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Regulatory Analysis Form		This space for use by IRRC 2000 JAN 19 PM 2:38	
(1) Agency Revenue		INDEPENDENT REGULATORY REVIEW COMMISSION	
(2) I.D. Number (Governor's Office Use) 15-353		McGinley	
		IRRC Number: 1908	
(3) Short Title Books, Publications and Advertising Materials			
(4) PA Code Cite 61 Pa. Code §§ 31.3, 31.29, 48.2 and 48.3		(5) Agency Contacts & Telephone Numbers Primary Contact: Anita M. Doucette (717) 787-1382 Secondary Contact: Douglas A. Berguson (717) 787-1382	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The Department is amending § 31.29 to bring it into conformity with recent statutory changes and to reflect the Department's current policy. Sections 31.3, 48.2 and 48.3 are amended or deleted in accordance with the Pennsylvania Supreme Court decision in <i>Haller v. Department of Revenue</i> , 556 Pa. 289, 728 A.2d 351 (1999), <i>cert. denied</i> , 120 S. Ct. 325 (1999). In <i>Haller</i> , the Court found the exclusion set forth in section 204(28) of the TRC (72 P.S. § 7204(28)) in violation of both the United States and Pennsylvania Constitutions. Section 204(28) provides a sales tax exclusion for the sale at retail or use of religious publications sold by religious groups and Bibles and religious articles.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. Statutory authority for the regulation is contained in section 270 of the TRC (72 P.S. § 7270). Relevant court decisions include the Pennsylvania Supreme Court decision in <i>Haller v. Department of Revenue</i> , 556 Pa. 289, 728 A.2d 351 (1999), <i>cert. denied</i> , 120 S. Ct. 325 (1999).			

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Department is amending § 31.29 to bring the section into conformity with recent statutory changes and to reflect the Department's policy. Sections 31.3, 48.2 and 48.3 are amended and deleted to reflect the *Haller* decision.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Taxpayers and tax practitioners will benefit from the regulation because the amendments bring the section into conformity with recent statutory changes and reflect the Department's policy.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any taxpayer making a sale at retail or use of publications, advertising inserts and advertising literature or materials will be required to comply with this regulation. In addition, sales of religious publications, bibles and religious articles will be affected by the *Haller* decision.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was published in the Pennsylvania Bulletin and the public was invited to comment. The Department received three comments from the public during the public comment period. The Department also received comments from the Senate Finance Committee and the Independent Regulatory Review Commission. The Department considered the comments in preparing the final form regulation. In addition, a copy of the regulation was forwarded to the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Chamber of Business and Industry and all parties who commented on the proposal. The regulation was listed in the Department's Agenda of Regulations published at 29 Pa.B. 3443 (July 3, 1999) and was forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Compliance with the regulation could result in a savings to the regulated community by reducing the possibility of assessment of penalty and interest. No legal, accounting or consulting procedures are required by the regulation.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government	Minimal					
Total Revenue Losses	Minimal					

(20a) Explain how the cost estimates listed above were derived.

The regulation may result in a minimal loss of revenue receipts because printing charges for investment prospectuses and financial and corporate annual reports sent to brokerage houses or prospective stock purchasers will be treated exempt from taxation.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of having a regulation that reflects recent statutory changes as well as the Department's policy outweigh the minimal loss of revenue receipts.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives associated with the regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no alternative regulatory schemes associated with the regulation.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

This regulation relates to the imposition of sales and use tax, there currently is no comparative Federal tax.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation will not put Pennsylvania at a competitive disadvantage with neighboring states. Generally, New York, New Jersey and Ohio are consistent with Pennsylvania's statute that excludes newspapers from tax. Maryland taxes newspapers except those that are distributed by a publisher at no charge. West Virginia exempts newspapers from tax if delivered to customers by route carriers. Pennsylvania's exclusion for subscriptions for magazines is similar to New Jersey's statute that exempts periodicals if issued at stated intervals at least as frequently as four times a year. New York exempts periodicals from taxation. Ohio's exemption from tax on periodicals applies to magazine subscriptions shipped by second class mail and sales or transfers of magazines distributed as controlled circulation publishing. Maryland and West Virginia tax periodicals.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation was presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. At the same time the regulation was presented to the Committees and the Commission, the regulation was published in the Pennsylvania Bulletin and the public was invited to comment.

