

No. 14

AN ACT

Amending the act of March 6, 1956 (P. L. 1228), entitled, as amended, "An act to provide revenue for Commonwealth purposes by imposing a tax on the sale, use, storage, rental or consumption of certain tangible personal property and utility services herein defined as tangible personal property; 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; increasing the rate of tax; imposing tax on certain additional services; changing the bracket schedule and basis to reflect tax increases; exempting certain property or persons from the tax and clarifying the scope of such exemptions; extending the tax credit provision to include certain services; changing the provisions relating to licenses, collection of tax and returns; extending the retail sales presumption to include certain services; allocating the tax proceeds for public education, and imposing additional penalties.

Selective Sales
and Use Tax Act.

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

Title, act of
March 6, 1956,
P. L. 1228,
amended May 24,
1956, P. L. 1707,
further amended.

Section 1. The title of the act of March 6, 1956 (P. L. 1228), known as the "Selective Sales and Use Tax Act," amended May 24, 1956 (P. L. 1707), is amended to read:

An Act

New title.

To provide revenue for [Commonwealth] purposes of *public education* by imposing a tax on the sale, use, storage, rental or consumption of certain [tangible] personal property and [utility] *certain* services [herein defined as tangible personal property]; 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.

Section 2, act of
March 6, 1956,
P. L. 1228, add-
ed May 24, 1956,
P. L. 1707,
amended April 5,
1957, P. L. 34,
and May 9, 1957,
P. L. 114, fur-
ther amended.

Section 2. Section 2 of the act, added May 24, 1956 (P. L. 1707) and amended April 5, 1957 (P. L. 34) and May 9, 1957 (P. L. 114), is amended to read:

Definitions.

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:

* "and" omitted in original.

(a) "Department." The Department of Revenue of this Commonwealth.

(b) "Maintaining a place of business in this Commonwealth."

(1) Having or maintaining within this Commonwealth, directly or by a subsidiary, an office, distribution house, sales house, warehouse, *service enterprise* or other place of business, or any agent of general or restricted authority irrespective of whether the place of business or agent is located here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this Commonwealth; or

(2) The engaging in any activity as a business within this Commonwealth by any person, directly or by a subsidiary, in connection with the lease, sale or delivery of tangible personal property or the performance of services thereon for use, storage or consumption including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, salesman, agent or representative under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this Commonwealth.

(c) "Manufacture." The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to—

(1) Every operation commencing with the first production stage and ending with the completion of personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another;

(2) Publishing of books, newspapers, magazines or other periodicals and printing;

(3) Refining, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stock piles or from pits or banks, any natural resources, minerals and mineral aggregates, including blast furnace slag;

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or

more when produced upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner;

(5) Research having as its objective the production of a new or an improved (a) product or utility service, or (b) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

The term "manufacture," as defined in this subsection (c), shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing personal property.

(d) "Person." Any natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth of Pennsylvania, its political subdivisions and instrumentalities and public authorities. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term "person," as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(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. [The term "purchase at retail" shall include the] (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 property. [but shall not include any acquisition for the purpose of resale. For the purpose of this subsection (e), a]* (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), [shall be considered an acquisition of such possession, custody or license to use or consume] other than for resale.*

(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 or purchase at retail of tangible personal property 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, or any other expense, but excluding the value of the following (i) returnable containers, (ii) labor or service cost in delivering, [installing, applying] or warranting 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 time, labor or service in installing, applying or repairing tangible personal property.*

(2) There shall be deducted from the purchase price the value of any personal property actually taken in trade or exchange within this Commonwealth in lieu of the whole or any part of the purchase price. For the purpose of this subsection (f), the amount allowed by reason of personal property actually taken in trade or exchange shall be considered the value of such property.

(3) In any transaction not at arm's length, the purchase price shall not be less than the prevailing market price for similar tangible personal property or those services described in subclauses (2), (3) and (4) of clause (j) of this section.

(4) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines, the full consideration paid or delivered to the vendor or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employe to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the purchase price if separately stated. There shall also be included as part of the purchase price the value of anything paid or delivered, or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession or custody of under a rental contract or lease arrangement.

(5) With respect to the tax imposed by subsection (b) of section 201 upon any tangible personal property

originally purchased by the user of such property six months or longer prior to the first taxable use of such property within the Commonwealth, such user may elect to pay tax on a substituted base determined by considering the purchase price of such property for tax purposes to be equal to the prevailing market price of similar personal property at the time and place of such first use within the Commonwealth. Such election must be made by filing a notice thereof in the form specified by the Department and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one year of the due date of such report and payment, as provided for by subsections (a) and (c) of section 520 of this act.

