

**CHAPTER 60. SALES AND USE TAX  
PRONOUNCEMENTS—STATEMENTS OF POLICY**

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**§ 60.1. Building maintenance or building cleaning services.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies—*

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Boiler—*A container which is used in the generation of steam from water or the production of hot water which is part of a heat distribution system. The term does not include, as part of the boiler, pipes used to circulate the steam or water, pumps, humidifiers, chimneys, utility lines into the boiler, water makeup systems or hot water heaters which are not part of the heat distribution system.

*Building—*A structure which usually has a roof and walls and is intended to be permanently affixed to real property. The term includes equipment which is an integral part of the structure such as central heating and air conditioning

units, electrical substations, fuel tanks, water tanks or chillers. For purposes of this section, an enclosed telephone booth is a building.

*Building cleaning services*—The performance of services which include the removal of dirt, dust, grease or grime on a building or inside of a building and the keeping of the building and its contents in a clean, neat, polished or orderly appearance. The term includes janitorial, maid or housekeeping services, office or building cleaning, window cleaning, floor waxing, chimney cleaning, acoustical tile cleaning, venetian blind cleaning, cleaning or degreasing service stations, or cleaning enclosed telephone booths.

*Building maintenance services*—The performance of routine and periodic services upon a building which keeps a building in a satisfactory operating condition. The term includes cleaning, oiling, greasing and replacing parts. The term does not include building repair services.

*Building repair services*—Services to a building which do not qualify as a building maintenance service or building cleaning service.

*Employe*—A person who is paid for his work or services by a vendor, including persons on the payroll or independent contractors.

*Employe costs*—Payments made or withheld by a vendor to an employe, including wages, salaries, bonuses, commissions, employment benefits, expense reimbursements, payroll and withholding taxes, employer paid Social Security Tax or Federal and Pennsylvania unemployment taxes. The term does not include employe recruiting, training, liability insurance, bonding expenses and other costs.

*Employment benefits*—Paid leave such as vacation; sick leave; health care such as hospitalization, medical, dental or eye care; retirement benefits; or worker's compensation.

*Expense reimbursement*—Meals, lodging, mileage or similar expenses incurred by the employe on behalf of the vendor for which the employe is reimbursed.

*Furnace*—An enclosed structure which produces heat and is part of a building heating system such as a central furnace; coal, oil or gas furnace; heat pump; or wood stove. The term does not include, as part of a furnace, the duct work, humidifier, chimney, air cleaner, utility lines into the furnace or similar items. The term does not include radiant heating systems, electric baseboard heating systems, portable heaters, fireplaces or similar systems which are not enclosed structures.

*Gross fee*—The total amount charged by the vendor excluding sales tax.

*Interior office building cleaning services*—Building cleaning services which are performed on the interior of an office building.

*Office building*—A building which is used predominantly for the transaction of business or the performance of a business service. The term includes manufacturing facilities, processing facilities, research and development facilities, public utility facilities, warehouses, laboratories, hospitals, libraries, retail

stores, banks, stock brokerages, service stations, repair garages, parking garages, movie theaters, race tracks, bars, restaurants and hotels. A building is predominantly used for the transaction of business or the performance of a business service if more than 50% of the total square footage of the building is actually used for these purposes. The term does not include apartment houses, retirement homes, condominiums and private residences unless the building is predominantly used for the transaction of business or the performance of a business service.

*Service fee*—Gross fees less separately stated employe costs.

(b) *Scope.*

(1) Effective October 1, 1991, the sale at retail or the use of building maintenance services or building cleaning services is subject to tax when the services are performed in this Commonwealth. The performance of building repair services on buildings or other property which is permanently affixed to realty are not taxable.

(2) Between October 1, 1991, and January 1, 1992, painting and wallpapering of buildings, other than new construction, and maintenance services or cleaning services of boilers, furnaces or parts thereof were taxable. Effective January 1, 1992, the following services are not taxable: the interior painting, wallpapering and application of other like coverings to walls, ceilings or floors; the exterior painting of buildings; and maintaining, cleaning, or repairing of boilers, furnaces or parts thereof. Effective July 1, 2000, the maintenance or repairs of residential air-conditioning equipment or parts thereof are not taxable.

(3) Between October 1, 1991, and March 31, 1995, the entire purchase price of interior office building cleaning services was taxable. Effective April 1, 1995, separately stated employe costs related to interior office building cleaning services are not taxable if these costs are specifically itemized or listed in aggregate on the invoice.

*Example:* An attorney practices law from an office located in a private residence. The office, which has its own entrance and is a separate area in the private residence, comprises less than 50% of the total square footage of the private residence. The attorney contracts with a cleaning service to clean only the office portion of the private residence. Because the private residence is not predominantly used as an office building, employe costs related to the building cleaning services, even if separately stated, are subject to sales tax.

(4) When interior office building cleaning services are provided by a sole proprietor, employe costs also include net profit or loss as reportable on the sole proprietor's Pennsylvania or Federal Schedule C for the prior year. When interior office building cleaning services are provided by a partnership, employe costs also include the partners' net profits from business and guaranteed payments for services rendered as reportable for purposes of Pennsylvania

individual income tax for the prior year. Gross sales minus net profit divided by gross sales equals the ratio which is applied to invoices to determine the taxable amount of the sale by a sole proprietor or a partnership.

*Example:* In 1994, "A," a sole proprietor, reported gross sales of \$50,000 and a net profit of \$20,000. The amount of "A's" gross sales which is subject to tax is \$30,000 or 60%. During 1995, "A" shall collect tax on 60% of the amount invoiced for interior office building cleaning services.

(5) When building maintenance services or building cleaning services are provided by a lessor to a lessee, the providing of the services, including separately stated employe costs, is taxable unless the services are incidental to the value of the lease. For purposes of this section, incidental services would be the performance of building maintenance services or building cleaning services to the area outside of the building being leased or the common areas within the building.

*Example:* An apartment complex is comprised of 100 separate units and the apartment owner provides general maintenance and cleaning outside the building and the hallways inside the building. The providing of these maintenance and cleaning services is not taxable because the services are incidental to the providing of an apartment.

(c) *Building cleaning services.* Building cleaning services include:

- (1) Housekeeping services.
- (2) Office cleaning, such as window cleaning, carpet cleaning, floor waxing and furniture polishing.
- (3) Chimney and fireplace cleaning, inside and outside of the building.
- (4) Cleaning light fixtures.
- (5) Telephone booth cleaning.
- (6) Cleaning and degreasing of service stations equipment and areas.
- (7) Indoor pool cleaning.
- (8) Fire restoration cleaning services, not including building repair services.
- (9) Siding or exterior cleaning of a building, including the pressure washing of a building.
- (10) Duct work cleaning.
- (11) Acoustical tile cleaning.
- (12) Venetian blind cleaning.
- (13) Examples.

(i) A contractor performs fire restoration services on a building. These services include both cleaning the building and repairing it. The invoice separately states the charges for cleaning services and the charges for repair services. Only the charges for cleaning services are subject to sales tax. The charges for repair services are not taxable.

- (ii) A contractor performs fire restoration services on a building. These services include both cleaning the building and repairing it. The invoice does not separately state the charges for cleaning services and the charges for repair services. All of the charges are subject to sales tax.
- (d) *Building maintenance services.* Building maintenance services include:
- (1) General maintenance of an apartment building.
  - (2) Replacing light bulbs.
  - (3) Elevator maintenance, and burglar and security alarm maintenance.
  - (4) Inspections in connection with maintenance services.
  - (5) Central air conditioning maintenance.
  - (6) Changing of air filters.
- (e) *Examples of services which are not building maintenance services or building cleaning services.* The following are examples of services which are not building maintenance services or building cleaning services:
- (1) Building repair services to buildings.
  - (2) Maintenance of boilers, furnace or parts thereof (effective January 1, 1992).
  - (3) Cleaning of outdoor in-ground pools.
  - (4) Painting or wallpapering interior walls, ceilings or floors.
  - (5) Exterior building painting.
  - (6) Sandblasting real property; pointing of bricks.
  - (7) Carpet dying.
  - (8) Snow plowing.
  - (9) Plumbing repairs, such as opening drains or repairing water leaks.
  - (10) Driveway sealing.
  - (11) Drapery and upholstery cleaning which are otherwise taxable as services to tangible personal property.
  - (12) Maid services performed in accordance with a two party transaction where the individual for whom the services are performed is required to withhold Federal Income and Social Security Taxes.
  - (13) Maintenance of residential air-conditioning equipment or parts thereof (effective July 1, 2000).
- (f) *Interior office building cleaning services.* When a taxable building cleaning service enumerated in subsection (c) is performed on the interior of an office building, the purchase price is computed in accordance with subsection (g).
- (g) *Purchase price.*
- (1) *Building maintenance and cleaning services.* The total amount charged for performing building maintenance services or building cleaning services is subject to tax. The failure to separately state taxable building maintenance services or building cleaning services from other nontaxable services on the invoice requires the charging of tax on the total invoice amount.
- Example:* The lease of offices within a building includes the providing of janitorial services for each of the offices. Since the janito-

rial services are not incidental to the lease of the offices, the janitorial services are taxable and if the services are not separately stated, the entire lease amount is taxable.

(2) *Interior office building cleaning services.*

(i) There are three methods to compute the purchase price of interior office building cleaning services:

(A) *Gross fee method.* To the extent that employe costs are not separately stated on the invoice, the purchase price is the gross fee charged by the vendor.

(B) *Actual service fee method.* To the extent that employe costs are separately stated on the invoice, the purchase price is the actual service fee charged by the vendor.

(C) *Average employe cost or average service fee method.* A vendor may, at its own risk, calculate the purchase price based upon the average employe cost or average service fee applicable to its total Pennsylvania business during a prior representative period. If it is determined that the average employe cost reported was higher than the actual employe cost or if the average service fee reported was less than the actual service fee, the vendor will be assessed a tax deficiency plus interest and penalties.

(ii) If either the actual service fee, average employe cost or average service fee method is used, at a minimum, the invoice provided to the purchaser shall contain the following information:

Gross Fee	\$xxxxx	\$xxxxx
Less: Employe Costs	<u>-xxxxx</u>	
Taxable Service Fee	xxxxx	
PA Sales Tax Rate	xxxxx	
PA Sales Tax Due	<u>\$xxxxx</u>	<u>xxxxx</u>
Total Invoice Amount		\$xxxxx

(3) *Taxable portion of purchase price.* The taxable portion of the purchase price for interior office building cleaning services shall be computed in accordance with this section. Chapter 33 (relating to computation of tax) does not apply to the extent that Chapter 33 is inconsistent with this section.

(h) *Exclusions.*

(1) Building maintenance services or building cleaning services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) The vendor of building maintenance services or building cleaning services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its building maintenance services or building cleaning services. The vendor may also purchase building maintenance services or building cleaning services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of another taxable service which it may use in the performance of its building maintenance services or building cleaning services.

(i) The following are examples of property which may be purchased exempt for resale when used in the performing of building maintenance services or building cleaning services:

- (A) Polishes, waxes and air fresheners.
- (B) Parts, belts, freon, filters and fittings.
- (C) Light bulbs.

(ii) The following are examples of property which is taxable when used in the performing of building maintenance services or building cleaning services:

- (A) Cleaners and soaps.
- (B) Brooms, mops, brushes, dust rags, buckets, polishers, scrubbers and ladders.
- (C) Grease guns, oil cans, testing and inspection equipment.
- (D) Administrative supplies.

**Source**

The provisions of this § 60.1 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 176; amended October 6, 1995, effective October 7, 1995, 25 Pa.B. 4233; amended March 10, 2006, effective March 11, 2006, 36 Pa.B. 1130. Immediately preceding text appears at serial pages (268443) to (268444), (200673) to (200676) and (268445).

**§ 60.2. [Reserved].**

**Source**

The provisions of this § 60.2 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 178; reserved August 4, 2000, effective August 5, 2000, 30 Pa.B. 3938. Immediately preceding text appears at serial pages (200677) to (200679).

**§ 60.3. Disinfecting or pest control services.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies*—

(i) Tangible personal property which is consumed in one of the following manners:

- (A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of this property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Agricultural commodity*—An unprocessed farm product.

*Disinfecting*—The performance of services to property which destroys or sanitizes harmful microorganisms, including deodorizing.

*Fumigation*—The performance of services to property which disinfects or destroys pests through the use of smoke, gas, gaseous chemicals or other fumigants.

*Pest*—A form of animal life which is considered detrimental, including termites, insects or rodents. The term does not include plant life including weeds.

*Pest control*—The performance of services to trees, shrubs, animals, buildings and other property which neutralizes, exterminates, traps, recovers or prevents pests, including fumigation.

(b) *Scope*. Effective October 1, 1991, the sale at retail or use of disinfecting or pest control services is subject to tax when these services are:

(1) Performed on real property which is located in this Commonwealth.

(2) Performed on tangible personal property located in this Commonwealth unless the property is delivered to a location outside of this Commonwealth.

(3) Performed on tangible personal property outside this Commonwealth and the property is delivered to a location in this Commonwealth.

(c) *Taxable examples*. The following are examples of taxable disinfecting or pest control services:

(1) Inspection or certification provided in conjunction with disinfecting, deodorizing, exterminating, fumigating or pest control services whether or not billed separately.

(2) Service policy fees or renewals for disinfecting, deodorizing, exterminating, fumigating or pest control services.

(3) Deodorizing and disinfecting buildings, restrooms, washrooms or other areas in a building.

(4) Disinfecting hot tubs, food processing equipment, wearing apparel, medical instruments, trucks, containers or other property.

(5) Pest proofing.

(6) Disinfecting, deodorizing, exterminating, fumigating or pest control services purchased by persons engaged in manufacturing, processing, rendering public utilities services, mining, printing or photography.

(d) *Examples*. The following are examples of services which are not disinfecting or pest control services:

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(1) Inspection or certification not provided in conjunction with disinfecting, fumigating, deodorizing or pest control services.

(2) Application of herbicides or fungicides to property other than lawns.

(3) Integrated pest management planning programs not involving other pest control services.

(e) *Purchase price.* Tax shall be imposed on the total charge for disinfecting or pest control services. The failure to state taxable disinfecting or pest control services from other nontaxable charges on the invoice requires the charging of tax on the total invoice amount.

(f) *Exclusions.*

(1) Disinfecting or pest control services are exempt if they are purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing or the public utility exclusion does not apply.

(2) The vendor of disinfecting or pest control services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its disinfecting or pest control services. The vendor may also purchase disinfecting or pest control services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of other taxable services which it may use in the performance of its disinfecting or pest control services.

(i) The following are examples of property which may be purchased exempt for resale when used in the performing of disinfecting or pest control services:

- (A) Insecticides or other similar types of chemicals.
- (B) Dispensers and dispenser paper towels.
- (C) Dispenser soap and dispenser deodorants.

(ii) The following are examples of property which are taxable when used in the performing of disinfecting or pest control services:

- (A) Spray applicators.
- (B) Mops and brushes.
- (C) Animal traps.
- (D) Administrative supplies.

(3) The spraying of gypsy moth control chemicals on trees which are intended for commercial harvesting is exempt.

(4) The purchase of disinfecting or pest control services which are predominately used directly in farming, dairying, agriculture, floriculture and horticulture, effective January 1, 1992, is exempt.

(5) The fumigation of agricultural commodities or containers for agricultural commodities, effective January 1, 1992, is exempt.

**Source**

The provisions of this § 60.3 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 179.

**§ 60.4. Help supply services.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies*—

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of this property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Employe*—A person who is paid for his work or services by a vendor, including persons on the payroll or independent contractors.

*Employe costs*—Payments made or withheld by a vendor to an employe, including wages, salaries, bonuses, commissions, employment benefits, expense reimbursements, payroll, withholding taxes, employer paid social security tax or Federal and Pennsylvania unemployment taxes. The term does not include employe recruiting, training, liability insurance, bonding expenses and other costs.

*Employment benefits*—Paid leave such as vacation; sick leave; health care such as hospitalization, medical, dental or eyeglasses; retirement benefits; or worker's compensation.

*Expense reimbursement*—Meals, lodging, transportation or another expense incurred by the employe on behalf of the vendor for which the employe is reimbursed.

*Gross fee*—The total amount charged by the vendor excluding sales tax.

*Help supply service*—The providing of an individual by a vendor to a purchaser whereby the individual is an employe of the vendor and the work performed by the individual is under the supervision of the purchaser.

(i) The term includes the type of service provided by labor and manpower pools, employe leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services.

(ii) The term does not include farm labor, home health care, human health-related services, including nursing and personal care. Personal care

includes providing at least one of the following types of assistance to persons with limited ability for self-care:

- (A) Dressing, bathing or feeding.
- (B) Supervising self-administered medication.
- (C) Transferring a person to or from a bed or wheelchair.
- (D) Routine housekeeping chores when provided in conjunction with and supplied by the provider in clause (A), (B) or (C).

*Service fee*—Gross fees less separately stated employe costs.

*Supervision*—Directing the work activities of the vendor's employe either directly or through a supervisor provided by the vendor.

(b) *Scope.* Effective October 1, 1991, the sale at retail or use of help supply service is subject to tax. If the delivery or use of the service occurs in this Commonwealth, it is subject to tax. For purposes of this section, delivery means an employe reporting for work at a location in this Commonwealth and use means an employe performing work at a location in this Commonwealth. If the purchaser is located in this Commonwealth, it is presumed that delivery occurred at a location in this Commonwealth unless otherwise documented. These principles may be illustrated as follows:

(1) A Pennsylvania purchaser requests a vendor's employe to report to the purchaser's location in this Commonwealth. This is a taxable transaction.

