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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE



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JUNE 13, 2005

6:16 AM

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Mary S. Wyatte
Acting Executive Director
Independent Regulatory
Review Commission
333 Market Street, 14th Fl.
Harrisburg, PA 17101

Dear Ms. Wyatte:

Enclosed please find the Department of Revenue's draft final form regulation relating to Prebuilt Housing. The language set forth in this draft regulation amends the proposal that was published at 34 Pa.B. 6245 (November 20, 2004).

We would appreciate it if you could convey your comments to this office by Wednesday, July 13, 2005. Comments received by this date will be considered in the drafting of the final form regulation.

Thank you for your anticipated input and assistance in promulgating this regulation.

Sincerely,

A handwritten signature in black ink that reads 'Douglas A. Berguson'. The signature is written in a cursive style with a large initial 'D'.

Douglas A. Berguson
Senior Assistant Counsel

Enclosure

DAB:mlk

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p>PA Department of Revenue (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>15-426</u></p> <p>DATE OF ADOPT <u>DRAFT</u></p> <p>BY _____ Gregory C. Fajt TITLE <u>Secretary of Revenue</u> (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY _____</p> <p>DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel-Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General Approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL RULEMAKING

DEPARTMENT OF REVENUE

Sales and Use Tax

61 Pa. Code §§ 31.30, 31.33, 46.8 and 60.18

Prebuilt Housing

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PREAMBLE

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), proposes amendments to 61 Pa. Code, Chapter 31. Imposition, by deleting section 31.30 (relating to house trailers and mobile homes); and adding section 31.33 (relating to prebuilt housing), Chapter 46. Construction Contractors, by deleting § 46.8 (relating to industrialized housing) and Chapter 60. Sales and Use Tax Pronouncements - Statements of Policy, by deleting § 60.18 (relating to sale and installation of prefabricated housing) to read as set forth in Annex A.

Purpose of Regulation

The regulation codifies legislative changes relating to prebuilt housing that were set forth in Act 23-2000 (72 P.S. §§ 7201(g)(8), (vv) - (zz), 7202(f) and 7204(60)).

Explanation of Regulatory Requirements

The Department is adding § 31.33 to set forth the new rules relating to prebuilt housing. Definitions for use in the section are set forth in subsection (a). Imposition rules for sales by a builder and trade-ins are set forth in subsection (b).

Consistent with 72 P.S. § 7202(f), which provides that a manufacturer may elect to precollect the tax from the builder at the time of sale to the builder, subsection (c) describes the

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rules which govern such pre-collection. Subsection (d) explains that no exemptions apply to the sale of prebuilt housing.

Subsection (e) explains that the provisions of this regulation do not apply to the sale and installation of prefabricated buildings, components and accessories which do not qualify as prebuilt housing and are governed by the provisions of § 31.12 (relating to imposition). Similarly, subsection (f) explains that the regulation does not apply to the repair and maintenance of prebuilt housing and once again, the rules of § 31.12 apply.

In addition, the Department has made editorial changes to several sentences for proper grammar usage. Upon adoption of § 31.33, provisions inconsistent with this section (§§ 31.30, 46.8 and 60.18) will be deleted from the Pennsylvania Code.

Affected Parties

Manufacturers, builders and purchasers of prebuilt housing may be affected by the regulation.

Comment and Response Summary

Notice of proposed rulemaking was published at 34 Pa.B. 6245 (November 20, 2004). This proposal is being adopted with changes to read as set forth in Annex A.

The Department received no comments from the public during the public comment period. No comments were received from either the House Finance Committee or the Senate Finance Committee. The

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only comments received on the proposed rulemaking were from the Independent Regulatory Review Commission (IRRC).

Explanations and amendments to the proposed rulemaking in response to IRRC's comments are as follows:

(1) Subsection 31.33(a) Definitions - IRRC requested the following six definitions be revised to mirror the statutory definitions, replace the regulatory definitions with citations to the statute, or explain the need to vary from the statute:

Prebuilt housing - The Department enhanced the statutory definition provided at 72 P.S. § 7201 to provide taxpayers with additional information. Therefore, § 31.33(a)(iii) was added to the statutory definition for clarification and remains in the final form regulation.

Prebuilt housing builder - The Department clarified the statutory definition provided at 72 P.S. § 7201 by inserting "including a prebuilt housing manufacturer" into the definition. The Department believes that the taxpayers will benefit from this enhanced definition and therefore, the same definition remains in the final form regulation.

Prebuilt housing purchaser - The Department agrees with IRRC's concern and has amended the definition by deleting the entire second sentence. This sentence has now been correctly relocated to the definition of prebuilt housing sale.

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Prebuilt housing sale - The Department agrees with IRRC's concern and has inserted the following sentence which previously appeared in the definition of prebuilt housing purchaser: "Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes." This definition mirrors the statutory definition at 72 P.S. § 7201 and should appear in the final form regulation for the convenience of taxpayers.

