

1/25/99

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Revenue		99 JUN 30 AM 11:30 Coccodrilli
(2) I.D. Number (Governor's Office Use) 15-408		IRRC Number: 2041
(3) Short Title Vending Machines		
(4) PA Code Cite 61 Pa. Code § 31.28	(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. <p>This regulation proposes to delete the current provisions of subsections (a) - (e) of § 31.28. Proposed subsection (a) defines "Juice beverage," "Meal," "Operator," "Selected food and beverage items," "Soft drink" and "Vending machine" for purposes of this section. Proposed subsection (b) relating to registration provides that an operator who sells taxable tangible personal property or selected food and beverage items through a vending machine is required to obtain a sales, use and hotel occupancy tax license for the purposes of collecting and remitting tax to the Department.</p> <p>Proposed subsection (c) requires that a sign or sticker stating the name and address of the operator be conspicuously displayed on the vending machine. Proposed subsection (d) explains the scope of taxation for the sale of tangible personal property and food or beverages from a vending machine.</p> <p>Proposed subsection (e) provides that the sale of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church are exempt from tax provided the sales are made in the ordinary course of the activities of the school or church. The sale of tangible personal property other than food or beverages, dispensed by means of a vending machine located on the premises of a school or church, is subject to tax.</p> <p>Proposed subsection (f) provides that sales tax collected by the operator upon taxable property, including selected food and beverage items, shall be reported and remitted to the Department. The current subsection (f) is relettered as subsection (g) and is amended to clarify the taxability of the purchase or lease of vending equipment and supplies.</p>		
(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 to bring § 31.28 into conformity with legislative changes from 1991 to the present.

(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 having § 31.28 consistent with the governing statute.

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.)

The regulation may affect vending machine operators. 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 and the Pennsylvania Chamber of Business and Industry. 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
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						
Total Revenue Losses	N/A					

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

Generally, this regulation will have no impact on revenue. Rather, it clarifies the Department's policy on the taxation of items dispensed from a vending machine. However, the change in policy required by the Commonwealth Court decision in CRH Catering Co., Inc. v. Com., 539 A.2d 38 (Pa. Crmwth. 1988) has had a negative impact on revenue. The policy has been in effect since the 1988-89 fiscal year. The fiscal impact of the change in policy was estimated to be about \$0.4 million for fiscal year 1998-99.

The regulation also sets for the Department's interpretation of Act 45-1998 which amended section 204(29) of the TRC (72 P.S. § 7204(29)) relating to sales tax on sales from vending machines. This amendment is estimated to reduce the fiscal year 1999-00 (the first full year of revenue loss) General Fund by \$15.4 million.

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.

N/A

(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?

Ohio, New Jersey, Maryland, New York and West Virginia generally all tax the sale of food, beverages and tangible personal property from vending machines with various exemptions. Examples of some specific exemptions include Maryland's exemption, as of July 1, 1997, of the sale of snack food from vending machines and Ohio's exemption, as of July 1, 1993, of the sale of food from machines that preserve food with a shelf life of 45 days or less by refrigeration.

(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)

RECORDED
99 JUN 30 AM 11:30

LEGISLATIVE REFERENCE BUREAU

1/25/99

2041

DO NOT WRITE IN THIS SPACE

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

By: [Signature]
(DEPUTY ATTORNEY GENERAL)

1999 JUN 25

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. 15-408

Date of Adoption: _____

By: [Signature]
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: [Signature]

2/10/99

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 § 31.28

Sales and Use Tax

Vending Machines

PREAMBLE

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), proposes an amendment to 61 Pa. Code, Chapter 31. Imposition, section 31.28, (relating to vending machines and automatic sales devices) to read as set forth in Annex A.

Purpose of Regulation

- Prior to October 1, 1991, § 31.28 provided that the sale of food and beverages and taxable tangible personal property from a vending machine was taxable; however, the sale of candy and gum from a vending machine was exempt.
- With the enactment of Act 22-1991, effective October 1, 1991, vending machines were considered to be eating establishments and the sale of food and beverages and taxable tangible personal property from a vending machine was taxable; however, the sale of candy and gum from a vending machine was exempt.
- With Act 40-1991, effective January 1, 1992, the term "vending machine" was removed from the definition of eating establishment; however, the law provided that sales from vending machines continued to be taxed as they were prior to October 1, 1991, therefore the provisions of § 31.28 continued in effect.
- With this proposal, the regulation in effect prior to October 1, 1991, is withdrawn and replaced with a new regulation. With Act 45-1998, imposition of tax will only be on items that are considered taxable when sold from other non-eating establishments. Vending machines are added to the list of establishments which are not considered to be establishments from which food or beverages ready to eat are sold. Since a vending machine does not qualify as an eating establishment, only the sale of selected food and beverage items set forth in section 204(29) of the TRC (72 P.S. § 7204(29)) are taxable when sold from a vending machine. Taxable tangible personal property, other than food and beverages, is also subject to tax when sold from a vending machine. The sale of candy and gum from a vending machine continues to be exempt.