(2) A Pennsylvania purchaser requests a vendor's employe to report to its out-of-State location. No tax is due. However, if the employe does enter this Commonwealth for work purposes, that portion of the transaction is taxable. For example, if the billing period is weekly and the purchaser is billed \$100 a day and the employe works 1 day in this Commonwealth, \$100 is the gross fee that is reportable in this Commonwealth.

(3) A non-Pennsylvania purchaser requests a vendor's employe to report to a location in this Commonwealth. This is a taxable transaction.

(4) A non-Pennsylvania purchaser requests a Pennsylvania vendor's employe to report to its out-of-State location. No tax is due. If the employe subsequently reports to a location in this Commonwealth, that portion of the transaction is taxable. If the employe is merely passing through this Commonwealth, for example a truck driver traveling from New York to Ohio via Pennsylvania, no tax would be due.

(c) *Purchase price.*

(1) The purchase price for help supply services subject to tax for the period October 1, 1991, to December 31, 1991, is the gross fee charged.

(2) Effective January 1, 1992, there are three methods to compute the purchase price subject to tax:

- (i) *Gross fee method.* To the extent that employe costs are not itemized or stated on the invoice as in subparagraph (ii), the service fee shall be the gross fee.

(ii) *Service fee method.* The service fee charged by the vendor is subject to tax.

(iii) *Average employe cost or average service fee method.* A vendor may, at its own risk, compute its service fee by utilizing an average employe cost or average service fee applicable to its total Pennsylvania business. If it is determined that the average employe cost reported was higher than the actual costs or if the average service fee reported was less than the actual amount, the vendor will be assessed a tax deficiency plus interest and penalties.

(3) If the service fee, average employe cost or average service fee methods are used, at a minimum, the invoice provided to the purchaser shall contain the following information:

Gross Fee	\$xxxxx	\$xxxxx
Less: Employe Costs	<u>-xxxxx</u>	
Taxable Service Fee	xxxxx	
PA Sales Tax Rate	xxxxx	
PA Sales Tax Due	<u>\$xxxxx</u>	<u>xxxxx</u>
Total Invoice Amount		\$xxxxx

(d) *Examples.* The following are examples of taxable help supply services:

(1) A contractor needs immediate help and obtains the services of employes of another contractor.

(2) Transactions between affiliated groups including common paymasters. If the gross fees and employe costs are identical, no service fee exists and no tax is due.

(3) Transactions identified as management fees which include taxable help supply services are taxable upon the total charge unless the taxable help supply services are separately stated.

(4) A law firm needs a secretary for a day and obtains the secretary from a vendor.

(5) A law firm requires the services of a specialized attorney and obtains the attorney from a vendor.

(6) A construction company requires the services of an engineer for 2 years and obtains the engineer from a vendor.

(7) An accounting firm acquires the contract for an assignment that requires more personnel than they have available. The firm contracts with another accounting firm to provide the additional personnel required. The contract for the additional personnel is a taxable transaction. If the two firms had bid the assignment contract as a joint venture, no tax would be due.

(8) A business with one computer operator requires another operator for 2 days a week and obtains an operator from a vendor. If the company had hired the second operator as an employe, no tax would be due.

(9) Exempt equipment rental with an operator. When equipment is exempt and the fee for the operator is separately stated, the operator fee is taxable. If the operator fee is not separately stated, the total charge is taxable.

(e) *Examples.* The following are examples of services which are not help supply services:

(1) A nursing home requires the services of a doctor once a month and acquires the doctor through a vendor.

(2) A law firm requires the services of a specialized attorney and engages the services of an attorney who is an independent contractor.

(3) A Pennsylvania trucking company requests a Pennsylvania vendor to furnish truck drivers that are to report to the purchaser's out-of-State location.

(f) *Exclusions.*

(1) Help supply services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations, and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) The vendor of help supply services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its help supply services. The vendor may also purchase help supply services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of other taxable services which it may use in the performance of its help supply services.

#### Source

The provisions of this § 60.4 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 180.

#### Cross References

This section cited in 61 Pa. Code § 60.8 (relating to secretarial and editing services).

### § 60.5. Employment agency services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies*—

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Employee*—A person who performs work for an employer and is paid for the performance of work or services, including persons on the payroll or independent contractors.

*Employer*—A person who hires an individual for the performance of duties as an employe.

*Employment agency*—A vendor engaged in the business of providing employment agency services.

*Employment agency services*—The service of attempting to procure or procuring temporary or permanent employment for prospective employes or employers. Examples of employment agency services include executive placing services or labor contractor employment agencies.

*Employe costs*—Payments made or withheld by a vendor to an employe, including wages, salaries, bonuses, commissions, employment benefits, expense reimbursements, payroll, withholding taxes, employer paid social security tax or Federal and Pennsylvania unemployment taxes. The term does not include employe recruiting, training, liability insurance, bonding expenses and other costs.

*Gross fee*—Total amount charged by the seller excluding sales tax.

*Service fee*—Gross fees less separately stated employe costs.

(b) *Scope*. Effective October 1, 1991, the sale at retail or use of employment agency services is subject to tax.

(1) An employe reporting to work at a location in this Commonwealth is subject to tax.

(2) An employe reporting to work at a location outside of this Commonwealth is not subject to tax, unless the employe is assigned to work in this Commonwealth.

(3) If the employe is located in this Commonwealth, it is presumed that the employment agency service is subject to tax unless documentation supports the reporting to a location outside of this Commonwealth.

(c) *Examples of taxable services*. The following are examples of taxable employment agency services:

(1) A Pennsylvania resident contacts a Pennsylvania vendor and is placed with an employer at a location in this Commonwealth.

(2) A Pennsylvania resident contacts an Ohio vendor and is placed with an employer at a location in this Commonwealth.

(3) A Pennsylvania employer contacts a vendor outside this Commonwealth and accepts an employe for its location in this Commonwealth.

(4) A New York resident contacts a New York vendor and is placed with an employer at a location in this Commonwealth.

(5) A Pennsylvania vendor paid on an hourly rate interviews and recommends a potential employe to an employer.

(d) *Examples of services which are not employment agency services.* The following are examples of services which are not employment agency services:

(1) A Pennsylvania resident contacts a Pennsylvania vendor and is placed with an employer at a location outside of this Commonwealth.

(2) A Pennsylvania resident contacts a New York vendor and is placed with an employer in New Jersey.

(3) A New York resident contacts a Pennsylvania vendor and is placed with an employer at a location in New York.

(4) A Pennsylvania employer contacts a vendor outside of this Commonwealth and accepts an employe for its out-of-State location.

(e) *Purchase price.*

(1) Effective October 1, 1991, through December 31, 1991, the purchase price of employment agency services subject to tax is the gross fee.

(2) Effective January 1, 1992, the purchase price of employment agency services subject to tax is the service fee if the employe costs are separately stated; otherwise, the gross fee is subject to tax.

(3) If the purchase price is canceled or renegotiated, tax is due on the adjusted purchase price. If an adjustment to the tax occurs, the vendor is permitted to offset the adjustment against current tax liabilities.

(4) If the purchase price is paid on an installment basis, the tax is due on the full purchase price and is payable at the time the purchaser accepts the contract or within 30 days of acceptance of the contract.

(f) *Exclusions.*

(1) Employment agency services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) Employment services provided by theatrical employment agencies or motion picture casting bureaus.

(3) Farm labor.

(4) A vendor of employment agency services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its employment agency services. The vendor may also purchase employment agency services from another provider which the vendor resells to its customer. The vendor may not

claim the resale exemption upon its purchase of administrative supplies or the purchase of another taxable service which it may use in the performance of its employment agency services.

**Source**

The provisions of this § 60.5 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 182.

**§ 60.6. Lobbying services.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies—*

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Communication—*A verbal or written message.

*Expenses—*Includes office supplies, travel, meals, entertainment, gifts, costs of communication, cost of maintaining an office and other costs connected with the performance of lobbying services.

*Formal action—*The promulgation, amendment or repeal of a ruling or regulation.

*Lobbying services—*The term means to advocate:

(i) The passage or defeat of legislation to members or staff of the General Assembly, or approval or veto of legislation to the Governor or his staff.

(ii) To officers or employees of an agency of the Commonwealth that the agency take or refrain from taking formal action, or that an agency engage in lobbying services as defined in subparagraph (i).

*Lobbyist—*A natural person who is registered under the Lobbying Registration and Regulation Act (46 P. S. §§ 148.1—148.76) to perform lobbying services.

*Purchase price—*

(i) For purposes of this section, the term means compensation, expense or obligation, whether in money or property, paid or due to a lobbyist for the performance of lobbying services.

(ii) The term does not include salary or wages paid by the employer to an employe employed to perform lobbying services solely for the employer.

(iii) The term purchase price includes that portion of:



(A) An advance payment to a contract lobbyist relating to the expenditure of time and expenses by the lobbyist in the performance of lobbying services for its purchaser.

(B) The dues or fees received by an organization or firm relating to the expenditure of time and expenses by an employe of the organization or firm in the performance of lobbying services for a member or purchaser.

*Total lobbying activities*—The total time spent by a registered lobbyist in the performance of nontaxable and taxable lobbying services.

(b) *Scope.* Effective October 1, 1991, the sale at retail or use of lobbying services is subject to tax if the benefit or delivery of the service occurs in this Commonwealth. The tax is imposed upon the purchase price of the lobbying service. The lobbyist or organization performing the lobbying service for its members, has the responsibility to collect and pay the tax to the Department. Purchasers of lobbying services who have not paid tax upon lobbying services to their lobbyist are required to pay the applicable tax directly to the Department.

(c) *Examples of lobbying services.* The following are examples of taxable lobbying services:

(1) Communications to members or staff of the General Assembly advocating the passage or defeat of legislation.

(2) Communications to the Governor or his staff advocating the approval or veto of legislation.

(3) Communications to an agency advocating the promulgation, amendment or repeal of a ruling or regulation.

(4) Communications to an agency advocating that the agency engage in performing lobbying services as defined in this section.

(d) *Examples of services which are not lobbying services.* The following are examples of services which are not lobbying services:

(1) Review of proposed legislation, amendments or tax journals.

(2) Communications to a client, another lobbyist, members of an association or to a private individual.

(3) Drafting proposed testimony.

(4) Attending a meeting of the General Assembly or a committee session of the General Assembly or an agency solely for the purpose of monitoring developments and not involving advocacy.

(5) Communications to members of the United States Congress and their staffs, the office of the President and his staff, and members of a Federal agency.

(6) Communications to elected and appointed officials of political subdivisions of this Commonwealth and their employes.

(7) Communications to elected and appointed officials of state governments other than the Commonwealth.

(e) *Purchase price.*

(1) The total purchase price paid for the performance of lobbying services is subject to tax.

(2) A lobbyist who is required to collect and remit tax upon the purchase price paid for the performance of lobbying services may elect to report and pay tax upon either the “service by service” or “formularly” methods of reporting tax.

(i) *Service by service method.* Under this method, taxes are collected or set aside from the advance payment each time a taxable lobbying service is performed. The total tax due is reported and paid at the time of filing the licensee’s tax return.

(ii) *Formulary method.*

(A) Under this method, the licensee chooses a representative sample period within a calendar year during which both nontaxable services and taxable lobbying services are performed.

(B) Utilizing the sample representative period, the licensee compares the amount representing total expenditures of time and expenses for total lobbying activities within the amount representing the total expenditures of time and expenses for taxable lobbying services.

(C) The resulting ratio or percentage is applied to total expenditures of time and expenses for total lobbying activities throughout the calendar year to establish the amount upon which the sales tax is calculated.

(D) Organizations performing lobbying services for their members may also utilize the formulary method in reporting tax.

(I) The organization which has paid salary and expenses for an employe lobbyist should follow the procedures in this subparagraph by comparing the total gross salary and expenses of its employe lobbyist relating to total lobbying activities with the gross salary and expenses of the employe lobbyist relating to taxable lobbying services.

(II) The resulting ratio or percentage would then be applied by the organization to the total gross salary and expenses relating to total lobbying activities performed by the employe lobbyist throughout the calendar year to establish the amount upon which the sales tax is calculated.

(III) Gross salary and expenses paid to the lobbyist employe for services rendered to the organization which do not involve lobbying activities would not be used in calculating the ratio or percentage.

(IV) An organization need not make a specific charge to the member for lobbying services and collect the applicable tax.

(V) The organization may accrue tax based upon method 1 or 2 and remit the tax directly to the Department.

(E) In the event of an audit of the records of the organization or lobbyist, the Department will verify the representativity of the “sample.” If the representativity of the “sample” is not verifiable, the lobbyist will be assessed on a transaction by transaction basis.

(F) An organization or a lobbyist utilizing the formulary reporting method shall establish a new ratio or percentage for each calendar year. The mixing of methods within a calendar year is not permitted.

(G) Lobbyists who maintain their principal office within the city of Philadelphia are required to collect the 1% Philadelphia sales tax in addition to the 6% State sales tax upon the expenditures of time and expenses in the performance of lobbying services.

*Example:* Lobbyist "L," located in Pittsburgh, received \$1,000 from A company to perform lobbying activities. "L" elects to collect and pay tax on the formulary basis. "L" chooses the month of March as the representative period. During March, "L" incurred \$100 in time and expenses in performing total lobbying activities. Of this amount, \$75 represented time and expenses in performing taxable lobbying services. "L's" ratio or percentage is .75 ( $\$75 \div \$100 = .75$ ). "L" files quarterly tax returns. From January to March, "L" incurred \$300 in time and expenses in performing total lobbying activities. "L's" 1st quarter tax return would reflect the following: Gross Sales \$300, Nontaxable Sales \$75, taxable sales \$225 ( $\$300 \times .75 = \$225$ ). Sales tax would be calculated on \$225. "L" would use the same procedure at the time of filing his remaining quarterly sales tax returns during the calendar year.

(3) Purchasers of lobbying services who have not paid tax upon lobbying services to their lobbyist and are required to pay tax directly to the Department may elect to pay tax in accordance with subsection (b).

(f) *Exclusions.*

(1) *Exempt purchases.* Lobbying services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, printing, publishing, processing, farming, dairying, mining or public utility exclusion does not apply.

(2) *Resale exemption.*

(i) The vendor of lobbying services may claim the resale exemption upon the purchase of tangible personal property which is transferred to its purchaser of the service in the performance of its lobbying services.

(A) The resale exemption does not apply to the transfer of property to the individual to whom the lobbying services are directed.

(B) A lobbyist may also claim the resale exemption upon the purchase of lobbying services from another lobbyist which the purchasing lobbyist resells to its purchaser.

(C) A lobbyist may not claim the resale exemption upon the purchase of administrative supplies or the purchase of other taxable services which the lobbyist may use in the performance of lobbying services.

(ii) The following are examples of property which may be purchased exempt for resale when transferred to the purchaser in the performing of lobbying services:

- (A) Writing or typing paper.
- (B) Envelopes.
- (C) Labels.
- (D) Typewriter ribbons.

(iii) The following are examples of property which are taxable when used in the performing of lobbying services:

- (A) Telephones.
- (B) Fax machines.
- (C) Typewriters.
- (D) Word processors.
- (E) Administrative supplies.
- (F) Postage meter devices.
- (G) Meals, gifts and other property or service provided to the individual to whom the lobbying service is directed.

**Source**

The provisions of this § 60.6 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 183.

**§ 60.7. Sale and preparation of food and beverages.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Candy and gum*—The term candy refers to all types of preparations commonly referred to as candy, including hard candy, caramel, chocolate candy, licorice, fudge, cotton candy, caramel coated popcorn, chocolate coated granola bars and similar items. The term gum refers to preparations commonly referred to as gum, including chewing gum, bubble gum and similar items.

*Caterer*—A business engaged in the service of providing prepared or ready-to-eat food and beverages for immediate consumption at a specific meal, affair or social function, usually at the premises of one other than the caterer, and normally including eating and drinking utensils.

*Eating establishment*—A business, or an identifiable location within a business, which advertises or holds itself out to the public as being engaged in the sale of prepared or ready-to-eat food or beverages, to customers for their immediate consumption on or off the premises. An eating establishment may be mobile or immobile and may or may not provide seating accommodations for its customers. The following are examples of eating establishments: restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, honor boxes, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, lunch trucks, cafeterias, employe cafeterias,

theaters, stadiums, arenas, amusement parks, juice stands, carry out shops, coffee shops, popcorn stands, automats, vending machines and similar establishments.

*Food and beverages*—Includes items for human consumption, regardless of quantity. Examples are sandwiches, hot pizza, salad bar items, crackers, cakes, ice cream, baked goods, potato chips, yogurt, hot or cold drinks, milk, natural fruit or vegetable juices, cocoa, soft drinks, candy, gum and other similar items whether or not the item is individually packaged in a sealed wrapper. The term does not include water or ice, malt or brewed alcoholic beverages or spirituous and vinous liquors.

*Food retailer*—A business, or an identifiable location within a business, which is engaged in the sale of grocery type items for other than immediate consumption. The following are examples of food retailers: bakeries, pastry shops, doughnut shops, delicatessens, grocery stores, supermarkets, farm markets, convenience stores and similar businesses.

*Gratuity*—A voluntary payment by the purchaser or a reasonable mandatory charge by the vendor, in lieu of the voluntary payment, which is billed to the purchaser for services rendered in connection with the purchase of food or beverages or hotel or motel accommodations.

*Grocery type items*—Includes baked goods such as pies, cakes, bread and similar items; produce such as fresh fruit and vegetables; canned goods; meat and cheese by the pound; milk in pint, quart, 1/2 gallon or gallon quantities; prepackaged ice cream products such as ice cream by the pint, quart, 1/2 gallon or gallon quantities; ice cream cakes and pies; frozen foods; unprepared fish and seafood; bottled honey; bottled syrup; jam; jelly and similar items.

*Nonfood retailer*—A business engaged in the sale of nonfood items. The following are examples of nonfood retailers: department stores, service stations, clothing stores, book stores and similar businesses.

