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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE

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MARIANNE I. REMPE
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March 1, 2000

James L. Fritz, Esq.
NcNees, Wallace and Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Original: 2146

Re: Pennsylvania Sales and Use Tax
Private Letter Ruling No. SUT-00-016
Bad Debts

Dear Mr. Fritz:

The Department of Revenue, Office of Chief Counsel issues this private letter ruling pursuant to Section 3.3 of Title 61 of the Pennsylvania Code.

Please be advised that this ruling is limited to the specific factual information contained herein and applies to the Taxpayer exclusively. Absent a statutory or regulatory change or recission of this letter ruling by the Department, the Taxpayer may rely on this ruling for five (5) years from the date of issuance. At the time this letter ruling expires, whether by statutory or regulatory change or rescission by the Department, you may resubmit your letter ruling request to the Office of Chief Counsel for review.

ISSUES

1. May the Taxpayer, a retailing company, assign to an affiliated credit card company or other affiliated entity the right to petition and receive a partial refund of sales tax attributable to bad debts?

2. When the volume of uncollectible accounts makes documentation impractical, may the Taxpayer calculate the refund amount using an alternate method that fairly apportions the taxable and nontaxable elements of the bad debts?

CONCLUSIONS

1. Yes. The Taxpayer may assign its rights under the law provided the assignee is an affiliated entity, that is, a corporation that is part of the same affiliated group as the taxpayer, as defined by Section 1504(a)(1) of the Internal Revenue Code. 72 P.S. §7247.1.

2. Yes. The proposed regulation suggests only one method of calculating the partial refund amount. However, the Board of Appeals will determine the appropriateness of alternate methods.

FACTS

The Taxpayer understands that Section 247.1 of the Tax Reform Code of 1971, *as amended,* provides for a partial refund of Pennsylvania sales tax attributable to bad debts. The bad debts must be written off on a vendor's books and records and deducted for Federal income tax purposes on tax returns required to be filed after January 1, 1999. The statute provides that a vendor may assign its right to petition and receive a refund to an affiliated entity, but not to any other person. The refund procedures outlined in the statute are exclusive and no deduction of credit for a bad debt may be taken on any sales and use tax return filed with the Department.

The Taxpayer notes that the corporate structure of many retail operations consists of an affiliated group of companies, including one or more retailing companies and a commonly owned credit card company. A large portion of the sales of most retail stores is made on credit. In many cases, an affiliated company issues credit cards to the store's customers for use in the store.

When customers fail to pay amounts charged on these credit cards, the unpaid amounts are written off as bad debts. The company and its affiliated entities deduct these bad debts for Federal income tax purposes on a consolidated return. This arrangement is distinguishable from private label credit card agreements in which unrelated credit card companies issue credit cards to a retail store's customers. Section 247.1 does not allow assignment in the latter situation.

The Taxpayer points out that because of the large volume of bad debts written off by many major retail operations, it may be

administratively impractical to document each bad debt transaction for which a refund could be claimed under Section 247.1. The Taxpayer believes that it can equitably determine the refund amount by alternate methods, which fairly reflect the apportionment of the taxable and nontaxable elements of bad debts. The amount of the refund the Taxpayer calculates by alternate methods would not exceed one-third of the tax attributable to the total amount of bad debts multiplied by the quotient of the vendor's taxable sales divided by the total sales for the same period.

DISCUSSION

In light of the proposed Regulation, it is the position of the Department of Revenue that the Taxpayer may assign its rights to petition for a partial refund, if the assignees meet the statutory definition cited above. The Board of Appeals will determine if an alternate method of calculating the amount of sales tax attributed to uncollectible accounts is acceptable.

If you have any questions regarding this ruling or require additional information, please contact me by telephone or at my electronic mail address listed above.

Sincerely yours,

Marianne I. Rempe

Marianne I. Rempe
Assistant Counsel

MIR:sp

McNEES, WALLACE & NURICK

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101
FILE # 01150-0018

FAX COVER LETTER

Original: 2146

DATE: November 14, 2000

PLEASE DELIVER THE FOLLOWING PAGES:

TO: John H. Jewett @ IRRC **FAX: (717) 783-2664**

FROM: James L. Fritz **Direct Dial: (717) 237-5365**

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER LETTER: 4

MESSAGE:

Re: Proposed Reg. #15-415 (#2146) Sales and Use Tax; Partial Refunds for Bad Debts

Attached for your information is the March 1, 2000 letter ruling which the Department of Revenue provided to me as counsel for the Pennsylvania Retailers' Association. I would direct your attention to the second issue and second Conclusion, indicating that when the volume of uncollectible accounts makes documentation of each bad debt transaction impractical, the company may calculate its refund amount using an alternate method that fairly apportions the taxable and nontaxable elements of the bad debts, provided that the Board of Appeals finds the alternate method to be appropriate.

I will await your call to further discuss this issue.

cc: Brian Rider, Pennsylvania Retailers' Association

FAX NUMBER: (717) 237-5300 **FAX OPERATOR: (717) 237-5259**

SECRETARY RESPONSIBLE: Allyn Litzelman **TELEPHONE: (717) 237-5223**

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Original: 2146

October 23, 2000

Via Hand Delivery

Anita M. Doucette
Office of Chief Counsel
Pennsylvania Department of Revenue
10th Floor, Strawberry Square
Harrisburg, PA 17128-1061

Re: Proposed Regulation: Sales and Use Tax; Partial Refunds for Bad Debts

Dear Ms. Doucette:

Following are comments which I am submitting on behalf of our client, the Pennsylvania Retailers' Association, with regard to the proposed regulation which is referenced above, published September 23, 2000 in the Pennsylvania Bulletin.

Our first comment relates to documentation of refund requests.

On March 1, 2000, the Department (Marianne Rempe, Esq.) issued a letter ruling to the Retailers' Association. One of the points addressed in that ruling was the type of documentation which will be required from companies filing refund claims based on bad debts. Specifically, the ruling letter framed the issue as follows:

> When the volume of uncollectible accounts makes documentation [of each transaction] impractical, may the Taxpayer calculate the refund amount using an alternate method that fairly apportions the taxable and nontaxable elements of the bad debts?

The Department answered this question by indicating that the Department's Board of Appeals, which handles such refund requests, could "determine if an alternate method of calculating the amount of sales tax attributed to uncollectible accounts is acceptable." We regarded this as helpful, to the extent that it at least recognized that the Board could entertain alternate forms of documentation.

