

7/28/00

Regulatory Analysis Form

This space for use by IRRC
RECEIVED

2000 SEP -8 AM 10: 37

INDEPENDENT REGULATORY
REVIEW COMMISSION



IRRC Number:

2146

(1) Agency

Revenue

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

15-415

(3) Short Title

Partial Refunds for Bad Debts

(4) PA Code Cite

61 Pa. Code §§ 33.3 and 33.5

(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)

- 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.

This regulation explains the application of section 247.1 of the TRC (72 P.S. 7247.1) relating to partial refund of sales tax attributed to bad debts.

Section 33.3(d) is deleted because it is in direct conflict with the provisions of section 247.1 of the TRC.

Subsection (a) of § 33.5 provides definitions of "affiliated entity," "bad debt," "discount amount" and "purchase price" for use in the section. Filing of a petition for partial refund is explained in subsection (b) of § 33.5. Paragraph (3) of subsection (b) provides a listing of supporting records that the vendor shall retain and make available to the Department upon its request. Section 33.5(c) provides an example that explains how to determine the partial refund amount when the purchaser makes no payment on account and when the purchaser makes a partial payment on account.

(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 explains the application of section 247.1 of the TRC (72 P.S. § 7247.1) relating to partial refund of sales tax attributed to bad debts.

(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 a regulation that explains section 274.1 of the TRC.

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.)

All taxpayers filing petitions for refund of sales tax paid to the Department that is attributed to a bad debt will be required to comply with the regulation. The number of people who will file petitions for refund for sales tax paid to the Department that is attributed to a bad debt is undeterminable.

(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 was listed in the Department's Agenda of Regulations published at 30 Pa.B. 3317 (July 1, 2000) and 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.

The regulation does not expand the present record keeping requirements; therefore, it should not create additional costs to the affected community. Any additional legal, accounting or consulting procedures necessary to calculate the partial refund of the bad debt is undeterminable.

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.

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.

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.

No direct comparison can be made with Federal standards because the Federal rules allow a deduction for both business and nonbusiness debts (with nonbusiness debts including both taxable and nontaxable items). The statute in Pennsylvania relating to refunds of bad debts only provides for a refund of one-third of the sales tax paid to the Department attributable to a bad debt.

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

New Jersey, Maryland, New York, Ohio, Virginia and West Virginia all allow for some type of credit and/or refund for sales tax paid on a bad debt. Pennsylvania is more restrictive than its neighboring states in that its law only allows for a refund of one-third of the sales tax paid attributable to the bad debt, whereas neighboring states allow a refund and/or credit of the total tax paid attributable to the bad debt. Pennsylvania's petition time period of three years and evidence requirements are in line with those of neighboring states. This regulation will not put Pennsylvania at a competitive disadvantage with other states.

(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 agency.

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

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

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.

The regulation will not change existing reporting or record keeping requirements. Some additional paperwork may be required to calculate the partial refund amount; however, the amount is undeterminable.

(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

2000 SEP -8 AM 10: 37

INDUSTRIAL REGULATORY
REVIEW COMMISSION

(17)

DO NOT WRITE IN THIS SPACE

7/28/00

#2146

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

By: 
(DEPUTY ATTORNEY GENERAL)

AUG 29 2000

DATE OF APPROVAL

Copy below is hereby certified to be true and correct copy of document issued, prescribed or promulgated by:

PA Department of Revenue

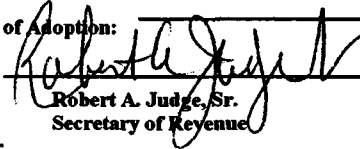
(Agency)

15-415

Document/Fiscal Note No.

Date of Adoption:

By:

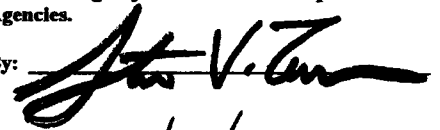

Robert A. Judge, Sr.
Secretary of Revenue

Title:

(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

By:



8/3/00

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 §§ 33.3 and 33.5

Sales and Use Tax

Partial Refunds for Bad Debts

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 amendments to 61 Pa. Code Chapter 33. Computation of Tax, by amending section 33.3 (relating to cancellations, returns, allowances and exchanges) and adding section 33.5 (relating to partial refunds for bad debts) to read as set forth in Annex A.

