

CHAPTER 47. RENTALS

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Source

The provisions of this Chapter 47 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686, unless otherwise noted.

§ 47.1. Coin-operated amusement devices.

The placing of coin-operated amusement and record playing devices in a store, restaurant or public place is not considered to be a rental when the owner-operator and the proprietor of the location are joint venturers and divide the proceeds from the device between themselves. It is a rental subject to tax when the proprietor of the location either pays a flat rental charge for the machine and retains all proceeds from the machine himself, or when the proprietor receives all the proceeds and pays a rent to the owner of the machine based on a percentage of the proceeds. In the case of a joint ventureship, the owner-operator of the amusement device shall pay tax upon the purchase of the device, and also upon the purchase by him of phonograph records, supplies, materials and equipment by him in the maintenance and repair of such devices. He should not collect tax from the person who is being provided a service in the form of entertainment upon depositing coins in the machine. Where the transaction is considered to be a rental to the proprietor of the location, the provisions of §§ 31.4 and 32.3 (relating to rentals or leases of tangible personal property; and sales for resale) are applicable.

§ 47.2. Films for commercial exhibitions.

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

Commercial exhibition—A public show, display or presentation made or presented for an audience which pays consideration.

Motion picture film—A series of still photographs capable of being displayed so as to simulate action.

Distributor—A supplier of motion picture films.

(b) *Commercial exhibitions.* The rental or licensing of motion picture film to persons for commercial exhibition is not subject to tax.

(c) *Sponsors of televisions programs.* The sale or lease of motion picture film to a sponsor or client for use on a television station is not rented or licensed for the purpose of commercial exhibition and therefore shall be subject to tax.

(d) *Commercial or educational television station.* The purchase or rental of motion picture film by a commercial or educational television station, licensed by the Federal Communications Commission, for use directly in its broadcasting operations shall be exempt from tax upon the basis of the processing exemption.

Source

The provisions of this § 47.2 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686; amended July 6, 1973, effective July 7, 1973, 3 Pa.B. 1279.

§ 47.3. Frozen food lockers.

The tax is not applicable to the charge made for the privilege of storing meat and similar perishable food products in frozen food lockers.

§ 47.4. Golf bag carts and lockers.

The rental of golf bag carts by a private, public or municipal golf course shall be subject to tax. The golf course need not collect tax with respect to fees paid for the rental of lockers, although the golf course shall pay tax upon the purchase by them of the lockers.

§ 47.5. [Reserved].**Source**

The provisions of this § 47.5 superseded by § 47.17, 6 Pa.B. 9, (January 2, 1976). Immediately preceding text appears at serial page (249844).

§ 47.6. Miniature golf course.

The tax is not applicable to the charge made for the use of a miniature golf course, even though the proprietor of the golf course permits the customer to use a golf ball and club in conjunction with the use of the course.

§ 47.7. [Reserved].**Source**

The provisions of this § 47.7 superseded by § 47.17, 6 Pa.B. 9, (January 2, 1976). Immediately preceding text appears at serial pages (249845) to (249846).

§ 47.8. [Reserved].**Source**

The provisions of this § 47.8 superseded by § 47.17, 6 Pa.B. 9, (January 2, 1976). Immediately preceding text appears at serial page (249846).

§ 47.9. [Reserved].**Source**

The provisions of this § 47.9 superseded by § 47.17, 6 Pa.B. 9, (January 2, 1976). Immediately preceding text appears at serial page (249846).

§ 47.10. Riding academies and stables.

The purchase of a horse by a riding stable or academy to be used exclusively for rental purposes is exempt from tax as a purchase for resale. The academy or stable shall charge sales tax on the rental price of the horse. The purchase of a horse by a riding academy or stable to be used for instruction purposes is subject to sales or use tax. Tax shall be paid on all purchases of materials, supplies and equipment used by these enterprises in the course of operating their business. Included are items as feed, stable supplies and riding equipment. Charges for boarding horses are not subject to tax.

§ 47.11. Saws and blades to butchers.

A person in the business of renting saws and blades to butchers shall collect tax with respect to the rental charge received by him, even though a portion of the charge may be attributed to service.

§ 47.12. Soda fountains.

Leasing of soda fountains in return for periodic consideration is considered a rental and the entire charge is subject to the tax.

§ 47.13. [Reserved].**Source**

The provisions of this § 47.13 reserved March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (40378).