*Selected food and beverage items*—Soft drinks; meals; sandwiches, including hoagies, hot dogs, hamburgers and similar sandwiches; food from salad bars; hand-dipped or hand-served ice-based products, including, ice cream, yogurt, frozen water-based products and similar items; hot soup; hot pizza, either whole or by the slice; other hot food items such as chicken, pork ribs, macaroni and cheese and similar items and hot drinks such as coffee, tea, cocoa and similar items.

*Soft drink*—A nonalcoholic beverage, in either powder or liquid form, whether or not carbonated, such as soda water, ginger ale, colas, root beer, flavored water, artificially carbonated water, orangeade, lemonade, juice drinks containing less than 25% by volume of natural fruit or vegetable juices, and similar drinks. The term does not include fruit and vegetable juices containing at least 25% by volume of natural fruit or vegetable juice. The term does not include coffee, coffee substitutes, tea, cocoa and milk or noncarbonated drinks made from milk derivatives.

*Vending machine*—A device which mechanically dispenses tangible personal property for a purchase price.

(b) *Scope.*

(1) *General.* The term food and beverages includes all forms of food and beverages for human consumption. The term includes selected food items, candy and gum and grocery type items. The term does not include water, ice, malt or brewed and alcoholic beverages or spirituous and vinous liquors. The sale of water and ice are exempt from tax. The sale of malt or brewed alcoholic beverages and spirituous and vinous liquors are taxed in a different manner than the sale of food and beverages. Under the provisions of the sales and use tax law, the sale of food or beverages may be taxable or exempt depending upon the type of food or beverage or upon the basis of the location from which the food or beverage is sold. This is illustrated by the following:

(i) The sale of food and beverages by an eating establishment or a caterer is subject to tax. However, if an eating establishment operates a separate department from which grocery type items are sold, the sale of the grocery type items is exempt from tax if the eating establishment fulfills the requirements in this section.

(ii) The sale of selected food items is subject to tax, whether or not the selected food items are sold by an eating establishment, caterer, food retailer or nonfood retailer. However, the sale of selected food items is exempt from tax when made by a school or church in the ordinary course of its activities, by a business located on the premises of the school or church in the ordinary course of its activities, by a business located on the premises of the school or church and the sale is in the ordinary course of the activities of the school or church or by a nonprofit association which supports sports programs and which operates at fixed locations on public property.

(iii) The remaining provisions of this subsection address various situations under which the sale of food and beverages is exempt or is subject to tax.

(2) *Malt or brewed alcoholic beverages and spirituous and vinous liquors.*

(i) The sale of malt or brewed alcoholic beverages by a distributor to a retail dispenser, liquor licensee or the public is subject to tax. However, the sale of malt or brewed alcoholic beverages by a retail dispenser or a liquor licensee is not subject to tax.

(ii) The sale of spirituous and vinous liquor by the Liquor Control Board, a winery or other vendor authorized by the Liquor Control Board is subject to tax. However, the sale of spirituous and vinous liquor by a liquor licensee is not subject to tax.

(3) *Sale of food and beverages by eating establishments.* With the exception of sales qualifying for exclusion from tax under subparagraphs (i) and (ii), the sale of food and beverages, including candy and gum, by an eating establishment is subject to tax, whether or not the food or beverages are prepared or

consumed on or off the premises. Tax is imposed upon the total purchase price billed to the purchaser for the food or beverages, including an amount billed for delivery but excluding a separately stated amount representing a gratuity.

(i) *Sale of grocery type items by a food retailer.* An eating establishment may also operate as a food retailer. An eating establishment failing to qualify as a food retailer, is required to collect tax upon its sale of items of food or beverages including grocery type items. To qualify as a food retailer, the eating establishment is required to satisfy the following requirements. The eating establishment shall maintain:

(A) A separate department or identifiable location from which grocery type sales are made.

(B) Separate records, such as a separate cash register or cash register key, for the sale of grocery type items.

(ii) *Sale of candy, gum and prepackaged frozen items from vending machines.* The sale of candy, gum and prepackaged frozen milk or frozen water-based products from a vending machine prior to October 1, 1991, and on or after December 13, 1991, is not subject to tax. However, the sale of these items from October 1, 1991, through and including December 12, 1991, is subject to tax.

(iii) *Examples.*

(A) "P" pizzeria sells whole pizzas, pizza by the slice and soft drinks. "P" has no eating facilities on its premises. "P" sells its food and beverages at its premises or delivers to its customers. The sale of whole pizza, pizza by the slice and soft drinks by "P" is subject to tax. If "P" makes a charge for delivery, the delivery charge is also subject to tax.

(B) "I" ice cream parlor sells hand-dipped ice cream products by the cone, dish, pint, quart and 1/2 gallon. "I" also sells ice cream cakes, pies and prepackaged ice cream sundaes from a separate department and maintains separate sales records. The sale of ice cream cakes, pies and prepackaged ice cream sundaes by "I" would not be subject to tax. The sale of hand-dipped ice cream in any quantity is taxable because hand-dipped ice cream qualifies as a selected food item.

(C) "R" restaurant sells prepared food and beverages. At the same location, but within a separately identified department, "R" operates a bakery from which baked goods, such as bread, cakes, doughnuts and cookies are sold and recorded on a separate cash register. The sale of food and beverages, including baked goods from "R's" restaurant operation is subject to tax. Baked goods sold from "R's" bakery operation are exempt from tax.

(D) "L" lunch counter sells quick lunches including hot and cold beverages, sandwiches and similar items. "L" has no tables or chairs for its customers. The sale of food and beverages by "L" is subject to tax.

(E) “T” tavern sells alcoholic and nonalcoholic beverages, sandwiches, popcorn, peanuts, crackers and similar items. “T” also sells prepared seafood such as lobsters, clams and crabs which may be purchased for consumption on or off the premises. “T” maintains separate sales records and a separate department from which unprepared lobsters, clams and crabs may be purchased. The sale of food and beverages, other than alcoholic beverages, including prepared lobsters, clams and crabs for consumption on or off the premises, is subject to tax. The sale of unprepared lobsters, clams and crabs from the separate department is not subject to tax.

(F) “V” vending machine operator, on or after December 13, 1991, sells hot and cold drinks, prepackaged crackers, pretzels, candy, gum, prepackaged frozen milk and frozen water-based products through vending machines. The sale of hot and cold drinks and prepackaged crackers and pretzels is subject to tax. However, the sale of candy, gum and prepackaged frozen milk and frozen water-based products is exempt from tax.

(4) *Sale of food and beverages by caterers.* The sale of food and beverages, including candy and gum, by a caterer is subject to tax. The tax is imposed upon the total purchase price billed to the purchaser including separately stated charges for tables, chairs, decorations, utensils, bartenders, food servers and similar charges. Since the caterer is required to pay tax at the time of the purchase of malt or brewed beverages and spirituous and vinous liquors, separately stated charges by the caterer to the customer for these items are not subject to tax.

Example:

“C” caterer caters a meal for a customer and issues the following billing:

Food @ \$8/person	\$400	
Room	100	
Liquor	60	
Floral Decorations	75	
50 Settings, @ \$2/setting	100	
5 Waiters @ \$25	125	
1 Bartender @ \$35	35	
5 tables @ \$5	25	
50 chairs @ \$2.50	125	
Service charge	100	
Gratuity	172	
SUBTOTAL	<u>\$1,317</u>	
	Sales Tax	65.10
	TOTAL	<u>\$1,382.10</u>

“C’s” separately stated charge for liquor and the reasonable gratuity are not taxable. The service charge, which is not in lieu of the gratuity, is taxable. The amount of \$1,085, therefore, is subject to tax.



(5) *Sale of food and beverages by food retailers and nonfood retailers.* Generally, the sale of food and beverages, including candy and gum, by a food retailer or a nonfood retailer is not subject to tax. However, the sale of selected food or beverage items, as defined in this section, by a food retailer or a nonfood retailer is subject to tax. If a food retailer or a nonfood retailer operates an eating establishment, the sale of food and beverages from the eating establishment is subject to tax.

Examples:

(i) “B” bakery sells baked goods, soft drinks, coffee, prepackaged and hand-dipped ice cream. The sale of baked goods and prepackaged ice cream by “B” is not subject to tax. However, the sale of soft drinks, coffee and hand-dipped ice cream by “B” is subject to tax.

(ii) “D” delicatessen sells meat and cheese by the pound, hoagies, sandwiches, prepared cold salads, hot beans, hot macaroni and cheese, cold hard-boiled eggs and hot barbecued chicken. The sale of meat and cheese by the pound, prepared cold salads and cold hard-boiled eggs by “D” is not subject to tax. The sale of hoagies, sandwiches, hot beans, hot macaroni and cheese and hot barbecued chicken by “D” is subject to tax.

(iii) “S” service station sells frozen ice cream products, small bags of potato chips, candy and heated sandwiches. The sales are not made from a vending machine. The sale of frozen ice cream products, bags of potato chips and candy by “S” is not subject to tax. The sale of heated sandwiches by “S” is subject to tax.

(iv) “C” candy store sells candy products. “C” also sells ice cream products such as hand-dipped ice cream by the cone, dish, pint or quart as well as coffee, milk shakes and ice cream sodas. The sale of candy by “C” is exempt from tax. However, the sale of coffee and hand-dipped ice cream products, such as cones, dishes, pints, quarts, milk shakes and ice cream sodas is subject to tax.

(v) “D” department store, a nonfood retailer, operates a restaurant located on its premises. The restaurant menu includes appetizers, salads, entrees, side dishes, desserts and beverages. The sale of food or beverage items by “D” from the restaurant is subject to tax.

(6) *Sale of food and beverages at or from a school or church.*

(i) *Schools and churches.* Generally, the sale of food or beverages by a school or church is exempt from tax, if the sales are in the ordinary course of the activities of the school or church. For example, the preparation and sale of a dinner to church members by a church organization in connection with a church function would be in the ordinary course of the activities of the church. However, if a school or church sells selected food or beverage items to the public or operates an eating establishment from which food or beverages are sold to the public in competition with other organizations or

businesses selling similar taxable items, the school or church is deemed to be operating an unrelated trade or business with respect to the sales and is required to collect tax.

Examples:

(A) “S” public school prepares lunch at the school cafeteria which it sells to its students. The sale of the lunch by “S” would not be subject to tax since the sale of the lunch to the students is in the ordinary course of the activities of the school.

(B) “C” church operates a hoagie stand at the annual Farm Show. There are other vendors located at the Farm Show selling taxable sandwiches, coffee and soft drinks. The sale of hoagies by “C” is subject to tax since “C” is operating an unrelated trade or business.

(C) “U” university operates a restaurant on university property. The restaurant holds itself out to and primarily sells meals to the public, rather than the students and faculty. The operation of the restaurant by “U” is not in the ordinary course of its school activities. The sale of food and beverages by the restaurant is subject to tax.

(D) “C” church offers catered meals to the public on a regular basis. The meals may be served on or off the church premises. The business of providing the catered meals is an unrelated trade or business of the church. The sale of food and beverages by the church is subject to tax.

(E) “C” church caters wedding receptions, funeral luncheons and anniversary dinners at the church in connection with member and nonmember church weddings, funerals and anniversaries. The business of providing catered receptions, luncheons and dinners is an unrelated trade or business of the church. The sale of food and beverages is subject to tax.

(ii) *Businesses located on the premises of a school or church.* Generally, the sale of food or beverages by a business located on the premises of a school or church is exempt from tax, if the sale is in the ordinary course of the activities of the school or church. For example, the sale of lunch to students at a public school by a business would be in the ordinary course of the activities of a school. However, if the business sells selected food or beverage items to the public or operates an eating establishment from which food or beverages are sold to the public in competition with other businesses selling similar items, the business is required to collect tax upon its sale of food and beverages to the public whether or not they are consumed on or off the premises of the school or church.

Examples:

(A) “V” vending machine sales company, a private business, operates vending machines at various locations at “H” college from which food and beverages, including selected food and beverage items, are sold. The vending

machines have been installed for the primary use by students and faculty of “H.” The sale of food and beverages from the vending machines by “V” is exempt from tax.

(B) “P” pizzeria, a private business, operates a pizza shop near the premises of “C” college. “P” delivers the pizza it sells to its customers. The sale of pizza by “P” to students and faculty located on the premises of “C” is subject to tax, whether or not the pizza is delivered to the customer on school premises.

(C) “R” restaurant, a private business, operates an eating establishment on the premises of “C” college primarily for “C” college students. The public is also permitted to utilize “R’s” restaurant facilities and purchase meals from “R.” The sale of food and beverages by “R” to the public is not in the ordinary course of the activities of “C” college. “R” need not collect sales tax upon food and beverages sold to students and faculty. However, the food or beverages sold to the public is subject to tax.

(7) *Sale of food and beverages by an exempt organization other than a school or church.* Generally, the sale of food or beverages by an exempt organization, as defined at § 32.1 (relating to definitions), to the members of the organization in connection with an organizational activity is exempt from tax. However, if the organization sells selected food or beverage items to the public or operates an eating establishment from which food or beverages are sold to the public, the sale is subject to tax as an unrelated trade or business, unless the sale qualifies as an isolated sale as defined at § 32.1.

Examples:

(i) “E,” an exempt charitable organization, sells hoagies to the public on three separate Saturdays during a calendar year from a location at which no other organizations or businesses are selling similar items. “E” makes no other taxable sales during the calendar year. The sale by “E” qualifies as an isolated sale under § 32.1. “E” would not be required to collect sales tax on its sale of hoagies.

(ii) “C” charity, an exempt organization, for the purpose of raising funds, sells hoagies to its members and the public on the first Saturday of each month during the calendar year. The sale by “C” does not qualify as an isolated sale as defined by § 32.1 but constitutes an unrelated trade or business of the organization. The sale of hoagies by “C” is subject to tax including those sales made during the first 3 months of the calendar year.

(iii) “F” fire company, an exempt organization, sells fried fish dinners each Friday evening. The dinners are consumed on the premises. “F” operates as an eating establishment. The sale of fish dinners by “F” does not qualify as an isolated sale as defined by § 32.1 but constitutes an unrelated trade or business of the organization. The sale of fish dinners by “F” is subject to tax including those sales made during the first 3 weeks of the calendar year.

(8) *Sale of food and beverages by hospitals, nursing, retirement and convalescent homes and summer camps.* The sale of food and beverages, including candy and gum, by hospitals, nursing, retirement and convalescent homes and summer camps to employes, visitors, staff and the general public is subject to tax. However, the value of furnished meals to patients, residents or campers which is included in the total charge for resident or patient care or camp activity is not subject to tax.

Examples:

(i) "H" hospital operates an employe dining room at which employes, staff and their guests may purchase food and beverages. The dining room of "H" qualifies as an eating establishment. The sale of food and beverages by "H" is subject to tax.

(ii) "N" nursing home operates a dining room at which patients, employes, staff and guests may eat. The dining room of "N" is an eating establishment. Therefore, the sale of food or beverages by "N" to employes, staff and guests is subject to tax. However, the value of the food provided by "N" to residents and patients which is included in the charge for residents' or patients' care is not subject to tax.

(iii) "R" retirement facility operates a dining room for its residents, employes, staff and guests. Residents are required to eat one meal at the dining room each day and are automatically billed for this meal with their other charges. Residents may eat additional meals for which they are billed. Charges to the residents for required meals are not taxable. The sale of meals to employes, staff and guests, including the optional meals sold to residents is subject to tax.

(9) *Sale of food and beverages by nonprofit associations which support sports programs.* The sale of food and beverages by a nonprofit association which supports a sports program and which operates at a fixed location on public property is exempt from tax.

(10) *Sale of food and beverages at fairs and carnivals.* The term eating establishment is defined to include a fair or carnival. Therefore, the sale of food and beverage items is subject to tax when sold at a fair or carnival. Examples of taxable food and beverages include: coffee; french fries; candied apples; funnel cakes; cookies; candy; cotton candy; baked potatoes; waffles; doughnuts; ice cream by the cup, dish or cone; soup; soft drinks; yogurt; bread sticks; cider by the cup; ice-based products such as flavored ice cones; popcorn; onion rings; cooked chicken; cooked pork ribs; soft pretzels; hoagies; sandwiches; nuts and similar items. The sale of grocery type items from an identifiable location by a vendor who operates as a food retailer and maintains separate records is exempt from tax. However, if the vendor fails to maintain a separate identifiable location and separate records for the sale of grocery type items, all sales are subject to tax.

Example:

“A” apple grower operates a stand at an apple festival. “A” sells cider by the glass as well as prepackaged quarts, half-gallons and gallons. The sale of apple cider by the glass is subject to tax. The sale of prepackaged quarts, half-gallons and gallons of apple cider is exempt if the sale is made from an identifiable location and “A” maintains separate records. If the sale is not made from an identifiable location and “A” fails to maintain separate records, all sales are subject to tax.

(c) *Equipment and supplies.* A person selling food or beverages is required to pay tax upon the purchase of utilities; equipment; fixtures; utensils, such as plates, cups, glasses, knives and forks; table cloths; napkins; straws; returnable containers and related supplies. For the taxability of similar items purchased by exempt organizations, see § 32.21 (relating to charitable, volunteer firemen’s and religious organizations and nonprofit educational institutions). The purchase of the following items in connection with the sale of food or beverages is exempt from tax:

- (i) Prepared or nonprepared food and beverages for resale.
- (ii) Wrapping supplies as defined by § 32.1.
- (iii) Examples:

(A) “C” caterer provides china plates and cups, silverware, table and chairs, table cloths and napkins to its customers when catering meals. “C” is required to pay tax upon its purchase of these items. “C” is not entitled to claim the resale exemption at the time of purchase even though “C” separately states a specific charge for the items on the customer’s invoice.

