

CHAPTER 58. MISCELLANEOUS

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§ 58.1. Publication of list of taxable and exempt tangible personal property.

The Department will compile a list of taxable and exempt property to be furnished as a general guide to vendors. This list will be published by notice in the *Pennsylvania Bulletin* at least once every 3 years. In addition, the Department will quarterly publish notice in the *Pennsylvania Bulletin* of additions, deletions or revisions to the list. A ruling on unusual transactions or on property or services not included in the list may be obtained upon written request to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, Pennsylvania 17128-1061.

Authority

The provisions of this § 58.1 amended under section 270 of the Tax Reform Code of 1971 (72 P. S. § 7270).

Source

The provisions of this § 58.1 amended through March 9, 1984, effective March 10, 1984, 14 Pa.B. 845; amended July 20, 1990, effective July 21, 1990, 20 Pa.B. 3977. Immediately preceding text appears at serial pages (117875) to (117876), (40415) to (40428), (89231) to (89239), (40437) to (40440) and (117877) to (117878).

Cross References

This section cited in 61 Pa. Code § 32.1 (relating to definitions); 61 Pa. Code § 52.1 (relating to purchases of medicines, medical supplies, medical equipment and prosthetic or therapeutic devices); and 61 Pa. Code § 58.2 (relating to Retailers' Information Booklet).

§ 58.2. Retailers' Information Booklet.

The Department may prepare for use by taxpayers a Retailers' Information Booklet which summarizes this chapter, provides supplemental procedural instructions for the submission of reports and tax remittances and reproduces the

list of taxable and nontaxable items published in the *Pennsylvania Bulletin* under § 58.1 (relating to publication of list of taxable and exempt tangible personal property). In addition, for a temporary period pending the publication of a revised list in the *Pennsylvania Bulletin*, the booklet may contain listings of new products available to retailers clarifying the taxability of the items.

Authority

The provisions of this § 58.2 issued under sections 248.2 and 270 of the Tax Reform Code of 1971 (72 P. S. §§ 7248.2 and 7270).

Source

The provisions of this § 58.2 adopted April 24, 1987, effective April 25, 1987, 17 Pa.B. 1665; amended July 20, 1990, effective July 21, 1990, 20 Pa.B. 3977. Immediately preceding text appears at serial page (117878).

§ 58.3. Timbering operations.

There may be no exemption provided in the act for property used in timbering or logging operations.

§ 58.4. Commission vendors of greeting cards.

When a dealer places greeting cards or similar items with a licensed vendor registered under the act who is to sell the merchandise on a commission basis, the registered vendor may report his sales on his sales tax return and regard the dealer as a wholesaler. Should the registered vendor fail to report the transaction or pay the proper tax the dealer would be liable for the tax due.

§ 58.5. Decorated cottage cheese containers.

The purchase by a dairy of decorated glass containers used to package cottage cheese for delivery to its customers is exempt from tax.

§ 58.6. Barbers' and beauticians' supplies, materials, tools and equipment.

(a) *Tax due on supplies purchased.* A barber or beautician shall pay sales tax to his supplier upon the purchase of barber and beautician supplies, materials, tools and equipment, whether for use in the performance of services or for resale. Suppliers who sell property to barbers and beauticians are responsible for collecting and remitting the sales tax to the Department. With respect to tax returns and remittances, suppliers are governed by the provisions of sections 215—219 of the TRC (72 P. S. §§ 7215—7219).

(b) *Tax to be collected on supplies sold.* Although a barber or beautician is required to pay tax to his supplier, he shall also register with the Bureau for the collection and remissions of sales tax upon his sales of property or services, such as charges for performing services on wigs, falls or other type hair pieces. A barber or beautician is not permitted to collect sales tax from a customer on property which he uses in the performance of his services.

(c) *Credit for tax paid to supplier.* If a barber or beautician makes an ordinary sale of some item of property, he shall collect the full 6.0% sales tax from the purchaser, on the purchase price of the item. However, at the time the tax is reported, a credit may be taken on account of "Taxes Paid—Purchases Resold" (TPPR) against the tax which was collected, equal in amount to the tax which was paid to a supplier. In other words, upon these items he shall pay over to the Bureau a tax payment computed upon the markup on items sold. He shall indicate upon the return the amount of tax which was paid to a supplier upon items sold, which is being credited against the tax collected from customers on account of TPPR. It is not sufficient merely to report and remit tax on the mark-up without indicating to the Bureau upon the return, the amount of credit which was taken.

