



**June 6, 2003 (Re-issued June 7, 2008)
Pennsylvania Sales and Use Tax
No. SUT-03-025**

Property Purchased by Construction Contractor for Municipal Authority Pump House

ISSUE:

What items of tangible personal property purchased by Contractor for the construction of a pump house that will be owned by a municipal authority upon completion of the construction contract are exempt from sales or use tax?

CONCLUSION:

A construction contractor's purchases are exempt from tax if the item is within the definition of 'building machinery and equipment' or the item is machinery or equipment directly used in rendering a public utility service or the foundation for directly used machinery and equipment. The items on Contractor's enclosed list are taxable or exempt as designated.

FACTS:

Contractor is engaged in environmental and industrial construction. It constructs facilities that include pumping stations and water and sewage treatment facilities. Its customers include contractors, developers, municipalities, and authorities.

This request relates specifically to the construction of pumping stations that will be owned by municipal authorities after completion. The construction of a pump house includes both the installation of machinery and equipment, and the construction of the 'building' surrounding the equipment. Included with the request was a list that described the major components used in the construction of a wastewater treatment facility and pump station.

DISCUSSION:

The Tax Reform Code of 1971, (TRC) as amended, provides two types of exemption for contractors involved in the construction of facilities that are owned by governmental entities and also used in rendering a public utility service. The first is the public utility exemption. This exemption is limited to the purchase of property constituting equipment, machinery and foundations for the exempt equipment and machinery which the contractor, in conjunction with his contract, transfers to and is subsequently used directly by the public utility in rendering its public utility service. This exemption, however, does not apply to construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure or tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service. 72 P.S. §§ 7201(k)(8); 7201(o)(4)(B).

The second exemption relates to the purchase of building machinery and equipment by a construction contractor having a construction contract with an exempt governmental entity. An item that qualifies as building machinery and equipment does not have to be used

directly in the rendering of the public utility service. The definition of 'building machinery and equipment' specifically excludes certain items such as pipes and fittings. These items would be exempt if they are directly used in the rendering of a public utility service. However, if the facility has a bathroom for its employees, the pipes and fittings used in this area would not be exempt.

Building machinery and equipment is defined as follows: Generation equipment, storage equipment, conditioning equipment, distribution equipment, and termination equipment which shall be limited to the following:

- (1) Air conditioning limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) Electrical;
- (3) Plumbing;
- (4) Communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) Alarms limited to fire, security and detection;
- (6) Control systems limited to energy management, traffic and parking lot and building access;
- (7) Medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) Laboratory system;
- (9) Cathodic protection systems; or
- (10) Furniture, cabinetry and kitchen equipment.

The term shall include boilers, chillers, air cleaners, humidifiers, fans, switch gears, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guard rails, medial devices, floor troughs, and grates, and laundry equipment, together with internal coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate; whether or not damage would be done to the item or its surroundings upon removal; or whether or not the item is physically located within a real estate structure. The term "building machinery and equipment" SHALL NOT INCLUDE guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation and duct work and coverings thereof.

Thus, these items even if not used directly in the rendering of the public utility service may be purchased tax exempt for work done by a construction contractor pursuant to a contract with an exempt governmental authority.