



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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LETTER RULING 2014-1

LR 2014-1. Sales and use tax treatment of subcontractors for retailers

You ask about the sales and use tax consequences regarding the situation where a retailer sells product and installation to a customer and hires a subcontractor to do the installation. Specifically, you ask whether a retailer is required to remit sales tax on the sales price (charged to the customer) or whether the subcontractor is required to remit use tax on the taxable tangible personal property it consumes in performing the contract on behalf of the retailer.¹ You have also posed other related scenarios.

Retailers of construction or home improvement materials frequently contract with subcontractors to install the materials (for example, countertops, siding, roofing, and windows) the retailers sell. You identify a scenario in which the retailer remits sales tax on the sales price of the materials while the subcontractor remits use tax for that same tangible personal property used and consumed in performing the contract. This would result in two separate taxpayers paying sales/use tax on the same property.

The General Sales Tax Act (GSTA) provides:

[T]here is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business....²

The Use Tax Act (UTA) provides:

There is levied upon and there shall be collected from every person in this state a specific tax for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services specified in section 3a or 3b.³

However, the UTA exempts:

property sold in this state on which transaction a tax is paid under the [GSTA] if the tax was due and paid on the retail sale to a customer.⁴

¹ For a more detailed discussion of contractor sales and use tax liability in general, see RAB 1999-2.

² MCL 205.52(1).

³ MCL 205.93(1).

⁴ MCL 205.94(1)(a).

Contractors are the consumers of the materials they affix to real estate for others.⁵ With few exceptions, tangible personal property consumed by contractors is subject to tax.⁶ The tax liability may be satisfied by the contractor paying sales tax to the vendor from which it purchases the property for use and consumption in fulfilling its contract, by the retailer remitting sales tax on the sale of materials to its customer, or by the contractor paying use tax on the property consumed.

Retailers, on the other hand, are responsible for remitting 6% sales tax based on the sales price of the property.⁷ A retailer may only avoid a sales tax liability when selling exempt property or when a proper exemption claim is presented.⁸

In the scenario you present, when a retailer makes a taxable sale of property to a customer it must remit sales tax, regardless whether the retailer subcontracts with a contractor for installation of the property. If the retailer collects sales tax from its customer, the contractor will be relieved of paying use tax for that property if the contractor can demonstrate that the sales tax was collected by the retailer. A sales invoice from the retailer to the customer that separately states the sales tax is sufficient evidence to establish that sales tax was collected on the retail sale and will satisfy the contractor's burden of proving its entitlement to the exemption provided in MCL 205.94(1)(a).

You also indicate that some contractors have requested that retailers not collect or remit sales tax on taxable sales of property, so that the contractor may instead pay use tax on the property. However, a retailer may not exempt otherwise taxable transactions without a valid claim of exemption. The contractor's intention to pay use tax on the property consumed is not a sales tax exemption. When there is no applicable exemption, the retailer must remit sales tax.

You propose a scenario in which the contractor obtains from another source the materials for contracts it has with the retailer; that is, the retailer is not selling the contractor the property that is eventually installed. In that case, the contractor would owe sales tax to the vendor unless there is a valid exemption, and that property would then be exempt from use tax upon installation.

Further information is also available at: www.michigan.gov/taxes.

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⁵ Mich Admin Code, R 205.71.

⁶ See RAB 1999-2 for treatment and exceptions.

⁷ MCL 205.52(1); see MCL 205.51(1)(d) for the definition of "sales price." A retailer may also be liable for use tax for tangible personal property it purchases exempt for resale and later converts to a taxable use. MCL 205.97(2).

⁸ See RAB 2002-15.