The Committees and Commission may hold hearings or meetings to consider the final form regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committees and the Commission. Notice of the Commission's public meeting to formally consider the final form regulation will be published in the Pennsylvania Bulletin prior to the meeting date.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation does not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

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Copy below is hereby approved as to
form and legality. Attorney General

By: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be true and correct copy
of a document issued, prescribed or promulgated by:

PA Department of Revenue

(Agency)

Document/Fiscal Note No. 15-353

Date of Adoption: _____

By: Robert A. Judge, Sr.
Robert A. Judge, Sr.
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to
form and legality. Executive or Independent
Agencies.

By: R. E. Grimaldi

1/11/00
Date of Approval

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

☐ Check if applicable. No Attorney
General approval or objection
within 30 days after submission

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 31.3, 31.29, 48.2 and 48.3

Sales and Use Tax

Books, Publications and Advertising Materials

PREAMBLE

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), by this order amends 61 Pa. Code, Chapter 31. Imposition, by amending sections 31.3 and 31.29 (relating to exclusions; and books, publications and advertising materials) and by deleting sections 48.2 and 48.3 (relating to religious articles and sacramental wines) as set forth in Annex A.

Purpose of Regulation

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

Sections 31.3, 48.2 and 48.3 are amended or deleted in accordance with the Pennsylvania Supreme Court decision in *Haller v. Department of Revenue*, 556 Pa. 289, 728 A.2d 351 (1999), cert. denied, 120 S. Ct. 325 (1999). In *Haller*, the Court found the exclusion set forth in section 204(28) of the TRC (72 P.S. § 7204(28)) in violation of both the United States and Pennsylvania Constitutions. Section 204(28) provides a sales tax exclusion for the sale at retail or use of religious publications sold by religious groups and Bibles and religious articles.

Explanation of Regulatory Requirements

In accordance with *Haller*, § 31.3 (relating to exclusions) is amended to delete paragraph (22) relating to religious publications sold by religious groups. The remaining paragraphs in the section are re-numbered accordingly.

The Department amended 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 as well as to incorporate the Act 45 of 1998 statutory change to section 204(35).

Consistent with section 204(50) of the TRC (72 P.S. § 7204(50)), the Department is adding a definition of "magazine." The Department is also adding the definitions of "advertising literature or material," "circulated among the general public," "mail order catalogue" and "subscription" to fill a void that existed in the regulation regarding these areas. Definitions for "publication," "religious publication" and "shopping guide" are

also added to subsection (a) because of questions the Department received in these areas.

Subsection (b)(1) provides the scope of the regulation. Subsection (b)(2) provides a listing of items exempt from tax when sold at retail.

In response to *Haller*, sections 48.2 and 48.3 are deleted.

Affected Parties

A taxpayer making a sale at retail or use of publications, advertising inserts and advertising literature or materials may be affected by this regulation. In addition, sales of religious publications, bibles and religious articles will be affected by the *Haller* decision.

Comment and Response Summary

Notice of proposed rulemaking was published at 27 Pa.B. 6572 (December 20, 1997). This proposal is being adopted with changes as set forth in Annex A.

The Department received three comments from the public during the public comment period. The Department also received comments from the Independent Regulatory Review Commission (IRRC) and the Senate Finance Committee. No comments were received from the House Finance Committee.

Amendments to the proposed rulemaking in response to comments are as follows:

(1) IRRC and two of the public comments questioned the Department's use of the term "vendor" in the definition of "direct mail advertising literature or materials," noting that the term would unduly restrict the application of the direct mail exclusion. The Department agrees with the concern raised and deleted the reference to "vendor" in the definition.

