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SALES AND USE TAX EXEMPTIONS AND REQUIREMENTS

(Replaces Revenue Administrative Bulletin 1996-6 for Periods On or After June 29, 2000)

RAB 2002-15. This Revenue Administrative Bulletin (RAB) describes sales and use tax exemption claim procedures and formats including the amendments to the General Sales Tax Act of Public Act 242 of 2000. This RAB addresses exemption claims based on the status of the purchaser (e.g., exempt entities) and exemption claims based on the use of the acquired property or specified service (e.g., industrial processing). This RAB does not cover exemption claims that are based solely on the type of product being sold (e.g., non-prepared food or prescription drugs for human use).

This RAB replaces RAB 1996-6 in its entirety for periods on or after June 29, 2000. This RAB reflects the new definition of "good faith" and the change from three years to four for the maximum length of time for which a properly executed blanket exemption is valid.

ISSUES

- I. How are exemptions claimed?
- II. What is a valid form of exemption certificate?
- III. What documents or tax exemption numbers must a seller obtain to adequately document an exempt sale?
- IV. Under what conditions may purchase orders be used as a substitute for a Certificate of Exemption?
- V. What good faith standard must a seller meet in making an exempt sale?
- VI. How long must a taxpayer retain a Certificate of Exemption and supporting documentation?
- VII. What are some of the most common status-based or use-based claims for exemption?

CONCLUSIONS

- I. Beginning June 29, 2000, a purchaser shall claim a single purchase exemption by delivering to the seller a completed Certificate of Exemption as described in Section II of this RAB. For a multiple purchase exemption, the purchaser shall deliver a completed blanket Certificate of Exemption described in Section II of this RAB. A blanket Certificate of Exemption remains in effect for the following four-year period unless the buyer and seller indicate on the certificate or otherwise in writing that a period of less than four years will apply. For rules governing periods prior to June 29, 2000, refer to RAB 1996-6.
- II. The Department's prescribed form for the Certificate of Exemption is included in this RAB. The purchaser shall complete all four sections of the exemption certificate to establish a valid exemption claim. In lieu of the Certificate of Exemption, the purchaser shall use: 1) any exemption certificate format contained in a current Sales and Use Tax Administrative rule; 2) the Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission; or, 3) a purchase order issued by the purchaser meeting all of the requirements set forth in Paragraph IV of this RAB as set forth below; 4) an exemption form approved by the Department

that contains the same information found in all sections of the Department's Certificate of Exemption. Only these items constitute a valid "Certificate of Exemption."

III. The Department issues sales tax license numbers to retail sellers which document a purchaser's ability to purchase items exempt under a claim of "for resale at retail." The Department also issues use tax registration numbers to lessors who elect to pay use tax on rental receipts rather than sales tax on the price of the property acquired for rental. When a purchaser claims an exemption based on an election to pay use tax on rental receipts or claims that the purchase is for "resale at retail," the seller is required to obtain the purchaser's sales or use tax number. In all other instances, sellers need not require a number as evidence of a purchaser's ability to claim exemption from sales and use taxes.

Some entitlements for statutory sales and use tax exemptions are evidenced by specified documents such as an Internal Revenue Service letter in the case of a nonprofit tax-exempt entity. In these cases, the seller shall obtain the specified document and retain it to substantiate the claim of exemption.

IV. A purchase order that contains all of the information and attachments described in Section II of this RAB is a valid exemption certificate for single purchases. Purchase orders intended to serve as a blanket Certificate of Exemption for multiple purchases must expressly state that intention on the purchase order. Purchase orders do not terminate a previously issued blanket Certificate of Exemption unless the purchase order makes specific reference to the date of the blanket Certificate of Exemption and states what was covered in the certificate it intends to terminate.

V. A seller must meet a "good faith" standard required by law. Effective June 29, 2000, "good faith" means that the seller received a completed and signed Certificate of Exemption from the purchaser. Exemptions will not be recognized without a properly completed Certificate of Exemption. For rules governing periods prior to June 29, 2000, refer to [RAB 1996-6](#).

VI. Sellers shall retain exemption certificates for a period of not less than four years from the date of the last sale the exemption certificate applies to. **Do not send the exemption certificates to the Department unless requested by the Department in writing.**

VII. The more common exemptions are listed on the Certificate of Exemption and are briefly discussed in this Section. Exemptions not listed on the Certificate of Exemption shall be entered on the line titled "Other (explain)."

The more common exemptions are as follows:

a. Sales for Resale. Section 2 of the General Sales Tax Act [MCL 205.52] imposes sales tax only upon sales at retail. Sales of property intended for resale are not sales at retail and are exempt.

Claims for exemption by retailers acquiring property for subsequent sale at retail shall state the claim for exemption as "for resale at retail." Retailers in Michigan are issued sales tax license numbers that must be included on the exemption form. If a retailer is not required to have a Michigan sales tax license number, it may include its home state's or country's sales tax license number on the exemption form in lieu of the Michigan sales tax license number.

