

of his or her life. Should any employe or former employe of the department of health of such city who has been transferred involuntarily into the department of health of a county of the second class, however, become totally and permanently disabled after fifteen years of service, he or she shall be entitled to the pension. If any employe who has served less than fifteen years becomes totally and permanently disabled by reason of injury sustained in the actual performance of duty, such employe shall be entitled to the pension. Proof of total and permanent disability shall consist of the sworn statement of three practicing physicians, designated by the board, that the employe is in a permanent condition of health which would totally disable him or her from performing the duties of his or her position or office. Once a year the board of pensions may require a disability pensioner to undergo a medical examination by three physicians appointed by the board, and should such physicians thereupon report and certify to the board that such beneficiary is no longer incapacitated and should the pension board concur in such report the pension to such beneficiary shall be discontinued.

Where employe who has served fifteen years becomes totally and permanently disabled.

Where employe who has served less than fifteen years becomes totally and permanently disabled.

Proof of total and permanent disability.

Annual medical examination.

* * * * *

APPROVED—The 14th day of August, A. D. 1959.

DAVID L. LAWRENCE

No. 258

AN ACT

Amending the act of March 6, 1956 (P. L. 1228), entitled, as amended, "An act to provide revenue for purposes of public education by imposing a tax on the sale, use, storage, rental or consumption of certain personal property and certain services; providing for licenses, reports and payment of tax, interest and penalties, assessments, collections, liens, reviews and appeals; conferring powers and imposing duties upon the Department of Revenue, public officers, manufacturers, wholesalers, retailers, corporations, partnerships, associations and individuals and making an appropriation," defining or redefining certain words, terms and phrases; imposing tax on certain additional tangible personal property or services; providing certain exemptions; providing for uncollectible accounts; adding provisions concerning refunds; increasing the rate of tax; imposition and changing the bracket schedule and basis to reflect certain tax increases.

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

Selective Sales and Use Tax Act.

Section 2, act of March 6, 1956, P. L. 1228, amended April 15, 1959, P. L. 20, amended by adding a new paragraph (a).

Section 1. Section 2 of the act of March 6, 1956 (P. L. 1228), known as the "Selective Sales and Use Tax Act," amended April 15, 1959 (P. L. 20), is amended by adding, after the first paragraph of such section, the following:

Section 2. Definitions.—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Bottled Soft Drinks."

All "soft drinks" which are closed and sealed in glass, metal, paper or any other type of container or bottle of less than one gallon capacity. "Soft Drinks"—All non-alcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, Dr. Pepper, fruit juice when any plain or carbonated water, flavoring or syrup is added, carbonated water, orangeade, lemonade, root beer or any and all preparations, commonly referred to as soft drinks, of whatsoever kind, and are further described as including any and all beverages, commonly referred to as "soft drinks," which are made with or without the use of any syrup. The term "soft drinks" shall not include natural fruit or vegetable juices or their concentrates, or natural concentrated fruit or vegetable juices reconstituted to their original state, whether any of the foregoing natural juices are frozen or unfrozen, sweetened or unsweetened, seasoned with salt or spice or unseasoned, nor shall the term "soft drinks" include natural fluid milk or non-carbonated drinks made from milk derivatives.

Clauses (a) and (e), subclause (1), clause (f) and clauses (h) and (j), section 2, act of March 6, 1956, P. L. 1228, amended April 15, 1959, P. L. 20, further amended.

Section 2. Clauses (a) and (e), subclause (1) of clause (f) and clauses (h) and (j) of section 2 of the act, amended April 15, 1959 (P. L. 20), are amended to read:

Section 2. Definitions.—

* * * * *

[(a)] (a.1) "Department." The Department of Revenue of this Commonwealth.

* * * * *

(e) "Purchase at Retail." (1) The acquisition for a consideration of the ownership, custody or possession of tangible personal property other than for resale when such acquisition is made for the purpose of consumption or use, whether such acquisition shall be absolute or conditional, and by whatsoever means the same shall have been effected. (2) The acquisition of a license to use or consume, and the rental or lease of tangible personal property, other than for resale, regardless of the period of time the lessee has possession or custody of the prop-

erty. (3) The obtaining for a consideration of those services described in subclauses (2), (3) and (4) of clause (j) of this section other than for resale. (4) A retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement (other than as security), other than for resale.

