



June 1, 2010
Pennsylvania Sales and Use Tax
No. SUT-10-002
Construction Contracts

ISSUE

What are the sales and use tax implications of Taxpayer's sale of bridge beams for use by the Pennsylvania Department of Transportation ("PennDOT")? Does this qualify as a construction contract?

CONCLUSION

Taxpayer's sale of bridge beams for use by PennDOT is a taxable sale of tangible personal property.

FACTS

Taxpayer is a manufacturer and supplier of bridge beams that has been authorized by both PennDOT and the Federal Highway Administration to provide materials on public projects. Taxpayer is an approved supplier of such products, and as such is listed in PennDOT's Bulletin 15, which identifies approved suppliers of different types of materials. However, Taxpayer is not a prequalified PennDOT contractor, and does not perform erection work with its own employees.

After a prime contractor or subcontractor informs Taxpayer that it wishes Taxpayer to supply beams for a project, contract documents are finalized. The prime contractor may simply accept Taxpayer's quote and ask Taxpayer to supply the beams to the prime contractor directly. Alternatively, the prime contractor may ask Taxpayer to serve as a supplier to a particular subcontractor, including a bridge subcontractor and/or a beam erector.

For PennDOT construction projects, it is generally the case that neither the prime contractor nor the entity in privity of contract with the prime contractor is capable of both supplying and erecting bridge beams. Most Bulletin 15 beam suppliers are not prequalified to erect beams, and most beam erectors are not Bulletin 15 suppliers. This scenario is true with other Bulletin 15 suppliers as well. In some situations, the prime contractor will enter into a subcontract with a beam manufacturer, such as Taxpayer, for supply and erection of the beams, with the cost of the erection services included in the subcontract amount. The beam supplier then may subcontract the erection work back to the prime contractor, which ultimately installs the beams. In other situations, when a prime contractor wishes to use an erection subcontractor, it is common for the erection subcontractor to enter into a supply and erect subcontract with a beam manufacturer, and then for the beam manufacturer to subsequently subcontract all of the erection work back to the erection subcontractor. For purposes of the ruling requested by Taxpayer, it is assumed that the full contract price due to the beam supplier under the supply and erect subcontract will be paid to the beam supplier by the prime contractor or the erection subcontractor, as the case may be. The prime contractor or the erection subcontractor will then separately bill the beam supplier for the amount due to them under the subcontract for erection services.

DISCUSSION

Pennsylvania's Sales and Use Tax is imposed upon the sales or purchase price of tangible personal property. 72 P.S. § 7202(a). Bridge beams are items of tangible personal property when sold to a construction contractor. Thus, sales tax is imposed upon their purchase price. Even though Taxpayer enters into contracts that include both the beam supply and their erection, as Taxpayer is not involved with the actual erection, it is, in reality, merely acting as the vendor of the beams, not a construction



contractor. In addition, Taxpayer cannot be a contractor pursuant to PennDOT rules.