Purchase price - The Tax Reform Code defines the "purchase price" of prebuilt housing to be sixty percent of the manufacturer's selling prices (72 P.S. § 7201 (g)(8)). However, the Code (72 P.S. § 7201 (g)(8)) provides that a manufacturer has the option of precollecting the sales tax on that sixty percent of the selling price, or one hundred percent of the actual cost of the supplies and materials used in the manufacture of the housing. The Code does not require a manufacturer to choose only one of those options, to the permanent exclusion of the other, as the regulation does. This restriction was added to the regulation at the request of the Department's Bureau of Audits. Audits determined that if a manufacturer was allowed to choose a different method of collecting tax for each customer, it would make auditing that manufacturer's books almost impossible. The Department firmly believes taxpayers will benefit from the

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definition and therefore, the same definition remains in the final form regulation.

Used prebuilt housing - The Department clarified the statutory definition at 72 P.S. § 7201 by inserting "prebuilt housing" to modify the word "sale," as the defined term is 'prebuilt housing sale.' The enhanced definition has not been changed in the final form regulation because the Department believes it is necessary to provide clarity to the taxpayers.

(2) Subsection 31.33(c) Prebuilt housing manufacturer's election to collect tax.

Paragraph (2) - IRRC requested an explanation of the rationale for and need to restrict the method to collect tax under this circumstance. The statute at § 7201(g)(8) provides the option only when the manufacturer precollects tax from a builder. The statute does not provide the same option when a manufacturer that is acting as a builder pays tax to the Department at the time of sales to purchasers.

Paragraph (3) - IRRC requested an explanation of how a manufacturer would request "prior authorization" to alternate between two methods of calculation and what criteria the manufacturer would have to satisfy. The Department agrees this needs clarification and has consulted with the Director at the Bureau of Audits. At the request of the Bureau of Audits to provide efficient auditing procedures, the proposed regulation

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language "prior authorization" has been replaced in the final form regulation with "written notification to the Director of the Department's Bureau of Audits."

(3) Miscellaneous Clarity Issues -

(a) In subsection 31.33(a), IRRC stated the definition of "prebuilt housing manufacturer" lacks clarity because the definition uses the same words as the term being defined. The Department agrees and has deleted the definition in the final form regulation.

(b) IRRC commented that the opening sentence of Paragraph 31.33(c)(1) uses twice the phrase "the law." The Department acknowledges the concern and replaced "the law" with the appropriate citation to the statute at the beginning of the sentence.

(c) IRRC commented that the opening sentence of Subsection 31.33(e) discusses the changes in the law and is not needed. The Department agrees with IRRC's comment and has deleted the referenced sentence that discusses the changes in the law.

(d) A broader cross reference was requested by IRRC in Subsections 31.33(e) and (f) instead of the language "governed by § 31.11" which is a reference to a definition section. The Department agrees with the concern and changed the cross reference to § 31.12 (relating to imposition of tax).

Fiscal Impact

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The Department has determined that the proposed amendment will have minimal fiscal impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the amendments is Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 4, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 6245 (November 20, 2004) to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. No comments were received from the public. Therefore, compliance with section 5(c) of the Regulatory Review Act, which

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requires the Department to provide IRRC and the Committees with copies of all comments received, was not required.

In preparing these final-form regulations, the Department considered the comments received from IRRC. There were no comments received on the proposed rulemaking from the Committees or the public.

These final-form regulations were (deemed) approved by the Committees on _____ and were (deemed) approved by IRRC on _____, in accordance with section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)).

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been duly 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, 46, and 60, are amended by adding §§ 31.33 and deleting §31.30, § 46.8, and § 60.18 to read as set forth in Annex A.

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(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 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.

GREGORY C. FAJT
SECRETARY OF REVENUE

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CONTINUATION SHEET
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ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B.
General Fund Revenues, Article II. Sales and Use Tax, Chapter
31. Imposition.

§ 31.30. Reserved.

§ 31.33. Prebuilt housing.

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

Prebuilt housing - Prebuilt housing which qualifies either
as:

(i) Manufactured housing, including mobile homes, which
bears the label required by and referred to in the Manufactured
Housing Construction and Safety Standards Authorization Act (35
P.S. §§ 1656.1 - 1656.9).

(ii) Industrialized housing as defined in the
Industrialized Housing Act (35 P.S. §§ 1651.1 - 1651.12).

(iii) The term includes all components or accessories
transferred at the time of the sale of the prebuilt housing.

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Prebuilt housing builder - A person, including a prebuilt housing manufacturer, ~~who~~ THAT makes a prebuilt housing sale to a prebuilt housing purchaser.

~~Prebuilt housing manufacturer - A manufacturer of prebuilt housing.~~

Prebuilt housing manufacturer's selling price -

(i) The total value of anything paid or delivered or promised to be paid or delivered, whether it be money or otherwise, by a prebuilt housing builder to a prebuilt housing manufacturer, for prebuilt housing, add-ons, insurance, seals, deposits, dues, optional equipment and similar charges whether or not such charges are separately stated on one or more purchase agreements.

