

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 41]

[L-00010152]

Evidentiary Criteria Used to Decide Motor Common Carrier Applications

Public Meeting held
October 12, 2001

Commissioners Present:

Glen R. Thomas, Chairperson; Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Evidentiary Criteria Used to Decide Motor Common Carrier Applications; Doc. No. L-00010152

Generic Investigation Re Eliminating the Evidentiary Criteria contained in 52 Pa. Code § 41.14(a) and (c); Doc. No. I-00010089

Order

By Order entered March 23, 2001, the Commission issued a Proposed Policy Statement on the Evidentiary Criteria Used to Decide Motor Common Carrier Applications. The proposed policy statement sought to eliminate two elements of the Commission's current evidentiary standards used in determining whether to grant a motor carrier application for authority as "necessary or proper for the service, accommodation, convenience, or safety of the public," in accordance with section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a).

The standards found in 52 Pa. Code § 41.14(a) and (c) that we sought to eliminate are: (1) a requirement that the applicant prove a "public demand or need" for the service; and (2) a provision that an application may be denied where it threatens the operations of existing carriers. The purpose for the proposed changes was the Commission's view that it is difficult to justify the continuation of burdensome entry standards for potential motor common carriers in this era of increasing competition. The proposed policy statement was published on May 5, 2001, in the *Pennsylvania Bulletin* at 31 Pa.B. 2389, with a 30-day comment period.

In response to the publication, 164 comments were filed. Twenty-nine comments were late-filed. In addition to numerous comments received from the household movers industry and the taxicab industry, numerous comments were filed by members of the State legislature.

The Commission has decided to withdraw the proposed policy statement at this time. Instead of finalizing the proposed policy statement, we hereby initiate an investigative proceeding in order to hold hearings and gather additional information regarding the issues raised by the proposed policy statement. By this Order, we hereby direct the Office of Administrative Law Judge (OALJ) to hold hearings and issue a Recommended Decision that will address, at a minimum, the following issues:

1) Whether eliminating the evidentiary requirement that an individual applicant prove that its application

will "serve a useful public purpose, responsive to a public demand or need," pursuant to 52 Pa. Code § 41.14(a), is consistent with the Commission's policies to promote competition and is in the public interest;

2) Whether eliminating the evidentiary requirement that an application may be denied where "it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers" pursuant to 52 Pa. Code § 41.14(c), is consistent with the Commission's policies to promote competition and is in the public interest;

3) Whether eliminating the evidentiary requirements described in 1 and 2 would preclude the Commission from fulfilling its statutory duty to determine whether the granting of an individual application is necessary or proper for the service, accommodation, convenience or safety of the public, in accordance with 66 Pa.C.S. § 1103(a);

4) Whether the Commission should adopt a pro-competitive motor carrier policy that reduces entry standards for new applicants? If not, why not?

5) Whether strengthening the Commission's current standards dealing with an applicant's technical and financial fitness, pursuant to 52 Pa. Code § 41.14(b), would be in the public interest (assuming the policy changes described are adopted).

In addition, the OALJ is directed to commence the proceedings no later than Tuesday, November 13, 2001, and provide its findings and recommendations to the Commission no later than March 22, 2002. Should the OALJ recommend any changes to the Commission's existing evidentiary requirements, a determination should be made regarding the best means available to the Commission to implement such changes (i.e., by policy statement, regulation, or proposed legislation). The Recommended Decision should also address whether differences among providers (such as taxicab, household movers, group and party, and paratransit) within the motor carrier industry warrant different evidentiary standards. Finally, in order to maximize participation from interested persons, hearings shall be conducted in Altoona, Harrisburg, Philadelphia, Pittsburgh, and Scranton; *Therefore,*

It Is Ordered:

1. That the proposed policy statement to eliminate the evidentiary requirements contained in 52 Pa. Code § 41.14(a) and (c) is hereby withdrawn.

2. That the Commission's Law Bureau place notice in the *Pennsylvania Bulletin* advising the public and interested parties of this generic investigation and soliciting public input.

3. That the Office of Administrative Law Judge is hereby directed to commence an investigation by holding hearings and issue a Recommended Decision, as detailed.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 01-1920. Filed for public inspection October 26, 2001, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 38a]

Hotel Occupancy Tax

The Department of Revenue (Department) has adopted a statement of policy under the authority contained in § 3.2 (relating to statements of policy). The statement of policy adds § 38a.1 (relating to scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy) and shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

This statement of policy is promulgated by the Department to clarify the scope and application of the Department's regulations published in Chapter 38 (relating to Hotel Occupancy Tax).

It has recently come to the attention of the Department that officials of several county governments of this Commonwealth have cited § 38.2(f) (relating to exemptions) as their authority to impose and collect certain county taxes imposed on hotel room rentals made to officials and employees of the Commonwealth while engaged in official Commonwealth business. The Department understands that these counties have refused to honor exemptions from the county taxes claimed by the Commonwealth and have cited § 38.2(f) as their legal basis for refusing the claimed exemptions.

