February 20, 2012

Tax Policy Committee – HB4145

Honorable Tax Policy Committee Members:

Thank you for the opportunity to speak in support of HB 4145.

My name is Rob Sarro and I am the County Administrator for Allegan County.

In November of 2011, Allegan County was asked by our construction management firm whether or not we would be providing our tax exempt number for contractors to utilize in purchasing materials for our jail construction project? To be honest, I was surprised by the question. Clearly, the County itself is tax exempt, but why would the contractors be asking to purchase under our tax exempt number? After a review by our Corporate Counsel, the fact remained that the County itself is tax exempt; but the contractors purchasing materials for the construction of our jail are considered users of the materials and must pay tax(es) under Michigan Law.

The attached Department of Treasury Revenue Administrative Bulletin 1999-2 states, "Five limited sales and use tax exemptions are available to a contractor as a consumer in the business of constructing, altering, repairing, or improving real estate for others." These exemptions are identified as A) Non-profit hospitals, B) Qualified Nonprofit Housing, C) Church Sanctuaries and D) Qualified Water Pollution Control Facilities and Qualified Air Pollution Control Facilities.

Considering the limited, five exemptions, even if Allegan County had supplied its tax exemption certificate to its contractors as requested, and/or purchased materials directly for our jail project, based on Treasury Bulletin 1999-2, the contractors would still be required to pay the applicable sales or use tax.

While our laws establish Michigan counties' exemption from sales/use taxes generally, a peculiar mandate of the same laws require that our citizens pay inflated public construction costs as a result of the contractor's obligation to pay sales/use taxes and pass that expense on to the counties.

Allegan County's recent experience serves as an example of the extra financial burden placed upon county governments as a result of current Michigan Law. Our County has suffered an additional, direct, construction cost of $476,616 as a result of sales/use taxes paid by contractors that were passed on in their bids/contracts. Also, Allegan County, having issued bonds for a large portion of its jail project at an interest rate of 2.93%, has the distinct privilege of paying as much as $160,243 more in interest on that same $476,616 over twenty (20) years. That is $636,859 in taxes and interest solely due to the application of sales/use taxes on contractors' materials and equipment purchases for a building the County is mandated by the State of Michigan to provide.

We urge you to please make the necessary to changes to ensure that counties remain exempt from sales/use taxes both directly and indirectly in meeting their mandates to provide public facilities including but not limited to county jails.

STATE OF MICHIGAN
JOHN ENGLER, Governor

DEPARTMENT OF TREASURY
TREASURY BUILDING, P.O. BOX 15128, LANSING, MICHIGAN 48901
MARK A. MURRAY, State Treasurer

REVENUE ADMINISTRATIVE BULLETIN 1999 - 2

Approved: April 20, 1999

SALES AND USE TAXATION IN THE CONSTRUCTION INDUSTRY INCLUDING NONPROFIT HOSPITAL, NONPROFIT HOUSING, AND CHURCH SANCTUARY EXEMPTIONS

(Replaces Revenue Administrative Bulletin 1991-15)

RAB-1999-2. This bulletin explains the Treasury Department's position regarding the application of sales and use taxes to the construction industry. This bulletin does not address the tax base for manufacturers who qualify as construction contractors or for contractors who manufacturer, fabricate, or assemble property prior to affixing it to real estate.

The bulletin restates the discussion in previous bulletins for the construction industry. It contains additional discussion of exemptions for real property contractors for work performed on the real estate of qualified nonprofit hospitals, nonprofit housing, and water and air pollution control facilities. It also contains a discussion of the exemption for real property contractors for work performed on a church sanctuary that was enacted by Public Acts 274 and 275 of 1998.

ISSUES

I. Taxable Sales to Contractors

What sales and use tax responsibilities does a contractor have as a consumer in the business of constructing, altering, repairing, or improving real estate for others?

A. Is a contractor required to pay sales or use tax on all items used to provide his or her service, including equipment, supplies, and materials?

