



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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LETTER RULING 2017-3

LR 2017-3. Use Tax liability for tangible personal property used and consumed in the fabrication of countertops.

You fabricate and install countertops. You have an arrangement with a retailer to fabricate countertops for its customers. You describe the facts relating to the arrangement as follows:

1. The retailer offers your product for sale at its store.
2. You contact customers who are interested in your product and arrange for an in-home visit and prepare a quote for the new countertop.
3. If the customer accepts the quote, the customer signs the retailer's purchase order form.
4. The customer makes a pre-payment to the retailer for the custom-fabricated countertop.
5. You fabricate the custom countertop per the quote.
6. Upon notice of successful installation, the retailer pays you for the fabricated countertop that it sold to the customer.

Ruling Request. You request confirmation that you are exempt from the Michigan Use Tax on tangible personal property used and consumed in the fabrication of countertops sold to the retailer. In reviewing your request, there appear to be three potentially taxable events involved in this fact pattern. Each one will be addressed separately.

1. Purchase by you of tangible personal property used in the fabrication of countertops
2. Sale of countertops by you to the retailer on claims for resale exemption
3. Retail sale of countertops by retailer to its customers

Summary of Applicable Law. The Michigan General Sales Tax Act and the Michigan Use Tax Act are complementary tax statutes that generally levy a 6% tax on the sale or use of tangible personal property. Tangible personal property is defined, in relevant part, as "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses." MCL 205.51a(q); MCL 205.92(k). The sales tax is levied on all persons engaged in the business of making sales at retail. A sale at retail is a transaction in which ownership of tangible personal property is transferred for consideration. MCL 205.52(1).

Where the sale or use of tangible personal property is subject to tax, tax is measured upon the "total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold." MCL 205.51(1)(d); MCL 205.92(f).

Sales of tangible personal property to an industrial processor for use or consumption in industrial processing are exempt from the sales tax and the use tax. MCL 205.54t(1); MCL 205.94o(1). However, the property is exempt only to the extent that the property is used for the exempt purposes under the statute. MCL 205.54t(2); MCL 205.94o(2).

To the extent that you have questions regarding delivery or installation charges and how they apply to your transaction, please refer to RAB 2015-17.

Conclusions.

- 1. Purchase By You Of Tangible Personal Property Used In The Fabrication Of Countertops.** The purchase by you of tangible personal property used to fabricate countertops to be sold at retail qualifies for the industrial processing exemption under MCL 205.54t(1) and MCL 205.94o(1). However, as noted above, the property is exempt only to the extent that the property is used for the exempt purposes under the statute. MCL 205.54t(2); MCL 205.94o(2). See also RAB 2016-24.
- 2. Sale Of Countertops By You To Retailer On Claim of Resale Exemption.** The sale of countertops by you to retailer on a claim of resale exemption is not subject to the sales or use tax.
- 3. Retail Sale Of Countertops By Retailer To Its Customer.** The sale of a countertop owned by retailer to its customer is a retail sale on which sales tax on the sales price is due and owing by the retailer.

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