(B) “L” lunch counter provides paper plates; styrofoam cups; straws; plastic knives, forks and spoons and napkins to its customers in connection with the sale of food and beverages. “L” may claim an exemption from the purchase of paper plates and styrofoam cups upon the basis that they qualify as wrapping supplies. “L” is required to pay tax upon the purchase of straws, napkins and plastic knives, forks and spoons.

#### Source

The provisions of this § 60.7 adopted July 22, 1994, effective July 23, 1994, 24 Pa.B. 3589.

#### Notes of Decisions

##### *Sale of Food and Beverages—Airlines*

Food, nonalcoholic beverages and related nonfood supplies furnished by airliner to passengers and crew members during commercial flights are not “directly used” in the supply of a public utility service and do not qualify for an exclusion under the “use tax” provisions in accordance with 72 P. S. § 7201(c). *American Airlines v. Board of Finance and Revenue*, 665 A.2d 417 (Pa. 1995).

### § 60.8. Secretarial and editing services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies—*

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of secretarial and editing services.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Court reporting—*Services performed by an individual who records and transcribes verbatim a report of proceedings in a court of law.

*Editing services—*Services performed upon written material, film, videos and audio tape, including altering, adapting, refining, proofreading or confirming. The term also includes reviewing for clarity, authenticity and meaning, and assembling by cutting or rearranging.

*Mail processing services—*Services that prepare property for bulk mailing or shipping, such as bursting, folding, collating, stuffing, addressing, bar coding, affixing labels, stamping, sorting, bundling or bagging in accordance with bulk mail specifications of the United States Postal Service or other transportation systems. The term does not include these services when performed in conjunction with secretarial services or the sale of tangible personal property.

*Secretarial services—*Services which include preparing correspondence or performing routine and detailed office work, letter writing, proofreading, resume writing, typing, word processing or telephone answering services. The term does not include separately stated charges for notary seals, completion of forms, mail processing services, stenographic services or court reporting services.

*Stenographic services—*Services performed by an individual who both records information by machine or shorthand from dictation or oral discourse and transcribes the information.

(b) *Scope.*

(1) Effective October 1, 1991, the sale at retail or use of secretarial or editing services is subject to tax.

(2) Services performed for a purchaser who is located in this Commonwealth are presumed to be predominately used in this Commonwealth and subject to tax. Services performed for a purchaser who is located outside this Commonwealth are presumed to be predominately used outside this Commonwealth and not subject to tax. For example:

(i) A Maryland resident purchases the services of a Pennsylvania secretarial service company to type a resume to be delivered in Maryland. The service is exempt from tax.

(ii) A Pennsylvania resident purchases services from a Pennsylvania secretarial service company to type one hundred letters and mail them to individuals throughout the country. The total charge, including charges for mail processing, is taxable.





(iii) A purchase by a Maryland resident in subparagraph (ii) is exempt even though some of the letters would be received by residents of this Commonwealth.

(3) The sale at retail or use of secretarial or editing services provided in conjunction with the performance of a nontaxable service is taxable unless the secretarial or editing service being provided is incidental to the nontaxable service. For example:

Company A receives 1,000 pamphlets, envelopes and labels from Company C. Company A is to fold and stuff the pamphlets into the envelopes and affix the mailing labels. Company A is also to type and insert a letter in every two hundredth envelope indicating that the recipient has won a prize. The typing of the letter is incidental to the nontaxable service of folding, stuffing and attaching labels and therefore is not taxable.

(c) Examples of taxable secretarial and editing services include:

(1) An individual purchases the services of a resume writer to write, format and type a resume.

(2) An individual purchases the services of a typist or word processor to type the name and address on envelopes from a prepared listing of some of the residents in the individual's development.

(3) A sole proprietor purchases a telephone answering service from an independent contractor.

(4) A secretary types a letter from a cassette tape dictated by the author.

(5) A publishing company purchases an editing service to proofread manuscripts prior to printing.

(6) An individual purchases the service of editing a home video and inserting music.

(d) Examples of services which are not secretarial and editing services:

(1) The recording and transcribing of a deposition by a stenographer.

(2) The completion of auto registration forms by a notary.

(3) The providing of a messenger service that is not made in conjunction with a taxable sale or service.

(4) The providing of a temporary help service employe to replace a secretary who is on vacation. See § 60.4 (relating to help supply services).

(5) The folding and inserting of letters in envelopes, which are provided by the customer, and affixing postage and mailing the letters.

(e) *Purchase price.* The total amount charged for performing secretarial and editing services is subject to tax. The failure to separately state the charge for taxable secretarial and editing services from other nontaxable charges on the invoice requires the charging of tax on the total amount. Charges for delivery of a secretarial and editing service, including postage, handling and insurance, are also subject to tax.

(f) *Exclusions.*

(1) Secretarial and editing services are exempt from tax if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business; the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions, including public school districts. The manufacturing, printing, publishing, processing, farming, dairying, mining or public utility exclusion does not apply.

(2) The vendor of secretarial and editing services may claim the resale exemption upon the purchase of tangible personal property which is transferred to the purchaser or a third party in the performance of secretarial and editing services. The vendor may also purchase from another provider secretarial and editing services which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or another taxable service which it may use in the performance of its secretarial and editing services.

(i) The following are examples of property which may be purchased exempt for resale when used in performing secretarial and editing services:

- (A) Writing or typing paper.
- (B) Envelopes.
- (C) Labels.
- (D) Typewriter ribbons.

(ii) The following are examples of property which is taxable when used in performing secretarial and editing services:

- (A) Rulers.
- (B) Staplers.
- (C) Typewriters.
- (D) Word processors.
- (E) Administrative supplies.
- (F) Postage meter devices.

(3) Persons who are engaged in the business of printing as well as rendering secretarial and editing services should refer to §§ 32.1 and 32.36 (relating to definitions; and printing and related business).

#### Source

The provisions of this § 60.8 adopted October 8, 1993, effective October 9, 1993, 23 Pa.B. 4795.

### § 60.9. Premium cable services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Premium cable service—*

(i) That portion of a cable television service; community antenna television service; or other distribution of television, video, audio or radio service which meets the following criteria:

(A) Is transmitted with or without wires to purchasers of the service.

(B) Consists substantially of programming uninterrupted by paid commercial advertising, such as full-length movies, sporting events, pay-per-view television service and audio and radio broadcasting.

(ii) Examples of premium cable services include Home Box Office, Cinemax, Showtime, Prism, The Disney Channel or commercial music service.

*Nonpremium cable service*—That portion of a cable television service; community antenna television service or another distribution of television, video, audio or radio service which does not qualify as premium cable service, including the following: installation and repair of nonpremium cable service; tier packages with no premium cable service; additional premium cable outlets up to an accumulative number of ten for an individual customer; public television or radio services; local origination programming which provides a variety of public service programs unique to the community; programming which provides coverage of public affairs issues which are presented without commentary or analysis such as Congressional proceedings and programming substantially related to religious subjects.

(b) *Scope.*

(1) Effective October 1, 1991, and continuing to December 31, 1991, the sale at retail or use of cable television services; community antenna television service or other distribution of television, video or radio service, with or without the use of wire, in excess of the minimum or basic charge were subject to tax. The following are examples of services which were taxable under this category: premium cable channels; tier packages; additional cable television outlets; installation charges made in connection with providing taxable cable television services and separately-stated charges for television, audio and radio equipment, including remote controls, or receivers. The following are examples of services which were not taxable under this category: minimum or basic cable, video and radio services and charges for the installation of minimum or basic service.

(2) Effective January 1, 1992, the sale at retail or use of premium cable service delivered to a location in this Commonwealth is subject to tax. In addition, the sale, rental or lease of television, audio or radio equipment, including remote controls, receivers, for use in connection with premium or nonpremium cable service is subject to tax.

(c) *Purchase price.*

(1) The total charge for premium cable services including charges for:

(i) Installation and repair of the premium cable service.

(ii) Upgrading to include additional premium cable service.

(iii) Downgrading to exclude all or some premium cable service.

(iv) Additional premium cable outlets in excess of the accumulative number of ten for an individual customer.

(v) Franchise fees relating to premium cable service.

(vi) Other charges related to premium cable service.

(2) If the charge for the cable service includes a charge for both premium and nonpremium cable service and the charge for nonpremium cable service is not separately stated, the entire charge for all cable services including nonpremium cable service is subject to tax.

(d) *Exclusions.*

(1) Premium cable services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts.

(2) The vendor of premium cable television services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its premium cable television services. The vendor may also purchase premium cable services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of another taxable service which it may use in the performance of its premium cable television services.

(i) The following are examples of property which may be purchased exempt for resale when used in the performing of premium cable television services:

(A) Remote control.

(B) Receivers.

(C) Amplifiers.

(3) Persons who are engaged in the business of providing basic and premium cable services and are entitled to claim the processing exemption should make reference to §§ 32.1, 32.32 and 42.1 (relating to definitions; manufacturing; processing; and definitions).

#### Source

The provisions of this § 60.9 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 186.

### § 60.10. Adjustment and collection services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Adjustment services*—An activity performed by a collection agency relating to the reconciliation or settlement of a debt on behalf of a creditor.

*Administrative supplies*—

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of this property includes sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Collection agency*—A person who performs adjustment or collection services on behalf of a creditor.

*Collection services*—An activity relating to the collection of a debt which involves a collection agency, a creditor and a debtor.

*Creditor*—A person to whom a debt is owed.

*Debt*—An obligation to pay money or other consideration owed by a debtor to a creditor, including current account receivables, interest, fines, penalties and other charges.

*Debtor*—A person who owes a debt to a creditor.

*Doing business in this Commonwealth*—Maintaining a place of business within this Commonwealth as defined at § 56.1 (relating to maintaining a place of business within this Commonwealth).

(b) *Scope.* Effective October 1, 1991, the sale at retail or use of adjustment or collection services is subject to tax when the creditor is doing business in this Commonwealth and the debtor's address referred for adjustment or collection services by the creditor is in this Commonwealth. The status as to whether the creditor is doing business in this Commonwealth and the address of the debtor in this Commonwealth is determined at the time the account is placed with the collection agency. The location of the collection agency does not have an effect on the taxability of the transaction.

(1) The creditor is presumed to be doing business in this Commonwealth if the debtor is located in this Commonwealth. A collection agency shall obtain a valid exemption certificate from a creditor who claims he is not doing business in this Commonwealth when the debtor is located in this Commonwealth.

(2) Adjustment and collection services provided to a Pennsylvania creditor against debtors located outside of this Commonwealth are not subject to tax.

(3) The site of the origination of the debt has no effect on whether the adjustment or collection service is taxable.

(4) A multistate creditor who does business in this Commonwealth would only be liable for adjustment and collection services performed against debtors located in this Commonwealth.

(5) Adjustment and collection services against multistate debtors are taxable when performed on behalf of a creditor who is doing business in this Commonwealth and the debtor's address referred by the creditor for adjustment or collection is in this Commonwealth. The determination of the debtor's

address in this Commonwealth is made at the time the account is placed with the collection agency. Examples are as follows:

(i) A Maryland collection agency is hired to collect debts owed to a Maryland company which is doing business in this Commonwealth and the debtors are located in this Commonwealth. The charge for the service against Pennsylvania debtors is taxable.

(ii) A Pennsylvania company is owed money from a New York company. The Pennsylvania company obtains the services of a Pennsylvania collection agency to collect the debt. The charge for the service against a New York debtor is not taxable.

(iii) A National chain store company with locations in this Commonwealth, hires a Maryland collection agency to collect its debts. Only charges for the collection of debts against debtors located in this Commonwealth are taxable.

(iv) A National credit card company incorporated in Delaware with an office in this Commonwealth hires a Delaware collection agency to collect debts from its delinquent customers. The collection services against the debtors located in this Commonwealth are taxable.

(c) *Examples of taxable services.* The following are examples of taxable adjustment and collection services:

(1) The attempt to collect or the collection of debts and claims by a collection agency, including current debts such as accounts receivable or bad check charges, regardless of whether money is collected.

(2) Providing of adjustment services in the settling of debts on behalf of a creditor.

(3) Sending notices to debtors for current debts, such as precollection letters, is taxable as a collection service when the debtor's payment is to be remitted to the collection agency; otherwise, the issuance of precollection letters may be taxable as a secretarial or computer service.

(4) Collection services performed for affiliated companies.

(5) Repossessing of property in connection with a debt owed to a creditor.

(6) Collection services provided by an attorney not in conjunction with, or incidental to, the attorney's nontaxable performance of a legal service, or rendering of legal advice, which involve the application of legal skills.

(d) *Examples of services which are not adjustment and collection services.* The following are examples of services which are not adjustment and collection services:

(1) Credit card services provided by a central agency, including a fee charged to the credit card company by a clearinghouse and a fee charged to the retailer in connection with the use of credit cards.

(2) Debt counseling, adjustment services or financial budgeting services to individuals.

(3) Billing or collection of telephone charges by a local telephone company on behalf of other companies.

(4) Charges for points, taxes, insurance, escrow fees and late penalties by financial institutions in connection with loans and mortgages.

(5) Collection of bills on behalf of utility companies when the accounts were not referred for collection but is merely a customer service.

(6) Charges made by a creditor to a debtor for a dishonored check.

(7) Consideration received by the seller in connection with the sale of accounts receivable—factoring. A service fee charged by the seller in connection with the collection of accounts is taxable.

(8) Claims adjustment services performed by an independent adjuster who determines the extent of loss for insurance companies.

(9) Commissions charged for the transfer and collection of funds in connection with the sale or purchase of real or personal property, such as stocks, bonds, real estate or escrow fees.

(10) Issuance of bills or invoices for a creditor but may be subject to tax as a computer service.

(11) Collection services provided by an attorney in conjunction with, or incidental to, the attorney's nontaxable performance of a legal service, or rendering of legal advice, which involve the application of legal skills.

(e) *Purchase price.*

(1) Tax shall be imposed on the total fee, contingency fee or other consideration charged or retained for providing adjustment or collection services. Charges representing the reimbursement of expenses incurred in connection with the adjustment or collection services are included in the taxable purchase price.

(2) The tax shall be separately stated on each billing to the creditor. When a collection agency collects debts from debtors located both within this Commonwealth and out-of-State for the same creditor, the collection agency has the option of billing the tax when the collection agency submits a reconciliation statement to the creditor; if the reconciliation statement is submitted to the creditor at least once every 3 months. The reconciliation statement shall set forth the individual payments of each Pennsylvania and out-of-State debtor during the period covered by the reconciliation statement.

(3) If the collection agency elects to charge tax on the reconciliation statement to the creditor, the periodic billings to the creditor shall indicate that the charging of tax will be calculated on the reconciliation statement. Examples are as follows:

(i) A collection agency is to receive 30% of the amount of debt collected. If the collection agency collects \$100, the creditor is billed tax on 30% of \$100 or \$1.80 (30% x \$100) x 6%.

(ii) In accordance with the contract of sale, a creditor is permitted to charge the debtor a 20% fee for debts referred to a collection agency. The

collection agency is permitted to retain the 20% penalty fee it collects. If the agency collects a \$100 debt and \$20 penalty fee, the collection agency shall charge \$1.20 tax ( $\$20 \times 6\%$ ) to the creditor.

(iii) A collection agency is to receive a 30% commission on the debt it collects for the creditor. The debt is comprised of a sale transaction amounting to \$90 and a \$10 charge for insufficient funds. The agency collects the total amount of \$100 and shall charge \$1.80 tax ( $\$100 \times 30\% \times 6\%$ ).

(f) *Exclusions.*

(1) Adjustment or collection services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) A collection agency may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its adjustment or collection services. The agency may also purchase adjustment or collection services from another provider which the agency resells to its customer. The agency may not claim the resale exemption upon its purchase of administrative supplies or the purchase of another taxable service which it may use in the performance of its adjustment or collection services.

(i) The following are examples of property or services which may be purchased exempt for resale when used in the rendition of performing adjustment or collection services:

(A) Adjustment or collection services which are sold to a collection agency for the purpose of selling the services to another collection agency for the purpose of resale.

(B) Paper and envelopes transferred as precollection letters or dunning letters.

(ii) The following are examples of property or services which are taxable when used in the rendition of performing adjustment or collection services.

(A) Administrative supplies.

(B) Computer services purchased by collection agencies and used in performance of adjustment or collection services.

**Source**

The provisions of this § 60.10 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 187.



**§ 60.11. Credit reporting services.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies*—

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Credit information*—Information relating to the history of financial transactions of a person or other entity including the description of the business, names of owners, related companies, financial statements, income, sales, timeliness of payments, competition, pending litigation matters, credit history, credit rating, credit verification or information from public records.

*Credit investigations*—The obtaining of credit information.

*Credit reporting services*—The providing of credit information by hard copy, electronic media, verbal or another method of transferring credit information.

(b) *Scope.* Effective October 1, 1991, the sale at retail or use of credit reporting services is subject to tax. Credit reporting services are subject to tax when the information or report is delivered to or received at a location in this Commonwealth.

(c) *Examples of taxable services.* The following are examples of taxable credit reporting services:

(1) Providing mercantile or consumer credit information.

(2) Performing of credit investigations.

(3) Providing a credit report by a credit reporting bureau.

(4) Verifying of credit by a credit clearinghouse or credit bureau.

(d) *Examples of services which are not credit reporting services.* The following are examples of services which are not credit reporting services:

(1) Processing loan applications and the computing of loan availability.

(2) Performing audits and preparation of financial statements and annual reports.

(3) Performing property or real estate appraisals.

(4) Performing personal and background investigations which are not in connection with credit investigations.

(e) *Purchase price.* The total amount charged for providing credit reporting services is subject to tax.