Unfortunately, the proposed regulation does not address the documentation which must be presented to the Board of Appeals in support of a bad debt refund claim. We believe that the regulation should not only include an indication that the Board may consider alternate forms of documentation, as the letter ruling has done, but should also provide examples of the types of documentation which the Board of Appeals will consider appropriate. We would be happy to sit down with representatives from the Chief Counsel's Office and the Board of Appeals to discuss specific language.

This is a particularly important point for Pennsylvania's retailing community because some retailers are claiming refunds on many thousands of transactions annually. Some have already encountered problems in dealing with the documentation issue.

The documentation questions are substantial. While the Board should have authority to evaluate the quality and sufficiency of evidence submitted to it, we believe it would be helpful to recognize by regulation that the companies and the Board need not document each and every transaction in detail. Furthermore, some examples of alternative forms of documentation which provide acceptable verification of the amount of refund due would give very helpful guidance to the business community.

Our second comment relates to assignments of the right to file a petition for refund.

The intent of the legislation was to allow a refund of tax remitted on bad debts, so long as the bad debt is written off by an entity within the retailer's affiliated group (i.e., within a group of commonly-owned and controlled entities). The Legislature was concerned that no refund be provided when a credit sale is financed through third-party credit, such as Visa or Mastercard.

It appears, however, that the proposed regulation allows assignments only from the retail vendor to an affiliated entity. While this addresses many situations, we have also been informed that there are some instances where the receivable has been assigned to an affiliate prior to writeoff, but the retail vendor for various reasons would like to file the claim for refund. In such instance, we believe the retail vendor would be a proper party to file for the refund since (a) the vendor actually remitted the sales tax on the bad debt to the Department, and (b) this would be consistent with the legislative intent to allow a refund, so long as the debt was retained within the affiliated group. We respectfully request that the regulation be revised to include language recognizing that the affiliate in which the writeoff occurs, may give an assignment to the retail vendor, to facilitate the vendor's filing of the refund claim.

I would be happy to arrange a meeting between representatives of the Department, myself and tax personnel from Retailers' Association members, for the purpose of further discussing these comments. Please contact me at the above address or direct dial phone number.

Very truly yours,

McNEES, WALLACE & NURICK

By
James L. Fritz

JLF:al

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FAX TRANSMISSION COVER PAGE

DATE: 10/24/00

TOTAL PAGES (including cover sheet): 4

TO: John Jewett

FROM: Brian Rider

MESSAGE: For your information.

Should you have any problems receiving this transmission, please call (717) 233-7976 or 1-800-727-3824.

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101
FILE # 81150-0019

FAX COVER LETTER

DATE: **November 21, 2000** Original: 2146

PLEASE DELIVER THE FOLLOWING PAGES:

TO: **John H. Jewett @ IRRC** **FAX: (717) 783-2664**

FROM: **James L. Fritz** **Direct Dial: (717) 237-5365**

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER LETTER: 9

MESSAGE:

Re: **Sales Tax Bad Debt Reg**

Attached are copies of the Ohio and New York regs which I mentioned in our phone conversation.

cc: **Brian Rider, Pennsylvania Retailers' Association**

FAX NUMBER: (717) 237-5300 **FAX OPERATOR: (717) 237-5259**

SECRETARY RESPONSIBLE: Allyn Litzelman **TELEPHONE: (717) 237-5223**

STATE-REG, OH-TAXRPTR ¶65-27^ Rule 5703-9-44. Bad Debts.--

Ohio Regulation, Rule 5703-9-44. Bad Debts.-- Original: 2146

(A) In reporting gross sales and net taxable sales a vendor may exclude an amount equal to the sum of the vendor's bad debts arising from sales occurring on or after July 1, 1980 and charged off as uncollectible on his books during the sales tax reporting period. The tax collected for the current period may be adjusted by deducting therefrom the amount of tax previously reported and paid as tax collected on the sale giving rise to the bad debt.

"Bad debt" means any debt or account receivable arising from the sale of tangible personal property by the vendor upon which sales tax has been reported and paid in a prior reporting period which has become worthless or uncollectible during the period between the vendor's preceding tax return and the present return and which has been uncollected for at least six months. The bad debt must be of a type that is properly deductible pursuant to the "Internal Revenue Code of 1954" 68A Stat. 50, 26 U.S.C. 166, as amended, and the regulations adopted pursuant thereto, or would be so deductible if the vendor kept his accounts on an accrual basis.

The amount of the bad debt is equal to the price, or portion thereof, of the tangible personal property that is uncollectible. No amount can be excluded as a bad debt that represents:

(1) Interest or finance changes on the debt or account;

(2) Sales tax charged on the purchase price;

(3) Uncollectible amounts on property that remains in the possession of the vendor until the full purchase price is paid;

(4) Expenses incurred in attempting to collect the debt or account;

(5) Any portion of the debt or account that is, in fact, collected;

(6) Any debt or account that is sold to a third party for collection; or

(7) Any uncollectible amount on property repossessed by or on behalf of the vendor.

(B) The burden of establishing the right to, and the validity of, a bad debt deduction is on the vendor claiming such deduction. For each bad debt excluded from gross sales, the vendor must maintain a record of:

(1) The name of the purchaser/debtor;

(2) The date of the sale or sales giving rise to the bad debt;

(3) The price of the property and the amount of sales tax charged thereon;

(4) The amount of interest, finance and service charges charged to the debt or account;

(5) Whether or not the property was retained by the vendor or repossessed;

(6) Any amounts charged to the debt or account representing costs of collection;

(7) The dates and amounts of any payments made on the debt or account; and

(8) Any portion of the debt or account which represents a charge that was not subjected to the tax in the original transaction.

All records must be preserved for four years after the filing of the return upon which the bad debt deduction is taken, unless the commissioner consents in writing to a shorter period or requires by order a longer period.

(C) In the event that the commissioner determines that a vendor has not maintained adequate records, the commissioner may test check the vendor's business in order to verify the amounts deducted as bad debts.

In the absence of adequate records showing the contrary, it is presumed that any payments made on a debt or account are applied first to the price of the property and sales tax thereon and secondly to interest, service charges and any other charges. The amount of interest charged to the account is presumed to be computed at the maximum rate of interest charged by the vendor on that type of account that gives rise to the bad debt.

If the vendor maintains a reserve for bad debts, only actual charges against the reserve representing uncollectible debts or accounts may be deducted for sales tax bad debt purposes. Contributions to the reserve are not deductible as a sales tax bad debt.

(D) The tax due on any bad debt found to have been improperly or illegally deducted may be recovered by assessment in the manner provided in section 5739.13 of the Revised Code.