The term "purchase at retail" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania Liquor Store" by any person for any purpose, and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor" or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "purchase at retail" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any purchase or acquisition of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

The term "purchase at retail" with respect to "bottled soft drinks" shall include the purchase of "bottled soft drinks" from a "soft drink bottler" or "soft drink distributor" by any person for any purpose, except purchases by a "soft drink bottler" or "soft drink distributor." The term "purchase at retail" shall not include any purchase of "bottled soft drinks" from any person other than a "soft drink bottler" or "soft drink distributor."

(f) "Purchase Price."

(1) The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale [, lease] at retail or purchase at retail [of tangible personal property], as herein defined, without any deduction on account of the cost or value of the property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the Commonwealth of Pennsylvania or any other expense, but excluding the value of the following: (i) returnable container, (ii) labor or service cost in delivering, [or warranting] installing or applying the property sold if

the consideration therefor is stated separately from the consideration paid for the property or services sold at retail: Provided, however, That the term "delivering" shall include only actual transportation from the vendor's place of business or storage to the place designated by the purchaser: And provided further, That no deduction may be made on account of the cost or value of *materials*, time, labor or service in [installing, applying or repairing tangible personal property] *the rendition of those services described in subclauses (2), (3) and (4) of clause (j) of this section.*

* * * * *

(h) "Resale."

(1) Any transfer of *ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of such property is transferred but where the transferor retains title only as security for payment of the selling price whether such transaction be designated as bailment lease, conditional sale or otherwise.

(2) The physical incorporation of personal property as an ingredient or constituent into other personal property, which is to be sold in the regular course of business or the performance of those services described in subclauses (2), (3) and (4) of clause (j) of this section upon personal property which is to be sold in the regular course of business or which the person incorporating such property has undertaken at the time of purchase to cause to be transported in interstate commerce to a destination outside this Commonwealth.

The term "resale" shall not include any sale of "malt or brewed beverages" by a "retail dispenser," or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of the "Liquor Code."

The term "resale" shall not include any sale of "bottled soft drinks" by any person other than a "soft drink bottler" or "soft drink distributor."

(3) *The physical incorporation of personal property as an ingredient or constituent in the construction of foundations for machinery or equipment, the sale or use of which is excluded from the tax under the provisions of paragraphs (a), (b) and (c) of clause (j) and subparagraphs (i), (ii) and (iii) of paragraph (c) of clause (n) of this section, whether such foundations at*

* "township" in original.

the time of construction or transfer constitute personal property or real estate.

* * * * *

(j) "Sale at Retail." (1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly, the materials used in the printing or imprinting.

(3) The rendition *for a consideration* of the service of—

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another [for a consideration], whether or, not any tangible personal property is transferred in conjunction therewith; *and*

(ii) *Inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code" or "The Tractor Code."*

(4) The rendition *for a consideration* of the service of repairing, *altering or cleaning* tangible personal property or applying or installing tangible personal property as a repair or replacement part of other personal property for a consideration, whether or not any tangible personal property is transferred in conjunction therewith. *Notwithstanding the meaning ascribed to the term "tangible personal property" by clause (1) of this section 2 for the purposes of this subclause 2(j)(4) only, the term "tangible personal property" shall also include any and all wearing apparel upon which the services described herein, including such services as drycleaning, dyeing, fitting, laundering, mending or pressing, may be performed whether the services are performed directly or by means of coin-operated equipment or by any other means: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new wearing apparel (other than that described by clause (1) (2) of this section 2), or upon diaper service.*

(5) Any retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement (other than [a] as security).

(6) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2),

(3) and (4) of this clause after [the effective date of this amendment] *April 15, 1959*, pursuant to a rental or service contract or other arrangement (other than [a] as security).

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

The term "sale at retail" shall not include (a) any such transfer or rendition *of services for the purpose of resale, or (b) such rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts and foundations therefor and supplies to be used or consumed directly in any of the operations of—

(a) The manufacture of personal property;

(b) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise;

(c) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings.

The exclusions provided in paragraphs (a) and (b) shall not apply to any vehicle required to be registered under The Vehicle Code or The Tractor Code or to maintenance facilities or to materials or supplies to be used or consumed in any construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts or foundations therefor that may be affixed to such real estate.

The exclusions provided in paragraphs (a), (b) and (c) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities.

