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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 17, 1999

Honorable Robert A. Judge, Sr., Secretary
Department of Revenue
Strawberry Square, 11th Floor
Harrisburg, PA 17128

Re: IRRC Regulation #15-407 (#2040)
Department of Revenue
Sales and Use Tax; Lawn Care Services

Dear Secretary Judge:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Anita Doucette
Douglas Berguson
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF REVENUE REGULATION NO. 15-407

SALES AND USE TAX; LAWN CARE SERVICES

SEPTEMBER 17, 1999

We have reviewed this proposed regulation from the Department of Revenue (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to consistency with the statute and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Subsection 55.6(a) Definitions. – Consistency with the statute and Clarity.

"Lawn"

The regulation's definition of "lawn" states that "the term does not include athletic fields, cemeteries, golf courses, fields, parks and public utility or highway right-of-ways." Mowing and other upkeep services performed on areas in the list of exclusions are not subject to tax as "lawn care services." However, the difference between a "lawn" and a "field" is unclear. What distinguishes a "lawn" from a "field"?

"Lawn care service"

The definition of "lawn care service" is inconsistent with the statutory definition. The Department should delete the text of the definition and replace it with a reference to the statutory definition at Section 201(jj) of the Tax Reform Code (TRC) (72 P.S. § 7201(jj)).

"Shrubbery" and "tree"

"Trimming or pruning shrubbery when performed in conjunction with other lawn care services" is listed as a taxable service in Subsection (c)(12). However, trimming or pruning trees is listed as a nontaxable service in Subsection (d)(2). There is uncertainty over the difference between shrubbery and trees. The Department should define these terms to distinguish the difference between the two.

2. Subsection 55.6(b) Scope. – Clarity.

The last sentence of Subsection (b) states services became taxable October 1, 1991. The purpose of this date reference is unclear. The Department should explain its purpose or delete this sentence from the regulation.

3. Subsection 55.6(c) Examples of taxable services – Clarity.

Subsection (c)(11) states that “overseeding, sodding or grass plugging of lawns” are taxable services. In contrast, Subsection (d)(1) indicates that “seeding, sodding or grass plugging to establish a new lawn” are nontaxable services. The word “existing” should be inserted before the word “lawn” in Subsection (c)(11) to clearly distinguish these services from the services to start a new lawn described in Subsection (d)(1).

4. Subsection 55.6(f) Exclusions. – Clarity.

There are two concerns with Subsection (f). First, it is entitled “exclusions” but its text uses the terms “exemption” and “exclusion.” It is our understanding that “exclusions” are those items or services that are not taxable by statute and the burden of proof to establish the contrary is on the Department. In contrast, “exemptions” are items or services that may be subject to tax under certain circumstances and the burden of proof is on the taxpayer claiming the exemption. If we are correct, clarity would be improved if there were a separate subsection for “exemptions” to distinguish them from “exclusions.”

The second concern is with the last sentence of Subsection (f)(1). It states: “[T]he manufacturing, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exclusions do not apply.” It is unclear which “exclusions” are being referred to and how comprehensive they are. We understand these are statutory exclusions found in the TRC definitions of “sale at retail” and “use” (at 72 P.S. §§ 7201(k)(8) and 7201(o)(4), respectively). The last sentence of Subsection (f)(1) should reference these statutory provisions and state that the exclusions do not apply to the tax on lawn care services.