

PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 31]

Sales and Use Tax; Books, Publications and Advertising Materials

The Department of Revenue (Revenue), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to amend § 31.29 (relating to books, printed matter and advertising materials) to read as set forth in Annex A.

Purpose of Amendment

The Department is proposing to amend § 31.29 to bring the section into conformity with recent statutory changes and to reflect the Department's current policy.

In March 1993, the Department adopted amendments to § 31.29 that deleted language that was in conflict with recent statutory changes. The deletion included the removal of the definition of "advertising insert" and "periodical" and the listing of advertising insert and periodical as items exempt from tax.

Explanation of Regulatory Requirement

The Department is now proposing to amend subsection (a) by adding definitions of "advertising insert" and "newspaper" consistent with the statutory changes made in section 204(30) of the TRC (72 P. S. § 7204(30)). The definition of "direct mail advertising literature or materials" is amended to clarify the Department's interpretation of what constitutes direct mail advertising literature or materials. In addition, a list of items has been added that provides examples of what the term includes and does not include.

Consistent with section 204(50) of the TRC, the Department is proposing to add a definition of "magazine." The Department is proposing to add the definitions of "advertising literature or materials," "circulated among the general public," "mail order catalogue" and "subscription" to fill a void that currently exists in the regulation regarding these areas. Definitions for "publication," "religious publication" and "shopping guide" are also proposed to be added to subsection (a) because of questions the Department received in these areas.

Subsection (b)(2) provides a listing of items exempt from tax when sold at retail. Subparagraph (i) that listed bibles, is proposed to be amended to further explain the term "bible." Subparagraph (ii) that provides for religious publications is proposed to be amended by adding language requiring the religious publication to be sold by the religious organization and the religious organization to receive payment of the full purchase price. Subparagraph (iii) that provides for mail order catalogues is proposed to be amended by adding examples of items subject to and exempt from tax. A new subparagraph (iv) is proposed to be added that provides for direct mail advertising literature or materials and sets forth examples of items subject to and exempt from tax. Subparagraph (vi) is proposed to be added and provides for newspapers. Subparagraph (vii) is proposed to be added and provides for magazines sold by subscription. The exemption applies to subscriptions purchased on or after July 1, 1994. A new subparagraph

(viii) provides for advertising inserts and sets forth an example of an item subject to and exempt from tax.

Fiscal Impact

The Department has determined that the proposed amendment will result in a minimal loss of revenue for the Commonwealth.

Paperwork

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

Effectiveness/Sunset Date

The proposed amendment will become effective upon final publication in the *Pennsylvania Bulletin*. The proposed amendment is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed amendment to Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days of 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)), on December 9, 1997, the Department submitted a copy of this proposed amendment 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 amendment, 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 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendment to which an objection has been made. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-353. (1) General Fund; (2) Implementing Year 1997-98 is \$Minimal Revenue Loss; (3) 1st Succeeding Year 1998-99 is \$Minimal Revenue Loss; 2nd Succeeding Year 1999-00 is \$Minimal Revenue Loss; 3rd Succeeding Year 2000-01 is \$Minimal Revenue Loss; 4th Succeeding Year 2001-02 is \$Minimal Revenue Loss; 5th Succeeding Year 2002-03 is \$Minimal Revenue Loss; (4) Fiscal Year 1995-96 \$ Nonapplicable; Fiscal Year 1994-95 \$; Fiscal Year 1993-94 \$; (8) recommends adoption. This proposed amendment may result in a minimal loss of revenue because printing charges for investment prospectuses and corporate annual reports sent to brokerage houses or prospective stock purchasers will be exempt from taxation.

Annex A
 TITLE 61. REVENUE
 PART I. DEPARTMENT OF REVENUE
 Subpart B. GENERAL FUND REVENUES
 ARTICLE II. SALES AND USE TAX
 CHAPTER 31. IMPOSITION

§ 31.29. Books, [printed matter] publications and advertising materials.

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

Advertising insert—Printed advertising material which is circulated as a component of a newspaper or magazine.

Advertising literature or materials—Tangible personal property which is primarily intended to promote business interest, create goodwill or engage the attention or interest of a prospective purchaser.

Circulated among the general public—The publication is available for purchase from a retail outlet, such as a newsstand or by subscription. In the case of an organizational publication, the organization shall provide evidence of sales to purchasers other than members of the organization.

Direct mail advertising literature or materials— [Tangible personal property which is distributed through the mail and is intended to promote business interest, create good will or engage the attention or interest of the prospective purchaser. The property] Advertising literature or materials purchased and distributed by a vendor to prospective purchasers by the United States Postal Service. The term does not include property distributed to the prospective purchaser by other than the United States Postal Service. Advertising literature or materials includes printed matter, brochures, matchbooks, calendars, price lists, video and audio tapes, computer disks, investment prospectuses, corporate annual reports, playing cards, pens and similar promotional materials. The term also includes envelopes and address labels used in sending the advertising literature or materials but does not include proxy materials, shopping guides nor magazines and inserts therein.

Magazine—A publication which is both of the following:

(i) Published at regular intervals not exceeding 3 months.

(ii) Circulated among the general public and either of the following:

(A) Contains matters of general interest and reports of current events published for the purpose of disseminating information of a public character.