The exclusion provided in paragraph (c) shall not apply to (a) construction materials used to construct, reconstruct, remodel, repair or maintain facilities not used directly in the production, delivering or rendition of public utility service, or (b) tools and equipment used but not installed in the maintenance of facilities used in the production, delivering or rendition of a public utility service.

Where tangible personal property or services are utilized for purposes constituting a "sale at retail" as herein defined, and for purposes excluded from the defi-

* "or" in original.

nition of "sale at retail," the predominant purpose shall determine whether such purposes constitute a "sale at retail" as herein defined.

The term "sale at retail" with respect to "liquor" and "malt or brewed beverages" shall include the sale of "liquor" by any "Pennsylvania liquor store" to any person for any purpose, and the sale of "malt or brewed beverages" by a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" to any person for any purpose, except sales by a "manufacturer of malt or brewed beverages" to a "distributor" or "importing distributor" or sales by an "importing distributor" to a "distributor" within the meaning of the "Liquor Code." The term "sale at retail" shall not include any sale of "malt or brewed beverages" by a "retail dispenser" or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any sale of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

The term "sale at retail" with respect to "bottled soft drinks" shall include the sale of "bottled soft drinks" by a "soft drink bottler" or "soft drink distributor" to any person for any purpose, except sales to a "soft drink bottler" or "soft drink distributor" for resale. The term "sale at retail" shall not include any sale of "bottled soft drinks" by any person other than a "soft drink bottler" or "soft drink distributor."

* * * * *

Section 3. Section 2 of the act is amended by adding, after clause (j), two new clauses to read:

Section 2, act of March 6, 1956, P. L. 1228, amended by adding two new clauses (j.1) and (j.2).

Section 2. Definitions.—

* * * * *

(j.1) "Soft drink bottler." Any person engaged in the business of producing "bottled soft drinks."

(j.2) "Soft drink distributor." Any person engaged in the business of selling bottled soft drinks in original containers or bottles in case lots or larger quantities for sale by the purchaser to others.

* * * * *

Section 4. Paragraph (17) of clause (1) of section 2 of the act, amended June 16, 1959 (Act No. 98), is amended to read:

Paragraph (17), clause (1), section 2, act of March 6, 1956, P. L. 1228, amended June 16, 1959, Act No. 98, further amended.

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

(17) Food and beverages, (except when purchased at, or from a school, church or hospital in the ordinary course of activities of such organization) when the purchase price of the total transaction is more than fifty cents (50¢), when purchased (i) from persons engaged in the business of catering, or (ii) from persons engaged in the business of operating restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels and other eating places. For the purposes of this clause (17) beverages shall not include malt and brewed beverages and spirituous and vinous liquors or bottled soft drinks whether or not served in the original container.

* * * * *

Section 2, act of March 6, 1956, P. L. 1223, amended by adding a new paragraph (18) of clause (1).

Section 5. Section 2 of the act is amended by adding, after paragraph (17) of clause (1), a new paragraph to read:

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

(18) Malt or brewed beverages, spirituous and vinous liquors and bottled soft drinks.

Paragraph (18), clause (1), section 2 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 6. Paragraph (18) of clause (1) of section 2 of the act, amended April 15, 1959 (P. L. 20), is amended to read:

Section 2. Definitions.—

* * * * *

(1) "Tangible Personal Property."

* * * * *

[(18)] (19) Periodical and other publications, but not including publications which are published at regular intervals not exceeding three months, circulated among the general public and containing matters of general interest and reports of current events [which are sold on a subscription or single copy basis].

* * * * *

Clause (n), section 2 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 7. Clause (n) of section 2 of the act, amended April 15, 1959 (P. L. 20), is amended to read:

Section 2. Definitions.—

* * * * *

(n) "Use."

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to transportation, storage or consumption.