(2) In its comments, IRRC questioned why the Department created a separate definition for "advertising literature or materials" since the proposed definition is language that was formerly a part of the definition of "direct mail advertising literature or materials." IRRC suggests that the Department clarify its intent and revise the definitions to improve their clarity.

Prior to this proposal, the definition of "direct mail advertising literature or materials" attempted to address what was considered advertising literature or materials and when such items

were exempt. The Department felt this definition was confusing and did not provide the public with an adequate definition of what constitutes "advertising literature or materials." The Department acknowledges the need for clarity and has therefore made significant organizational changes to both definitions. In response to IRRC and one of the public comments, the Department specifically references reply envelopes and application forms as items included in the definition of "advertising literature or materials."

(3) IRRC and the two public comments also raised the concern that the limitation of the phrase "to prospective purchasers" within the definition of "direct mail advertising literature or materials" was beyond the scope of the enabling statute. The Department acknowledges the concern and deleted "to prospective purchasers" and added "distributed directly to intended recipients."

(4) IRRC and a public comment suggested that the use of "corporate" when referring to annual reports in the definition of "advertising literature or materials" and "publication" was unduly restrictive and did not allow for non-corporate entities that publish annual reports. The Department agrees with the concern raised and amended both definitions to reference "financial and corporate annual reports."

(5) In addition to the revision to "publication" referenced above, the Department amended the listing for prospectuses by deleting the term "stock" and adding the term "investment" in response to a public comment.

(6) In response to the statutory changes made by Act 45-1998 relating to the one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, the Department added a new subparagraph (vii) to subsection (b)(2). The language set forth in Act 45 responded to comments from the Senate, IRRC and the public regarding the use of mailing lists in direct mail advertising.

(7) Section 31.29(b)(1) relates to scope and provides the general rule regarding taxation of publications, advertising inserts and advertising literature or materials. In the proposal, paragraph (2) provided a listing of items and examples that are exempt from tax. In its comments, IRRC suggests that the examples in paragraph (2) need to be clarified and restructured in a more logical order. After reviewing the examples at issue, the Department concluded they were not necessary and deleted them from the regulation.

Revisions initiated during the Department's internal review of the regulation are as follows:

(1) The proposed definitions of "magazine" and "textbook" are amended to more closely track the statutory definitions provided in section 204(50) and 204(33) of the TRC (72 P.S. § 7204(50) and (33)).

(2) Consistent with Act 45-1998, the definition of "mail order catalogue" is amended to require distribution through the United States Postal Service.

(3) Stylistic changes were made throughout the regulation for clarity.

Revisions initiated in response to *Haller* are as follows:

(1) Section 31.3 (relating to exclusions) is amended to delete paragraph (22) relating to religious publications sold by religious groups. The remaining paragraphs in the section are re-numbered accordingly.

(2) The definition of "religious organization" was deemed unnecessary and is deleted from § 31.29(a). Subsection (b)(1) relating to scope is amended by adding "bibles, religious publications, including religious publications sold by religious organizations" to the items subject to tax when delivered to a location within this Commonwealth. All references to bibles and religious publications are deleted from subsection (b)(2) relating to examples of items exempt from tax. The remaining examples in paragraph (2) are re-numbered accordingly.

(3) Sections 48.2 and 48.3 are deleted.

Comment that did not result in an amendment to the regulation is as follows:

IRRC and two of the public comments questioned limiting the direct mail exclusion to items distributed by the United States Postal Service. Although the Department understands the argument that today's delivery market place provides an array of delivery services, Act 45-1998 specifically references "through the United States Postal Service;" therefore, the Department is unable expand the scope of the exclusion to include other types of delivery services.

In its comments, IRRC asked the Department to explain whether and when e-mail advertising is taxable or nontaxable, and the statutory basis for its taxation or its exemption if it is not

taxed. If there are circumstances when e-mail advertising is subject to tax and other circumstances when it is not taxed, IRRC also requested examples of both situations. E-mail advertising is an example of an enhanced telecommunication service and is not taxable as a telecommunication service. The Department has created the term "enhanced telecommunication service" to provide guidance to taxpayers who might be confused about the application of tax to services that involve telecommunication services yet, due to rapid changes in technology, are not what the Department has historically considered to be taxable telecommunications services, see Department's statement of policy, § 60.20 (relating to telecommunications service).

