

12/03/07

# Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Revenue

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

15-442

IRRC Number: 2667

(3) Short Title

Repeal of Sales and Use Tax Exclusion for Tangible Personal Property Used in the Production of Commercial Motion Pictures

(4) PA Code Cite

61 Pa. Code § 32.38

(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 nontechnical language.

The Department proposes to reserve 61 Pa. Code § 32.38 (relating to commercial motion pictures) to reflect a statutory change. Sections 1 and 1.1 in Act 55 of 2007 (P.L. \_\_\_, No. 55) (72 P.S. §§ 7201(c)(8) and 7204 (54)) repeal the exclusion from sales and use tax for tangible personal property used in the production of commercial pictures. This repeal takes effect on October 1, 2007, and necessitates the Department's regulations be amended immediately to remove the obsolete regulation.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for the regulation is set forth in sections 201 and 204 of the Tax Reform Code of 1971 (TRC) (72 P.S. §§ 7201(c)(8) and 7204 (54)).

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(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 law, court order or federal regulation. See answer to (8) above for Pennsylvania state law requirement.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Act 55 of 2007 necessitates the Department's regulations be amended to reflect a change in statute.

(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.)

The removal of an obsolete regulation will benefit taxpayers that reference the *Pennsylvania Code*.

## **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.)

The producers of commercial motion pictures produced in Pennsylvania will be affected by this regulation. There is no way to quantify the number of people affected by this 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.)

Taxpayers and tax practitioners will be required to comply with the regulation.

(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 regulation was forwarded to the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry, the Pennsylvania Film Office within the Dept. of Community & Economic Development, the Greater Philadelphia Film Office and the Pittsburgh Film Office. The regulation is listed on the Department's Regulatory Report posted on the Department's website 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.

There are no costs and/or savings to the regulated community associated with this regulation.

## **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.

(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.

## 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

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

There are no savings from implementing this regulation.  
There are no costs for implementing 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
	NA	NA	NA	NA

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

This regulation does not alter existing law. There are no costs for implementing this permanent regulation. The permanent regulation serves to reflect a statutory change for the repeal of the exclusion from sales and use tax for tangible personal property used in the production of commercial motion pictures. This repeal takes effect on October 1, 2007 and necessitates the Department's regulations be amended to remove this obsolete 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 the regulation.

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

There are no alternative regulatory schemes associated with the regulation.

## 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 are no federal standards associated with this regulation.

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

The repeal of this regulation itself may or may not put Pennsylvania at a competitive disadvantage with other states depending on whether the other state has a sales tax exemption for tangible personal property used in commercial film production. However, Act 55 of 2007 provides other tax relief provisions for the production of commercial motion pictures in Pennsylvania.

(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 regulation does not affect any other existing or proposed regulations 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 repeal of regulation § 32.38 removes the paperwork requirement for an exemption form, since the exclusion will terminate on October 1, 2007.

(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.

See response to (25) above.

(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 regulation will be effective upon final publication in the Pennsylvania Bulletin. There are no permits, licenses or other approvals required by the regulation.

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

This 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)

12/03/07

2667

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REVIEW COMMISSION  
DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p>PA Department of Revenue (AGENCY) <u>15-442</u></p> <p>DOCUMENT/FISCAL NOTE NO. _____</p> <p>DATE OF ADOPTION _____</p> <p>BY <u>[Signature]</u> Thomas W. Wolf TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY <u>[Signature]</u> Andrew C. Clark</p> <p>JAN 7 2008</p> <p>DATE OF APPROVAL _____</p> <p>(Deputy General Counsel) (Chief Counsel Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
<p>DATE OF APPROVAL _____</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>		

NOTICE OF FINAL-OMITTED RULEMAKING

DEPARTMENT OF REVENUE

61 Pa. Code § 32.38

Repeal of Sales and Use Tax Exclusion  
for Tangible Personal Property Used in the  
Production of Commercial Motion Pictures

## PREAMBLE

The Department of Revenue (Department) is adopting final-omitted regulations under sections 201 and 204 of the Tax Reform Code of 1971 (72 P.S. §§ 7201 and 7204) (relating to definitions and exclusions from tax). The Department proposes to reserve 61 Pa. Code § 32.38 (relating to commercial motion pictures) as set forth in Annex A.

### Purpose of Regulation

Sections 1 and 1.1 in Act 55 of 2007 (P.L. \_\_\_\_\_, No. 55) (72 P.S. §§ 7201(c)(8) and 7204 (54)) repeal the exclusion from sales and use tax for tangible personal property used in the production of commercial motion pictures. This repeal takes effect on October 1, 2007, and necessitates the Department's regulations be amended immediately to reflect this change in the statute and remove the obsolete regulation.

### Explanation of Regulatory Requirements

As a result of the enactment of Act 55 of 2007, the Department proposes to adopt final-omitted regulations for the timely repeal of 61 Pa. Code § 32.38, which will be obsolete on October 1, 2007.

### Fiscal Impact

The Department of Revenue has determined that the regulations will have minimal fiscal impact on the Commonwealth.

### Paperwork

The regulations will not generate substantial paperwork for the public or the Commonwealth.

### Effectiveness/Sunset Date

The regulations will become effective upon 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

The contact person for an explanation of the regulations is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061.

### Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on January 18, 2008, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. A copy of this material is available to the public upon request. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 - 732-506). Under section 5.1(j.1) of the

Regulatory Review Act (71 P.S. § 745.5a(j.1), on \_\_\_\_\_, the final-omitted rulemaking was (deemed) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on \_\_\_\_\_, and approved the final-omitted rulemaking.

### Findings

The Department finds that the regulations are necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this regulation that repeals a statutory exclusion from sales and use tax effective October 1, 2007.

### Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by reserving § 32.38 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the Pennsylvania Bulletin.

THOMAS W. WOLF  
SECRETARY OF REVENUE

9/05/07

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 32.  
Exemptions.

Chapter 32. EXEMPTIONS

§ 32.38. Reserved.

08/01/07

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

I.D. NUMBER: 15-442

SUBJECT: REPEAL OF SALES AND USE TAX EXCLUSION FOR TANGIBLE  
PERSONAL PROPERTY USED IN THE PRODUCTION OF COMMERCIAL  
MOTION PICTURES

AGENCY: DEPARTMENT OF REVENUE

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- X 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 Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

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 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1/18/08	<i>Paul Wilkinson</i> <i>Pat DeCello</i> (minority)	HOUSE COMMITTEE ON FINANCE
1/18/08	<i>Pat DeCello</i>	MAJORITY CHAIRMAN <u>David K. Levdansky</u>
1/18/08	<i>[Signature]</i> (minority)	SENATE COMMITTEE ON FINANCE
1/18/08	<i>Bohannon</i>	MAJORITY CHAIRMAN <u>Patrick M. Browne</u>
1/18/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
1-18-08	<i>M. Mummet</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)