

## **House Bill 43 (2005 Special Session)**

### **Detailed Summary**

This legislation would broaden the sales and use tax base to include almost all goods and services, as well as to reduce the rate of that tax, in order to provide funds for the operating expenses of school districts. Please note that this bill is part of the Commonwealth Caucus' "Plan for Pennsylvania's Future". The Caucus has introduced its plan into special session, and the bill package includes HB 39, 40, 41, 42, and 43.

This legislation amends the Tax Reform Code by reducing the current sales tax from 6.0% to 5.0% and repealing and adding certain exemptions. The legislation also provides for an increase in the Local Real Estate Transfer Tax from 1.0% to 3.0%.

HB 43 is identical to HB 1920 (regular session). Both bills propose to place a sales tax on any service that is not specifically exempted in the bill. Furthermore, the bill provides a definition of how and when a service should be taxed. The legislation states that a service subject to the tax is "the rendition for a consideration of any service, other than medical service, when the primary objective of the purchaser is the receipt of any benefit of the service performed". This means that professional legal services would now be subject to a 5.0% sales tax.

Like HB 1920, HB 43 also details when services are to be taxed: 1) if the service is performed completely in Pennsylvania; 2) if the service is performed partially in Pennsylvania and partially outside of Pennsylvania when the recipient or user of the service is located in Pennsylvania; 3) if the service is performed partially in Pennsylvania and partially outside of Pennsylvania if the recipient or user of the service is not located in Pennsylvania, but only to the extent of those services actually performed in Pennsylvania; 4) if the place of the service can not be determined but the recipient or user of the service is located in Pennsylvania.

The following exemptions are being **eliminated** from the Tax Reform Code (items previously exempt that will now be subject to a 5.0% sales tax):

- Sale at retail or use of disposable diapers; pre-moistened wipes; incontinence products; colostomy deodorants; toilet paper; sanitary napkins, tampons or similar items used for feminine hygiene; or toothpaste, toothbrushes or dental floss
- Items purchased or used by charitable, volunteer fire or non-profit educational organizations or religious organizations
- Steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate subscriber line charges, basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use and charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate
- Wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies
- Vessels designed for commercial use of registered tonnage of fifty tons or more when produced by the builders thereof upon special order of the purchaser

- Tangible personal property or services used or consumed in building, rebuilding, repairing and making additions to or replacements in and upon vessels designed for commercial use of registered tonnage of fifty tons or more
- Tangible personal property or services to be used or consumed for ship cleaning or maintenance or as fuel, supplies, ships' equipment, ships' stores or sea stores on vessels designed for commercial use of registered tonnage of fifty tons or more
- Non-prescription medication, including crutches, wheelchairs, artificial limbs, false teeth, eyeglasses, or any other therapeutic, prosthetic or artificial device
- Coal
- Sale at retail or use of motor vehicles, trailers and semi-trailers to a nonresident of Pennsylvania to be used outside of Pennsylvania
- Water
- All clothing apparel, including vesture, wearing apparel, raiments, garments, and footwear
- Religious publications
- Food and beverages
- Newspapers
- Caskets and burial vaults
- Flags of the United States or the Commonwealth
- Textbooks for use in colleges, and universities
- Sale at retail, or use of motion picture film rented or licensed from a distributor for the purpose of commercial exhibition
- Mail order catalogs
- Horses
- Fish feed purchased by sportsmen's clubs, fish cooperatives and nurseries approved by the PA Fish Commission
- Materials for tourist promotion agencies
- Brook Trout, Brown Trout, and Rainbow Trout
- Firewood
- Sale at retail or use of materials used in the construction and erection of objects purchased by not-for-profit organizations for purposes of commemoration and memorialization of historical events
- Electrical vehicles
- Power units for electrical vehicles
- Magazines
- Sale at retail or use of interior office building cleaning services (as it relates to the cost of the supplied employee)
- Candy or gum
- Sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience
- Horses to be used for commercial racing
- Sale at retail or use of tangible personal property or services used, transferred or consumed in installing or repairing equipment or devices designed to assist persons in ascending or descending a stairway

- Sale at retail to or use by a construction contractor of building machinery and equipment and services
- Personal computers, peripheral devices or Internet access devices, service contracts, or single-user licensed software
- Prebuilt Houses
- Food and nonalcoholic beverages provided by airlines
- Fees paid for the filing or the retrieval of requested information for financial statements or records of secured transactions

The following exemptions **remain** in the Tax Reform Code (items previously exempt that remain as NOT taxed):

- Sale at retail or use of tangible personal property (other than motor vehicles, trailers, semi-trailers, motor boats, aircraft or other similar tangible personal property required under either Federal law or laws of this Commonwealth to be registered or licensed) or services sold by or purchased from a person not a vendor in an isolated transaction
- Use of tangible personal property purchased by a nonresident and brought into the Commonwealth for a period not to exceed seven days, or when a person is a tourist or vacationer
- Use of tangible personal property purchased outside the Commonwealth for use outside the Commonwealth by a then nonresident natural person or a business entity not actually doing business within the Commonwealth
- Gasoline and other motor fuels
- Sale at retail of tangible personal property or services sold to the United States, the Commonwealth of Pennsylvania, or any subdivision of the Commonwealth
- Prescription medicines
- Sale of food and beverages by a school (public or private) or church in the ordinary course of their activities
- Advertising materials, regardless by whom produced
- Passenger rail transportation equipment
- Food stamps
- Sale of food and beverages by a nonprofit associations which supports sports programs
- Sale or use of molds and related equipment
- Property or services used in agricultural business activities – farming, dairying, etc. – for the production of food
- Sale to, or use by, a construction contractor employed by a public school district of material or supplies used in the construction or reconstruction of instructional public school buildings

The following exemptions are **added** to the Tax Reform Code (items are NOT eligible to be taxed):

- Medical goods or services by a hospital
- All other medical or dental services (includes office visit charges)
- Medicare Part B transactions
- Transportation provided by the Federal, State, or local governments
- Insurance premiums
- Mortgages
- Investments (deposits, stocks, and bonds)
- Rental of real property

On January 1, 2006, the state Real Estate Transfer tax rate, which is currently 1.0%, will increase to 3.0%. Prior to December 31, 2005, all monies collect through the Real Estate Transfer tax will be deposited into the General Fund. However, after December 31, 2005, all revenue collected from the Local Real Estate Transfer tax will be deposited in the Education Operating Fund. In addition, all monies collected through the sales and use taxes will also be deposited in the Education Operating Fund, as soon as this act takes effect.