Explanation of Regulatory Requirements

This regulation proposes to delete the current provisions of subsections (a) - (e) of § 31.28. Proposed subsection (a) defines "Juice beverage," "Meal," "Operator," "Selected food and beverage items," "Soft drink" and "Vending machine" for purposes of this

section. Proposed subsection (b) relating to registration provides that an operator who sells taxable tangible personal property or selected food and beverage items through a vending machine is required to obtain a sales, use and hotel occupancy tax license for the purposes of collecting and remitting tax to the Department.

Proposed subsection (c) requires that a sign or sticker stating the name and address of the operator be conspicuously displayed on the vending machine. Proposed subsection (d) explains the scope of taxation for the sale of tangible personal property and food or beverages from a vending machine.

Proposed subsection (e) provides that the sale of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church are exempt from tax provided the sales are made in the ordinary course of the activities of the school or church. The sale of tangible personal property other than food or beverages, dispensed by means of a vending machine located on the premises of a school or church, is subject to tax.

Proposed subsection (f) provides that sales tax collected by the operator upon taxable property, including selected food and beverage items, shall be reported and remitted to the Department. The current subsection (f) is relettered as subsection (g) and is amended to clarify the taxability of the purchase or lease of vending equipment and supplies.

Affected Parties

The regulation may affect vending machine operators.

Fiscal Impact

The Department has determined that the proposed amendment will have no fiscal impact on the Commonwealth. Rather, it clarifies the Department's policy on the taxation of items dispensed from a vending machine.

However, the change in policy required by the Commonwealth Court decision in CRH Catering Co., Inc., v. Com., 539 A.2d 38 (Pa. Cmwlth. 1988) has had a negative impact on revenue. The policy has been in effect since the 1988-89 fiscal year. The fiscal impact of the change in policy was estimated to be about \$0.4 million for fiscal year 1998-99.

The regulation also sets forth the Department's interpretation of Act 45-1998 which amended section 204(29) of the TRC (72 P.S. § 7204(29)) relating to sales tax on sales from vending machines. This amendment is estimated to reduce the fiscal year 1999-00 (the first full year of revenue loss) General Fund by \$15.4 million.

Paperwork

The proposed amendment will not require 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 amendment 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 (71 P.S. 745.5(a)), the Department submitted a copy of this proposed amendment on June 30, 1999 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that

portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, SR.
SECRETARY OF REVENUE

11/05/98

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
31. Imposition.

§ 31.28. Vending machines [and automatic sales devices].

[(a) Vending or automatic sales. Tangible personal property otherwise taxable under the Sales and Use Tax Act (72 P.S. §§ 3403-1 - 3403-605) is taxable when dispensed by means of a vending machine or other automatic sale device.

(b) Identification requirement. Every machine used for the purpose of vending tangible personal property shall bear conspicuously thereon a sign or sticker setting forth the following information:

(1) The name and address of the owner of the merchandise contained within the machine and sold thereby.

(2) The charge made for the merchandise contained therein and sold thereby, indicating as separate items the charge made for the merchandise, the amount of tax imposed on the sale and the total amount of the sale including the tax. -

(3) The Sales Tax License Number of the person liable for collection of the tax.

(c) The sign or sticker required by this section may be reproduced by any method, but shall be clearly legible and prominently displayed.

(d) Where articles of more than one price are sold by the same machine, the sales price, tax and total amount charged shall be clearly shown for each article or group of articles having a different price.

Example: THE NAME AND ADDRESS OF THE OWNER OF THE MERCHANDISE CONTAINED IN AND SOLD BY THIS MACHINE IS:

Joseph J. Jones
387 Parkside Drive
Philadelphia 7, Pa.

SALES PRICE OF ARTICLE SOLD.....23 CENTS
SALES TAX PAYABLE..... 2 CENTS
TOTAL AMOUNT CHARGED.....25 CENTS
SALES TAX LICENSE NUMBER.....

(e) Sales tax shall be paid by the vendor on the sale or use of food and beverages dispensed by means of a vending machine or other automatic sales device at the rate of 6% of the gross receipts collected from the machine under section 202(d) of the TRC (72 P.S. § 7202(d)). Thus, if the receipts from a machine total \$100, the amount of tax that is remitted to the Commonwealth by the vendor is \$6.]

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

Juice beverage - A liquid beverage containing at least 25% by volume natural fruit or vegetable juice.

Meal - A variety of foods prepared for immediate consumption and sold as a single item.

Operator - A person who makes sales of tangible personal property, including food or beverages, primarily through a vending machine.

Selected food and beverage items - Soft drinks; meals; hot or cold sandwiches, including cold meat sandwiches, cheese sandwiches, hoagies, hot dogs, hamburgers and similar sandwiches; brewed coffee; hot beverages such as hot chocolate, hot tea and similar items; food from salad bars; pizza, soup and other food items dispensed from the vending machine in a heated form or which are served in cold form and normally heated in an oven or microwave provided by the operator.