Example. B, a barber, purchases 200 bottles of hair tonic during the month of August at \$1.00 a bottle; B pays tax to the supplier upon the price paid for the hair tonic. B later uses 20 bottles of tonic in his own work and resells 180 bottles at \$2.00 per bottle. B collects tax upon the sale of the 180 bottles. In reporting the tax upon the return, B shall complete the return form as follows:

(1) Total Gross Sales, Rentals and Services	\$360.00
(2) Total Nontaxable Sales, Rentals and Services	None
(3) Net Taxable (Line 1 less 2)	\$360.00
(4) Total Amount of Tax Collected	\$21.60
(5) Less 1% Discount	-0.22
(6) Net Amount of Tax Due	\$21.38
(7) Amount of Use Tax Incurred	None
(8) Total Tax Due \$21.38 Less TPPR—10.80	\$10.58

TPPR represents Taxes Paid—Purchases Resold. This represents the amount of tax paid by B to the supplier on the bottles which B resold ($180 \times \$1.00$, cost per bottle = $\$180 \times 6\% = \10.80).

(d) *Tax returns and remittance.* Tax returns and remittance shall conform with the following:

- (1) With respect to tax returns and remittances by barbers and beauticians, see the provisions of sections 215—219 of the TRC (72 P. S. §§ 7215—7219).
- (2) Returns shall be filed under § 34.3 (relating to tax returns).

Authority

The provisions of this § 58.6 issued under the Tax Reform Code of 1971 (72 P. S. § 7270).

Source

The provisions of this § 58.6 amended December 27, 1985, effective December 31, 1985, 15 Pa.B. 4584. Immediately preceding text appears at serial pages (89242) to (89243).

§ 58.7. Trading stamps.

(a) Companies who distribute and sell trading stamp programs are liable for tax upon the cost to them of trading stamps, booklets, catalogues and promotion items, such as signs, and the like, transferred to the retail merchants in connection with the trading stamp program. The sale of trading stamps to retail merchants, however, is not subject to tax.

(b) The purchase of property by the trading stamp company for the purpose of redeeming stamps is considered to be a purchase for resale and is therefore exempt from tax.

(c) The redemption of trading stamps for the exchange of merchandise is a "sale at retail" under the TRC. Persons redeeming the stamps shall collect sales tax upon the fair retail price of the merchandise being tendered.

§ 58.8. Commercial airport and aircraft operators.

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

Casual sales—A sale of an aircraft by a person not engaged in the business of selling aircraft.

Commercial aircraft operator—A person, excluding scheduled airlines, who is engaged in any of the following activities as a business for compensation:

- (i) Transporting persons or property as a common carrier.
- (ii) Selling or leasing of aircraft.
- (iii) Providing flight instruction.

Common carrier—An air carrier who has obtained a Certificate of Convenience from the Civil Aeronautics Board, or its successor, for the purpose of transporting persons or property.

Fair rental value—The rental price which the owner, lessor or other operator of an aircraft normally charges for the rental of the aircraft; or the rental price which would be charged on the open market for the rental of a similar aircraft for a similar period of time under similar circumstances. When the fair rental value is unknown, the Department will recognize 2.0% of the purchase price as a monthly fair rental value of an aircraft provided the purchase price represents the fair market value of such aircraft.

Flight instruction—Instruction provided in connection with obtaining a student license, private rating, commercial rating, instrument rating, instructor rating, transport rating, jet rating, instrument instructor rating or any rating or course approved by the Federal Aviation Administration.

Prevailing market price—The amount which would be charged for an aircraft on the open market at the time and place of transfer; or the amount which would be charged on the open market for a similar aircraft under similar circumstances.

Purchase price—The total value paid or delivered, or promised to be paid or delivered, whether it be money or otherwise in the complete performance of a sale or purchase including delivery charges paid to the seller. The following items may be excluded from purchase price provided they are separately stated:

- (i) Tangible personal property taken in trade or exchange.
- (ii) Reasonable interest and finance charges in connection with an installment sale.

Rental or lease—The transfer of possession or custody of an aircraft, including an aircraft provided or used in connection with flight instruction, but the term does not include the service of a common carrier.

Rental or lease payment—The total value paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, for any period under a rental or lease arrangement:

- (i) Including payments for maintenance, insurance or repair paid by the lessee to the lessor, or directly to a repairman or insurance carrier.
- (ii) Excluding separately stated charges for aircraft fuel sold by the lessor or purchased by the lessee and reimbursed by the lessor. To qualify for exemption, the charges for fuel shall:
 - (A) Be separately stated on the rental or lease invoice and reflect the quantity and total charge.
 - (B) Not exceed 110% of the manufacturer's consumption rate for the aircraft leased.
- (iii) Excluding separately stated charges for instructor fees if such fees are identified.

Resident—

- (i) A natural person who is domiciled in this Commonwealth, or who maintains a permanent place of abode within this Commonwealth and spends in the aggregate more than 60 days of the year within this Commonwealth.
- (ii) A corporation incorporated under the statutes of this Commonwealth, or authorized to do business or doing business within this Commonwealth, or maintaining a place of business within this Commonwealth.
- (iii) An association, fiduciary, partnership or other entity domiciled in this Commonwealth, or authorized to do business or doing business within this Commonwealth, or maintaining a place of business within this Commonwealth.

