



## **SALES AND USE TAX BULLETIN 2021-05**

### **Taxation of Equipment Rentals and Equipment Rentals with Operators**

**Issued: November 2, 2021**  
**Effective Date: Immediately**

The Department of Revenue (“Department”) issues this Sales and Use Tax Bulletin to inform taxpayers engaged in the rental of equipment and equipment with operators, including but not limited to cranes, concrete pumping and excavating, of the taxation of such transactions. This bulletin provides clarification regarding the affected taxpayers’ existing responsibilities. As such, the guidance in this Tax Bulletin is effective immediately.

Section I provides a general overview of the Sales and Use Tax law as it applies to the rental of tangible personal property. Section II explains the application of the Sales and Use Tax law to the rental of equipment that may or may not include an operator. Section III explains the vendor’s responsibility if it changes its position regarding the applicability of Sales Tax to its rental activities.

#### **Section I – Sales and Use Tax Law**

Pennsylvania’s Tax Reform Code of 1971 (“TRC”), as amended, imposes a tax of six percent (6%) of the purchase price on the sale at retail or use of tangible personal property or certain enumerated services within this Commonwealth. 72 P.S. § 7202(a). Allegheny County and Philadelphia County also impose an additional one percent or two percent, respectively, on the state sales tax base.

The definition of “sale at retail” includes the rental or lease of tangible personal property. 72 P.S. § 7201(k)(1); 61 Pa. Code §§ 31.1(1), 31.4(a). The purchase price of rented or leased tangible personal property includes all charges paid to the vendor, except for the value of labor supplied by the vendor to operate the tangible personal property, if the cost of the labor is separately stated on the vendor’s invoice. 72 P.S. § 7201(g)(4).

The charge for an operator supplied with the rental of tangible personal property is subject to tax as a taxable help supply service. 72 P.S. §§ 7201(g)(6), (k)(15). However, the taxable purchase price for help supply does not include the cost of the supplied employee if the vendor separately states the cost of the employee on the invoice provided to the customer. 72 P.S. § 7201(g)(6).

Taxpayers who purchase tangible personal property for the predominate purpose of renting or leasing the property to others are entitled to claim the resale exemption. 61 Pa. Code § 31.4(b). If the taxpayer uses the property purchased for resale in a manner other than resale, the taxpayer becomes the ultimate consumer of the property and owes use tax on its use of the property. 61 Pa. Code § 31.4(b)(1).

Taxpayers who render a nontaxable service, are the consumers of the taxable personal property and services used in their business and must pay tax on such property and services. 61 Pa. Code § 31.6(a).

## **Section II – Application of the Sales and Use Tax Law to Equipment Rentals and Equipment Rentals with Operators**

Vendors offer the use of their equipment in one of two manners: as the rental of tangible personal property with or without the services of their operator.

When the vendor furnishes the equipment with the services of their operator, it shall be presumed that the transaction involves a transfer of the right to use or direct the use of the equipment. 61 Pa Code § 31.4(a)(1). In this instance, the vendor of the equipment is providing a taxable rental of tangible personal property.

This presumption may be rebutted by establishing that the work to be accomplished is exclusively under the control of the person who furnished the equipment and their operator. 61 Pa Code § 31.4(a)(1). In this instance, the vendor of the equipment is providing a nontaxable service.

When the vendor furnishes the equipment without the services of their operator, the transaction is subject to tax as a rental of tangible personal property. 61 Pa Code § 31.4(a).

Rental of tangible personal property. If the customer directs the use of the equipment – by either providing its own employee to operate the equipment or by directing an operator provided by the vendor as to what task is to be performed - this is the taxable rental of equipment. The vendor must charge sales tax on the entire amount charged for the rental of the equipment. If the vendor provides the use of an operator with the rental of the equipment, the charge for the operator is taxable as this is considered a taxable help supply service. The vendor may exclude the cost of the provided employee from the purchase price of the help supply service only if the employee costs are separately stated on the vendor's invoices.

When the predominant purpose of the equipment is for rental, the vendor may claim resale on the purchase of equipment and any repair parts thereof. 61 Pa Code § 31.4(b). If the vendor performs a nontaxable service as discussed below, the vendor must remit use tax on the fair rental value of the equipment.

Nontaxable services. When the vendor provides equipment with the services of their operator to complete a specific task or tasks without direction from the customer, the vendor does not charge tax to its customer on the price of its services. To establish the vendor is providing a nontaxable

service, the vendor must rebut the presumption outlined in 61 Pa Code § 31.4(a)(1) by disclosing on the invoice or agreement that the specific task(s) is under the exclusive control of vendor. When the predominant purpose of the equipment is providing a nontaxable service, the vendor must pay tax on the purchase of the equipment and any repair parts thereof.

### **Section III – Right to Assess**

Providing equipment with an operator is presumed to be a taxable rental of equipment unless the vendor establishes the equipment is under the exclusive control of the vendor. In instances where the vendor treated the transaction as a taxable rental of equipment but subsequently determines that the transaction was a nontaxable service, in order for the customer to obtain a refund of the sales tax paid, the vendor must complete form REV-1890 acknowledging that sales tax was incorrectly charged and that use tax will be paid on the fair rental value of the equipment. If the vendor does not remit use tax, the Department reserves the right to assess the vendor for the fair rental value of the rental of the equipment. Also, if the customer fails to include a completed REV-1890 with its refund petition, the refund will not be granted.

Generally, the Department is required to assess sales or use tax within three years after the date the sales and use tax return is filed or the end of the year in which the tax liability arises, whichever shall last occur. *See* 72 P.S. § 7258. If a taxpayer willfully files a false or fraudulent return with intent to evade the sale and use tax, the Department may assess tax at any time. *See* 72 P.S. § 7260.

It is the Department's position that if a vendor first charges and collects sales tax then provides REV-1890 to its customer stating that it provided a nontaxable service, the vendor must remit the proper amount of use tax, even if the three-year statutory time period has expired. If not, the Department may issue an assessment on the fair rental value of the equipment.