§ 47.14. Water filters or softeners.

[Withdrawn]

Editor's Note: Pursuant to the adoption of the order of the Bureau of Sales and Use Tax, ruling 83, "Water Filters or Softeners—Rental of," filed November 1, 1965 and adopted in conformance with the Commonwealth Documents Law on September 9, 1972, at 2 Pa.B. 1686, has been withdrawn. Reference should be made to ruling 210 as set forth in § 58.10 (relating to water softeners and conditioners).

§ 47.15. [Reserved].**Source**

The provisions of this § 47.15 reserved March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (40378) and (83021).

§ 47.16. Rental of equipment between affiliated interests.

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

Affiliated interest—The relationship between two corporations, associations, partnerships, proprietorships or other businesses, in which one corporation, association, partnership, proprietorship, individual or other business owns more than 50% of the stock or assets, including inventory, machinery and equipment of the remaining corporation, association, partnership, proprietorship or other business. Also, the common ownership of more than 50% of the stock or assets of each of two or more business entities results in an affiliated interest between the two commonly owned entities.

Example 1. “A” company owns 60% of the stock of “B” corporation. “A” has an affiliated interest in “B”.

Example 2. “C,” an individual, owns 75% of the stock of “D” corporation and 55% of the stock of “E” corporation. “D” corporation has an affiliated interest in “E” corporation.

Fair rental charge—The amount which would be charged for the rental of the property in the open market for a similar period of time and at a similar place.

(b) *Scope.* When there has been a rental or lease of equipment, machinery, tools or other property between businesses having an affiliated interest, and the charge for the rental or lease, in the opinion of the Department, is not indicative of the true value of the equipment, machinery or tools, or the fair rental charge thereof, the Department may use as the constructive monthly purchase price of such rental or lease an amount equal to 4% of the original purchase price, which shall include an amount equal to the original purchase price of any accessories, attachments or additions to such equipment, machinery or tools.

Example. “A” company has an affiliated interest in “B” company. “A” company leases a motor vehicle (\$10,000 acquisition cost) to “B” company for which an annual charge of \$1 is made. The Department determines that the \$1 charge is not indicative of the fair rental charge of the vehicle. The Department may use as the monthly tax base 4% of \$10,000 or \$400 as the constructive purchase price of the monthly rental charge for each month during which the vehicle was rented. The monthly tax due on the transaction is \$24. For rental or lease periods for a duration of less than 1 month, appropriate allocation of this rule may be followed.

Source

The provisions of this § 47.16 adopted September 7, 1973, effective September 8, 1973, 3 Pa.B. 2026.

§ 47.17. Lease or rental of vehicles and rolling stock.

(a) *Introduction.* This ruling supersedes Rulings Numbers 74, 76, 77, 78 and 132, and becomes effective upon the date of issue (See 6 Pa.B. 9 (January 2, 1976)). Upon its effective date, the 16 2/3% exemption under former Ruling No. 76, pertaining to charges for gasoline, is no longer in effect. This ruling also pertains to the taxability of rolling stock for the period from March 4, 1971, through October 16, 1974. Prior and subsequent to this period, rolling stock was and is specifically excluded from taxability by statutory amendment. See subsection (c)(1)(i)(B).

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

Lease agreement—A contract whereby the lessee obtains or has the right to possession or custody of a vehicle in exchange for lease payments.

Lease payments—Full consideration paid or delivered or promised to be paid or delivered to the lessor for a lease period under a lease agreement, whether it be money or otherwise, even though consideration is separately stated and designated as payment for service, maintenance, insurance, repairs, depreciation or otherwise.

(i) *Maintenance, insurance or repairs obtained by lessee.* When a lessee is required pursuant to a lease agreement to provide or obtain maintenance, insurance or repairs, any payment made by the lessee to a vendor other than the lessor for maintenance, insurance or repairs shall be included by the lessor as part of the lease payments for the purpose of computing tax, unless tax was charged by the vendor who provided the maintenance, insurance or repairs.

(ii) *Gasoline charges.* Separate sales of gasoline by a lessor to a lessee are not subject to tax. A transfer of gasoline to a lessee is not considered to be a separate sale unless the bill or sales invoice to the lessee separately states the number of gallons of gasoline transferred, and either the charge per gallon or the total charges made for gasoline. Charges for gasoline computed on the basis of the mileage a leased vehicle is driven, rather than upon the actual quantity of gasoline transferred to the lessee, are therefore subject to tax.

