

9/23/05

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2508

(1) Agency
Revenue

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

15-430

(3) Short Title

Administrative Clean Up of Chapter 46 Construction Contractors

(4) PA Code Cite

61 Pa. Code §§ 31.11, 46.2, 46.3,
46.6 and 46.9

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary R. Sprunk (717) 783-7524
Secondary Contact: Douglas A. Berguson (717) 346-4633

(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 non technical language.

Our proposed rulemaking is an administrative "clean up" that will eliminate duplicated regulations for Construction Contractors that currently appear both in Chapters 31 and 46 of 61 Pa. Code. In addition, a specific list of financial institution security equipment whose installation constitutes a construction activity will now be properly placed in Chapter 31.

(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 Tax Reform Code of 1971 (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?

This administrative regulation rids 61 Pa. Code of duplicated regulations and also alleviates any possible confusion to those who read Chapters 31 and 46.

(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.)

Parties who read Chapters 31 and 46 of 61 Pa. Code. Specifically, financial institutions that enter into agreements for the purchase and installation of financial institution security equipment that involve construction activities may be affected by this administrative regulation.

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 this administrative 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.)

Not applicable.

This is an administrative “clean up” of existing regulations at Chapters 46 and 31 of 61 Pa. Code.

(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 proposed regulation was forwarded to the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Association of Community Bankers, the Pennsylvania Bankers Association, the Pennsylvania Credit Union Association, and stakeholders. The regulation is listed in the Department’s Agenda of Regulations published at 35 Pa.B. 3724 (July 2, 2005) and will be 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.

Not applicable.

This is an administrative “clean up” rulemaking to existing regulations in Chapters 31 and 46 of 61 Pa. Code.

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 this 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 this 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						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

There are no costs or savings associated with the implementation of this regulation.

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
Sales & Use Tax ^{1/}	\$7,292,499	\$7,519,561	\$7,728,543	\$7,951,300

^{1/} Dollar amounts are in thousands and represent General Fund Sales and Use Tax collections. The amount shown for the current fiscal year is a 2004-05 estimate.

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no costs associated with this regulation.

(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 this proposed administrative regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See response in (22) above.

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.

There is no comparative federal statute.

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

The regulation is based upon Pennsylvania statutory law. Any competitive advantage or disadvantage is derived from the statutory law.

(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 administrative regulation does not affect any other existing or proposed regulation 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 administrative regulation will not change any existing reporting, record keeping, or other paperwork requirement.

(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 this administrative 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 administrative regulation will be effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

This administrative 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)

9/23/05

#2508

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

NOV 21 2005

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

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

PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-430

DATE OF ADOPTION _____

B. _____
Gregory C. Fajt
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

BY _____
DAVID J. CURLES

NOV 03 2005

DATE OF APPROVAL
EXECUTIVE
(Deputy General Counsel)
(~~Chief Counsel Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney
General Approval or objection
within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code §§ 46.2, 46.3, 46.6, 46.9, and 31.11

Administrative Clean Up of Chapter 46 Construction Contractors
and Amendment to §31.11

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 31. Imposition, section 31.11, (relating to definitions) and Chapter 46. Construction Contractors, by deleting sections 46.2 (relating to construction of exempt public utility facilities), 46.3 (relating to construction contractor installing stained glass windows), 46.6 (relating to contractors renting equipment to others) and 46.9 (relating to financial institution security equipment), to read as set forth in Annex A.

Purpose of Regulation.

During normal review of its regulations, the Department determined that deleting §§ 46.2, 46.3, 46.6 and 46.9 in their entirety not only rids 61 Pa. Code of duplicated regulations, it also alleviates any possible confusion to those who read Chapters 31 and 46. This administrative regulation proposes to amend § 31.11 by transferring to it a specific list of financial institution security equipment from § 46.9 whose installation constitutes a construction activity. The list of financial institution security equipment is now being properly placed in § 31.11 (relating to definitions) under Construction activities. In addition, § 31.12(b)(1) is amended to include language

transferred from § 46.6 (relating to contractors renting equipment to others) and will be properly placed in Chapter 31.

Explanation of Regulatory Requirements

When the sales and use tax regulations were originally adopted in 1972, Title 61 of the Pennsylvania Code, Article II, was divided into two divisions: regulations and rulings. At that time, regulations provided general guidance and rulings were issued to respond to specific questions. In 1993, the Department deleted the antiquated distinction between the two types of documents in Article II; however, the Department did not delete documents that had been classified as rulings even though the information contained in a ruling was also set forth in a regulation. In the case of § 46.9, the rules governing all construction contracts including the sale, installation and repair of financial institution security equipment were already addressed in §§ 31.11 - 31.16 (relating to construction contractors).