(f) *Exclusions.*

(1) Credit reporting services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and non-profit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) The vendor of credit reporting services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its credit reporting services. The vendor may also purchase credit reporting services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of other taxable services which it may use in the performance of its credit reporting services.

(i) The following are examples of property or services which may be purchased exempt for resale when used in the performing of credit reporting services:

(A) Credit reporting information which is purchased for the purpose of selling credit reporting services.

(B) Property transferred to the purchaser which contains credit information, including envelopes.

(C) Copying charges incurred in the obtaining of credit information documents which are transferred to the purchaser.

(ii) The following are examples of property or services which are taxable when used in the performing of credit reporting services:

(A) Administrative supplies.

(B) Investigative reports or documents used in the obtaining of credit information which are not transferred to the purchaser.

(C) Computer services and equipment which are used in the performance of credit reporting services including the charge for the transmitting of information to the purchaser.

(D) Copying charges incurred in the obtaining of credit information documents which are not transferred to the customer.

#### Source

The provisions of this § 60.11 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 189.

### § 60.12. Self-storage services.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Administrative supplies—*

(i) Tangible personal property which is consumed in one of the following manners:

(A) Used but not transferred by a vendor in the performance of this service.

(B) Transferred by a vendor to another party in connection with the performance of the vendor's services when the property is not a critical element of the service.

(ii) Examples of the property include sales invoices, receipts, contracts, estimate sheets, confirmations or other similar items.

*Commercial warehouse*—A business, such as a public warehouse, engaged in the operation of receiving, handling and storing property for others and the purchaser of the service does not have separate access to the storage area used to hold the property.

*Facility for goods distribution*—A building which is used for the receiving, holding, handling and distribution of business inventory which is being held for subsequent sale.

*Self-storage service*—The providing of a building, a room in a building, or a secured area within a building primarily for the purpose of storing personal property with a separate access for each purchaser of self-storage service.

(b) *Scope*. Effective January 1, 1992, the sale at retail or use of self-storage service at a location in this Commonwealth is subject to tax.

(c) *Examples of taxable services*. The following are examples of taxable self-storage services:

(1) The rental of a garage on an annual basis for the storage of a boat. If the boat is only kept in the garage for 5 months, the rental is taxable because the primary purpose for the use of the garage is storage of the boat.

(2) The rental of an entire building by a contractor for the storage of construction equipment and materials.

(3) The rental of the basement in a building for the purpose of storing business property which is not intended for sale, such as records storage, office equipment storage or construction equipment storage.

(4) The rental of an airplane hangar if the purchaser rents or leases the entire building or a secured area within the building with separate access for each purchaser.

(d) *Examples of services which are not self-storage services*. The following are examples of services which are not self-storage services:

(1) Rental of a safe deposit box from a bank.

(2) Storage of property in meat lockers, refrigerators or freezers.

(3) Storage of merchandise or commodities which are intended for sale.

(4) Rental of a locker in a train station.

(5) Storage of shoes for eventual distribution to the purchaser's various retail stores.

(6) Security deposits charged and subsequently returned to the purchaser by the provider of self-storage services.

(7) Public parking garages.

(8) Rental of a garage in which one half of the area is used for administrative functions and the other half is used for storage.

(9) Rental of a shoe store in a mall and the area rented is primarily used for storage of inventory.

(10) Monthly rental amounts for an apartment which includes a separate detached storage area are not taxable unless the charges for the apartment and storage area are separately stated

(e) *Purchase price.*

(1) The total amount charged for providing self-storage services is subject to tax. Charges associated with the cost of self-storage such as utilities, insurance, pick-up, delivery, locks or keys are part of the taxable purchase price.

(2) If the primary use of the facility being rented is not for self-storage services, the providing of an area for storage is not taxable unless there is a separate charge for the storage area.

(f) *Exclusions.*

(1) Self-storage services are exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also exempt if purchased by the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusion does not apply.

(2) Safe deposit boxes rented from financial institutions.

(3) Storage of property in refrigerator or freezer units.

(4) Charges for the storage of property in commercial warehouses.

(5) Rental or lease of a facility for goods distribution.

(6) Rental of lockers in airports, bus stations, museums or other public places.

(7) The vendor of self-storage services may claim the resale exemption upon its purchase of tangible personal property which is transferred to its purchaser or a third party in the performance of its self-storage services. The vendor may also purchase self-storage services from another provider which the vendor resells to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of other taxable services which it may use in the performance of its self-storage services.

(i) The following are examples of property which may be purchased exempt for resale when used in the performing of self-storage services:

(A) The purchase of tangible personal property which is transferred to the purchaser by the vendor such as storage racks, bins, covers, tarpaulins,

pad locks or keys. If the vendor charges the purchaser for the use of the property, tax shall be charged by the vendor.

(B) The rental of a building for the primary purpose of subleasing the building to another is not subject to tax. The sublease of the building may be taxable depending on the use of the building by the sublessee.

(ii) The following are examples of property which is taxable when used in the performing of self-storage services:

(A) The purchase of materials, equipment or supplies used in the construction, reconstruction, remodeling, repair or maintenance of buildings which are used in the performance of self-storage services.

(B) The vendor's purchase of utilities used in connection with the providing of self-storage services are subject to tax unless the utilities are resold through separate meters. If utilities are resold through a separate meter in the providing of self-storage services, the vendor is required to collect the applicable tax.

(C) Administrative supplies.

(g) *Storage services.*

(1) For the period October 1, 1991, to December 31, 1991, the total charge for the storage of tangible personal property within a building or similar structure is subject to tax.

(2) The following are examples of services which are taxable under this category:

(i) Storage of furs, jewelry and other valuables.

(ii) Safe deposit boxes.

(iii) Cold storage and freezer lockers.

(iv) Storage of raw materials, in-process materials and finished products.

(v) Storage lockers.

(vi) Storage of administrative records, such as files, folders, computer tapes, microfilm, and the like.

(vii) Vehicle, boat and aircraft storage.

(viii) Self-storage facilities.

(ix) The lease of buildings or portions of buildings for the predominant purpose of storage of tangible personal property.

(3) The following are examples of services which are not taxable under this category:

(i) Vehicle parking in a parking lot or an unenclosed parking garage.

(ii) Vehicle, boat or aircraft storage outside of a building or similar structure.

(iii) Separately stated charges for the performance of services other than storage, such as distribution, handling, packaging, assembling, inventory control, quality control, product "break bulk," "pick and pack," and the like which are performed in connection with the storage of tangible personal property.

**Source**

The provisions of this § 60.12 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 190.

**§ 60.13. [Reserved].****Source**

The provisions of this § 60.13 adopted October 22, 1993, effective October 23, 1993, 23 Pa.B. 5037; amended June 27, 1997, effective June 28, 1997, 27 Pa.B. 3068; reserved February 22, 2008, effective February 23, 2008, 38 Pa.B. 977. Immediately preceding text appears at serial pages (200716) and (232211) to (232219).

**§ 60.14. Zero emission vehicles.**

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Comparable vehicle*—A motor vehicle which is primarily self-propelled by a combustion engine and is similar to the category type of the zero emission vehicle which is being purchased. The four categories of motor vehicles are as follows:

- (i) Passenger car.
- (ii) Passenger truck.
- (iii) Van.

(iv) Other qualifying motor vehicle—A motor vehicle which is something other than a passenger car, passenger truck or van.

*Comparable vehicle amount*—The average manufacturer's suggested retail list price (M.S.R.P.) of a comparable vehicle.

*Electric vehicle*—A motor vehicle which operates solely by use of a battery or battery pack and which meets the applicable Federal motor vehicle safety standards. The term includes a motor vehicle which is powered mainly through the use of an electric battery or battery pack but which uses a flywheel that stores energy produced by the electric motor or through regenerative braking to assist in operation of the motor vehicle.

*Hybrid electric vehicle*—An electric vehicle which allows power to be delivered to the drive wheels solely by a battery-powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery and which meets the applicable Federal motor vehicle safety standards. The primary source of power for the motor is the electric battery or battery pack and not the combustion engine.

*Motor vehicle*—A vehicle which is self-propelled and is required to be titled or licensed for highway use.

*Power unit*—The batteries or battery packs which provide the power to operate a zero emission vehicle.

*Premium purchase amount*—The amount charged for a zero emission vehicle which is in excess of the comparable vehicle amount.

*Zero emission vehicle*—A motor vehicle which is an electric vehicle, a hybrid electric vehicle or another type of motor vehicle which produces no emissions of any criteria of pollutants under any operational mode and under any conditions and which meets the applicable Federal motor vehicle safety standards.

(b) *Scope.*

(1) Effective October 1, 1991, the premium purchase amount shall be excluded from the purchase price in the computation of tax for a new or used zero emission vehicle. As a result of this exclusion, the comparable vehicle amount shall become the purchase price for the purpose of computing the amount of tax due. This exclusion from tax expires on December 31, 1999.

(2) Effective October 1, 1991, the sale at retail or use of power units is excluded from tax. This exclusion from tax expires on December 31, 1999.

(3) The Department will annually establish the comparable vehicle amounts for the categories: passenger cars, passenger trucks and vans. These amounts will be published as a notice in the *Pennsylvania Bulletin* by the Department and be codified in subsection (d). The last published listing of amounts shall remain in effect until the date the Department publishes a replacement listing of amounts.

(4) If the Department does not establish a comparable vehicle amount for “other qualifying motor vehicle,” 25% of the gross purchase price shall be the

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premium purchase amount unless the purchaser can provide a statement from the manufacturer or other satisfactory documentation which substantiates a higher premium purchase amount.

(c) *Computation of tax—zero emission vehicle.*

(1) The comparable vehicle amount shall become the purchase amount and from this amount shall be deducted any trade-in to arrive at the taxable amount of the vehicle. If the taxable amount is a negative amount, the taxable amount is zero.

(2) The taxable amount is subject to tax at the applicable tax rates.

(d) *Comparable vehicle amounts.*

(1) The following comparable vehicle amounts will be used from October 1, 1991, through December 31, 1993:

(i) Passenger car	\$20,000
(ii) Passenger truck	\$18,900
(iii) Van	\$16,400

(2) The following comparable vehicle amounts will be used from January 1, 1994, through December 31, 1994:

(i) Passenger car	\$18,900
(ii) Passenger truck	\$14,900
(iii) Van	\$17,800

(3) The following comparable vehicle amounts will be used from January 1, 1996, through December 31, 1996:

(i) Passenger car	\$19,800
(ii) Passenger truck	\$15,600
(iii) Passenger van	\$18,600

(4) The following comparable vehicle amounts will be used from January 1, 1997, through December 31, 1997:

(i) Passenger car	\$20,196
(ii) Passenger truck	\$15,921
(iii) Passenger van	\$18,972

(5) The following comparable vehicle amounts will be used from January 1, 1998, through December 31, 1998:

(i) Passenger car	\$20,661
(ii) Passenger truck	\$16,287
(iii) Passenger van	\$19,408

(6) The following comparable vehicle amounts will be used from January 1, 1999, through December 31, 1999:

(i) Passenger car	\$21,033
(ii) Passenger truck	\$16,580
(iii) Passenger van	\$19,757

**Source**

The provisions of this § 60.14 adopted July 2, 1993, effective July 3, 1993, 23 Pa.B. 3136; amended June 3, 1994, effective June 4, 1994, 24 Pa.B. 2808; amended April 19, 1996, effective April 20, 1996, 26 Pa.B. 1872; amended December 27, 1996, effective January 1, 1997, 26 Pa.B. 6224;

amended December 26, 1997, effective December 27, 1997, 27 Pa.B. 6866; amended December 11, 1998, effective December 12, 1998, 28 Pa.B. 6124. Immediately preceding text appears at serial pages (232219) to (232221) and (239301).

**§ 60.15. Sales tax refund procedures regarding contracts with exempt entities.**

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Contract*—A written or verbal agreement which involves the transfer of property or service as a construction or sales activity or as a rental or lease. The term includes a subcontract.

*Exempt entity*—A charitable organization; volunteer firemen's organization; nonprofit educational institution; religious organization; the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or political subdivisions, including public school districts.

(b) Under section 252 of the TRC (72 P. S. § 7252), a refund granted pursuant to a petition for refund filed with the Board of Appeals on or after October 1, 1991, in conjunction with a contract with an exempt entity will be granted to the exempt entity.

(c) A contractor, at the time of making a claim for refund with the Board of Appeals for tax paid in conjunction with a contract with an exempt entity, shall file a separate petition for refund for each exempt entity. Failure to provide the following information may result in the dismissal of the petition:

- (1) The name of exempt entity.
- (2) The address of exempt entity.
- (3) A copy of the contract with exempt entity or in the alternative satisfactory evidence that the contract was performed for an exempt entity.
- (4) Sales and Use Tax Appeal Schedule (REV-39) which describes the type of property for which the refund is requested and the corresponding dollar amount of the refund claimed on the property.

(d) The Board of Appeals may request additional information it deems necessary. Failure to provide the information may result in the denial of the petition.

(e) Upon the filing of a petition referred to in subsection (c), the Board of Appeals will notify the entity in subsection (c)(1) that a refund petition is pending at the Board of Appeals.

(f) An exempt entity may receive an assignment of rights from the contractor and file a petition for refund.

(g) If a refund is determined to be due and the contractor has a valid assignment of rights from the exempt entity, the refund will be paid to the contractor.

**Source**

The provisions of this § 60.15 adopted December 3, 1993, effective December 4, 1993, 23 Pa.B. 5716.

**§ 60.16. Local Sales, Use and Hotel Occupancy Tax.**

(a) *General provisions.*

(1) *General.* This section is promulgated to administer the provisions of sections 501—509 of the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (53 P. S. §§ 12720.501—12720.509) and sections 3150-B—3157-B of the Second Class County Code (16 P. S. §§ 6150-B—6157-B).

(2) *Registration.* A person making a sale, rental or lease subject to tax under this section shall apply for a license on a form prescribed by the Department.

(3) *Returns.* The taxes collected under this section shall be reported on a return prescribed by the Department and filed under sections 217—220 of the TRC (72 P. S. §§ 7217—7220) and § 34.3 (relating to tax returns).

(4) *Payment.* Payment shall be made under sections 221—224 of the TRC (72 P. S. §§ 7221—7224).

(5) *Imposition of tax.* Unless otherwise specifically noted, Article II of the TRC (72 P. S. §§ 7201—7281.1) and regulations thereunder apply to the taxes imposed under this section.



(6) *Exemption certificates.* A claim for exemption from taxes imposed under this section shall be supported by a valid Pennsylvania exemption certificate.

(7) *Direct payment permit.* A purchaser may use a direct payment permit issued under § 34.4 (relating to direct payment permit) in conjunction with the sales tax imposed under this section. A purchaser may not use a direct payment permit in connection with the purchase of vehicles, food and beverages or hotel occupancies.

(8) *Local tax.* The term local tax means sales, use or hotel occupancy tax imposed by a county of this Commonwealth or the city of Philadelphia and administered by the Department.

(9) *State tax.* The term State tax means sales, use or hotel occupancy tax imposed by Article II of the TRC.

(10) *Local sales and use tax.* For purposes of this section, the local sales tax is the tax which is collected by the vendor and the local use tax is the tax payable if the vendor is not required or fails to collect the proper amount of local sales tax.

(11) *Point of sale.* Local sales tax is imposed at the point of sale. A sale of property or a service delivered to a location within this Commonwealth is deemed to occur at the place of business of the retailer. A sale of property or a service delivered by the retailer or its agent to an out-of-State destination is subject to neither the State nor the local tax. The local tax is in addition to the State tax if a sale is deemed to have occurred in a taxable county. There are no transactions which are only subject to the local tax.

(12) *Tax bracket schedule.* The 1% local sales and use tax is computed in accordance with the following bracket schedule:

(i) Purchase price	Tax
50 or less	0
51 but less than \$1.51	1
\$1.51 but less than \$2.51	2
\$2.51 but less than \$3.51	3
\$3.51 but less than \$4.51	4
\$4.51 but less than \$5.51	5
\$5.51 but less than \$6.51	6
\$6.51 but less than \$7.51	7
\$7.51 but less than \$8.51	8
\$8.51 but less than \$9.51	9
\$9.51 but less than \$10.01	10

(ii) The tax on purchases in excess of \$10 is 1% of each \$10 of the purchase price plus the bracket charge on a fractional part of a \$10 increment under subparagraph (i).

(13) *Taxable county.* A county or the city of Philadelphia which has adopted the local tax.

(14) *Nontaxable county.* A county which has not adopted the local tax.

(15) *Effective date of local tax.*

(i) The effective dates of the local tax in counties that have adopted the local tax are as follows:

<i>County</i>	<i>Effective Date</i>	<i>Rate</i>
Allegheny	July 1, 1994	1%
Philadelphia	October 1, 1991	1%

(ii) When a county adopts the local tax or changes the rate of the local tax, the Department will publish a notice in the *Pennsylvania Bulletin* and codify the change in subsection (a)(15)(i).

(b) *Scope.*

(1) The local tax shall be remitted to the Department. If the vendor fails to collect the applicable local sales tax from the purchaser, the purchaser shall pay the local use tax directly to the Department.

(2) Property and services subject to the State tax are subject to the local sales and use tax. If a purchase is exempt from the State sales and use tax, the exemption also applies to the local tax.

(3) If the sale occurred before the effective date of the local tax, the sale is not subject to the local tax. If the sale occurs on or after the effective date of the local tax, the sale is subject to the local tax. The date of sale is the date of an invoice or other similar document. Lease payments due on or after the effective date of the local tax are subject to the local tax.

(4) The following are examples of sales which are subject to the local tax:

(i) Jeff signed a contract for the lease of a television set from an appliance store located in a taxable county prior to the effective date of the local tax. Lease payments are due on a monthly basis. The lease payments due on or after the effective date of the local tax are subject to the local sales tax.

