

Regulatory Analysis Form

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IRRC REVIEW COMMISSION



IRRC Number: # 1935

(1) Agency

Department of Community and Economic Development

(2) I.D. Number (Governor's Office Use)

4-67

(3) Short Title

Commercial Motion Picture Sales Tax Exemption Certificate

(4) PA Code Cite

12 Pa. Code, Chapter 33

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jill B. Busch, 717-720-7314

Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purpose of the final regulation is to prescribe a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the act of May 7, 1997 (P.L. __, No. 7), known as the Tax Reform Code of 1971 (72 P.S. §7204(54)) (the "Act").

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 204(54) of the Act provides that "...the purchaser shall furnish to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe....".

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(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.

Section 204(54) of the Act gives the Department no other option than to designate the form of the certificate by regulation.

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

The final regulation prescribes a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

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

If the Department does not prescribe the form the certificate must take, qualified producers of commercial motion pictures will not know what certificate to furnish to vendors, and, therefore, will not be able to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

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

Qualified producers of commercial motion pictures.

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(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.)

N/A

(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.)

Producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

(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.

None.

(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.

N/A

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(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.

N/A

(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.

N/A

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(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. N/A

	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						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

N/A. The final regulation simply prescribes a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

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

Program	FY -3	FY -2	FY -1	Current FY

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

N/A

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

None.

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

None.

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.

N/A

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

N/A

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

The final regulation is consistent with §60.22 (c)(1) of Title 61 Revenue; Part I. Department of Revenue; Subpart B. General Fund Revenues; Article II. Sales and Use Tax; Chapter 60. Sales and Use Tax Pronouncements - Statements of Policy published by the Department of Revenue on December 27, 1997, which provides "a producer may make certain purchases for resale. Material 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, Form REV-1220, is issued to the supplier".

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

No.

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(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.

No.

(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.

N/A

(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?

The regulation will become effective upon final publication in the Pennsylvania Bulletin and shall apply retroactively to May 7, 1997.

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

The final regulation will continue in effect until §204(54) of the Act no longer requires the Department to prescribe the type of certificate to be used under this section.

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

(Pursuant to Commonwealth Documents Law)

#1935

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REVIEW COMMISSION

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____</p> <p>Date of Approval</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Community and Economic Development (Agency)</p> <p>Document/Fiscal Note No. 4-67</p> <p>Date of Adoption: _____</p> <p>By: <u>Emily J. White</u> Emily J. White</p> <p>Title: Deputy Secretary for Business Financing</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u>REB</u></p> <p><u>28 March 2000</u> Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART I. GENERAL ADMINISTRATION

**SUBPART E. COMMERCIAL MOTION PICTURE SALES
TAX EXEMPTION CERTIFICATE**

**CHAPTER 33. COMMERCIAL MOTION PICTURE SALES
TAX EXEMPTION CERTIFICATE**

PREAMBLE

By this order, the Department of Community and Economic Development, under the authority of Section 204(54) of the act of May 7, 1997 (P.L. __, No. 7), (72 P.S. §7204(54)), known as the Tax Reform Code of 1971, hereby amends Title 12 of the Pennsylvania Code by adding Chapter 33. The purpose of the final regulation is to prescribe a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

Introduction

Section 204(54) of the act of May 7, 1997 (P.L. __, No. 7), known as the Tax Reform Code of 1971, exempts from the tax imposed by section 202 of the Tax Reform Code of 1971 (Pennsylvania sales tax) 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: Provided, however, that the production of any motion picture for which the property will be used does not violate any Federal or State law; and, Provided further, that the purchaser shall furnish to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax pursuant to this clause." Before qualified producers of commercial motion pictures can take advantage of the tax exemption, they must know what form of certificate to use. Pursuant to section 204(54) of the Act, only the Department may prescribe the type of certificate to be used. The purpose of the final regulation is to prescribe a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Act.

The Department received only one comment to the proposed regulations. The comment came from the Independent Regulatory Review Commission and dealt with the Department's

inconsistent use of the terms "exemption" and "exclusion". Because the use of these terms affects the burden of proof, the Independent Regulatory Review Commission recommends that only one term be used and recommends the sole use of the word "exemption", because use of that term places the burden of proof on the taxpayer claiming the exemption, rather than the Commonwealth. The Department welcomed such comment and has implemented it in the final regulation.

