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

April 13, 2000

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

Re: IRRC Regulation #15-392 (#2092)
Department of Revenue
Sales and Use Tax; Computer Software, Hardware and Related Transactions

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 Kimberly Trammell de Bien at 783-6834.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Anita M. Doucette
Douglas A. Berguson
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

Comments of the Independent Regulatory Review Commission

on

Department of Revenue Regulation No. 15-392

Sales and Use Tax; Computer Software, Hardware and Related Transactions

April 13, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) list the criteria the Commission must use to determine if the regulation is in the public interest. The Department of Revenue (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 13, 2002, the regulation will be deemed withdrawn.

1. General. – Fiscal impact; Clarity.

The proposed regulation sets forth those computer software and hardware items that are and are not taxable. However, the regulation is silent on whether canned software downloaded over the Internet or from another source is subject to tax. We understand from discussions with the Department that downloaded software is not considered “tangible personal property” and, therefore, is not taxable. Based on the Department’s response, the regulation should clearly state that canned software that is purchased and delivered by computer download from the Internet, or transferred from the seller’s computer to the purchaser’s own storage media, is not subject to tax.

2. Section 31.33. Computer software, hardware and related transactions. – Clarity.

Subsection (a) Definitions.

Canned software

The definition of the term “canned software” is simply “[A] ll computer software that does not qualify as custom software.” This definition is vague. For clarity, the Department should consider providing examples of “canned software” in this definition.

Computer hardware

The examples in Subsection (iv) of the definition of “computer hardware” are not uniformly plural. For example: “memory chip,” “microphone” and “digitizer” should be rewritten as “memory chips,” “microphones” and “digitizers.”

Subsection (b)(2)(i)(B) Computer software

This subsection states, “Charges for the custom software or modifications must be reasonable...” We have two concerns. First, this subsection incorrectly refers to custom software when it is only charges for modifications made to canned software that must be reasonable. The Department should consider deleting the phrase “custom software or.”

Second, the term “reasonable” is vague. The Department should explain the standards they will use to determine whether or not charges for modifications are “reasonable.”