(ii) John orders a television set from an appliance store located in a taxable county. John signs a contract of sale and receives an invoice from the vendor for the total purchase price prior to the effective date of the local tax. The television set is delivered after the effective date of the local tax. The purchase is subject to the local tax because delivery was subsequent to the effective date of the local tax.

(c) *Sales of, and services to, tangible personal property and other taxable services.* The sales of, and services to, tangible personal property and other taxable services subject to the State sales and use tax are also subject to the local tax if the sale originates in a taxable county. Other taxable services include: building maintenance and building cleaning, collections and adjustment, computer, credit reporting, disinfecting and pest control, employment agency, help supply, lawn care, lobbying, premium cable, secretarial and editing and self-storage.

(1) The following are examples of sales or services subject to the local tax:

(i) Mary Ellen purchases a television set from an appliance store located in a taxable county. Regardless of whether Mary Ellen takes the television set home in her car or the store delivers it to Mary Ellen's Pennsylvania residence, the store shall collect the local tax because the sale occurred in a taxable county.

(ii) Mara, a resident of a taxable county, purchases a television set from an appliance store located in a nontaxable county. Regardless of whether Mara takes the television set home in her car or the store delivers it to Mara's residence, the purchase is subject to the local use tax rather than the local sales tax. Mara shall pay the local use tax directly to the Department. The appliance store in the nontaxable county is not required to collect the local tax.

(iii) ABC, a corporation located in a taxable county, purchases fuel oil from a dealer in New Jersey which delivers the oil to ABC's location. The purchase is subject to the local use tax rather than the local sales tax. ABC shall pay the local use tax directly to the Department. The oil dealer in New Jersey is not required to collect the local tax.

(iv) Bruce, a resident of a nontaxable county, subscribes to premium cable television from a cable company located in a taxable county. The cable company shall collect the local tax because the sale occurred in a taxable county.

(2) The following are examples of sales or services not subject to the local tax:

(i) Tim, a New Jersey resident, purchases a television set from an appliance store located in a taxable county. The store delivers the television set to Tim at his New Jersey home. Because the television is delivered to an out-of-State location, it is not subject to the local tax.

(ii) XYZ, a manufacturing company located in a taxable county, with offices in both the taxable county and a nontaxable county, purchases the services of a keypunch operator from a help supply vendor located in a nontaxable county. Because the keypunch operator reports for work at an office of XYZ located in a nontaxable county, the help supply services are not subject to the local tax.

(d) *Utility services.* The sale or use of utility services subject to the State sales and use tax, including steam, natural and manufactured gas and electricity, is subject to the local tax if the meter which registers the service is located in a taxable county. The sale or use of telephone service subject to the State sales and use tax is subject to the local tax if the telephone equipment to which the telephone number is assigned is located at an address within a taxable county. The sale or use of a telegraph service subject to the State sales and use tax which originates in a taxable county is subject to the local tax.

(1) The following are examples of sales subject to the local tax:

(i) A business located in a taxable county purchases electricity through a meter at its business location in a taxable county. Because the meter that registers the service is located in a taxable county, the service is subject to the local tax.

(ii) A business headquartered in a nontaxable county purchases natural gas for its location in a taxable county. The gas is metered at the plant located in the taxable county but billed to the business headquarters. Because the meter that registers the service is located in a taxable county, the service is subject to the local tax.

(iii) A salesperson for a business located in a taxable county makes a collect telephone call from Chicago to its service address. Because the service address of the collect call is located in a taxable county, the service is subject to the local tax.

(2) The following are examples of sales not subject to the local tax:

(i) A business headquartered in a taxable county purchases electricity for its location in a nontaxable county. The electricity is metered at the location in the nontaxable county but billed to the business headquarters. Because the meter that registers the service is not located in a taxable county, the service is not subject to the local tax.

(ii) A salesperson for a business located in a nontaxable county makes a cellular telephone call within a taxable county which is billed to the service address of the equipment located in the nontaxable county. Because the service address of the telephone call is located in a nontaxable county, the service is not subject to the local tax.

(e) *Retailer with multiple locations.*

(1) If a retailer has multiple business locations, the sale is deemed to occur at the place of business where the initial order for the property or service is placed, even though the order may be forwarded elsewhere for acceptance, approval of credit, shipment or billing.

(2) The following are examples of sales or services subject to the local tax:

(i) Eileen orders a television set from an appliance store in a taxable county. Regardless of whether the television set is delivered to Eileen from a location in a nontaxable county, or Eileen picks up the set at a location in a nontaxable county, the store shall collect and remit the local tax since the sale occurred in a taxable county.

(ii) Steve, a resident of a taxable county, orders a television set from an appliance store in a nontaxable county. Regardless of whether Steve picks up the set at a location in a taxable county or the set is delivered from a location in a taxable county, the purchase is subject to the local use tax rather than the local sales tax. Steve shall pay the local use tax directly to the Department.

(iii) Bob, a resident of a taxable county, purchases a professional drum from a music store in New York City. The drum is delivered to Bob from



New York City. Bob does not pay the applicable State sales tax or applicable local tax to the seller. Bob is required to remit the State and local use taxes directly to the Department.

(iv) Merrill, who maintains a regular place of business in a taxable county, sells jewelry from a temporary location in a nontaxable county. Because Merrill maintains a place of business in a taxable county, Merrill shall collect the State and local sales taxes.

(f) *Salesperson.*

(1) Sales by salespersons who are employees of a vendor are deemed to occur at the employer's business address from which the salesperson works. Sales by salespersons who are independent contractors who issue their own invoices are deemed to occur at the place of business of the independent contractor. If, however, the independent contractor merely solicits sales on behalf of a vendor, the sale is deemed to occur at the business location of the vendor.

(2) The following are examples of sales or services subject to the local tax:

(i) A salesperson working as an employe from an office in a nontaxable county sells encyclopedias door-to-door in a taxable county. Tim buys the encyclopedias when the salesperson visits Tim's home in a taxable county. The purchase is subject to the local use tax rather than the local sales tax. Therefore, Tim shall pay the local use tax directly to the Department.

(ii) A salesperson working as an employe from an office in a taxable county sells encyclopedias door-to-door in a nontaxable county. Jeff buys the encyclopedias when the salesperson visits Jeff's home in a nontaxable county. The purchase is subject to the local sales tax rather than the local use tax. Therefore, the salesperson shall collect the local sales tax and remit it to the Department.

(iii) Joe, an independent contractor, sells teddy bears by direct mail advertising. Anne purchases a teddy bear through the mail. Anne is billed by Joe on his letterhead indicating an address in a taxable county. The purchase is subject to the local sales tax. If Anne had received an invoice from a manufacturer located outside of this Commonwealth whom Joe represents, the purchase would not be subject to the local sales tax but would be subject to the local use tax if Anne is a resident of a taxable county. Anne would be required to pay the tax directly to the Department.

(g) *Vehicles, motorboats and aircraft.*

(1) The sale or use of vehicles, boats or aircraft required to be titled or licensed is subject to the local tax if the address of the purchaser is at a location in a taxable county. The local tax on vehicles is payable to the Department of Transportation. The local tax on aircraft is payable to the Department. The local tax on motorboats is payable to either the Department or the Fish and Boat Commission. The location of the seller or the location to which the property is delivered does not affect the taxability of the property. This subsection does not apply to the purchase or use of snowmobiles, ATVs or dirt bikes.

Subsection (c) relates to the taxability of snowmobiles, ATVs and dirt bikes. See §§ 31.41—31.50 and 58.8 (relating to vehicles; and commercial airport and aircraft operators) for the general rules regarding the taxability of vehicles or aircraft.

(2) A lease or rental payment, including a down payment, made in connection with the lease or rental of a motor vehicle, trailer, semitrailer, mobile home, motor boat, aircraft or other similar tangible personal property required under Federal or State laws to be registered or licensed, is taxable based upon the location of the lessor or retailer, if the lease or rental agreement was entered into during the period of October 1, 1991, through June 30, 1994. If the lease is resold to another lessor in a taxable county, the new lessor is responsible for collecting the local sales tax on the remaining lease payments. If the lease is resold to a new lessor whose business location is in a nontaxable county, the lessor is not required to collect the local sales tax. If the lessee is a resident of a taxable county, the lessee shall pay the local use tax. On or after July 1, 1994, the lease of property referred to in this paragraph required to be registered or licensed under either Federal or state laws, shall be deemed to have been completed or used at the address of the lessee. The lessee shall pay local tax to the lessor upon the down payment and each lease payment relating to the lease. The lessor shall collect the local tax from the lessee. A rental payment made upon the property referred in this paragraph on or after July 1, 1994, is taxable based upon the location of the retailer. For the purpose of this subsection, a lease means a contract for 30 days or more and rental means a contract for a period of less than 30 days.

(i) The following are examples of sales subject to the local tax:

(A) John, a resident of a taxable county, purchases an automobile from an automobile dealer located in a taxable county. Because the sale occurred in a taxable county, the dealer shall collect and remit the local tax.

(B) A New Jersey resident purchases an automobile in New Jersey and subsequently establishes a residence in a taxable county. If the date of establishing the residence in the taxable county is less than 6 months after the date of purchase of the automobile, the tax is based on the original purchase price. If the date of establishing the residence is beyond 6 months of the date of purchase, neither state nor local tax is due.

(C) Mary Ellen, a resident of a taxable county, leases an automobile from a lessor located in a nontaxable county on July 15, 1994. The lessor is required to collect the 1% local tax.

(D) Sherry ordered a new automobile prior to the effective date of the local tax in the county in which she resides. The automobile is delivered to Sherry by the dealer after the effective date of the local tax. Sherry is required to pay the 1% local tax at the time she registers the vehicle with the Department of Transportation.

(ii) The following are examples of sales not subject to the local tax:

(A) Steve, a resident of a nontaxable county, purchases a boat from a boat dealer located in a taxable county. Because the address of the purchaser is not in a taxable county, the sale is not subject to the local tax.

(B) An aircraft dealer located in a taxable county sells an aircraft to a resident located in a nontaxable county. Because the address of the purchaser is not in a taxable county, the sale is not subject to the local tax.

(h) *Vending machines.*

(1) An operator of a vending machine located in a taxable county, from which food or beverages, excluding candy, gum and frozen milk-based or frozen water-based products are sold, is required to collect and remit the local tax at the rate of 1% upon the sales of food and beverages. Taxable sales from vending machines located in a nontaxable county are not subject to the local tax. Sales of 50 or less are not taxable. On sales in excess of 50, the tax shall be computed using the following formula:

$(\text{Gross receipts} \div 1.07) \times .01 = \text{local tax due}$

$(\text{Gross receipts} \div 1.07) \times .06 = \text{State tax due}$

(2) An operator of a vending machine selling taxable property, other than food or beverages, is required to collect and remit the local sales tax upon each individual sale of taxable property in accordance with the local tax bracket system.

(i) *Hotel occupancy tax.*

(1) The occupancy of hotel rooms located in a taxable county is subject to the 6% State hotel occupancy tax and the 1% local hotel occupancy tax. The occupancy of hotel rooms which is exempt from the 6% State hotel occupancy tax is also exempt from the 1% local hotel occupancy tax.

(2) The maximum State and local hotel occupancy tax is 7% plus additional local tax which a taxable county imposes and administers.

(j) *Use tax.*

(1) Persons who purchase taxable property or services which are subject to the local tax and do not pay the applicable local sales tax are required to remit the local tax directly to the Department. The purchaser shall report the tax as use tax on the purchaser's tax return.

(2) The rules for imposing State use tax upon property purchased outside of this Commonwealth or purchased exempt from tax and subsequently put to a taxable use in this Commonwealth apply to local tax. These rules apply to the establishment of a residence in a taxable county, the temporary use of property within a taxable county by a nonresident of a taxable county, the use of property by a tourist or vacationer in a taxable county, or the use of property which was purchased by a resident within 6 months of its first taxable use in a taxable county. See § 31.7 (relating to use tax).

(3) The following are examples of transactions that are subject to local tax:

(i) Anne, a resident of a nontaxable county, purchases a television set without paying local sales tax. Anne immediately takes the set to her busi-

ness located in a taxable county, where it remains for more than 7 days. Anne's use of the television is subject to the local use tax after 7 days and Anne shall remit the use tax directly to the Department.

(ii) Tim purchases a television set at an appliance store located outside this Commonwealth. The set is delivered to Tim at his residence in a taxable county. Tim is required to pay the applicable State and local use taxes directly to the Department.

(iii) Mike orders an English grammar book from a vendor located in a taxable county. The book is delivered to Mike's residence in a nontaxable county. The vendor did not charge Mike the local tax. Mike is required to remit the local use tax to the Department.

(iv) Gregg, a resident of a nontaxable county, establishes a new residence in a taxable county. Gregg need not pay local use tax on property purchased 6 months or more prior to establishing his residence in the taxable county. However, Gregg shall pay local tax upon the purchase price of property purchased within 6 months of establishing his residence in the taxable county. Gregg is entitled to a credit for local tax paid upon the property at the time of purchase.

(k) *Construction contracts and special resale exemption.*

(1) *Payment of tax.* Persons who perform construction contracts within taxable counties are required to pay local tax upon the purchase of property or services, on or after the effective date of the local tax, which are used or installed under the performance of a construction contract. If the property or service is purchased within a taxable county, the contractor is required to pay the local sales tax. If the property is purchased prior to the effective date of the local tax, it is not subject to the local tax imposed by the county in which the contract is being performed.

(2) *Special exemption on fixed-price contracts in Allegheny County.* The sale to or use of materials by a contractor is exempt from tax if the materials are incorporated into and made part of real estate under a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of real estate within Allegheny County on the basis of a fixed-price contract which is not subject to change or modification, or entered into under the obligation of a formal written bid which cannot be altered or withdrawn provided the contract or bid was signed prior to July 1, 1994. This exemption also applies to purchases made by subcontractors who perform contracts pursuant to exempt fixed-price contracts, even though the subcontracts are entered into on or after July 1, 1994. This exemption does not apply to change orders entered into on or after July 1, 1994, relating to the original fixed-price contract which was entered into prior to July 1, 1994.

(3) *Special resale exemption.* A special resale exemption applies to the transfer of ownership of tangible personal property purchased solely for the purpose of being processed, fabricated or manufactured into, attached to or

incorporated into tangible personal property within the taxable county and thereafter transported outside the taxable county for use exclusively outside the taxable county.

(4) *Examples.* The following are examples of transactions which are subject to local tax:

(i) ABC Company, a construction contractor, entered into a cost-plus contract on May 1, 1994, for the construction of a building in Allegheny County. ABC purchased all materials in Allegheny County. ABC purchased bricks in January of 1994 and installed the bricks on July 15, 1994. ABC also purchased and installed concrete on July 25, 1994. The bricks purchased in January of 1994 are not subject to the Allegheny County local tax because they were purchased prior to the effective date of the Allegheny County local tax. The concrete purchased and installed on July 25, 1994, is subject to the Allegheny County local tax because the concrete was neither purchased and used prior to the effective date nor purchased and used pursuant to a fixed-price contract within Allegheny County.

(ii) Alex Corporation purchases unassembled bicycles from a nontaxable vendor. The bicycles are delivered to XYZ Corporation in Allegheny County for assembly. After the bicycles are assembled, they are delivered to Alex's plant in a nontaxable county for employee use. Because Alex is entitled to claim the special resale exemption, there is no local tax due on the work performed in Allegheny County by XYZ Corporation.

(iii) The Brendan Company, located in a nontaxable county, entered into a fixed-price contract to purchase and install a concrete block wall for an office building in Philadelphia. The contract was signed and the materials were purchased prior to the effective date of the Philadelphia local tax. The work was done after the effective date of the Philadelphia local tax. The materials were purchased in a nontaxable county. The materials are subject to the local tax. The Philadelphia local sales tax law does not contain a provision which excludes from the local tax fixed-price contracts entered into prior to the effective date of the Philadelphia local tax.

(iv) Stephanie Company, a contractor, entered into a fixed-price contract in March of 1994 to construct a building in Allegheny County. On July 12, 1994, Stephanie Company signed a change order to the original contract for additional construction at an agreed price. Materials purchased by Stephanie Company which are used to fill the change order are subject to the Allegheny local tax.

(l) *Credits against tax.*

(1) *Interstate credits.* To the extent that State or local tax is due, a credit will be granted for State and local taxes which were legally due and paid to another jurisdiction if the other jurisdiction grants similar credit for State and local taxes paid to the Department. Credit for taxes paid will be applied to the State tax first and the remainder to the local tax.

(i) Kathy, a New Jersey resident, purchased an automobile on February 3, 1992, from a New Jersey dealer and paid the 6% New Jersey sales tax. On April 4, 1992, Kathy established her residence in a taxable county. Because Kathy established her residence in a taxable county less than 6 months after she purchased the automobile, the use of the automobile is subject to the 6% State use tax and the 1% local tax. Since Kathy paid the 6% New Jersey sales tax, Pennsylvania will grant her a credit equal to the 6% New Jersey tax and apply the credit to the State tax. Kathy will be required to pay the 1% local tax.

(ii) If Kathy had been a New York resident and had paid tax at the rate of 7%, Kathy would not owe State or local tax.

(2) *Intrastate credits.* To the extent that the local use tax is due upon the use of property or services in a taxable county, a credit will be granted for local sales or use tax legally due and paid upon the purchase or use of the property or services to another taxable county.

(i) Chris, a resident of a taxable county, purchases a television set in another taxable county. Chris pays the applicable local sales tax at the time of purchase and takes the television set home. Chris is permitted to take a credit for the amount of local sales tax paid at the time of purchase and can apply the credit to the amount of local use tax due in Chris's county of residence.

