

**200005315L [Tax Type: Sales] [Document Type: Letter/Memo]**

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**Texas Comptroller of Public Accounts STAR System**

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200005315L

May 16, 2000

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Dear \*\*\*\*\*:

Thank you for your recent letter regarding your **landscaping** ► business and Texas sales tax.

◄**Landscaping**► includes activities of arranging and modifying areas of land, natural scenery and other areas, such as indoor or outdoor patios, for aesthetic effect, considering the use to which the land is to be put. The term includes adding, removing, or arranging natural forms, features, and plantings, including vegetation, and other features to fulfill aesthetic requirements. It includes the application of soil, soil additives, and amendments to prepare or maintain the planting area. Some examples are garden planting or maintenance, arborist services, ornamental bush or shrub planting, tree planting or removal, tree surgery, pruning or spraying, and lawn sodding. ◄**Landscaping**► services performed by ◄**landscape**► designers or ◄**landscape**► architects are taxable.

The taxability of these services is the same whether performed on residential or commercial nonresidential) properties. However, neither ◄**landscaping**► nor lawn mowing includes agricultural activities such as hay baling or mowing in a pecan orchard.

Lawn or yard maintenance and ◄**landscaping**► are taxable real property services. Lawn and yard maintenance includes mowing, trimming, fertilizing, watering and any other treatment or service that may be performed on private or commercial yards or lawns. It also includes maintenance of trees and plants whether inside or outside a building. The term does not include clearing land for buildings, power line rights-of-way, pipeline rights-of-way, or maintenance on land belonging to a governmental entity when the service is required by the governmental entity.

You must collect tax from your customers on the total amount billed for the taxable services. You must remit the tax due on these sales to this agency when filing your sales tax return. You must pay tax on equipment, tools, and other items that you use to provide the service. However, you may issue a resale certificate instead of paying the tax when purchasing tangible personal property if the care, custody, and control will be transferred to your customer during the service. For example, you may purchase fertilizer, plants, potting soil, and bark chips for resale because you will transfer the care, custody, and control of these items to your customers when you perform the service.

Transactions that are taxable may be sold to exempt organizations, such as lawn mowing for a church. In these instances you may accept a properly completed exemption certificate from the exempt entity in place of the tax. You may also sell to other businesses that are selling your services to their customers; on these transactions you may accept the businesses' properly completed resale certificate(s) in place of the tax. Neither the sale to the church nor the sale to the other business for resale should be included in your taxable sales data on your sales tax return.

◀**Landscaping**▶ and lawn or yard maintenance do not include ◀**hardscape**▶ activities such as the addition of sprinkler systems, retaining walls, ponds, pools, or fences, or other construction activities nor professional services provided by ◀**landscape**▶ designers or ◀**landscape**▶ architects such as consultation, research, preparation of general or specific design or detail plans, studies, specifications, or supervision, or any other professional services or functions within the definition of the practice of engineering or architecture. When providing services classified as ◀**hardscape**▶ activities, you are improving realty.

When improving realty by installing new systems you are operating as a contractor. You may operate as a lump-sum contractor and pay tax on everything; the lump-sum charge to the customer is not taxed. Or, you may operate as a separated contractor by separately stating the incorporated materials charge from the labor charge. You will collect tax from your customer on the incorporated materials charge; the new construction labor is not taxed. You may purchase these incorporated materials for resale. Again, you pay tax on all taxable items used to perform the work.

When improving realty by repairing or remodeling an existing irrigation or other ◀**hardscape**▶ system that is a nonresidential (commercial) improvement to realty, the total charge to your customer is taxed as nonresidential repair or remodeling. On these jobs, you are a taxable service provider and may purchase the incorporated materials for resale; you must pay tax on items used to perform the services. Irrigation systems for agricultural purposes (new construction and certain repairs) may qualify for certain exemptions; please call or write for more information about agricultural exemptions as needed.

There is an exclusion from the taxable service category when real property services are performed for contractors building new structures to be used as a residence. You should presume your services are taxable until the contractor gives you documentation (written contract, exemption certificate, etc.) stating the ◀**landscaping** or other real property services are being purchased as part of a new construction contract to build a new structure to be used as a residence. Under these contracts, you are operating as a new construction contractor.

This opinion is based on the facts presented. Additional or different facts

may yield different results.

You may call me toll free 1-800-531-5441, extension 5-9787, if you have any questions or need more information. The direct line is 512/305-9787. You may also write to Tax Policy Division, Comptroller of Public Accounts.

Sincerely,

Philip Knisely  
Tax Policy Division

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