

**CHAPTER 34. REGISTRATION, RECORDKEEPING
AND RETURNS**

- Sec.
34.1. Registration.
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§ 34.1. Registration.

(a) *General requirements.* Every person who maintains a place of business in the Commonwealth as defined in section 201(b) of the TRC (72 P. S. § 7201(b)) and who effects the sale at retail or delivery to Pennsylvania locations of tangible personal property or taxable services shall be required to register with the Department, collect and remit the applicable tax on the sales.

(b) *Solicitors for foreign-based vendors.* Where solicitors take orders in this Commonwealth for sales at retail of tangible personal property or taxable services on behalf of a foreign-based vendor, the vendor shall include in his tax return the receipts of taxable sales of his solicitors and pay the taxes collected thereon. However, the solicitor will not be relieved from liability for filing the proper return and paying the tax due if the vendor fails to make the necessary returns and pay the tax or if the vendor is not licensed by the Department.

(c) *Leased departments and concessions.* Where a licensee leases part of his premises to another to sell tangible personal property or taxable services, the lessor may include in his tax return the receipts of taxable sales of the lessee and pay the taxes collected thereon, if the lessor treats the receipts of the lessee as his own. However, the lessee will not be relieved from the liability for filing the proper returns and paying the tax due if the lessor fails to make the necessary returns and pay the tax due.

(d) *House to house solicitation by agents.* Where agents do house-to-house selling, the principal may include in his tax return the receipts of taxable sales of the agents and pay the taxes collected thereon, if the principal treats the receipts of the agent as his own. However, the agent will not be relieved from the liability for filing the proper returns and paying the tax due if the principal fails to make the necessary returns and pay the tax due.

(e) *License.* Upon receipt of an application, the Department will issue each applicant a license for the licensee's principal place of business. There is no registration fee. The license shall be prominently displayed at the licensee's principal place of business in this Commonwealth or, if the licensee maintains no regular place of business, upon his cart, stand, truck or other merchandising device. If the licensee has no merchandising device, the licensee shall carry the license on his person. The licensee shall prepare photostatic copies of the license for each additional place of business he maintains within this Commonwealth. The copies shall be displayed at the licensee's additional places of business in this Common-

wealth together with a statement as to where the original license is displayed. A license is nonassignable and nontransferable and shall be surrendered to the Department immediately upon the licensee's ceasing to do business in this Commonwealth.

(f) *Summary offense.* Failure to obtain a license does not relieve the vendor or lessor from his liability to collect the tax and remit it to the Department. In addition to imposing interest, additions and penalties for nonpayment of tax the act also provides that a person required to register thereunder who fails to obtain a license shall be guilty of a summary offense and upon conviction shall be sentenced to pay a fine of not less than \$100 nor more than \$300, and in default thereof to undergo imprisonment of not less than 5 days nor more than 30 days.

Source

The provisions of this § 34.1 amended November 1, 1991, effective September 6, 1986, 21 Pa.B. 5137. Immediately preceding text appears at serial pages (105787) to (105788) and (91023).

Cross References

This section cited in 61 Pa. Code § 35.1 (relating to tax examinations and assessments); and 61 Pa. Code § 39.2 (relating to registration).

§ 34.2. Keeping of records.

(a) *General requirements.* The act provides that every sale of tangible personal property or services thereon shall be presumed to be at retail and to be subject to sales tax. Therefore, every person who sells or uses personal property or services shall be required to keep the following basic records:

(1) For purposes of accountability for use tax, taxpayers shall be required to retain purchase invoices, requisitions, documents and other records relating to their acquisition of tangible personal property and services. The purchaser shall maintain records showing that the tax was paid where the purchaser has paid the tax to his vendor, and where the purchaser has not paid tax to his vendor but has paid use tax directly to the Commonwealth. Where the purchaser has not paid tax in the above cited instances, he shall create and maintain records showing the reason he considered the purchase as nontaxable, and information concerning the nature, use, price and dates of purchases and use of the property, from which it can be ascertained by the Department, with reasonable facility, whether or not use tax is due thereon and, if due, the amount of tax.

(2) As a minimum for practicable enforcement, the act required the following sales tax records which are amenable to a three-point audit:

(i) With respect to sales, records shall be maintained for each store or other outlet showing the total amount of taxable and nontaxable sales, that is, gross sales, made on each day and during each tax reporting period. Total sales should also be divided as to cash sales and credit sales.