(g) "Purchaser." Any person who acquires, for a consideration, the ownership, custody or possession by sale, lease or otherwise, of tangible personal property, *or who obtains services in exchange for a purchase price but not including an employer who obtains services from his employes in exchange for wages or salaries when such services are rendered in the ordinary scope of their employment.*

(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.

(i) "Resident."

(1) Any natural person (i) who is domiciled in the Commonwealth, or (ii) who maintains a permanent place of abode within the Commonwealth and spends in the aggregate more than sixty days of the year within the Commonwealth.

(2) Any corporation (i) incorporated under the laws of this Commonwealth, or (ii) authorized to do business

* "subclause" in original.

or doing business within this Commonwealth, or (iii) maintaining a place of business within this Commonwealth.

(j) "Sale at Retail." (1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the [transfer] *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. [The term "sale at retail" shall include the 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.]

(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 of the service of 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.*

(4) *The rendition of the service of repairing 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.*

(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 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 pursuant to a rental or service contract or other arrangement (other than a 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—

[(1)] (a) **The manufacture of personal property;

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

* "or" in original.

** "The" omitted in original.

[(3)] (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 [(1)] (a) and [(2)] (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 [paragraph (1), (2) and (3)] *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 [is] or services are utilized for purposes constituting a "sale at retail" as herein defined, and for purposes *excluded from the definition of "sale at retail," the predominant purpose shall determine whether such purposes constitute a "sale at retail" as herein defined.

[For the purpose of this subsection (j), 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) shall be considered a transfer of such possession, custody or license to use or consume.]

(k) "Storage." Any keeping or retention of tangible personal property within this Commonwealth.

(1) "Tangible Personal Property."

(1) Motor vehicles, trailers, semi-trailers and aircraft and all accessories, supplies, parts, lubricants and equipment used in the maintenance, operation or repair of such motor vehicles, trailers, semi-trailers and aircraft;

(2) Formal day or evening apparel and articles made of fur on the hide or pelt, or any material imitative of fur and articles of which such fur real, imitation or

* "excluding" in original.

synthetic, is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material;

(3) All materials, supplies and equipment used in the construction, reconstruction, remodeling, repair and maintenance of any real estate;

(4) Furnishings, appliances, supplies, fittings, ornaments, furniture, equipment and accessories for home, business, industrial or commercial use, for indoor or outdoor purposes;

(5) Business, industrial, professional and commercial supplies, equipment and machines of all types, including parts and accessories purchased for or used in connection therewith;

(6) Cosmetics, toilet preparations, toilet articles, drugs and medical supplies, except when sold on prescription;

(7) All smoking accessories and tobacco products, except cigarettes;

(8) Luggage, handbags, wallets, billfolds, pocketbooks, umbrellas, leather goods and related articles, except leather wearing apparel not elsewhere in this section defined as tangible personal property, but including fittings and accessories;

(9) Jewelry, watches, clocks, silverware, dishes, tableware, pottery and related articles, but not including religious articles;

(10) Books, stationery and stationery supplies, but not including religious publications sold by religious groups. Bibles, mail order catalogues and direct mail advertising literature;

(11) Toys, games, hobby supplies, photographic and projection equipment and supplies, sporting goods and athletic equipment and supplies therefor, designed for a particular sport and which normally are not used or worn when not engaged in that sport, bicycles and parts, accessories and supplies therefor, pleasure boats and equipment parts, accessories and supplies used in connection therewith, regardless of the use made *of such property;

(12) Flowers, plants, shrubbery, trees, fertilizer, sprays and insecticides, bulbs and seeds, and supplies and equipment used in connection therewith;

(13) Fuel oil and petroleum products for heating purposes; steam and natural, manufactured and bottled gas; *electricity; intra-state telegraph service and intra-state telephone service;*

* "or" in original.

(14) Hardware, tools, paint and painting materials, and equipment;

(15) Live animals, fish and birds (except when purchased as food for human consumption), and supplies, food and equipment used in connection therewith;

(16) Radios, television, receiving sets and receiving equipment, phonographs, sound recorders, musical instruments or any combination of the foregoing, and parts, components and accessories for the same, and records and sheet music;

(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, when in the latter case, the purchase is for consumption on the premises of the vendor or when furnished, prepared or served for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor. For the purposes of this clause (17), beverages shall not include malt and brewed beverages and spirituous and vinous liquors.

