

## No. 491

## 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 and upon the occupancy of hotel rooms; providing for licenses, reports and payment of tax, interest and penalties, assessments, collections, liens, reviews and appeals; prescribing crimes and offenses and penalties \*therefor; providing for the application of general laws in the administration and enforcement of this act; conferring powers and imposing duties upon the Department of Revenue, public officers, manufacturers, wholesalers, retailers, operators, corporations, partnerships, associations and individuals and making an appropriation," defining and creating an exemption for processing, and further regulating the time of making returns and payment thereof, and eliminating the provision for commissions for collection and remittance of the tax, and changing the fee to be charged when checks issued in payment of tax or for other purposes are returned as uncollectible.

Selective Sales  
and Use Tax  
Act.

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

Section 2, act of  
March 6, 1956,  
P. L. 1228,  
amended April  
15, 1959, P. L.  
20, amended by  
adding a new  
clause (c.1).

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 clause (c) of such section, a new clause to read:

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:

\* \* \* \* \*

(c.1) "Processing." *The performance of the following activities when engaged in as a business enterprise:*

(1) *The cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.*

(2) *The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.*

(3) *The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.*

\* "therefore" in original.

(4) *The rolling, drawing or extruding of ferrous and non-ferrous metals.*

(5) *The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, \*gratings, fire escapes or railings (not including fabrication work done at the construction site).*

(6) *The preparation of animal feed or poultry feed for sale.*

(7) *The production, processing and bottling of non-alcoholic beverages for wholesale distribution.*

(8) *The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.*

(9) *The milling for sale of flour or meal from grains.*

(10) *The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.*

(11) *The processing of used lubricating oils.*

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Section 2. Clauses (j) and (n) of section 2 of the act, amended August 20, 1959 (P. L. 729) and November 21, 1959 (P. L. 1556), are amended to read:

Clauses (j) and (n), section 2 of the act, amended August 20, 1959, P. L. 729 and November 21, 1959, P. L. 1556, further amended.

Section 2. Definitions.—

\* \* \* \* \*

(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, 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."

(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 prop-

\* "cratings" in original.

erty for a consideration, whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate. 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 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 April 15, 1959, pursuant to a rental or service contract or other arrangement (other than 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;

*(d) The processing of personal property as defined in clause (c.1) of this section.*

The exclusions provided in paragraphs (a), [and] (b) and (d) 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) and (d) 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 definition 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".

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(n) "Use." (1) The exercise of any right or power incidental to the ownership, custody or possession of

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\* "or" in original.

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 services 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."

(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, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate. 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 dry-cleaning, 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 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 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;

(iv) *The processing of personal property as defined in subclause (c.1) of this section.*

The exclusions provided in subparagraphs (i) [and] (ii) and (iv) 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) and (iv) 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" 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 "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 use of tangible personal property purchased at retail upon which the services described in subclauses (2), (3) and (4) of this clause (n) have been performed shall be deemed to be a use of said services by the person using said property.

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Subsection heading, subsection (a), and clause (3), subsection (a), section 520 of the act, amended April 15, 1959, P. L. 20, further amended.

Section 3. The subsection heading of subsection (a) and clause (3) of subsection (a) of section 520 of the act, amended April 15, 1959 (P. L. 20), are amended to read:

Section 520. Time for Filing Returns.— (A) Monthly, *Bimonthly* and Quarterly Returns:

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(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, and the return due for the month of May, 1962, and for the month of May of each year thereafter, shall be filed on or before the twentieth day of June next following. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

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Section 4. Subsection (a) of section 520 of the act is amended by adding, at the end thereof, a new clause to read:

Subsection (a), section 520 of the act, amended by adding a new clause (4).

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

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(4) For the year 1962, and for each year thereafter, every licensee required to file a quarterly return for the second calendar quarter shall file a single return for the months of April and May on or before the fifteenth day of June next following. The filing of such return shall not relieve the licensee of the duty to file a return on or before the last day of July next following and to remit therewith tax for the month of June.

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Section 5. Subsection (a) of section 531 of the act, amended April 4, 1957 (P. L. 34), is amended to read:

Subsection (a), section 531 of the act, amended April 4, 1957, P. L. 34, further amended.

Section 531. Time of Payment.—(a) Monthly, Bi-monthly and Quarterly Payments. The tax imposed by this act and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 520 and such payment must accompany the return for such preceding period.

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Section 6. Section 534 of the act, as amended, is repealed.

Section 534 of the act, as amended, repealed.

Section 7. Subsection (d) of section 571 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Subsection (d), section 571 of the act, amended May 24, 1956, P. L. 1707, further amended.

Section 571. Additions to Tax.— \* \* \*

(d) Uncollectible Checks. Whenever any check issued in payment of any tax, or for any other purpose, shall be returned to the department as uncollectible, the secretary shall charge a fee of [five dollars (\$5)] *ten percent of the face amount thereof*, plus all protest fees, to the person presenting such check to him, to cover the cost of its collection in addition to the interest and penalties otherwise provided for by this act: *Provided, however, That the additions imposed hereby shall not exceed two hundred dollars (\$200) nor be less than ten dollars (\$10).*

\* \* \* \* \*

Section 8. This act shall take effect immediately and the provisions of sections 1 and 2 shall be retroactive to March 7, 1956.

Effective dates.

APPROVED—The 23rd day of August, A. D. 1961.

DAVID L. LAWRENCE