(ii) The prebuilt housing manufacturer's selling price does not include amounts representing delivery charges, erection charges or set-up fees.

Prebuilt housing purchaser - A person who purchases prebuilt housing in a transaction and who intends to occupy the unit for residential purposes in this Commonwealth. ~~Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.~~

Editor's note: Sentence moved to the next definition.

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Prebuilt housing sale - A sale of prebuilt housing to a prebuilt housing purchaser, including a sale to a landlord, without regard to whether the person making the sale is responsible for installing the prebuilt housing or whether the prebuilt housing becomes real estate upon installation. Temporary installation by a prebuilt housing builder for display purposes of a unit held for resale shall not be considered occupancy for residential purposes.

Purchase price - The purchase price of prebuilt housing shall be 60% of the prebuilt housing manufacturer's selling price. A prebuilt housing manufacturer of prebuilt housing ~~who~~ THAT elects to precollect tax from the prebuilt housing builder shall have the option to collect tax on 60% of the prebuilt housing manufacturer's selling price or on 100% of the prebuilt housing manufacturer's cost of the materials and equipment incorporated into the prebuilt housing.

Used prebuilt housing - Prebuilt housing that was previously subject to a prebuilt housing sale to a prebuilt housing purchaser.

(b) Imposition of tax.

(1) Prebuilt housing builder sales. A prebuilt housing builder is required to pay tax upon his purchase price of prebuilt housing sold to a prebuilt housing purchaser within the Commonwealth, if the prebuilt housing builder has not paid

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the applicable tax to the prebuilt housing manufacturer. The prebuilt housing builder is required to pay tax without regard to whether the prebuilt housing is sold as tangible personal property or as real estate. The prebuilt housing builder's written contract with the prebuilt housing purchaser should clearly indicate that the prebuilt housing builder paid applicable tax.

(2) Trade-in. The value of a trade-in by a prebuilt housing purchaser to a prebuilt housing builder in connection with the purchase of housing may not be used to reduce the purchase price upon which the prebuilt housing builder is required to pay tax.

(3) Used prebuilt housing. Sales tax is not imposed upon the purchase price of used prebuilt housing.

(c) Prebuilt housing manufacturer's election to collect tax.

(1) Although ~~the law~~ 72 P.S. § 7202(f) requires the prebuilt housing builder to pay tax directly to the Department, the law also provides that the prebuilt housing manufacturer has the option to collect tax from the prebuilt housing builder at the time of the purchase of the prebuilt housing by the prebuilt housing builder from the prebuilt housing manufacturer. If the prebuilt housing manufacturer elects to collect tax, the

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prebuilt housing manufacturer is required to use either of the following to establish the purchase price:

(A) Sixty percent of the prebuilt housing manufacturer's selling price.

(B) One hundred percent of the prebuilt housing manufacturer's cost of materials and equipment incorporated into or USED as a component of the housing.

(2) If a prebuilt housing manufacturer is also acting as a prebuilt housing builder, the purchase price of the prebuilt housing shall be 60% of the prebuilt housing manufacturer's selling price.

(3) A prebuilt housing manufacturer is not permitted to alternate between these two methods of calculation without prior ~~authorization from the Department~~ WRITTEN NOTIFICATION TO THE DIRECTOR OF THE DEPARTMENT'S BUREAU OF AUDITS.

(d) Exemptions. No exemptions apply to the sale of prebuilt housing. Prebuilt housing manufacturers are therefore not required to obtain exemption certificates from prebuilt housing builders. Unless the prebuilt housing manufacturer elects to precollect the tax, the prebuilt housing builder is obligated to remit tax to the Commonwealth on its sale of prebuilt housing to a prebuilt housing purchaser.

(e) Prefabricated buildings and components which do not qualify as prebuilt housing. ~~The changes in the law as outlined~~

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~~in this section relate only to prebuilt housing as that term is defined. Therefore, t~~ The sale and installation of prefabricated buildings, components and accessories which do not, qualify as prebuilt housing are governed by the provisions of § 31.142 (relating to ~~definitions~~ IMPOSITION OF TAX). Sales of prefabricated buildings, components and accessories, which do not include installation, qualify as sales of tangible personal property. Examples include construction site trailers, travel trailers and modular space units.

(f) Repair and maintenance of prebuilt housing. This section relates only to prebuilt housing sales and does not apply to the repair and maintenance of prebuilt housing. The application of tax upon charges made for the repair and maintenance of prebuilt housing is governed by the provisions of § 31.142 (RELATING TO THE IMPOSITION OF TAX).

Chapter 46. Construction Contractors.

§ 46.8. Reserved.

Chapter 60. Sales and Use Tax Pronouncements - Statements of Policy.

§ 60.18. Reserved.

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