



SALES AND USE TAX BULLETIN 2021-04

Waste Transportation and the Public Utility Exclusion

Issued: September 17, 2021

Effective Date: Immediately

The Department of Revenue (“Department”) issues this Sales and Use Tax Bulletin to inform businesses involved in the transportation of residential, commercial, and non-hazardous industrial waste (“waste”) whether they fall under the public utility exclusion and are entitled to claim an exemption from tax on their purchase of machinery, equipment, parts and supplies directly and predominantly used in providing their service.

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 excludes from the definition of “sale at retail” property which is directly and predominantly used in rendering public utility services. 72 P.S. §§ 7201(k)(8)(ii)(C) and 7201(o)(4)(B)(iii).

Though the Tax Code does not define “public utility service,” case law has limited the public utility exemption to:

- (1) A public utility as defined under the Public Utility Code.
- (2) A contractor who purchases materials for the use of a public utility in the service of providing the public utility service; and,
- (3) An entity long established by the courts to be a public utility.

Bell Atlantic Mobile Systems, Inc. v. Commonwealth, 799 A.2d 902 (Pa. Cmwlth. 2002), *aff’d, per curiam*, 845 A.2d 762 (Pa. 2004); *Vincent Construction Inc. v. Commonwealth*, 668 A.2d 289 (Pa. Cmwlth. 1995); *Concentric Network Corporation v. Commonwealth*, 877 A.2d 542 (Pa. Cmwlth. 2005).

Furthermore, the Pennsylvania Supreme Court in *Lafferty*, when addressing the applicability of the public utility exclusion for sales and use tax found that, “the statutory exclusion in question was meant by the Legislature to apply only to Public Utility Code ‘public utilities’ when they render Public Utility Code ‘services.’” *Commonwealth v. Lafferty*, 233 A.2d 256, 259 (Pa. 1967).

Businesses involved in the transportation of waste are not rendering a public utility service as contractors purchasing materials for the use of a public utility service, nor are they entities long established by the courts to be a public utility. As such, we look to the definitions and jurisdiction of the Public Utility Code (“PUC Code”), the TRC, and the service being provided by the business.

The PUC Code defines the term “public utility” in pertinent part as:

[a]ny persons or corporations . . . owning or operating in this Commonwealth equipment or facilities for . . . (iii) [t]ransporting passengers or property as a common carrier.”

66 Pa. C.S. § 102.

In addition, the Tax Code provides that the exclusion shall only apply to a vehicle required to be registered under The Vehicle Code when the vehicle is directly and predominantly used as a common carrier.

The PUC Code defines a “common carrier” in pertinent part as:

[a]ny and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, . . . but shall not include contract carriers by motor vehicles

66 Pa. C.S. § 102.

The PUC Code defines “common carrier by motor vehicle” in pertinent part as:

[a]ny common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, . . . but does not include:

* * *

(iv) Any person or corporation who or which uses, or furnishes for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. This paragraph does not include the use or furnishing of five-axle tractor trailers.”

66 Pa. C.S. § 102.

A statement of policy on the transportation of waste for disposal issued by the Public Utility Commission states that “the transportation of waste water sludge which has little or no intrinsic value does not involve the transportation of property under 66 Pa. C.S. §§ 102 and 2501 . . . and therefore is not subject to the Commission’s jurisdiction.” It goes on to state that “[t]he Commission has no jurisdiction over the transportation by motor vehicle of waste, including but not limited to rubbish, garbage, sludge, sewage and hazardous waste, in solid, liquid or semiliquid state, for disposal.” 52 Pa. Code §§ 41.16 (a) and (b).

Accordingly, regardless of whether a business holds a motor carrier certificate or certificate of convenience issued by the Public Utility Commission, when the business is involved in the transportation of waste with little or no intrinsic value¹ in a vehicle other than a five-axle tractor trailer,² it is not involved in the transportation of property under 66 Pa.C.S. § 102. It is therefore not a “common carrier” as defined by the PUC Code and as such, the business is not entitled to

claim the public utility exemption when purchasing machinery, equipment, parts and supplies used in providing the service.

¹“Waste” may have value, for example, once it is sorted or when it is used in a manufacturing process, but such value is post transportation.

² It should be noted this Tax Bulletin does not apply to businesses that transport waste in five-axle tractor trailers. These businesses are not exempt from the Public Utility Commission’s jurisdiction.