(ii) Pat, a resident of a taxable county, purchases a computer in a non-taxable county. Pat takes the computer home and pays the applicable local use tax to that county. Three months later, Pat takes the computer to another taxable county to use while attending college for 4 years. Pat is permitted to take a credit for the amount of local use tax paid to Pat's county of residence and can apply the credit to the amount of local tax due to the county in which the computer is used while attending college.

(3) *Voluntary collection.* A vendor who is not located in a taxable county may voluntarily collect the local tax even though not required to collect the local tax. A vendor who voluntarily collects the local tax is responsible for reporting and remitting the local tax collected.

#### Source

The provisions of this § 60.16 adopted October 8, 1993, effective October 9, 1993, 23 Pa.B. 4795; amended June 17, 1994, effective June 18, 1994, 24 Pa.B. 3040; amended October 20, 1995, effective October 21, 1995, 25 Pa.B. 4536. Immediately preceding text appears at serial pages (190210) to (190218) and (197837).

#### Cross References

This section cited in 61 Pa. Code § 60.20 (relating to telecommunications service).

### § 60.17. Sale of food and beverages by nonprofit associations which support sports programs.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Nonprofit association—*

(i) An entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of the Commonwealth or the United States.

(ii) An entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of the Commonwealth, and which is organized and operated on a nonprofit basis, including the following associations or separately chartered auxiliaries thereof:

- (A) Youth or athletic.
- (B) Volunteer fire.
- (C) Ambulance.
- (D) Religious.
- (E) Charitable.
- (F) Fraternal.
- (G) Veterans.
- (H) Civic.

*Sports program—*Subject to the limitations set forth in subparagraph (ii), a sports program shall include:

(i) Baseball, softball, football, basketball, soccer and other competitive sports formally recognized as a sport by one or more of the following:

- (A) The United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (36 U.S.C.A. §§ 371—396).
- (B) The Amateur Athletic Union.
- (C) The National Collegiate Athletic Association.

(ii) The term is limited to a program or that portion of a program which meets the following criteria:

(A) Organized for recreational purposes and conducts activities substantially for these purposes.

(B) Organized primarily for participants who are 18 years of age or younger or whose 19th birthday occurs during the year of participation or the competitive season, whichever is longer. There is no age limitation for programs operated for persons with physical handicaps or persons with mental retardation.

*Support—*The term means the following:

(i) The nonprofit association sells food and beverages and uses the funds raised solely to pay the expenses of a sports program.

(ii) The nonprofit association sells food and beverages at a location where a sports program is being conducted.

(b) *Scope.*

(1) The sale of food and beverages by nonprofit associations which support sports programs is not subject to tax.

(2) The following are examples of taxable and nontaxable sales by non-profit associations:

(i) “F” fraternal association sells food and beverages to fans from a food stand located on university property where basketball games are played by members of the various fraternities, most of whom are 20 years of age or older. Sales of food and beverages by “F” to fans are taxable since the sports program is primarily for participants who are older than 18 years of age.

(ii) “A” charitable association operates a food stand four times a year at a public park where food and beverages are sold to raise funds solely to pay the expenses of a sports program. Since the funds raised from the sales of food and beverages by “A” are used solely to support sports programs, these sales are not subject to tax even though they are made from a location other than where the sports program is being conducted.

(c) *Equipment and supplies.*

(1) A vendor of food or beverages (which is not otherwise an exempt organization under § 32.21 (relating to charitable, volunteer firemen’s and religious organizations, and nonprofit educational institutions)) is required to pay tax upon the purchase of utilities, equipment, fixtures, utensils—such as glasses, knives and forks, and nondisposable plates and cups—table cloths, napkins, straws, returnable containers and related supplies.

(2) The purchase of the following items in connection with the sale of food or beverages is exempt from tax regardless of whether the purchaser is an exempt entity under § 32.21:

(i) Prepared or nonprepared food and beverages for resale.

(ii) Wrapping supplies as defined by § 32.1 (relating to definitions).

(3) The following examples illustrate what items are and are not subject to tax:

(i) In connection with the sale of food and beverages at a food stand where a sports program is being conducted, “N” nonprofit association provides tables and chairs for its customers to use. “N” is not an exempt organization under § 32.21. “N” shall pay tax on these items at the time of purchase and may not claim the resale exemption even though the invoices separately state the charges for these items.

(ii) In connection with the sale of food and beverages at a food stand where a sports program is being conducted, “X” nonprofit association provides to its customers paper plates, styrofoam cups, straws, paper napkins, and plastic knives, forks and spoons. “X” is not an exempt organization under § 32.21. “X” can purchase paper plates and styrofoam cups exempt from tax on the basis that these items qualify as wrapping supplies. “X” shall pay tax upon the purchase of straws, paper napkins, and plastic knives, forks and spoons.



**Source**

The provisions of this § 60.17 adopted August 25, 1995, effective August 26, 1995, 25 Pa.B. 3493; amended July 2, 2011, effective July 3, 2011, 41 Pa.B. 3543. Immediately preceding text appears at serial pages (234302) and (200739) to (200740) and (326001).

**§ 60.18. [Reserved].****Source**

The provisions of this § 60.18 adopted April 14, 1995, effective April 15, 1995, 25 Pa.B. 1434; reserved May 26, 2006, effective May 27, 2006, 36 Pa.B. 2525. Immediately preceding text appears at serial pages (200741) to (200742) and (262351).

**§ 60.19. Computer software, hardware and related transactions.**

(a) *Scope.* Effective July 1, 1997, the rendition of computer programming, computer integrated systems design, computer processing, data preparation or processing, information retrieval, computer facilities management and other computer-related services, as defined under repealed section 201(dd)—(ii) of the TRC (72 P. S. § 7201(dd)—(ii)), are no longer subject to Sales or Use Tax. The sale at retail or use of computer hardware and canned software, as well as services thereto, remains subject to Sales and Use Tax as the sale at retail or use of tangible personal property and is not affected by the repeal of section 201(dd)—(ii) of the TRC.

(b) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Canned software*—Computer software that does not qualify as custom software.

*Computer hardware*—Assembly of physical equipment that is united and regulated by interaction or interdependence to accomplish a set of specific computer system functions.

(i) The term includes any connected equipment which enables the computer to store, retrieve or communicate to or from a person, another computer or another device, the results of computer operations, computer programs or computer data.

(ii) The term also includes associated parts, which encompass any component of computer system hardware that is used in connection with and that is necessary to the performance of the hardware's operation.

(iii) Examples of computer hardware are: microcomputers; minicomputers; main-frame computers; personal computers; external hard drives; portable disk drives; memory chip; compact disc read only memory (CD-ROM) drives; external modems; printers; scanners; servers; monitors; keyboards; mice; microphones; network interfaces; network hubs; network routers; motherboards; daughterboards; central processing units; controller cards; internal hard drives; digitizer; internal modems; network interface cards; sound cards; video cards; and network wiring and cables.

*Custom software*—Computer software designed, created and developed for and to the specifications of an original purchaser.

*Original purchaser*—The first person for whom the custom software was designed, created and developed, and to whom it was transferred in a sale at retail.

*Storage media*—The term includes hard disks, compact disks, floppy disks, magnetic tape, cards and other tangible medium used for the storage of computer readable information.

(c) *Application.*

(1) *Computer hardware.*

- (i) The sale at retail or use of computer hardware is subject to tax.
- (ii) The sale at retail or use of the services of repairing, altering or cleaning computer hardware is subject to tax.
- (iii) The sale at retail or use of maintenance, service and warranty contracts for computer hardware constitutes prepayment for services to tangible personal property and is subject to tax.

(2) *Computer software.*

(i) *Canned software.* The sale at retail or use of canned software, regardless of the method of delivery, including updates, enhancements and upgrades is subject to tax.

(A) Canned software includes custom software that is transferred pursuant to a sale at retail to a person other than the original purchaser.

(B) Computer software designed, created and developed to adapt or modify canned software to the specific needs of a particular customer does not convert the canned software to custom software. Any charge for the custom software or modifications shall be reasonable and be separately stated on the sales invoice or statement to the customer to be exempt from tax.

(C) A vendor's transfer for consideration to a purchaser of the temporary ownership, possession or custody of a storage medium containing canned software for the purpose of being used or recorded by either the purchaser or vendor on the purchaser's computer hardware is subject to tax.

(D) The sale at retail or use of a canned software maintenance contract constitutes a prepayment for services to tangible personal property and is subject to tax. If a canned software maintenance agreement provides that the purchaser is entitled to receive both taxable components, such as canned software updates, enhancements, upgrades or error corrections, and nontaxable components, such as consultation, support or training services, the charge for the nontaxable component is not subject to tax if that charge is separately stated on the sales invoice.

(ii) *Custom software.* The sale at retail or use of custom software is not subject to tax. The sale at retail or use of custom software constitutes a purchase of a nontaxable computer programming service.

(A) The sale at retail or use of multiple copies or licenses of custom software to the original purchaser is not subject to tax.

(B) The sale at retail or use of custom software installation, custom software repair and maintenance, custom software updates, enhancements and upgrades that constitute custom software is not subject to tax.

(C) A custom software vendor's purchase of storage media used to transfer custom software to its customers, and the vendor's purchase of any related materials, including documentation and training manuals that are transferred to the customer as part of the sale at retail of custom software, are subject to tax when purchased by the custom software vendor.

(d) *Exemptions from tax.*

(1) The sale at retail or use of canned software and computer hardware is exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, unless the software is used in an unrelated trade or business; by the Federal government; or by the Commonwealth, its instrumentalities or political subdivisions, including public school districts.

(2) The manufacturing, research, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exemptions from tax apply to the purchase of canned computer software and computer hardware predominantly and directly used in these operations.

(3) Under section 201(c)(5) of the TRC, the manufacturing and research exemption from tax applies to the sale at retail or use of tangible personal property or taxable services by a person engaged in the business of manufacturing or researching canned software, if the property is predominately and directly used by the purchaser in the manufacture or research of canned software.

(i) The creation of custom software does not qualify as manufacturing or research.

(ii) When a purchaser of tangible personal property uses the property to both manufacture canned software and create custom software, the purchaser has the burden of establishing that the tangible personal property is predominately used in the manufacturing or research of canned software.

(4) The sale at retail of canned software and computer hardware to a vendor who will transfer ownership, custody or possession of the canned software or computer hardware for a consideration in the ordinary course of its business is exempt from tax as a sale for resale. Canned software or computer hardware used by a vendor in producing a separate computer product for resale or in providing a service does not qualify as a sale for resale.

#### Source

The provisions of this § 60.19 adopted January 7, 2000, effective January 8, 2000, 30 Pa.B. 233; amended March 2, 2007, effective March 3, 2007, 37 Pa.B. 1048. Immediately preceding text appears at serial pages (319287) to (319290).

#### Notes of Decisions

##### *Canned Software Electronically Delivered*

Petitioner sought refund of taxes paid on purchase of software license renewal to use software programs, however, under the “essence of the transaction” test, renewals of licenses to use “canned” software, whether transmitted electronically or on a physical medium, is taxable as the sale of tangible personal property; the computer program is stored on a computer’s hardware, takes up space on the hard drive, and is physically perceived by checking the computer’s files. *Graham Packaging Co., LP, v. Commonwealth*, 882 A.2d 1076, 1086—1087 (Pa. Cmwlth. 2005).

##### *Software Licenses Are Tangible Personal Property*

Taxpayer petitioned for review of the order of Board of Finance and Revenue denying its request for refund of sales taxes on purchase of licenses to use computer software; the sale of all canned software, whether transmitted electronically or on a physical medium, is taxable as the sale of tangible personal property, therefore licenses to use the software was sale at retail of tangible personal property and subject to sales tax. *Dechert LLP v. Com.*, 922 A.2d 87, 90 (Pa. Cmwlth. 2007).

### § 60.20. Telecommunications service.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Airtime*—A component of a telecommunications service that is charged on a basis that reflects the time span of the communication.

*Basic local telephone service*—The provision of an access line and dial tone, to a fixed location, for purposes of sending or receiving a telecommunication service within a local calling area, regardless of whether the purchaser has limited or unlimited access to a private or a party line. The term also includes installation service, providing and restoring access lines, touch tone service, 911 service and telecommunications relay service.

*Cell site*—The geographic area covered by receiving and transmitting equipment that provides cellular mobile telecommunications service directly to or from a subscriber.

*Channel*—A pathway for the transmission of information between a sending point and a receiving point.

*Commercial use*—The use or consumption other than a residential use.

*Enhanced telecommunication services*—

(i) Services, offered over a telecommunications network, which employ computer processing applications that include one or more of the following:

(A) Acts on the format, content, code, protocol or similar aspects of the purchaser's transmitted information.

(B) Provides the purchaser additional, different or restructured information.

(C) Involves the purchaser's interaction with stored information.

(ii) Examples of enhanced telecommunication services include electronic publishing, Internet access, voice mail and electronic mail services. Services utilizing any of the computer processing applications in subparagraph (i) solely for the management, control or operation of a telecommunications system or the management of a telecommunications service is not an enhanced telecommunication service.

*International telecommunications service*—A telecommunications service that either originates in this Commonwealth and terminates outside the United States, or originates outside the United States and terminates in this Commonwealth.

*Interstate telecommunications service*—A telecommunications service that either originates in this Commonwealth and terminates in another state, or originates in another state and terminates in this Commonwealth.

*IntraState telecommunications service*—A telecommunications service that originates and terminates within this Commonwealth, regardless of routing.

*Private line*—A dedicated, nontraffic sensitive telecommunications service for a single purchaser that entitles the purchaser to the exclusive or priority use of a communications channel, or group of channels, between specified locations.

*Residential use*—The use or consumption within that portion of a structure used as a home, dwelling, private residence, condominium, housing cooperative, prefabricated building, camper, summer home, motor home or similar place of abode. The term includes the use or consumption by a condominium association or housing cooperative association that acts on behalf of residents who use the condominium or housing cooperative units as their personal residences. The term does not include the use or consumption of a telecommunications service for commercial purposes at a purchaser's private residence.

*Subscriber line charge*—An access charge paid directly by the purchaser of a telephone service to a local exchange carrier to defray the cost of providing local exchange access.

*Telecommunications service*—

(i) Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form, which affect or are intended to affect meaningful communications by electronic or electromagnetic means by means of wire, cable, satellite, light waves, micro-waves, radio waves or other transmission media.



(ii) Except as provided in subparagraph (iii), the term includes all types of telecommunication transmissions such as:

- (A) Local, toll or wide-area telephone service.
- (B) Private line service.
- (C) Telegraph service.
- (D) Radio repeater service.
- (E) Wireless communication service.
- (F) Personal communications system (PCS) service.
- (G) Cellular mobile telecommunication service.
- (H) Specialized mobile radio service.
- (I) Stationary two-way radio service.
- (J) Paging service.

(iii) The term does not include:

- (A) Subscriber charges for access to a video dial tone system.
- (B) Charges to video programmers for the transport of video programming.
- (C) Enhanced telecommunication services.

*Video dial tone service*—A common carrier service for the transport of a video programming service to a subscriber.

*Video programming service*—Video or information programming, whether in digital or analog format, that is provided by a cable television operator, or is of the type that would generally be considered comparable to programming provided by a cable television operator, and upon which the cable television operator pays a franchise fee. The term does not include on-line, interactive information services to the extent that access to these services is accomplished through use of a dial-up or telephone line, or a wireless or direct-to-home satellite transmission.

(b) *Scope.*

(1) *General.* Effective October 1, 1991, the sale at retail or use of an international or interstate telecommunications service charged to a service address in this Commonwealth or an intraState telecommunications service is subject to tax.

(2) *Purchase price.* The total amount charged for an international, interstate or intraState telecommunications service is taxable, regardless of whether the charge is based upon a flat rate or a message unit rate.

(3) *Private line service.* If the telecommunications service is a private line service, both of the following charges are taxable:

(i) Charges imposed for each channel termination point in this Commonwealth.

(ii) Charges for that portion of the channel within this Commonwealth determined by mileage or other reasonable method.

(4) *Ancillary services.* Services that are ancillary to the provision of telecommunication services are taxable, such as directory assistance service, the

connection or disconnection of telecommunications services or equipment, call forwarding, caller identification and call waiting.

(5) *Prepaid telephone calling cards.* The sale of prepaid telephone calling cards, which allow the holders of the cards to use a predetermined number of minutes or set dollar amount of a telecommunications service, are not subject to Pennsylvania Sales Tax. The sale of the cards are considered to be the sale of a right to future telecommunication services and not a sale of tangible personal property. Once a telecommunications service that originates within this Commonwealth is made with the use of a prepaid telephone calling card, the call is subject to tax as a telecommunications service.

(i) The purchase price subject to tax is the consideration for the telecommunication service that is charged by the telecommunication service provider. This consideration is the value, expressed in terms of money, of the units or minutes that are reduced from the card upon each use. The tax shall be remitted to the Department by the telecommunications service provider.

(ii) The telecommunications provider or other entity that sells the debit cards is the consumer of the plastic or paper cards. Because the cards are not tangible personal property purchased for resale, the telecommunications provider or other entity shall pay tax upon its purchase of the cards.

(iii) The rules pertaining to debit cards under this subsection apply whether the card is transferred to a retail customer for consideration or as part of a promotional program.

(6) *Internet access.* Service charges associated with the provision of Internet access by an Internet or on-line service provider, including flat rate monthly, installation and hourly charges, are considered enhanced telecommunication charges and are not subject to sales and use tax. Telecommunication charges incurred by an Internet service provider to deliver Internet access to its subscribers are subject to tax. Local, toll or long distance telephone charges incurred by a subscriber to transmit signals from a computer to the Internet service provider are subject to tax, subject to the exceptions listed in subsection (d).

