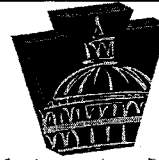


6/12/09

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:
Revenue

(2) Agency Number:

Identification Number: 15-446

IRRC Number: 2751

(3) Short Title:
Amendments to § 53.1. Clothing

(4) PA Code Cite:
61 Pa. Code § 53.1

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Mary R. Sprunk, Regulatory Coordinator
Pennsylvania Department of Revenue, Office of Chief Counsel
P.O. Box 281061
Harrisburg, PA 17128-1061
(717) 783-7524
(717) 772-1459 (Fax)

Secondary Contact: Douglas A. Berguson (717) 346-4633

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
 - ☐ Certification by the Governor
 - ☐ Certification by the Attorney General

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REVIEW COMMISSION

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed regulation will conform to Pennsylvania law and avoid any confusion for Pennsylvania taxpayers paying sales and use taxes. In addition, the regulation codifies legislative changes relating to clothing patterns that were set forth in Act 23-2000 (72 P.S. § 7204(26)). Reference should be made to the preamble for a detailed description of the amendments.

(9) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------------------|
| A. The date by which the agency must receive public comments: | <u>April 6, 2009</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>1st Quarter, 2010</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon final publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(10) 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.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is contained in section 270 of the TRC (72 P.S. § 7270).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is necessary to bring Title 61 into conformity with the statutory language regarding clothing.

Taxpayers and tax practitioners will benefit from having the Department's regulations reflect statutory language.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies or references are used to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No parties should be adversely affected by the regulation.

(16) 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 will be required to comply with the regulation. The approximate number of people required to comply is indeterminable.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

No legal, accounting or consulting procedures are required by the regulation.

(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. Explain how the dollar estimates were derived.

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. Explain how the dollar estimates were derived.

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.

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

	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	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation serves to conform to Pennsylvania law in order to avoid confusion for taxpayers.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A copy of the regulation was forwarded to the Pennsylvania Jewelers Association, the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, and the Pennsylvania Chamber of Business and Industry. The regulation was listed in the Department's Agenda of Regulations published at 39 Pa.B. 772 (February 7, 2009), and posted on the Department's Website Quarterly Regulatory Report. The proposed regulation was published at 39 Pa.B. 1209 (March 7, 2009). One comment, in support of the proposed rulemaking, was received from the public.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation.

(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 regulations.

This regulation relates to the imposition of sales and use tax. There currently is no comparative federal tax.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation does not change existing reporting, record keeping or other paperwork requirements.

Regulatory Analysis Form

(28) 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 the regulation.

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WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

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:

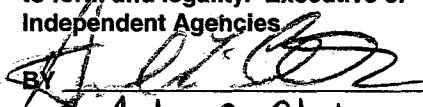
PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-446

DATE OF ADOPTION _____

BY _____
Stephen H. Stetler
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

BY 
Andrew C. Clark

AUG 7 2009

DATE OF APPROVAL

(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 FINAL RULEMAKING

DEPARTMENT OF REVENUE

Sales and Use Tax

61 Pa. Code § 53.1

Clothing

Requests for Final-Form Regulation

In accordance with section 5.1(a) of Act 1997-24, requests for information concerning the final-form regulation may be submitted to the Department. Commentators that request information regarding the final-form regulation will receive a copy of the regulation when the Department submits the final-form regulation to the Independent Regulatory Review Commission and the House and Senate Finance Committees.

The Department of Revenue, Office of Chief Counsel, has not received any requests for information concerning the final-form regulation for "Amendments to § 53.1. Clothing."

PREAMBLE

The Department of Revenue (Department), under section 270 of The Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), proposes amendments to 61 Pa. Code Chapter 53 "Wearing Apparel," by renaming the chapter "Clothing," amending definitions, conforming the regulation to the statute, clarifying examples and the scope in § 53.1 to read as set forth in Annex A.

Purpose of this Final-Form Rulemaking

This final-form rulemaking will conform to Pennsylvania law and avoid any confusion for taxpayers paying Sales and Use Taxes. In addition, the regulation codifies legislative changes relating to clothing patterns that were set forth in Act 23-2000 (See section 204(26) of the TRC 72 P.S. § 7204(26)).

Explanation of Regulatory Requirements

The major reason for this amendment is to bring the regulation into conformity with the statute. The current definition of "wearing apparel" in § 53.1(a)(7) (relating to clothing) when read in conjunction with § 53.1(b)(3) would appear to exempt from Sales and Use Tax the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and clothing. The statute in section 201(k)(4) and (o)(4) of the TRC

(72 P.S. § 7201(k)(4) and (o)(4)) excludes from the definition of "sale at retail" and "use" the repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning of only wearing apparel or shoes. Although "wearing apparel" is not defined in the TRC, it is referred to in section 7204(26) of the TRC as a subset of clothing. That section provides an exemption from tax for "all vesture, wearing apparel, raiments, garments, footwear and other articles of clothing ... but all accessories, ornamental wear, formal day or evening apparel, and articles made of fur ... and sporting goods and clothing not normally used or worn when not engaged in sports shall not be excluded from tax." This language clearly indicates that wearing apparel is clothing since wearing apparel is followed by "and other articles of clothing." The language also indicates that accessories, ornamental wear, formal day or evening apparel, fur articles, sporting goods and sporting clothing are not clothing or wearing apparel and the sale or use of these items are taxable.