B. May a contractor charge sales or use tax to his or her customer?

C. Is a contractor required to pay sales or use tax if he or she *acquires* but does not purchase or own the tangible personal property used or consumed in performing a contract?

D. Is a contractor required to pay sales or use tax on tangible personal property used or consumed in construction that takes place either in Michigan or outside of Michigan?

II. **Exempt Sales to Contractors**

When does a real property contractor qualify for the exemptions from sales and use tax liability for property affixed to and made a structural part of real estate of the following entities:

A. Nonprofit Hospitals

B. Qualified Nonprofit Housing

C. Church Sanctuaries

D. Qualified Water Pollution Control Facilities and Qualified Air Pollution Control Facilities

E. What documentary support is required to claim such an exemption?

III. **Contractor Engaged in Retail Sales**

What sales and use tax responsibilities does a contractor have when also engaged in the business of making sales at retail of tangible personal property?

A. Is a contractor who is also a retailer required to be licensed under the General Sales Tax Act?

B. Is a contractor who is also a retailer required to pay sales or use tax when material is removed from resale inventory in Michigan and used by the contractor in performing a construction contract?

IV. **Suppliers**

What sales and use tax responsibilities does a "supplier" have when selling to a contractor engaged in the business of constructing, altering, repairing, or improving real estate for others?

A. Who is a "supplier" for sales and use tax purposes?

B. Is a supplier liable for the collection and payment of sales and use tax to the Department of Treasury?

CONCLUSIONS

I. **Taxable Sales to Contractors**

A contractor incurs sales and use tax responsibilities as a consumer in the business of constructing, altering, repairing, or improving real estate for others.

A. A contractor is required to pay sales or use tax on all items used to provide his or her service, including equipment, supplies, and materials.

B. A contractor who pays sales or use tax on the purchase of property, such as equipment, supplies, and materials, cannot charge sales or use tax directly to his or her customer. However, the contractor can include the amount of the tax in the total contract price as an overhead cost.

C. A contractor is required to pay sales or use tax if he or she *acquires* tangible personal property even if he or she *does not purchase or own* the tangible personal property if sales or use tax has not already been paid on the tangible personal property.

Example

A nonprofit school purchases building materials in a tax-exempt transaction and provides the materials to the contractor for use or consumption in performing the contract upon the school's real property. The contractor must pay use tax on the property, absent any other applicable exemption.

D. A contractor is required to pay sales or use tax on tangible personal property acquired in Michigan that is used in a construction project that takes place either within Michigan or outside of Michigan.

II. Exempt Sales to Contractors

Five limited sales and use tax exemptions are available to a contractor as a consumer in the business of constructing, altering, repairing, or improving real estate for others. A real property contractor in the business of constructing, altering, repairing, or improving real estate is afforded exemptions for property affixed to or made a structural part of real estate that qualifies under A through D below:

A. Nonprofit Hospitals

This exemption applies to real estate owned by a "nonprofit hospital". To qualify for this exemption, a hospital must meet a four-part definition. The definition requires: (1) that the hospital must be a separately organized institution or establishment; (2) that the hospital must have as its primary purpose the provision of acute or intensive healthcare and nursing; (3) that the hospital must provide these services to persons requiring them; and, (4) that the hospital must not be operated for profit and no benefit from the real estate inures to individuals or private shareholders.

B. Qualified Nonprofit Housing

Only private qualified nonprofit housing that has received an exemption certificate from the Michigan Housing Development Authority (MSHDA) qualifies for this exemption. Public nonprofit housing is not covered by MSHDA and therefore does not qualify for exemption.

C. Church Sanctuaries

(Effective only for purchases made on or after July 22, 1998.) The exemption applies only to materials affixed to or made a structural part of the "sanctuary" portion of a building. The building must be owned, occupied, and used by a religious

organization qualified under section 501(c)(3) of the internal revenue code of 1986. **The exemption does not apply to the entire building.** The exemption is limited to building portions that are predominantly and regularly used for worship service. Predominant use will be presumed if public worship occurs more than 50% of the time that the building portion is in use. "Use" includes passive uses, such as storage. Regular use means the normal or usual periodic use or uniform use of that portion of the building.

