

CHAPTER 46. CONSTRUCTION CONTRACTORS

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Source

The provisions of this Chapter 46 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686, unless otherwise noted.

§ 46.1. Construction contractor cutting or bending a steel beam.

The mere cutting or bending of a structural steel beam prior to its being incorporated into real estate is not considered to be manufacturing or processing under the act. A construction contractor performing the operations shall pay tax based upon his purchase price for his purchase or use of the beam. The construction contractor is not entitled to the manufacturer's or processor's exemption with respect to the equipment he uses in the activity.

Source

The provisions of this § 46.1 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

§ 46.2. Construction of exempt public utility facilities.

Effective March 4, 1971, the purchase or use of tools, equipment and supplies by a contractor which are used but not installed as a component of a public utility facility is subject to tax.

Source

The provisions of this § 46.2 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

§ 46.3. Construction contractor installing stained glass windows.

Persons engaged in the business of fabricating and installing stained glass windows are construction contractors within the meaning of §§ 31.11—31.16 (relating to construction contractors). Persons subject to §§ 31.11—31.16 are required to pay tax upon the raw materials purchased and used by them in the fabrication of stained glass windows which they install.

Source

The provisions of this § 46.3 adopted September 8, 1972, effective September 9, 1972, 2 Pa.B. 1686.

§ 46.4. Fixed price construction contract.

(a) *Definition.* The term “fixed price construction contract,” when used in this section, shall mean any construction contract, either in written or paragraph form, containing a bid price which has been accepted, which bid price cannot be altered, modified or withdrawn by either of the parties to the contract, unless the context clearly indicates otherwise.

(b) *Contracts which are not fixed price contracts.* Contracts which are not fixed price contracts shall conform with the following:

(1) A contract containing provisions providing that the owner may, by written order, direct a contractor to perform certain additional work or services or make changes or alterations in the work or omit work or services, or providing that the contractor shall receive cost plus a fixed percentage for any additional or extra work, is not a fixed price contract.

(2) A construction contract containing a provision substantially similar to any one of the following is not deemed to be a fixed price construction contract:

Example 1. If the manufacturer’s price to the Builder for the basic house and other materials is increased prior to delivery thereof to the Builder, the Builder may elect to add such increase to the total purchase price, in which event the Owner may accept such increase in writing or terminate this Agreement in writing within seven days after notification of the increase and be refunded the down payment.

Example 2. This Agreement is conditioned upon the ability of the Seller to complete the above described premises at present prices for material existing at the date of this Agreement with respect to operative home building. If Seller at any time or for any reason is unable to complete the above described premises at present prices for material, or finds that his material costs for the premises or any part thereof still to be constructed will exceed the material costs prevailing at the date of this Agreement, the Seller is hereby given the option to cancel this contract upon written notice to the Buyer, in which event the full deposit money shall be returned to the Buyer without interest and this Agreement shall thereupon become cancelled and void, and the Seller shall have no further liability whatsoever to the Buyer. However, if the Seller is unable to complete the above described property at present prices for material, the Seller may proceed with said construction and give notice to the Buyer of the increase in the material costs, and if the Buyer, within five calendar days after such notice, shall agree in writing to pay such increased costs at or prior to settle-

ment, this Agreement as so modified shall continue in full force and effect, otherwise this Agreement at the option of the Seller shall become cancelled and void.

Example 3. All present and future taxes imposed by any federal, state or local authority which we may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, use or consumption of the materials or services covered hereby, including taxes upon or measured by the receipts therefrom, shall be for your account.

Example 4. All excise, privilege, occupational, sales, use and other taxes applicable to the purchase, sale or use of fencing covered by this proposal or applicable to or measured by the receipts of the contractor therefrom shall be in addition to the price quoted herein and shall be for the sole account of the purchaser.

§ 46.5. Outdoor advertising signs.

(a) The erection of outdoor advertising boards, signs or sign boards by permanent or semipermanent construction is considered to be construction activity. The person erecting the signs is therefore considered the ultimate consumer and is liable for sales tax upon all materials, supplies and equipment purchased within this Commonwealth. He also is liable for use tax upon all materials, supplies and equipment purchased outside this Commonwealth and used in the construction activity.

(b) Tax need not be collected on the periodic charge received by the owner of the board, sign or sign board in consideration of the placing by him of certain advertising materials thereon (such an arrangement being often referred to as “lease of space”), since the consideration is for a license relating to real estate.

