

10/7/98

Regulatory Analysis Form

This space for use by IRRC
99 JUN 20 AM 11:29

(1) Agency

Revenue

(2) I.D. Number (Governor's Office Use)

15-407

TELETYPE UNIT
BUSH
IRRC Number: 2040

(3) Short Title

Lawn Care Services

(4) PA Code Cite

61 Pa. Code §§ 55.6 and 60.2

(5) Agency Contacts & Telephone Numbers

Primary Contact: Anita M. Doucette (717) 787-1382
Secondary Contact: Douglas A. Berguson (717) 787-1382

(6) Type of Rulemaking (check one)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
 No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Section 55.6(a) defines the terms "lawn" and "lawn care service" for use in § 55.6. Subsection (b) provides that the sale at retail or use of lawn care services performed in this Commonwealth is subject to tax. Lawn care services became taxable October 1, 1991. Subsection (c) provides examples of taxable lawn care services. Subsection (d) provides examples of services that are not taxable lawn care services. Subsection (e) provides that tax shall be imposed on the total charge for lawn care services. The failure to state charges for lawn care services separately from other nontaxable charges on the invoice requires the charging of tax on the total invoice amount. Subsection (f) sets forth exclusions.

With the adoption of the proposal at § 55.6, the Department will be deleting the pronouncement set forth at § 60.2.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Statutory authority for the regulation is contained in section 270 of the TRC (72 P.S. § 7270).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is not mandated by federal or state law, court order, or federal regulation.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This regulation will codify the Department's interpretation of 72 P.S. § 7201(k)(17), (o)(15) and (jj) as a regulation at § 55.6. Currently, the Department's interpretation is set forth as a pronouncement and codified at § 60.2 (relating to lawn care services).

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Taxpayers and tax practitioners will benefit from the Department setting forth its interpretation of 72 P.S. § 7201(k)(17), (o)(15) and (jj) as a regulation.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No parties should be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Providers of lawn care services will be required to comply with the regulation. The number of providers is indeterminable.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A copy of the regulation was forwarded to the Pennsylvania Bar Association; the Pennsylvania Institute of Certified Public Accountants and the Pennsylvania Chamber of Business and Industry. The regulation will be listed in the Department's next Agenda of Regulations and will be forwarded to interested parties upon request.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Compliance with the regulation could result in a savings to the regulated community by reducing the possibility of assessment of penalty and interest. No legal, accounting or consulting procedures are required by the regulation.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

This regulation does not increase costs or savings to local governments. No legal, accounting or consultant procedures are required by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

This regulation does not increase costs or savings to state government. No legal, accounting or consultant procedures are required by the regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$1.1 Million					

(20a) Explain how the cost estimates listed above were derived.

Excluding shrubbery trimming from tax when not performed in conjunction with a taxable lawn care service will result in an estimated revenue loss of approximately \$1 million for fiscal year 1998-99. Excluding leaf raking from the definition of a lawn care service will result in an estimated revenue loss of approximately \$100,000 for fiscal year 1998-99.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department exercised its nonregulatory alternative with the use of a pronouncement to set forth its interpretation of 72 P.S. § 7201(k)(17), (o)(15) and (jj) in 1993.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See response in (22) above.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

This regulation relates to the imposition of sales and use tax, there currently is no comparative Federal tax.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation should not put Pennsylvania at a competitive disadvantage with neighboring states. Generally, Ohio and West Virginia are consistent with Pennsylvania's taxation of lawn care services. Ohio's statute does provide a unique provision in that it excludes from the definition of "landscaping and lawn care service," services provided by a person who has less than \$5,000 in sales of lawn care and landscaping services during the calendar year.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The regulation will be presented to the House and Senate Finance Committees and the Independent Regulatory Review Commission. The Committees may hold public hearings or informational meetings to consider the regulation. The date, time and location of such hearings or meetings can be ascertained by contacting the Committees. The Commission may hold informational meetings to consider the regulation. The date, time and location of such meetings can be ascertained by contacting the Commission.