Use—The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property including but not limited to the transportation, storage and consumption.

(b) *Sales, purchases, leases or rentals involving delivery in this Commonwealth.*

(1) *Transactions originating in this Commonwealth.* Transactions which originate in this Commonwealth and involve physical delivery within this Commonwealth are subject to sales tax, unless the purchaser or lessee is

entitled to claim one of the exemptions listed in subsection (d). Examples of taxable transactions include casual or dealer sales or purchases of aircraft, and leases or rentals of aircraft; sales, purchases, leases or purchases of aircraft parts; and sales or purchases of repair or maintenance services.

(2) *Transactions originating outside of this Commonwealth.* Transactions such as sales, purchases, leases or rentals of aircraft, parts or repair or maintenance services originating outside of this Commonwealth but involving physical delivery within this Commonwealth are also subject to tax. If the seller, lessor or repairman is licensed by the Department to collect Pennsylvania sales tax, the purchaser or lessee is required to pay the applicable tax at the time of purchase or lease. If the seller, lessor or repairman is not licensed by the Department to collect tax, the purchaser or lessee is required to remit the tax directly to the Department. See subsection (h).

(3) *Leases and rentals.* Leases or rentals taxable at the time of delivery remain subject to Pennsylvania sales tax throughout the entire period of the lease or rental, notwithstanding the fact that the aircraft or aircraft part may be periodically removed from this Commonwealth on one or more occasions during the total rental period. If during a period of out of state use, the lessee is legally required to pay sales or use tax to another taxing jurisdiction having tax credit reciprocity with the Commonwealth, appropriate credit will be given for such tax against Pennsylvania sales tax owing upon the same lease or rental payment. See subsection (e).

(4) *Basis for tax.* If the transaction is a sale, the tax is imposed upon the purchase price. If the transaction is a lease or rental, the tax is imposed upon the full lease or rental payment.

(c) *Purchases, leases or rentals involving delivery outside of Pennsylvania.*

(1) *General.* Transactions which originate either inside or outside this Commonwealth and involve physical delivery outside of this Commonwealth are exempt from Pennsylvania sales or use tax. If the aircraft enters this Commonwealth following delivery, it becomes subject to Pennsylvania use tax unless the purchaser or lessee is entitled to claim one of the exemptions listed at subsection (d). Examples of this type of transaction include the casual sale or the purchase of an aircraft from a dealer; leases or rentals of aircraft; purchases or leases of aircraft parts and purchases of repair or maintenance service.

(2) *Use by a resident.* If a resident brings an aircraft or aircraft part into this Commonwealth within 6 months following the date of an out-of-state purchase, the use tax is based upon the original purchase price. If after 6 months of the date of purchase, the resident brings the aircraft into this Commonwealth, the resident purchaser may elect to pay use tax based upon the prevailing market value on the date the aircraft or aircraft part enters this Commonwealth. If a resident brings an aircraft or aircraft part into this Commonwealth following its lease or rental outside of this Commonwealth, the use tax is based

upon that portion of the rental or lease payment attributable to the use of the aircraft in this Commonwealth. The resident may be entitled to a tax credit representing sales tax required to be paid to another taxing jurisdiction having tax credit reciprocity with the Commonwealth.

(3) *Use by a nonresident.* If a nonresident brings an aircraft or aircraft part into this Commonwealth following an out-of-state purchase, lease or rental, the nonresident is required to pay use tax and is entitled to the same exemptions as a Pennsylvania resident. The nonresident is not required to pay tax upon an aircraft or aircraft part:

(i) Used in this Commonwealth for any period of time as a tourist or vacationer.

(ii) Used in this Commonwealth other than as a tourist or vacationer, for a period of 7 days or less.

(iii) Brought into this Commonwealth in connection with the establishment of a permanent business or residence if the aircraft or aircraft part was purchased more than 6 months prior to the date it was brought into this Commonwealth. This 6 month exemption does not apply to aircraft or aircraft parts which were purchased within 6 months of the date they were brought into this Commonwealth in connection with the establishment of a permanent business or residence. The aircraft or aircraft parts, purchased within 6 months, are subject to Pennsylvania use tax upon their original purchase price. If a nonresident brings an aircraft or aircraft part into this Commonwealth following its lease or rental outside of this Commonwealth, and is not entitled to an exemption, the Pennsylvania use tax is based upon that portion of the rental or lease attributable to the use of the aircraft in this Commonwealth. The nonresident may be entitled to a tax credit representing sales tax required to be paid to another taxing jurisdiction having tax credit reciprocity with the Commonwealth.

