COMMITTEE ON FINANCE, JANUARY 28, 2019

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 and for exclusions from tax.

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

14 Section 1. Section 201 of the act of March 4, 1971 (P.L.6,
15 No.2), known as the Tax Reform Code of 1971, is amended by
16 adding definitions 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 (eee) "Financial institution." An institution or licensee

1 as defined by the act of May 15, 1933 (P.L.565, No.111), known
2 as the Department of Banking and Securities Code, or a similar
3 institution or licensee doing business in Pennsylvania subject
4 to supervision by a regulatory authority of the Federal
5 Government, another state or a foreign country.

6 (fff) "Canned software." Computer software that is
7 available for sale to the general public, or a substantial and
8 indefinite class of similarly situated persons, that can be used
9 as-is without the purchase of professional services, including,
10 but not limited to, programming, systems design, facilities
11 management, information retrieval, data preparation or
12 processing, communication, data or computer processing,
13 accounting, appraisal, legal, engineering, architectural or
14 other services from the vendor that supplies the software.

15 (ggg) "Custom software." Computer software that is not
16 canned software, including modifications made to canned software
17 to facilitate its use by a purchaser if there is a separately
18 stated purchase price for the modifications.

19 Section 2. Section 204 of the act is amended by adding
20 clauses to read:

21 Section 204. Exclusions from Tax.--The tax imposed by
22 section 202 shall not be imposed upon any of the following:

23 * * *

24 (71) The sale at retail or use of canned software, or the
25 maintenance, support or updating of canned software, which is
26 acquired incidental to the purchase at retail of computer
27 programming, computer integrated systems design, data
28 preparation or processing, computer facilities management,
29 information retrieval and other computer or data processing
30 services, including computer services that are part of

1 electronic fund transfers, electronic financial transactions or
2 services, banking or trust services or management or
3 administrative services, including transfer agency, shareholder,
4 custodial and portfolio accounting services, unless the
5 predominant purpose of a transaction is to purchase or use
6 canned software.

7 (72) The sale at retail or use of systems, devices and
8 equipment, and their components, installed in a building and
9 utilized by a financial institution for its protection or
10 convenience in conducting financial transactions, provided that
11 both of the following are satisfied:

12 (i) The systems, devices, equipment or components:

13 (A) are installed by a contractor or the contractor's
14 designee; or

15 (B) after installation are repaired, altered or maintained
16 on-site by a contractor; or

17 (C) are removed from the installation site by a contractor
18 for repair or maintenance and returned to the installation site
19 by the contractor.

20 (ii) The systems, devices, equipment or components are
21 attached or affixed to real estate by means of:

22 (A) a hook, bolt, screw, nail or other similar method; or

23 (B) insertion through a building wall or floor, or mounting
24 it upon a specially prepared foundation, the removal of which
25 may result in damage to the real estate; or

26 (C) wire which is integrated into an electrical system.

27 A contractor engaged in the installation, repair or maintenance
28 of systems, devices, equipment or components that is subject to
29 the exclusion under this paragraph shall be deemed to be a
30 construction contractor pursuant to a construction contract

1 engaged in the use of tangible personal property or services
2 under section 201(o)(17) regardless of the method, or
3 permanence, of attachment of the systems, devices, equipment or
4 components, to real property.

5 (73) Fees charged by a financial institution for a financial
6 service, regardless of whether tangible personal property is
7 provided to a customer incidental to the provision of the
8 financial service, unless the predominant purpose of a
9 transaction is to purchase or use tangible personal property.

10 Section 3. The addition of section 204(72) of the act shall
11 be construed and read in pari materia with 61 Pa. Code § 46.9.

12 Section 4. The addition of section 204(71), (72) and (73)
13 shall apply to transactions that occur on or after the effective
14 date of this act.

15 Section 5. This act shall take effect immediately.