(A) Sales tax records shall be maintained from which it is possible to ascertain the vendor's compliance with the taxing and exemption features of the act, that is, whether sales made without collection of tax were in fact nontaxable. The records shall describe items sold without tax, and show those sales which were made tax free because the purchase price was less than the amount at which the statute begins to impose tax. This is the first essential for determining the amount of tax incurred in the vendor's business.

(B) The vendor shall obtain from purchaser and also retain certificates of exemption with respect to sales of a taxable character which are sold tax free on the claim that they are exempt because of the nature of the purchaser's activity and the use for which they are purchased. In such cases, the identification of items sold as well as the purchaser is necessary because the use of property in many instances is clearly determined by the identification. For example, stationery may not be validly exempt under a certificate stating that it is to be used directly in the production, rendition or delivery of a public utility service.

(ii) The second essential is that sales tax records shall show the tax incurred on each taxable sale so that a so-called effective rate may be determined. Under the bracket schedule established by the TRC the rate of tax incurred varies according to the purchase price of the sale. The overall effective rate of the vendor's tax incurred cannot be determined unless there are reliable sales records showing the taxable sales price of individual sales.

(iii) Apart from accountability of tax incurred, records of the amount of tax actually collected by the vendor shall be essential for the following reasons:

(A) Since the vendor is a trustee with respect to the taxes he has collected, the keeping of records which will clearly reflect his performance of his responsibilities is basic to this fiduciary relationship. The TRC, in recognition of this, requires that a vendor shall remit the amount of tax due, incurred or the amount actually collected, whichever is greater.

(B) The burden which would be placed on vendors whose businesses involve a large number of mixed sales if they were required to maintain complete records of the tax incurred on every individual sales transaction as described in this paragraph have long been recognized by the Department. Therefore, vendors shall be permitted to keep records of tax incurred on a sample basis under standards discussed in detail in subsection (b).

(C) If a vendor, for his own convenience, computes and reports his tax incurred on the basis of a formula derived from part-time, sample or test check recordkeeping, complete records of the amount of tax actually collected at each outlet together with a record of sales at each outlet, provide a practical basis for comparison with the results of the formula. This con-

tinuous check is useful both to the vendor and the tax agency in gauging the reliability of the formula, and the tax consciousness of store personnel.

(iv) A vendor's duty to collect and remit tax on taxable sales, his liability for tax due if he fails to collect properly, and his duty to keep records from which liability for tax incurred and tax collected can be ascertained, are clearly imposed in the TRC. Reference should be made to sections 208, 237(b) and 271 of the TRC (72 P. S. §§ 7208, 7237(b) and 7271).

(3) The memoranda or records required to be created at the time of sale may take the form of sales slips, sales invoices, guest checks, tally sheets, itemized lists, memoranda or other records provided they meet the requirements of this section as to content. Thus, a copy of a cash register tape retained by the vendor may meet the requirements of an auditable sales tax record if it bears sufficient identification of the items sold and other required information.

(i) Within reasonable limits, items may be described by a symbol if the symbol is representative of a class of merchandise or services all of which constantly remains taxable or nontaxable. Thus, if a vendor sells only nontaxable periodicals in his "Department P," a description of such merchandise as "Dept P" is sufficient provided the vendor uses such symbol consistently in all of his records to describe the same merchandise. However, if a vendor sells several types of merchandise of both taxable and nontaxable merchandise in a single department, his records shall identify individually the types of merchandise which are nontaxable.

(ii) The following shall constitute an example:

JOHN DOE STORE
MILLVILLE, PA.

Sales Slip	Jan. 15, 1968
To: Roe Ribbon Mill	
1. 1 Coffee percolator	\$16.80
2. 1 hacksaw	4.25
3. 1 pr. doorknobs	<u>3.10</u>
	\$24.15
(6 percent Sales Tax—\$1.45)	
4. 6 prs. cotton gloves	4.20
5. 2 bearings (loom)	
Manuf. Exemp. Cft.	<u>8.50</u>
	\$36.85
Sales Tax	<u>1.45</u>
	\$38.30

(A) It is assumed for the purpose of this example that the Roe Ribbon Mill has furnished the Doe Store a manufacturer's exemption certificate.

