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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 17, 1999

Honorable Robert A. Judge, Sr., Secretary
Department of Revenue
Strawberry Square, 11th Floor
Harrisburg, PA 17128

Re: IRRC Regulation #15-408 (#2041)
Department of Revenue
Sales and Use Tax; Vending Machines

Dear Secretary Judge:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Anita Doucette
Douglas Berguson
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF REVENUE REGULATION NO. 15-408

SALES AND USE TAX; VENDING MACHINES

SEPTEMBER 17, 1999

We have reviewed this proposed regulation from the Department of Revenue (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to reasonableness, economic and fiscal impact, and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 31.28. Vending machines. - Reasonableness, Economic and fiscal impact, and Clarity.

Subsection (a)

Soft Drink

The definition of "soft drink" is not as complete as the definition in Section 7201 of Act 45 of 1998 (Act). Statutory definitions should not be amended in regulations. The Department should include a citation to the statutory definition of "soft drink" in the final regulation.

Selected Food and Beverage Items

The last phrase in this definition refers to other food items which are dispensed in cold form "and normally heated in an oven or microwave provided by the operator." The Department should clarify whether the microwavable items sold are taxable if an operator does not provide a microwave.

Subsection (d)(2)

The posting of signs or stickers indicating the purchase price and the amount of tax for each item in Subsection (2) can be interpreted as optional in the rulemaking. The Department should clarify whether posting such information is mandatory.

Also, Subsection (2) relates to taxable property other than food and beverages. Subsection (3) relates to taxable food and beverage items. Although both of these sections address the requirements for taxing certain items, the structure of these subsections is inconsistent.

In addition, Subsection (3) contains an example of how to calculate the tax; Subsection (2) does not. To clarify, the Department should consider adding examples to provide additional clarity and parallel structure for these two subsections.

Subsection (d)(4)(ii)(I)

This subsection lists “juice drinks” as an item that is not taxable when sold from a vending machine. We believe the Department intended to list “juice beverages,” rather than “juice drinks,” in this subsection. The Department should correct this inconsistency in the final regulation.

Subsection (d)(4)(ii)(L)

This subsection includes the term “prepackaged frozen water-based products.” For clarity, the Department should provide examples of these products.

Subsection (e)(1)

Subsection (e)(1) states “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, if the sales are made in the ordinary course of the activities of the school or church.” The Department should clarify when sales would *not be* considered to be in the ordinary course of the church or school’s activities.