



Earl Ray Tomblin
 Governor

Craig A. Griffith
 State Tax Commissioner

ADMINISTRATIVE NOTICE 2011-24

SUBJECT: CONSUMERS SALES AND SERVICE TAX - Application of the amendment of 2007 and the amendment of 2011 to West Virginia Code § 11-15-8d authorizing qualified contractors to purchase services, machinery, supplies or materials exempt from Consumers Sales and Service Tax or Use Tax.

The Legislature on March 10, 2007, enacted Senate Bill 631, which amended West Virginia Code § 11-15-8d pertaining to contracting services for principals which are qualified direct use businesses. The Legislature again amended West Virginia Code §11-15-8d(b) in 2011 by passing Senate Bill 247 which adds an exemption pertaining to contracting services for certified distribution facilities. Those amended portions of West Virginia Code § 11-15-8d(b) follow.

... However, effective July 1, 2007, 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 subdivision (2), subsection (b), section nine of this article had it purchased the services, machinery, supplies or materials. ... This section shall not apply to qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components, or to qualified purchases of building materials and certain tangible personal property, as those terms are defined in section nine-n of this article, 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 section nine-n of this article. Purchases of gasoline and special fuel shall not be treated as exempt pursuant to this section.

DISCUSSION

This Administrative Notice advises the public of the policy the Tax Department will follow with respect to the application of the 2007 and 2011 amendments to West Virginia Code § 11-15-8d and updates Administrative Notice 2007-19.

Prior to the amendment of 2007 West Virginia Code § 11-15-8d prohibited 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, was entitled. However, effective July 1, 2007, persons performing construction contracting services for a person entitled to claim the exemption under West Virginia Code §11-15-9(b)(2) may purchase exempt from Consumers Sales and Service Tax and Use Tax (hereinafter "Sales Tax") services, machinery, supplies and materials to be used or consumed in certain construction contracting activities. West Virginia Code § 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:

(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.


The 2011 amendment adds certified distribution facility as a principal that qualifies for an exemption from Sales Tax. The exemption applies to the same qualified purchases of building materials and certain tangible personal property as well as the same restrictions as stated above. However, the amendment also includes as a refundable exemption the qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components for the certified distribution facility.

The above exemptions 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 Form WV CST-286, "Special Contractors Exempt Purchases Certificate" issued by the Tax Department.

Purchases of building materials and tangible personal property by a contractor for construction of, and incorporation into, facilities for a government-owned water or sewer utility or a Public Service District water or sewer utility are exempt from Sales Tax pursuant to both West Virginia Code §§ 11-15-9(a)(3) and 11-15-9(b)(2). This exemption applies only to government-owned water or sewer utilities and Public Service District water or sewer utilities. For construction contracting related purchases by contractors or subcontractors for government-owned or Public Service District owned water or sewage utilities, the government-owned utility or Public Service District taxpayer identification number is used instead of the direct pay permit number on Form CST-286.

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