Since this exemption covers only items used directly in manufacturing, items 1 and 2 are taxable. Since the exemption does not cover maintenance of realty, item 3 is taxable. No tax is incurred on item 4 because clothing is exempt. No tax is incurred on item 5 since it is covered by the manufacturer's exemption. Therefore, the total taxable sale price is \$24.15. On this price, the tax incurred is computed as follows:

6 percent on full dollar amount (6 percent of \$24.)	\$1.44
6 percent on cents amount of price under the "Bracket System" (11¢ to 17¢ incl.)	<u>.01</u>
TOTAL TAX INCURRED	\$1.45

(B) Notice how the sales slip in this example, supported by the exemption certificate, permits an audit of the vendor's performance in applying tax status rules to arrive at nontaxed items and in computing the tax incurred on the taxable amount of the sale. Had the vendor incorrectly determined the tax at less than \$1.45, he would nevertheless be liable for payment of the correct amount. If he had collected more than \$1.45 he would be liable to the Commonwealth for the amount collected unless he showed that he had refunded the overcharge to the purchaser.

(b) *Part-time recordkeeping.* Part-time recordkeeping shall conform with the following:

(1) *General considerations.* The Department upon application by a vendor may authorize him to use a sample recordkeeping system from which a formula may be derived to account for his tax due with reasonable accuracy and simplicity without the necessity of maintaining full-time detailed records as described in subsection (a). Such authorization is not to be construed as relieving the vendor from remitting the full amount of tax collected. Reference should be made to section 271(e) of the TRC. The Department may revoke the authorization upon 30 days written notice to the vendor. The vendor may terminate the use of the authorized procedure by giving to the Department written notice preceding the proposed termination date by a time period not less than the vendor's tax reporting period.

(i) No appeal lies directly from the Bureau's refusal of a vendor's application for a formula procedure. However, the merits of a proposed formula and the action of the Bureau thereon are reviewable in connection with the hearing and determination of a petition for reassessment from a deficiency arising from the use of the formula. Reference should be made to section 271(e) of the TRC and subsection (c).

(ii) If a vendor wishes to set up a formulary record system without prior concurrence by the Bureau, there shall be nothing to prevent his doing so, but

in acting unilaterally he shall proceed at his own risk. Upon audit, the Bureau and subsequent reviewing bodies may find that his sample records and formulary system are not sufficiently representative or adequate. If he operates without a prior agreement, when the time comes for an examination of his accountability his records shall speak for themselves. If the records which he has maintained are such that his nontaxables and rate of tax incurred on taxable sales cannot reliably be ascertained, he shall be in no position to contend that he has kept adequate sales tax records. Rather, he shall be in the same position as another vendor who lacks adequate sales tax records.

(iii) A formula method shall be based upon representation samplings, tests, of the vendor's transactions and application or projection of the results of the samplings to reliably establish the amount of tax incurred on his sales. Samplings may be employed to determine the percentage ratio of nontaxable and taxable sales to gross sales, and the percentage ratio of tax incurred to taxable sales. Ordinarily, an applicant will be expected to provide for a sample of at least one of each of the normal business days of the week during each calendar quarter. This shall be done by testing all transactions on 2 days a month and rotating the test days to include, in each calendar quarter, all selling days of the week. Vendors operating more than one store or sales outlet shall test all stores or outlets on each test day, and separately apply test results in each store to the sales of that store, except where a vendor demonstrates by experience with sampling that a smaller sample or modified procedure is adequate and reliable, the Department will consider his specific written proposal and may authorize further adjustments on that basis.

(iv) While the act does not specifically mention special recording procedures or formulary methods with respect to use taxes, the Department will accept such applications as are filed and, consistent with the law and the safeguarding of public revenues, will consider the granting of the permission to persons required to remit use tax in particular circumstances where the facts warrant the treatment. Persons holding or desiring to obtain direct pay permits may seek the dual permission (with accompanying responsibilities) of remitting under the direct pay permit provisions and in accordance with an authorized special recording procedure or formula method. Reference should be made to section 237(d) of the TRC.

(2) *Conditions of granting of authorization.* The granting of authorization to use a special recording procedure or formula method shall be subject to the following requirements and conditions:

(i) The vendor shall submit an "Application for Special Recording Procedure" (Form REV-134) to the Department of Revenue, including a full and description of the material facts and methods of his various operations as they affect his tax liability, and the procedures he proposes to employ. This application shall be accompanied by a detailed written statement of the circumstances which, in his opinion, warrant the use of a special procedure.

(ii) Authorization to employ a special recording procedure for determining tax due may not be construed to relieve the vendor of responsibility for maintaining, with respect to each store or sales outlet, records showing the following:

- (A) The actual amount of tax collected and
- (B) Gross sales per day and tax reporting period.