(E) A bad debt may only be deducted on the return for the sales tax reporting period during which the uncollectible debt was written off on the books of the vendor. In the event that the bad debt deduction exceeds the net taxable sales of the vendor for that period, the tax attributable to the excess amount can only be recovered by refund claim pursuant to sections 5739.07 and 5741.10 of the Revised Code. If all or a portion of a bad debt is subsequently paid by the consumer or any other person, the vendor must include the amount paid in gross sales and net taxable sales on the return for the period during which the payment was made and he must remit the tax thereon.

(F) If the vendor's business consists of taxable and nontaxable sales of tangible personal property, and if the vendor is unable to document whether the sale of the property that gives rise to the bad debt was a taxable or nontaxable sale, the amount of the bad debt deduction shall not exceed the amount of the bad debt multiplied by the quotient obtained by dividing the vendor's taxable sales for the preceding calendar year by his gross sales for the preceding calendar year. In the event that the vendor was not engaged in business during at least six months of the preceding calendar year, the amounts of his taxable sales and gross sales for the preceding twelve months, or the amounts for each of the months that he has been engaged in business, whichever period is shorter, shall be the amounts used in computing the bad debt deduction pursuant to this division.

In order to ensure that a bad debt deduction accurately reflects the tax imposed on the sale which gave rise to the bad debt, whenever the sales tax rate applicable to the vendor's place of business changes, such as by statutory change or the enactment of county or transit authority sales and use tax, the amount of the bad debt deduction must be adjusted before it is excluded from gross sales and net taxable sales. The amount to be excluded shall be the amount of the bad debt multiplied by the quotient obtained by dividing the tax rate applicable at the time of the sale by the tax rate applicable at the time of the deduction.

In case the vendor receives payment after the bad debt deduction has been excluded, the amount that must be included in gross sales and net taxable sales is the amount of the payment multiplied by the quotient of the tax rate applicable at the time of sale divided by the tax rate applicable at the time of the payment. This will assure that the vendor only remits the amount of tax that he previously recovered by excluding the bad debt.

In addition to all other records required to be kept by this rule, the vendor must maintain a record of any computation and adjustments made pursuant to this division.

(G) The provisions of this rule also apply to sellers registered with the tax commissioner pursuant to section 5741.17 of the Revised Code. (Effective September 26, 1980.)

STATE-REG, NY-TAXRPTR ¶65-39' Reg. Sec. 534.7. Refunds and Credits Attrib''ble to Bad Debts. (Tax Law, Secs. 1132(c), 1139(c)).--

New York Regulation, Reg. Sec. 534.7. **Refunds and Credits Attributable to Bad Debts. (Tax Law, Secs. 1132(c), 1139(c)).--**

(a) *Definitions.* The following definitions apply for the purpose of determining entitlement and computation of the refunds and credits authorized in this section only--

(1) The term "uncollectible" means worthless, as used for federal income tax purposes. Legal action to enforce payment when it would probably not result in satisfaction of a judgment upon a showing of the underlying facts is not a necessary prerequisite in determining worthlessness.

(2) The term "retail-vendor" means a vendor of tangible personal property or services payment for which is made, in whole or in part, by the extension of credit to the purchaser by such vendor who is responsible for remitting applicable sales tax to the Department and includes a lessor-vendor which meets the conditions of paragraph (2) of subdivision (b) of this section.

(3) The term "account-obligor" means the purchaser of tangible personal property or services the receipts of which are paid, in whole or in part, by the extension of credit by the retail-vendor.

(4) The term "receivables of a retail-vendor" means indebtedness to the retail-vendor incurred by an account obligor upon his purchases whether or not subject to the sales and use taxes.

(5) The term "captive finance company" means a company that meets all of the following conditions:

(i) it is wholly owned by the retail-vendor or is wholly owned by a company which is related to such retail-vendor through an unbroken chain of wholly owned companies;

(ii) it does not finance receivables of any vendor other than its retail-vendor or any company related to such retail-vendor by an unbroken chain of wholly owned related companies;

(iii) it does not extend credit to anyone other than in the form of the purchase of receivables created as a result of extension of credit by the retail-vendor, except that the requirement of this subparagraph shall not be violated by the investment of excess cash funds in the short or long-term financial markets or by advancing funds to its retail-vendor or a company which is related to such retail-vendor through an unbroken chain of wholly owned companies;

(iv) it does not sell receivables to a third party other than a transfer of a receivable to its retail-vendor; and

(v) it does not receive payments on the receivable directly from the account-obligors. Instead, the foregoing payments, including interest, on the receivable must be made by the account-obligors directly to the retail-vendor, and must be reported as income by the retail-vendor for income and franchise tax purposes.

(6) The term "recourse" means that all bad debts are transferred back to the retail-vendor or such bad debts are charged against the retail-vendor's reserve account established for that purpose.

(b) *Allowance of refund or credit.* (1) Where a receipt, amusement charge, or hotel rent has been ascertained to be uncollectible, either in whole or in part, the vendor of the tangible personal property or services, the recipient of the amusement charges, or the operator of the hotel (as such terms are defined in section 1101 of the Tax Law) may apply for a refund or credit of the tax paid on such receipt, amusement charge, or hotel rent within three years from the date the tax was payable by such person to the Tax Department. However, no refund or credit shall be allowed based upon the fact that receipts are not actually paid on transactions described in section 527.15(e) of this Title.

(2) A vendor will be considered the vendor of the tangible personal property or services giving rise to the bad debt even though the property or services are sold by a leased department or concession (as described in section 526.10(f) of this Title) provided all the following conditions are met:

(i) the leased department or concession accounts for and pays over all of its receipts to the lessor-vendor,

(ii) the lessor-vendor reports and remits to the Department of Taxation and Finance the tax on all of the leased department or concession's receipts, and

(iii) the transfer of all receivables from the leased department or concession to the lessor-vendor is made without any discount for any credit transactions which involve the lessor-vendor's receivables and without recourse to the leased department or concession.

(3) A refund or credit is not available for a transaction which is financed by a third party or for a debt which has been assigned to a third party, whether or not such third party has recourse to the vendor on that debt.

(4) Receivables transferred to a captive finance company by its retail-vendor (as such terms are defined in paragraph (a) of this section) will not be treated as debts assigned to a third party provided the following conditions are met:

(i) such captive finance company has recourse (as defined in paragraph (6) of subdivision (a) of this section) on all bad debts to the transferor retail-vendor, and

(ii) annually (for a period determined from June 1 to May 31 of each year) not more than 10% of the receivables of the retail-vendor are incurred by account obligors upon purchases from any vendor other than the retail-vendor or a leased department or concession of the retail-vendor which meets the conditions of paragraph (2) of this subdivision.