Chapter 38 applies solely to the Hotel Occupancy Tax imposed by section 210 of the Tax Reform Code of 1971 (72 P. S. § 7210). The regulations do not, and statutorily could not, apply to any hotel tax imposed by any county government of this Commonwealth under other laws enacted by the General Assembly.

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

LARRY P. WILLIAMS,
Secretary

(Editor's Note: The regulations of the Department are amended by adding a statement of policy in § 38a.1 to read as set forth in Annex A.)

Fiscal Note: 15-419. 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 38a. HOTEL OCCUPANCY TAX PRONOUNCEMENTS—STATEMENT OF POLICY

Sec.
38a.1. Scope and application of Chapter 38a—Hotel Occupancy Tax—statement of policy

§ 38a.1. Scope and application of Chapter 38—Hotel Occupancy Tax—statement of policy.

(a) *Generally.* This section is issued by the Department to clarify the scope and application of Chapter 38 (relating to Hotel Occupancy Tax). Chapter 38 applies solely to the Hotel Occupancy Tax imposed by section 210 of the TRC (72 P. S. § 7210). The regulations do not, and

statutorily could not, apply to any hotel tax imposed by any county government of this Commonwealth under other laws enacted by the General Assembly.

(b) *Enabling statute for Hotel Occupancy Tax.* Under section 210 of the TRC, the General Assembly has imposed "an excise tax of six per cent of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth" as provided by the TRC. It is the responsibility of the Department to collect for the Commonwealth all taxes imposed by Article II of the TRC, including the Hotel Occupancy Tax. See 72 P. S. §§ 7270—7277 (relating to enforcement and examinations).

(c) *Enforcement and regulatory responsibility with regard to Hotel Occupancy Tax statute.*

(1) *Enforcement.* As part of its responsibility to enforce and administer the taxes imposed by Article II of the TRC, the Department is authorized and empowered by section 270(a) of the TRC (72 P. S. § 7270(a)) to prescribe rules and regulations relating to the administration and enforcement of Article II.

(2) *Exemptions.* Acting under its authority under section 270(a), the Department promulgated Chapter 38. Section 38.1 (relating to imposition and computation of tax) prescribes rules and methods for the imposition and computation of the Hotel Occupancy Tax. Section 38.2 (relating to exemptions) establishes certain exemptions from the Commonwealth's Hotel Occupancy Tax. Under § 38.2, there are exemptions provided for permanent residents; ambassadors, ministers and consular officers of foreign governments; occupancies of hotel rooms by United States Government personnel; and occupancies of hotel rooms by other exempt entities. See § 38.2(a)—(d).

(3) *Requirement.*

(i) Having listed in § 38.2 the hotel occupancies exempt from the Hotel Occupancy Tax, the Department included a final subsection providing explicitly certain hotel occupancies that are not exempt from the Hotel Occupancy Tax. Section 38.2(f) provides as follows:

(f) *Others not exempt.* No person or entity other than those referred to in this section may be exempt from the Hotel Occupancy Tax. Occupancy by employees or representatives of the Commonwealth, its instrumentalities or political subdivisions, is not exempt from hotel occupancy tax, regardless of the nature of the business upon which the employee or representative is engaged, and regardless of the identity of the person or agency paying for the occupancy. Occupancy by employees or representatives of State credit unions is not exempt from the tax. Exemption from the sales and use tax portion of the TRC granted to persons, organizations or institutions, including exemptions granted to religious organizations, charities, educational institutions and the like, are not applicable to the Hotel Occupancy Tax, and those persons, organizations or institutions are required to pay tax upon their occupancy of hotel rooms.

(ii) As is true of all of Chapter 38, § 38.2(f) applies solely and exclusively to the Hotel Occupancy Tax imposed by section 210 of the TRC and collected by the Department.

(d) *Applicability of § 38.2 to certain county taxes.*

(1) Several county governments of this Commonwealth have cited to § 38.2(f) as their authority to impose and

collect certain county taxes imposed on hotel room rentals made to officials and employees of the Commonwealth while engaged in official Commonwealth business. These counties have refused to honor exemptions from the county taxes claimed by the Commonwealth and have cited to § 38.2(f) as their legal basis for refusing the claimed exemptions.

(2) As the agency that promulgated § 38.2(f) and administers and enforces the Commonwealth's Hotel Occupancy Tax imposed under the TRC, the Department issued this section to make clear the limited scope and applicability of Chapter 38. Promulgated by the Department under its authority under the TRC solely to enforce

and administer the Hotel Occupancy Tax imposed by section 210 of the TRC, Chapter 38 of the Department's regulations has, and statutorily could have, no application to taxes imposed by county governments under separate statutory authority. Therefore, § 38.2(f) cannot properly be cited as a basis for a county government to impose a hotel room rental tax upon a Commonwealth official or employee staying overnight in a hotel in the course of performing official Commonwealth business.

[Pa.B. Doc. No. 01-1921. Filed for public inspection October 26, 2001, 9:00 a.m.]