To bring the regulation into conformity with the statute, the "definitions" subsection in § 53.1(a) has been amended. "Clothing" has been enhanced to mirror language in the statute in section 204(26) of the TRC. The definition for "wearing apparel" has been deleted.

The "scope" subsection has been amended in § 53.1(b) to remove language and insert clarifying language that mirrors language in the statute in sections 7201(k)(4) and (o)(4) and 7204(26) of the TRC. Language has been added in § 53.1(c) to clarify examples of accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing. The word "wearing apparel" has been deleted from this subsection.

In subsection (d), the word "patterns" has been deleted to mirror the statute as a result of Act 23-2000.

Affected Parties

Taxpayers in this Commonwealth paying Sales and Use Tax may be affected by the regulation although it is believed that the repairers, alters, and the like, of accessories, ornamental wear, and the like, have been charging Sales Tax on these services.

Comment and Response Summary

Notice of proposed rulemaking was published at 39 Pa. B. 1209 (March 7, 2009). This proposed rulemaking is being adopted without amendments to read as set forth in Annex A.

The Department received one comment from the public during the public comment period. No comments were received from either the House Finance Committee or the Senate Finance

Committee. The Independent Regulatory Review Commission (IRRC) submitted no comments on the proposed rulemaking.

No amendments have been made to the proposed rulemaking in response to the one public comment, as it was in support of the proposed rulemaking as published.

Fiscal Impact

The Department has determined that the final-form rulemaking will have minimal fiscal impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-form rulemaking 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

The contact person for an explanation of the final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 20, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 1209 (March 7, 2009), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comment received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered the one comment from the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2009, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2009, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The amendments are necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

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

(a) The regulations of the Department, 61 Pa. Code, Chapter 53, are amended by renaming the chapter "Clothing," amending definitions, conforming the regulation to the statute, replacing obsolete language, clarifying examples and the scope in § 53.1 to read as set forth in Annex A.

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

(c) The Secretary of the Department 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.

STEPHEN H. STETLER
SECRETARY OF REVENUE

05/07/09

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 53.
[Wearing Apparel] Clothing.

Chapter 53. [WEARING APPAREL] CLOTHING

§ 53.1. Clothing.

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

* * * * *

(2) Clothing - Articles, including vesture, wearing apparel, raiments, garments or shoes, which are designed to cover the human body as ordinary or everyday wear.

* * * * *

[(7) Wearing apparel - Articles worn or carried on or about the human body including but not limited to clothing, accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing.]

(b) Scope. [Scope shall conform with] This section applies to the following transactions:

* * * * *

(3) A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning [wearing apparel] shoes of any type or clothing is not subject to tax with the exception of the [following:

(i) Imprinting] imprinting or printing of clothing belonging to others.

[(ii). Alterations of formal day and evening apparel made at the time of sale by the seller.]

(4) A charge for the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning accessories, ornamental wear, formal day or evening apparel, fur articles or sporting goods and sporting clothing, except for shoes of any type shall be subject to tax unless the purchaser is entitled to claim an exemption under the law.

(c) Examples [of wearing apparel]. The following are examples of [wearing apparel] accessories, ornamental wear, formal day or evening apparel, fur articles and sporting goods and sporting clothing:

* * * * *

(d) Materials to be incorporated in clothing [-]. The sale of items such as fabrics, thread, knitting yarn, buttons, snaps and zippers, to be incorporated into clothing [may] are not [be] subject to tax[; however, the]. The sale of property such as

needles, [patterns,] dress forms, scissors and thimbles, shall be subject to tax unless the purchaser is engaged in the business of manufacturing or of purchasing the items for resale.

05/07/09

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

I.D. NUMBER: 15-446
SUBJECT: SALES AND USE TAX CLOTHING
AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

Proposed Regulation

X 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 Tolled Regulation

a. With Revisions b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1/25	<u>Leadford</u> (minority)	HOUSE COMMITTEE ON FINANCE Samuel E. Rohrer
1/25	<u>Sharon Snel</u>	MAJORITY CHAIRMAN David K. Levdansky
1/25	<u>Granna Venu</u> (minority)	SENATE COMMITTEE ON FINANCE James Ferlo
1/25	<u>Burt Jane</u>	MAJORITY CHAIRMAN Patrick M. Browne
1/25/10	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)