(18) 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.

(m) "Taxpayer." Any person required to pay or collect the tax imposed by this act.

(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 [except that the term "use" shall not include the following:].

(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 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.*

(4) The obtaining by a purchaser of the service of repairing 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: Provided, however, That the term "use" shall not include—

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

[(2)] *(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.*

[(3)] *(c) The use or consumption of tangible personal property including, but not limited to machinery and equipment 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 [(1) and (2)] *(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 [(1), (2) and (3)] *(i), (ii) and (iii)* shall not apply to tangible personal property or services to be used or consumed in managerial sales or other [non-operation] *non-operational* activities.

* "or" in original.

** "paragraphs" in original.

*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 [is] 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.

(o) "Vendor." Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this act but not including an employe who in the ordinary scope of employment renders services to his employer in exchange for wages or salaries.

Sections 201 and 202, act of March 6, 1956, P. L. 1228, added May 24, 1956, P. L. 1707, amended.

Section 3. Sections 201 and 202 of the act, added May 24, 1956 (P. L. 1707), are amended to read:

Section 201. Imposition of Tax.—(a) There is hereby imposed upon each separate sale at retail [of tangible personal property] *as defined herein* within this Commonwealth a tax of three and one-half 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 per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who [uses such property] *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 [with respect to such property] *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 per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred at the rate of three per cent under this subsection prior to its amendment.*

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

* "paragraph" in original.

(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 [forty-one cents (41¢)] *thirty cents (30¢)*, one cent (1¢) shall be collected.

(c) If the purchase price is [forty-one cents (41¢)] *thirty cents (30¢)* or more but less than [seventy-one cents (71¢)] *sixty cents (60¢)*, two cents (2¢) shall be collected.

(d) If the purchase price is [seventy-one cents (71¢)] *sixty cents (60¢)* or more but less than [one dollar and one cent (\$1.01)] *ninety cents (90¢)*, three cents (3¢) shall be collected.

(e) If the purchase price is [more than one dollar (\$1.00)], three 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] *ninety cents (90¢) or more but less than one dollar and twenty cents (\$1.20)*, 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.

Section 4. Section 203 of the act, added May 24, 1956 (P. L. 1707) and amended April 5, 1957 (P. L. 34), May 9, 1957 (P. L. 114) and July 8, 1957 (P. L. 531), is amended to read:

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

(a) The sale at retail or use of tangible personal property (other than motor vehicles, trailers and semi-trailers) or services sold by or purchased from a person not a vendor in an isolated transaction or sold by or purchased from a person who is a vendor but is not a vendor with respect to the tangible personal property or services sold or purchased in such transaction: Provided, That inventory and stock in trade so sold or

Section 203, act of March 6, 1956, P. L. 1228, added May 24, 1956, P. L. 1707, and amended April 5, 1957, P. L. 34, May 9, 1957, P. L. 114 and July 8, 1957, P. L. 531, further amended.

purchased, shall not be excluded from the tax by the provisions of this subsection. *

(b) The use of tangible personal property purchased by a nonresident person outside of, and brought into this Commonwealth for use therein for a period not to exceed seven days, or for any period of time when such nonresident is a tourist or vacationer and, in either case, not consumed within the Commonwealth.

(c) The sale at retail or use of supplies and materials to be used in the fulfillment of contracts for the construction, reconstruction, remodeling, repairing, maintenance or sale of real estate when such contract was entered into

(1) Prior to March 7, 1956, and is at a fixed price not subject to change or modification by reason of the tax imposed by this act; or

(2) Pursuant to the obligation of a bid or bids submitted prior to March 7, 1956, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of the tax imposed by this act.

Provided, however, That notice of such contract or bid by reason of which an exclusion is claimed under this subsection (c) must be given by the taxpayer to the department on or before June 15, 1956.

(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, 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.

[(d)] (e) The sale at retail to or use by (1) any charitable organization, volunteer firemen's organization or nonprofit educational institution, or (2) a religious organization for religious purposes of tangible personal property or services: Provided, however, That the exclusion of subsection [(d)] (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.

[(e)] (f) The sale at retail, or use of tubes and replacement parts directly used in broadcasting radio and television programs by licensed stations.

[(f)] (g) The sale at retail, or use of gasoline and other motor fuels, the sales of which are otherwise subject to excise taxes under the "Liquid Fuels Tax Act," May 21, 1931 (P. L. 194), as amended, and the "Fuel Use Tax Act," January 14, 1952 (P. L. 1965), as amended.