A Sanctuary is:

1. Those portions of a building where the acts of worship take place, and
2. Those portions of a building structurally necessary to the portion of the building where worship takes place.

"Those portions of a building where the acts of worship take place" -- means those areas where the public participates in worship, including areas dedicated to individual worship such as chapels, and those portions of a building whose sole use and function is directly related to the act of public worship. These areas include a sacristy or similar area adjacent to the room where public worship services are conducted or areas where consumables are prepared for use in the worship service. It includes a vestry or similar area adjacent to the room where public worship services are conducted or where clergy or other religious leaders prepare for public worship services. It does not include areas for social functions, day care, schooling, religious education, or any other activity that does not constitute public worship.

"Those portions of a building structurally necessary to the worship portion of the building where worship takes place" -- means those structural portions of the building directly connected to the area where public worship takes place such as foundations, including basement walls which support the interior worship area; exterior walls and their finishing materials directly adjacent to the interior worship area; interior walls, floors and ceilings facing the interior ceiling area; and roofs directly over the interior worship area. To the extent exterior walls, foundations and roofs extend beyond the interior worship area they are not exempt. Roofs not directly over the interior worship area, such as roofs over a second story office that is above the interior worship area are not exempt but may be included in the apportionment formula described below. Structural necessity includes building utilities such as heating, ventilating and air conditioning devices. In instances where a single piece of equipment, such as a furnace, is supplying qualified sanctuary areas as well as other non-exempt areas, a percentage shall be developed to represent the exempt portion of the device. The percentage shall be derived from a fraction, the numerator of which shall be the square footage of the sanctuary and the denominator of which shall be the total square footage of the entire building including all regularly heated or cooled areas, such as basements. This same percentage may be applied to total material purchases for multiple use areas such as roofs and foundations in lieu of accounting for actual cubic yards of concrete or squares of roof shingles directly under or over the sanctuary.

D. **Qualified Water Pollution Control Facilities and Qualified Air Pollution Control Facilities**

The State Tax Commission must have granted certification to the facilities before the contractor may qualify for the exemption. The exemption is not available prior to the receipt of a signed exemption from the State Tax Commission.

D. **Documentary Support**

The contractor must obtain a written statement from the property owner specifying the legal and factual basis for the claimed exemption. The preferred statement form is attached to this bulletin.

III. **Contractor Engaged in Retail Sales**

A contractor is engaged in the business of making sales at retail of tangible personal property when selling property, such as building materials, "over-the-counter" to customers. A contractor also makes a sale at retail when he or she sells tangible personal property is sold in the course of performing a construction contract and the property is not consumed, affixed to, or made a part of the real property upon installation but remains tangible personal property.

A. A contractor who engages in sales at retail must be licensed under the General Sales Tax Act.

B. A contractor who is engaged in sales at retail is required to pay sales or use tax when material is removed from resale inventory in Michigan and used by the contractor in performing a construction contract, regardless of the location of the construction project.

IV. **Suppliers**

A. A "supplier" -- for sales and use tax purposes – is a person in the business of selling building materials, supplies, tools, equipment, etc. to contractors at retail.

B. A supplier is liable for the collection and payment of sales and use tax to the Department of Treasury when selling materials, supplies, tools, equipment, etc. to a contractor. In such a transaction, the contractor is the consumer who pays the sales or use tax to the supplier.

LAW AND ANALYSIS

I. **Taxable Sales to Contractors**

A contractor pays sales or use tax on all items used to provide his service, including equipment, supplies and materials. A contractor is defined as a consumer in the Use Tax Act [P.A. 94 of 1937, as amended] when engaged in the business of constructing, altering, repairing, or improving real estate for others. The General Sales Tax Act [1933 PA 137, as amended] also contains provisions effectively treating the contractor as a consumer.

Section 2(g) of the Use Tax Act [MCL 205.92(g); MSA 7.555(2)(g)] states:

> "Consumer" means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes a person acquiring tangible personal property if engaged in the business of constructing, altering, repairing or improving the real estate of others.

