

Exempt Organization Contracts

This supercedes Sales Tax Information Letter #40

dated 8-28-74, which should be destroyed.

Chapters 513 and 514, Laws of 1974 amended Section 1115(a)(15) of the tax law to exempt all tangible personal property which will become an integral component part of real property of all exempt organizations described in section 1116(a) pursuant to a capital improvement contract entered into on or after September 1, 1974. These amendments eliminated the requirement that tangible personal property be sold to the exempt organization pursuant to a time and materials contract before such property is incorporated into the realty for contracts entered into after August 31, 1974. A technical amendment to section 1115(a)(16) was also made, as explained on page 2.

The following information covers department policy regarding exempt organization capital improvement contracts as well as repair and maintenance contracts, for both the periods prior to and after the amendments.

EXEMPT ORGANIZATION CAPITAL IMPROVEMENT CONTRACTS ENTERED INTO ON AND AFTER SEPTEMBER 1, 1974 - In the case of contracts involving non-governmental exempt organizations, the prime contractor must obtain an Exempt Organization Certification (Form ST-119.1) from his customer. Such certification must be maintained in his records with the contract document and copies furnished to all subcontractors on the job. The subcontractors, like the prime contractor, are to retain this certification in their records with a copy of the contract which identifies the project and the location. When purchasing tangible personal property for incorporation into the exempt project, the prime contractor and subcontractors will issue a Contractor's Exempt Purchase Certificate (Form ST-120.1) to their suppliers.

In the case of contracts involving governmental entities, the signed contract will be sufficient proof of the exempt status of the purchases made for such contract. The existence of a signed contract document between the prime contractor and the subcontractor, which identifies the project, location, and exempt owner, will form the basis for exemption of tangible personal property purchased for incorporation into the exempt project. When purchasing the qualifying tangible personal property from a supplier, the contractor or subcontractor will issue a Contractor's Exempt Purchase Certificate to the supplier.

EXEMPT ORGANIZATION CAPITAL IMPROVEMENT CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 1974 - For exempt organization construction contracts entered into prior to September 1, 1974, including related subcontracts regardless of the date signed, the following policy is applicable and will be applied retroactively.

1. Time and material contracts - contractors and subcontractors may purchase material for incorporation into the project without payment of New York State and local sales tax by using the Contractor's Exempt Purchase Certificate and the prime contractor will complete a Contractor's Exempt Purchase Certificate for each subcontractor.
2. Lump sum contracts - contractors and subcontractors are required to pay sales tax on all purchases of material for such project. However, Department policy acknowledges that where it is shown that the intention of both parties is to preserve the tax benefit to the exempt entities by omitting the sales tax from the bid price of the contract, the purchases of materials for the fulfillment of those contracts will not be subject to tax.

OTHER TAXABLE PURCHASES BY CONTRACTORS - Contractors' purchases of tangible personal property which do not become an integral component part of the exempt organization's real property and are consumed by the contractor, as well as purchases of taxable services are subject to tax. However, those purchases of tangible personal property by the contractor which are not incorporated into the realty but are later sold and transferred to the exempt organization as tangible personal property are not subject to tax.

The following types of property and services are representative of purchases which are taxable to all contractors, irrespective of whether the contractor has a time and material contract or lump sum contract which was entered into before September 1, 1974, or on or after such date, with an exempt organization:

1. construction machinery and equipment, including rentals or repair parts
2. contractors' office supplies
3. contractors' supplies, tools and miscellaneous equipment, including forms materials and scaffolding (whether purchased or rented)
4. temporary heating fuel
5. telephone and electric services
6. any other items purchased or rented by a contractor for his use in performing the contract and not incorporated into the realty

REPAIR AND MAINTENANCE CONTRACTS WITH EXEMPT ORGANIZATIONS - Chapter 513 amended section 1115(a)(16), effective May 25, 1974, to read as follows (new material underscored):

"(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen, as the terms real property, property or land are defined in the real property tax law: provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property."

The above change reflects the statutory requirements found in section 1115(a)(15), and limits the exemption for repair and maintenance materials to those items of tangible personal property actually incorporated into the exempt organization's structure, building or real property. Unlike section 1115(a)(15), the type or form of maintenance or repair contract entered into with an exempt organization (i.e. time and materials or lump sum) was never a factor in establishing exemption for the contractor's purchases of materials used in the project.

GENERAL

The information covering exempt organization capital improvement contracts entered into on and after September 1, 1974, may also be followed for repair and maintenance contracts entered into on and after May 23, 1974. For repair and maintenance contracts entered into prior to May 23, 1974, the prime contractor must prepare a Contractor Exempt Purchase Certificate for each subcontractor, and both the contractor and subcontractors must use such a certificate when purchasing tangible personal property from a supplier which will be used to maintain, service or repair the real property of an exempt organization.