The Department wants to avoid the duplication of information and believes that the guidelines that financial institutions (banks) and contractors need to know on the timing of the taxation of security equipment is set forth as it is for all other contractors in Sections 31.11 through 31.16.

Specifically, the sections to be deleted and their duplicated regulation are as follows:

<u>Section</u>	<u>Name</u>	<u>Duplicated in 61 Pa. Code</u>
46.2	Construction of exempt public utility facilities	§ 32.34(a)(3)(ii)
46.3	Construction contractor installing stained glass windows.	§ 31.12(c)
46.6	Contractors renting equipment to others.	§ 34.1 § 31.12(b)(1) proposed amendment
46.9	Financial institution security equipment	§ 31.11 - 31.16 proposed amendments

Affected Parties

Parties who read Chapters 31 and 46. Specifically, financial institutions that enter into agreements for the purchase and installation of financial institution security equipment that involve construction activities may be affected by this administrative regulation.

Fiscal Impact

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

Paperwork

The proposed amendment will not create significant additional paperwork for the public or the Commonwealth.

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 Mary R. Sprunk, 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 *December 2, 2005*, 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.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed

regulation. The Independent Regulatory Review Committee may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria that 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.

GREGORY C. FAJT
SECRETARY OF REVENUE

08/30/05

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
31. Imposition.

CONSTRUCTION CONTRACTORS

§ 31.11. Definitions.

The following words and terms, when used in this section and
§§ 31.12 - 31.16, have the following meanings, unless the context
clearly indicates otherwise:

* * *

Construction activities - An activity resulting from an
agreement or contract under which a contractor attaches or
affixes tangible personal property to real estate so as to become
a permanent part thereof. Construction activities also include
the service of repairing real estate even though tangible
personal property is not transferred by a contractor in
conjunction with the repairs which he makes. In the absence of
satisfactory evidence to the contrary, the following items are
presumed to become a permanent part of real estate:

* * *

Financial institution security equipment

Accelerated cash terminals or cash guards

Access control systems

After-hour depositories

Alarm systems (burglar, police, fire and the like)

Automatic banking systems

Bandit reserve barriers

Bulletproof windows

Customer convenience counters

Drive-in windows (bay, flush, counter and the like)

Fire doors

Quick depositories

Receiving lockers, heads or chests

Safes

Safety deposit boxes

Surveillance and security systems

Television banking systems

Teller rails and lockers

Vaults

Vault doors (automatic, manual, emergency and the like)

Vault ventilators

* * *

§ 31.12. Imposition of tax.

* * *

(b) Sales activities. Imposition of tax on sales activities shall conform with the following:

(1) A contractor who, in addition to performing construction activities, makes sales at retail, as defined by the TRC, of tangible personal property is deemed to be a vendor and is required to register with the Department for the collection and remission of tax upon the sales which he makes. Construction contractors renting equipment to other contractors must apply for a license under the act and collect tax with respect to these rentals.

* * *

Chapter 46. Construction Contractors.

§ 46.2. Reserved.

§ 46.3. Reserved.

§ 46.6. Reserved.

§ 46.9. [Financial institution security equipment.

(a) General. This ruling pertains to the sale, installation and repair of security equipment utilized by financial institutions. The effective date of this ruling is the date of adoption. Its effect is, therefore, prospective only, and it applies only to transactions involving security equipment consummated after the date of its adoption.

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

Financial institution - A corporation or association, such as a bank, a bank and trust company, a trust company, a savings

bank, a mutual banking association, a savings and loan association, a finance company, a credit union, or other similar institution, which maintains a place of business in this Commonwealth.

Installation - An attachment or affixation of security equipment to real estate by means of one of the following:

- (i) A hook, bolt, screw, nail or other similar method.
- (ii) Inserting equipment through a building wall or floor, or mounting it upon a specially prepared foundation, the removal of which may result in damage to the real estate.
- (iii) Wire which is integrated into an electrical system.

Security equipment - Systems, devices and equipment, and their components, utilized by a financial institution for its protection or convenience in conducting financial transactions.

