

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

#### [58 PA. CODE CH. 117]

#### Boat Rental Businesses

The Fish and Boat Commission (Commission) by this order amends Chapter 117 (relating to boat rental businesses). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to livery operators.

#### A. *Effective Date*

The amendments will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the amendments, contact John F. Simmons, Director, Bureau of Boating and Education, (717) 657-4538, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

#### C. *Statutory Authority*

The amendments are published under the statutory authority of section 5122 of the code (relating to registration, licenses, permits, plates and statistics).

#### D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations relating to boat rental businesses. The specific purpose of the amendments is described in more detail in the next section.

#### E. *Summary of Changes*

At the July 1998 meeting, the Commission adopted a regulation that requires operators of personal watercraft to obtain and carry a Boating Safety Education Certificate when operating their craft. That regulation also authorized and directed staff to prepare guidelines that provide for the issuance of temporary certificates to operators of rental boats and purchasers of new boats.

To properly manage the issuance of temporary certificates by liveries, the Commission must identify these businesses and provide an enforceable mechanism to provide terms and conditions for the operators of the liveries. The code authorizes the Commission to promulgate special provisions applicable to operators of boat liveries, and the Commission proposed to exercise this authority by requiring most active liveries to obtain an annual livery operator's permit.

A notice of proposed rulemaking was published at 29 Pa.B. 2678 (May 22, 1999), and the Commission subsequently extended the public comment until September 10, 1999. At its meeting on September 27, 1999, the Commission voted to defer action on the proposal until January, 2000, to allow staff an opportunity to redraft the amendments to address public comments, to share the redraft with livery operators, to ask the Commission's Boating Advisory Board to consider the redraft at its fall 1999 meeting and to solicit additional public comments until November 30, 1999.

Taking into account the public comments that were received, staff redrafted the proposal removing all references to an annual livery operator's permit. The Boating Advisory Board (Board), at its fall meeting, considered the redraft of the proposed amendments and recommended adoption by the Commission with a modification to § 117.3(d) to clarify the size of the letters. The Commission subsequently adopted the amendments, as redrafted by its staff and with the change recommended by the Board. These amendments, to read as set forth in Annex A, represent a clarification and simplification of the Commission's prior regulations in Chapter 117.

#### G. *Fiscal Impact*

The amendments will have a slight fiscal impact on the Commonwealth in that the Commission will incur relatively modest costs associated with printing posters and other written educational materials. The Commission estimates that the educational materials to be supplied to the liveries will cost approximately \$1,000 per year. The amendments will impose no new costs on political subdivisions, the private sector or the general public.

#### H. *Public Involvement*

As stated, a notice of proposed rulemaking was published at 29 Pa.B. 2678, and the Commission subsequently extended the public comment until September 10, 1999. At its meeting on September 27, 1999, the Commission voted to defer action on the proposal until January 2000, to allow staff an opportunity to redraft the amendments to address public comments, to share the redraft with livery operators, to ask the Board to consider the redraft at its fall 1999 meeting and to solicit additional public comments until November 30, 1999.

During the various public comment periods, the Commission received 60 comments concerning the proposal. Copies of all public comments have been provided to the Commissioners. The majority of the public comments either opposed the proposed amendments in their entirety (particularly, the annual permit requirement) or objected to their application to nonpowered boat rental businesses. Many of the comments that were received prior to the September 1999 Commission meeting asked the Commission to table consideration of the proposal until the proposed amendments were rewritten to address the public's concerns.

#### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

#### *Order*

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 117, are amended by amending §§ 117.1–117.4 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director 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 immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-90. (1) Boat Fund; (2) Implementing Year 1999-00 is \$1,000; (3) 1st Succeeding Year 2000-01 is \$1,000; 2nd Succeeding Year 2001-02 is \$1,000; 3rd Succeeding Year 2002-03 is \$1,000; 4th Succeeding Year 2003-04 is \$1,000; 5th Succeeding Year 2004-05 is \$1,000; (4) Fiscal Year 1998-99 \$n/a; Fiscal Year 1997-98 \$n/a; Fiscal Year 1996-97 \$n/a; (7) General Government Operations; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 117. BOAT RENTAL BUSINESSES**

**§ 117.1. Definitions.**

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

*Boat livery*—A commercial enterprise (person, partnership, corporation or other legal entity) that rents or leases rental boats to other persons for use on the waters of this Commonwealth.

*Boat rental business*—A boat livery.

*Boat rental transaction*—The exchange of consideration in the form of money, goods or services for the use of a rental boat for a period of time.

*Livery operator*—The owner or lessee of a boat livery and employes and other persons authorized to act on behalf of the boat livery.