(4) *Payment of tax.* Residents and nonresidents who use aircraft or aircraft parts in this Commonwealth following their purchase, lease or rental in another state, have the responsibility to remit any Pennsylvania use tax which may be due directly to the Department. See subsection (h).

(d) *Exemptions.* Transactions relating to aircraft may be subject to an exemption. If the purchase, lease or rental involves physical delivery within this Commonwealth, the purchaser or lessee is required to give to the seller or lessor a completed exemption certificate in lieu of the tax (Form REV-1220). If the exempt purchaser or lessee brings the aircraft or aircraft parts into this Commonwealth, following the purchase or lease, the purchaser or lessee may claim an exemption at the time of filing with the Department (Form REV-832 "Aircraft Sales and Use Tax Return"). Purchasers or lessees entitled to claim an exemption under their appropriate regulations are required to complete the form and provide a reason for the claimed exemption.

(e) *Credit against tax.* A credit may be granted with respect to the tax due and paid to another state by reason of a tax similar to the tax imposed by the TRC. No credit will be granted unless the other state grants similar tax relief to persons who have paid tax to the Commonwealth. A list of states granting similar tax relief may be obtained from the Department upon request.

(f) *Commercial aircraft operators.* A commercial operator may purchase an aircraft without payment of tax if the commercial aircraft operator is entitled to claim an exemption under the law. Thereafter, if the commercial aircraft operator makes a taxable use of such aircraft, he is permitted to pay tax to the Department based upon the fair rental value of the aircraft during such taxable use. If the commercial aircraft operator uses the aircraft or aircraft part in performing aerial surveys, crop dusting, pipeline inspections or similar flight activities or uses the aircraft or aircraft part for personal use, he is required to pay to the Department use tax upon the fair rental value of the aircraft or aircraft part during such use.

(g) *Flight instruction.* Airport operators who engage in the business of providing flight instructions are required to collect sales tax upon all equipment and supplies including the rental of an aircraft used in providing this service. No tax need be collected on charges made for flight instructions. If the charges for an aircraft are not separately stated, the Department will require tax to be collected on the amount billed to the student.

(h) *Tax and information returns.*

(1) *General.* Purchases and lessees of aircraft, aircraft parts or repair or maintenance services who do not pay the applicable sales tax to the seller, lessor or repairman are required to remit tax directly to the Department. If the purchaser or lessee is licensed with the Department, the applicable tax shall be remitted with the purchaser's or lessee's regular tax return. In the conduct of its audit examinations, the Department will examine both the books and records as well as the aircraft flight logs in order to determine the tax due. If the purchaser or lessee is not licensed with the Department, the following forms shall be used:

(i) *Purchase of aircraft.* Form REV-832 "Aircraft Sales and Use Tax Return."

(ii) *Leases of aircraft, lease of aircraft parts or purchase of repair or maintenance services.* Form PA-3. To obtain this tax return, purchaser or lessee must register with the Department of filing Form REV-289 "Application of Sales, Use or Hotel Occupancy License."

(2) *Aircraft sales information return.* Persons engaged in the business of selling aircraft are required to file an Aircraft Sales Information Return with each regular tax return which is filed with the Department. This form permits the seller to list all purchasers of aircraft during the reporting period, the identification of the aircraft sold, and whether the sale was taxable or exempt.

Source

The provisions of this § 58.8 amended March 9, 1984, effective March 10, 1984, 14 Pa.B. 848. Immediately preceding text appears at serial pages (40444) to (40445).

Cross References

This section cited in 61 Pa. Code § 33.2 (relating to scope); and 61 Pa. Code § 60.16 (relating to Local Sales, Use and Hotel Occupancy Tax).

§ 58.9. School textbook exemption.

Students enrolled in educational institutions approved by the Department of Education are exempt from sales tax on their purchases of textbooks which are used in conjunction with the educational curriculum. This exemption is also applicable to the faculty of such institutions.

(1) To qualify for the exemption granted by section 204(33) of the act of March 4, 1971 (P. L. 6, No. 2) (72 P. S. § 7204(33)) pertaining to sales of textbooks, the following requirements shall be met:

(i) The transaction shall pertain to the sale of a textbook. For these purposes textbook means any book which the educational institution requires students to purchase for use in one of its courses.

(ii) The purchase of the books shall be for use in a school, college or university either public or private, recognized by the Department of Education. The vendor shall verify the purchaser's association with the educational institution by examining the matriculation card if he is a student, or requiring other evidence of his association with the educational institution if he is a member of the faculty. The vendor shall also maintain a textbook exemption register to be signed by the purchaser at the time of the purchase certifying that he is entitled to this exemption.

(A) It is recommended for simplification of record keeping that this register be maintained as follows:

I certify that I am entitled to the school textbook exemption of section 204(33) of the act.