Fiscal Impact

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

Paperwork

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

Effectiveness/Sunset Date

The amendments will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the amendments is Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

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 the notice of proposed rulemaking, published at 27 Pa.B. 6572, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department considered the comments received from IRRC, the Committees and the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were (deemed) approved by IRRC on _____, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745a(e)).

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by amending sections 31.3 and 31.29 to read as set forth in Annex A and deleting sections 48.2 and 48.3.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

ROBERT A. JUDGE, SR.
SECRETARY OF REVENUE

01/06/00

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article II. Sales and Use Tax, Chapter
31. Imposition.

§ 31.3. Exclusions.

The tax does not apply to the following:

* * *

(22) ~~Religious publications sold by religious groups.~~

~~Sales or use of bibles and religious articles are exempt.~~

~~(23) * * * *~~

~~(24) (23) * * * *~~

~~(25) (24) * * * *~~

~~(26) (25) * * * *~~

~~(27) (26) * * * *~~

~~(28) (27) * * * *~~

~~(29) (28) * * * *~~

~~(30) (29) * * * *~~

~~(31) (30) * * * *~~

§ 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 THAT is circulated as a component of a newspaper or magazine WITH ANOTHER PUBLICATION.

Advertising literature or materials - Tangible personal property which THAT is primarily intended to promote business interest, create goodwill or engage the attention or interest of a prospective purchaser RECIPIENT. THE TERM INCLUDES PRINTED MATTER, BROCHURES, MATCHBOOKS, CALENDARS, PRICE LISTS, VIDEO AND AUDIO TAPES, COMPUTER DISKS, INVESTMENT PROSPECTUSES, FINANCIAL AND CORPORATE ANNUAL REPORTS, ELECTORAL LITERATURE OR MATERIALS, PLAYING CARDS, ENVELOPES, ADDRESS LABELS, REPLY ENVELOPES, APPLICATION FORMS, PENS AND SIMILAR PROMOTIONAL MATERIALS. THE TERM DOES NOT INCLUDE PROXY MATERIALS.

Circulated among the general public - The publication is MADE available for purchase from a retail outlet, such as a newsstand or BOOKSTORE, OR MADE AVAILABLE FOR PURCHASE by subscription. In the case of an organizational publication, the organization shall provide evidence of THE PUBLICATION WILL BE CONSIDERED TO BE CIRCULATED AMONG THE GENERAL PUBLIC ONLY IF THERE ARE REGULAR sales OF THE PUBLICATION 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 THAT ARE distributed by a vendor to prospective purchasers by DIRECTLY TO INTENDED RECIPIENTS THROUGH the United States Postal Service. The term does not include property distributed to the prospective purchase by ADVERTISING LITERATURE OR MATERIALS THAT ARE DISTRIBUTED IN ANY MANNER other than BY 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 THAT is both of the following:

(i) Published PUBLISHED at regular intervals not exceeding 3 months-,

(ii) Circulated THAT IS CIRCULATED among the general public, and either of the following:

(A) Contains AND CONTAINS matters of general interest and reports of current events THAT ARE published for the purpose of disseminating information of a public character-

~~(B) Is~~ OR IS devoted to literature, the sciences, art or some special industry. THE TERM SHALL NOT INCLUDE LOOSE LEAF INFORMATION SERVICES.

Mail order catalogue - A publication that contains a printed enumeration LISTING of items with descriptive details and includes a mail order form. A mail order catalogue need not be AND IS 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~~ TANGIBLE media. Examples include printed ~~matter~~, MATERIAL, SUCH AS books; FINANCIAL AND corporate annual reports; ~~stock~~ INVESTMENT prospectuses; proxy materials; shopping guides; magazines; tabloid newspapers; AND printed material ~~which~~ THAT 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. THE TERM ALSO INCLUDES 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 THAT is GENERALLY provided to a consumer free of charge.