(iii) The proposed procedure shall include provision for the following:

- (A) A continuing training program for the vendor's employes in applicable sales and use tax provisions.
- (B) Supervision of tests and verification of test results by qualified personnel.
- (C) Recording and retention of test data, including work sheets, in such manner and detail that the Department may ascertain, with reasonable facility, the accuracy and validity of the tests.
- (D) Maintenance of adequate records of all purchases.
- (E) Adequate provision for accounting for tax collection.
- (F) Prompt notification of the Department by the vendor of material changes in his business operations or sales, including merchandising and accounting methods and procedures.

(iv) During such time as the authorized procedure agreement is in effect and in the absence of material changes in the vendor's business operations, including his merchandising and accounting methods and procedures, it shall be used to determine the amount of tax due by the vendor on the transactions covered by the authorization, provided such authorization was not obtained by means of fraud, misrepresentation or nondisclosure of material facts.

(v) A vendor, having represented in his application that a certain sample period is adequate for reporting purposes and having agreed to remit to the Commonwealth the greater of the amount of tax due as shown by his formula or tax collected, cannot state, upon audit by the Department, that the sampling is inadequate for auditing purposes.

(vi) The granting of special authorization may not be deemed a waiver by the Department of its right to audit fully the books, documents, records and transactions of the vendor to determine whether the authorization was properly obtained, whether the vendor has complied with the terms and conditions of the agreement and whether he has accounted to the Department for all tax collected.

(vii) The Department will not revoke retroactively its grant of an authorization that has been obtained and applied in good faith under this section. However, the Department reserves the right to conduct audits to determine whether the authorized formula currently reflects the vendor's true liability and to revoke a formula agreement prospectively.

(viii) The vendor shall, if directed by the Department, furnish a bond or other security guaranteeing faithful compliance with the authorized procedure and this section.

(3) *Conditions under which authorization will not be granted.* Authorization to employ a special procedure or formula method will not be granted in the following instances:

(i) Where the nature of the vendor's business or the value of units of merchandise sold do not make it unreasonable to require full-time employment of the accounting prescribed in subsection (a).

(ii) Where the Department has found that the vendor has failed to comply with requirements of the act or regulations.

(iii) Where, in the opinion of the Department, the best interests of the Commonwealth will not be served by granting the authorization.

(c) *Liability of vendor who has not kept auditable sales records.* Courts and administrative boards have, in numerous cases where a vendor has failed to keep the records necessary for auditing his tax liability, sustained the right of a tax agency to base an assessment on methods which fairly and reasonably approximate the liability incurred. Where a vendor has not kept complete auditable records or has used an unauthorized formula, evidence of sample data which he has compiled and used in reporting tax on a formula basis is of course admissible. However, under these circumstances the prima facie validity of the tax agency's test audit is difficult to overcome. Courts and administrative bodies have subjected the evidence to close scrutiny because it was compiled without permission, supervision or verification by the tax agency. Reference should be made to section 271(e) of the TRC.

(d) *Accounting for and handling tax collections.* Taxes collected by a vendor from purchasers which have not been properly refunded by the vendor to the purchaser shall constitute a trust fund for the Commonwealth. Since the vendor is a trustee with respect to the taxes he has collected, the keeping of records which will clearly reflect his performance of his responsibilities is basic to this fiduciary relationship. The act, in recognition of this, requires that a vendor shall remit the amount of tax due or the amount actually collected, whichever is greater.

(1) *Physical segregation of tax where collections are not shown on sales memoranda or cash register tapes.* The act provides that a vendor must adopt some method of segregating tax from sales receipts and record such in accordance with proper accounting and business practices. Reference should be made to section 271(e) of the TRC.

(i) If a vendor keeps full-time memoranda of sales showing the amount of tax due and the amount charged to the purchaser as provided in subsection (a), he will not be required to physically segregate his tax collection from sales receipts or create other records of tax collections of individual sales.

(ii) If a vendor uses a register which lists each tax collection on a tape retained by the vendor, or if he makes a list or record manually and retains it for Departmental audit, he will not be required to physically segregate his tax collections, unless the Department, because of special circumstances, notifies him to do so. A vendor may, of course, segregate his tax collection. The fact that tax collections are not physically segregated from sales receipts may not be deemed a waiver of the Department's procedural rights to enforce the trust which exists with respect to tax collections.

(e) *Accessibility of information and records.* Records, including sales memoranda and records created at the time of sale and other documents, books or records pertaining to tax liability and tax collections shall be dated, legible, written in the English language and maintained and preserved to disclose in readily accessible and verifiable detail the basis for and accuracy of the vendor's or user's entries on his sales and use tax returns.

