



STATE OF MICHIGAN

JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

TREASURY BUILDING, P.O. BOX 1528, LANSING, MICHIGAN 48922
DOUGLAS B. ROBERTS, State Treasurer

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SALES AND USE TAX EXEMPTIONS AND REQUIREMENTS

(Replaces Revenue Administrative Bulletin 1990-32)

RAB-96-6. This bulletin illustrates the recommended sales and use tax exemption claim formats acceptable to the Michigan Department of Treasury (Department), incorporating the amendments to the General Sales Tax Act and Use Tax Act of Public Acts 132, 156, and 424 of 1994 and Public Act 254 of 1995.

BACKGROUND

Section 17 of the General Sales Tax Act [MCL 205.67; MSA 7.538] lists the information that must be included in supporting a claim for exemption from sales tax:

"If an exemption from sales tax is claimed because the sale is for resale or for any of the other exemptions or deductions granted under this act, a record shall be kept of the name and address of the person to whom the sale is made, the date of the sale, the article purchased, the use to be made of the article, and the amount of the sale, and if that person has a sales tax license, that number shall also be included."

Section 14 of the Use Tax Act [MCL 205.104; MSA 7.555(14)] and Department of Treasury Sales and Use Tax Administrative Rule, 1979 AC, R 205.23(5), reiterate these requirements.

Public Act 132 of 1994 amended Section 17 of the General Sales Tax Act by adding the following:

"If a taxpayer maintains the records required under this section, and accepts an exemption certificate from the buyer in good faith on a form prescribed by the department, the taxpayer is not liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption under this act. As used in this section, "good faith" means that the taxpayer exercised reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed (emphasis added)."

Section 17 of the General Sales Tax Act was also amended by Public Act 254 of 1995 to include the following:

For purposes of this section, exemption certificate includes a blanket exemption certificate on a form prescribed by the department that covers all exempt transfers between the taxpayer and the buyer for a period of 3 years or for a period of less than 3 years as stated on the blanket exemption certificate if that period is agreed to by the buyer and taxpayer.

TAX EXEMPTION NUMBERS

The Michigan Department of Treasury does not issue "tax exemption numbers" for any type of organization. Sellers should not accept a "number" as evidence of exemption from sales and use taxes. (However, a sales tax license number may support a tax exemption claim based on "for resale at retail" as described later in this bulletin.)

CERTIFICATE OF EXEMPTION-SINGLE PURCHASE

The Department's prescribed form for the Certificate of Exemption is included in this bulletin. The Department will also accept any exemption certificate contained in a Sales and Use Tax Administrative Rule, the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission and as discussed later in this bulletin, a purchase order issued by the purchaser. Collectively, these items are referred to as "exemption claims", and represent the only acceptable formats.

An exemption claim must be presented by the purchaser to the seller. Whether or not an exemption is allowed depends on the type of organization purchasing the item(s), the activity of the purchaser or the proposed use of the item(s). Characterization by the purchaser that the sale is exempt is not, in itself, proof of exemption.

If the seller accepts, in good faith, the exemption claim, the seller will not be liable for collection of the unpaid tax after a finding that the sale did not qualify for exemption. As defined by Public Act 132 of 1994, "good faith" means the seller exercised reasonable care and effort to verify the buyer's entitlement to the exemption.

Reasonable care would include such activities as consulting the Michigan Sales and Use Tax Acts and Administrative Rules or submitting facts to the Department for an opinion. In conjunction with consulting Michigan's sales and use tax laws and specific rules, reasonable care could also be demonstrated by the seller's consideration of the buyer's business activity, the nature of the item, its intended use, and the specific quantity being purchased.

BLANKET EXEMPTION CLAIMS

Blanket exemption certificates are accepted by the State of Michigan. The statutory language of Section 17 of the General Sales Tax Act [MCL 205.67; MSA 7.538] requires that the blanket exemption certificate cover a three year period, unless the buyer and the seller mutually agree upon a shorter period.