Though a retail-vendor is not denied eligibility for the refund or credit with respect to debts determined to be uncollectible with respect to its receivables financed by a captive finance company if no more than 10% of its receivables (whether or not financed by the captive finance company) are derived from sales of any vendor other than the retail-vendor or a leased department or concession of such retail-vendor which meets the conditions of paragraph (2) of this subdivision, there is no refund or credit allowable to such retail-vendor with respect to any receivables derived from sales of such other vendors.

(c) *Computation of refund or credit.* (1) Only the amount attributable to the sales tax imposed and remitted to the Department of Taxation and Finance by the vendor remaining unpaid by the customer to the vendor is allowable as a refund or credit in respect of a debt determined to be uncollectible.

(2) Where the debt determined to be uncollectible and charged off by a vendor is comprised in part of non-taxable charges (such as interest, service and finance charges, charges for purchases delivered out-of-state by the vendor, or charges otherwise exempt or excluded from the State and local sales and use taxes) and in part of charges subject to the New York sales and use taxes, refund or credit may be claimed only with respect to the proportionate amount of the New York sales and use taxes attributable to the amount of the unpaid taxable charges remaining in such debt and only to the extent that the tax was remitted to the Department of Taxation and Finance. Such proportionate amount may be computed by determining:

(i) the tax imposed and remitted upon the unpaid amount of taxable charges in an account or

(ii) the unpaid amount of New York sales tax in an account.

(3) Payments upon an account shall be first applied to the oldest charges in the account. These payments must be divided proportionately between the taxable and the non-taxable components, if any, of such charges.

(4) Though interest, service and finance charges may be considered in the computation of the bad debt refund or credit, since payments are first applied to the oldest charges in an account, later accruing interest, service and finance charges upon inactive accounts generally do not affect the amount of such refund or credit.

Example 1: The following is an analysis of an account that was written off as a bad debt.

Charges to account	Payments made
Feb. Sale price	$250 4 at $25 each (March-June)
Feb. Sales tax	20 Total $100
July - Dec. Service charge for late payment	30
Total	300

As of the date the account was charged off on the vendor's books as uncollectible, the balance due was $200. This balance was determined by adding together the sale price, sales tax and service charge for a total of $300 and deducting payments of $100. Only that portion of the $200 bad debt that represents amounts on which the vendor collected and remitted sales tax to the department is included in the computation of the bad debt credit or refund. Therefore the composition of this $200 must be ascertained.

However, since paragraph (3) of this subdivision requires that payments received on account be applied first to the oldest charges in the account, before the composition of the $200 bad debt can be determined, a computation must be made wherein the customer's payments are so applied. In this example, in applying the payments to the oldest charges in the account, the entire $100 is absorbed by the first charge to the account (i.e., the February sale of $250 and the sales tax on that amount of $20, or a total of $270). Subtracting the $100 in payments from the $270 in charges leaves a partial bad debt of $170. Since the $270 was composed of the sale price and the sales tax, the $170 partial bad debt consists of these items as well, and in the same proportion. The composition of this $170 may be computed as follows:

STATE-REG, NY-TAXRPTR ¶65-39' Reg. Sec. 534.7. Refunds and Credits Attrib[illegible]ble to bad debts. (Tax Law, Secs. 1132(e), 1139(e)).—

Sale price	250 x 170 =	$157.41	Proportionate sale price
Total sales price and tax	270		
Sales tax	20 x 170 =	$ 12.59	Proportionate sales tax
Total sales price and tax	270		

Once the payments on account have been applied to the oldest charges in the account and any proportionate amount of bad debt subject to refund or credit has been ascertained, the balance of the outstanding charges to the account are reviewed to determine their taxable or nontaxable status. In this example, only one charge to the account remains unaccounted for--the $30 service charge for December. Since sales tax is not imposed on this type of charge (and should not have been collected), no refund or credit is available with respect to it.

The account's remaining balance due of $200 is composed of:

Proportionate sale price	$157.41
Proportionate sales tax	12.59
Service charges	30.00
Total	$200.00

Thus, the bad debt refund or credit for sales tax is $12.59.

Example 2: Assume the same facts as in Example 1, except that the bad debt write-off occurred after $250 had been paid on account. The uncollected balance of the account is $50 ($300 minus $250). As in Example 1, the $250 in payments is applied to the oldest charges in the account (i.e., $270) leaving a partial bad debt of $20. The composition of this $20 would be computed as follows:

Sale price	250 x 20 =	$18.52	Proportionate sale price
Total sale price and tax	270		
Sales tax	20 x 20 =	$ 1.48	Proportionate sales tax
Total sale price and tax	270		

The account's remaining unpaid balance of $50 due is composed of:

Proportionate sale price	$18.52
Proportionate sales tax	1.48
Service charges	30.00
Total	$50.00

Thus, the bad debt refund or credit for sales tax would be $1.48. Again, no refund or credit is available with respect to the $30 in service charges, since late payment service charges are not subject to sales or use tax. If the customer had paid at least $270, no bad debt refund or credit for sales tax would be allowed the vendor.

Example 3: The following is an analysis of an account that became a bad debt:

Charges to account		Payments made
Jan.: Sale price (exempt)	$200	4 at $60 each
Jan.-June: Finance charges	15	Total $240
July: Sale price	100	
Sales tax at 8%	8	
July-Sept: Finance charges	5	
Total	$328	

As of the date the account was written off on the vendor's books as uncollectible, the balance due was $88 ($328 minus $240). The $240 paid is applied first to the oldest charges in the account. This $240 is sufficient to cover the entire $200 exempt sale in January and the finance charges of $15 for the period January through June. Since the total of these two amounts is $215, there remains $25 ($240 minus $215) to be applied to the next oldest account charges, which is the July sales price of $100 and the related $8 in sales tax ($108). Subtracting the remaining $25 in payments from the $108 leaves a partial bad debt for sales tax computation purposes of $83. Since the $108 was composed of the sale price of $100 and the sales tax of $8, the $83 partial bad debt consists of these items, in the

STATE-REG, NY-TAXRP TR 103-59' Reg. Sec. 534.7. Returns and Credits Allowed ... Secs. 1132(e), 1139(e)).--

same proportion. The composition of this $83 may be computed as follows:

Sale price	100 x 83 =	$76.85 Proportionate sales price
Total sale price and tax	108	
Sales tax	8 x 83 =	6.15 Proportionate sales tax
Total sale price and tax	108	

The composition of the unpaid balance due is:

Proportionate sale price	$76.85
Proportionate sales tax	6.15
Finance charges	
(July-Sept.)	5.00
Total	$88.00

Thus, the bad debt refund or credit for sales tax would be $6.15.

