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House of Representatives

COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

January 20, 2006

John R. McGinley Jr., Esq.
333 Market St
14th Floor
Harrisburg, PA 17101

Dear Chairman McGinley:

I am writing in regard to proposed rulemaking by the Department of Revenue which deals with the tax treatment of financial institution security equipment. This regulation change has been described as an administrative clean-up of redundant language. While the Department of Revenue has made assurances that this regulation change will not bring about a tax treatment of financial institutions that is different than current practice, the language found in the proposed rulemaking suggests otherwise.

The Department of Revenue has proposed to delete several provisions of 61 Pa. Code Chapter 46 (relating to construction contractors) and amend portions of the deleted provisions into 61 Pa. Code Chapter 31 (relating to imposition of tax). Of particular interest are the definitions of "installation" and "security equipment" as are currently provided for in 61 Pa. Code Chapter 46.9.

The definition of "security equipment" currently reads as follows:

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

While the proposed rulemaking does recodify an itemized list of security equipment into the definition of "construction activities" in 61 Pa. Code Chapter 31.11, this list is not all-inclusive. By including the itemized list of security equipment in the definition of "construction activities" without including a definition of "security equipment," significant confusion and misinterpretation may arise. Additionally, there are numerous items which may be utilized by a financial institution for its *protection* or *convenience* in conducting financial transactions that could now become subject to the sales and use tax, as they are not itemized on the list of construction activities.

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Under the proposed rulemaking, the purchase of financial security equipment pursuant to a construction contract would only be considered a construction activity if it was to be *permanently* attached or affixed to the real estate. Currently, 61 Pa. Code Chapter 46.9 does not make such a distinction. The definition of "installation" under 61 Pa. Code Chapter 46.9 is as follows:

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.***

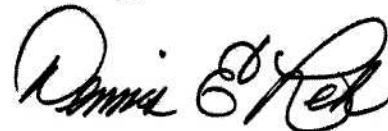
It is clear that the provisions of 61 Pa. Code Chapter 46.9 apply to the installation of security equipment attached or affixed to real estate, regardless of the permanence of the equipment.

Because of the two issues raised above, I am not in agreement with the Department of Revenue that this is simply an administrative clean-up of redundant language within the regulations. For this reason, as Chairman of the House Finance Committee, I am writing to oppose the Department of Revenue's proposed rulemaking as it is currently written. I would be glad to work with all interested parties in reaching a common ground on this matter, but as the language in the proposed rulemaking is currently drafted, I cannot support such a change in the regulations.

I commend the Department of Revenue for working to clean up various portions of the revenue code. However, in doing so, the current tax treatment of any entity must not be changed. The proposed rulemaking in question raises serious concerns about the future tax treatment of financial institutions. Such a change should only come about by means of the legislative process, not by means of a regulation or administrative change.

Thank you for your time in this matter. I look forward to an open dialogue with all interested parties regarding this issue in the future.

Sincerely,



DENNIS E. LEH, Member
House of Representatives
130th Legislative District

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