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

July 19, 2001

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

Re: Regulation #15-416 (IRRC #2198)
Department of Revenue
Master Settlement Agreement

Dear Secretary Williams:

Enclosed are our Comments. They will soon be available on our website at 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,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director
evp
Enclosure

cc: Honorable Karl W. Boyes, Majority Chairman, House Finance Committee
Honorable Fred A. Trello, Democratic Chairman, House Finance Committee
Honorable Jane M. Earll, Chairman, Senate Finance Committee
Honorable John N. Wozniak, Minority Chairman, Senate Finance Committee

Comments of the Independent Regulatory Review Commission

on

Department of Revenue Regulation No. 15-416

Master Settlement Agreement

July 19, 2001

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 If the final-form regulation is not delivered by June 18, 2003, the regulation will be deemed withdrawn.

1. Section 71.31. Definitions. - Clarity.

The definitions in the regulation of *Affiliate*, *Cigarette*, *Qualified escrow fund*, *Tobacco product manufacturer* and *Units sold* repeat or modify the definitions in the Tobacco Settlement Agreement Act (Act) (35 P.S. § 5673). These definitions should be referenced rather than repeated in regulation.

Also, the term "person" is used in the regulation, but is not defined. For clarity, this term should be added to the definitions with a reference to the Act.

2. Section 71.32. Additional cigarette stamping agent responsibilities. - Economic impact; Need; Clarity.

There are two concerns.

First, Subsection 71.32(a) requires reporting in addition to the information already reported under an existing provision at Section 71.9(a). Section 71.9 is titled "Cigarette stamping agent report requirements." Since Section 71.32(a) is adding new informational requirements to Section 71.9, the Department should amend Section 71.9 by adding a cross-reference to Section 71.32(a).

Second, Section 71.32(a)(2) requires a listing of "suppliers, other than nonparticipating tobacco product manufacturers...." Read in conjunction with the proposed definition of "nonparticipating tobacco product manufacturers," the stamping agent would be required to report on both participating and nonparticipating tobacco product manufacturers. It is our understanding that the intent of this provision is to require reporting of merchants or suppliers who obtained tobacco

products from nonparticipating tobacco product manufacturers. Subsection (a)(2) should be revised to clearly state who must be included in a report.

3. Section 71.33. Tobacco product manufacturer responsibilities. – Statutory authority; Need; Duplication of statute; Clarity.

The Department's statutory authority to promulgate regulations is contained within the definition of "units sold" at 35 P.S. § 5673. The relevant language in this definition limits the Department's authority to promulgate regulations "as are necessary to ascertain the amount of State tax paid on the cigarettes of such tobacco product manufacturer for each year."

This section repeats the statutory provisions in 35 P.S. § 5674 (relating to requirements), which outline the functions of the Attorney General. Nothing in this provision relates to the Department's authority to ascertain the amount of state tax paid on tobacco products. Therefore, we question the Department's statutory authority for this section.

In addition to our concern about the Department's statutory authority, we question the necessity for this provision. It merely duplicates self-executing statutory provisions. If this section is retained, the Department should explain how it is authorized, why it is needed, and how it will be enforced.

If Section 71.33 is retained, it should be amended. As of the date of these comments, the deadline in Subsection (a)(2)(i), of April 15, 2001, has passed. Similarly, Subsection (a)(2)(ii)(A) covers the period June 22, 2000 through December 31, 2000, which has expired. The Department should delete references to these dates or explain why they are needed.