

ADMINISTRATIVE NOTICE 2007-19

SUBJECT: CONSUMERS SALES AND SERVICE TAX - Application of the amendment set forth in Senate Bill 631 to West Virginia Code § 11-15-8d authorizing qualified contractors to purchase services, machinery, supplies or materials exempt from Consumers Sales and Service Tax.

The Legislature on March 10, 2007, enacted Senate Bill 631, which amended West Virginia Code § 11-15-8d. The amending language provides the following:

Provided, however, That effective the first day of July, two thousand seven, this section shall not apply to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing "contracting", as defined in section two of this article, if the purchaser of the "contracting" services would be entitled to claim the refundable exemption under the provisions of subdivision (2), subsection (b), section nine of this article [§ 11-15-9(b)(2)] had it purchased the services, machinery, supplies or materials.

DISCUSSION

This Administrative Notice advises the public of the policy the Tax Department will follow with respect to the application of this exemption.

Currently, Section 11-15-8d prohibits persons who perform contracting, or persons acting in an agency capacity, from asserting any exemption to which the purchaser of the contracting services, or the Principal, is entitled. However, effective July 1, 2007, persons performing construction contracting services for a person entitled to claim the exemption under Section 11-15-9(b)(2) may purchase exempt from Consumers Sales and Service Tax services, machinery, supplies and materials to be used or consumed in certain construction contracting activities. Section 11-15-9(b)(2) provides the following exemption:

(b) Refundable exemptions

Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

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(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power,

provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

. . .

A construction contractor performing construction contracting for the following qualified businesses may assert the exemption for qualified purchases of services, machinery, supplies and materials for use or consumption in the performance of the construction contracting service:

- (1) Business of manufacturing,
- (2) Business of transportation,
- (3) Business of transmission of liquid, natural gas or electricity by pipes or wires,
- (4) Business of communication,
- (5) Business of production of natural resources,
- (6) Business of gas storage,
- (7) Business of generation or production or selling electric power,
- (8) Business of provision of a public utility service, or
- (9) Business of operation of a utility service or the operation of a utility business.

With relation to purchases of tangible personal property, the exemption applies to purchases of tangible personal property that remains on the construction site after the construction activity is completed. It does not apply to purchases of tools, bulldozers, cranes, etc. that become the property of the construction contractor and removed from the site after construction is completed. However, rentals of cranes, bulldozers, and other equipment specifically for use on the specifically identified job by the contractor, or the hiring of a subcontractor to provide bulldozer services, crane services, etc., with an operator of the machine qualify for the exemption. Purchases by a subcontractor who is working for a prime contractor, where the prime contractor is entitled to the Senate Bill 631 exemption, are also exempt in the same manner and with the same restrictions as are applicable to the prime contractor.

This exemption may be claimed by one of two methods:

- (1) The contractor may pay the appropriate amount of Sales Tax and claim a refund from the Tax Department; or
- (2) If the Principal has a direct pay permit, the contractor may use the Special Contractors Exempt Purchases Certificate issued by the Tax Department.

The exemption may be asserted on qualified purchases on or after July 1, 2007 under a construction contract between the contractor and the Principal that was entered into before July 1, 2007, but which ends after that date, as follows:

(1) If the purchase order was issued before July 1, 2007 but the services, machinery, supplies or materials were received after July 1, 2007;

(2) If the invoice date for the services, machinery, supplies or materials that were purchased is after July 1, 2007 even though those services, machinery, supplies and materials were ordered before that date; or

(3) If the check payment date, in payment for the tangible personal property or services purchased from the vendor, is on or after July 1, 2007, even though the services, machinery, supplies and materials were received before that date

For further discussion concerning the use of the Senate Bill No. 631 exemption please direct your inquiries to the State Tax Department at telephone number (304) 558-3333 or toll free at (800) 982-8297.