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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1258 Session of  
2018

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INTRODUCED BY WHITE, HUTCHINSON, STEFANO, RESCHENTHALER, MENSCH,  
FOLMER, BARTOLOTTA, BROWNE, ALLOWAY AND REGAN,  
SEPTEMBER 21, 2018

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REFERRED TO FINANCE, SEPTEMBER 21, 2018

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AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," in sales and use tax, further providing for  
11 definitions and for exclusions from tax.

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

14 Section 1. Section 201 of the act of March 4, 1971 (P.L.6,  
15 No.2), known as the Tax Reform Code of 1971, is amended by  
16 adding definitions to read:

17 Section 201. Definitions.--The following words, terms and  
18 phrases when used in this Article II shall have the meaning  
19 ascribed to them in this section, except where the context  
20 clearly indicates a different meaning:

21 \* \* \*

22 (ddd) "Financial institution." An institution or licensee

1 as defined under section 2 of the act of May 15, 1933 (P.L.565,  
2 No.111), known as the Department of Banking and Securities Code,  
3 or a similar institution or licensee doing business in this  
4 Commonwealth subject to supervision by a regulatory authority of  
5 the Federal Government, another state or foreign country.

6 (eee) "Canned software." Computer software that is  
7 available for sale to the general public, or a substantial and  
8 indefinite class of similarly situated persons, that can be used  
9 as-is without the purchase of professional services, including,  
10 but not limited to, programming, systems design, facilities  
11 management, information retrieval, data preparation or  
12 processing, communication, data or computer processing,  
13 accounting, appraisal, legal, engineering, architectural or  
14 other services from the vendor that supplies the software.

15 (fff) "Custom software." Computer software that is not  
16 canned software, including modifications made to canned software  
17 to facilitate the software's use by a purchaser if there is a  
18 separately stated purchase price for the modifications.

19 Section 2. Section 204 of the act is amended by adding  
20 clauses to read:

21 Section 204. Exclusions from Tax.--The tax imposed by  
22 section 202 shall not be imposed upon any of the following:

23 \* \* \*

24 (71) The sale at retail or use of canned software, or the  
25 maintenance, support or updating of canned software, acquired  
26 incident to the purchase at retail of computer programming,  
27 computer integrated systems design, data preparation or  
28 processing, computer facilities management, information  
29 retrieval and other computer or data processing services,  
30 including computer services that are part of electronic fund

1 transfers, electronic financial transactions or services,  
2 banking or trust services or management or administrative  
3 services, including transfer agency, shareholder, custodial and  
4 portfolio accounting services, unless the predominant purpose of  
5 a transaction is to purchase or use canned software.

6 (72) As follows:

7 (i) The sale at retail or use of systems, devices and  
8 equipment, and their components, installed in a building and  
9 utilized by a financial institution for its protection or  
10 convenience in conducting financial transactions, provided the  
11 systems, devices, equipment or components:

12 (A) are installed by a contractor or the contractor's  
13 designee;

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

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

19 (ii) A contractor engaged in the installation, repair or  
20 maintenance of systems, devices, equipment or components that is  
21 subject to the exclusion under this paragraph shall be deemed to  
22 be a construction contractor pursuant to a construction contract  
23 engaged in the use of tangible personal property or services  
24 under section 201(o)(17) regardless of the method, or  
25 permanence, of attachment of the systems, devices, equipment or  
26 components, to real property.

27 (73) Fees charged by a financial institution for a financial  
28 service, regardless of whether tangible personal property is  
29 provided to a customer incidental to the provision of the  
30 financial service, unless the predominant purpose of a

1 transaction is to purchase or use tangible personal property.

2 Section 3. The addition of section 204(72) of the act shall  
3 be construed and read in pari materia with 61 Pa. Code § 46.9.

4 Section 4. The addition of section 204(71), (72) and (73)  
5 shall apply to transactions that occur on or after the effective  
6 date of this act.

7 Section 5. This act shall take effect immediately.