

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
WASHINGTON, D. C.

PRIMA FACIE DETERMINATION IN THE MATTER
OF APPLICATION FOR EXEMPTION OF LANDSCAPE
CONTRACTING FROM THE MAXIMUM HOURS
PROVISIONS OF THE FAIR LABOR STANDARDS ACT
OF 1938 AS AN INDUSTRY OF A SEASONAL NATURE
WITHIN THE MEANING OF SECTION 7(b)(3) AND
PART 526, AS AMENDED, OF THE REGULATIONS
ISSUED THEREUNDER.

WHEREAS, applications have been filed by Edwin M. Tate, Landscape Contractor, Caldwell, New Jersey, and sundry other parties for the exemption of landscape contracting from the maximum hours provisions of the Fair Labor Standards Act of 1938, as a branch of an industry of a seasonal nature within the meaning of Section 7(b)(3) of the Act and Part 526, as amended, of the Regulations issued thereunder, and

WHEREAS, it appears from the said application and upon further investigation that:

1. In a general sense (more particularly defined below) landscape contracting consists of the planting or transplanting of trees, shrubs, and other plants for ornamentation, including the making of lawns and gardens, together with other subsidiary and related operations for the same purpose; and
2. The basic operations of planting and transplanting are necessarily limited by natural factors to those times of the year when the plants will withstand the transplanting operations, because of the conditions of the plants, the soil and other climatic factors; and therefore, in a practical sense the plants are available for landscape contracting only during such times of the year; and
3. In general, transplanting takes place in the spring and fall or during the late fall, winter and early spring, the periods aggregating about five months and not in excess of six months, except in the states of Washington, Oregon and California where, under special climatic conditions therein prevailing, the operating season can and does extend from 8 to 12 months; and
4. Except during the operating seasons described above, landscape contracting ceases during the remainder of the year, apart from work such as maintenance, repair, clerical and sales work, because the trees, shrubs and other materials used in such operations are unavailable in the form in which they can be used practically, due to unfavorable climate.

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NOW, THEREFORE, upon consideration of the facts stated in the said application and upon further investigation the Administrator hereby determines, pursuant to Section 526.5(c), as amended, of the Regulations, that a prima facie case has been shown for the granting of an exemption pursuant to Section 7(b)(5) of the Fair Labor Standards Act of 1938 and Part 526, as amended, of the Regulations issued thereunder to landscape contracting, except in the Pacific States of California, Oregon and Washington.

In the above:

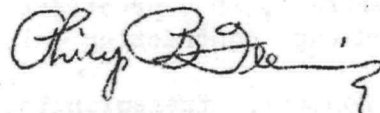
The term "landscape contracting" includes the planting or transplanting of trees, shrubs and other plants, including the making of lawns and gardens and the necessary coincidental building, on the site, of garden retaining walls, rock gardens, etc. It does not include routine lawn or garden maintenance except as an incident to the above during the planting season or seasons.

In accordance with the procedure established by Section 526.5(c), as amended, of the Regulations, the Administrator for fifteen days following the publication of this determination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the prima facie case shown upon the application.

This application may be examined at Room 313, 939 D Street, N. W., Washington, D. C.

Signed at Washington, D. C., this 19th day of June 1940.



Philip B. Fleming
Administrator
Wage and Hour Division
Department of Labor

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