Purpose of Regulation

This regulation explains the application of section 247.1 of the TRC (72 P.S. § 7247.1) relating to partial refund of sales tax attributed to bad debts.

Explanation of Regulatory Requirements

Section 33.3(d) is deleted because it is in direct conflict with the provisions of section 247.1 of the TRC.

Subsection (a) of § 33.5 provides definitions of "affiliated entity," "bad debt," "discount amount" and "purchase price" for use in the section. Filing of a petition for partial refund is explained in subsection (b) of § 33.5. Paragraph (3) of subsection (b) provides a listing of supporting records that the vendor shall retain and make available to the Department upon its request. Section 33.5(c) provides an example that suggests how to determine the partial refund amount when the purchaser makes no payment on account and when the purchaser makes a partial payment on account.

Affected Parties

All taxpayers filing petitions for refund of sales tax paid to the Department that is attributed to a bad debt may be affected by the regulation.

Fiscal Impact

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

Paperwork

The proposed amendment will not require significant additional paperwork for the public or the Commonwealth. Additional paperwork may be required to calculate the partial refund amount; however, the amount is undeterminable.

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)), on 9/8/00 the Department submitted a copy of this proposed amendment 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 amendment, 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 rulemaking, it will notify the Department within 10 days of the close of the Committees' review 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 amendments, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, SR.
SECRETARY OF REVENUE

07/10/00

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
33. Computation of Tax.

§ 33.3. Cancellations, returns, allowances and exchanges.

* * *

[(d) Bad debts. A seller may not be permitted to take a sales tax credit for amounts representing bad debts or uncollectible accounts. The tax remains due upon the original purchase price of the property sold.]

(Editor's Note: The Department is adding § 33.5 (relating to partial refunds for bad debts), to ease readability, the text is not underscored.)

§ 33.5. Partial refunds for bad debts.

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

Affiliated entity - A corporation that is part of the same affiliated group as the vendor, as defined by section 1504(a)(1) of the IRC (26 U.S.C.A. § 1504).

Bad debt - The portion of the purchase price that the vendor determined to be uncollectible and wrote off as such, either in whole or in part on the vendor's books, and which was deducted for Federal income tax purposes.

Discount amount - The amount of credit granted to a vendor by the Department under section 227 of the TRC (72 P.S. § 7227), for the collection and timely payment of the sales tax and timely filing of the return.

Purchase price - The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, as purchase price is defined in section 201(g) of the TRC (72 P.S. § 7201(g)), but not including interest, finance charges and expenses incurred in attempting to collect any amount receivable.

(b) Filing a petition for partial refund.

(1) A vendor may file with the Board of Appeals a petition for a refund of one-third of the sales tax paid to the Department attributable to amounts deducted as a bad debt on Federal income tax returns required to be filed after January 1 and before December 31, 1999, less one-third of the discount amount. Thereafter, a vendor may petition for a refund of two-thirds of the sales tax paid to the Department attributable to amounts deducted as a bad debt on Federal income tax returns required to be filed after January 1, 2000, less two-thirds of the discount amount. See Chapter 7 (relating to Board of Appeals). The vendor shall file the petition in accordance with section 253 of the TRC (72 P.S. § 7253).

(2) A vendor may assign the right to file a petition for refund attributable to a bad debt only to an affiliated entity.

Example: Company P owns 100% of Company R which operates as a retailer in this Commonwealth. Company P also owns 100% of Company F, which has an agreement with Company R pursuant to which Company F issues credit cards to customers of Company R. The credit cards bear Company R's name and are used exclusively for purchases at Company R stores. Company R may assign to Company F its right to petition for partial refund of tax attributable to bad debts of Company R's customers, when Company R's customers fail to pay amounts charged on their "Company R" credit cards, the unpaid amounts are written off as bad debts and are deducted for Federal income tax purposes.

(3) The vendor or affiliated entity bears the burden of establishing the validity of a bad debt deduction. The vendor shall retain supporting records and make those records available upon request by the Department. At a minimum, the vendor shall retain records that substantiate the following:

(i) The name or account number of the purchaser and the date of the sale giving rise to the bad debt.