*Rental boat*—A vessel propelled by oars, paddles, sail or power, rented or leased in this Commonwealth.

(i) The term includes canoes, kayaks, inflatable boats, rowboats, sailboats, personal watercraft and other motorboats.

(ii) The term does not include inner tubes or similar devices not considered to be boats under this title.

**§ 117.2. Inspections.**

(a) A livery operator shall inspect its rental boats on a regular basis and shall maintain its rental boats in good repair. It is unlawful for a livery operator to rent or use a rental boat that is not in good repair and serviceable condition.

(b) A livery operator shall permit inspection of equipment, facilities and documentation required by this chapter by a waterways conservation officer or other officer authorized to enforce the code.

(c) A livery operator shall correct deficiencies noted by a waterways conservation officer or other officer autho-

rized to enforce the code within 2 weeks of notification. If the deficiency involves equipment, the livery may not use the equipment until the deficiency is corrected.

**§ 117.3. Responsibilities.**

(a) It is unlawful for a livery operator to permit a rental boat to depart from the boat rental business without the equipment required by this title for the type of boat being rented.

(b) A livery operator shall offer to all persons renting boats an orientation/introduction to boating safety and conditions, including a review of the laws and regulations applicable to the type of boat being rented and the waters on which the boat will be used. The Executive Director will provide guidance in the preparation of this orientation. Persons who produce a Boating Safety Education Certificate issued or approved by the Commission under § 91.6 (relating to certificates) are exempt from review.

(c) Boat rental transactions shall be made using a written agreement, specifying the name and address of the lessee, the number of persons in the lessee's party and date of departure.

(d) Livery boats shall be clearly marked on both sides for easy identification of the business. Each boat shall be marked with letters, numbers or decals at least 3 inches tall.

(e) A livery operator shall only rent boats that meet or exceed minimum United States Coast Guard requirements for boats of that type. Rental boats shall be of a design and material suitable for their intended use.

(f) A livery operator shall submit a boating accident report for all reportable accidents involving one or more of the rental boats in accordance with Chapter 101 (relating to boating accidents). This requirement is in addition to the requirement that the operator of the boat file a boating accident report.

(g) It is unlawful for a livery operator to rent or use a boat in excess of its capacity as set forth by the manufacturer for the total number of passengers, total weight or maximum horsepower.

**§ 117.4. Personal watercraft liveries.**

(a) A livery operator that rents personal watercraft shall verify that operators of rented personal watercraft comply with § 109.3 (relating to personal watercraft) and the guidelines on providing education and training issued by the Executive Director. A livery operator that rents personal watercraft also shall verify that operators of rented personal watercraft either possess a permanent Boating Safety Education Certificate or have obtained a temporary Boating Safety Education Certificate from the personal watercraft livery.

(b) A personal watercraft livery shall take measures to oversee the operation of rented personal watercraft by persons who possess only a temporary Boating Safety Education Certificate. These measures shall include one of the following:

(1) The designation of a specified, marked area of operation for rented personal watercraft.

(2) The provision of qualified observers employed by the livery to directly observe the operation of rented personal watercraft. No more than seven personal watercraft may be under the observation of a single observer at any one time. Qualified observers shall be at least 16 years of age, have at least 10 hours of experience operating personal watercraft and have successfully completed the requirements for a permanent Boating Safety Education Certificate. The permanent Boating Safety

Education Certificate shall be in the observer's possession when performing duties under this paragraph.

[Pa.B. Doc. No. 00-525. Filed for public inspection March 24, 2000, 9:00 a.m.]

## Title 61—REVENUE

### DEPARTMENT OF REVENUE

#### [61 PA. CODE CHS. 31 AND 48]

#### Sales and Use Tax; Books, Publications and Advertising Materials

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), by this order amends §§ 31.3 and 31.29 (relating to exclusions; and books, publications and advertising materials) and deletes §§ 48.2 and 48.3 (relating to religious articles; and sacramental wines) to read as set forth in Annex A.

#### *Purpose of Regulation*

The Department is amending § 31.29 to bring it into conformity with recent statutory changes and to reflect the Department's current policy.

Sections 31.3, 48.2 and 48.3 are amended or deleted in accordance with the Pennsylvania Supreme Court decision in *Haller v. Department of Revenue*, 728 A.2d 351 (Pa. 1999), cert. denied, 120 S. Ct. 325 (1999). In *Haller*, the Court found the exclusion in section 204(28) of the TRC (72 P. S. § 7204(28)) in violation of both the United States and Pennsylvania Constitutions. Section 204(28) of the TRC provides a Sales Tax exclusion for the sale at retail or use of religious publications sold by religious groups and Bibles and religious articles.

