



417 Walnut Street
Harrisburg, PA 17101-1902
717 255-3252 / 800 225-7224
FAX 717 255-3298
<http://www.pachamber.org>

Correct the *Graham Packaging* Decision – Preserve the Long-standing Exclusion of Electronic Downloads from Taxation under the Sales and Use Tax

The Pennsylvania Chamber supports immediate action on S.B. 1134, legislation designed to address the Commonwealth Court's decision in *Graham Packaging* by clarifying that electronic downloads are excluded from the definition of tangible personal property for Sales and Use Tax purposes.

In September of 2005, the Commonwealth Court held in *Graham Packaging Company, LP v. Commonwealth of Pennsylvania* that all canned software is taxable as "tangible personal property" under Pennsylvania's Sales and Use Tax. In doing so, the Court expanded the taxation of software to include software that is electronically downloaded. The decision is troubling for several reasons:

- **The *Graham Packaging* decision invalidates 25 years of DOR statements of policy and rulings that treated electronic downloads as non-taxable.**
- **The decision rendered by the Commonwealth Court was not sought by either party.** In fact, the Court ignored both the parties' arguments, dismissed a pure statutory interpretation, and applied its own test which it derived from another state.
- **The Court effectively legislated a major tax increase on taxpayers in the Commonwealth by single-handedly expanding the base of the sales tax to include electronic downloads.**
- **At a minimum, the new tax is estimated to cost the business community an additional \$55M in the next fiscal year.** The decision will increase costs to consumers, but business that will absorb the greatest impact of the court's decision.
- **The prospective impact of this decision on Pennsylvania's economy could be considerable.** Due to significant increases in tax liability, some companies likely will relocate computer functions/servers and the attendant personnel out of state in order to maintain fiscal stability.

Unfortunately, because it does not address the *Graham Packaging* decision and maintain the status quo for the treatment of downloadable software, the Governor's proposed budget would levy a net increase of \$20M in new taxes on business. The proposed \$35M in new tax relief for business clearly is outweighed by the \$55M in estimated revenue derived from the new tax.

For reasons unique to the case, the taxpayer in *Graham Packaging* is not filing an appeal; therefore the statutory solution proposed in S.B. 1134 is necessary to preserve the long-time treatment of electronic downloads as non-taxable and preserve the reliance by businesses on this long-standing rule.