(1) *Persons engaged in separate businesses.* A person engaged in business as a retail dealer in taxable items who, at the same time, is engaged in another business or businesses which do not involve the making of taxable sales, shall keep separate books and records of his businesses. For example, a person engaged in business as a retail dealer who is also engaged in business as a construction contractor, shall keep separate records and accounts of his retail business and his construction business. Reference should be made to section 271(d) of the act.

(2) *Audit requirement.* Upon audit by the Department, or at such other times as the Department requests, the vendor or user shall present his records in an orderly manner, together with the summaries and schedules the Department may request. The vendor or user shall provide the auditors or examiners of the Department with suitable facilities for conducting their audit or examination.

(3) *Retention of records.* Records required to be maintained under the act or this section shall be retained for a period of at least 3 years from the end of the calendar year to which the records relate. Reference should be made to section 272 of the TRC (72 P. S. § 7272).

(f) *Place where records and tax collections shall be kept.* Records and tax collections shall be kept in accordance with the following:

(1) Where a person makes sales at or from establishments or locations within this Commonwealth, records relative to the transactions and the sales and use taxes collected at those points shall be retained within this Commonwealth, unless the vendor has written authorization from the Director of the Bureau of Sales and Use Tax to remove them. The authorization shall be revokable by the Director upon 30 days written notice.

(2) Where a person makes sales on which he is liable for the collection of sales or use tax at or from establishments or locations outside this Commonwealth, records relative to the transactions and sales and use taxes collected

outside this Commonwealth may be maintained in this Commonwealth or retained at the establishments or locations at or from which the sales were made or at the home office of the vendor. If special problems arise, vendors shall contact the Department of Revenue for advice.

(3) Records created or received by a person within this Commonwealth with respect to his use of property or services on which he is subject to tax shall be retained within this Commonwealth.

(g) *Microfilm reproduction of general books of account and supporting records of detail.* The Department of Revenue will consider the microfilm, including microfiche, reproduction of general books of account and their supporting records of detail as acceptable books and records when the reproduction satisfactorily complies with the standards and procedures established by the United States Internal Revenue Service and approval of the reproduction is granted by the same. In addition, the taxpayer shall make available necessary codes and equipment to enable the Department to audit the books and records.

Source

The provisions of this § 34.2 amended December 19, 1975, 5 Pa.B. 3277.

Notes of Decisions

Accessibility of Records

The taxpayer failed to produce required records when requested during the audits and again during the evidentiary hearings. Boxes of unsorted invoices, bills of lading, weight slips, drivers' logs, and other documents do not permit the taxing authority to ascertain with reasonable facility whether tax is due and how much tax is due. The taxpayer has suffered the consequences of inadequate record keeping in that the taxpayer was unable to document use of the assessed equipment in providing public utility services. *Fiore v. Commonwealth*, 609 A.2d 862 (Pa. Cmwlth. 1992); vacated 633 A.2d 1111 (Pa. 1993); 668 A.2d 1210 (Pa. Cmwlth. 1995); adhered to 676 A.2d 723 (Pa. Cmwlth. 1996); affirmed 690 A.2d 234 (Pa. 1997); cert. denied 118 S. Ct. 181 (U. S. 1997).

Documentation

The taxpayer failed to produce the necessary records when requested during the audits and again during the evidentiary hearings. Boxes of unsorted invoices, bills of lading, weight slips, drivers' logs, and other documents did not permit the taxing authority to ascertain with reasonable facility whether tax was due and how much tax was due. The taxpayer suffered the consequences of inadequate record keeping in that taxpayer was unable to document use of the assessed equipment in providing public utility services. *Fiore v. Commonwealth*, 609 A.2d 862 (Pa. Cmwlth. 1992); vacated 633 A.2d 1111 (Pa. 1993); 668 A.2d 1210 (Pa. Cmwlth. 1995); adhered to 676 A.2d 723 (Pa. Cmwlth. 1996); affirmed 690 A.2d 234 (Pa. 1997); cert. denied 118 S. Ct. 181 (U. S. 1997).

The records maintained by the taxpayer were inadequate to show why no use or sales tax was paid. *Fiore v. Commonwealth*, 609 A.2d 862 (Pa. Cmwlth. 1992); vacated 633 A.2d 1111 (Pa. 1993); 668 A.2d 1210 (Pa. Cmwlth. 1995); adhered to 676 A.2d 723 (Pa. Cmwlth. 1996); affirmed 690 A.2d 234 (Pa. 1997); cert. denied 118 S. Ct. 181 (U. S. 1997).