Section 1c of the General Sales Tax Act [MCL 205.51c; MSA 7.521c] states in part:

> "Sale at retail" includes the sale of tangible personal property to persons directly engaged in the business of constructing, altering, repairing, or improving real estate for others ...

The contractor is the consumer in transactions involving tangible personal property that becomes attached to real estate in the performance of a construction contract for others. As the consumer, the contractor pays the sales or use tax due on tangible personal property which is acquired in Michigan. This is true whether the construction takes place inside or outside of Michigan.

Under MCL 205.92(g) and 205.93, the contractor cannot charge the tax to the other party to the contract because the contractor is using or consuming the building materials in constructing realty for others rather than reselling it at retail. The contractor can, however, recover expenses incurred in performing the contract, including taxes paid on the building materials, by including the amount of such expenses in the total contract price.

A contractor need not purchase or own the materials being affixed to real estate to incur a use tax liability. The Use Tax Act provides that a contractor is subject to use tax if the contractor merely acquires tangible personal property which is used in the contractor's business is. MCL 205.92(g); MSA 7.555(2)(g). Thus, use tax is due in situations where the contractor receives the materials from its customer when the customer has purchased the materials without payment of sales or use tax, i.e., places of worship, schools, state, city, county, municipalities, nonprofit organizations, etc.

In addition to paying tax on materials becoming part of real estate of others, the real property contractor pays sales or use tax on all equipment, supplies, and other items of tangible personal property purchased, withdrawn from inventory, or consumed in Michigan.

II. Exempt Sales to Contractors

A real property contractor is afforded five exemptions from sales and use tax liability as a consumer in the business of constructing, altering, repairing, or improving real estate for others. These exemptions are for nonprofit hospitals, qualified nonprofit housing, church sanctuaries, qualified water pollution control facilities and qualified air pollution control facilities.

Section 4(l) of the Use Tax Act [MCL 205.94(l); MSA 7.555(4)(1)] provides:

> The tax levied shall not apply to:
>
> Property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the property is affixed to and made a structural part of the real estate of a nonprofit hospital or a nonprofit housing entity . . .

The General Sales Tax Act provides an identical exemption in Section 1c [MCL 205.51(c); MSA 7.521(c)].

Section 4(v) of the Use Tax Act [MCL 205.94(v); MSA 7.555(4)(v)] provides:

> The tax levied shall not apply to:
>
> Tangible personal property purchased and installed as a component part of a water pollution control facility for which a tax exemption certificate is issued pursuant to part 37 (water pollution control facilities; tax exemption) of the natural resources and environmental protection act, 1994 PA 451 MCL 324.3701 to 324.3708, or an air pollution control facility for which a tax exemption certificate is issued pursuant to part 59 (air pollution control facility; tax exemption) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5901 to 324.5908

The General Sales Tax Act provides an identical exemption in Section 4a(o) [MCL 205.54a(o); MSA 7.555(4o)].

Also, effective July 22, 1998 with passage of Public Acts 274 and 275, the General Sales Tax Act and Use Tax Act were both amended to provide an exemption for a "sanctuary". Section 4m of the Use Tax Act [MCL 205.94m(1); MSA 7.555(4m)]was added to read as follows:

> (1)The tax levied under this act does not apply to tangible personal property acquired by a person engaged in the business of constructing, altering, repairing, or improving real estate for others if the property is to be affixed to or made a structural part of a sanctuary.

The General Sales Tax Act provides an identical exemption in a new section 4p [MCL 205.54p; MSA 7.555(4p)].

Nonprofit Hospital

Both the General Sales Tax Act and Use Tax Act, MCL 205.94(l) and MCL 205.51(c) contain similar exemptions with respect to the real estate of "nonprofit hospitals". Both acts describe the term "nonprofit hospitals" as follows:

> . . . the property of a nonprofit hospital . . . , the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person. [MCL 205.51(c); MSA 7.521(c)].