<i>Date</i>	<i>Signature of Purchaser</i>	<i>Address</i>	<i>School</i>	<i>Invoice No.</i>	<i>Amount of Purchase</i>
—	—	—	—	—	—

(B) The vendor should also retain all invoices of his sales so that he will have an auditable record of his transactions.

(iii) The exemption is applicable only if the schools, colleges or universities sell directly or through bookstores designated by them to sell textbooks on their behalf to the students and faculty. The designation shall be granted by the educational institution on request by a bookstore. The educational institution may only designate those bookstores who operate as a school or college bookstore by maintaining in inventory for purchase by the student

body the textbooks required by the school, college or university. The relationship between the educational institution and designee shall be evidenced by a written authorization.

§ 58.10. Water softeners and conditioners.

(a) Water softeners and conditioners are considered tangible personal property, irrespective of the manner in which they are attached to a water system. Accordingly, the sale at retail of water softening or conditioning equipment, or parts thereof are subject to sales tax based on the total purchase price, including charges for delivery or installation.

(b) Charges for the rental of a water softener or conditioner are also subject to sales tax based on the total rental price, including delivery or installation charges.

(c) The servicing or repair of water softeners or conditioners is the maintenance of tangible personal property, and a charge therefore is subject to tax.

Source

The provisions of § 58.10 adopted June 1, 1973, effective June 1, 1973, 3 Pa.B. 1059.

Cross References

This section cited in 61 Pa. Code § 47.14 (relating to water filters or softeners).

Editor's Note: This ruling supersedes Ruling No. 83, Water Filters or Softeners, Rental of, issued September 10, 1965, and is effective as of June 1, 1973.

§ 58.11. Taxes paid; purchases resold.

(a) A licensee may claim a credit on his sales tax return for taxes paid on purchases of property included in inventory which have been resold or leased in the ordinary course of the licensee's business. This credit is referred to as a credit for "Taxes Paid—Purchases Resold" or, as abbreviated, TPPR. The Department's intention in granting this credit is to eliminate the necessity of filing a petition for refund in circumstances where a less formal procedure would be appropriate. This credit is subject to certain limitations in subsections (b) and (c) and will not be considered a substitute for situations in which a refund may be claimed under Chapter 7 (relating to Board of Appeals).

(b) A TPPR credit may be claimed when a licensee pays Pennsylvania sales or use tax on an item included in inventory which the licensee subsequently sells as a sale at retail. In filing the regularly scheduled return, the licensee may recover the tax overpayment by claiming a credit for the amount of tax he has previously paid on the property.

Example. “A” owns and operates an aluminum siding company with 50% of the business derived from retail sales and 50% from construction contracts. “A” enters into a construction contract with “B” whereby he is to install 1,000 square feet of aluminum siding on “B’s” house. “A” purchases the 1,000 square feet of aluminum siding at \$3 per square foot and he correctly pays \$180 sales tax on the \$3,000 purchase price because he anticipates that he will be the ultimate consumer of the siding. Before the contract is performed, “A” decides to sell at retail the aluminum siding at \$5 per square foot to “C”. At the time of sale “A” properly collects \$300 sales tax from “C” who purchases the aluminum siding for \$5,000. In reporting the \$300 tax which he has collected from “C”, “A” is permitted to claim a credit of \$180 for the sales tax which he had previously paid on this item.

(c) A claim for TPPR credit is subject to the following limitations:

(1) The TPPR credit shall be taken within 3 years of the original payment of tax on the item which has been sold.

Example. Adopt the facts from the example in subsection (b), except that “A” purchased the aluminum siding in January, 1966 and sold same to “C” in January 1974. Since more than 3 years have elapsed from the original purchase, “A” may not claim a credit on his return for the first quarter of 1974.

(2) The amount of TPPR credit taken on any one return may not exceed the total amount due the Commonwealth for that period before the TPPR credit. The balance on the return may not be less than zero, and the amount of TPPR credit which exceeds the tax due amount may be carried forward on subsequent returns. Documentation shall be retained which supports the TPPR credit amount shown on the return for a period of at least 3 years from the date of the return. The TPPR credit shall be taken within 3 years of the original payment of tax on the item which has been resold or leased. Filing a timely petition for refund is required if the total credit cannot be recovered within 3 years.

Example. Use the same facts as above except that “A” resells the aluminum siding at \$2 per square foot. The sale price would be \$2,000 and the tax collected would be \$120. Since “A” wishes to claim a credit of \$180, his credit would exceed the total amount due the Commonwealth for the quarter by \$60 (assuming this was his only transaction in the period). The maximum credit “A” may claim is \$120. “A” must wait until the following quarter to claim the \$60 excess against his remittance for that quarter. In other words, the credit may not reduce amount remitted below zero.