Evidence Insufficient

A taxpayer who produced no credible evidence to show entitlement to the public utility exclusion it claimed could not avail itself of the exclusion. *Fiore v. Commonwealth*, 609 A.2d 862 (Pa. Cmwlth.

1992); vacated 633 A.2d 1111 (Pa. 1993); 668 A.2d 1210 (Pa. Cmwlth. 1995); adhered to 676 A.2d 723 (Pa. Cmwlth. 1996); affirmed 690 A.2d 234 (Pa. 1997); cert. denied 118 S. Ct. 181 (U. S. 1997).

General Requirements

A taxpayer who sells or uses personal property or services must: 1) retain all purchase invoices and other documents relating to acquisition of taxable property and services, and 2) if the tax has not been paid, the taxpayer must create or maintain records documenting the nature, use, price, dates of the purchase, etc. from which it can be ascertained “with reasonable facility” whether use tax is due and the amount of the tax. *Fiore v. Commonwealth*, 609 A.2d 862 (Pa. Cmwlth. 1992); vacated 633 A.2d 1111 (Pa. 1993); 668 A.2d 1210 (Pa. Cmwlth. 1995); adhered to 676 A.2d 723 (Pa. Cmwlth. 1996); affirmed 690 A.2d 234 (Pa. 1997); cert. denied 118 S. Ct. 181 (U. S. 1997).

Rehearing Granted

Although not relieved of the duty to comply with statutes and regulations regarding records of purchases and their use, taxpayer was denied procedural due process and entitled to a new hearing to allow it to address those defenses to taxpayers claim raised by the Commonwealth after the administrative adjudicators and 20 days prior to the evidentiary hearing. *Fiore v. Board of Finance and Revenue*, 633 A.2d 1111 (Pa. Cmwlth. 1993).

Cross References

This section cited in 61 Pa. Code § 35.1 (relating to tax examinations and assessments).

§ 34.3. Tax returns.

(a) *Filing procedure.* The filing procedure for tax returns shall conform with the following:

(1) *Form and content.* The tax imposed by the TRC (72 P. S. §§ 7101—8203) is due and payable concurrently with the return for any given period. Returns shall be made on forms prescribed by the Department. For the convenience of the licensee, the Department will distribute returns forms. However, a licensee will not be excused from liability for failure to report and pay the tax because he has failed to receive a form. The return may be filed by an authorized agent of the licensee with the same effect as if filed by the licensee

himself. Every return filed by a taxpayer shall contain, on the work sheet side of the tax return, a full, complete and accurate disclosure for the reporting period of the taxpayer's as follows: (Line "A") Total Gross Sales, Rentals and Services, (Line "B") Nontaxable Sales, Rentals and Services, (Line "C") Net Taxable Sales, Rentals and Services, (Line "D") Total Amount of Tax Collected, and (Line "G") Amount of Use Tax Incurred for purchases, services, transfers or imports on which no Pennsylvania tax was charged by vendor. Income from nontaxable services of the type described in § 31.6 (relating to persons rendering nontaxable services) need not be included in the disclosure of sales, rentals and services required by this subsection. The Department may require additional information it deems proper. A return not fully disclosing the required information will be considered incomplete and may be rejected by the Department. Upon receipt of notice that an incomplete return has been rejected, a taxpayer shall immediately complete the return form and file the same with the Department. If the return is not filed with the Department in acceptable form prior to the due date, the additions and interest provided for in the TRC will be added to the amount of tax otherwise due.

(2) *Timely filing.* Timely filing shall be determined from the following:

(i) *Generally.* Effective March 13, 1974, the Department of Revenue will consider all mailed returns filed as of the date indicated by the United States Postal Service postmark appearing on the envelope or wrapper, unless the postmark is printed by use of a Postage Meter licensed by the United States Postal Service, as discussed in subparagraph (iv). A return in an envelope or wrapper bearing a Postal Service postmark dated after the last date prescribed for filing the return will be considered to have been filed late, regardless of the date on which the return was deposited in the mail. If the postmark date is not legible, or is otherwise unclear, then if the return is received by the Department more than 5 days after the date prescribed for filing, it shall be presumed that the return was mailed by the taxpayer after the prescribed date. Further, returns which are mailed but which do not contain a postmark on the envelope or wrapper, or which are delivered in any manner other than by the United States Postal Service will be considered filed as of the date of actual receipt by the Department of Revenue. The returns which are received by the Department of Revenue after their due date will be considered as having been filed late.