At the same time the regulation is presented to the Committees and the Commission, the regulation will be published in the Pennsylvania Bulletin and the public will be invited to comment.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation does not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special groups are affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This regulation will be effective upon final publication in the Pennsylvania Bulletin. Compliance with the regulation is required upon publication. There are no permits, licenses or other approvals required by this regulation.

(31) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED
99 JUN 30 AM 11:29
LEGISLATIVE COUNSEL

10/7/98

2040

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: [Signature]
(DEPUTY ATTORNEY GENERAL)

MAY 25 1999.

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue
(Agency)

Document/Fiscal Note No. 15-407

Date of Adoption: [Signature]

By: Robert A. Judge, Sr.
Robert A. Judge, Sr.
Secretary of Revenue

Title: _____
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

By: [Signature]

2/24/98
Date of Approval

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Sales and Use Tax

61 Pa. Code §§ 55.6 and 60.2

Lawn Care Services

PREAMBLE

Notice is hereby given that the Department of Revenue, under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 7270), proposes amendments to 61 Pa. Code by amending Chapter 55. Services, by adding section 55.6 (relating to lawn care services) and amending Chapter 60. Sales and Use Tax Pronouncements - Statements of Policy, by deleting section 60.2 (relating to lawn care services) as set forth in Annex A.

Purpose of Regulation

Currently, the Department's interpretation of Act 22-1991 (72 P.S. §§ 7201(k)(17), (o)(15) and (jj)) relating to lawn care services is set forth as a pronouncement and codified at 61 Pa. Code § 60.2. The Department has concluded that the issues relating to lawn care services have evolved to a point where a regulation can be proposed. With the adoption of the proposal at § 55.6, the Department will be deleting the pronouncement set forth at § 60.2.

In 1996, the Department prepared a similar proposal. The Department received numerous comments on this prior proposal concerning the definition of "lawn" and the application of the tax to trimming shrubbery. In addition, there were indications that the authorizing statute might be amended by the legislature. Consequently, the Department decided in 1997 to withdraw the final form regulation to provide further time to study the revision of the regulation. In this present proposal, the Department has addressed the issues raised in the prior proposed rulemaking process.

Explanation of Regulatory Requirements

Section 55.6(a) defines the terms "lawn" and "lawn care service" for use in § 55.6. Subsection (b) provides that the sale at retail or use of lawn care services performed in this Commonwealth is subject to tax. Lawn care services became taxable October 1, 1991.

Subsection (c) provides examples of taxable lawn care services. Subsection (d) provides examples of services that are not taxable lawn care services. Subsection (e) provides that tax shall be imposed on the total charge for lawn care services. The failure to state charges for lawn care services separately from other nontaxable charges on the invoice requires the charging of tax on the total invoice amount.

Subsection (f) sets forth exclusions. Paragraph (1) provides an exemption if the lawn care services are purchased by qualified institutions of purely public charity, charitable organizations,

volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business. The services are also excluded if purchased by the Federal government or its instrumentalities; or the Commonwealth or its instrumentalities or subdivisions, including public school districts. Paragraph (2) provides that the vendor of lawn care services may claim the resale exemption upon its purchase of tangible personal property that is transferred to the purchaser or a third party in the performance of the lawn care services. This subsection also provides examples of property that may be purchased exempt for resale when transferred to the purchaser in the performance of lawn care services and examples of property that is taxable when used in the performance of lawn care services.

Affected Parties

Providers of lawn care services will be affected by the regulation.

Fiscal Impact

The Department of Revenue has determined that the change in policy from the Department's statement of policy (§ 60.2) relating to the exclusion of shrubbery trimming from tax when not performed in conjunction with a taxable lawn care service and the exclusion of leaf raking from the definition of a lawn care service as set forth in this proposed regulation will result in an estimated revenue loss of approximately \$1.1 million for fiscal year 1998-99.

Paperwork

The proposed regulation will require no 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

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed regulation to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. § 745.1-745.15), the agency submitted a copy of this proposed regulation on June 30, 1999 to the Independent Regulatory Review Commission and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the regulation, the agency has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the agency by 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review of objections raised, prior to final publication of the regulation, by the agency, the General Assembly and the Governor.

09/15/98

CONTINUATION SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Article II.
Sales and Use Tax, Chapter 55. Services.

