

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 9 AND 47] Passenger Car Rental Tax

The Department of Revenue (Department), under the authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to delete § 9.14 (relating to passenger car rental tax) and add § 47.20 (relating to passenger car rental tax) as set forth in Annex A. Section 1603-A of the TRC (72 P. S. § 8603-A) provides in subsection (c) that unless otherwise noted, the provisions of Article II of the TRC (72 P. S. §§ 7201—7281.2) applies to the tax required under Article XVI-A of the TRC (72 P. S. §§ 8601-A—8604-A). This proposal is therefore being promulgated under the authority contained in section 270 of the TRC. Section 270(a) of the TRC specifically provides that the Department is authorized and empowered to prescribe, adopt, promulgate and enforce, rules and regulations consistent with the provisions of Article II of the TRC, Tax For Education, relating to any matter or thing pertaining to the administration and enforcement of the provisions of Article II and the collection of taxes, penalties and interest imposed by Article II.

This proposal sets forth the Department's interpretation of Article XVI-A of the TRC.

Section 47.20(a) relates to definitions. The Department has developed several definitions to assist in the interpretation of this section. Though the act defined the term "motor vehicle" in section 1601-A of the TRC, the Department has created the term "passenger car" because the term "motor vehicle" has a specific meaning and using it in this section would create confusion.

Section 47.20(b) relates to general provisions. This subsection provides taxpayers with information regarding statutory authority for the collection of passenger car rental tax, registration, returns, payments, including direct payment permits, and the applicability of the TRC.

Section 47.20(c) relates to scope. In accordance with section 1604-A of the TRC, paragraph (1) provides that, with respect to rental contracts entered into on or after July 1, 1994, a tax of 2% is imposed upon rental payments made on or after August 15, 1994. Paragraph (2) sets forth examples of transactions that are and are not subject to the passenger car rental tax.

Section 47.20(d) relates to exclusions and provides that, if the rental of a passenger car is exempt from State sales or use tax, the rental is also exempt from passenger car rental tax. The subsection also details the use of an exemption certificate to support a claim for exemption.

In accordance with section 1603-A of the TRC, subsection (e)(1) provides that the initial annual reconciliation report shall be due on or before February 15, 1995, and subsequent annual reconciliation reports shall be due on February 15 of each subsequent calendar year. Paragraph (2) provides for the date of filing, paragraph (3) sets forth the information the reconciliation report must contain,

paragraph (4) details the particulars regarding refunds, and paragraph (5) provides an example of how the refund process works.

To assist taxpayers prior to the adoption of this proposal, the Department has also set forth its interpretation in a pronouncement codified at § 9.14. This pronouncement has provided taxpayers and tax practitioners with an immediate source of information on which they can rely. Upon adoption of this proposal, § 9.14 will be deleted.

Fiscal Impact

The Department has determined that the proposed amendments will have no significant fiscal impact on the Commonwealth.

Paperwork

The proposed amendments will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*. The proposed amendments will be monitored annually. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendments to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on April 11, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the agency, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-376. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart A. GENERAL PROVISIONS

CHAPTER 9. REVENUE

PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 9.14. (Reserved).

CHAPTER 47. RENTALS

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

§ 47.20. Passenger car rental tax.

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

Licensing and title fees—Licensing and title fees imposed by 75 Pa.C.S. (relating to the Vehicle Code) and collected by the Department of Transportation. The term does not include encumbrance fees.

Local sales or use tax—Sales or use tax imposed by a county of this Commonwealth or the city of Philadelphia and administered by the Department.

PCRT—Passenger Car Rental Tax—The tax authorized under Article XVI-A of the TRC (72 P. S. §§ 8601-A—8604-A).

PTA—Public transportation assistance.

Passenger car—A passenger motor vehicle designed to transport 15 or fewer passengers which is used for the transportation of persons and rented without a driver. The term does not include a motorcycle, motor-driven cycle, school bus, truck, truck-tractor, hearse, motor home or mobile home.

Purchaser—A person who acquires, for money or other consideration, the custody or possession of a passenger car under a rental contract.

Rental contract—A contract between a purchaser and a vehicle rental company for the use of a passenger car for less than 30 days. If a passenger car is rented for less than 30 days, and the use of the passenger car subsequently extends beyond a 29-day period, the transaction remains a rental, and the rental payments continue to be subject to the PCRT until the rental contract is terminated.

Rental payment—Full consideration paid or delivered or promised to be paid or delivered to the vehicle rental company under a rental contract, excluding charges for local sales or use tax, State sales or use tax and PTA fees.

State sales or use tax—Sales or use tax imposed by Article II of the TRC (72 P. S. §§ 7201—7281.2).

Vehicle rental company—A business entity engaged in the business of renting passenger cars in this Commonwealth which owns or has available for rental five or more passenger cars.

(b) *General provisions.*

(1) *General.* This section is promulgated to administer the provisions of Article XVI-A of the TRC relating to the PCRT.

(2) *Registration.* A vehicle rental company renting passenger cars that are subject to the PCRT shall register with the Department.

(3) *Returns.* A vehicle rental company shall report the PCRT on a return prescribed by the Department. The initial return was due on or before October 20, 1994, and subsequent returns will be due thereafter on a quarterly basis.

(4) *Payment.* A vehicle rental company shall make payment with the return.

(5) *Direct payment permit.* A purchaser cannot use a direct payment permit issued under § 34.4 (relating to direct payment permit) in conjunction with the PCRT because the vehicle rental company may be entitled to a refund of the tax collected.

