

9/22/94

<h1>Regulatory Analysis Form</h1>		This space for use by IRRC  97 DEC -9 PM 2:16  REVENUE COMMISSION  <b>McGinley</b>  IRRC Number: 1908
(1) Agency  Revenue		
(2) I.D. Number (Governor's Office Use)  15-353		
(3) Short Title  Books, Publications and Advertising Materials		
(4) PA Code Cite  61 Pa. Code § 31.29	(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 checked="" type="checkbox"/> Proposed Rulemaking <input 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 61 Pa. Code § 31.29 (relating to books, printed matter and advertising materials) to bring the section into conformity with recent statutory changes and to reflect the Department's policy. The Department is proposing to amend subsection (a) by adding several definitions. Subsection (b)(2) provides a listing of items exempt from tax when sold at retail. Subparagraph (i) that listed bibles, has been amended to further explain the term bible. Subparagraph (ii) that provides for religious publications has been amended by adding language requiring the religious publication to be sold by the religious organization and the religious organization to receive payment of the full purchase price. Subparagraph (iii) that provides for mail order catalogues has been amended by adding examples of items subject to and exempt from tax. A new (iv) has been added that provides for direct mail advertising literature or materials and sets forth examples of items subject to and exempt from tax. Subparagraph (vi) has been added and provides for newspapers. Subparagraph (vii) has been added and provides for magazines sold by subscription. The exemption applies to subscriptions purchased on or after July 1, 1994. A new subparagraph (viii) provides for advertising inserts and sets forth an example of an item subject to and exempt from tax.		
(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).		

## 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.

(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.

(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.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation was listed in the Department's Agenda of Regulations published at 27 Pa.B. 3294 (July 5, 1997) 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
<b>REVENUE LOSSES:</b>						
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 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 will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committee. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

### 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.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

97 DEC -9 PM 2:16

RECEIVED  
LEGISLATIVE REFERENCE BUREAU  
RECEIVED

9/22/97

DO NOT WRITE IN THIS SPACE

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

BY: [Signature]  
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

☐ Check if applicable  
Copy not approved. Objections attached.

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

Department of Revenue  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-353

DATE OF ADOPTION: \_\_\_\_\_

BY: Robert A. Judge, Sr.

TITLE: Secretary of Revenue  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: [Signature]

10-2-97

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 PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code § 31.29

Sales and Use Tax

Books, publications and  
advertising materials

## PREAMBLE

Notice is hereby given that the Department of Revenue, under authority contained in section 270 of the act of March 4, 1971 (P.L. 6, No. 2) (72 P.S. § 7270), proposes amendments to 61 Pa. Code by amending Chapter 31. Imposition. Section 31.29, (relating to books, printed matter and advertising materials) as set forth in Annex A.

### Purpose of Regulation

The Department is amending 61 Pa. Code § 31.29 (relating to books, printed matter and advertising materials) to bring the section into conformity with recent statutory changes and to reflect the Department's current policy.

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

### Explanation of Regulatory Requirement

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

Consistent with section 2 of the act of June 16, 1994 (P.L. 279, No. 48) section 204(50) of the TRC (72 P.S. § 7204(50)), the Department is adding a definition of magazine. The Department has added the definitions of advertising literature or materials, circulated among the general public, mail order catalogue and subscription to fill a void that currently exists in the regulation regarding these areas. Definitions for publication, religious publication and shopping guide have also been added to subsection (a) because of questions the Department received in these areas.

Subsection (b)(2) provides a listing of items exempt from tax when sold at retail. Subparagraph (i) that listed bibles, has been amended to further explain the term bible. Subparagraph (ii) that provides for religious publications has been amended by adding language requiring the religious publication to be sold by the

religious organization and the religious organization to receive payment of the full purchase price. Subparagraph (iii) that provides for mail order catalogues has been amended by adding examples of items subject to and exempt from tax. A new (iv) has been added that provides for direct mail advertising literature or materials and sets forth examples of items subject to and exempt from tax. Subparagraph (vi) has been added and provides for newspapers. Subparagraph (vii) has been added and provides for magazines sold by subscription. The exemption applies to subscriptions purchased on or after July 1, 1994. A new subparagraph (viii) provides for advertising inserts and sets forth an example of an item subject to and exempt from tax.

#### Fiscal Impact

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

#### Paperwork

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

#### Effectiveness/Sunset Date

The regulations 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

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendments to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

#### Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. § 745.1-745.15), the agency submitted a copy of this proposed regulation on December 9, 1991, to the Independent Regulatory Review Commission and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in

compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency by 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met by the portion of the proposed regulation to which an objection has been made. The act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the agency, the General Assembly and the Governor.

08/21/97

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.

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

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

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

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

Circulated among the general public - For purposes of this section, the phrase "circulated among the general public" shall mean that the publication is available for purchase from a retail outlet, such as a newsstand, or by subscription, or in the case of an organizational publication, the organization shall provide evidence of sales to purchasers other than members of the organization.

Direct mail advertising literature or materials - [Tangible personal property which is distributed through the mail and is intended to promote business interest, create goodwill or engage

the attention or interest of the prospective purchaser. The property] Advertising literature or materials purchased and distributed by a vendor to prospective purchasers by the United States Postal Service. Property distributed to the prospective purchaser by other than the United States Postal Service is not direct mail advertising literature or materials. 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. Advertising literature or materials also includes envelopes and address labels used in sending the advertising literature or materials but does not include proxy materials, shopping guides nor magazines and inserts therein.

Magazine - A publication which is:

(i) Published at regular intervals not exceeding three months, and

(ii) Circulated among the general public and either

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

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

Mail order catalogue - A publication that contains a printed enumeration of items with descriptive details and includes a mail

order form. A mail order catalogue need not be distributed through the United States Postal Service.

Newspaper - A "legal newspaper" or a publication containing matters of general interest and reports of current events that qualifies as a "newspaper of general circulation" authorized to carry a "legal advertisement" as those terms are defined at 45 Pa.C.S. § 101 (relating to legal notices). The term does not include magazines.

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

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

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

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

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

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

(b) Scope.

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

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

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

[(2)] (ii) Religious publications sold by a religious organization. [Religious commentaries and other religious publications primarily devoted to religious instruction, promotion or information are exempt from tax when 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)] (iii) Mail order catalogues [and direct mail advertising literature or materials. See § 32.36 (relating to printing and related businesses)].

Examples:

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

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

(C) Product sample books are subject to tax.

(iv) Direct mail advertising literature or materials. See § 32.36 (relating to printing and related businesses).

Examples:

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

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

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

[(4)] (v) Textbooks.

(vi) Newspapers.

Examples:

(A) Race track "R" sells a racing program. A purchaser may only obtain the racing program through admission to

the race track. The racing program is not circulated among the general public.

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

(vii) Magazines sold by subscription. This exemption applies to subscriptions purchased on or after July 1, 1994.

Example:

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

(viii) Advertising inserts.

Examples:

(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.

11/06/97

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-353  
SUBJECT: Books, Publications and Advertising Materials  
AGENCY: Revenue

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**TYPE OF REGULATION**

- X Proposed Regulation
- 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

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
12/9/97	<u>ZAE</u>	HOUSE COMMITTEE ON FINANCE
12/9/97	<u>WDR</u>	SENATE COMMITTEE ON FINANCE
12/9/97	<u>J. Helms</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
12/9/97	<u>CF</u>	LEGISLATIVE REFERENCE BUREAU

November 24, 1997