

12/3/97

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b>  9/11/97 - 2 10:57 RECEIVED REVENUE DIVISION  IRRC Number: 1930
(1) Agency  Revenue		
(2) I.D. Number (Governor's Office Use)  15-400		
(3) Short Title  Commercial Motion Pictures		
(4) PA Code Cite  61 Pa. Code § 32.38	(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 setting forth its interpretation of section 2 of Act 7-1997, section 204(54) (72 P.S. § 7204(54)) regarding the sales and use tax exclusion for the sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience. Subsection (a) sets forth the definition of various terms for use in § 32.38. Subsection (b) details the scope of the exclusions for commercial motion pictures. Subsection (c) describes the treatment of property and services purchased for resale. Subsection (d) provides that charges to install, repair, maintain or service equipment, parts, tools and supplies directly used in the production of a commercial motion picture are exempt from tax. Subsection (e) explains that utilities used directly and exclusively in the production of a commercial motion picture are exempt from tax. Examples of taxable and exempt electricity usage are provided. An explanation regarding the use of exemption certificates is set forth in subsection (f).		
(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 regulation is necessary sets forth the Department's interpretation of section 2 of Act 7-1997, section 204(54) (72 P.S. § 7204(54)).

(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 Department setting forth its interpretation of 72 P.S. § 7204(54) in a regulation.

### 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.)

Persons involved in the sale at retail to or use by a producer of commercial motion pictures of any tangible personal property will be required to comply with the regulation. The number of taxpayers who will be required to comply is indeterminable.

(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, the Pennsylvania Chamber of Business and Industry and the Department of Community and Economic Development. The regulation will be listed in the Department's next Agenda of Regulations and will be 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>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	N/A					
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>	N/A					
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	N/A					

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

N/A

**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 regulation creates no costs or benefits. Rather, it sets forth the Department's interpretation of statutory changes made by Act 7 of 1997 with respect to taxation of commercial motion picture production activities. The expenditure for the exclusion provided by Act 7 is estimated to be \$0.6 million for fiscal year 1997-98.

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

The Department is exercising its nonregulatory alternative with the use of a pronouncement to set forth its interpretation of 72 P.S. § 7204(54) in addition to promulgating a proposed rulemaking. The pronouncement will provide guidance to taxpayers pending the final adoption of the proposed rulemaking.

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

See response in (22) above.

### 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 other states. New York, New Jersey and West Virginia provide an exemption for property directly used in motion picture production. Ohio does not have a motion picture exemption. Pennsylvania's exclusion is equal to or more generous than the exemption in New York, New Jersey and West Virginia because Pennsylvania grants an exclusion for motor vehicles which includes not only special cars with cameras, but also rental cars and trucks used to transport cast, crew and props to shooting locations.

(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)

RECEIVED  
LEGISLATIVE REFERENCE BUREAU  
90 MAR -2 11:10:57  
LEGISLATIVE REFERENCE BUREAU  
REVENUE COLLECTION

12/3/97

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General  
By: [Signature]  
(DEPUTY ATTORNEY GENERAL)

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:  
PA Department of Revenue  
(Agency)

Copy below is hereby approved as to form and legality. Executive of Independent Agencies.  
By: [Signature]

FEB 17 1998  
DATE OF APPROVAL

Document/Fiscal Note No. 15-400  
Date of Adoption: \_\_\_\_\_  
By: [Signature]  
Robert A. Judge, Sr.  
Secretary of Revenue  
Title: \_\_\_\_\_  
(Executive Officer, Chairman or Secretary)

12/12/97  
Date of Approval  
(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable  
Copy not approved. Objections attached.

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

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code § 32.38

Sales and Use Tax

Commercial Motion Pictures

## PREAMBLE

Notice is hereby given that the Department of Revenue, under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), proposes amendments to 61 Pa. Code by amending Chapter 32. Exemptions, by adding section 32.38, (relating to commercial motion pictures) as set forth in Annex A.

### Purpose of Regulation

The Department is setting forth its interpretation of section 2 of Act 7-1997, section 204(54) (72 P.S. § 7204(54)) regarding the sales and use tax exclusion for the sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience.

### Explanation of Regulatory Requirements

Subsection (a) sets forth the definition of various terms for use in § 32.38. Subsection (b) details the scope of the exclusions for commercial motion pictures. To effect legislative intent, the Department has added language at § 32.38(b)(2)(ii). If this subparagraph were not added, the purchase of the tangible personal property would be exempt but the repair or alteration would be subject to tax. For example, the purchase of film would be exempt but the development charges would be subject to tax which clearly is not the legislative intent. Subsection (c) describes the treatment of property and services purchased for resale. Subsection (d) provides that charges to install, repair, maintain or service equipment, parts, tools and supplies directly used in the production of a commercial motion picture are exempt from tax. Subsection (e) explains that utilities used directly and exclusively in the production of a commercial motion picture are exempt from tax. Examples of taxable and exempt electricity usage are provided. An explanation regarding the use of exemption certificates is set forth in subsection (f).

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

Fiscal Impact

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

Paperwork

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

Effectiveness/Sunset Date

The regulation 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 regulation to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, [REDACTED] 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 *March 2, 1998* to the Independent Regulatory Review Commission and 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 which have not been met by

that portion. 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.

02/09/98

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  
32. Exemptions.

§ 32.38. Commercial motion pictures.

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

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

Distribution to a national audience - Distribution via  
theatrical release or for exhibition on national television by a  
television network or through syndication.

Producer - Any purchaser who is responsible for the  
production of a commercial motion picture.

(b) Scope.

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

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

(i) Examples of tangible personal property that may be directly used in the production of a commercial motion picture include, but are not limited to, film and tape products; set construction equipment and supplies; props, including livestock, motor vehicles, books, paintings and other tangible personal property when photographed as part of a scene; wardrobe; grip and lighting equipment; cameras; camera mounts including tripods; jib arms; steadicams; cranes; dollies; generators; walkie talkies; boats, trains, helicopters, airplanes, vans, trucks or other motor vehicles specifically equipped for motion picture production or used solely for production activities, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, sound recording equipment, and editing, dubbing and mixing equipment.

(ii) Examples of services performed upon tangible personal property that may be directly used in the production of a commercial motion picture include, but are not limited to, sound or music recording; creation of special effects or animation on film, tape or other audiovisual medium, including animation drawings, inkings, paintings, tracing and celluloid "cels"; preparation of storyboards for either animation or live photography; technological modification, including colorizing; computer graphics, including transfers of computer graphics on computer-generated media; sound dubbing or sound mixing; sound or music or effect transferring; film or tape editing or cutting; developing or processing of negative or positive prints; timing; coding or encoding; creation of opticals, titles, main or end credits; captioning; and medium transfers (for example film to tape, tape to tape).

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

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

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

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

(c) Property and services purchased for resale.

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

(2) For example, the original negative is the medium (film, tape, etc.) first used in the camera when photographing live action, special effects, animation, computer generated images, etc. The developing of the film is a service that is



purchased for resale because the producer is selling the film on which the service is being performed.

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

(1) Installing illumination lighting and sound equipment.

(2) Installing special effects riggings.

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

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

(1) Electricity used for set lighting is exempt.

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

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

(f) Exemption certificates.

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

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

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

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

02/09/98

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

I.D. NUMBER: 15-400  
 SUBJECT: Commercial Motion Pictures  
 AGENCY: Department of Revenue

RECEIVED  
 99111-2 0110:57  
 HOUSE OF REPRESENTATIVES  
 REVENUE COMMISSION

**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

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>3/2/98</u>	<u>Bonnie J. Drachbill</u>	HOUSE COMMITTEE ON FINANCE
<u>3/3/98</u>	<u>Brenda Mitchell</u>	SENATE COMMITTEE ON FINANCE
<u>3/2/98</u>	<u>Ken C. Turner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
<u>3-2-98</u>	<u>James L. Cates</u>	LEGISLATIVE REFERENCE BUREAU

February 17, 1998