Analysis

Section 33.1 prescribes the type of certificate to be furnished by a qualified producer of commercial motion pictures to a vendor in order to comply with the statutory exemption from the Pennsylvania Sales and Use Tax.

Fiscal Impact

The final regulations have no fiscal impact on the Commonwealth, political subdivisions, or the public.

Paperwork

Because the certificate to be used by qualified producers of commercial motion pictures is a Pennsylvania Exemption Certificate (FORM REV-1220) which is already in use, the final regulations impose no new or different paperwork requirements.

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 the Notice of Proposed Rulemaking, published at 28 Pa. B. 13, on March 17, 1998 to the Independent Regulatory Review Commission, the Chairperson of the House Commerce and Economic Development Committee, and the Chairperson of the Senate Community and Economic Development Committee for review and comment. In compliance with Section 5(b.4), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final form regulation the agency has considered all comments received from the Commission, the Committees and the public.

This final form regulation was [deemed] approved by the House Committee on _____ and [deemed] approved by the Senate Committee on _____. The Commission met on _____ and [deemed] approved the regulation in accordance with Section 5(c) of the Act.

Effective Date/Sunset Date

(a) This regulation will become effective upon final publication in the Pa. Bulletin and shall apply retroactively to May 7, 1997.

(b) The final regulation will expire when §204(54) of the Act no longer requires the Department to prescribe the type of certificate to be used under this section.

Contact Person

For an explanation of these regulations contact Jill Busch, Deputy Chief Counsel, Department of Community and Economic Development, 524 Forum Building, Harrisburg, PA 17120, 717-720-7314.

Findings and Order

The Department of Community and Economic Development finds:

- (1) That public notice of intention to adopt the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202).
- (2) That the regulation is necessary and appropriate.

The Department of Community and Economic Development, acting under the authorizing statute, orders:

- (1) That the regulations of the Department of Community and Economic Development, 12 Pa. Code, are amended by adding Subpart E, Chapter 33 to read as set forth at 28 Pa. B. 13, as amended by Annex A hereto.
- (2) That the Department of Community and Economic Development shall submit this order, 28 Pa. B. 13 and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.
- (3) That this order shall take effect upon publication in the Pennsylvania Bulletin and shall apply retroactively to May 7, 1997.

By the Department of Community and Economic Development

Samuel McCullough,
Secretary

ANNEX A

**TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT
PART I. GENERAL ADMINISTRATION
SUBPART E. COMMERCIAL MOTION PICTURE SALES
TAX EXEMPTION CERTIFICATE
CHAPTER 33. COMMERCIAL MOTION PICTURE SALES
TAX EXEMPTION CERTIFICATE**

§33.1 Producers of motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exemption provided by section 204(54) of the Tax Reform Code of 1971 (72 P.S. §7204(54)), shall use a Pennsylvania Exemption Certificate (FORM REV-1220).



**Pennsylvania Department of Community and Economic Development
Office of Chief Counsel**

April 11, 2000

**Independent Regulatory Review Commission
c/o John R. McGinley, Jr.
14th Floor, Harrisstown II
333 Market Street
Harrisburg, PA 17101**

Dear Mr. McGinley:

Pursuant to Section 5b of the Regulatory Review Act, enclosed for your review is a final regulation. The regulation submitted would add Chapter 33 to Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the House Commerce and Economic Development Committee and the Senate Community and Economic Development Committee for their respective review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill B. Busch".

**Jill B. Busch
Deputy Chief Counsel**

Enclosures

cc: Chris Lammando, Legislative Liaison

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

I.D. NUMBER: 4-67
 SUBJECT: Commercial Motion Picture Sales Tax Exemption Certificate
 AGENCY: DEPARTMENT OF Community & Economic Development #1935

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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4-11-00	<i>Roy O'Brien</i>	HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT
4-11-00	<i>Miedner</i>	SENATE COMMITTEE ON COMMUNITY AND ECONOMIC DEVELOPMENT
4-11-00	<i>Jessica Villarreal</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

April 4, 2000