(ii) *Registered mail.* If the return is sent by United States registered mail, the date of registration shall be treated as the postmark date under subparagraph (i).

(iii) *Certified mail.* If the return is sent by United States certified mail and the sender's receipt is postmarked by the United States Postal Service, the date of that postmark shall be treated as the postmark date of the return under subparagraph (i).

(iv) *Meter stamps printed by postage meters licensed by United States Postal Service.* If an envelope or wrapper containing a return is postmarked by use of a postage meter licensed by the United States Postal Service, that return received by the Department more than 5 days after the due date of the return is presumed to have been mailed after the due date.

(3) *Due dates.* Due dates shall conform with the following:

(i) *Quarterly licensees.* New licensees shall file tax returns on a quarterly basis. Licensees whose total tax reported is less than \$600 in the third calendar quarter but more than \$75 annually shall continue to file quarterly. Filing dates for quarterly returns are as follows:

<i>Returns</i>	<i>Due Date</i>
First Quarter	April 20
Second Quarter	July 20
Third Quarter	October 20
Fourth Quarter	January 20

(ii) *Monthly licensees.* A tax return shall be filed monthly with respect to each month by a licensee whose total tax reported for the third calendar quarter of the preceding year equals or is greater than \$600. Required filing dates are as follows:

<i>Returns</i>	<i>Due Date</i>
January	February 20
February	March 20
March	April 20
April	May 20
May	June 20
June	July 20
July	August 20
August	September 20
September	October 20
October	November 20
November	December 20
December	January 20

(iii) *Semiannual licensees.* Upon authorization by the Department a return shall be filed semiannually by licensees whose total tax reported does not exceed \$75 annually. Required filing dates are as follows:

<i>Returns</i>	<i>Due Date</i>
January 1 to June 30	August 20
July 1 to December 31	February 20

(iv) *Extension of time for filing returns.* The Department, upon written application and for good cause shown, may grant a reasonable extension of time for filing a return required by the TRC. However, the time for filing a return will not be extended for more than 3 months.

(4) [Reserved]

(5) *Use tax returns.* A person other than a licensee who is liable to pay tax under the TRC shall file a Use Tax Return with the Department on or before the 20th day of the month succeeding the month in which the liability for the tax is incurred. Nonlicensees of the Bureau are not required to file negative returns for the months in which no use tax liability is incurred. Licensees report use tax liability in conjunction with their regular returns.

(6) *Other returns.* The Department is empowered to require a person by notice served on that person or by regulations to make the returns, render the statements or keep the records the Department deems sufficient to show whether or not the person is liable to pay or collect tax under the TRC.

(b) *Remittance of tax with return.* Remittance of tax with return shall conform with the following:

(1) *Collections.* Each licensee shall account to the Commonwealth for the entire amount of taxes collected from purchasers. The taxes so collected shall be remitted to the Department, even though the money collected is in excess of 6% of the total purchase price of the vendor's sales or leases subject to tax.

(i) *Tax collections must be retained within this Commonwealth.* No tax collected by a vendor may be sent outside this Commonwealth without the written consent of, and in accordance with conditions prescribed by, the Department.

(ii) *Trust funds.* Taxes collected by vendors in accordance with the TRC constitute a trust fund for the benefit of the Commonwealth. The trust will be enforceable against the vendor, his representative and any person receiving any part of the fund without consideration or with knowledge that the vendor is committing a breach of trust.

(2) *Basis.* A licensee shall report on the basis of sales made during the reporting period. In addition, credit transactions must be reported under § 33.4 (relating to credit and lay-away sales).

Authority

The provisions of this § 34.3 issued under section 270 of the Tax Reform Code of 1971 (72 P. S. § 7270).

Source

The provisions of this § 34.3 amended through December 27, 1985, effective December 28, 1985, 15 Pa.B. 4484. Immediately preceding text appears at serial pages (40312), (94389) to (94390) and (96397) to (96398).

Notes of Decisions

Failure to file a tax return which includes gross sales and what is believed by a taxpayer to be non-taxable sales may subject that taxpayer to a late filing penalty. *Zimmerman v. Commonwealth*, 449 A.2d 103 (Pa. Cmwlth. 1982).

Cross References

This section cited in 61 Pa. Code § 32.21 (relating to charitable, volunteer firemen's and religious organizations, and nonprofit educational institutions); 61 Pa. Code § 35.2 (relating to interest, additions, penalties, crimes and offenses); 61 Pa. Code § 47.19 (relating to Public Transportation Assistance Fund taxes and fees); 61 Pa. Code § 58.6 (relating to barbers' and beauticians' supplies, materials, tools and equipment); and 61 Pa. Code § 60.16 (relating to Local Sales, Use and Hotel Occupancy Tax).