(c) Sales and installation. Sales and installation shall conform with the following:

(1) A sale of security equipment which is also installed, as defined in subsection (b), by the seller or the seller's designee is a construction contract. The seller-installer may not charge sales tax of the Commonwealth to his customer upon the contract price. Rather, the seller-installer, as a construction contractor, is considered to be the consumer of property transferred in connection with the construction contract. He shall pay the applicable sales or use tax upon his

purchase price of the installed equipment, or upon his purchase price of material acquired and incorporated into the installed equipment during the process by which it is produced by the seller-installer, in accordance with §§ 33.1 and 33.2 (relating to definitions; and purchase price).

Examples. "S" Seller purchases 10,000 lbs. of material at \$1 per pound from "C" Company. The invoice submitted by "C" to "S" includes a \$10,000 charge for the material and a \$100 charge for the delivery of the material.

"S" then produces a vault door with 100 lbs. of the material, sells the vault door to "T" Trust Company, and installs it. "S" should not charge sales tax to "T". Rather, "S" is himself liable for the payment of sales or use tax on his purchase price of the material incorporated into the door, or \$101--the price which "S" paid for the material plus a proportionate amount of the charge incidental to the delivery of the material.

"S" Seller sells a drive-in teller window to "B" Bank. Prior to delivery of the window, "S" sends "B" specifications for construction of the wall in which the drive-in teller window will be installed. "S" does not prepare the wall into which the window will be installed. After the wall has been constructed by "B", "S" delivers the drive-in teller window, inserts it into the previously prepared opening, and bolts it into position. "S" is a construction contractor and is required to pay the applicable

sales and use tax of the Commonwealth upon his purchase price of the drive-in teller window installed in "B" Bank.

(2) As a construction contractor, a seller-installer shall also pay tax upon all property, such as tools, equipment and supplies, which is used in the performance of a construction contract, but which is not transferred to a customer, in accordance with §§ 33.1 and 33.2 and § 46.7 (relating to nonresident contractors).

(d) Straight sale. A straight sale is one in which security equipment of a type which does not require installation, as defined in subsection (b) is transferred, or one in which any type of security equipment is sold directly to a customer without installation by the seller or a designee. A straight sale is a taxable transfer of tangible personal property, and the seller shall register with the Department, to collect tax upon the total purchase price paid by a customer for security equipment, and to remit the tax collected to the Department.

(e) Maintenance. Maintenance shall conform with the following:

(1) Maintenance of installed security equipment on the premises in which it is installed, or maintenance of installed security equipment by a person who removes it from the premises for the work and later reinstalls it, is a construction contract. As a construction contract, the work is a nontaxable service to real estate, and the person performing the service may not charge

tax to his customer upon the contract price. Rather, the person performing the service is responsible for the payment of tax upon the purchase price of any part or other tangible personal property which is transferred to the customer in the course of the service.

(2) Maintenance of security equipment which is the subject of a straight sale because it does not require installation as defined in subsection (b), or maintenance of installed security equipment which is removed by the owner or a designee and taken to the service premises, is a taxable service to tangible personal property. The person rendering the service shall register with the Department and collect tax upon both the labor charge and the charge for any part or other tangible personal property which is transferred to the customer in the course of the service. The resale exemption from tax is available to the serviceman upon the purchase of property which is to be transferred.

(f) Categories of security equipment. Examples of security equipment upon the transfer of which the seller is liable for the payment of tax when installed by him or his designee are as follows:

Accelerated cash terminals or cash guards.

Access control systems.

After-hour depositories.

Alarm systems (burglar, police, fire, and the like).

Automatic banking systems.
Bandit reserve barriers.
Bulletproof windows.
Customer convenience counters.
Drive-in windows (bay, flush, counter, and the like).
Fire doors.
Quick depositories.
Receiving lockers, heads or chests.
Safes.
Safety deposit boxes.
Surveillance and security systems.
Television banking systems.
Teller rails and lockers.
Vaults.
Vault doors (automatic, manual, emergency, and the like).
Vault ventilators.] Reserved.

08/30/05

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 15-430

SUBJECT: Administrative Clean Up of Chapter 46 Construction Contractor &
Amendment to Section 31.11

2005 DEC -2 AM 10:34
INDEPENDENT REGULATORY
REVIEW COMMISSION

AGENCY: DEPARTMENT OF REVENUE

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 Tolloed Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
12/2/05	<i>Jin Sellers</i>	HOUSE COMMITTEE ON FINANCE
12/2/05	<i>Pat DeCello</i>	
12/2/05	<i>Kristi Krusen</i>	SENATE COMMITTEE ON FINANCE
12/2/05	<i>Nancy Hermann</i>	
12/2/05	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
12/2/05	<i>C. Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)