#### *Explanation of Regulatory Requirements*

In accordance with *Haller*, § 31.3 is amended to delete paragraph (22) relating to religious publications sold by religious groups. The remaining paragraphs in the section are renumbered accordingly.

The Department amended subsection (a) by adding definitions of "advertising insert" and "newspaper" consistent with the statutory changes made in section 204(30) of the TRC. The definition of "direct mail advertising literature or materials" is amended to clarify the Department's interpretation of what constitutes direct mail advertising literature or materials as well as to incorporate the act of April 23, 1998 (P. L. 239, No. 45) (Act 45) statutory change to section 204(35).

Consistent with section 204(50) of the TRC, the Department is adding a definition of "magazine." The Department is also adding the definitions of "advertising literature or material," "circulated among the general public," "mail order catalog" and "subscription" to fill a void that existed in the regulation regarding these areas. Definitions for "publication," "religious publication" and "shopping guide" are also added to subsection (a) because of questions the Department received in these areas.

Subsection (b)(1) provides the scope of the regulation. Subsection (b)(2) provides a listing of items exempt from tax when sold at retail.

In response to *Haller*, §§ 48.2 and 48.3 are deleted.

#### *Affected Parties*

A taxpayer making a sale at retail or use of publications, advertising inserts and advertising literature or materials may be affected by this amendment. In addition, sales of religious publications, Bibles and religious articles will be affected by the *Haller* decision.

#### *Comment and Response Summary*

Notice of proposed rulemaking was published at 27 Pa.B. 6572 (December 20, 1997). This proposal is being adopted with changes to read as set forth in Annex A.

The Department received three comments from the public during the public comment period. The Department also received comments from the Independent Regulatory Review Commission (IRRC) and the Senate Finance Committee. No comments were received from the House Finance Committee.

Amendments to the proposed rulemaking in response to comments are as follows:

(1) IRRC and two of the public commentators questioned the Department's use of the term "vendor" in the definition of "direct mail advertising literature or materials," noting that the term would unduly restrict the application of the direct mail exclusion. The Department agrees with the concern raised and deleted the reference to "vendor" in the definition.

(2) In its comments, IRRC questioned why the Department created a separate definition for "advertising literature or materials" since the proposed definition is language that was formerly a part of the definition of "direct mail advertising literature or materials." IRRC suggested that the Department clarify its intent and revise the definitions to improve their clarity.

Prior to this proposal, the definition of "direct mail advertising literature or materials" attempted to address what was considered advertising literature or materials and when these items were exempt. The Department felt this definition was confusing and did not provide the public with an adequate definition of what constitutes "advertising literature or materials." The Department acknowledges the need for clarity and has therefore made significant organizational changes to both definitions. In response to IRRC and one of the public comments, the Department specifically references reply envelopes and application forms as items included in the definition of "advertising literature or materials."

(3) IRRC and the two public commentators also raised the concern that the limitation of the phrase "to prospective purchasers" within the definition of "direct mail advertising literature or materials" was beyond the scope of the enabling statute. The Department acknowledges the concern and deleted "to prospective purchasers" and added "distributed directly to intended recipients."

(4) IRRC and a public commentator suggested that the use of "corporate" when referring to annual reports in the definition of "advertising literature or materials" and "publication" was unduly restrictive and did not allow for noncorporate entities that publish annual reports. The Department agrees with the concern raised and amended both definitions to reference "financial and corporate annual reports."

(5) In addition to the revision to "publication" referenced in paragraph (4), the Department amended the listing for prospectuses by deleting the term "stock" and adding the term "investment" in response to a public comment.

(6) In response to the statutory changes made by Act 45 relating to the one-time license to use a list of names and mailing addresses for each delivery of direct mail advertising literature or materials, the Department added a new subparagraph (vii) to subsection (b)(2). The language set forth in Act 45 responded to comments from the Senate, IRRC and the public regarding the use of mailing lists in direct mail advertising.

(7) Section 31.29(b)(1) relates to scope and provides the general rule regarding taxation of publications, advertising inserts and advertising literature or materials. In the proposal, paragraph (2) provided a listing of items and examples that are exempt from tax. In its comments, IRRC suggested that the examples in paragraph (2) need to be clarified and restructured in a more logical order. After reviewing the examples at issue, the Department concluded they were not necessary and deleted them from the regulation.

Revisions initiated during the Department's internal review of the regulation are as follows:

(1) The proposed definitions of "magazine" and "text-book" are amended to more closely track the statutory definitions provided in section 204(33) and (50) of the TRC.