Example 4: Between January and October a building supply company delivered materials to a contractor at several construction sites in different localities and billed the contractor's account. The contractor's account with the vendor is later determined to be uncollectible and charged off on the vendor's books.

Month	Amount of sale	Delivery charges	Tax amount	Juris	Tax rate	(Payments)	Balance
Jan.	$ 10,000	$ 250	$ 615	City X	6%	$	$ 10,865
Feb.						5,000	5,865
March	15,000	300	612	County A	4%	2,500	13,277
April						7,000	12,277
May	25,000	100		County B	Exempt	5,000	32,377
June						25,000	7,377
July	10,000	200	714	County B	7%	5,000	13,291
Aug.	10,000	300	618	City X	6%	5,000	19,209
Sept.	5,000		200	County C	4%	10,000	14,409
Oct.	10,000			County A	Exempt	5,000	19,409
	$ 85,000	$1,150	$2,759			$ 69,500	

Summary of Charges

Month	Total Charges	Cumulative charges
Jan.	$10,865	$ 10,865
March	15,912	26,777
May	25,100	51,877
July	10,914	62,791
Aug.	10,918	73,709
Sept.	5,200	78,909
Oct.	10,000	88,809

The $69,500 paid is applied first to the oldest charges in the account. This $69,500 is sufficient to cover the charges to the account through July, of $62,791. Consequently, there are $6,709 in payments to be applied to the charges to the account for August of $10,918 ($10,000 + $300 + $618).

Subtracting the $6,709 from the $10,918 leaves a partial bad debt of $4,209 for the August charges. Since the August charges of $10,918 was composed of the sale price ($10,000), the delivery charges ($300) and sales tax ($618), the partial bad debt of $4,209 for August is composed of these items, in the same proportion. The composition of this $4,209 may be computed as follows:

Sale price and delivery	10,300 x 4,209 =	$3,970.75
Total sale price, delivery and tax	10,918	
Sales tax	618 x 4,209 =	238.25
Total sale price, delivery and tax	10,918	

The account's total unpaid balance due of $19,409 is composed of:

Proportionate amount of sale (including delivery) for August	$ 3,970.75
Proportionate amount of sales tax on sale for August	238.25
Amount of sale for September	5,000.00
Sales tax on September sale	200.00

Amount of exempt sale for October	10,000.00
Total	$19,409.00

Thus, the bad debt refund or credit is the total of the uncollected portion of the tax on the August sale of $238.25 and the uncollected tax on the September sale of $200.00, or $438.25.

Example 5: Assume the same facts as in Example 4, except that instead of the August sale of $10,000 to City X at the six percent tax rate, the supplier delivered materials to four job sites in August, as follows:

Jurisdiction	State and Local Tax Rate	Materials	Delivery Charges	Tax	Total
County A	5%	$ 832	$ 40	$ 43.60	$ 915.60
County B	7%	5,000	120	358.40	5,478.40
City X	6%	3,500	100	216.00	3,816.00
County B	7%	668	40	Exempt	708.00
Total		$ 10,000	$ 300	$618.00	$10,918.00

In Example 4 it was determined that there was a partial bad debt for August of $4,209. The portion of this bad debt attributable to uncollected sales tax in August for each of the jurisdictions for which tax was remitted to the department may be determined as follows:

	Partial Bad Debt		Uncollected Sales Tax
County A tax	43.60	x 4,209 =	$ 16.81
Total sale price, delivery and tax	10,918		
County B tax	358.40	x 4,209 =	138.17
Total sale price, delivery and tax	10,918		
City X tax	216	x 4,209 =	83.27
Total sale price, delivery and tax	10,918		238.25

(5) Other methods of calculation of the refund or credit, not inconsistent with the principals herein expressed, fairly and equitably apportioning taxable and nontaxable elements of a bad debt and computing the amount of sales tax imposed and remitted in respect of such taxable charges remaining unpaid on such debt, may, subject to the approval of the Department of Taxation and Finance, be used to compute such refund or credit where the volume and character of the uncollectible accounts is of such a magnitude to warrant use of alternative computations.

(d) *Procedures.* (1) No credit or refund may be sought until an account has been found to be uncollectible and has been actually charged off for federal income tax purposes.

(2) An application for refund or credit, in respect of the sales taxes collected and remitted upon a debt which has been found to be uncollectible and charged off, shall be filed with the Department of Taxation and Finance within three years from the date the tax was payable by the applicant to the Department of Taxation and Finance. The applicant may, as part of the application for credit, take such credit on the return which is due coincident or immediately subsequent to the time such debt is charged off and the application filed.

(3) The application for refund or credit shall be subject to the provisions of subdivisions (a), (b) and (c) of section 1139 of the Tax Law and section 534.2 of this Part.

(4) A schedule of the computation of the state and local taxes for which refund or credit is sought must be attached to the return upon which such credit is taken or the application for refund.

(e) *Subsequent collection.* (1) If a vendor later collects, in whole or in part, any amounts attributable to a debt determined to be uncollectible which was charged off and in respect of which a refund was granted or a credit taken, the tax on the amount so collected must be reported to the Department of Taxation and Finance on, and remitted with, the next return due after such collection.

(2) In determining the amount of subsequent collections upon a debt determined to be uncollectible for which refund or credit of sales tax was previously allowed attributable to tax, such collection should be allocated to taxable charges, non-taxable charges and taxes in the same manner as regular payments to such account.

(f) *Interest.* Credits or refunds of tax attributable to bad debts will be made without interest.

(Adopted November 19, 1984; amended February 26, 1992; December 9, 1992; June 1, 1994.)

The Insurance Federation of Pennsylvania, Inc.

ORIGINAL: 2246

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John R. Doubman
Secretary & Counsel

March 1, 2002

Peter J. Salvatore,
Regulatory Coordinator
Special Projects Office
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

Re: Public Adjuster Regulation: 31 Pa. Code Chapter 115, Fiscal Note 11-146

Dear Mr. Salvatore:

The Insurance Federation of Pennsylvania (the "Federation") is pleased to have this opportunity to comment on the proposed regulations governing public adjuster contracts and licensing which the Insurance Department (the "Department") published in the February 2, 2002 Pennsylvania Bulletin. Thank you in advance for considering our suggestions. These are grounded in the extensive experience of member companies in dealing with public adjusters.

Preliminarily, the Federation has no objection to the contents of the Department's published proposal. It represents progress in modernizing the old regulation to conform with the current authorizing statute. However, the Department has neglected the opportunity to exercise its rulemaking authority to help combat abusive activities in which some public adjusters engage. The Federation believes that the Department has the authority to and should add many additional safeguards to this regulation.

