

# PROPOSED RULEMAKING

## DEPARTMENT OF REVENUE

[61 PA. CODE CHS. 31, 46 AND 60]

### Sales and Use Tax; Prebuilt Housing

The Department of Revenue (Department), under section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to delete §§ 31.30, 46.8 and 61.18 (relating to house trailers and mobile homes; industrialized housing; and sale and installation of prefabricated housing) and proposes to add § 31.33 (relating to prebuilt housing) to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

The proposed rulemaking codifies legislative changes relating to prebuilt housing in sections 201(g)(8) and (vv)—(zz), 202(f) and 204(60) of the TRC (72 P. S. §§ 7201(g)(8) and (vv)—(zz), 7202(f) and 7204(60)).

#### *Explanation of Regulatory Requirements*

Proposed § 31.33 sets 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 section 202(f) of the TRC 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 the precollection. 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 § 31.11 (relating to definitions). Similarly, subsection (f) explains that the section does not apply to the repair and maintenance of prebuilt housing and once again § 31.11 applies.

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 this proposed rulemaking.

#### *Fiscal Impact*

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

#### *Paperwork*

This proposed rulemaking will not create additional paperwork for the public or the Commonwealth.

#### *Effectiveness/Sunset Date*

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The regulations are scheduled for review within 5 years of final-form publication. No sunset date has been assigned.

#### *Contact Person*

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the pro-

posed amendment to Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 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 rulemaking 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 proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department.

The Committees may, at any time prior to the submittal of the final-form rulemaking, convey to the Department and IRRC, their comments, recommendations and objections to the proposed rulemaking. IRRC may, within 30 days of the close of the public comment period, submit to the Department and Committees any comments, recommendations and objections to the proposed rulemaking. 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*

**Fiscal Note:** 15-426. No fiscal impact; (8) recommends adoption.

#### **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:* As part of this proposed rulemaking, the Department is proposing to delete the text of § 31.30 which appears at 61 Pa. Code pages 31-38 to 31-54, serial pages (265204) to (265210). Section 31.33 is proposed to be adopted and is printed in regular text to enhance readability.)

#### **§ 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*—

(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 the charges are separately stated on one or more purchase agreements.

(ii) The term 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 will 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. 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 the purchase price of prebuilt housing sold to a prebuilt housing purchaser within this 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 § 31.11 (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 § 31.11.

## CHAPTER 46. CONSTRUCTION CONTRACTORS

### § 46.8. (Reserved).

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to delete the text of § 46.8, which appears at 61 Pa. Code pages 46-5, serial page (265809).)

## CHAPTER 60. SALES AND USE TAX PRONOUNCEMENTS—STATEMENTS OF POLICY

### § 60.18. (Reserved).

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to delete the text of § 60.18 which appears at 61 Pa. Code pages 60-71 to 60-73, serial pages (200741) to (200742) and (262351).)

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