(3) The TPPR credit will only be granted in situations where a licensee has either paid the Commonwealth sales or use tax upon property and has resold or leased the same property as a normal sale at retail of inventory. In claiming the credit for the tax on his return, the taxpayer shall note TPPR beside the word “credit” on the credit line of the return. The amount of the credit shall be entered on the same line in the column provided for amounts. This amount

shall be subtracted from the sum of “total tax due”, penalty and interest; the remainder should then be inserted opposite the word “payment” on the payment line of the return.

Authority

The provisions of this § 58.11 amended under section 270 of the Tax Reform Code of 1971 (P. L. 6, No. 2) (72 P. S. § 7270).

Source

The provisions of this § 58.11 adopted December 27, 1974, effective December 28, 1974, 4 Pa.B. 2709; amended June 23, 1989, effective June 24, 1989, 19 Pa.B. 2663. Immediately preceding text appears at serial pages (115269) and (40449).

Cross References

This section cited in 61 Pa. Code § 58.13 (relating to carpeting and other floor coverings).

§ 58.12. Flags.

(a) *General.* This section is intended to clarify the extent to which the sale or use of flags is subject to tax. The basis for the determination of taxability is essentially whether the flag is an official flag of the United States of America or the Commonwealth as defined in this section.

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

Flag of the United States of America—A flag which has been adopted through legislative enactment by the Congress of the United States as an official flag.

Flag of the Commonwealth of Pennsylvania—A flag which has been adopted through legislative enactment by the General Assembly of the Commonwealth as an official flag.

Accessories—A pole, rope or other hardware which is to be used in connection with the display of a flag.

Scope—The sale at retail or use of a flag other than a flag of the United States of America or the Commonwealth of Pennsylvania is subject to tax.

(c) Accessories which are purchased or used in connection with the use of any flag are subject to tax. Where flags of the United States of America or the Commonwealth are sold with accessories and the purchase price of the flag is not separately stated on the invoice, the entire purchase price is subject to tax.

Source

The provisions of this § 58.12 adopted August 20, 1976, effective August 21, 1976, 6 Pa.B. 1990.

§ 58.13. Carpeting and other floor coverings.

(a) *General.* This section pertains to the sale and/or installation of carpeting, tile, linoleum and other similar floor coverings. This ruling is intended to amplify the provisions of § 31.16 (relating to contractors acting as agents for their exempt customers).

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

Construction contract—A sale of floor covering under which the dealer has the responsibility for installation. If an invoice to a customer is written to include the rendering of installation services, such as with notations “installed”, “including installation”, “delivered and installed”, “paste-down” or “tacking”, it is presumed that the transaction constitutes a “construction contract”.

Example. “D” Dealer agrees to furnish carpeting to “B” Buyer for use in “B’s” home. “D” engages “C” Installer to install the carpeting. “D” includes on “B’s” invoice the notation “installed”. The sale between “D” and “B” is a “construction contract”.

Floor covering—A type of carpeting, tile, linoleum or other floor surfacing materials.

Installation—The attachment of floor covering to real estate by tacking, adhesive, hooks, tape or another method.

Licensed dealer—A person engaged in the business of selling floor covering who has been issued a license by the Department to collect and remit sales tax. A dealer holding a use tax registration number prefixed with the digits “89” is not a licensed dealer.

Purchase price—For purposes of this section, the total value of anything paid or delivered, or promised to be paid or delivered, whether it is money or otherwise.

(i) Items which are includable in purchase price whether or not they are separately stated are:

(A) Cost or value of the floor covering and other materials transferred.

(B) Cost or value of transportation.

(C) Discount paid or allowed after the sale, such as a prompt payment discount.

(ii) Items which may be excluded from purchase price, if separately stated, are:

(A) Employee, volume, trade and cash discounts which establish a new purchase price before the sale is completed.

(B) Interest or finance charges paid by a purchaser on an installment basis.

Straight sale—A sale of floor covering not a “construction contract” as defined in this subsection.

Example. “D” Dealer agrees to furnish carpeting to “B” Buyer. “B,” independent of the sale, engages and pays “C” Installer to install the carpeting. The invoice between “D” and “B” does not reflect the notation “installed,” and the like. The sale between “D” and “B” is a “straight sale.”

(c) *Straight sales.* A straight sale of floor covering is a taxable sale of tangible personal property under the sales tax law. Dealers making taxable straight sales of floor covering are required to be licensed with the Department and collect and remit sales tax upon the total purchase price, as defined in subsection (b), unless the purchaser submits a properly executed exemption certificate or other documentary evidence establishing that the transaction is exempt. See subsection (h). The amount representing the purchase price of a taxable “straight sale” is reported on the taxable sale line of the dealer’s regular sales tax return (Form PA-3).