Soft drink - A nonalcoholic beverage, in either powder or liquid form, whether or not carbonated, such as soda water, ginger ale, colas, root beer, flavored water, artificially carbonated water, orangeade, lemonade, juice drinks containing less than 25% by volume of natural fruit or vegetable juices, and similar drinks. The term does not include a juice beverage.

Vending machine - A device which mechanically dispenses tangible personal property, including food and beverages, for a purchase price.

(b) Registration. An operator who sells taxable tangible personal property or selected food and beverage items through a vending machine is required to obtain a Sales, Use and Hotel Occupancy Tax License for the purpose of collecting and remitting tax to the Department. One license is sufficient for any number of machines operated by the same operator.

(c) Identification requirement. A sign or a sticker setting forth the name and address of the operator shall be conspicuously displayed on the vending machine.

(d) Scope.

(1) General. The sale of food or beverages may be taxable or exempt depending upon the type of food or beverage or upon the basis of the location from which the food or beverage is sold. Since a vending machine does not qualify as an eating establishment, only the sale of selected food and beverage items as defined in subsection (a), are taxable when sold from a vending machine. Taxable tangible personal property, other than food and beverages, is also subject to tax when sold from a vending machine.

(2) Sales of taxable property, other than food and beverages. An operator is required to collect and remit sales tax upon the purchase price of each individual sale of taxable property, such as cigarettes, combs, toys and similar items. The

amount required to be inserted in the machine is presumed to be the purchase price of each taxable item of property unless the operator displays a sign or sticker indicating the purchase price and the amount of tax for each taxable item.

(3) Sales of selected food and beverage items.

(i) The sale of selected food and beverage items, as defined in subsection (a), from a vending machine are subject to tax.

(ii) Collection of tax. An operator of a vending machine from which selected food and beverage items are sold is required to collect and remit sales tax at the rate of 6% upon the sale of the selected food and beverage items. Sales tax shall be computed by the following formula: (Total receipts from the sale of selected food and beverage items ÷ 1.06) x .06 = sales tax due.

Example:

"A" operates a vending machine from which milk, coffee and crackers are sold. "A" removes \$100.00 from the machine representing the following sales: milk-\$50.00, coffee-\$25.00 and crackers-\$25.00. Coffee is a selected food and beverage item. Milk and crackers are not. "A" remits tax in the amount of \$1.42 calculated as follows: (\$25.00 ÷ 1.06) x .06 = \$1.42.

(4) Sales of food and beverages other than selected food and beverage items.

(i) The sale of food and beverages of the type described in this paragraph are not subject to sales tax when sold from a vending machine.

(ii) Examples of exempt food and beverages include baked goods, such as cakes, pies, cookies; potato chips; corn chips; cheese balls; pretzels; crackers; milk products, such as plain milk, chocolate milk, malted milk; ice tea; iced coffee; juice drinks; unflavored water; prepackaged ice cream products, such as ice cream cakes and pies, popsicles, sundaes and novelties; prepackaged frozen water-based products; candy and gum and all other food and beverages not defined as a selected food and beverage item.

(e) Vending machine sales on school or church property.

(1) Sales of selected food and beverage items dispensed by means of a vending machine located on the premises of a school or church are exempt from tax, provided the sales are made in the ordinary course of the activities of the school or church.

(2) Sales of tangible personal property, other than food or beverages, which are dispensed by means of a vending machine located on the premises of a school or church, are subject to tax.

(f) Remitting tax to the Department. Sales tax collected by the operator upon taxable property, including selected food and beverage items, shall be reported and remitted to the Department.

[(f)](g) Purchase or lease of vending equipment and supplies.
[Vending] The purchase or lease of vending equipment, including parts [and], accessories, [purchased for or used in connection therewith, shall be included within the scope of the definition of tangible personal property and the purchase thereof shall be] such as tables, chairs, microwaves, straw and napkin dispensers and other similar items, and supplies, such as straws, napkins, stirrers, eating utensils and similar items, is subject to tax. Wrapping supplies, such as plastic, paper and styrofoam cups, bowls or similar containers used to wrap property which is sold, are exempt from tax.

02/09/99

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

I.D. NUMBER: 15-408
 SUBJECT: Sales and Use Tax – Vending Machines
 AGENCY: Department of Revenue

RECEIVED
 99 JUN 30 AM 11:30
 DEPARTMENT OF REVENUE
 REGULATORY REVIEW

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
6/30/99	<u>Patricia Maunt</u>	HOUSE COMMITTEE ON FINANCE
_____	_____	_____
6/30/99	<u>Patricia Carruth</u>	SENATE COMMITTEE ON FINANCE
_____	_____	_____
6/30/99	<u>Kim C. Garner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
6/30/99	<u>Maysa Garcia</u>	LEGISLATIVE REFERENCE BUREAU

June 3, 1999