To qualify for these two exemptions, the hospital must meet a four-part definition established by the Michigan Court of Appeals in *Canterbury Health Care v Dep't of Treasury*, 220 Mich App 23 (1996):

1) the hospital must be a separately organized institution or establishment;

2) the hospital must have as its primary purpose the provision of acute or intensive healthcare and nursing;

3) the hospital must provide these services to persons requiring them; and,

4) the hospital must not be operated for profit and no benefit from the real estate inures to individuals or private shareholders.

The first requirement seeks to ensure that the hospital has a separate organizational identity from other business entities that do not meet the definition of a hospital. Separate accounting, physical separation of the hospital's real estate, exclusive use by the hospital are examples of some of the factors which may indicate that a hospital is a separately organized institution or establishment.

The second requirement examines whether the primary purpose of the hospital is to provide acute or intensive healthcare services. Acute or intensive healthcare must involve any one of the following areas of practice -- medical, obstetrical, psychiatric, or surgical -- and, the level of care must significantly exceed a physician's mere supervision of nurses or the provision of prescription medication. Rather, the level of care concerns the type of treatments that only licensed physicians can perform and which require the physician's active and direct performance.

Licensure by the Michigan Department of Health as a hospital is substantial evidence that a hospital meets this second requirement. On the other hand, licensure as a different type of health care provider weighs against a finding that the provider's facility meets this requirement. For example, licensed nursing facilities or skilled care nursing facilities will likely not meet the second requirement.

The third requirement considers the hospital's actual practice and not just its stated purpose. If a hospital's purpose is to provide acute or intensive healthcare described in the second requirement, the hospital must actually and primarily provide acute or intensive care to persons requiring it. Again, licensure by the Michigan Department of Health as a hospital is substantial evidence that this requirement has been met.

Finally, the fourth requirement of the definition requires that the hospital must be nonprofit. The term "nonprofit" is defined in MCL 205.94(1) and 205.51(C). Not operated for profit means that the income or benefit from the operation of the hospital does not inure, in whole or in part, to individuals or private shareholders, directly or indirectly, and that the activities of the entity or agency are carried on exclusively for the benefit of the public at large, and are not limited to the advantage, interests, and benefits of its members or a restricted group.

If benefit from the real estate inures to individuals or private shareholders in the manner described in the statutes, the real estate will not qualify for exemption, even though owned by a qualified nonprofit hospital entity. Commercial ventures such as shopping

center retail store buildings held as an investment will not qualify for exemption. Any buildings in which office space is rented to physicians to carry out their private practices would also not qualify for exemption, and the entire building would be taxable. In instances where a single building is being constructed that will have multiple uses, some of which will not pass the inurement test as previously described, the entire building/project will fail to gain exempt status. This is true regardless of the extent of benefit.

Qualified Nonprofit Housing

The General Sales Tax Act and Use Tax Act contain identical descriptions of what entities are covered by the exemption for "nonprofit housing entity" exemption to real property contractors at Section 4(l) and Section 1(c) respectively [MCL 205.94(l); MSA 7.555(4)(1) and MCL 205.51(c); MSA 7.521(c) respectively]. MCL 205.51(c) states that the exemption for nonprofit housing includes only:

> the homes or dwelling places constructed by a nonprofit housing entity qualified as exempt pursuant to section 15a of the state housing development authority act MCL 125.1415a, the income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder, or other private person. [MCL 205.51(c)]

The statute states that the real property must have received exemption from the Michigan State Housing Development Authority (MSHDA). Additionally, no direct or indirect benefit can inure to any person other than the intended qualified tenants. MSHDA exemption provisions do not currently cover public nonprofit housing. Therefore public nonprofit housing does not qualify exemption to real property contractors.

Church Sanctuaries

1998 PA 274 and 275 amended the General Sales Tax Act and the Use Tax Act respectively [MCL 205.54p; MSA 7.525(16) & MCL 205.94m; MSA 7.555(4m)], by providing an exemption to real property contractors for tangible personal property affixed to or made a structural part of a sanctuary. MCL 205.54p & 205.94m define the term sanctuary in the following manner:

> "Sanctuary " means only that portion of a building that is owned and occupied by a regularly organized church or house of religious worship that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a regularly organized church or house of religious worship and that will be used predominantly and regularly for public worship.

