
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 568 Session of
2019

INTRODUCED BY HUTCHINSON, ARGALL, BAKER, BARTOLOTTA, BLAKE,
FOLMER, MARTIN, MENSCH, REGAN, STEFANO AND J. WARD,
APRIL 18, 2019

REFERRED TO FINANCE, APRIL 18, 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. Sections 201 and 204 of the act of March 4, 1971
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended
18 by adding clauses 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 204. Exclusions from Tax.--The tax imposed by

1 section 202 shall not be imposed upon any of the following:

2 * * *

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

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

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

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

26 Nothing in this clause shall be construed to exclude from tax
27 under this article the separately stated purchase price or the
28 cost or value of canned software delivered to or used by a
29 purchaser and the installation, maintenance and updating of
30 canned software, as provided by subclauses (i) and (ii). Nothing

1 in this article shall be construed to impose tax upon computer
2 or data processing services provided by a vendor to a purchaser
3 through the use of canned or custom software by the vendor.

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

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

10 (A) are installed by a contractor or the contractor's
11 designee;

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

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

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

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

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

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

24 A contractor engaged in the installation, alteration, repair or
25 maintenance of systems, devices, equipment or components subject
26 to the exclusion under this clause shall be deemed to be a
27 construction contractor pursuant to a construction contract
28 engaged in the use of tangible personal property or services
29 under section 201(o)(17) regardless of the method or permanence
30 of attachment of the systems, devices, equipment or components

1 to real property.

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

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

14 Section 2. The addition of sections 201(ddd), (eee) and
15 (fff) and 204(71), (72), (73) and (74) of the act shall apply
16 to:

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

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

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

27 (ii) is filed after the effective date of this
28 section in response to an assessment of tax on the
29 transaction issued on or after the effective date of this
30 section or issued with a mailing date of up to 60 days

1 prior to the effective date of this section.

2 Section 3. The following shall apply:

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

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

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

22 Section 4. This act shall take effect immediately.