



OFFICE OF ADVOCACY *FACTSHEET*

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Advocacy Urges IRS to Review Excise Tax Proposal and Reduce Burdens on Small Business

On September 9, 2003, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments to the Internal Revenue Service (IRS) on a proposal that expands the applicability of an excise tax on certain communications services. Based on concerns raised by small firms, Advocacy urged the IRS to analyze the rule's impact on small businesses and consider less burdensome alternatives as required by the Regulatory Flexibility Act (RFA). A complete copy of Advocacy's comments is at <http://www.sba.gov/advo/laws/comments/>.

Advocacy enforces the RFA, which requires agencies to give proper consideration to impacts on small businesses during rulemaking.

The IRS proposed rule would change the definition of "toll call service" established by Congress in 1965. This change creates ambiguities regarding how the communications services excise tax will be applied. As a result, the 3 percent excise tax imposed under the law may now apply to telephone services that are currently exempt from the tax. In particular, the IRS proposal puts in question the exemption provided by law to the following industries: news services, broadcasters, common carriers (such as railroads and trucking companies), and telephone and telegraph companies. These industries are predominantly comprised of small businesses.

The IRS did not perform a small business impact analysis, having concluded that the rulemaking was not subject to the RFA, that notice and comment were not required, and that the rule did not impose a collection of information on small entities. Advocacy believes the rule is subject to the RFA because such legislative rules must be issued by notice and comment rulemaking, triggering RFA requirements.

Small firms told Advocacy that ambiguities in the IRS proposal would cause them to seek professional advice—at significant expense—to clarify their potential tax liability, and potentially to review and renegotiate their communications services contracts based on their tax treatment under the changes. These expenses would be in addition to any extra taxes they might be required to pay as a result of the IRS proposed change. They are also concerned about inconsistent enforcement, audits, and penalties, because IRS revenue agents would be judging which communications services were taxable under the new rule without a clear standard.

Based on small business outreach, Advocacy believes the IRS should bring the rulemaking into compliance with the RFA by analyzing the impact of the proposal, considering less burdensome alternatives, and giving small entities opportunity to comment in a meaningful way.

For more information on the Office of Advocacy, visit Advocacy's web page at www.sba.gov/advo or contact Russell Orban at 202-205-6946.