

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3680, 3710, 3760, 3800, 3810, 5310 and 6400]

Child Residential and Day Treatment Facilities; Extension of Public Comment Period

The Department of Public Welfare published a notice of proposed rulemaking at 28 Pa.B. 953 (February 14, 1998) seeking public comment on proposed regulations applicable to child residential and day treatment facilities. The notice of proposed rulemaking provided for a 30-day public comment period to end on March 16, 1998. The public comment period on the proposed regulations is hereby extended by 30 days, until April 15, 1998.

The extension in the public comment period is being made because this is the first in a series of proposed licensing regulatory reform initiatives, and the Department wants to allow adequate opportunity for interested stakeholders to review and comment on this comprehensive regulatory proposal.

FEATHER O. HOUSTOUN,
Secretary

[Pa.B. Doc. No. 98-414. Filed for public inspection March 13, 1998, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 32]

Commercial Motion Pictures; Sales and Use Tax

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to add § 32.38 (relating to commercial motion pictures) to read as set forth in Annex A.

Purpose

The Department is setting forth its interpretation of section 2 of Act 7-1997, section 204(54) (72 P. S. § 7204(54)) regarding the sales and use tax exclusion for the 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.

Explanation of Regulatory Requirements

Subsection (a) sets forth the definition of various terms for use in § 32.38. Subsection (b) details the scope of the exclusions for commercial motion pictures. To effect Legislative intent, the Department has added language in § 32.38(b)(2)(ii). If this subparagraph were not added, the purchase of the tangible personal property would be exempt but the repair or alteration would be subject to tax. For example, the purchase of film would be exempt but the development charges would be subject to tax which clearly is not the Legislative intent. Subsection (c) describes the treatment of property and services pur-

chased for resale. Subsection (d) provides that charges to install, repair, maintain or service equipment, parts, tools and supplies directly used in the production of a commercial motion picture are exempt from tax. Subsection (e) explains that utilities used directly and exclusively in the production of a commercial motion picture are exempt from tax. Examples of taxable and exempt electricity usage are provided. An explanation regarding the use of exemption certificates is set forth in subsection (f).

The Department of Community and Economic Development has advised the Department that it will propose a regulation relating to the exemption certificate form.

Fiscal Impact

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

Paperwork

The proposed regulation will require no additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed regulation will become effective upon final publication in the *Pennsylvania Bulletin*. The proposed regulation 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 regulation 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)), on March 2, 1998, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposed regulation, 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 any objections to any portion of the proposed regulation, it will notify the Department within 10 days after the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by that portion. 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: 15-400. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 32. EXEMPTIONS

§ 32.38. Commercial motion pictures.

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

Commercial motion picture—A series of related images at least 40 minutes in length either on film, tape or other similar medium, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced for distribution to a National audience. The term does not include motion pictures produced for private noncommercial use, including motion pictures of weddings or graduations to be used as family mementos, accident reconstruction videotapes to be used for legal analysis or student films to be used for class projects.

Distribution to a National audience—Distribution by means of theatrical release or for exhibition on National television by a television network or through syndication.

Producer—A purchaser who is responsible for the production of a commercial motion picture.

(b) *Scope.*

(1) The sale at retail to or use by a producer of tangible personal property directly used in the production of a commercial motion picture distributed to a National audience is exempt from sales and use tax.

(2) The production of a commercial motion picture involves the process of recording the actions taking place within the motion picture and includes the actual shooting of the picture, either on location or at a motion picture studio, as well as the editing, dubbing and mixing of the motion picture.

(i) Examples of tangible personal property that may be directly used in the production of a commercial motion picture include film and tape products; set construction equipment and supplies; props, including livestock, motor vehicles, books, paintings and other tangible personal property when photographed as part of a scene; wardrobe; grip and lighting equipment; cameras; camera mounts including tripods; jib arms; steadicams; cranes; dollies; generators; walkie talkies; boats, trains, helicopters, airplanes, vans, trucks or other motor vehicles specifically equipped for motion picture production or used solely for production activities, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, sound recording equipment, and editing, dubbing and mixing equipment.

(ii) Examples of services performed upon tangible personal property that may be directly used in the production of a commercial motion picture include sound or music recording; creation of special effects or animation on film, tape or other audiovisual medium, including animation drawings, inkings, paintings, tracing and celluloid "cels"; preparation of storyboards for either animation or live photography; technological modification, including colorizing; computer graphics, including transfers of com-

puter graphics on computer-generated media; sound dubbing or sound mixing; sound or music or effect transferring; film or tape editing or cutting; developing or processing of negative or positive prints; timing; coding or encoding; creation of opticals, titles, main or end credits; captioning; and medium transfers (for example film to tape, tape to tape).

(3) The exclusion from sales and use tax provided for property and services directly used in production does not apply to either:

(i) The purchase of property used for administrative purposes. Administrative purposes includes activities such as sales promotions, general office work, ordering and receiving materials, making travel arrangements, the preparation of shooting schedules, and the preparation of work and payroll records.

(ii) The purchase of catering services, as well as secretarial services, disinfecting or pest control services, building maintenance or cleaning services, help supply services, lawn care services, self-storage services and employment agency services, as terms are defined under section 201 of the TRC (72 P.S. § 7201). However, charges for employment agency services provided by theatrical employment agencies and motion picture casting bureaus are not subject to sales or use tax.

(4) When a single unit of tangible personal property is used in two different activities, one of which is a direct use and the other of which is not, the property will not be excluded from tax unless the producer makes use of the property more than 50% of the time directly in the production phase of a commercial motion picture.

(c) *Property and services purchased for resale.*

(1) A producer may make certain purchases for resale. Materials and services on these materials that will become a component of the product sold may be purchased exempt from tax, if a properly completed exemption certificate is issued to the supplier.

(2) For example, the original negative is the medium (film, tape, and the like) first used in the camera when photographing live action, special effects, animation, computer generated images, and the like. The developing of the film is a service that is purchased for resale because the producer is selling the film on which the service is being performed.

(d) *Installation, repair, maintenance and service of tangible personal property.* Charges to install, repair, maintain or service equipment, parts, tools and supplies directly used in the production of a commercial motion picture are exempt from sales and use taxes. Examples of these services include:

(1) Installing illumination lighting and sound equipment.

(2) Installing special effects riggings.

(3) Connecting wiring from electrical sources to production equipment.

(e) *Utilities used in production.* Utilities used directly and exclusively in the production of a commercial motion picture are exempt from tax. Examples of taxable and exempt electricity usage:

(1) Electricity used for set lighting is exempt.

(2) Electricity used in a mobile trailer maintained for actors is taxable.

(3) Electricity used to light and heat a temporary or permanent office is taxable.

(f) *Exemption certificates.*

(1) A producer shall furnish a properly completed exemption certificate to its vendors to:

(i) Exclude the producer's purchases of tangible personal property that becomes a physical component part of the commercial motion picture and is actually transferred to the customer (for example resale).

(ii) Exclude the producer's purchases of qualifying production machinery, equipment, parts, tools or supplies for use directly in the production of a motion picture. This certificate shall also be furnished to those who install, repair, maintain or service the exempt machinery, equipment, parts, tools or supplies. To claim this exclusion, the producer shall state on the certificate in the space marked "Other" the following: "Property or services shall be directly used in the production of a commercial motion picture under section 204(54) of the TRC (72 P. S. § 7204(54))."

(2) A properly completed exemption certificate shall be furnished and accepted in good faith no later than 60 days after delivery of the property or service or the sale will be considered a taxable sale.

[Pa.B. Doc. No. 98-415. Filed for public inspection March 13, 1998, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Fishing; Extension of Public Comment Period

On January 3, 1998, the Fish and Boat Commission (Commission) published a notice of proposed rulemaking in the *Pennsylvania Bulletin* at 28 Pa.B. 45, seeking public comments, objections or suggestions about proposed changes to its current bass regulations. Specifically, the Commission sought public comments on proposed amendments to 58 Pa. Code §§ 61.1, 65.8 and 65.9 (relating to Commonwealth inland waters; warmwater/coolwater species special conservation waters; and big bass special regulations). The notice of proposed rulemaking provided for a 90-day public comment period from the date of publication.

The Commission is extending the public comment period for these proposed amendments until May 15, 1998.

PETER A. COLANGELO,
Executive Director

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