Lease period—The interval of time established by the lessor and lessee which occurs between successive lease payments in accordance with the lease agreement, but this interval may not exceed 31 days. In circumstances when the lessor and lessee establish an interval between successive payments which exceeds 31 days, the Department will assume lease periods on a month-to-

month basis beginning with the first day of the first complete month subsequent to the execution of the lease agreement.

Lessor—A person who is engaged in the business of leasing or renting vehicles.

Public utility common carrier—A public utility common carrier is a public utility which is registered as a common carrier with either the Pennsylvania Public Utility Commission or the Interstate Commerce Commission and is organized to perform, and does, in fact, perform services affected with a public interest, and which holds itself out to the general public to carry goods or persons without discrimination and for compensation. An independent contractor (that is, one who reserves the right to refuse to serve any person at his discretion and the power to fix his rates or charges by individual contract with the person or persons with whom he contracts) is not a common carrier.

Resident—A person who is domiciled in this Commonwealth, maintaining a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth, incorporated under the law of the Commonwealth, authorized to do business or doing business within this Commonwealth, or maintaining a place of business within the Commonwealth.

Rolling stock—A device which is used exclusively upon stationary rails or tracks, including, but not limited to, locomotives, flat cars, box cars, coal cars, coaches, cabooses and other railroad cars. Rolling stock includes the type of property described even though it may be owned by persons other than railroads.

Vehicle—A device in, upon or by which a person or property is or may be transported or drawn, including, but not limited to, automobiles, trucks, trailers, tractors, power shovels, road machinery and agricultural machinery. The term does not include devices moved by human power, vehicles which are designed to travel solely through air or water, or a device which is used exclusively upon stationary rails or tracks.

(c) *Scope.* Use of vehicles and rolling stock is subject to tax as follows:

(1) *Vehicles.* Taxability of vehicles shall conform with the following:

(i) *Taxability of lease payments.* Taxability of lease payments shall conform with the following:

(A) *Leases executed within this Commonwealth.* All lease payments made in accordance with lease agreements executed within this Commonwealth are subject to tax.

(B) *Leases executed outside this Commonwealth.* Leases executed outside this Commonwealth shall conform with the following:

(I) *Resident.* A lease payment made in accordance with a lease agreement executed outside this Commonwealth by a resident is subject to tax if during the corresponding lease period the vehicle is brought

within the geographical boundaries of this Commonwealth; unless, the lessee is otherwise exempt under subsection (d).

(II) *Nonresident.* A lease payment made in accordance with a lease agreement executed outside this Commonwealth by a nonresident lessee is subject to tax if during the corresponding lease period the vehicle is used within the Commonwealth more than 7 days; unless, the nonresident lessee is exempt as a tourist or vacationer or is otherwise exempt under subsection (d).

(C) *Lease with option to buy.* When a lease agreement involves an option to buy, sales tax is applicable to lease payments as well as any payment made in exercising the option to buy.

(ii) *Use of vehicles or parts therefor by lessors.* Use of vehicles or parts therefor by lessors shall conform with the following:

(A) *Resident.* A vehicle or parts therefor used within this Commonwealth by a resident lessor for a purpose other than leasing makes the property subject to use tax based on the purchase price paid by the lessor in his initial purchase of the property. However, if the property was purchased more than 6 months prior to its first taxable use, tax may be computed and reported on the fair market value of the property at the time of such taxable use.

(B) *Nonresident.* The use of a vehicle or parts therefor within this Commonwealth for a period of more than 7 days, for any purpose other than leasing, makes the property subject to use tax if the lessor is not a tourist or vacationer. Tax is based on the original purchase price; or if purchased more than 6 months prior to its first taxable use, then on the fair market value at the time of the taxable use. The option of basing the tax on the fair market value is an election which shall be made by the taxpayer.

(2) *Rolling stock.* Taxability of rolling stock shall conform with the following:

(i) *Taxable period.* Lease payments made from March 4, 1971, through October 16, 1974, for the leasing of rolling stock are subject to tax in precisely the same manner as lease payments for the leasing of vehicles under paragraph (1)(i). Thus, the taxability of lease payments made for the leasing of rolling stock may be determined by substituting rolling stock for vehicles in paragraph (1)(i). Similarly, the use of rolling stock within this Commonwealth from March 4, 1971, through October 16, 1974, is subject to tax in precisely the same manner as the use of vehicles under paragraph (1)(i)(B)(II). Thus, tax liability for the use of rolling stock during this period may be determined by substituting rolling stock for vehicles in paragraph (1)(ii). Subsections (d)—(f), dealing with exemptions, credits against tax, and procedures, also apply to the leasing or rental of rolling stock during the taxable period.

(ii) *Nontaxable period.* Lease payments made prior to March 4, 1971, or subsequent to October 16, 1974, for the leasing of rolling stock are specifically excluded from tax by statutory amendment. Similarly, the use of rolling stock within this Commonwealth prior to March 4, 1971, or subsequent to October 16, 1974, is specifically excluded from tax by statutory amendment.

(d) *Exemptions.* Exemptions shall conform with the following:

(1) *Purchases of vehicles or parts, lubricants or repairs therefor by lessors.* Lessors are not subject to tax upon their purchase or lease of vehicles which are purchased for leasing. Also, repair services, repair parts, replacement parts or lubricants purchased for vehicles which are used for leasing are exempt from tax. This exemption does not apply to tools, equipment and supplies used in connection with the repairing or servicing of leased vehicles.

(2) *Lease by exempt organizations.* A vehicle leased by any one of the following individuals or organizations is exempt from tax:

(i) Charitable organization, volunteer firemen's organization, religious organization or nonprofit educational institution if the vehicle is for use in any activity which bears a reasonable relationship to the purpose for which the organization or institution exists. See § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions).

(ii) United States Government. See § 32.22 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government).

(iii) Commonwealth of Pennsylvania or its political subdivisions. See § 32.23 (relating to sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions).

(iv) Ambassadors, ministers and consular officers of foreign governments. See § 32.24 (relating to sales to ambassadors, ministers and consular officers of foreign governments).

(v) Federal credit unions organized under the provisions of the Federal Credit Union Act (12 U.S.C.A. §§ 1751—1795k). See § 48.4 (relating to credit unions).

(vi) Pennsylvania credit unions formed and incorporated under 17 Pa.C.S. §§ 101—1504 (relating to the Credit Union Code). See § 48.4.

(vii) Public authorities created under the Municipal Authorities Acts of 1945 (53 P. S. §§ 301—322). See § 32.23.

(viii) Cooperative agricultural associations required to pay corporate net income tax under the provisions of the Co-operative Agricultural Association Corporate Net Income Tax Act (72 P. S. §§ 3420-21—3420-30). See § 44.2 (relating to cooperative agricultural associations).

(ix) Electric cooperative corporations formed under 15 Pa.C.S. §§ 7301—7359 (relating to the Electric Cooperative Law of 1990). See § 45.1 (relating to exemption of electric cooperative corporations).

(x) Any other organization claiming an exempt status under a particular statute shall make application to the Bureau of Sales and Use Tax (Attention: Legal Division) for approval to use the exemption.

(3) *Public utility common carrier exemption.* The lease of vehicles by a public utility common carrier, engaged in business as a common carrier is exempt from tax if the vehicles are predominantly used directly by the lessee in performing a public utility service. This exemption also applies to the purchase of supplies, repair parts and accessories for such vehicles. The lease of vehicles as well as supplies, repair parts and accessories for the vehicles by any other public utility service are subject to tax.

(4) *Manufacturing, processing or farming exemptions.* The manufacturing, processing or farming exemption does not apply to the lease of any vehicles required to be registered under 75 Pa.C.S. §§ 101—9821. Supplies, repair parts or accessories for the vehicles are taxable unless purchased by the lessor.

(e) *Credits against tax.* A credit against tax shall be granted, with respect to vehicles purchased or leased for use outside this Commonwealth, equal to the tax paid to another state by reason of the imposition by the other state of a tax similar to the tax imposed by Article II of the TRC (72 P. S. §§ 7201—7282), provided, however, that no credit shall be granted unless such other state grants substantially similar tax relief by reason of the payment of tax under Article II of the TRC. Tax paid by a lessor on his purchase of vehicles cannot be credited against taxes due from a lessee to the lessor on lease payments. A credit listing of the states can be obtained upon request from this Bureau.

(f) *Procedures.* Procedures for records and claiming exemptions shall conform with the following:

(1) *Records.* All lessors shall keep books that enable the Department to accurately determine at any time the amount of tax collected and remitted upon each individual vehicle. The lessor shall identify each vehicle by reference to the specific registration number and state of registration. The identification shall be made upon the books and records of the lessor and upon all billings and invoices to customers.