[(g)] (h) The sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition.

[(h)] (i) The sale at retail to, or use by the United States, this Commonwealth or its instrumentalities or political subdivisions of tangible personal property *or services*.

[(i)] (j) The sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, non-returnable containers and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by section 201.

[(j)] (k) (1) * Sale at retail or use of vessels designed for commercial use of registered tonnage of fifty tons or more when produced by the builders thereof upon special order of the purchaser;

(2) Sale at retail of tangible personal property used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of fifty tons or more upon special order of the purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of or for the account of the owner.

[(k)] (l) The sale at retail or use of tangible personal property *or services* to be used or consumed as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels to be operated principally outside the limits of the Commonwealth.

[(l)] (m) The sale at retail or use of medicine on prescription, crutches and wheelchairs for the use of cripples and invalids, artificial limbs, artificial eyes and artificial hearing devices when designed to be worn on the person of the purchaser or user, false teeth and materials used by a dentist in dental treatment, eyeglasses

* "The" in original.

when especially designed or prescribed by an ophthalmologist, oculist or optometrist for the personal use of the owner or purchaser and artificial braces and supports designed solely for the use of crippled persons.

[(m)] (n) The sale at retail or use of coal.

[(n)] (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.

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, 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.

Sections 204 and 205, act of March 6, 1956, P. L. 1228, added May 24, 1956, P. L. 1707, amended.

Section 5. Sections 204 and 205 of the act, added May 24, 1956 (P. L. 1707), are 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 [per cent (3%)] and one-half per cent (3½%) 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 of the tax paid pursuant to the election pro-

vided 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.

Section 205. Credit Against Tax.—A credit against the tax imposed by this act shall be granted with respect to tangible personal property or services purchased for use outside the Commonwealth equal to the tax paid to another state by reason of the imposition by such other state of a tax similar to the tax imposed by this act: Provided, however, That no such credit shall be granted unless such other state grants substantially similar tax relief by reason of the payment of tax under this act.

Section 6. Section 301 of the act and its amendments are repealed: Provided, however, That this repeal shall not affect any liability incurred or affect any prosecution pending or to be instituted to punish any offense under the authority of the repealed section.

Section 7. The act is amended by adding, after the Article heading of Article III, a new section to read

Section 301. Licenses.—(a) Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not hitherto obtained a license from the department, shall, on or before the thirtieth day after the effective date of this act or prior to the beginning of business thereafter, make application to the department, on a form prescribed by the department, for a license. If such person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) The department shall, after the receipt of an application, issue the license applied for under subsection (a) of this section. The license shall be nonassignable and of permanent duration.

(c) Any person who, upon the expiration of sixty days after the effective date of this act, shall maintain a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department pursuant to the provisions of this section, shall be guilty of a summary offense, and upon conviction thereof in a

Section 301. act of March 6, 1956, P. L. 1228, as amended, repealed.

Act of March 6, 1956, P. L. 1228, amended by adding a new section 301.

summary proceeding, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), and in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. The penalties imposed by this section shall be in addition to any other penalties imposed by this act.

(d) Failure of any person to obtain a license shall not relieve him of liability to pay the tax imposed by this act.

Clause (3), subsection (a), section 520, act of March 6, 1956, P. L. 1228, amended July 8, 1957, P. L. 584, further amended.

Section 8. Clause (3) of subsection (a) of section 520 of the act, amended July 8, 1957 (P. L. 584), is amended to read:

Section 520. Time for Filing Returns.—(a) Monthly and Quarterly Returns:

* * * * *

(3) For the period beginning July 1, 1957, and ending December 31, 1957, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the first calendar quarter of 1957 equals or exceeds six hundred dollars (\$600). For the year 1958, and for each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds six hundred dollars (\$600). Such returns shall be filed on or before the fifteenth day of the second month succeeding the month with respect to which the return is made, except that the return due for the month of April, 1959, shall be filed on or before the twentieth day of May next following, and the return due for the month of April, 1961, shall be filed on or before the twentieth day of May next following. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

Section 546, act of March 6, 1956, P. L. 1228, amended May 24, 1956, P. L. 1707, and May 9, 1957, P. L. 114, further amended.

Section 9. Section 546 of the act, amended May 24, 1956 (P. L. 1707) and May 9, 1957 (P. L. 114), is amended to read:

Section 546. Collection of Tax.—(a) Collection by Department. The department shall collect the tax in the manner provided by law for the collection of taxes imposed by the laws of this Commonwealth.

