

June 30, 2003

CC:ITA:RU (REG-141097-02)
Room 5226,
Internal Revenue Service
POB 7604 Ben Franklin Station
Washington, DC 20044

re: Notice of Proposed Rulemaking: Excise Taxes; Communications Services, Distance Sensitivity REG-141097-02

June 30th, 2003 Comments and Request to Speak at Hearing

Dear Assistant Deputy Commissioner Mader:

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. The Office of Advocacy is an independent entity within the U.S. Small Business Administration (SBA), so the views expressed by the Office of Advocacy do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires the Office of Advocacy to monitor agency compliance with the RFA.

Black Radio Network, Inc. and their legal representative have just brought to our attention the impact the above named proposed rule would have on small businesses. Their letters give us reason to believe that this proposal will have a significant impact on a substantial number of small entities so it is our intention to review the matter very carefully.

We recognize that our comments come shortly after the deadline but we request that you consider our comments and that we be allowed to participate in the hearing in September. Here is an outline of our concerns that we will supplement with more substantive comments.

We believe the RFA applies because the proposed rule makes changes to a longstanding interpretation of existing law that will significantly increase excise taxes for small businesses. Such a change is inherently legislative rather interpretative in nature and, therefore, the proposed rule is subject to the Administrative Procedures Act.

We believe that an initial regulatory flexibility analysis should have been performed. IRS did not measure the impact of the proposal on small businesses or consider less burdensome alternatives, which are basic requirements for regulating under the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA), Executive Order 12866 and Executive Order 13272.

Thank you for your assistance in this matter.

Respectfully,

Russell Orban
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