(2) *Procedure for claiming exemption.* A lessee claiming exemption must tender to the lessor a properly executed Blanket Exemption Certificate.

Source

The provisions of this § 47.17 adopted January 2, 1976, effective January 3, 1976, 6 Pa.B. 9; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (249848) to (249853).

Cross References

This section cited in 61 Pa. Code § 31.41a (relating to scope).

§ 47.18. Totalizator equipment.

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

Corporation—A corporation licensed under section 203 of the Race Horse Industry Reform Act (4 P. S. § 325.203).

Prevailing market price—The price which the equipment will bring if offered for sale in the open market at the time the equipment is brought into this Commonwealth.

Resident—A natural person, partnership, corporation, association or other entity which is domiciled, maintains a place of business or is authorized to do business in this Commonwealth.

Totalizator company—A business providing electronic totalizator equipment to a corporation.

(b) *Scope.* A totalizator company shall conform with the following:

(1) *Charges to a corporation.* A totalizator company which provides electronic totalizator equipment to a corporation in connection with parimutuel betting is deemed to be rendering a nontaxable service. Therefore, charges made by the totalizator company to a corporation in connection with rendering its nontaxable service is exempt from sales and use taxes.

(2) *Purchases by a resident totalizator company.* A totalizator company is considered to be the consumer of equipment, materials or supplies, and services thereto, which it uses in the rendition of its nontaxable service. Accordingly, a totalizator company shall pay sales or use tax of this Commonwealth in accordance with this subsection:

(i) *Purchases involving delivery within this Commonwealth.* A purchase of taxable property and services which involve delivery within this Commonwealth is subject to sales or use tax at the effective rate of tax upon the full purchase price, including charges for delivery. Credit will not be granted for taxes illegally imposed and paid to states other than the Commonwealth.

(ii) Purchases involving delivery outside of this Commonwealth but later brought into this Commonwealth:

(A) *Purchases within 6 months.* Property, including property upon which a taxable service has been performed, which has been brought into this Commonwealth within 6 months of the date of purchase or service is subject to tax at the effective rate upon the original purchase price, including charges for delivery. See subsection (c).

(B) *Purchases beyond 6 months.* Property, including property upon which a taxable service has been performed, which has been brought into this Commonwealth beyond 6 months of the date of purchase or service, is subject to tax at the effective rate of tax upon the original purchase price of the property or service including charges for delivery.

(3) *Purchases by nonresident totalizator company.* Notwithstanding subsection (b), when a nonresident totalizator company brings property, including property upon which a taxable service has been performed, into this Commonwealth in connection with the establishment of a permanent residence, the totalizator company shall pay use tax of the Commonwealth with respect to the property in accordance with this subsection:

(i) *Purchases within 6 months.* Property, including property upon which a taxable service has been performed, which has been brought into this Commonwealth within 6 months of the date of purchase, is subject to tax at the effective rate on the original purchase price, including charges for delivery.

(ii) *Purchases beyond 6 months.* Property, including property upon which a taxable service has been performed, which has been brought into this Commonwealth beyond 6 months of the date of purchase, is exempt from Commonwealth sales or use tax.

(4) *Fair rental value.* There is no authority under the TRC by which a totalizator company may pay tax upon the basis of the fair rental value of property which is subject to tax.

(c) *Credits against tax.* A totalizator company may take credit against tax owed to the Commonwealth, under subsection (b)(2)(ii) with respect to equipment, materials and supplies which are taxable in this Commonwealth equal to the tax legally due and paid to another state upon the equipment, materials and supplies by reason of a tax similar to the tax imposed by the Commonwealth. Credit will not be granted unless the other state grants similar tax relief to persons who have paid tax to the Commonwealth. A listing of the states granting similar relief may be obtained from the Department (Attn: Legal Bureau) upon request. Credit cannot be taken for sales tax paid to Canada.

Source

The provisions of this § 47.18 adopted July 15, 1977, effective July 16, 1977, 7 Pa.B. 1982; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (59269) to (59270) and (117865).

§ 47.19. Public Transportation Assistance Fund taxes and fees.

(a) *General provisions.*

(1) *General.* This section is promulgated to administer section 2301 of the TRC (72 P. S. § 9301).