Subscription - The ADVANCE 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 PROVIDED the magazine is also sold on BY 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 A PERSON OTHER THAN THE PUBLISHER.

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)]~~ A NEW OR USED BOOK THAT IS REQUIRED OR APPROVED FOR USE IN CONJUNCTION WITH AN EDUCATIONAL CURRICULUM PROVIDED BY AN INSTITUTION OF LEARNING RECOGNIZED BY THE DEPARTMENT OF EDUCATION.

(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, BIBLES, RELIGIOUS PUBLICATIONS, INCLUDING RELIGIOUS PUBLICATIONS SOLD BY RELIGIOUS ORGANIZATIONS 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 agents, if any].-

[(3) Mail order catalogues and direct mail
advertising literature or materials. See § 32.36 (relating to
printing and related businesses)] ~~(iii)~~ (I) 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)~~ (II) 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)~~ (III) Textbooks.

~~(vi)~~ (IV) 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) (V) 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) (VI) Advertising inserts THAT BECOME A PART OF A NEWSPAPER OR MAGAZINE. 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.~~

(VII) ONE TIME LICENSE FEES PAID FOR THE USE OF A LISTING OF NAMES AND MAILING ADDRESSES FOR EACH DELIVERY OF DIRECT MAIL ADVERTISING LITERATURE OR MATERIALS.

Chapter 48. Exempt Organizations.

§ 48.2. RESERVED.

§ 48.3. RESERVED.

01/06/00

**Commentors Who Requested Additional
Information Relating to Final-Form
Regulation 15-353**

Zachary P. Alexander, Esq.
Stradley, Ronon, Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE



PHONE: 717-787-1382
FAX: 717-772-1459

January 20, 1998

Thomas D. Storms
Vice President and Controller
Rodale Press
33 East Minor Street
Emmaus, PA 18098-0099

Dear Mr. Storms:

We have received your letter dated January 15, 1998, in which you commented on proposed regulation 15-353, relating to books, publications and advertising materials. The Department will consider your comments when preparing the final-form regulation.

In accordance with Section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to me at the above address or by calling (717) 787-1382. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

Thank you for participating in the regulatory process.

Sincerely,

A handwritten signature in cursive script, reading "Anita M. Doucette".

Anita M. Doucette
Regulatory Coordinator

AMD:sp(tlch)



January 20, 1998

Zachary P. Alexander, Esq.
Stradley, Ronon, Stevens
and Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098

Dear Mr. Alexander:

We have received your letter dated January 15, 1998, in which you commented on proposed regulation 15-353, relating to books, publications and advertising materials. The Department will consider your comments when preparing the final-form regulation.

In accordance with Section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to me at the above address or by calling (717) 787-1382. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

Thank you for participating in the regulatory process.

Sincerely,

A handwritten signature in cursive script that reads "Anita M. Doucette".

Anita M. Doucette
Regulatory Coordinator

AMD:sp(tlch)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE



PHONE: 717-787-1382
FAX: 717-772-1459

January 22, 1998

Dori Laskin
Principal - Tax Department
The Vanguard Group
P.O. Box 2600
Valley Forge, PA 19482-2600

Dear Ms. Laskin:

We have received your letter dated January 15, 1998, in which you commented on Proposed Regulation 15-353, relating to books, publications and advertising materials. The Department will consider your comments when preparing the final-form regulation.

In accordance with Section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to me at the above address or by calling (717) 787-1382. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

Thank you for participating in the regulatory process.

Sincerely,

A handwritten signature in cursive script, reading "Anita M. Doucette".

Anita M. Doucette
Regulatory Coordinator

AMD:tlch

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-353
SUBJECT: Books, Publications & Advertising Materials
AGENCY: DEPARTMENT OF REVENUE

2000 JAN 19 PM 2:38

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

1/17/00 *Pet Macint*

HOUSE COMMITTEE ON FINANCE

1-19-00 *Sandra Burns*

SENATE COMMITTEE FINANCE

1/19/00 *Ken C. Danner*

INDEPENDENT REGULATORY REVIEW COMMISSION

January 13, 2000