A blanket exemption claim is limited to a completed Certificate of Exemption, any exemption certificate contained in a Sales and Use Tax Administrative Rule, or the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, filed once and maintained in the seller's records, which states that all of the defined purchases made by the presenter of the certificate are exempt from tax. This claim is subject to the good faith provisions as described previously. Therefore, the seller must exercise reasonable care and effort to determine that the purchaser is entitled to the exemption. If the seller becomes aware that

an item will be used in a taxable manner rather than the exempt use stated on the certificate, the items purchased must be taxed.

For example, a purchaser, who usually buys widgets, submits a blanket exemption certificate to the seller for industrial processing and subsequently purchases a coffee pot from the same seller. It is reasonable for the seller to determine that the coffee pot will not be used in industrial processing. Tax must be charged on the sale of the coffee pot. However, if the purchaser uses some of the widgets, covered by the blanket certificate, to repair a delivery truck, the purchaser incurs the incidence of the tax and must compute its use tax liability and pay the tax due directly to the State of Michigan.

PURCHASE ORDERS

Statements of taxability or exemption contained on purchase orders that are given to a seller after a Certificate of Exemption or any exemption certificate contained in a Sales and Use Tax Administrative Rule, but before consummation of the sale transaction, will take precedence and be controlling for tax purposes. If such a purchase order states that the purchase is subject to tax and the purchaser has also previously issued a blanket exemption claim, the seller is liable for sales tax on the purchase. The seller cannot rely on the blanket claim of exemption for the taxable sale, because he had knowledge of the taxability of the sale and the statute imposes a good faith responsibility on the seller. It should be noted that purchasers should carefully review their use of blanket exemption claims, and limit situations where conflicting purchase orders are not anticipated or expected.

Single Purchases

For a single purchase from a seller, a purchase order may support a tax exemption claim by making a clear statement of exemption that includes all the information required by Section 17.

Multiple Purchases

Blanket exemption certificates may be used when the purchaser makes multiple purchases of exempt items from a seller.

When a purchaser buys both exempt and taxable items from the same seller, the certificate must identify the exempt items covered. The seller remains liable for tax on items not specifically listed on the exemption certificate.

If a purchaser submits a blanket exemption claim for all items being acquired, but purchases both exempt and taxable items from the same seller and the seller accepts the claim in good faith, the purchaser is liable for the use tax on the items subject to tax.

EXAMPLES OF BLANKET EXEMPTION CLAIMS

1. The sale of electricity on a monthly basis to a customer is not considered to be a continuous sale but rather numerous individual retail sales. The sale each month of a specific amount of electricity is a retail sale subject to tax. A seller of electricity may accept blanket exemption certificates if the use of the electricity is exempt.
2. An exempt nonprofit hospital continually purchases supplies and equipment for its own use from a specific seller. The seller may accept a blanket exemption claim from the hospital.

3. A seller accepts a blanket exemption claim provided by a school. However, school employees are making personal purchases for cash under the school name. These personal purchases are not covered by the blanket exemption claim and will not be exempt. In this instance, the seller must use reasonable care in making this determination.
4. A seller accepts a blanket exemption claim from a particular customer. On a subsequent sale, a purchase order is issued in which the customer states that the purchase is taxable. The customer's purchase order will overrule the blanket exemption for that specific purchase, and the sale does subject the seller to tax.
5. A seller of bolts accepts a blanket exemption claim from a manufacturer who purchases a large quantity of bolts on a weekly basis. The seller makes this decision based on his knowledge of the purchaser's business activity, the nature of the item and the specific quantity being purchased.

NOTE: These examples illustrate situations in which blanket exemption claims may be used and the tax effect. The examples are not intended to be all-inclusive or restrictive.

VARIOUS STATUTORY EXEMPTIONS

An exemption claim must be presented to the seller prior to or when tangible personal property is sold. The buyer must state a valid **reason** for claiming exemption. The more common exemptions allowed by the General Sales Tax Act and the Use Tax Act are listed below.

Sales for Resale

Section 2 of the General Sales Tax Act [MCL 205.52; MSA 7.522] imposes the sales tax only upon sales at retail. Thus, sales of property intended for resale are exempt. A Certificate of Exemption, any exemption certificate contained in a Sales and Use Tax Administrative Rule, Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable) should indicate the reason for claiming exemption as "For resale at retail." Retailers in Michigan are issued sales tax license numbers. The purchaser's sales tax license number must also be included on the exemption form.