(2) *Registration.* A person who makes sales, rentals or leases subject to a tax or fee under subsection (b), (c) or (d) is required to apply for a Public Transportation Assistance Tax License Number on a form prescribed by the Department. The registration is separate from sales tax registration required under section 208 of the TRC (72 P. S. § 7208).

(3) *Returns.* The taxes and fees collected under subsection (b), (c) or (d) shall be reported on a return prescribed by the Department. The returns shall be filed under sections 217—220 of the TRC (72 P. S. §§ 7217—7220) and § 34.3 (relating to tax returns).

(4) *Payment.* Payment of the taxes and fees under subsection (b), (c) or (d) shall be made under sections 221—224 of the TRC (72 P. S. §§ 7221—7224).

(5) *Imposition of tax.* The taxes and fees imposed under subsection (b), (c) or (d) are in addition to Sales or Use Tax and are excluded from the computation of tax for Sales and Use Tax purposes.

(6) *Exemption certificates.* Claims for exemption from the taxes and fees imposed under subsection (b), (c) or (d) shall be supported by the use of a valid Pennsylvania Exemption Certificate.

(7) *Direct payment permit.* A direct payment permit issued under § 34.4 (relating to direct payment permit) may be used in conjunction with the taxes and fees imposed under this section.

(8) *Applicability of TRC.* Article II of the TRC (72 P. S. §§ 7201—7282) and regulations promulgated thereunder apply to the taxes and fees imposed under subsection (b), (c) or (d).

(b) *Tire fee.*

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

Highway use—The use of a tire on a vehicle which is required to be licensed for highway use. If a tire is of the type used on a vehicle normally required to be licensed for highway use under 75 Pa.C.S. §§ 1301—1318 (relating to general provisions), the tire shall be presumed to be for highway use.

Sale—A transfer of the ownership of new tires for a consideration whether the transfer is absolute or conditional and by whatever means the transfer has been effected. The term does not include a rental or lease.

(2) *Scope.* Effective October 1, 1991, the sale of a new tire which is delivered to a location in this Commonwealth for highway use is subject to a \$1 fee. The fee shall be collected by the vendor from the purchaser. If the vendor fails to collect, report or remit the tire fee, the vendor shall be assessed the fee. If the purchaser does not pay the fee to the vendor, the purchaser shall be assessed the tire fee. The sale of new tires in conjunction with the sale of other property shall be subject to the tire fee. There is no exclusion for exempt organizations or businesses engaged in manufacturing, processing, farming, dairying, printing, mining or rendering a public utility service.

(3) *Exclusions.* The following transactions are excluded from tax:

- (i) The sale of tires not for highway use.
- (ii) The sale of new tires to governmental entities.

(iii) The rental or lease of new tires. The lessor is required to pay the tire fee on the purchase of tires to be rented or leased.

(iv) The sale of used tires including retreads or recaps.

(v) The sale of tires when delivered to the purchaser at an out-of-State location. The subsequent use of the tires within this Commonwealth is not subject to the tire fee.

(4) *Examples of sales subject to the tire fee.*

(i) A purchaser buys a new or used automobile with four new tires and one spare tire. A tire fee of \$5 is due on the sale of five new tires.

(ii) A leasing company buys new tires to use as replacements on its leased licensed vehicle fleet. Since the tires are for highway use, the purchase of the tires by the leasing company is subject to the tire fee.

(iii) A church buys a new tire to replace a tire on a vehicle registered in the name of the church. The purchase of the tire by the church is subject to the tire fee.

(iv) A trucking company buys tires from an out-of-State vendor. The tires are delivered to the trucking company in this Commonwealth. The sale of the tires is subject to the tire fee.

(v) A new car dealer withdraws an automobile from inventory and makes a taxable use of the automobile for sales and use tax purposes. The dealer is required to pay the tire fee directly to the Department.

(vi) A garage replaces a tire in connection with the repair of a damaged motor vehicle. The sale of the tire is subject to the tire fee regardless of whether the cost of the repair is covered by an insurance contract.

(5) *Examples of sales not subject to the tire fee.*

(i) A used car dealer buys new tires to place on a vehicle to be resold. The purchase of tires by the dealer is not subject to the tire fee. The subsequent sale of the vehicle with the new tires to a purchaser for highway use is subject to the tire fee.

(ii) A lessee rents a vehicle with new tires from a leasing company. A tire fee is not due on the rental. The lessor is liable for paying the tire fee on the purchase of the tires.