(b) Collection by Persons Maintaining a Place of Business in the Commonwealth. (1) Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services, the sale or use of which is subject to tax, shall

collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department.

(2) Any person required under this act to collect tax from another person, who shall fail to collect the proper amount of such tax, shall be liable for the full amount of the tax which he should have collected.

(c) Exemption Certificates. If the tax does not apply to the sale or lease of tangible personal property *or services*, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially such form as the department may, by regulation, prescribe. Where the tangible personal property *or service* is of a type which is never subject to the tax imposed or where the sale or lease is in interstate commerce, such certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. An exemption certificate, which on its face discloses a valid basis of exemption, if taken in good faith, shall relieve the vendor from any liability for the tax.

(d) Direct Payment Permits. The department may authorize a purchaser or lessee who acquires tangible personal property *or services* under circumstances which make it impossible at the time of acquisition to determine the manner in which [it] *the tangible personal property or service* will be used, to pay the tax directly to the department and waive the collection of the tax by the vendor. No such authority shall be granted or exercised, except upon application to the department, and the issuance by the department, in its discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the department, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the department by the permit holder.

Section 10. Section 573 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Section 573. Crimes.—(a) Fraudulent Return. Any person who with intent to defraud the Commonwealth shall wilfully make, or cause to be made, any return required by this act, which is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2,000), or undergo imprisonment not exceeding three years, or both.

Section 573, act of March 6, 1956, P. L. 1228, amended May 24, 1956, P. L. 1707, further amended.

(b) Other Crimes. Except as otherwise provided by subsection (a) of this section, any person maintaining a place of business in this Commonwealth, who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this act will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property *or services described in subclauses (2), (3) and (4) of section 2 (j) of this act* sold or, if added, that the tax or any part thereof will be refunded, other than when such person refunds the purchase price because of such property being returned to the vendor, and any person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property *or said services* the sale or use of which by the purchaser is subject to tax hereunder, who shall wilfully fail or refuse to collect the tax from the purchaser and remit the same to the department, and any person who shall wilfully fail, neglect or refuse to file any return or report required by this act or any taxpayer who shall refuse to pay any tax, penalty or interest imposed or provided for by this act, or who shall wilfully fail to preserve his books, papers and records as directed by the department, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales, purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property *or said services*, or shall make, utter or issue a false or fraudulent exemption certificate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both: Provided, however, That any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at such place of business without being subject to the above penalty and fines. The penalties imposed by this section shall be in addition to any *other penalties imposed by any provision of this act.

* "other" omitted in original.

Section 11. Section 602 of the act, added May 24, 1956 (P. L. 1707), is amended to read:

Section 602. Sales Presumed to be at Retail.—

Every sale of tangible personal property or services described in subclauses (2), (3) and (4) of section 2 (j) shall be presumed to be at retail and to be subject to the tax imposed by this act.

Section 12. The act is amended, by adding after section 604. *a new **section to read:

Section ***604.1. *Disposition of Proceeds.*—All taxes collected under the provisions of this act shall be used for purposes of public education in so far as permitted by the requirements of the Constitution of Pennsylvania.

Section ****13. *Saving Clause.*—Nothing contained in this amendatory act shall be construed to relieve any person from any taxes, penalties or interest or the filing of returns imposed or required by the provisions of this act prior to the effective date of this amendment or affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of this act prior to the effective date of this amendment, or prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of such act, or for the assessment, collection or recovery of taxes, penalties or interest due or owing the Commonwealth under this act prior to the effective date of this amendment.

Section *****14. This act shall take effect immediately.

- "two" in original.
- "sections" in original.
- "605" in original.
- "606" in original.
- "13" in original.

APPROVED—The 15th day of April, A. D. 1959.

DAVID L. LAWRENCE

No. 15

AN ACT

Amending the Act of March 6, 1956 (P. L. 1256), entitled "An act imposing a tax on the occupancy of rooms in hotels, inns, motels, tourist homes, houses, or courts, lodging houses and rooming houses, defined herein as hotels; prescribing the manner of collecting the tax; providing for licenses; imposing duties on and prescribing powers of the Department of Revenue; and fixing penalties," increasing the rate of tax, clarifying the liability of hotel operators for tax collections, providing standards for commission allowances.

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

Section 602, act of March 6, 1956, P. L. 1228, added May 24, 1956, P. L. 1707, amended.

Act of March 6, 1956, P. L. 1228, amended by adding a new section 604.1.

Saving clause.

Effective immediately.

The Hotel Occupancy Tax Act.