(2) The obtaining by a purchaser of the service of printing or imprinting of tangible personal property when such purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(3) The obtaining by a purchaser of the service of (i) washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services, and (ii) *inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code" or "The Tractor Code."*

(4) The obtaining by *a purchaser of the service of repairing, *altering or cleaning* tangible personal property or applying or installing tangible personal property as a repair or replacement part of other personal property whether or not any tangible personal property is transferred to the purchaser in conjunction therewith. *Notwithstanding the meaning ascribed to the term "tangible personal property" by clause (1) of this section 2 for the purposes of this subclause 2 (n) (4) only, the term "tangible personal property" shall also include any and all wearing apparel upon which the services described herein, including such services as drycleaning, dyeing, fitting, laundering, mending or pressing, may be performed whether the services are performed directly or by means of coin-operated equipment or by any other means: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new wearing apparel (other than that described by clause (1) (2) of this section 2), or upon diaper service: And [Provided, however] provided further, That the term "use" shall not include—*

(a) The demonstration of tangible personal property in the regular course of business, and

(b) The interim keeping; retaining or exercising any right or power over tangible personal property for the sole purpose of subsequently transporting it outside this Commonwealth for use outside this Commonwealth, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into other personal property to be transported outside the Commonwealth for use solely outside this Commonwealth.

(c) The use or consumption of tangible personal property including, but not limited to machinery and equip-

* "a" omitted in original.

ment and parts and foundations therefor, and supplies or the obtaining of the services described in subclauses (2), (3) and (4) of this clause directly in any of the operations of—

- (i) The manufacture of personal property;
- (ii) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise;
- (iii) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings.

The exclusions provided in subparagraphs (i) and (ii) shall not apply to any vehicle required to be registered under The Vehicle Code or The Tractor Code or maintenance facilities, or to materials or supplies to be used or consumed in any construction, reconstruction, remodeling, repair or maintenance of real estate other than machinery, equipment or parts or foundations therefor, that may be affixed to such real estate. The exclusions provided in subparagraphs (i), (ii) and (iii) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other non-operational activities.

The exclusion provided in subparagraph (iii) shall not apply to (a) construction materials used to construct, reconstruct, remodel, repair or maintain facilities not used directly in the production, delivering or rendition of public utility service, or (b) tools and equipment used but not installed in the maintenance of facilities used in the production, delivering or rendition of a public utility service.

Where tangible personal property or services are utilized for purposes constituting a "use," as herein defined, and for purposes excluded from the definition of "use," the predominant purpose shall determine whether such purposes constitute a "use," as herein defined.

The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" of "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "use" shall not include any purchase of "malt

or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include the exercise of any right or power incidental to the ownership, custody or possession of "liquor" or "malt or brewed beverages" obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the "Liquor Code."

The term "use" with respect to "bottled soft drinks" shall include the purchase of "bottled soft drinks" from a "soft drink bottler" or "soft drink distributor" by any person for any purpose, except purchases by a "soft drink bottler" or "soft drink distributor" for resale. The term "use" shall not include any purchase of "bottled soft drinks" from any person other than a "soft drink bottler" or "soft drink distributor."

Section 8. Section 201 of the act, amended April 15, 1959 (P. L. 20) and June 9, 1959 (Act No. 91), is amended to read:

Section 201 of the act, amended April 15, 1959, P. L. 20, and June 9, 1959, Act No. 91, further amended.

Section 201. Imposition of Tax.—(a) There is hereby imposed upon each separate sale at retail as defined herein within this Commonwealth a tax of [three and one-half] *four* per cent of the purchase price, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the Commonwealth as herein provided.

(b) There is hereby imposed upon the use, on and after the effective date of this act, within this Commonwealth of tangible personal property purchased at retail on or after March 7, 1956, a tax of [three and one-half] *four* per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who makes such use as herein provided, except that such tax shall not be paid to the Commonwealth by such person where he has paid the tax imposed by subsection (a) of this section or has paid the tax imposed by this subsection (b) to the vendor with respect to such use. The tax at the rate of [three and one-half] *four* per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred at the rate of three per cent *or three and one-half per cent* under this subsection prior to [its] *this* amendment.

(c) Notwithstanding any other provisions of this act, the tax with respect to intrastate telephone service and intrastate telegraph service within the meaning of subclause (13) of clause (1) of section 2 of this act shall, except for telegrams paid for in cash at telegraph offices, be computed at the rate of [three and one-half] *four* per

cent upon the total amount billed to customers periodically for such services, irrespective of whether such billing is based upon a flat rate or upon a message unit charge.

Section 202 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 9. Section 202 of the act, amended April 15, 1959 (P. L. 20), is amended to read:

Section 202. Computation of Tax.—The amount of tax imposed by section 201 of this act shall be computed as follows:

(a) If the purchase price is ten cents (10¢) or less, no tax shall be collected.