(iii) A manufacturer purchases new tires for use on forklifts not required to be licensed for highway use. The purchase is not subject to the tire fee.

(iv) A trucking company buys new tires from an out-of-State vendor. The tires are delivered to the trucking company at an out-of-State location. The sale or use of the tires is not subject to the tire fee even though the tires are subsequently used in this Commonwealth.

(v) A retail tire dealer purchases tires from a tire manufacturer for resale. As the retail tire dealer is not purchasing the tires for highway use, the purchase is not subject to the tire fee. The retail tire dealer's subsequent sale of the tire to a customer for highway use is subject to the tire fee.

(c) *Motor vehicle lease tax.*

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

Lease—A contract for the use of a motor vehicle for 30 days or more.

Lease price—Full consideration paid or delivered or promised to be paid or delivered to the lessor for a lease period under a lease agreement, whether it is money or otherwise, even though the consideration is separately stated and designated as a payment for downpayment, service, maintenance, insurance, repairs, depreciation, excess mileage fees or similar charges.

(i) The term also includes an accelerated lease payment or buy out purchase price whether or not made in connection with the termination of the lease.

(ii) The term does not include the option purchase price, penalty fees for early termination of lease, damage fees or similar charges.

(iii) The term does not include Sales Tax imposed on the lease price.

(iv) Credits or refunds which reduce the lease price reduce the amount subject to tax even though the credits or refunds are issued after termination of the lease.

(v) If the lessor fails to separately state the lease price of other property, such as a trailer, from the lease of a motor vehicle, the total lease price is subject to tax.

Motor vehicle—A self-propelled device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except tractors, power shovels, road machinery, agricultural machinery and vehicles which move upon or are guided by a track or trolley. The term does not include trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) (relating to trucks and truck tractors). Title 75 Pa.C.S. § 1916(a)(1) currently defines trucks in Class 4 as those having a registered gross or combination weight between 9,001 and 11,000 pounds.

(2) *Scope.* Effective October 1, 1991, each lease of a motor vehicle subject to the tax imposed by section 202 of the TRC (72 P. S. § 7202) is subject to an additional tax of 3% of the total lease price charged. This tax will be imposed upon lease payments due on or after October 1, 1991, regardless of the date upon which the lease was executed. Lease payments made on or after April 1, 1995, for the use of trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a)(1) are not subject to the tax. The tax shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the tax, the lessor shall be assessed the tax. If the lessee does not pay the tax to the lessor, the lessee shall be assessed the tax.

(3) *Exclusions.* If the lease of a motor vehicle is exempt from Sales and Use Tax imposed by section 202 of the TRC, the lease is exempt from the tax imposed under this subsection.

(d) *Motor vehicle rental fee.*

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

Motor vehicle—A self-propelled device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except tractors, power shovels, road machinery, agricultural machinery and vehicles which move upon or are guided by a track or trolley.

Rental—A contract for the use of a motor vehicle for less than 30 days.

(2) *Scope.* Effective October 1, 1991, each rental of a motor vehicle subject to the tax imposed by section 202 of the TRC is also subject to a fee of \$2 for each day or part of a day for which the vehicle is rented. The fee shall be collected by the lessor from the lessee. If the lessor fails to collect, report or remit the fee, the lessor shall be assessed the fee. If the lessee does not pay the fee to the lessor, the lessee shall be assessed the fee. If a motor vehicle is rented for less than 30 days, and the use of the motor vehicle subsequently extends beyond a 29-day period, the transaction remains a rental, and the rental payments continue to be subject to the fee until the rental contract is terminated. With respect to lease payments paid in accordance with a lease contract, lease payments are subject to tax at the rate of 3%.

(3) *Exclusions.* If the rental of a motor vehicle is exempt from Sales and Use Tax imposed by section 202 of the TRC (72 P. S. § 7202), the rental is exempt from the fee imposed under this subsection.

(4) *Examples of rentals subject to the rental fee.*

(i) A lessee rents a motor vehicle from a rental company for 5 hours. The rental is subject to a \$2 rental fee.

(ii) A lessee rents a motor vehicle from a rental company for 1 day. The vehicle is returned to the lessor 5 hours after the end of the rental period. If the lessee is charged the daily rental rate plus an additional charge for the period after the end of the rental period, a rental fee of \$4 is due.