§ 55.6. Lawn Care Services.

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

Lawn - Any area maintained with grass adjacent to a building. The term does not include athletic fields, cemeteries, golf courses, fields, parks and public utility or highway right-of-ways.

Lawn care service - Providing services for lawn upkeep including fertilizing, mowing or performing other lawn treatment services.

(b) Scope. The sale at retail or use of lawn care services performed in this Commonwealth is subject to tax. Lawn care services became taxable October 1, 1991.

(c) Examples of taxable services. The following are examples of taxable lawn care services:

- (1) Fertilizing lawns.
- (2) Mowing, trimming, cutting or edging lawns.
- (3) Dethatching lawns.

(4) Applying herbicides, insecticides or fungicides to lawns.

(5) Raking grass on lawns.

(6) Applying treatments for weed, pest, insect or disease control to lawns.

(7) Watering lawns.

(8) Applying lime to lawns.

(9) Aerating lawns.

(10) Providing lawn evaluation, consultation or soil testing services on lawns, if purchased in conjunction with other lawn care services, regardless of whether the costs of the lawn evaluation, consultation or soil testing services are separately stated on the invoice.

(11) Overseeding, sodding or grass plugging of lawns.

(12) Trimming or pruning shrubbery when performed in conjunction with other lawn care services.

(d) Examples of nontaxable services. The following are examples of services which are not taxable lawn care services:

(1) Seeding, sodding or grass plugging to establish a new lawn.

(2) Trimming, pruning or fertilizing trees.

(3) Planting or removing shrubbery or trees.

(4) Providing lawn evaluation, consultation or soil testing services, if not purchased in conjunction with other lawn care services.

(5) Designing lawns or landscapes.

(6) Applying herbicides or fungicides to shrubbery, trees, flowers or vegetables.

(7) Maintaining shrubbery, flower or vegetable beds, such as by mulching, tilling, weeding or fertilizing.

(e) Purchase Price. Tax shall be imposed on the total charge for lawn care services. The failure to separately state charges for lawn care services from other nontaxable charges on the invoice requires the charging of tax on the total invoice amount.

(f) Exclusions.

(1) Lawn care services are exempt if purchased by qualified institutions of purely public charity, charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, except if used in an unrelated trade or business; the Federal government or its instrumentalities; or the Commonwealth, its instrumentalities or subdivisions, including public school districts. The manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusions do not apply.

(2) The vendor of lawn care services may claim the resale exemption upon its purchase of tangible personal property that is transferred to the purchaser or a third party in the performance of the lawn care services. The vendor may also

purchase lawn care services from another provider and subsequently resell the services to its customer. The vendor may not claim the resale exemption upon its purchase of administrative supplies or the purchase of other taxable services that it may use in the performance of its lawn care services.

(i) The following are examples of property that may be purchased exempt for resale when transferred to the purchaser in the performance of lawn care services:

(A) Herbicides, insecticides, fungicides or other chemicals that are applied to lawns.

(B) Grass seed, sod, grass plugs, straw, fertilizers or lime applied to lawns.

(ii) The following are examples of property that are taxable when used in the performance of lawn care services:

(A) Mowers; edgers; or pruning, dethatching, aerating or mulching equipment, including motor oil and gasoline used in such equipment.

(B) Rakes, shovels or hoes.

(C) Spray applicators.

(D) Testing kits.

(E) Lawn sweepers.

(F) Other tangible personal property and services used in connection with the performance of lawn care services such as invoices, sales receipts, contracts, estimate sheets, confirmations and other similar items.

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

§ 60.2. Reserved.

04/22/99

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 15-407
SUBJECT: Lawn Care Services
AGENCY: Department of Revenue

99 JUN 30 11:29

RECEIVED
PETER J. HANCOCK
COMMISSION

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. _____ With Revisions
b. _____ Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/30/99	<u>Patricia Macart</u>	HOUSE COMMITTEE ON FINANCE
6/30/99	<u>Patricia A. Carnathan</u>	SENATE COMMITTEE ON FINANCE
6/30/99	<u>Ken C. Barron</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
6/30/99	<u>Wayne Carver</u>	LEGISLATIVE REFERENCE BUREAU

June 3, 1999