The Federation would be pleased to assist in any fashion with the preparation of a final form for submission which would contain all or any of the additional provisions suggested in these comments which are designed to cut down on abuses by public adjusters.

1. Background of Suggested Improvements

As the Federation noted in comments submitted on September 12, 1996, when the Department was in the process of reviewing all of its regulations under a general mandate from Governor Ridge, revision of the adjuster regulation should not only modernize it to match Chapter 30 of Title 63, "but also strengthen it to address the compelling public interest of improved availability of urban coverage." That letter noted that such improvements were of particular interest to urban policyholders since public adjustment businesses are naturally attracted to population centers. An Urban Availability Task Force convened by the then Insurance Commissioner had noted that improvements in adjuster regulation could serve several public goals.

It is clear that the Insurance Commissioner, charged with administering and enforcing the Act under 63 P.S. Section 1608 and authorized to promulgate regulations toward that end, has wide discretion in fashioning licensing requirements and business practice standards. Moreover, many of the grounds for fines, suspensions and revocations under Section 1606 clearly invite both clarification and definition by the Commissioner. It is appropriate for the Commissioner to define and give examples of what she deems to be material misrepresentations, fraudulent transactions or practices, material misstatements or activities which demonstrate "incompetency or untrustworthiness."

The provisions in Section 1605 are ample evidence that public adjuster contracts and practices are particularly subject to abuse. This is evident from the contact strictures and rescission provisions in Section 1605, the list of prohibited practices in Section 1606 and the bonding requirement in Section 1604.

The Federation encourages the Department to strengthen the regulation in the respects outlined below so as to more completely fulfill its statutory responsibility to regulate this activity. From the definition of "public adjuster" in Section 1601 throughout the rest of the governing statute, it is obvious that this business is entirely an offshoot of the insurance business. The Insurance Commissioner should seize this opportunity to make sure that it operates ethically and in the public interest.

2. Licensing and Qualification Improvements

a. Knowledge and Education Required of Applicants

The Federation generally supports the specification of the licensing requirements in Section 115.11 et seq. Member companies, however, are concerned that the regulations should specify that only adjusters who have proper training in both estimating and general business practices be licensed to practice in Pennsylvania.

Section 115.11 provides that license applicants must pass an examination "except as provided in subsections (b) and (c)." There are no subsections (b) and (c). I assume that those references are to the next succeeding sections, Sections 115.12 and 115.13.

At the outset, the Federation favors very restrictive, if any, exceptions to the requirements for passing an examination. If this is a new requirement, as judging by the draft, there is no rationale for excusing someone whose license has currently expired (Section 115.12). Likewise, the Federation does not favor reciprocity unless the same degree of expertise is required under another state's laws as in Section 115.13.

Most importantly, whether by amplifying the scope of Section 115.16 or in another fashion, the Federation suggests that an applicant should be tested on his knowledge of home and building construction, renovation, repairs and repair contracting practices and conditions and appraisals of real and personal property. Furthermore, the applicant should also be tested on his or her knowledge of the restrictions of the Act and, especially the contracting practices and prohibited activities specified in the regulation.

b. Continuing Education

The Federation reiterates the suggestion contained in its 1996 submission that the regulations impose a continuing education requirement on public adjusters. There are continuing developments in repair techniques, building materials and changes in building codes and restrictions. A continuing education requirement would help protect the public from unknowledgeable adjusters. The Federation

proposes that this requirement apply to public adjusters rather than those working for insurers for several reasons.

Unlike those adjusters acting as independent businesses, insurers hire and train their adjusters under great pressure to produce competent practitioners and to supervise them closely. If an insurer fails to train its adjusters correctly so that they perform competently, the insurer can be sued for bad faith as well as breach of the contract. The Pennsylvania bad faith statute, 42 Pa.C.S.A. Section 8371, authorizes a court to award interest, punitive damages, court costs and attorney fees against an insurer. An insured who uses a public adjuster has no action for bad faith against the public adjuster or the public adjusting firm.

Since public adjusters are not subject to the bad faith statute and do not have the same level of interest in properly training and supervising their employees, the regulations should compensate to some degree by imposing continuing education requirements.

3. Business Practice Restrictions

a. Fraud Warning

By far the most common recommendation from Federation members is that the contract between the insured and public adjuster should contain an auspicious fraud warning. Several of our members have seen incidents where an insured has been misled by a public adjuster and it is the insured who is ultimately responsible for the alleged fraud. Consequently, while the insured may have signed claims forms which already contain a fraud statement, including this in the adjusting contract, which is clearly an important claims related document, will close a loophole and avoid any misunderstanding about the duty of both parties in submitting claims.

We recommend that the fraud warning place a burden on both the public adjuster and the insured, committing both to responsibility for the accuracy and truth of the information submitted to the insurer on any claim in which the adjuster has provided services. It might read:

"Both parties to this contract agree that each of them severally is entirely responsible in each and every claim for which services under this contract are provided for complying with the requirement of 18 P.S. Section 4117(a)(3) that any person who knowingly and with intent to defraud any insurance company or other person files a statement or claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, or which contains information which documents or supports an amount claimed in excess of the actual loss sustained by the claimant, commits a fraudulent insurance act which is a crime and which subjects the person to criminal and civil penalties."

b. Improper Client Solicitation

The solicitation of clients by public adjusters is an area that must be addressed by these regulations. There are two facets of the problem which our companies note.

(i) Cooling off Period

The law currently prohibits a public adjuster from soliciting a client within 24 hours of a fire, castrophe or other occurrence. Our members' experience is that public adjusters are not honoring this restriction, and, indeed, can be found in some cases soliciting business even while the house is literally still burning.

The Federation's submits that the statutory limit is a minimum stay away period only. The Department in its role of determining what is a fraudulent, incompetent or untrustworthy practice would be within its authority to expand this to 72 hours. The Federation recommends that the regulation impose a 72 hour stay out so that the consumer may make a more informed, calmer and rational decision about the need to retain a public adjuster.

Consequently, it would improve the regulation to both recite the cooling off period in the regulations and expand it to 72 hours.

(ii) Deceptive Solicitations

Insurers have come across various techniques by which public adjusters solicit business which are unethical. In one case, a public adjusting firm ran an employment advertisement and when contacted, as the first order of business, asked to visit the inquirer's house to see if there were any claims which could be submitted. Other unethical contacts center around unsolicited approaches and the use of fire and police personnel to solicit clients. The Federation believes that some limitations must be placed on the ability of public adjusters to solicit claims and that requirements should be created to ensure that these are conducted in an honest and truthful manner.