(b) If the purchase price is eleven cents (11¢) or more but less than [thirty cents (30¢)] *twenty-six cents (26¢)*, one cent (1¢) shall be collected.

(c) If the purchase price is [thirty cents (30¢)] *twenty-six cents (26¢)* or more but less than [sixty cents (60¢)] *fifty-one cents (51¢)*, two cents (2¢) shall be collected.

(d) If the purchase price is [sixty cents (60¢)] *fifty-one cents (51¢)* or more but less than [ninety cents (90¢)] *seventy-six cents (76¢)*, three cents (3¢) shall be collected.

(e) If the purchase price is [ninety cents (90¢)] *seventy-six cents (76¢)* or more but less than [one dollar and twenty cents (\$1.20)] *one dollar and one cent (\$1.01)*, four cents (4¢) shall be collected.

[(f) If the purchase price is one dollar and twenty cents (\$1.20) or more but less than one dollar and fifty cents (\$1.50), five cents (5¢) shall be collected.

(g) If the purchase price is one dollar and fifty cents (\$1.50) or more but less than one dollar and eighty cents (\$1.80), six cents (6¢) shall be collected.

(h) If the purchase price is one dollar and eighty cents (\$1.80) or more but less than two dollars and eleven cents (\$2.11), seven cents (7¢) shall be collected.

(i) If the purchase price is two dollars and eleven cents (\$2.11) or more, the tax shall be collected at the rate of three and one-half per cent of such purchase price adjusted to the next highest cent or in accordance with such bracket schedule as the department may by regulation prescribe.]

(f) *If the purchase price is more than one dollar (\$1.00), four per centum of each dollar of purchase price plus the above bracket charges upon any fractional part of a dollar in excess of even dollars shall be collected.*

Section 10. Section 203 of the act, amended April 15, 1959 (P. L. 20), is amended by adding, after clause (b), a new clause to read:

Section 203 of the act, amended April 15, 1959, P. L. 20, amended by adding a new clause (b.1).

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon—

* * * * *

(b.1) The use of tangible personal property purchased outside this Commonwealth for use outside this Commonwealth by a then non-resident natural person or a business entity not actually doing business within this Commonwealth, who later brings such tangible personal property into this Commonwealth in connection with his establishment of a permanent business or residence in this Commonwealth: Provided, That such property was purchased more than six months prior to the date it was first brought into this Commonwealth or prior to the establishment of such business or residence, whichever first occurs. This exclusion shall not apply to tangible personal property temporarily brought into Pennsylvania for the performance of contracts for the construction, reconstruction, remodeling, repairing and maintenance of real estate.

* * * * *

Section 11. Clause (d) of section 203, added April 15, 1959 (P. L. 20), is amended to read:

Clause (d), section 203, added April 15, 1959, P. L. 20, further amended.

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon—

* * * * *

(d) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate, when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after March 7, 1956, but prior to [the date of enactment of this amendment] April 15, 1959, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of this act as amended [hereby] April 15, 1959 (P. L. 20), and from the additional one-half of one per cent of tax imposed by section 201 of this act as amended hereby: Provided, however, That the exemption granted by this subclass shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department as provided by section 552 of this act.

* * * * *

Section 203 of the act, amended by adding a new clause (d.1).

Section 12. Section 203 of the act is amended by adding, after clause (d), a new clause to read:

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon—

* * * * *

*(d.1) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale *of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after April 15, 1959, but prior to the effective date of this amendment, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of this act as amended hereby: Provided, however, That the exemption granted by this subclause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department as provided by section 552 of this act.*

* * * * *

Clauses (e), (f) and (o), section 203 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 13. Clauses (e), (f) and (o) of section 203 of the act, amended April 15, 1959 (P. L. 20), are amended to read:

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon—

* * * * *

(e) The sale at retail to or use by (1) any charitable organization, volunteer firemen's organization or non-profit educational institution, or (2) a religious organization for religious purposes of tangible personal property or services: Provided, however, That the exclusion of subsection (e) shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any tangible personal property defined in paragraph (3) of section 2 (1) of this act, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

(f) The sale at retail, or use of [tubes and replacement parts] machinery, equipment, parts, supplies and the obtaining of those services described in subclauses (2) and (4) of clause (j) of section 2 of this act directly

* "or" in original.

used in broadcasting radio and television programs by licensed stations.