These sections also provide the following additional definition:

> "Regularly organized church or house of religious worship" means a religious organization qualified under section 501(c)(3) of the internal revenue code of 1986.

Both amendments were given immediate effect on July 22, 1998. Therefore, the exemption is limited to purchases made on or after the effective date of the acts (July 22,

1998). Materials purchased prior to July 22, 1998 do not qualify for the exemption regardless of when they might be affixed to an otherwise qualified sanctuary.

The exemption is limited to tangible personal property (materials) "affixed to and made a structural part of a sanctuary." [MCL 205.54p(1) and 205.94m(1).] This includes framing materials, finishing materials such as drywall, plaster and brick, and other structural parts of a sanctuary. The exemption does not include tools and equipment or supplies used and consumed in the construction which does not become a structural part of the sanctuary, i.e. sandpaper.

The sanctuary consists of the following:

those portions of a building where the acts of worship take place, and

those portions of a building structurally necessary to the portion of the building where worship takes place.

The exemption is limited to building portions dedicated in a predominant and regular sense to worship service. Predominant use will be presumed if worship service occurs more than 50% of the time the building portion is in use. Use will include passive uses, such as storage. Regular will mean normal or usual and periodic or uniform in occurrence.

"Where the acts of worship take place" is limited to those areas where the public participates in worship services, including areas dedicated to individual worship such as chapels, and those building portions whose sole use and function is directly related to the act of worship. These areas include a sacristy adjacent to the room where public worship services are conducted where consumables are prepared for use in the worship service. It includes a vestry adjacent to the room where public worship services are conducted where clergy or other religious leaders prepare for public worship services. It does not include areas for social functions, day care, schooling, religious education, or any other activity that does not constitute public worship.

"Structurally necessary to the worship portion of the building" is limited to those building portions directly connected to the area where public worship takes place. It includes: foundations, including basement walls which support the interior worship area; exterior walls and their finishing materials directly adjacent to the interior worship area; interior walls, floors and ceilings facing the interior ceiling area; and roofs directly over the interior worship area. To the extent exterior walls, foundations and roofs extend beyond the interior worship area they are not exempt. Roofs not directly over the interior worship area -- such as, roofs over a second story office which is above the interior worship area -- are not exempt. However, roof purchases may be apportioned as provided below.

Structural necessity includes building utilities such as heating, ventilating and air conditioning devices. In instances where a single piece of equipment, such as a furnace, is supplying qualified sanctuary areas as well as other non-exempt areas, a percentage shall be developed to represent the exempt portion of the device. The percentage shall be derived from a fraction, the numerator of which shall be the square footage of the sanctuary, and the denominator of which shall be the total square footage of the entire building. This same percentage may be applied to total materials purchased for use in

multiple areas such as roofs and foundations in lieu of accounting for actual cubic yards of concrete or squares of roof shingles directly under or over the sanctuary.

Building areas generally not provided exemption include a gymnasium, office, vestibule, hallways, restrooms, basements and classrooms. Also not exempt are outdoor areas such as a parking lot, sidewalk and steps leading into a building. Also not exempt are finishing materials affixed to basement foundation walls or attached to walls common to the sanctuary, but constituting the interior walls of space dedicated to any activity other than public worship. Basement floors and second story flooring are not exempt.

Water Pollution Control Facilities and Air Pollution Control Facilities

The State Tax Commission grants exemption through issuance of a certificate for qualified water or air pollution control facilities. This exemption may include portions of real property as well as equipment and other items of tangible personal property.

The Department will not allow an exemption until it has received a signed exemption certificate from the State Tax Commission. However, after a certificate is granted, refunds will be authorized. Requests for refund review as well as other information may be obtained from the Technical Section of the Sales, Use and Withholding Taxes Division at the telephone number and address listed at the end of this bulletin.