The most logical step to cut down on most of these practices is to flatly prohibit adjuster initiated solicitations. This would likely run afoul of commercial speech guarantees, so some specification of improper techniques would be necessary to sustain the regulation. Clearly, solicitations under false pretenses (like employment offers) and adjuster solicitations initiated by unrelated third parties being compensated by adjusters should be defined as activities which demonstrate untrustworthiness.

c. Claims Processing

Regardless of whether the Department can promulgate regulations directly regulating adjuster behavior or must act only through defining certain conduct as evidence of incompetence or untrustworthiness, the Federation strongly recommends that adjusters be required to comply with reasonable practices as they perform their services. The following prescriptions are some, but not all, of the areas where the activities of adjusters have to be regulated so as to work in harmony with insurer functions.

(i). Notification of Representation

The regulations should mandate immediate notification of the insurer of the public adjuster's representation. Insurers sometimes contact an insured only to find that an adjuster has been retained, resulting in a delay in the

adjustment process and sometimes in the receipt of conflicting information.

The notification should include a copy of the signed Notice of Right to Cancel and a copy of the adjuster's contract with the insured. The adjuster's contract with the insured may contain various provisions which impact on the insured's rights under his policy and his rights under Pennsylvania insurance laws as well. In light of the involvement of all the partied to the claims process, it is clear that the insurer should have the same right to understand the adjuster's relationship with the insured as the adjuster does to understand the insured's insurance policy.

(ii). Property Inspection

Prompt inspection of property allegedly damaged or injured assures the preservation of evidence and expedites the adjustment of the claim to the insured's benefit. Companies report that some public adjusters restrict inspection to their schedule and for their own reasons, resulting in significant inspection delay. This exposes insurers to potential bad faith claims for untimely claims handling. See, for example, Polselli v. Nationwide. The regulations should prohibit this type of behavior and characterize it as incompetent or untrustworthy.

(iii). Settlement Offers

Insurers often find that insureds are not advised of their settlement offers. The regulation should require public adjusters to communicate any and all settlement offers from an insurer to the insured in writing within three business days of receipt.

(iv). Unauthorized Practice of Law

It would benefit both the marketplace and the adjuster community if the regulations would clarify that public adjusters are subject to the prohibition of the unauthorized practice of law. Insurers continually come across adjusters, who are not attorneys, who advise their

clients on the law and quote law and legal precedent during the adjustment process.

(v). Impeding Insurer Contact

Closely allied to the previous problem is the assumption by public adjusters that they are entitled like attorneys to prevent insurers from directly communicating with their insureds. Adjusters, with few exceptions are not attorneys and their relationship with their clients is not entitled to the type of protection given to the bar. There is no rationale for why an adjustment arrangement should be given preference when it comes to communicating over the mutual duties in an insurance contract.

It should be an untrustworthy or illegal practice for an adjuster to attempt to dissuade or to take any other action to prevent an insured from speaking directly with an insurer about the settlement or processing of a claim. Moreover, the statement of this principle should make clear that nothing in the law or regulations is to be interpreted as authorizing an adjuster to interfere with the freedom of an insurer to communicate with its insured.

(vi). Communicating Responsibly

Insurers and their employees, including adjusters, are subject to heavy regulation and restrictions concerning their claims processing and to significant potential penalties if they fail in this regard. Adjusters retained to assist insureds with claims become part of that exact same process. Even if adjusters are not subjected to the same heavy financial penalties as insurers, there is every reason in public policy and the interests of consumer protection to require a modicum of responsiveness and accountability on public adjusters in working on an insurance claim.

The Federation recommends that consistent with the Unfair Insurance Practices Act and the Department's unfair claims settlement practices regulations, public adjusters should be required to make a responsive and appropriate reply to any written or oral communication from an insurer with respect to a claim being adjusted within 7 business days of receiving it if the communication solicits a reply.

Moreover, an adjuster should be deemed to be engaging in incompetent or untrustworthy claims practices if he or she has demonstrated a pattern of failing to respond to communications from the insurer or the insured. A pattern is any demonstration that three or more communications have gone untended for an unreasonable time or one inconsistent with these regulations.

The Federation regrets the length of these suggestions. Please understand that in order to deal with repeat violators of many of the practices cited that it is essential to have regulatory guidelines with which to work. These carry significant weight regardless of whether the Department is at all times staffed and ready to act effectively to detect and punish these practices. Thank you again for your consideration.

Sincerely,

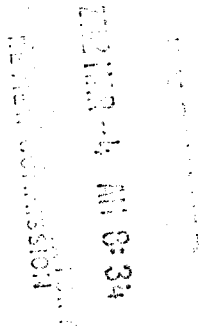
John R. Doubman

IRRC ORIGINAL: 2246

From: IFP [mailbox@ifpenn.org]
Sent: Friday, March 01, 2002 5:13 PM
To: IRRC
Subject: Public Adjuster Regulation: 31 Pa. Code Chapter 115, Fiscal Note 11-146
Attn: Richard Sandusky

Attached please find a letter from John Doubman.

Thank you.



IRRC

From: Jewett, John H.
Sent: Tuesday, November 21, 2000 8:43 AM
To: IRRC
Cc: Wilmarth, Fiona E.; Harris, Mary Lou; Wyatte, Mary S.; Eckert, Christina A.
Subject: FW: Sales Tax Bad Debt Regulation

Original: 2146
Please file under "proposed comments" under #2146. Thanks!

-----Original Message-----
From: Jim Fritz [mailto:jfritz@mwn.com]
Sent: Monday, November 20, 2000 5:41 PM
To: <
Cc: <; barider@mail.ptd.net
Subject: Sales Tax Bad Debt Regulation

Dear Mr. Jewett:

Following are the text and example which I suggest be added to the Sales Tax Bad Debt regulation:

"Where the volume of uncollectible accounts is of such magnitude that documentation of every bad debt transaction would impose an undue burden on the vendor, the vendor may document the amount of refund to which it is entitled under this section through use of other methods fairly and equitably apportioning taxable and nontaxable elements of bad debts and calculating the amount of refund due."

"Example. Corporation "R" is a retailer with stores in a number of states, including Pennsylvania. R has collected and remitted Pennsylvania Sales Tax on a timely basis with respect to its Pennsylvania locations. R makes tens of thousands of sales annually on its proprietary credit cards. R submits a timely claim for partial refund of Sales Tax remitted to Pennsylvania on sales written off as bad debts on a federal tax return required to be filed after January 1, 2000. It makes a copy of the federal tax return available to verify the total amount written off by the company as bad debt ("W"). It also establishes the ratio of Pennsylvania sales to total sales ("P") for the year prior to the year for which the federal tax return was filed and, with respect to Pennsylvania sales, establishes the ratio of taxable sales to gross Pennsylvania sales ("T") for the year prior to the year for which the federal tax return was filed. If the Board of Appeals is satisfied with the reliability of the information provided by R, it may grant a refund determined as follows:

W x P x T x 2/3 = Refund"

I will Fax copies of the Ohio and New York regs to you tomorrow. The example above is loosely based on the Ohio reg. According to the larger Retailers Assn. members, both Ohio and New York allow alternative forms of documentation in support of bad debt credit/refund claims and are among the better states to deal with on this issue.