§ 34.4. Direct payment permit.

(a) *Generally.* Authorization to remit tax under a direct payment permit is limited to taxpayers who acquire tangible personal property or services under circumstances which make it impossible at the time of purchase or other acquisition to predict the manner in which the property or services will be used and, therefore, impossible to determine whether the use of the property or services will be taxable or exempt. Holders of direct payment permits are given the privilege of purchasing property without payment of tax to their suppliers, and later paying the tax directly to the Commonwealth. A tax status determination shall be made and recorded at the time the property or service is actually put to specific use or designated for specific use, or when the proposed use becomes known.

(b) *Requirements.* To receive a Direct Payment Permit, the following requirements shall be met by the taxpayer:

(1) Application for direct payment permit shall be filed with the Department by each taxpayer on a special form provided by the Department.

(2) The taxpayer's business activities shall include, in a substantial amount, purchases or other acquisitions of tangible personal property or services, the use of which is impossible to determine at the time of acquisition.

(3) The taxpayer shall substantiate to the Department the adequacy of its recordkeeping system with respect to the accumulation, recordation, reporting of purchases and remittance of tax incurred.

(4) Taxpayer's business classification shall be of such nature and size that the issuance of a Direct Payment Permit is prerequisite to economical and efficient accounting for tax incurred.

(5) Direct Payment Permit holders are required, as a condition of the issuance of the permission, to provide the Department access to all records maintained to account for the tax due.

(c) *Manner in which direct payment permits is to be used by taxpayer.* The Direct Payment Permit number shall be inserted on a certificate of exemption and issued in the same manner as any certificate of exemption in lieu of the payment of tax at the time of acquisition of tangible personal property or services except

for those transactions enumerated in subsection (e) or except for those cases where the direct payment permit is further restricted at the time of issuance. Reference should be made to § 32.2 (relating to exemption certificates). A tax status determination, and a recordation thereof, must be made with respect to the purchase on the date upon which any of the following shall first occur: the date upon which the actual proposed use is known or designated; the date upon which the use actually occurs. However, it is expected that a tax status determination, and a recordation thereof, shall in all cases be made within 1 year from the date of acquisition of tangible personal property or services. The Department, upon examination of Direct Payment Permit holders, may consider the presumption of taxability to apply to those acquisitions for which tax status determinations have not been properly made and recorded within 1 year from the date of acquisition.

(d) *Revocation of Direct Payment Permit.* The Department has the authority to revoke a Direct Payment Permit at any time for failure to comply with the conditions under which the authority was granted, or for other reasons constituting misuse of the authority.

(1) Within 30 days after receipt by the permit holder of notice of revocation from the Department, or at least 30 days in advance of unilateral discontinuance of direct payment authority by the permit holder, he shall:

(i) Give notice to each supplier with whom he had transacted business under direct payment authority, that subsequent to an appropriate effective date, he will no longer claim exemption from payment of tax at the time of acquisition under direct payment authority.

(ii) Create and maintain records to evidence receipt of the notice by each such supplier for subsequent inspection by the Department.

(iii) Return to the Department the Direct Payment Permit certificate issued by the Department.

(2) However, where a unilateral discontinuance of direct payment authority is a result of the cessation of business activities, corporate reorganization, corporate merger or similar reasons the Department may waive the requirements in this subsection upon written request for the action by the permit holder, provided, however, that the request shall state the specific reasons for which special consideration is required by the permit holder.

(e) *General restrictions upon use of Direct Payment Permit.* A Direct Payment Permit may never be used in conjunction with the following transactions:

(1) Purchase of a motor vehicle, trailer, semitrailer or tractor required to be registered with the Bureau of Motor Vehicles.

(2) Purchase of prepared food or beverages at an eating place.

(3) Purchase of occupancy or accommodations subject to tax under the hotel occupancy tax provisions of the TRC.

Source

The provisions of this § 34.4 corrected June 12, 2003, effective February 29, 1992, 33 Pa.B. 2756. Immediately preceding text appears at serial pages (249840) to (249842).

Cross References

This section cited in 61 Pa. Code § 47.19 (relating to Public Transportation Assistance Fund taxes and fees); 61 Pa. Code § 47.20 (relating to Vehicle Rental Tax); and 61 Pa. Code § 60.16 (relating to Local Sales, Use and Hotel Occupancy Tax).

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