Documentary Support for an Exempt Real Property Contract

A real property contractor who intends to make claims of exemption for materials used in any of the above exempt types of construction contracts should obtain a written statement from the qualified nonprofit housing entity, nonprofit hospital, church, or owner of water and/or air pollution control facilities. The information given in the statement should be specific, such as:

the entity that owns and is having the hospital structure constructed meets the four-part definition of hospital and no benefit of the hospital will inure, directly or indirectly, to a private individual; or,

the nonprofit housing entity has qualified under section 15a of the state housing development authority act of 1966; or,

the entity that owns and is having the sanctuary constructed is a church or house of religious worship qualified under section 501(c)(3) of the internal revenue code, and the designated exempt portion of the building will be used predominately and regularly for religious worship; or,

the real property construction claimed exempt for air and water pollution control reasons has been granted an exemption certificate by the State Tax Commission.

Where appropriate the statement should be accompanied by supporting documentation. Such documentation may include copies of the Michigan State Housing Development Authority ruling, a hospital license from the Michigan Department of Public Health, State Tax Commission certification, or Internal Revenue Service 501(c)(3) ruling letter.

III. Contractors Engaged in Retail Sales

A person engaged as a real property contractor in the business of constructing, altering, repairing or improving real estate may also be engaged in the business of making sales at retail. For example, a contractor may make over-the-counter sales of building materials, or may, in the course of performing a construction contract, sell tangible personal property that will remain tangible personal property rather than becoming affixed to realty upon installation.

Contractors who are also retailers are required to be licensed under the General Sales Tax Act. Contractor/retailers holding a valid sales tax license are exempt from sales tax when purchasing tangible personal property for resale. When making such purchases, the properly licensed contractor/retailer must provide its sales tax license number to the supplier and include the phrase "for sale at retail" on the exemption claim form provided to the supplier.

A contractor/retailer is exempt from tax when purchasing inventory for resale in the manner described above. However, the contractor/retailer is taxed when material is removed from resale inventory in Michigan for the contractor/retailer's own use in a construction contract. The material is taxable in Michigan whether the contractor uses it in a construction contract in this state or elsewhere.

IV. Suppliers

A supplier is a person in the business of selling building materials to contractors. Suppliers make sales at retail. Contractors purchase property that will be affixed to and made a structural part of real estate in the performance of a construction contract.

Although the contractor is the consumer and must pay the sales or use tax due on the transaction, the supplier is liable for the collection and payment of the tax to the Department of Treasury. The supplier is relieved of this responsibility only when:

1. building materials purchased by the contractor are to be affixed to and become a structural part of the real estate of one of the exempt properties described in section II of the "Conclusions" section of this bulletin; or,

2. materials are purchased for resale.

The supplier must retain records of tax-exempt sales to contractors. When the property is sold for resale, the supplier must retain sales documentation containing the contractor's sales tax license number and identifying the sale as "for sale at retail." When the sale is of property to be affixed to and made a structural part of real estate of one of the exempt properties described in this bulletin, the supplier must obtain a properly executed exemption certificate. A copy of the prescribed form of exemption certificate is attached at the end of this RAB. For a more detailed discussion of exemption certificates see the Department's Revenue Administrative Bulletin (RAB) entitled SALES AND USE TAX EXEMPTIONS AND REQUIREMENTS.

Related RAB

For a detailed discussion of the tax liability of contractors who manufacture, fabricate or assemble tangible personal property before they affix it to real estate see the Department's Revenue Administrative Bulletin (RAB) titled USE TAX BASE OF TANGIBLE PERSONAL PROPERTY AFFIXED TO REAL ESTATE BY A MANUFACTURER/CONTRACTOR.

Assistance

For further information or to request a copy of the RABs referred to above please contact:

Michigan Department of Treasury
Sales, Use and Withholding Taxes Division, Technical Section
Treasury Building
430 W. Allegan St.
Lansing, Michigan 48922

Telephone: (517) 373-3190

Treasury website www.treas.state.mi.us

Michigan Department of Treasury, SUW
3519 (4/99)

MICHIGAN SALES AND USE TAX CERTIFICATE OF EXEMPTION

This certificate is invalid unless all four sections are completed by the purchaser.

