

October 22, 2008

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Revenue

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

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 & 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 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) 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 TRC (72 P.S. § 7270).

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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 or state law, court order, or federal regulation.

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

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

(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.)

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

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

(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 Jewelers Association, the Pennsylvania Bar Association, the Pennsylvania Institute of Certified Public Accounts, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry and stakeholders. The regulation is listed in the Department's Agenda of Regulations published at 38 Pa.B. 3443 (June 21, 2008), posted on the Department's Website Quarterly Regulatory Report, 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.

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

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(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.

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(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	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) 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
N/A	N/A	N/A	N/A	N/A

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

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

(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.

This regulation relates to the imposition of sales and use tax, there currently is no comparative Federal tax.

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

(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.

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

(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 the 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 regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. 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)

October 22, 2008

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DO NOT WRITE IN THIS SPACE

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

[Signature]

By: _____
(Deputy Attorney General)

DEC 11 2008

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 *[Signature]*
Thomas W. Wolf
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

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

BY *[Signature]*

Andrew C. Clark

NOV 19 2008

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 PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Sales and Use Tax

61 Pa. Code § 53.1

Clothing

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 53. Wearing Apparel, by renaming the chapter to "Clothing," amending definitions, conforming the regulation to the statute, clarifying examples and the scope to read as set forth in Annex A.

Purpose of Regulation

The proposed regulation 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 (72 P.S. § 7204(26)).

Explanation of Regulatory Requirements

The major reason for this amendment is to bring this regulation into conformity with the statute. The current definition of "wearing apparel" in § 53.1(a)(7) 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 at 72 P.S. §§ 7201(k)(4) and 7201(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 Tax Reform Code, it is referred to in 72 P.S. § 7204(26) 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" section in § 53.1(a) has been amended. "Clothing" has been enhanced to mirror language in the statute at 72 P.S. § 7204(26) (relating to exclusions from tax). The definition for "wearing apparel" has been deleted.

The "scope" section has been amended at § 53.1(b) to remove language and insert clarifying language that mirrors language in the statute at 72 P.S. § 7201(k)(4) (relating to sale at retail),

72 P.S. § 7201(o)(4)(relating to use) and 72 P.S. § 7204(26) (relating to exclusions from tax).

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 legislative Act 23-2000 (72 P.S. § 7204(26)).

Affected Parties

Taxpayers in Pennsylvania paying sales and use tax may be affected by the regulation although it is believed that the repairers, alters, etc., of accessories, ornamental wear, etc., have been charging sales tax on these services.

Fiscal Impact

The Department has determined that the proposed amendment will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create 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, P.O. Box 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 *February 20, 2009*, 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 Commission 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 which 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.

THOMAS W. WOLF
SECRETARY OF REVENUE

07/18/08

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 the following:

* * * * *

(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 not be subject to tax; however, 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.

04/11/08

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

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

2009 FEB 20 AM 10:45

INDEPENDENT REGULATORY
REVIEW COMMISSION

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 Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/20/09	<u>Paul Fry</u> minority	HOUSE COMMITTEE ON FINANCE <u>David G. Argall</u>
2/20/09	<u>Robert K...</u>	MAJORITY CHAIRMAN <u>David K. Levdansky</u>
2/20	<u>Tim ...</u> minority	SENATE COMMITTEE ON FINANCE <u>James Ferlo</u>
2/20/09	<u>Julie C...</u>	MAJORITY CHAIRMAN <u>Patrick M. Browne</u>
2/20/09	<u>St. Helmut</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
2/20/09	<u>Michelle L...</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)