(d) *Construction contracts.* A construction contract does not constitute a taxable sale of tangible personal property. Charges for the sale and installation of floor covering (construction contract) are not subject to tax. The dealer making the construction contract is not exempt from tax. He is considered to be the consumer of property which he uses or transfers in the performance of the “construction contract” and is liable for the payment of the applicable tax. The tax which the dealer is required to pay is based upon his purchase price, as defined in subsection (b), of property used, consumed or transferred in the performance of the construction contract. The tax may be paid by utilizing one of two procedures set forth at subsection (g). The amount representing a construction contract is reported at the nontaxable sales line of the dealer’s regular sales tax return (Form PA-3).

(e) *Repairing of floor covering.* Repairing of floor covering shall conform with the following:

(1) Persons who provide the service of repairing or altering of floor covering without removing the floor covering from the place where it is located are considered to be performing the services upon a permanent part of the realty. As a service upon real estate, sales tax is not due upon the contract price. The person performing the services is deemed to be the ultimate consumer of the materials, supplies and equipment used in performing the services and shall pay sales and use tax thereon.

(2) Persons who provide the service of repairing or altering of floor covering involving the removal of floor covering from the place where it is located are performing a taxable service upon tangible personal property. Persons performing these services shall collect and remit sales tax upon the total price charged for performing the services unless the purchase qualifies for exemption under subsection (h). Purchases of machinery, equipment, tools, supplies, materials or other tangible personal property, such as shampoo and other cleaning agents, are subject to tax when purchased for use in performing these services.

Persons performing these services are entitled to use the “resale” exemption with respect to purchases of tangible personal property or services which they transfer to their customers.

(f) *Subcontractors’ charges for installing floor covering.* A subcontractor’s charges for floor covering installation services, as defined in subsection (b) are not subject to sales tax as a separately stated item on the customer’s invoice, since a subcontract to perform the services falls within the definition of a “construction contract.”

Example. “D” Dealer agrees to furnish carpeting to “B” Buyer. “D’s” sales invoice includes the notation “installed.” “D” enters into an agreement with “C” Installer for “C” to pick up the carpeting at “D’s” store and install the carpeting in “B’s” home. “C’s” charge of \$50 to “D” for performing this service is not subject to tax. “D” would be required to pay the applicable tax upon his purchase price of the carpet.

Example. “D” Dealer makes a “straight sale” of carpeting to “B” Buyer. “D” charges “B” the applicable sales tax. The sales invoice makes no reference to installation. “B,” thereafter, independently contracts with “C” Installer for “C” to install the carpeting in “B’s” home. “C’s” charge of \$50 to “B” for the installing of the carpet is not subject to tax.

(g) *Purchases.* Purchases by licensed dealers and unlicensed dealers shall conform with the following:

(1) *Licensed dealer.* A licensed dealer may utilize one of the following procedures with respect to each purchase of floor covering:

(i) Claim the “resale” exemption and not pay sales tax to the supplier at the time of purchase. The dealer shall tender to his supplier a properly executed Sales and Use Tax Exemption Certificate (Form REV-1220), indicating thereon the resale basis for exemption and the dealer’s sales tax license number.

(ii) Pay the applicable tax to his supplier on the total purchase price.

(2) A licensed dealer who either claims an exemption or otherwise makes purchases from a supplier not licensed by the Department at the time of the purchase, shall thereafter:

(i) Collect the applicable tax upon his taxable “straight sales.”

(ii) Pay use tax upon the purchase price of the materials used in his “construction contracts.”

(iii) Accept in good faith an exemption certificate from his customer as to those transactions qualifying as exempt straight sales. See subsection (h).

(3) A licensed dealer who pays the applicable Pennsylvania sales tax to his supplier has fulfilled his tax responsibilities with respect to the use of floor covering and related materials in connection with his construction contracts. If the licensed dealer sells the floor covering or related materials as a taxable or exempt straight sale, he is permitted to take credit for the tax he has paid to his

supplier against any tax he has collected, to the extent of the material sold either as a taxable or exempt straight sale. See § 58.11 (relating to taxes paid; purchases resold).

(4) *Unlicensed dealer.* A dealer who does not make taxable “straight sales” of floor covering or taxable sales of other tangible personal property, is not required to be licensed by the Department. An unlicensed dealer is required to pay tax upon his purchases of floor covering and related materials to his supplier. If the dealer’s supplier is not licensed with the Department for the collection and remission of taxes, the unlicensed dealer is required to obtain a use tax registration number from the Department for the purpose of paying the applicable tax upon materials used in the performance of his construction contracts directly to the Department. If an unlicensed dealer later makes taxable straight sales, the dealer is required immediately to obtain a sales tax license number from the Department as authority to collect and remit tax upon his taxable straight sales. If an unlicensed dealer makes an exempt straight sale of floor covering, the dealer may file a Petition for Refund with the Department for the recovery of tax paid by him upon the floor covering transferred in connection with the exempt straight sale or he may claim the “resale” exemption at the time of purchase. If the unlicensed dealer claims the “resale” exemption on the material which he will sell exempt from tax, the dealer shall provide a statement on the exemption certificate which explains why he is not required to be licensed.

(h) *Exemptions.* Exemptions shall conform with the following:

(1) *Construction contracts.* An exemption is not available to a dealer with respect to construction contracts involving floor covering. Thus, a dealer is required to pay the applicable tax upon his use of any floor covering and related materials in the performance of a construction contract, notwithstanding the fact that his contract is with a school, church, college, the Commonwealth, the United States Government, municipal authority, hospital, and the like. Any tax which the dealer is required to pay, nevertheless, may be included as an ingredient of the total contract price charged to the customer, provided it is not invoiced as a separately stated item and identified as sales or use tax.

(2) *Straight sales.* Straight sales shall conform with the following:

(i) A dealer is permitted to make straight sales of floor covering and related materials to the following organizations and entities without the collection of tax. The dealer shall obtain a properly executed Sales and Use Tax Exemption Certificate (Form REV-1220) in lieu of the applicable tax.

(A) United States Government. See § 32.22 (relating to sales to the United States Government or within areas subject to the jurisdiction of the Federal Government).

(B) Commonwealth of Pennsylvania, its instrumentalities or its political subdivisions. Political subdivisions include public schools, school districts or intermediate units governed by The Public School Code of 1949

(24 P. S. §§ 1-101—27-2702). See § 32.23 (relating to sales to the Commonwealth or its political subdivisions and sales by the Commonwealth and its political subdivisions).

(C) Ambassadors, ministers and consular officers of foreign governments who are holders of a United States Department of State Tax Exemption Card. See § 32.24 (relating to sales to ambassadors, ministers and consular officers of foreign governments).

(D) Federal credit unions organized under the provisions of the Federal Credit Union Act (12 U.S.C.A. §§ 1751—1795k). See § 48.4 (relating to credit unions).

(E) Pennsylvania credit unions formed and incorporated under 17 Pa.C.S. §§ 101—1504 (relating to the Credit Union Code). See § 48.4.

(F) Public authorities formed under the Municipal Authority Acts of 1935 and 1945. See § 32.23.

(G) Cooperative agricultural associations required to pay corporate net income tax under the provisions of the Co-operative Agricultural Association Corporate Net Income Tax Act (72 P. S. §§ 3420-21—3420-30). See § 44.2 (relating to cooperative agriculture associations).

(H) Electric cooperative corporations formed under 15 Pa.C.S. §§ 7301—7359 (relating to the Electric Cooperative Law of 1990). See § 45.1 (relating to exemption of electric cooperative corporations).

(I) Another organization claiming exempt status under a particular statute shall make application to the Department (Attention: Legal Division) for approval to use the exemption.

(ii) A dealer shall be required to collect the applicable sales tax upon the straight sale of floor covering and related materials to the following organizations or institutions where the floor covering and related materials are of the type which require installation as that term is defined in subsection (b).

(A) Religious organizations.

(B) Charitable organizations.

(C) Nonprofit educational institutions such as private schools, colleges, universities, and the like.

(D) Volunteer fire companies.

Example. “D” Dealer makes a “straight sale” of rubber backed carpeting to “C” Church. Rubber backed carpeting is normally installed by means of adhesive. “D” Dealer is required to collect and remit the applicable tax upon the sale of carpeting to “C” Church.

Example. “D” Dealer makes a “straight sale” of a persian rug to “U” University. Persian rugs do not require installation. “D” Dealer may accept a properly executed exemption certificate from “U” University in lieu of the applicable sales tax.

(iii) A dealer who, within this Commonwealth, performs work or services upon floor covering which thereafter is delivered to an out-of-State

location in the completion of a “straight sale” or “construction contract”, need not collect sales tax nor pay a use tax upon the floor covering and materials used out-of-State.

Example. “D” Dealer agrees to furnish and install carpeting as a “construction contract” at the home of “B” Buyer in New Jersey. “D” Dealer cuts the carpet at his Commonwealth business location prior to its delivery and installation within the state of New Jersey. “D” Dealer need not collect Pennsylvania sales tax nor pay Pennsylvania use tax upon the carpeting and related materials used in the performance of the construction contract in New Jersey.

Source

The provisions of this § 58.13 amended through August 6, 1977, effective August 7, 1977, 7 Pa.B. 2191; amended June 15, 1990, effective June 16, 1990, 20 Pa.B. 3160; amended March 19, 1993, effective March 20, 1993, 23 Pa.B. 1322. Immediately preceding text appears at serial pages (149638) to (149642) and (176799) to (176800).

Cross References

This section cited in 61 Pa. Code § 31.11 (relating to definitions).

[Next page is 60-1.]