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

November 27, 2000

Honorable Larry P. Williams, Acting Secretary  
Department of Revenue  
Strawberry Square, 11th Floor  
Harrisburg, PA 17128

Re: IRRC Regulation #15-415 (IRRC #2146)  
Department of Revenue  
Sales and Use Tax: Partial Refunds for Bad Debts

Dear Acting Secretary Williams:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](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 my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

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Enclosure

cc: Honorable Karl W. Boyes, Majority Chairman, House Finance Committee  
Honorable Fred A. Trello, Democratic Chairman, House Finance Committee  
Honorable Melissa A. Hart, Chairman, Senate Finance Committee  
Honorable John N. Wozniak, Minority Chairman, Senate Finance Committee  
Anita M. Doucette, Regulatory Coordinator, Department of Revenue  
Doug Berguson, Esq., Department of Revenue

**Comments of the Independent Regulatory Review Commission**

**on**

**Department of Revenue Regulation No. 15-415**

**Sales and Use Tax; Partial Refunds for Bad Debts**

**November 27, 2000**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. 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 If the final-form regulation is not delivered by October 23, 2002, the regulation will be deemed withdrawn.

**1. Section 33.5(a). Definitions. - Clarity.**

The definition of "discount amount" references "the amount of credit granted to a vendor by the Department under Section 227 of the TRC..." Under this section of the Tax Reform Code, the "amount of credit" is one percent of the tax collected. This specific percentage should be included in the definition.

**2. Section 33.5(b). Filing a petition for partial refund. - Fiscal Impact; Reasonableness; Need; Clarity.**

*Subsection (b)(2)*

Subsection (b)(2) states that a vendor may assign the right to file a petition for refund to an affiliated entity. The example describes such an assignment by a retailer to an affiliated company that issues credit cards. However, the example does not indicate which company wrote off the bad debt on a federal tax return. There are two concerns.

First, if the affiliated credit card company, not the retailer, has written off the bad debt, the regulation should clearly state whether the retailer may assign the right to file a refund petition to the affiliated credit card company.

Second, if bad debts on sales by a vendor are written off by an affiliated entity, is it the intent of the regulation that the vendor may still file the refund petition?

*Subsection (b)(3)*

This subsection contains minimum record retention requirements to establish the validity of a petition for refund of sales tax on a bad debt. There are three concerns.

First, Subsection (b)(3)(i) contains two distinct record keeping requirements: name or account number and date of sale. For clarity, these requirements should be placed in separate subsections.

Second, Subsections (b)(3)(i)-(ix) set forth several types of documentation that must be retained to substantiate the validity of a refund claim. However, it does not indicate how long the documentation should be retained. Do the existing retention rules at 61 Pa. Code § 34.2(e)(3) apply? If so, Section 34.2(e)(3) should be referenced in Section 33.5(b). If not, the regulation should include a time limit for record retention for the purposes of this section.

Third, Subsections (b)(3)(vii) and (viii) both require documentation that the bad debt was deducted on a federal income tax return. The only distinction is that Subsection (b)(3)(vii) applies to returns filed in 1999 and refunds of one-third, and Subsection (b)(3)(viii) applies to returns filed after January 1, 2000, and refunds of two-thirds. Subsection (b)(1) explains that bad debts deducted on returns filed in 1999 will only qualify for a refund of one-third of the sales tax. Therefore, there is no need to repeat this distinction with two repetitive subsections. Subsections (b)(3)(vii) and (viii) should be combined into one subsection.

**3. Section 33.5(c). Examples for determining the partial refund amount, using as a basis a one-third refund. - Consistency with Statute; Clarity.**

This subsection provides examples for calculating the amount of refund in different circumstances. There are two concerns.

First, the examples are based on situations in which the refund is one-third of the sales tax. These examples apply only to bad debts listed as deductions on federal income tax returns filed in 1999. Starting on January 1, 2000, the refund is permanently increased to two-thirds of the sales tax on bad debts. The examples in the regulation would be more useful if they were based on refunds for two-thirds of the sales tax.

Second, the example in Subsection (c)(1) includes the following statement: "Partial Refund, less one-third of any discount allowed by the Department." The only discount that applies to this regulation is set forth in Section 227 of the Tax Reform Code (Act) (72 P.S. § 7227). If examples using the two-thirds refund are added to this regulation, this language should match the words in Section 247(b) of the Act (72 P.S. § 7247.1(b)), as amended by Act 23 of 2000, which states: "... less two-thirds of any discount under Section 227 of this act."

**4. Alternative methods for calculation and documentation. - Reasonableness; Clarity.**

The proposed regulation states in Section 33.5(b)(1) that a vendor may file a refund petition with the Board of Appeals (Board). The Pennsylvania Retailer's Association wrote that some retailers file petitions for refunds of the sales tax on thousands of transactions that occurred in one year. The Association claims that some retailers have already encountered problems with documenting large numbers of transactions, and suggests that the regulation address the use of alternate methods of documentation and calculation.

The Department in a private letter ruling (No. SUT-00-016), dated August 8, 2000, addressed situations in which the volume of uncollectible accounts makes documentation impractical. The ruling states that the Board "will determine the appropriateness of alternate methods." However, the proposed regulation is silent on this issue. The regulation should address whether alternative methods of calculation and documentation can be used for refund petitions.