Section 1: Check one of the following:

Γ One time purchase Γ Blanket certificate[1]

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made under this certificate from:

_____
(Vendor's Name)

and certifies that this claim is based upon the purchaser's proposed use of the items or services, or the status of the purchaser:

Section 2: Items covered by this certificate:

Γ All items purchased
Γ Limited to the following items: _____

Section 3: Basis for exemption claim:

Resale

Γ At Retail - Sales Tax Registration Number: _____

Γ At Wholesale - No Number Required

Γ Agricultural Production: (Describe)_____

Γ Industrial Processing

Non-Profit Organizations

Γ Government Entity, Nonprofit School, Nonprofit Hospital, and Church
(circle type of organization)
Γ Internal Revenue Code Section 501(c)(3) and 501(c)(4) Organizations

Γ Exempt letter from the State of Michigan

Γ Other (explain):_____

Section 4: Certification:

In the event this claim is disallowed, the purchaser promises to reimburse the seller for the amount of tax involved.

_____ _____
Purchaser Street Address

_____ _____
Area Code / Telephone No. City State Zip Code

_____ _____
Signature and Title Date Signed

_____
Name (Print or Type)

[1]A blanket certificate is valid for three years from date of signature unless an earlier expiration date is listed below:

Expiration date, if less than three years: _____.

Michigan Department of Treasury, SUW
3520 (4/99)

MICHIGAN SALES AND USE TAX CONTRACTOR ELIGIBILITY STATEMENT FOR QUALIFIED NONPROFIT HOSPITALS, NONPROFIT HOUSING, CHURCH SANCTUARIES, AND POLLUTION CONTROL FACILITIES EXEMPTIONS

A real property contractor may use this form to obtain a statement from the property owner that materials to be affixed to and made a structural part of certain real property qualify for exemption based on facts within the control of the property owner. The property owner should complete the form and return it to the contractor who will submit this form to the supplier along with the Sales and Use Tax Certificate of Exemption at the time of purchase. Nothing in this statement should be construed to relieve a contractor from tax liability if it is found that the subject property does not qualify for the exemption.

PROPERTY OWNER STATES that materials will be affixed to and made a structural part of its real property and that the property owner is one of the following entities (Check the box that applies):

☐ **Nonprofit Hospital**
Check this box only if the property owner meets the definition of hospitals contained in Revenue Administrative Bulletin 99-2 and no benefit will inure directly or indirectly to a private individual.

☐ **Qualified Nonprofit Housing**
Check this box only if the property owner is qualified under section 15a of the state housing development authority act of 1966. (Attach a copy of the Michigan Housing Development Authority ruling.)

☐ **Qualified Water Pollution Control Facility**
(Attach a copy of the exemption certificate granted by the Michigan State Tax Commission.)

☐ **Qualified Air Pollution Control Facility**
(Attach a copy of the exemption certificate granted by the Michigan State Tax Commission.)

☐ **Church Sanctuary**
Check this box only if the property owner is a religious organization qualified under section 501(c)(3) of the internal revenue code and the material will be affixed to the designated exempt portion of the building defined by law as a sanctuary that is or will upon completion be used predominantly and regularly for religious worship. (Attach verification of 501(c)(3) status from the Internal Revenue Service)

Optional: A percentage can be used to determine the exempt portion of a piece of equipment or an order of materials to be used in taxable and nontaxable areas. The percentage is a fraction, the numerator of which is the square footage of the sanctuary and the denominator is the square footage of the entire building.

- Square footage of sanctuary _____.
- Square footage of entire building _____.
- The percentage of the building that constitutes that sanctuary is _____.
  (Rounded to the nearest one-hundredth of a percent)

The undersigned property owner states that the attached documentation (if applicable) and the representations on this form are true and acknowledges that the contractor, the seller, and the State of Michigan may rely upon this form to determine qualifications for tax exemption.

Property Owner	Street Address		
Area Code/Telephone No	City	State	Zip Code
Signature and Title		Date Signed	