(c) *Service address.*

(1) If telecommunications equipment is designed to originate or receive a telecommunications service at a fixed location, the service address is the location of the equipment from which the purchaser originates or receives the telecommunications service. The following are examples involving a service address at a fixed location:

(i) Bruce calls New York from his home telephone located in this Commonwealth. Because Bruce's telephone is designed to originate a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. Because the telephone call also originates in this Commonwealth, the telecommunications service is subject to Pennsylvania Sales and Use Tax.



(ii) Jonathan places a collect call from New Jersey to Mary's home phone in this Commonwealth. Because it is a collect call, Mary is the purchaser of the telecommunications service. Because Mary's telephone is designed to receive a telecommunications service at a fixed location in this Commonwealth, the service address is in this Commonwealth. The collect call is subject to Pennsylvania Sales and Use Tax because it is received in this Commonwealth and its service address is in this Commonwealth.

(2) If telecommunications service equipment is designed to originate or receive a telecommunications service at a mobile location, the service address is the subscriber's primary use of the telecommunications equipment as defined by telephone number, authorization code or location in this Commonwealth where bills are sent. If the mobile telephone switching office or similar facility first receiving the telecommunication is outside the subscriber's assigned service area (that is, the subscriber is "roaming"), the service address is deemed to be the location of that mobile telephone switching office or similar facility. In the case of airtime service, a mobile telecommunications service provider may elect to define service address as being the location of the initial cell site used by the service provider's customer to originate the call or, if the customer receives a call, the cell site that connects the call to the receiver. The following are examples involving a service address at a mobile location:

(i) Cara, a Pennsylvania resident, purchases a paging service that covers Pennsylvania, New York and New Jersey. To activate the paging service, the paging service provider has antennas located throughout the tristate area that emit a signal corresponding to Cara's pager. Cara's pager is activated while she is attending a conference in New York City. Cara's service address is defined as her billing address in this Commonwealth because her pager is designed to receive a telecommunications service from a mobile location. The paging service originates in this Commonwealth because the paging service provider's signals originate from antennas located in this Commonwealth. Because the service originates in this Commonwealth and is charged to a service address in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(ii) Janis, a Pennsylvania resident, calls Newark, New Jersey from her cellular telephone while driving through Scranton, Pennsylvania, which is within her assigned cellular telephone service area. The cellular telephone service provider sends Janis's phone bills to her residence in this Commonwealth. Accordingly, the service address is deemed to be Janis's billing address. Because the call originates in this Commonwealth and the service address is in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(iii) Katie, a Pennsylvania resident, calls New York from her cellular telephone while driving through Maine, which is outside her assigned cellular telephone service area. Accordingly, the service address is defined as the

mobile telephone switching office in Maine that transmits the signal. Because the service address is in Maine and the telecommunication originates and terminates outside this Commonwealth, the call is not subject to Pennsylvania Sales and Use Tax.

(iv) Mike, a New York resident, calls Ohio from his cellular telephone while driving through this Commonwealth, which is outside his assigned cellular telephone service area. Accordingly, the service address is defined as the mobile telephone switching office in this Commonwealth that transmits the signal. Because the service originates in this Commonwealth, and the service address is deemed to be in this Commonwealth, the call is subject to Pennsylvania Sales and Use Tax.

(v) Joe, a resident of Valley Forge, Pennsylvania, calls his office in Philadelphia, Pennsylvania, from his cellular telephone while driving in Cherry Hill, New Jersey. The call originates and terminates within his assigned cellular mobile telephone service area, which encompasses both this Commonwealth and New Jersey. Joe's service provider elects to use the cell site method for determining service address and determines that the initial cell site used to originate the call was located in Cherry Hill, New Jersey. Although Joe's cellular telephone call terminated in this Commonwealth and his billing address is in this Commonwealth, the call is not subject to Pennsylvania sales tax, because the location of the call's service address, under the cell site method, is in New Jersey.

(3) The service address of an intraState telecommunications service is deemed to be in this Commonwealth regardless of how or where billed or paid.

*Example:* Gregg places a call from Philadelphia, Pennsylvania to Scranton, Pennsylvania. He charges the call to a third party located outside this Commonwealth. Because the call originates and is received in this Commonwealth, the entire charge is taxable. The fact that Gregg charges the call to a third party located outside this Commonwealth is irrelevant.

(4) If the charge for an international or interstate telecommunications service is paid by a credit or payment mechanism that does not relate to a service address, such as a debit or credit card, or when the service is charged to equipment at a location that does not constitute a service address, the service address is deemed to be the location at which the telecommunications service originated.

(i) *Example:* Jack calls Massachusetts from a pay telephone located in this Commonwealth and uses his prepaid telephone debit card to pay for the call. Because a prepaid telephone debit card is not related to a service address, the service address is deemed to be this Commonwealth, the origination of the call. Because the call also originates in this Commonwealth, the charge is subject to Pennsylvania Sales and Use Tax.

(ii) *Example:* John calls New York from a telephone in this Commonwealth and charges the call to his calling card, a credit payment mechanism

related to his home telephone in Florida. Because the telecommunications service was charged to equipment at a location that did not constitute a service address from which the call either originated or terminated, the service address is deemed to be this Commonwealth, the origination of the call. Therefore, because the call originates in this Commonwealth, it is subject to Pennsylvania Sales and Use Tax.

(5) The service address of a private line telecommunications service is deemed to be in this Commonwealth to the extent that charges for the service are attributed to this Commonwealth under subsection (b)(4).

(d) *Exemptions from tax.* The following telecommunication services are exempt from tax:

(1) Basic local telephone service purchased directly by the purchaser solely for the purchaser's own residential use.

(2) Subscriber line charges purchased directly by the purchaser solely for the purchaser's own residential use.

(3) Telegrams paid for in cash at a telegraph office.

(4) Sales for resale of a telecommunications service as described in subsection (e).

(5) A telecommunications service purchased by a charitable organization as defined under § 32.1 (relating to definitions) that holds an exemption number issued by the Department under § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions) and satisfies the requirements for a tax-exempt purchase under § 32.21.

(6) A telecommunications service purchased by a governmental entity as defined in § 32.22 or § 32.23 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government; and sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions).

(7) A telecommunications service that is predominately used directly in manufacturing, processing, public utility, farming, dairying, agriculture, horticulture or floriculture, as defined in § 32.1.

(8) Effective July 1, 1995, a telephone call paid for by inserting money into a telephone that accepts a direct deposit of money to operate.

(9) A telecommunications service purchased by an entity otherwise exempt from Pennsylvania Sales and Use Tax under any Federal or State law not enumerated in this subsection.

(e) *Resale exemption.*

(1) *Purchase for resale.* The purchase of a telecommunications service for resale occurs if the purchaser does not use the telecommunications service itself but rather resells the telecommunications service in the ordinary course of business. A purchase for resale does not occur when an enhanced telecommunication services provider acquires telecommunications services, regardless

of whether the cost of the telecommunications services is separately stated on the invoice to the enhanced telecommunication service provider's customer.

(2) *Examples:*

(i) A guest at a hotel places a long distance telephone call. The call is handled through the hotel's switchboard. The guest is charged \$5 per minute and the guest's bill separately states this charge. The hotel may claim the resale exemption on the charge for the guest's call that it receives from the long distance telephone company providing service to the hotel.

(ii) A university purchases telecommunications services in bulk and then resells these services to individual students, faculty members or other retail purchasers. The university may claim the resale exemption on its purchase of the telecommunication service that is resold to retail purchasers.

(iii) Interexchange telephone company IXC pays access charges to local exchange telephone company LEC for switched access service so that it may place a customer's long distance telephone call. IXC may claim resale on the access charge.

(iv) ISP, an Internet service provider, purchases telecommunication services to provide Internet access to its customers. Because ISP renders an enhanced telecommunication service, it cannot claim resale upon its purchase of telecommunication services that it uses to provide its enhanced service.

(v) XYZ Co. is an information services provider located in this Commonwealth that sells sports gambling information for \$5 per minute to customers who access the information through a "900" telephone number. XYZ Co. purchased the "900" telephone number from a long distance telephone company for a flat monthly fee of \$2,000. Although the \$5 per minute fee is listed on the customer's telephone bill, this charge does not represent the customer's charge for the "900" telephone call. Instead, the \$5 per minute charge represents the purchase price of XYZ Co.'s sports gambling information retrieved by means of the "900" telephone number. XYZ Co. cannot claim resale upon its purchase of its \$2,000 per month "900" telephone number because it is using this telecommunication service to render its sports information service. Accordingly, XYZ Co. shall pay Sales Tax upon its purchase of the "900" telephone number because the calls terminate in this Commonwealth and are charged to XYZ Co.'s service address in this Commonwealth.

(f) *Credits against tax.*

(1) To the extent that tax is due on the purchase of an international or interstate telecommunications service, a credit will be granted for taxes that were legally due and paid to another jurisdiction, if the other jurisdiction grants a similar credit for taxes paid to the Department. A credit cannot exceed the amount of tax owed to the Department on the same transaction.

(2) Credits against local tax will be applied in accordance with § 60.16 (relating to local sales, use and hotel occupancy tax).

(g) *Local sales and use tax.*

(1) A telecommunications service provider shall collect and remit local tax if the telecommunications service is provided to a service address in a county or other local jurisdiction that has enacted a local tax.

(2) In the case of airtime service, a cellular mobile telecommunications service provider may elect to use the cell site method for determining the service address as being in a county or other local jurisdiction that has enacted a local tax in a manner similar to that described in subsection (c)(2).

(h) *Telecommunications equipment and supplies.* The purchase, use, lease, repair or maintenance of telecommunications equipment and supplies, such as telephones and wires, is subject to Sales and Use Tax, unless the purchaser is entitled to claim an exclusion under the provisions of § 32.21, § 32.22 or § 32.34 (relating to public utilities).

**Source**

The provisions of this § 60.20 adopted October 17, 1997, effective October 18, 1997, 27 Pa.B. 5432; amended December 19, 1997, effective December 20, 1997, 27 Pa.B. 6577. Immediately preceding text appears at serial pages (234303) to (234311).

**Notes of Decisions***Enhanced Telecommunications Service*

When a service provides Internet access, it is an enhanced telecommunications service under subsection (a) and is excluded from the definition of “telecommunications service.” As such, it cannot fall under the exception in section 201(rr)(3)(B) of the Tax Reform Code of 1971 (72 P.S. § 7201(rr)(3)(B)) that allows taxes on “[t]elecommunication services purchased by an Internet service provider to deliver access to the Internet to its customers.” Thus, the service is exempt from tax as Internet access. *Level 3 Commc’ns, LLC v. Commonwealth*, 125 A.3d 832 (Pa. Cmwlth. 2015).

*Internet Equipment Taxable*

Taxpayer, an internet service provider, was not entitled to sales tax exemption for equipment used in providing internet access based on regulations that telecommunications services are taxable under the sales and use tax. *Concentric Network Corp. v. Commonwealth*, 897 A.2d 6, 15 (Pa. Cmwlth. 2006).

**§ 60.21. Commercial racing activities.**

(a) *Definitions.* The following term, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

*Commercial racing activities—*

(i) A thoroughbred and harness racing event at which parimutuel wagering is conducted under the Racehorse Industry Reform Act (4 P.S. §§ 325.101—325.402).

(ii) A fair harness racing event approved by the Pennsylvania State Harness Racing Commission.

(b) *Scope.*

(1) Effective July 11, 1996, the sale at retail or use of the following items of tangible personal property or services thereto is not subject to tax:

(i) Horses to be used exclusively for commercial racing activities. The exemption applies to interests acquired by individuals in syndicated or corporate-owned horses.

(ii) Feed, bedding, grooming supplies, riding tack, farrier services, portable stalls and sulkies solely for horses that are used exclusively for commercial racing activities.

(2) Items such as horse vans; motor vehicles; jockey or sulky driver uniforms; whips and accessories; and similar items remain subject to tax.

*Example.*

“A” purchased a thoroughbred horse at a claiming race. “A” purchased the horse solely for racing at United Race Track, at which parimutuel wagering is conducted. The purchase of a horse by “A” is not subject to tax. “A” also purchased a specially designed trailer to transport the horse from “A’s” home to the race track and a sulky to carry the driver at the horse race meeting. The purchase of the sulky by “A” is not subject to tax. However, the purchase of the trailer by “A” is subject to tax because it does not represent one of the enumerated exempt items in the statute.

(3) Effective July 11, 1996, the propagation and raising of horses to be used exclusively for commercial racing activities when engaged in as a business qualifies as farming under the provisions of the sales and use tax law. Persons engaged in the business of farming are entitled to the limited exemption from sales and use tax as set forth in § 32.33 (relating to farming).

*Example.*

“B” operates a riding stable at which persons may lease horses for riding purposes. “B” also operates a farm where riding horses (but not racing horses) are propagated and raised. “B” is not engaged in the business of farming because the horses are not exclusively used for commercial racing activities.

(c) *Procedure for claiming exemption.*

(1) Persons entitled to claim an exemption under this section are required to tender to the vendor a completed REV-1220 form in lieu of the tax.

(2) Persons claiming an exemption under subsection (b)(1) shall annotate Form REV-1220 at block “other” by inserting the following wording: “Horse/property will be exclusively used for commercial racing activities.”

(3) Persons claiming an exemption under subsection (b)(3) shall annotate Form REV-1220 at block 1 by inserting the word “farming.”

(4) If Form REV-1220 is properly annotated, the same form may be used in claiming exemption under subsection (b)(1) and (3).

**Source**

The provisions of this § 60.21 adopted July 25, 1997, effective July 26, 1997, 27 Pa.B. 3683.

**§ 60.22. [Reserved].**

**Source**

The provisions of this § 60.22 adopted December 26, 1997, effective December 27, 1997, 27 Pa.B. 6824; reserved July 7, 2000, effective July 8, 2000, 30 Pa.B. 3459. Immediately preceding text appears at serial pages (239304) to (239306) and (246133).

**§ 60.23. Electric utility services.**

(a) *General.* Chapter 28 of 66 Pa.C.S. (relating to The Electricity Generation Customers Choice and Competition Act) (act) became effective on January 1, 1997. The act includes two major changes. First, section 2804 of the act (relating to standards for restructuring of electric industry) gives the retail customer the choice of an electric generation supplier. Second, section 2804 of the act gives the Pennsylvania Public Utility Commission the authority to require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution. This statement of policy sets forth the policy of the Department in taxing unbundled charges relating to the sale to or use of electricity by nonresidential users under Article II of the TRC (72 P. S. §§ 7201—7281.2).

(b) *Article II of the TRC.*

(1) The TRC became effective on March 4, 1971. Article II of the TRC imposes Sales and Use Tax upon certain tangible personal property and selected services.

(i) Section 201(m) of the TRC (72 P. S. § 7201(m)) defines tangible personal property to include “electricity for nonresidential use.”

(ii) Section 202 of the TRC (72 P. S. § 7202) imposes Sales or Use Tax upon the “purchase price” of each “sale at retail” or “purchase at retail” of tangible personal property within this Commonwealth.

(iii) The term “sale at retail” is defined in section 201(k) of the TRC as any transfer for a consideration, of the ownership, custody or possession of tangible personal property.

(iv) The term “purchase at retail,” is defined in section 201(f) of the TRC as the acquisition for a consideration of the ownership, custody or possession of tangible personal property when the acquisition is made for the purpose of consumption or use.

(v) Section 201(g) of the TRC defines “purchase price” as the total value of anything paid or delivered or promised to be paid or delivered in the complete performance of a “sale at retail” or a “purchase at retail.”

(2) Since the enactment of the TRC, the bundled charges for the generation, transmission and distribution of “electricity for nonresidential use,” together with other charges representing reimbursements to the seller for taxes, fuel adjustment costs and similar charges, have been subject to tax.

(c) *Revenue-neutral reconciliation.* Section 2810 of the act (relating to revenue-neutral reconciliation) provides: “It is the intention of the General Assembly that the restructuring of the electric industry be accomplished in a manner that allows Pennsylvania to enjoy the benefits of competition, promotes the competitiveness of Pennsylvania’s electric utilities and maintains revenue neutrality to the Commonwealth.” In maintaining revenue neutrality, section 2810 of the act further provides that it is the intention of the General Assembly not “to

cause a shift in proportional tax obligations among customer classes or individual electric distribution companies” but “to establish this revenue replacement at a level necessary to recoup losses that may result from the restructuring of the electric industry and the transition thereto.” Among the taxes to which the General Assembly makes reference are the sales and use taxes collected under Article II of the TRC. To maintain revenue neutrality, both bundled and unbundled charges relating to the sale or use of “electricity for nonresidential use” will continue to be subject to Sales and Use Tax under Article II of the TRC to the same extent as receipts from bundled charges for “electricity for nonresidential use” were taxable during the Fiscal Year 1995—1996.

(d) *Taxability of unbundled charges.* To fulfill its responsibilities under Article II of the TRC, as well as, the recognition of the intention of the General Assembly, as provided under the act, the Department is required to impose Sales and Use Tax upon the total purchase price charged upon each separate charge for the generation, transmission or distribution in connection with providing nonresidential electric utility services as well as all related charges, services or costs for the generation, production, transmission or distribution of electricity whether or not the total amount charged is billed as a single charge by one vendor or billed separately by one or more vendors.

#### Source

The provisions of this § 60.23 adopted July 17, 1998, effective July 18, 1998, 28 Pa.B. 3418.

#### Notes of Decision

##### *Electricity Services Taxable*

Transmission, distribution, and transition services associated with taxpayer’s purchase of electricity was not exempt from Pennsylvania sales tax even though taxpayer purchased electricity from third party generator which was delivered by a separate utility; utility that delivered electricity to taxpayer was not a mere delivery carrier, but with electricity generator, were together the “vendor” and therefore the services were not separate and exempt from sales tax. *Spectrum Arena L.P. v. Com.*, 983 A.2d 641, 650-651 (Pa. 2009).

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