Please call me if I can be of further assistance.

Jim Fritz
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Email: jfritz@mwn.com
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****

State & Local Tax
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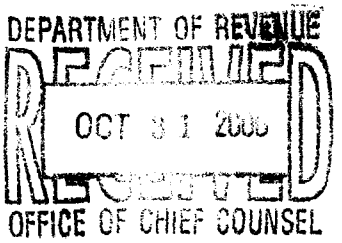
Mailstop KSOPHL0512-5A

Original: 2146



October 31, 2000

Ms. Anita M. Doucette
Office of Chief Counsel
PA Department of Revenue
Dept. 281061
Harrisburg, PA 17128-1061

Dear Ms. Doucette:

I am writing on behalf of Sprint Communications Company, L.P. ("Sprint") to comment on Proposed Regulation section 33.5, 30 Pa.B. 4932, relating to partial refunds for bad debts. In particular, I am writing to object to and suggest an alternative method to the documentation requirements of Pennsylvania Proposed Regulation section 33.5(b)(3).

Subsection (b)(3) of the Proposed Regulation provides that "[t]he vendor shall retain supporting records and make those records available upon request by the Department." Sprint understands the necessity of substantiating bad debt claims and does not object to any requirement that a vendor properly substantiate its bad debt claim. Sprint does object, however, to the minimum documentation requirement in the Proposed Regulation. In particular, the Proposed Regulation's minimum documentation requirement provides that:

> 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 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.

Sprint believes that such a minimum documentation requirement is unnecessary and runs counter to the statutory requirements of the section permitting the bad debt refund. The Pennsylvania bad debt refund statute provides that a vendor may file a petition for refund of sales tax paid on bad debt "if all of the following apply:

> (1) The purchaser fails to pay the vendor the total purchase price.
> (2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.
> (3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. Section 166).
>
> Pa. Stat. Ann. § 7247.1(a)

Rather than requiring "purchase-by-purchase" documentation, as contemplated by the Proposed Regulation, Sprint believes that the Pennsylvania statute can and should be read to permit documentation of a bad debt claim on an aggregated basis. Permitting documentation to be provided on an aggregate basis under certain circumstances, such as where the volume of records is extraordinarily high, would be beneficial to the state by resulting in the efficient use of resources, while still preserving the integrity of the refund statute.

In addition, Sprint believes that the Department has the authority to permit documentation on an aggregate basis under the powers provided to it by subsection (e) of the bad debt statute. That subsection provides that "[t]he documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe." Pa. Stat. Ann. § 7247.1(e).

The aggregate approach suggested by Sprint is exactly the type that was adopted by the nearby state of Massachusetts. Like Pennsylvania, the Massachusetts bad debt statute is based on the determination that a *purchaser's* account is worthless. Specifically, the Massachusetts bad debt statute provides that

> [a]ny vendor who has paid to the commissioner an exise [sic] under this chapter upon a sale for which credit is given to the *purchaser* and such account is later determined to be worthless shall be entitled to

> reimbursement without interest of the excise paid to the commissioner on such worthless account. Such claim for reimbursement shall be filed on or before April fifteenth, covering the amount of excise paid on such accounts determined to be worthless in the prior calendar year.
>
> Ch. 64H Mass. Gen. Law § 33 (emphasis supplied).

In interpreting that state's bad debt statute, the Massachusetts Commissioner of Revenue generally concluded that in order to claim the bad debt reimbursement

> [t]he taxpayer must document each worthless sale by attaching an explanation to the claim that contains the following information:
>
> 1. The date and amount of each sale.
>
> 2. The buyer's name and address.
>
> 3. The buyer's federal identification number, if available.
>
> 4. All facts pertinent to the determination that the account is worthless.
>
> Technical Information Release 00-3 (02/10/2000).

The Massachusetts Commissioner also concluded, however, that an aggregated proration calculation of bad debt would be appropriate under certain circumstances. In particular, the Commissioner concluded that

> [v]endors who are unable to document separately the portion of each worthless account that represents taxable Massachusetts sales may calculate the reimbursement on an aggregated basis. The reimbursement should be calculated on an aggregated basis by multiplying total worthless accounts by a fraction, the numerator of which is the total taxable Massachusetts sales for the fiscal year, and the denominator of which is the total sales for the fiscal year. The resulting prorated amount of worthless accounts is multiplied by the sales tax rate to determine the reimbursement amount.
>
> Technical Information Release 00-3 at III.B. (02/10/2000).

The Massachusetts Commissioner also adopted additional requirements for vendors claiming bad debt on an aggregate basis. These additional requirements generally focus on the vendor's procedures for computing bad debt on an aggregate basis and appear to provide a safeguard against abusive claims. In particular, the additional requirements for claiming bad debt reimbursement on an aggregate basis are as follows:

> 1. The procedures used to compute the bad debt reimbursement must reflect the actual experience and knowledge of the vendor. For example, a

vendor who has knowledge that certain worthless accounts consist of exclusively non-Massachusetts sales must exclude these accounts from "total worthless accounts."

2. The vendor must identify and explain these procedures and attach a supporting schedule to Form ST-BDR.

3. The vendor must be consistent in applying these procedures in subsequent years.

4. The procedures must be consistent with the procedures used by the vendor in claiming bad debt reimbursements in other states.

5. The vendor must attach a list which contains the buyers' names, addresses, and federal identification numbers, if available, and all facts pertinent to the determination that the accounts are worthless.

Id.

Because Sprint believes that Pennsylvania's bad debt statute does not require purchase-by-purchase documentation, Sprint objects to such a documentation requirement in the Proposed Regulation. Instead, Sprint recommends that the Department, like Massachusetts, adopt procedures for documenting a bad debt refund on an aggregate basis. With appropriate safeguards, permitting documentation on an aggregate basis will allow the department to use its valuable resources more efficiently in its tax administration duties.

If you have any questions or require additional information, please contact Anthony M. Whalen, Esq. at (913) 315-5791 or me at (913) 315-5802.

Sincerely,

Scott R. Paintin

Scott R. Paintin
Assistant State Tax Counsel