

U. S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

IN THE MATTER OF PARTIAL 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 MEAN-  
ING OF SECTION 7(b)(3) AND PART 526,  
AS AMENDED, OF THE REGULATIONS ISSUED  
THEREUNDER.

WHEREAS, applications were 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 appeared 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; and

WHEREAS, on June 20, 1940, the Administrator caused to be published in the Federal Register (5 FR 2310) a notice which stated that upon consideration of the facts stated in the said application and upon further investigation the

Administrator determined, pursuant to Section 526.5(c), as amended, of the Regulations, that a prima facie case had been shown for the granting of an exemption pursuant to Section 7(b)(3) 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, and which notice stated further that if no objection and request for hearing was received within fifteen days thereafter, the Administrator would make a finding upon the prima facie case shown upon the application.

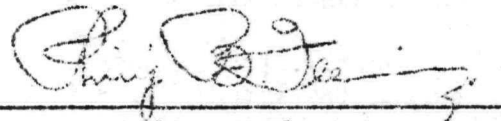
In the above:

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; and

WHEREAS, no objection and request for hearing was received within fifteen days thereafter:

NOW, THEREFORE, pursuant to Section 526.5(b)(ii) of the Regulations, as amended, the Administrator hereby finds on the prima facie case shown in the said application that landscape contracting, except in the Pacific States of California, Oregon, and Washington, is a seasonal industry within the meaning of Section 7(b)(3) of the Fair Labor Standards Act of 1938 and Regulations issued thereunder, and, therefore, it is entitled to the exemption provided in Section 7(b)(3) of the said Act.

Signed at Washington, D. C., this 18th day of July, 1940.



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

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(4988)