



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
DANIEL F. CLARK, ESQ.
ARTHUR COCCODRILLI
MURRAY UFBERG, ESQ.
MARY S. WYATTE, ACTING EXECUTIVE DIRECTOR/CHIEF COUNSEL

PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

January 19, 2005

Honorable Gregory C. Fajt, Secretary
Department of Revenue
Strawberry Square, 11th Floor
Harrisburg, PA 17128

Re: Regulation #15-426 (IRRC #2446)
Department of Revenue
Sales and Use Tax; Prebuilt Housing

Dear Secretary Fajt:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. We will send a copy to the standing committees when they are designated.

If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Mary S. Wyatt
Acting Executive Director/Chief Counsel
evp
Enclosure

Comments of the Independent Regulatory Review Commission

on

Department of Revenue Regulation #15-426 (IRRC #2446)

Sales and Use Tax; Prebuilt Housing

January 19, 2005

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Revenue (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on December 20, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Subsection 31.33(a) Definitions. – Consistency with statute; Clarity.

The definitions of the following terms in the regulation vary from the statutory definitions of the terms in 72 P.S. § 7201:

- Prebuilt housing
- Prebuilt housing builder
- Prebuilt housing purchaser
- Prebuilt housing sale
- Purchase price
- Used prebuilt housing

The Department should revise the definitions to mirror the statutory definitions, replace the regulatory definitions with citations to the statute, or explain the need to vary from the statute.

2. Subsection 31.33(c) Prebuilt housing manufacturer's election to collect tax. – Reasonableness; Need; Feasibility.

Paragraph (2)

Under 72 P.S. § 7201(g)(8) in the definition of "purchase price," a manufacturer who precollects tax "shall have the option to collect tax on 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 prebuilt housing." Paragraph (2) of the regulation precludes this option for manufacturers who also act as builders. Under the regulation, they can only use a purchase price of 60% of the manufacturer's

selling price. The Department should explain the rationale for and need to restrict the method to collect tax under this circumstance.

Paragraph (3)

This paragraph states, “A prebuilt housing manufacturer is not permitted to alternate between these two methods of calculation without prior authorization from the Department.” The Department should explain the need for Department authorization. If prior authorization is necessary, the regulation should state how a manufacturer would request prior authorization and what criteria the manufacturer would have to satisfy.

3. Miscellaneous Clarity Issues

- a) In Subsection 31.33(a), the definition of “prebuilt housing manufacturer” lacks clarity because the definition uses the same words as the term being defined.
- b) The opening sentence of Paragraph 31.33(c)(1) uses the phrase “the law” twice. These general references should be replaced with citations to the applicable portions of the law.
- c) The opening sentence of Subsection 31.33(e) discusses the changes in the law. This sentence is not needed.
- d) Subsections 31.33(e) and (f) state certain items are “governed by § 31.11.” Since Section 31.11 is a definitions section, a broader cross reference should be used to all provisions that govern the items outlined in Subsections (e) and (f) respectively.

Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer



Phone: (717) 783-5419
Fax #: (717) 783-2664
E-mail: kriss@irrc.state.pa.us
Website: www.irrc.state.pa.us

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

RECEIVED

2005 JAN 19 PM 2:39

INDEPENDENT REGULATORY
REVIEW COMMISSION

Mary Sprunk
To: ~~Anita Doucette~~
Agency: Department of Revenue
Phone: 7-1382
Fax: 2-1459
Date: January 19, 2005
Pages: 4

*Please change
your RECORDS -
Anita is no
longer in this
department.*

*Thank you!
Mary*

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Revenue Department's regulation #15-426 (IRRC #2446). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Mary R. Sprunk* Date: *1/19/05*