

REVENUE COMMISSIONER'S REPORT
ON
OUTDOOR ADVERTISING EXCISE TAX REGULATIONS PUBLIC HEARING

October 29, 2019

On June 19, 2019, the Department of Revenue filed with the Department of Records, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, proposed Outdoor Advertising Excise Tax Regulations.

Public notice of the filing of the proposed Regulations was published, and later, on June 28, 2019, one written request for a public hearing was made on behalf of several taxpayers and counsel by Adam M. Koelsch of Chamberlain Hrdlicka. A public hearing was scheduled and held on Tuesday, October 29, 2019 at 1:00 p.m. at the One Parkway Building, located at 1515 Arch Street in Philadelphia, Pennsylvania. Alan C. Kessler and Luke P. McLoughlin of Duane Morris, Stewart M. Weintraub of Chamberlain Hrdlicka, and Leslie M. Gerstein of Klehr Harrison Harvey Branzburg, LLP, on behalf of their respective industry clients, spoke at the hearing.

Mr. Kessler began by reserving his clients' rights with respect to the legality of the Outdoor Advertising Excise Tax. Mr. Kessler then commented on Section 202(a)(1) of the Regulations that allows for an exemption for advertising on motor vehicles, and Section 202(a)(9) that provides for an exclusion of advertising signs within outdoor stadiums, sports venues or entertainment facilities. Mr. Kessler comments that the exemption for advertising within outdoor entertainment venues goes beyond the authority of the ordinance, creates an unfair competitive advantage, and raises the constitutional issue of tax uniformity. The Revenue Commissioner disagrees.

Mr. Weintraub commented that a contradiction exists regarding Section 202's exclusion of advertising on newsstands because the ordinance in Philadelphia Code 19-3402(1) expressly includes newsstands. The Revenue Commissioner disagrees with these comments because Philadelphia Code 9-602(2)(e), 19-3402(1) and Regulations consistently exclude accessory signs on newsstands.

Mr. Kessler continued by commenting that the Section 204(c) of the proposed Regulations creates a distinction between direct and indirect payment of commissions that is unreasonable. Mr. Kessler commented that no rational basis exists for distinguishing between a commission paid to a sign company that then pays an advertising agency and a commission that is paid directly to an advertising agency. Mr. Kessler commented that this distinction raises tax uniformity questions. The Revenue Commissioner disagrees.

Mr. Kessler commented that the inclusion of the word "reasonable" as a standard in Section 206 regarding acceptable itemization of various charges for separate locations is too broad, vague, and gives "unlimited and unbridled discretion" to the Department of Revenue. Mr. Kessler proposed that a definition of "reasonable" be included. The Revenue Commissioner disagrees with these comments.

Mr. Kessler commented that Section 303(a) imposes an overly broad imposition of liability for "any person receiving any part of such fund." The Commissioner agrees in part, and a change is made to narrow the focus of responsible person liability consistent with the language in the ordinance.

Mr. Kessler commented that the language in subsection (b) of this Section is inconsistent with the ordinance in Philadelphia Code 19-3402(2) on the subject of whether the City can impute the seven percent tax on an expected but only partially collected Purchase Price. By imposing the tax on the "first monies in," this requirement conflicts with the ordinance and Section 201(b) of the Regulations that requires no payment of tax when a Purchase Price is only partially collected. Mr. Kessler stated that without waiving this position, he suggested "at most the 7% tax should only be assessed on what the sign company actually receives and not the contract price." The Revenue Commissioner agrees in part and the necessary changes are made accordingly.

Mr. Kessler commented that Section 303(c) goes beyond the Philadelphia Code by allowing the City to collect imputed tax when the Purchase Price has been collected but ~~no~~ tax has been collected. The Revenue Commissioner disagrees with these comments because Philadelphia Code 19-3403(2) imposes liability on an Outdoor Advertising Company for payment of the tax, including interest and penalties, if it fails to collect the tax.

Mr. Weintraub commented that Section 303(a) should include a definition of "responsible person" consistent with Pennsylvania Supreme Court case law. Mr. Weintraub raised the fact that the Wage Tax ordinance under Philadelphia Code 19-1500 includes a definition of "responsible person." The Revenue Commissioner disagrees with these comments because, to the contrary, the ordinance governing the Outdoor Advertising Excise Tax does not similarly include a definition, and therefore these Regulations need not narrow or otherwise alter the scope of individual liability not expressly authorized by statute.

Ms. Gerstein commented that the requirement in Section 401(a) of maintaining books and records that detail daily, weekly, or monthly taxable advertising transactions is not clear because it does not define "transaction." The Revenue Commissioner agrees that this Section can be clearer and the necessary changes are made accordingly.



Frank Breslin CPA, Revenue Commissioner

Date:

