

4/16/04

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Revenue		2004 NOV -4 AM 11:45 INDEPENDENT REGULATORY REVIEW COMMISSION
(2) I.D. Number (Governor's Office Use) 15-426		IRRC Number: 2446
(3) Short Title Prebuilt Housing		
(4) PA Code Cite 61 Pa. Code §§ 31.30, 31.33, 46.8 and 60.18	(5) Agency Contacts & Telephone Numbers Primary Contact: Anita M. Doucette (717) 346-4637 Secondary Contact: Douglas A. Berguson (717) 346-4633	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. 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)). Reference should be made to the preamble for a detailed description of the provision.		
(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).		

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(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?

The regulation is necessary to bring Title 61 into conformity with recent legislative changes regarding prebuilt housing.

(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 having the Department's regulations reflect recent statutory changes.

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(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.)

Manufacturers, builders and purchasers of prebuilt housing will be required to comply with the regulation. The approximate number of people required to comply 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 Accounts, the Pennsylvania Society of Public Accountants, the Pennsylvania Chamber of Business and Industry and stakeholders. The regulation is listed in the Department's Agenda of Regulations published at 34 Pa.B. 758 (February 7, 2004) 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.

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(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.

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(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	N/A					

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

This regulation does not increase costs or savings to state or local governments. Compliance with this regulation may result in an increase in savings to the regulated community by reducing the possibility of assessment of penalty and interest. This regulation does not increase costs to the regulated community.

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.

There are no adverse effects or costs associated with this regulation. This regulation could facilitate compliance and thereby increase savings to the regulated community by reducing the possibility of assessment of penalty and interest.

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

There are no nonregulatory alternatives associated with the regulation.

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

There are no alternative regulatory schemes associated with the regulation.

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(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?

The taxation of prebuilt housing in this Commonwealth is consistent with the taxation of such housing in surrounding states. The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(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 agency.

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

The Department has not scheduled any public hearings or informational meetings to discuss the regulation.

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(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 the 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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

4/16/04

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INDEPENDENT REGULATORY
DO NOT WRITE IN THIS SPACE

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

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

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

R.A. Skullo

By: _____
(Deputy Attorney General)

OCT 27 2004

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-426

DATE OF ADOPTION _____

BY *G.C. Fajt*

TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

BY

Tanya C. Skullo

10.7.04

DATE OF APPROVAL

Asst.
(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 §§ 31.30, 31.33, 46.8 and 60.18

Prebuilt Housing

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

A new § 31.33 is proposed to be added 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 a builder for sales 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

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 § 31.11 (relating to definitions). Similarly, subsection (f) explains that the regulation does not apply to the repair and maintenance of prebuilt housing and once again, the rules of § 31.11 apply.

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.

Fiscal Impact

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

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Mary R. Sprunk, 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 (71 P.S. § 745.5(a)), on *November 4, 2004* the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

GREGORY C. FAJT
SECRETARY OF REVENUE

03/23/04

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, Subpart B.
General Fund Revenues, Article II. Sales and Use Tax, Chapter
31. Imposition.

§ 31.30. Reserved.

(Editor's Note: The Department is proposing to add § 31.33, to ease readability, the text is not underscored.)

§ 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.

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

Prebuilt housing manufacturer - A manufacturer of prebuilt housing.

Prebuilt housing manufacturer's selling price - 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. 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.

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.

Purchase price - The purchase price of prebuilt housing shall be 60% of the prebuilt housing manufacturer's selling price; provided, however, that a prebuilt housing manufacturer of prebuilt housing who 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 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 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 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 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.

(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 in this section relate only to prebuilt housing as that term is defined. Therefore, the sale and installation of prefabricated buildings, components and accessories which do not qualify as prebuilt housing are governed by the provisions of § 31.11

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(relating to definitions). 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 § 31.11.

Chapter 46. Construction Contractors.

§ 46.8. Reserved.

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

§ 60.18. Reserved.

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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 15-426
 SUBJECT: Sales & Use Tax - Prebuilt Housing
 AGENCY: DEPARTMENT OF REVENUE

TYPE OF REGULATION

- 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

INDEPENDENT REGULATORY
REVIEW COMMISSION

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11/4	<i>Ray O'Brien</i>	HOUSE COMMITTEE ON FINANCE
11/4	<i>Pat McCall</i>	
11/4	<i>Kristi Kreider</i>	SENATE COMMITTEE ON FINANCE
11/4	<i>[Signature]</i>	
11/4/04	<i>Steph F. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
11/4/04	<i>C Lee-Brum</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)