Source

The provisions of this § 46.5 amended through October 5, 1984, effective October 6, 1984, 14 Pa.B. 3624. Immediately preceding text appears at serial pages (40367) to (40368).

§ 46.6. Contractors renting equipment to others.

Construction contractors renting equipment to other contractors shall apply for a license under the TRC and collect tax with respect to all rentals.

§ 46.7. Nonresident contractors.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Construction equipment and supplies—Property, such as cranes, dozers, graders, vehicles, hand tools, shoring lumber, lubricants, administrative supplies, and the like, which a construction contractor uses but does not install so as to become a part of the facility constructed within this Commonwealth. See §§ 31.11—31.16 (relating to construction contractors).

Prevailing market price—The price which an item will bring if offered for sale in the open market at the time and place of the taxable use within this Commonwealth.

(b) *Construction equipment and supplies purchased within this Commonwealth.* An item of construction equipment or supply purchased or leased and delivered within this Commonwealth by a nonresident contractor is subject to sales tax upon its purchase price. See § 33.2 (relating to scope).

(c) *Construction equipment and supplies purchased outside of this Commonwealth and used but not consumed in this Commonwealth.* Construction equipment and supplies purchased outside of this Commonwealth by a non-resident construction contractor and which are used but not consumed in this Commonwealth for 7 days or less are exempt from tax. These purchases are subject to tax when the property is used in this Commonwealth beyond 7 days.

(d) *Construction equipment and supplies purchased outside of this Commonwealth and consumed in this Commonwealth.* Construction equipment and supplies purchased outside of this Commonwealth by a nonresident contractor and consumed in this Commonwealth in the performance of a construction contract are subject to tax regardless of the length of time they are used in this Commonwealth.

(e) *Tax payment.* When a nonresident construction contractor purchases or leases equipment and supplies from a supplier in this Commonwealth and delivery of the property is made within this Commonwealth, sales tax shall be paid upon the full purchase price to the supplier. In all other cases of taxable purchases or use of property within this Commonwealth, the nonresident contractor shall remit and pay tax directly to the Department. Contractors may obtain a use tax license number with which to remit the tax to the Department.

(f) *Use tax base.* Use tax on taxable property shall be reported by the nonresident contractor either on the original purchase price paid or on the prevailing market price if the nonresident contractor purchased the equipment or supplies 6 months or longer prior to its first taxable use in this Commonwealth.

(g) *Fair rental value.* Effective March 4, 1971, a nonresident construction contractor is no longer permitted to pay tax on the basis of fair rental value.

(h) *Credit against tax.* A construction contractor may take credit against tax owed to the Commonwealth with respect to individual items of construction equipment and supplies used within this Commonwealth equal to the tax paid to another state upon the individual items of equipment by reason of a tax similar to the tax imposed by the Commonwealth. Credit will not be granted unless the other state grants similar tax relief to persons who have paid tax to the Commonwealth. A listing of the states granting similar relief may be obtained from the Department, Attention: Legal Bureau, upon request.

Source

The provisions of this § 46.7 adopted September 29, 1972, effective September 30, 1972, 2 Pa.B. 1816; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (94394) and (40369) to (40370).

Cross References

This section cited in 61 Pa. Code § 46.9 (relating to financial institution security equipment).

§ 46.8. [Reserved].**Source**

The provisions of this § 46.8 adopted May 18, 1973, effective May 19, 1973, 3 Pa.B. 926; reserved May 26, 2006, effective May 27, 2006, 36 Pa.B. 2525. Immediately preceding text appears at serial page (265809).

§ 46.9. Financial institution security equipment.

(a) *General.* This ruling pertains to the sale, installation and repair of security equipment utilized by financial institutions. The effective date of this ruling is the date of adoption. Its effect is, therefore, prospective only, and it applies only to transactions involving security equipment consummated after the date of its adoption.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Financial institution—A corporation or association, such as a bank, a bank and trust company, a trust company, a savings bank, a mutual banking association, a savings and loan association, a finance company, a credit union, or other similar institution, which maintains a place of business in this Commonwealth.

Installation—An attachment or affixation of security equipment to real estate by means of one of the following:

- (i) A hook, bolt, screw, nail or other similar method.
- (ii) Inserting equipment through a building wall or floor, or mounting it upon a specially prepared foundation, the removal of which may result in damage to the real estate.
- (iii) Wire which is integrated into an electrical system.

