



## SALES AND USE TAX BULLETIN 2021-03

### Remote Help Supply Services

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**Effective Date: Immediately**

The Department of Revenue (“Department”) issues this Sales and Use Tax Bulletin to inform persons responsible for charging, collecting, remitting, or accruing sales or use tax of the taxability of remote help supply services.

The Tax Reform Code of 1971 (“Tax Code”) imposes a six percent tax on the sale at retail or use within the Commonwealth of tangible personal property and certain services. 72 P.S. § 7202. The Tax Code defines “sale at retail” to include “[t]he rendition for a consideration of employment agency services or help supply services.” 72 P.S. § 7201(k)(15). In addition, “use” is defined to include “[t]he obtaining by the purchaser of employment agency services or help supply services.” 72 P.S. § 7201(o)(13). Help supply services themselves are defined as “[p]roviding temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished.” 72 P.S. § 7201(cc).

Help supply services are subject to sales or use tax “[i]f the *delivery or use* of the service occurs in this Commonwealth.” 61 Pa. Code § 60.4(b) (emphasis added). *See also* 61 Pa. Code § 9.3(a) (“These services are presumed to be subject to Pennsylvania sales tax if the delivery or benefit of the service occurs in this Commonwealth.”). The pronouncement on help supply services provides guidance on whether the delivery or use occurs in Pennsylvania under the traditional arrangement, *i.e.*, supplied help physically reporting to a location of the purchaser and supervision is supplied in person. In such instances, the pronouncement looks to whether the employee is reporting for work *at* a location in the Commonwealth. To illustrate that principle, four examples are provided that deal with an employee of the vendor reporting *to* a location of the purchaser. *See* 61 Pa. Code §§ 60.4(b)(1)-(4). The location the help supply employee reports *at* and the location the help supply employee reports *to* are easily understood as the location where delivery or use occurs under the traditional arrangement—when a help supply employee is physically working at a purchaser’s location, that location of the purchaser is where the service is delivered to. This may no longer be the case as technological developments have allowed some help supply employees to work remotely. However, the same principles determine whether the delivery or use of the help supply services occur in this Commonwealth under traditional or remote work arrangements.

Pennsylvania sales and use tax is based upon whether delivery or use occurs in the Commonwealth. Services to tangible personal property are subject to Pennsylvania tax if the tangible personal property is delivered to or used at a location in the Commonwealth regardless of whether the repairing, altering, or mending takes place in the Commonwealth. 61 Pa. Code §§ 31.5(f),(g). Other taxable services also focus on the location of delivery or use, *e.g.*, lobbying services are subject to tax if the benefit or delivery of the service occurs in this Commonwealth,

61 Pa. Code § 60.6(b); premium cable services are subject to tax if delivered to a location in this Commonwealth, 61 Pa. Code § 60.9(b)(2); credit reporting services are subject to tax when the information or report is delivered to or received at a location in this Commonwealth, 61 Pa. Code § 60.11(b); international or interstate telecommunications services charged to a service address in this Commonwealth are subject to tax. 61 Pa. Code § 60.20(b)(1).

In applying these principles to remote help supply, the Department is guided by the Court's finding in *Commonwealth v. A.J. Wood Research Company*, 431 A.2d 367 (Pa. Cmwlth. 1981). Specifically, that "[t]he law's concepts have sufficient vital capacity for growth to accommodate technological evolution." *Id.* at 370. While remote work may allow a help supply employee to work at one location and report to another, help supply services are still subject to tax "[i]f the delivery or use of the service occurs in this Commonwealth." 61 Pa. Code § 60.4(b). For example:

- A purchaser located in Pennsylvania engages a help supply services vendor located in New Jersey. The New Jersey vendor provides an employee who both (a) reports to the purchaser's location in Pennsylvania in-person and (b) works remotely from her home in New York. All of the services are subject to Pennsylvania tax. The work undertaken by the help supply employee is delivered and used where the purchaser is located.
- A non-Pennsylvania purchaser engages a help supply services vendor located in New Jersey. The New Jersey vendor provides an employee to configure hardware at purchaser's data center located outside the Commonwealth. The vendor's employee works remotely from her house in Pennsylvania. The services are delivered to a location outside the Commonwealth and are not subject to Pennsylvania tax. If the employee subsequently remotely works upon the purchaser's hardware located in the Commonwealth, that portion of the transaction is taxable.
- A purchaser has its headquarters in Delaware. The purchaser engages a help supply services vendor located in New Jersey to provide services for the purchaser's call center. The call center and associated equipment is located in Pennsylvania. The help supply employee works remotely from her house in New York. Notwithstanding the "technological evolution" of remote work, the help supply service was delivered to the location of the call center and is subject to Pennsylvania tax.
- A purchaser has its headquarters in Delaware. The purchaser engages a help supply services vendor located in New Jersey to provide services for the purchaser's call center. The call center and associated equipment is located in Pennsylvania, though the employees and supervisor that are directly employed by the purchaser may work remotely from their homes. Likewise, the help supply employee works remotely from her house in New York. Notwithstanding the "technological evolution" of remote work, the help supply service was delivered to the location of the call center and is subject to Pennsylvania tax.

Whether the help supply employee is reporting in person or remotely is not determinative. Rather, where delivery or use occurs controls under both traditional and remote arrangements. As illustrated in the examples above, the difference is that where the work is delivered *to* is not where the work is conducted *at* if the help supply employee is not physically working at a location of the purchaser. If the purchaser is located in this Commonwealth, the Department will continue to presume that delivery occurred at a location in this Commonwealth unless otherwise documented for both traditional and remote help supply services. Purchasers or vendors of help supply services may contact the Department for questions regarding how these principles apply to their particular arrangement.