
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1163 Session of
2019

INTRODUCED BY SANKEY, RYAN, GREINER, BERNSTINE, DUNBAR, PICKETT,
MILLARD, IRVIN, GROVE, ZIMMERMAN AND LAWRENCE, APRIL 8, 2019

REFERRED TO COMMITTEE ON FINANCE, APRIL 8, 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; and providing for
12 refund of taxes collected on fees for information retrieval
13 services.

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

16 Section 1. Section 201 of the act of March 4, 1971 (P.L.6,
17 No.2), known as the Tax Reform Code of 1971, is amended by
18 adding definitions 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:

23 * * *

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

7 (eee) "Canned software." Computer software that is:

8 (1) available for sale to the general public or a
9 substantial and indefinite class of similarly situated persons;
10 and

11 (2) can be used as-is without the purchase of professional
12 services, including programming, systems design, facilities
13 management, information retrieval, data preparation or
14 processing, communication, data or computer processing,
15 accounting, appraisal, legal, engineering, architectural or
16 other services from the vendor that supplies the software.

17 (fff) "Custom software." Computer software that is not
18 canned software, including modifications made to canned software
19 to facilitate use of the canned software by a purchaser if there
20 is a separately stated purchase price for the modifications.

21 (ggg) "Information retrieval services." Furnishing content
22 or data of any kind which has been collected, compiled or
23 analyzed by a seller and which content or data may be accessed
24 or provided through any means or method, including through the
25 use of a remote server. The term includes furnishing of general
26 or specialized news or other current information, including
27 financial information, electronic data retrieval or research,
28 online database information retrieval services or remote
29 database information retrieval services.

30 Section 2. Section 204 of the act is amended by adding

1 clauses to read:

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

4 * * *

5 (71) The sale at retail or use of custom software.

6 (72) The sale at retail or use of computer programming,
7 computer integrated systems design, data preparation or
8 processing, computer facilities management, information
9 retrieval, custom software and other computer or data processing
10 services acquired in conjunction with or in support of the sale
11 or use of canned software or the installation, maintenance or
12 updating of canned software utilized in the operation of a
13 business or non-profit association, including a business engaged
14 in providing electronic fund transfers, electronic financial
15 transactions or services, banking or trust services or
16 management or administrative services or transfer agency,
17 shareholder, custodial and portfolio accounting services,
18 provided that:

19 (i) there is a separately stated purchase price for the
20 canned software and installation, maintenance or updating of the
21 canned software; or

22 (ii) the purchaser can reasonably demonstrate the cost or
23 value of the canned software and installation, maintenance and
24 updating of the canned software independent of the cost or value
25 of the computer programming or other related services, based on
26 information provided by the supplier of the canned software or
27 services, or any other credible source.

28 Nothing in this clause shall be construed to exclude from tax
29 under this article the separately stated purchase price or the
30 cost or value of canned software delivered to or used by a

1 purchaser and the installation, maintenance and updating of
2 canned software, as provided by subclauses (i) and (ii). Nothing
3 in this article shall be construed to impose tax upon computer
4 or data processing services provided by a vendor to a purchaser
5 through the use of canned or custom software by the vendor.

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

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

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

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

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

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

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

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

25 (C) wire that is integrated into an electrical system.

26 A contractor engaged in the installation, alteration, repair or
27 maintenance of systems, devices, equipment or components subject
28 to the exclusion under this clause shall be deemed to be a
29 construction contractor pursuant to a construction contract
30 engaged in the use of tangible personal property or services

1 under section 201(o)(17) regardless of the method or permanence
2 of attachment of the systems, devices, equipment or components
3 to real property.

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

10 (75) Fees charged by a business entity for information
11 retrieval services, notwithstanding whether tangible personal
12 property is provided to a customer incidental to the provision
13 of the information retrieval services, unless the predominant
14 purpose of the information retrieval services is to purchase or
15 use tangible personal property.

16 Section 3. The addition of sections 201(ddd), (eee) and
17 (fff) and 204(71), (72), (73) and (74) of the act shall apply
18 to:

19 (1) The sale at retail or use of tangible personal
20 property or services occurring on or after the effective date
21 of this section.

22 (2) The sale at retail or use of property or services
23 occurring prior to the effective date of this section if a
24 petition for reassessment or refund of taxes due on the
25 transaction:

26 (i) is pending before the Board of Appeals or the
27 Board of Finance and Revenue or is subject to review by a
28 court upon the effective date of this section; or

29 (ii) is filed after the effective date of this
30 section in response to an assessment of tax on the

1 transaction issued on or after the effective date of this
2 section or issued with a mailing date of up to 60 days
3 prior to the effective date of this section.

4 Section 4. The following shall apply:

5 (1) The addition of sections 201(ggg) and 204(75) of the
6 act shall apply to the sale at retail or use of tangible
7 personal property or services occurring after December 31,
8 2016.

9 (2) Notwithstanding any other provision of law, tax
10 collected by a business entity under Article II of the act
11 after December 31, 2016, and paid to the Department of
12 Revenue on fees charged by the business entity for
13 information retrieval services, notwithstanding whether
14 tangible personal property is provided to a customer
15 incidental to the provision of the information retrieval
16 services, unless the predominant purpose of the information
17 retrieval services is to purchase or use tangible personal
18 property, shall be refunded by the Department of Revenue.

19 (3) Except as provided by section 3003.1(b) of the act,
20 a business entity shall have one year from the effective date
21 of this paragraph to petition the Department of Revenue for a
22 refund under paragraph (2) of tax paid after December 31,
23 2016, and prior to the effective date of this section.

24 Section 5. This act shall take effect immediately.