(6) *Applicability of TRC.* Unless otherwise specifically noted, Article II of the TRC and regulations promulgated thereunder apply to the PCRT.

(c) *Scope.*

(1) *General.* With respect to rental contracts entered into on or after July 1, 1994, a tax of 2% is imposed upon rental payments made on or after August 15, 1994. If the vehicle rental company fails to collect the applicable tax, the purchaser shall pay the tax directly to the Department.

(2) *Examples.*

(i) The following are examples of transactions that are subject to the PCRT:

(A) "A" rents a passenger car from a vehicle rental company for 14 days. Due to circumstances unforeseen at the commencement of the rental, "A" uses the car for 36 days before returning it. Because the transaction continues to be governed by the rental contract for the entire 36-day period, the rental payment is subject to the PCRT.

(B) "B" rents a passenger car from a vehicle rental company for 10 days. The rental contract provides for an additional charge for excess mileage as well as a pick up and drop off fee. In addition, under the rental contract, "B" elects to obtain a vehicle damage waiver, a child's car seat and a car top carrier. Because the charges for excess mileage, a pick up and drop off fee, a vehicle damage waiver, a child's car seat and a car top carrier are all part of the rental payment, the cost of these items is subject to the PCRT.

(C) "P" rents a passenger car for 7 days from "R." "R" owns two and leases 28 of the 30 passenger cars that it rents to others. Because "R" has five or more passenger cars available for rental, "R" is a vehicle rental company, and the rental payment made by "P" is subject to the PCRT.

(ii) The following are examples of transactions that are not subject to the PCRT:

(A) "Y" rents a passenger car from "E" vehicle rental company for 28 days. Due to circumstances unforeseen at the commencement of the rental, "Y" wishes to use the car for a longer period of time. After using the car for 28 days, "Y" returns the car to "E," and pays the PCRT on the rental payment, and the parties terminate the rental contract. They then enter into a lease agreement under which "Y" leases the same car from "E" for 2 years. Because the second transaction is a lease agreement and not a rental, the lease payments are not subject to the PCRT.

(B) "Z" rents a passenger car from "D" car dealership, which has only three passenger cars available for rental. Because "D" has fewer than five passenger cars available for rental, "D" is not a vehicle rental company and the rental payment is not subject to the PCRT.

(C) On June 15, 1994, "S" rents a passenger car from a vehicle rental company for 21 days. Due to circumstances unforeseen at the commencement of the rental, "S" does not return the car until August 24, 1994. Although the transaction is governed by a rental contract, the rental payment is not subject to the PCRT because the rental contract was entered into prior to July 1, 1994.

(d) *Exclusions.* If the rental of a passenger car is exempt from State sales or use tax, the rental is also exempt from the PCRT. A purchaser shall support a claim for exemption from the PCRT by submitting a completed Pennsylvania exemption certificate setting forth a valid basis for exemption. A purchaser may use the same exemption certificate used to claim an exemption from State sales or use tax, but the exemption certificate shall clearly indicate that the purchaser is claiming an exemption from the PCRT. The purchaser shall make that indication either by checking the appropriate blocks for the PCRT on the recently revised exemption certificate form or by checking the paragraph labeled "other" on the older exemption certificate form and explaining that an exemption is being claimed from the PCRT.

(e) *Annual reconciliation reports.*

(1) *General.* A vehicle rental company that has remitted the PCRT and is claiming a refund shall file an annual reconciliation report. An annual reconciliation report shall be on a form prescribed by the Department. An annual reconciliation report is not required if the vehicle rental company is not claiming a refund. The initial annual reconciliation report shall be due on or before February 15, 1995, and subsequent annual reconciliation reports shall be due on February 15 of each calendar year.

(2) *Date of filing.* The United States Postal Service postmark date will be used to determine the date of filing of an annual reconciliation report.

(3) *Contents.* An annual reconciliation report shall set forth the amount of both:

(i) The PCRT remitted during the previous calendar year.

(ii) The total amount of licensing and title fees imposed by the Commonwealth on a vehicle rental company's passenger cars and paid to the Department of Transportation by the vehicle rental company in the previous calendar year.

(4) *Refund.* The Department will refund to a vehicle rental company that has remitted the PCRT an amount, not including interest or penalties that may have been paid by the vehicle rental company, equal to the total amount of licensing and title fees paid to the Department of Transportation on the passenger cars that the vehicle rental company owns or has available for rental. The amount of refund cannot exceed the amount of the PCRT remitted by the vehicle rental company in the previous calendar year.

(5) *Example.* "R" owns a vehicle rental company that "R" sells to "S" on July 30, 1995. Prior to the sale, "R" pays licensing and title fees on a portion of its fleet of vehicles. "R" also files tax returns and remits the PCRT on January 20, April 20 and July 20, 1995. Under paragraph (4), "R" may claim a refund up to the amount of the PCRT remitted by "R" with the three tax returns. After acquiring ownership of the vehicle rental company, "S" pays the licensing and title fees due between August 1 and December 31, 1995, on the other vehicles in the fleet, and remits the PCRT for the third quarter on October 20, 1995. "S" may claim a refund of the licensing and title fees paid from August to December. The amount of the refund to "S" may not exceed the amount of the PCRT "S" remitted in October. To claim a refund, both "R" and "S" shall file their respective annual reconciliation reports on or before February 15, 1996.

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