(B) Is devoted to literature, the sciences, art or some special industry.

Mail order catalogue—A publication that contains a printed enumeration of items with descriptive details and includes a mail order form. A mail order catalogue need not be distributed through the United States Postal Service.

Newspaper—A “legal newspaper” or a publication containing matters of general interest and reports

of current events that qualifies as a “newspaper of general circulation” authorized to carry a “legal advertisement” as those terms are defined in 45 Pa.C.S. § 101 (relating to legal notices). The term does not include magazines.

Publication—Information transferred by means of paper and ink or electronic media. Examples include printed matter; books; corporate annual reports; stock prospectuses; proxy materials; shopping guides; magazines; tabloid newspapers; printed material which may supplement, explain, amend, revise or otherwise alter, expand or render current a loose leaf information service, or a book or bound volumes of books previously issued, including a supplement or pocket part, whether the additional material is periodically distributed or purchased independently of the basic book to which it is applicable; video and audio tapes; computer disks and similar items, including advertising inserts incorporated into the publication.

Religious organization—An organization defined under § 32.1 (relating to definitions), which is registered with and holds [an] a current and valid exemption number issued by the Department under § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions).

Religious publication—Religious commentaries and other publications primarily devoted to religious instruction, promotion or information.

Shopping guide—A publication primarily devoted to consumer awareness, promotion or information and which is provided to a consumer free of charge.

Subscription—The purchase in advance of a series of issues of a magazine delivered by the publisher to an address designated by the purchaser. The term also includes a series of magazines provided by an organization to its members in consideration of the payment of membership dues, if the magazine is also sold on subscription or by individual copy to the public. The term does not include a purchase of an issue or series of issues of a magazine from a retail outlet.

Textbook—A publication [which is required] used in conjunction with educational curriculum by an educational institution[, recognized] approved by the Department of Education[, for use by its students in conjunction with its educational curriculum and which is exempt under § 58.9 (relating to school textbook exemption)].

(b) *Scope.*

(1) [The] Except as otherwise provided in this subsection, the sale at retail or use of [all books, printed matter] publications, advertising inserts and advertising literature or materials[,] is subject to tax when delivered to a location within this Commonwealth.

(2) The sale at retail or use of the following items is exempt from tax:

[(1) *Bibles*] (i) Bibles, or similar texts, whether printed or transferred in any format, provided the product is a verbatim transcription of the text.

[(2) *Religious publications.* Religious commentaries and other religious publications primarily

devoted to religious instruction, promotion or information are exempt from tax when sold by a religious organization.] (ii) *Religious publications sold by a religious organization.* The mere approval or sanction of publications by a religious organization does not [render the sale of] qualify the publications as religious publications exempt from tax [, if they are otherwise taxable. The payment of a royalty or license fee by a seller to a religious organization does not constitute the seller an agent of the religious organization.] To constitute an exempt sale, the religious organization shall sell the religious publication and receive payment of the full purchase price [for the publications, less a reasonable commission to its agent, if any].

[(3) *Mail order catalogues and direct mail advertising literature or materials.* See § 32.36 (relating to printing and related businesses)] (iii) *Mail order catalogues.* Examples are as follows:

(A) Mail order catalogues purchased by vendors for distribution at retail locations are exempt from tax.

(B) Catalogues that do not contain a mail order form are subject to tax regardless of the method of distribution or the identity of the purchaser.

(C) Product sample books are subject to tax.

(iv) Direct mail advertising literature or materials. See § 32.36 (relating to printing and related businesses). Examples are as follows:

(A) The purchase of advertising materials by a manufacturer for distribution by the United States Postal Service to a retailer for hand out by a retailer is subject to tax.

(B) The purchase of pamphlets by a retailer when the pamphlets are distributed by the United States Postal Service by the retailer to prospective purchasers is exempt from tax.

(C) The purchase of pamphlets by a retailer for hand out to prospective purchasers is subject to tax even though the pamphlets may be distributed to the retailer by the United States Postal Service.

[(4)] (v) *Textbooks.*

(vi) *Newspapers.* Examples are as follows:

(A) Race track "R" sells a racing program. A purchaser may only obtain the racing program through admission to the race track. The racing program is not circulated among the general public.

(B) "O" organization publishes a magazine which is provided to each of its members. The magazine is also available for sale to nonmembers. "O" is able to demonstrate that it has made sales to the public. The magazine is circulated among the general public.

(vii) *Magazines sold by subscription.* This exemption applies to subscriptions purchased on or after July 1, 1994. Examples are as follows:

"O" organization sells a magazine to its members on subscription. "O" also sells the magazine on subscription and individual copies to the public. The sale of the magazine on subscription to its members and the public is exempt from tax. The sales of individual copies of the magazine by "O" are subject to tax.

(viii) *Advertising inserts.* Examples are as follows:

(A) Advertising inserts placed into magazines sold by subscription or newspapers are exempt from tax.

(B) Inserts circulated with publications such as magazines not sold by subscription or shopping guides are subject to tax.

[Pa.B. Doc. No. 97-2037. Filed for public inspection December 19, 1997, 9:00 a.m.]