* * * * *

(o) The sale at retail or use of supplies and materials to be used exclusively in the fulfillment of a contract for the construction, reconstruction, remodeling, repairing or maintenance of real estate, when such contract was entered into prior to March 7, 1956, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945": Provided, That notice of a claim of exemption under this clause is received by the department within fifteen days after the effective date of this clause.

(o.1) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after March 7, 1956, but prior to [the date of enactment of this amendment] *April 15, 1959*, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of this act as amended [hereby] *April 15, 1959 (P. L. 20)*, and from the additional one-half of one per cent of tax imposed by section 201 of this act as amended hereby: Provided, however, That the exemption granted by this subsection shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department as provided by section 552 of this act.

Section 14. Section 203 of the act, amended April 15, 1959 (P. L. 20), is amended by adding, at the end thereof, a new clause to read:

Section 203 of the act, amended April 15, 1959, P. L. 20, amended by adding a new clause (o.2).

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon—

* * * * *

(o.2) *The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate when the contract was entered into on or after April 15, 1959, but prior to the effective date of this amendment, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one-half of one per cent of tax*

imposed by section 201 of this act as amended hereby: Provided, however, That the exemption granted by this subsection shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department as provided by section 552 of this act.

Section 204 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 15. Section 204 of the act, amended April 15, 1959 (P. L. 20), is amended to read:

Section 204. Alternate Imposition of Tax.—If any person brings tangible personal property purchased for use outside the Commonwealth into the Commonwealth for use (other than complete consumption) therein for a period not to exceed six months, such person may, upon notice to the department within ten days of the commencement of use of such property within the Commonwealth, elect to pay a tax upon the use of such property equal to [three and one-half per cent (3½%)] *four per cent (4%)* of the fair rental value of such property for the actual period of use if such use does not exceed six months. Should such property be completely *consumed within the Commonwealth or remain therein for longer than six months, the taxpayer shall be liable for a tax upon the use of such property according to section 201 (b) of this act but shall be allowed a credit equal to seventy per cent (70%) of the tax paid pursuant to the election provided for in this section. Such election may not be made with respect to any tangible personal property purchased or used in a state having a tax similar to that imposed by this act which does not grant, either

(a) A similar election with respect to tangible personal property upon the sale or use of which tax has been paid under the provisions of this act, or

(b) Tax relief substantially similar to that granted by section 205 of this act.

Act of March 6, 1956, P. L. 1228, amended by adding a new section 549.1.

Section 16. The act is amended by adding, after section 549, a new section to read:

Section 549.1. Prepayment of Tax.—Whenever a vendor is forbidden by law or governmental regulation to charge and collect the purchase price in advance of or at the time of delivery, the vendor shall prepay the tax as required by section 531 of this act, but in such case if the purchaser shall fail to pay to the vendor the total amount of the purchase price and the tax, and such amount is written off as uncollectible by the vendor, the vendor shall not be liable for such tax and shall be entitled to a credit or refund of such tax paid. If the

* "consumed" in original.

purchase price is thereafter collected, in whole or in part, the amount collected shall be first applied to the payment of the entire tax portion of the bill, and shall be remitted to the department by the vendor with the first return filed after such collection. For any tax prepaid prior to the effective date of this amendment, credit may be claimed on any returns filed for the periods prior to the effective date of this amendment. Tax prepaid after the effective date of this amendment shall be subject to refund upon petition to the department under the provisions of section 552 of this act, filed within one hundred five days of the close of the fiscal year in which such accounts are written off.

Section 17. Subsection (d) of section 553 of the act, amended July 8, 1957 (P. L. 584), is amended to read:

Subsection (d), section 553 of the act, amended July 8, 1957, P. L. 584, further amended.

Section 553. Refund Petition.— * * *

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this act subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed within five years of the date of the payment of which a refund is requested. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

Section 18. This act shall take effect immediately.

Act effective immediately.

APPROVED—The 20th day of August, A. D. 1959.

DAVID L. LAWRENCE

No. 259

AN ACT

To commission posthumously Edwin L. Drake in the Pennsylvania National Guard.

Whereas, the year 1959 marks the 100th Anniversary of the first successful drilling for oil, and Preamble.