Security equipment—Systems, devices and equipment, and their components, utilized by a financial institution for its protection or convenience in conducting financial transactions.

(c) *Sales and installation.* Sales and installation shall conform with the following:

- (1) A sale of security equipment which is also installed, as defined in subsection (b), by the seller or or the seller's designee is a construction contract. The seller-installer may not charge sales tax of the Commonwealth to his customer upon the contract price. Rather, the seller-installer, as a construction contractor, is considered to be the consumer of property transferred in connec-

tion with the construction contract. He shall pay the applicable sales or use tax upon his purchase price of the installed equipment, or upon his purchase price of material acquired and incorporated into the installed equipment during the process by which it is produced by the seller-installer, in accordance with §§ 33.1 and 33.2 (relating to definitions; and scope).

Examples. “S” Seller purchases 10,000 lbs. of material at \$1 per pound from “C” Company. The invoice submitted by “C” to “S” includes a \$10,000 charge for the material and a \$100 charge for the delivery of the material.

“S” then produces a vault door with 100 lbs. of the material, sells the vault door to “T” Trust Company, and installs it. “S” should not charge sales tax to “T”. Rather, “S” is himself liable for the payment of sales or use tax on his purchase price of the material incorporated into the door, or \$101—the price which “S” paid for the material plus a proportionate amount of the charge incidental to the delivery of the material.

“S” Seller sells a drive-in teller window to “B” Bank. Prior to delivery of the window, “S” sends “B” specifications for construction of the wall in which the drive-in teller window will be installed. “S” does not prepare the wall into which the window will be installed. After the wall has been constructed by “B”, “S” delivers the drive-in teller window, inserts it into the previously prepared opening, and bolts it into position. “S” is a construction contractor and is required to pay the applicable sales and use tax of the Commonwealth upon his purchase price of the drive-in teller window installed in “B” Bank.

(2) As a construction contractor, a seller-installer shall also pay tax upon all property, such as tools, equipment and supplies, which is used in the performance of a construction contract, but which is not transferred to a customer, in accordance with §§ 33.1 and 33.2 and § 46.7 (relating to nonresident contractors).

(d) *Straight sale.* A straight sale is one in which security equipment of a type which does not require installation, as defined in subsection (b) is transferred, or one in which any type of security equipment is sold directly to a customer without installation by the seller or a designee. A straight sale is a taxable transfer of tangible personal property, and the seller shall register with the Department, to collect tax upon the total purchase price paid by a customer for security equipment, and to remit the tax collected to the Department.

(e) *Maintenance.* Maintenance shall conform with the following:

(1) Maintenance of installed security equipment on the premises in which it is installed, or maintenance of installed security equipment by a person who removes it from the premises for the work and later reinstalls it, is a construction contract. As a construction contract, the work is a nontaxable service to real estate, and the person performing the service may not charge tax to his customer upon the contract price. Rather, the person performing the service is

responsible for the payment of tax upon the purchase price of any part or other tangible personal property which is transferred to the customer in the course of the service.

(2) Maintenance of security equipment which is the subject of a straight sale because it does not require installation as defined in subsection (b), or maintenance of installed security equipment which is removed by the owner or a designee and taken to the service premises, is a taxable service to tangible personal property. The person rendering the service shall register with the Department and collect tax upon both the labor charge and the charge for any part or other tangible personal property which is transferred to the customer in the course of the service. The resale exemption from tax is available to the serviceman upon the purchase of property which is to be transferred.

(f) *Categories of security equipment.* Examples of security equipment upon the transfer of which the seller is liable for the payment of tax when installed by him or his designee are as follows:

- Accelerated cash terminals or cash guards.
- Access control systems.
- After-hour depositories.
- Alarm systems (burglar, police, fire, and the like).
- Automatic banking systems.
- Bandit reserve barriers.
- Bulletproof windows.
- Customer convenience counters.
- Drive-in windows (bay, flush, counter, and the like).
- Fire doors.
- Quick depositories.
- Receiving lockers, heads or chests.
- Safes.
- Safety deposit boxes.
- Surveillance and security systems.
- Television banking systems.
- Teller rails and lockers.
- Vaults.
- Vault doors (automatic, manual, emergency, and the like).
- Vault ventilators.

Source

The provisions of this § 46.9 adopted August 11, 1978, effective August 12, 1978, 8 Pa.B. 2244; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (40370) to (40373).

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(319284) No. 381 Aug. 06

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