(2) Consistent with Act 45, the definition of "mail order catalog" is amended to require distribution through the United States Postal Service.

(3) Stylistic changes were made throughout the regulation for clarity.

Revisions initiated in response to *Haller* are as follows:

(1) Section 31.3 is amended to delete paragraph (22) relating to religious publications sold by religious groups. The remaining paragraphs in the section are renumbered accordingly.

(2) The definition of "religious organization" was deemed unnecessary and is deleted from § 31.29(a). Subsection (b)(1) relating to scope is amended by adding "bibles, religious publications, including religious publications sold by religious organizations" to the items subject to tax when delivered to a location within this Commonwealth. All references to bibles and religious publications are deleted from subsection (b)(2) relating to examples of items exempt from tax. The remaining examples in paragraph (2) are renumbered accordingly.

(3) Sections 48.2 and 48.3 are deleted.

Comments that did not result in an amendment to the regulation are as follows:

IRRC and two of the public commentators questioned limiting the direct mail exclusion to items distributed by the United States Postal Service. Although the Department understands the argument that today's delivery market place provides an array of delivery services, Act 45 specifically references "through the United States Postal Service"; therefore, the Department is unable to expand the scope of the exclusion to include other types of delivery services.

In its comments, IRRC asked the Department to explain whether and when E-mail advertising is taxable or nontaxable, and the statutory basis for its taxation or its exemption if it is not taxed. If there are circumstances when E-mail advertising is subject to tax and other circumstances when it is not taxed, IRRC also requested examples of both situations. E-mail advertising is an example of an enhanced telecommunication service and is not taxable as a telecommunication service. The Depart-

ment has created the term "enhanced telecommunication service" to provide guidance to taxpayers who might be confused about the application of tax to services that involve telecommunication services yet, due to rapid changes in technology, are not what the Department has historically considered to be taxable telecommunications services, see Department's statement of policy, § 60.20 (relating to telecommunications service).

#### *Fiscal Impact*

The Department determined that the amendments will result in a minimal loss of revenue for the Commonwealth.

#### *Paperwork*

The amendments will not generate significant additional paperwork for the public or the Commonwealth.

#### *Effectiveness/Sunset Date*

The amendments will become effective upon final publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final publication. No sunset date has been assigned.

#### *Contact Person*

The contact person for an explanation of the amendments is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 9, 1997, the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 6572 (December 20, 1997) to IRRC and the Chairpersons of the House and Senate Committees on Finance for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department considered the comments received from IRRC, the Committees and the public.

These final-form regulations were approved by the Committees on February 8, 2000, and were approved by IRRC on February 17, 2000, in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745a(e)).

#### *Findings*

The Department finds that:

(1) Public notice of intention to amend the regulations has been 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 Chapters 31 and 48, are amended by amending §§ 31.3 and 31.29 and deleting §§ 48.2 and 48.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(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*.

ROBERT A. JUDGE, Sr.,  
*Secretary*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to the document, see 30 Pa.B. 1320 (March 4, 2000).)

**Fiscal Note:** Fiscal Note 15-353 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 61. REVENUE

#### PART I. DEPARTMENT OF REVENUE

#### Subpart B. GENERAL FUND REVENUES

#### ARTICLE II. SALES AND USE TAX

#### CHAPTER 31. IMPOSITION

#### § 31.3. Exclusions.

The tax does not apply to the following:

\* \* \* \* \*

(21) Sales to or use of tangible personal property or services by: charitable organizations; volunteer firemen's organizations; nonprofit educational institutions; or religious organizations for religious purposes.

(i) This exclusion does not apply to property or services used in an unrelated trade or business carried on by this type of organization or institution. This exclusion does not apply to materials, supplies and equipment used in the construction, reconstruction, remodeling, repair and maintenance of real estate, other than materials and supplies used in routine maintenance and repairs of real estate.

(ii) Equipment used in the routine maintenance and repair of real estate is subject to tax.

(22) Property or services purchased by the United States, the Commonwealth of its political subdivisions, or instrumentalities thereof.

(23) Flags of the United States and the Commonwealth.

(24) The sale at retail or use of rail transportation equipment used in the movement of personalty.

(25) The sale at retail of horses, if at the time of purchase, the seller is directed to ship or deliver the horse to an out-of-State location. The seller shall obtain a bill of lading from the carrier or purchaser, reflecting the out-of-State destination. The seller shall execute and retain a "Certificate of Delivery to Destination Outside of the Commonwealth" to justify the noncollection of sales tax. If a horse is sold and delivered to a domiciled person prior to out-of-State delivery the "Certificate of Delivery to Destination Outside of the Commonwealth" shall have both bills of lading attached.