Wholesalers, **that make no retail sales**, are not licensed with the Department and are not issued numbers. Wholesalers buying for resale should indicate on the Certificate of Exemption, any exemption certificate contained in an Administrative Rule, the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable) "For resale at wholesale."

Sales to Agricultural Producers

A sale to a person for use or consumption in agricultural production is exempt from tax, provided the items are used or consumed in connection with the production of horticultural or agricultural products as a business enterprise. [MCL 205.54a(f); MSA 7.525(f) and MCL 205.94(f); MSA 7.555(4)(f), and Department of Treasury Sales and Use Tax Rule, 1979 AC, R 205.51]

Sales to Industrial Processors (Manufacturers)

Industrial processing is the act of transforming, altering, or modifying tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail, or sale to another industrial processor for further processing and ultimate sale at retail. The sale of property to a manufacturer

or industrial processor for use or consumption in industrial processing is exempt from sales tax. [MCL 205.54a(g); MSA 7.525(g) and [MCL 205.94(g); MSA 7.555(4)(g)]

Sales to Governmental Entities

Section 4 of the General Sales Tax Act [MCL 205.54(6); MSA 7.524(5)] and Michigan Sales and Use Tax Administrative Rule, 1979 AC, R 205.79, provide that sales to the United States government, the State of Michigan, and their political subdivisions, departments and institutions, and the American Red Cross and its chapters and branches are not taxable when ordered on a governmental purchase order and paid for by warrant on government funds. At the time of purchase the governmental entity should indicate on the Certificate of Exemption, any exemption certificate contained in an Sales and Use Tax Administrative Rule, or Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission that payment is from funds of the governmental entity. Sales to other States or their departments are subject to tax.

Sales Not for Resale to Nonprofit Schools, Nonprofit Hospitals, and Churches

The sale of tangible personal property to a nonprofit school, parent cooperative preschool, nonprofit hospital, or regularly organized church or house of religious worship is exempt, provided the property will be used or consumed in connection with the operation of the institution or agency, and that the institution or agency qualifies as an exempt entity under the law. [MCL 205.54a(a),(b); MSA 7.525(a),(b); Department of Treasury Sales and Use Tax Rules, 1979 AC, R 205.74, R 205.87, and R 205.65]

Sales Not for Resale to other Nonprofit Organizations

In order to qualify for this exemption, the tangible personal property purchased must be used or consumed primarily in carrying out the purposes of the institution or agency, as stated in the bylaws or articles of incorporation of the exempt entity.

Sales of tangible personal property to these organizations are exempt from tax provided:

1. Health, welfare, educational, cultural arts, charitable, or benevolent organizations previously certified as exempt, must present the "exemption ruling letter," signed by the Administrator of the Sales, Use, and Withholding Taxes Division of the Department, reissued after June 12, 1994 (sample copy attached);

OR

2. Organizations not previously certified as exempt must:
 - 1) Present a Certificate of Exemption, any exemption certificate contained in an Administrative Rule, Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission, or purchase order (where applicable), completed in accordance with Section 17 of the General Sales Tax Act, indicating "For nonprofit organization exempt from Federal income tax under section 501(c)(3) or 501(c)(4) of the IRC"; and
 - 2) Include a copy of their Federal exemption letter. (A two-sided, one-page document could be utilized--one side the Certificate of Exemption, and the other a reproduction of the page in the Federal ruling or determination letter that states recognition of tax-exempt status.)

Please see Revenue Administrative Bulletin 1995-3 regarding non-profit organizations. [General Sales Tax Act MCL 205.54n[1]; MSA 7.525(14) and Use Tax Act MCL 205.94(aa); MSA 7.555(4)(y)]

For questions related to this Revenue Administrative Bulletin please call the Sales, Use and Withholding Taxes Division-Technical Section at (517) 373-3190 or write to them at Treasury Building, Lansing, Michigan 48922.

