



**April 21, 2010**  
**Pennsylvania Sales and Use Tax**  
**No. SUT-03-043**  
**Tangible Personal Property;**  
**Construction Contractors**

ISSUES/ CONCLUSIONS

1. What procedure should the Taxpayer follow in connection with the sale of a building or pole sign?

When the Taxpayer sells a building or pole sign without installation, the Taxpayer is required to collect sales tax from its customer unless it obtains a properly completed exemption certificate or it delivers the sign to a location outside the Commonwealth.

2. What procedure should the Taxpayer follow in connection with the sale and installation of a building or pole sign when its customer is an exempt governmental entity, or a 'purely public charity?'

When the Taxpayer sells and installs or repairs a building or pole sign for an exempt governmental entity or a 'purely public charity,' the Taxpayer is liable for sales or use tax on any materials used in the performance of its contract. The Taxpayer's invoice to its customer should not separately state sales tax.

3. What procedure should the Taxpayer follow in connection with the sale and installation of a building or pole sign or its repair when the installed sign remains tangible personal property?

When the Taxpayer sells and installs or repairs a building or pole sign in the Commonwealth and the sign remains tangible personal property, the Taxpayer must collect sales tax from its customer on all charges relating to the sale, installation, or repair of the sign.

4. What procedure should the Taxpayer follow in connection with the sale and installation of a building or pole sign or its repair when the installed sign is permanently affixed to the real estate?

When the Taxpayer sells and installs or repairs a building or pole sign that is permanently affixed to real estate within the Commonwealth, the Taxpayer is performing a construction contract and is liable for sales or use tax on any materials used in the performance of its contract. The Taxpayer's invoice to its customer should not separately state sales tax.

5. What procedure should the Taxpayer follow when it manufactures a sign for installation outside the Commonwealth?

If the Taxpayer delivers a sign to a location outside the Commonwealth, the Taxpayer is not required to collect Pennsylvania sales tax.

If the transaction involves a construction contract, the Taxpayer is not required to pay Pennsylvania sales or use tax on those materials that the Taxpayer fabricates or incorporates into the manufactured sign in Pennsylvania and then takes to a location outside the Commonwealth. Any other materials that the Taxpayer takes from its Pennsylvania location to the out of state location for the construction contract are subject to Pennsylvania sales or use tax.

FACTS

The Taxpayer fabricates various building and pole signs. In addition to the manufacture of various signs, the Taxpayer provides installation and will repair and service building and pole signs. Building signs



include identification signs, exterior and interior building directories, vinyl letters attached to glass, neon lighting, awnings and temporary banners. Pole mounted signs include business identification, directional, temporary banners attached to poles and flagpoles.

The Taxpayer has a business location outside Pennsylvania as well as a location within the Commonwealth of Pennsylvania.

## DISCUSSION

The Tax Reform Code of 1971, as amended, provides for the imposition of a sales and use tax on the sale at retail of tangible personal property and certain enumerated services. Services which are subject to tax include the repair or alteration of tangible personal property. The sale of a building or pole sign without installation is a sale at retail of tangible personal property and is subject to tax unless the sign is delivered by the vendor or a common carrier to a location outside the Commonwealth.

A Private Letter Ruling was issued shortly after the passage of Act 45 which provided that outdoor advertising signs were by definition 'real estate structure.' Prior to this legislation, the application of sales and use tax varied depending on whether the sign remained tangible personal property or was permanently affixed to the real estate.

Act 89 of 2002 then provided clarification for the definitions that were included in Act 45 of 1998 and added language to the definition of 'real estate structure' that stated that the definition applied only to exempt construction contracts. An exempt construction contract is a contract with an exempt governmental entity or a 'purely public charity.' Therefore, the purchase of an installed sign by a nonexempt customer is not always a construction contract. The correct procedure to be used for the imposition of sales and use tax for non-exempt contracts is again dependent on whether a sign remains tangible personal property or becomes a permanent part of the real estate.

When the Taxpayer sells a sign without installation, or sells a sign that remains tangible personal property, the Taxpayer is a vendor with respect to this transaction. As a vendor the Taxpayer is required to collect sales tax on the total charge made to the customer for the sign including any charges for installation or repair. The Taxpayer, however, is entitled to the resale exemption on any property, which it purchases and resells as a vendor. Regulation Section 31.11 states that electric, neon, wood, metal or plastic signs that are attached by bolts, screws or similar means are presumed to remain tangible personal property.

If the Taxpayer's installation of a sign that will be attached by bolts or screws includes the installation of foundation materials, e.g. the erection of a brick foundation, the charge for the installation of the foundation materials should be separately stated. The erection of the foundation would be a construction contract, and the Taxpayer would pay tax to its supplier for materials used for the foundation or remit use tax directly to the Commonwealth. Then, the Taxpayer would collect tax from its customer on only the charge for the sale and installation of the sign that is attached by bolts or screws.

If the installed sign is permanently affixed to the real estate, e.g. imbedded in concrete, or the sign is to be installed for an exempt entity, the transaction is a construction contract. When the Taxpayer's installation is a construction contract, the Taxpayer is the consumer of all materials used in the installation. The Taxpayer can either pay tax to its supplier when purchasing the materials for the contract or remit use tax directly to the Commonwealth when filing its sales and use tax return.

The Taxpayer is not required to pay Pennsylvania Sales or Use tax on materials used to manufacture signs in Pennsylvania which are shipped or taken outside the Commonwealth for sale at its out of state location. If the Taxpayer sells those materials as a vendor in the other state, and collects that state's applicable



sales tax, the materials are purchased for resale and are not subject to Pennsylvania Sales and Use tax. Additionally, the Taxpayer is not required to pay Pennsylvania Sales or Use tax on materials purchased in Pennsylvania which are delivered by the supplier to a location outside Pennsylvania and are not brought into the Commonwealth.

The Taxpayer, however, is required to pay Pennsylvania Sales or Use tax on materials purchased or delivered in Pennsylvania upon which no work or services are performed prior to the transportation of those materials to an out of state location if the materials are used in a construction contract. If materials are fabricated or incorporated into other tangible personal property in the Commonwealth prior to their transportation to the out of state location, these materials are exempt from Pennsylvania Sales and Use tax because they qualify for the 'special resale' exemption. The 'special resale' exemption applies to materials that are purchased or maintained in the Commonwealth solely for the purpose of being fabricated, manufactured into, attached to or incorporated into tangible personal property and then are transported outside the Commonwealth for use exclusively outside the Commonwealth.