(ii) A description and the purchase price of the property that is the subject of the debt and the amount of sales tax the vendor charged.

(iii) The date or period when the vendor remitted the sales tax to the Department.

(iv) The dates and amounts of any payments the purchaser made on the debt or account.

(v) That the purchaser failed to pay the purchase price of the property or service that is the subject of the bad debt.

(vi) That the vendor wrote off the bad debt on its books and records.

(vii) That the bad debt was deducted on a Federal income tax return required to be filed after January 1, 1999, in accordance with section 166 of the IRC (26 U.S.C.A. § 166) for a refund of one-third of the sales tax paid attributable to the bad debt.

(viii) That the bad debt was deducted on a Federal income tax return required to be filed after January 1, 2000, in accordance with section 166 of the IRC (26 U.S.C.A. § 166) for a refund of two-thirds of the sales tax paid attributable to the bad debt.

(ix) That the vendor assigned its rights to an affiliated entity, if applicable.

(4) If the vendor or affiliated entity that has received a bad debt refund later collects on a bad debt, in whole or in part, the vendor or the affiliated entity shall remit to the Department, with the first return filed after the collection,

that proportion of the bad debt refund which is represented by the amount of taxable purchase price collected, divided by the total taxable purchase price previously treated as a bad debt for refund purposes.

(c) Examples for determining the partial refund amount, using as a basis a one-third refund.

(1) No payment on account. When the purchaser makes no payment on account, the vendor calculates one-third of the sales tax it paid to the Department on a bad debt and, if applicable, subtracts one-third of the discount amount to yield the amount of the bad debt refund.

Example: Purchase on account

Sale of Tools	\$200	Taxable Purchase on Account
	<u>12</u>	Sales Tax Remitted by Vendor
	\$212	Total Purchase Price

$\frac{\$12}{3} = \4 Partial Refund, less one-third
of any discount allowed by the Department

(2) Partial payment on account. When the purchaser makes partial payment on account:

(i) If a transaction combines both taxable and nontaxable components and the purchaser has made a partial payment on the debt, the vendor shall allocate the partial payment proportionally between the taxable and nontaxable components of the transaction.

Example: Purchase on account

Clothing	\$200	Nontaxable Purchase
Tools	<u>800</u>	Taxable Purchase
	\$1000	Combined Purchase Price
	<u>48</u>	Sales Tax on \$800
	\$1048	Total Price

Partial Payment on account: \$500

Allocation of Partial Payment:

$\frac{\$ 800 \text{ Taxable Purchase}}{\$1000 \text{ Combined Purchase Price}} = 80\%$, Taxable Portion

$80\% \times \$500 \text{ Partial Payment} = \400 of the Partial Payment Allocated to Taxable Purchase and tax

(ii) The vendor shall prorate any partial payment on a taxable transaction or on the taxable portion of a transaction between the original purchase price and the sales tax due on the sale. For example, continuing with the original transaction:

Amount Allocable to Taxable Purchase = \$400

To prorate \$400 between purchase price and sales tax divide by 1.06:

$\frac{\$400}{1.06} = \377.36 Amount of Partial Payment related to Taxable Purchase Price

\$800 Taxable Price less \$377.36 paid = \$422.64 Bad Debt

(iii) The vendor shall then compute one-third of the sales tax paid on a bad debt and subtract one third of the

discount amount to yield the amount of the bad debt refund.

$\$422.64 \times .06 = \25.36 Sales Tax paid by vendor to the
Department attributable to Bad Debt

$1/3 \times \$25.36 = \8.45 Sales Tax Partial Refund Amount
less 1/3 of the discount taken, if any.

07/10/00

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-415
SUBJECT: Sales & Use Tax - Partial Refunds for Bad Debts
AGENCY: DEPARTMENT OF REVENUE

2000 SEP -8 AM 10 37
INDEPENDENT REGULATORY
REVIEW 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
9/8/00	<i>P. Macart</i>	HOUSE COMMITTEE ON FINANCE
9/8/00	<i>A. Wilson</i>	SENATE COMMITTEE ON FINANCE
9/8/00	<i>D. Eickert</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
9/8/00	<i>L. Brown</i>	LEGISLATIVE REFERENCE BUREAU

August 30, 2000