(26) The sale at retail or use of fish feed purchased by or on behalf of sportsmen's clubs, fish cooperatives or nurseries approved by the Fish and Boat Commission.

(27) The sale at retail or use of supplies and materials to tourist promotion agencies, which receive grants from the Commonwealth, for distribution to the public as promotional material.

(28) The sale or use of brook trout, brown trout or rainbow trout.

(29) The sale at retail or use of buses to be used exclusively for the transportation of children for school purposes.

(30) The sale at retail or use of firewood cut into proper lengths for burning and used for fuel for cooking, hot water production or to heat residential dwellings.

#### § 31.29. Books, publications and advertising materials.

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

*Advertising insert*—Printed advertising material that is circulated with another publication.

*Advertising literature or materials*—Tangible personal property that is intended to promote business interest, create goodwill or engage the attention or interest of a recipient.

(i) The term includes printed matter, brochures, matchbooks, calendars, price lists, video and audio tapes, computer disks, investment prospectuses, financial and corporate annual reports, electoral literature or materials, playing cards, envelopes, address labels, reply envelopes, application forms, pens and similar promotional materials.

(ii) The term does not include proxy materials.

*Circulated among the general public*—Made available for purchase from a retail outlet, such as a newsstand or bookstore, or made available for purchase by subscription. In the case of an organizational publication, the publication will be considered to be circulated among the general public only if there are regular sales of the publication to purchasers other than members of the organization.

*Direct mail advertising literature or materials*—Advertising literature or materials that are distributed directly to intended recipients through the United States Postal Service. The term does not include advertising literature or materials that are distributed in a manner other than by the United States Postal Service.

*Magazine*—A publication that is published at regular intervals not exceeding 3 months, that is circulated among the general public, and contains matters of general interest and reports of current events that are published for the purpose of disseminating information of a public character or is devoted to literature, the sciences, art or some special industry. The term does not include loose leaf information services.

*Mail order catalogue*—A publication that contains a listing of items with descriptive details and includes a mail order form and is distributed through the United States Postal Service.

*Newspaper*—A "legal newspaper" or a publication containing matters of general interest and reports of current events that qualifies as a "newspaper of general circulation" authorized to carry a "legal advertisement" as those terms are defined in 45 Pa.C.S. § 101 (relating to legal notices). The term does not include magazines.

*Publication*—Information transferred by means of tangible media.

(i) Examples include printed material, such as books; financial and corporate annual reports; investment prospectuses; proxy materials; shopping guides; magazines; tabloid newspapers; and printed material that may supplement, explain, amend, revise or otherwise alter, expand or render current a looseleaf information service, or a book or bound volumes of books previously issued, including a supplement or pocket part, whether the additional material is periodically distributed or purchased independently of the basic book to which it is applicable.

(ii) The term also includes video and audio tapes, computer disks and similar items.

*Religious publication*—Religious commentaries and other publications primarily devoted to religious instruction, promotion or information.

*Shopping guide*—A publication primarily devoted to consumer awareness, promotion or information and that is generally provided to a consumer free of charge.

*Subscription*—The advance purchase of a series of issues of a magazine delivered by the publisher to an address designated by the purchaser.

(i) The term includes a series of magazines provided by an organization to its members in consideration of the payment of membership dues, provided the magazine is also sold by subscription or by individual copy to the public.

(ii) The term does not include a purchase of an issue or series of issues of a magazine from a person other than the publisher.

*Textbook*—A new or used book that is required or approved for use in conjunction with an educational

curriculum provided by an institution of learning recognized by the Department of Education.

(b) *Scope.*

(1) Except as otherwise provided in this subsection, the sale at retail or use of publications, advertising inserts, Bibles, religious publications, including religious publications sold by religious organizations and advertising literature or materials is subject to tax when delivered to a location within this Commonwealth.

(2) The sale at retail or use of the following items is exempt from tax:

(i) Mail order catalogs.

(ii) Direct mail advertising literature or materials. See § 32.36 (relating to printing and related businesses).

(iii) Textbooks.

(iv) Newspapers.

(v) Magazines sold by subscription.

(vi) Advertising inserts that become a part of a newspaper or magazine.

(vii) One time license fees paid for the use of a listing of names and mailing addresses for each delivery of direct mail advertising literature or materials.

**CHAPTER 48. EXEMPT ORGANIZATIONS**

**§ 48.2. (Reserved).**

**§ 48.3. (Reserved).**

[Pa.B. Doc. No. 00-526. Filed for public inspection March 24, 2000, 9:00 a.m.]