(iii) A lessee rents a motor vehicle from a rental company under a daily rental contract. The rental is subject to a \$2 per day rental fee. The lessee returns the motor vehicle to the lessor at the end of the 15th day and enters into a lease contract. During the first 15 days, the lessee is required to pay a rental fee of \$2 per day. For the period after the 15th day, the lessee is required to pay a tax of 3% of the lease payment.

Authority

The provisions of this § 47.19 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 47.19 adopted October 30, 1998, effective October 31, 1998, 28 Pa.B. 5488.

§ 47.20. Vehicle 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. §§ 1912, 1916(a), 1920 and 1952(a) 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.

PTA—The Public Transportation Assistance Fund created by Article XXIII of the TRC (72 P. S. § 9301).

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

Rental contract—A contract between a purchaser and a vehicle rental company for the use of a rental vehicle for 29 or fewer consecutive days. If a rental vehicle is rented for 29 or fewer consecutive days, and the use of the rental vehicle extends beyond a 29-day period without entering into a new written contract, the transaction remains a rental unless the parties enter into a written lease agreement.

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.

Rental vehicle—A motor vehicle designed to transport 15 or fewer passengers or a truck, trailer or semitrailer used in the transportation of property other than commercial freight, that is rented without a driver. The term does not include a motorcycle, motor-driven cycle, school bus, hearse, motor home, camper or mobile home.

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

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

Vehicle rental company—A business entity engaged in the business of renting five or more rental vehicles in this Commonwealth.

(b) *General provisions.*

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

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

(3) *Returns.* A vehicle rental company shall report the VRT on a return prescribed by the Department. The return is due 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 VRT because the vehicle rental company may be entitled to a refund of the tax collected.

(6) *Applicability of TRC.* Article II of the TRC and regulations promulgated thereunder apply to the VRT.

(c) *Scope.*

(1) *General.* With respect to rental contracts involving motor vehicles designed to transport 15 or fewer passengers, a tax of 2% is imposed upon the rental payments. With respect to rental contracts involving trucks, trailers and semitrailers used in the transportation of property other than commercial freight, entered into on or after July 1, 1997, a tax of 2% is imposed upon the rental payments made on or after July 1, 1997. If the vehicle rental company fails to collect the applicable tax, the purchaser shall pay the tax directly to the Department on a form prescribed by the Department.

(2) *Examples.*

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

(A) "A" rents a rental vehicle from a vehicle rental company for 14 days. Due to circumstances unforeseen at the commencement of the rental, "A," without entering into a new contract, continues to use the car on a day by day basis and eventually returns the car on the 36th day. Because the transaction continues to be governed by the rental contract for the entire 36-day period, the rental payment is subject to the VRT.

(B) "B" rents a rental vehicle 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 VRT.

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

(D) "R" rents a truck to transport a used living room set to "R's" hunting camp. The rental payments are subject to VRT as the living room set does not qualify as commercial freight.

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

(A) "Y" rents a rental vehicle 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 VRT 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 VRT.

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

(C) “M” manufacturer rents a truck used exclusively to deliver “M’s” own manufactured products to “M’s” customers. The rental payments are not subject to VRT as “M’s” products qualify as commercial freight.

(d) *Exclusions.* If the rental of a rental vehicle is exempt from State Sales or Use Tax, the rental is also exempt from the VRT. A purchaser shall support a claim for exemption from the VRT 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 VRT. The purchaser shall make that indication either by checking the appropriate blocks for the VRT on the 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 VRT.

(e) *Annual reconciliation reports.*

(1) *General.* A vehicle rental company that has remitted the VRT 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. An annual reconciliation report shall be filed on or before February 15 of the subsequent 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. When the envelope containing the report does not reflect a United States Postal Service postmark date, the date of receipt by the Department shall determine the date of filing.

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

(i) The VRT 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 rental vehicles 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 VRT 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 rental vehicles. The amount of refund cannot exceed the amount of the VRT 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 VRT on January 20, April 20 and July 20, 1995. Under paragraph (4), “R” may claim a refund up to the amount of the VRT 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 VRT 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 VRT “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.

Authority

The provisions of this § 47.20 issued under section 270 of The Tax Reform Code of 1971 (72 P. S. § 7270).

Source

The provisions of this § 47.20 adopted October 30, 1998, effective October 31, 1998, 28 Pa.B. 5492.

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(352426) No. 432 Nov. 10

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