Wholesalers that make no retail sales are not licensed with the Department and are not issued sales tax license numbers. Wholesalers buying for resale should indicate "for resale at wholesale" on the Certificate of Exemption.

b. Sales to Agricultural Producers. Section 4a(1)(e) of the General Sales Tax Act [MCL 205.54a(1)(e)] and Section 4(1)(f) of the Use Tax Act [MCL 205.94(1)(f)] provide exemption for the sale of tangible personal property to the extent that the property is used or consumed in connection with the production of qualified agricultural or horticultural pursuits as a business enterprise. No sales tax number is required to support this exemption claim but the exemption certificate shall contain a brief statement of the intended use of the purchased item(s).

c. Sales to Industrial Processors. Section 4t of the General Sales Tax Act [MCL 205.54t] and Section 4(g) of the Use Tax Act [MCL 205.94(o)] exempt sales of tangible personal property for use or consumption in "industrial processing" to the extent the purchased items are used for such purpose. Industrial processing means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. In addition, specifically enumerated activities and property are also listed as exempt in the statute. No sales tax license number is required to support an industrial processing claim. For a more complete discussion of industrial processing see the RAB titled, "Sales and Use Tax — Industrial Processing."

d. Sales to Governmental Entities. Section 4 of the General Sales Tax Act [MCL 205.54(7)] and Section 4 of the Use Tax Act [MCL 205.94(1)(g)] provide that sales of tangible personal property and selected services to (i) the United States government and certain of its agencies and instrumentalities, (ii) the State of Michigan and its political subdivisions, departments and institutions, and (iii) the American Red Cross and its chapters and branches are not taxable. The seller shall document these sales by obtaining a governmental purchase order and the governmental entity shall indicate on the Certificate of Exemption that payment is from funds of the governmental entity. Sales to other states or their departments are subject to tax.

e. Sales Not for Resale to Nonprofit Schools, Nonprofit Hospitals, and Churches. Section 4a(1)(a) and (b) of the General Sales Tax Act [MCL 205.54a(1)(a) and (b)] and Section 4(1)(h) and (i) of the Use Tax Act [MCL 205.94(1)(h) and (i)] provide that certain sales of tangible personal property and selected services to certain nonprofit schools, parent cooperative preschools, nonprofit hospitals, or regularly organized churches or houses of religious worship are exempt. The exempt entity shall indicate that the entity and not a named employee is the purchaser. Payment for the purchase shall be made with the entity's funds. For a more complete discussion of nonprofit entities see the RAB, titled, "Nonprofit Entities."

f. Sales Not for Resale to Other Nonprofit Organizations. Section 4q of the General Sales Tax Act [MCL 205.54q] and Section 4(1)(y) of the Use Tax Act [MCL 205.94(1)(y)] provide that certain sales of tangible personal property and selected services to organizations described in these sections are exempt from tax to the extent that the tangible personal property purchased is 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. Exemptions for such sales shall be documented as follows:

1. Health, welfare, educational, cultural arts, charitable, or benevolent organizations previously certified as exempt shall complete a Certificate of Exemption and shall present to the seller a copy of 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). The entity and not a named employee shall be indicated as the purchaser on the Certificate of Exemption. Payment for the purchase shall be made with entity's funds.
2. Organizations not previously certified as exempt shall:
 - a. Present a completed Certificate of Exemption indicating "for nonprofit organization exempt from Federal income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, and
 - b. Include a copy of their Federal exemption letter. (A two-sided, one page document could be utilized, with one side the exemption certificate, and the other a reproduction of the Federal ruling or determination letter recognizing tax-exempt status), and
 - c. Indicate the entity and not a named employee as the purchaser, and
 - d. Make payment for the purchase with the entity's funds.

For a complete discussion on nonprofit entities, see the RAB titled "Nonprofit Entities."

LAW AND ANALYSIS

Exemptions are strictly construed in favor of the taxing authority and the burden of proving entitlement to an exemption rests on the party asserting it. *Elias Bros Restaurants Inc v Dep't of Treasury*, 452 Mich 144, 150 (1996).

Section 17 of the General Sales Tax Act [MCL 205.67] and Section 14 of the Use Tax Act [MCL 205.104] require that taxpayers maintain accurate and complete inventory records as well as all pertinent documents in a form the Department requires. These sections also provide that if an exemption from tax is claimed 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 type of exemption claimed, the amount of the sale, and, if that person has a sales tax license, the sales tax license number. If a taxpayer fails to maintain or preserve the records as required, the statute authorizes the Department to assess the tax due based on the best information available. Such an assessment shall be deemed correct and the burden to demonstrate that a lesser amount of tax is properly due is on the taxpayer.

Section 17 of the General Sales Tax Act expressly provides for the use of exemption certificates to establish claims for exempt sales.

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. Effective June 29, 2000, "good faith" means that the taxpayer received a completed and signed exemption certificate from the buyer. MCL 205.67. Under prior law, good faith required that the taxpayer "exercised reasonable care and effort to determine that the purchaser was entitled to the exemption being claimed."

Generally accurate exemption records shall be generated or on file with the vendor at the time of sale. The Department administratively allows sellers a reasonable opportunity to supply missing or misplaced exemption certificates.

Some exemption statutes require the purchaser to receive a specific exemption certificate prior to purchase. For example,

1. Sales to Water or Air Pollution Control Facilities. "Installed as a component part of a water [air] pollution control facility for which a tax exemption certificate is issued pursuant to part 37 [59] of the natural resources and environmental protection act..." [MCL 205.54a(1)(l)].
2. Sales to High Technology Business. "The department has issued a certificate to the business certifying that the eligible property is used for a high technology activity and the other requirements of this section are met." [MCL 205.54(l)].

Unlike Section 17 of the General Sales Tax Act, Section 14 of the Use Tax Act does not expressly provide for the use of an exemption certificate. Section 14 does, however, provide for retention of "all pertinent documents in a form the department may require." This statutory language supports the use of exemption certificates, and where a taxpayer meets the "good faith" requirement by receiving a completed and signed exemption certificate, the taxpayer is not liable if the transaction is subsequently determined to be taxable.

OBTAINING ADDITIONAL INFORMATION

For questions related to this RAB, please call Customer Contact Division, Sales and Use Tax Unit at (517) 636-4730.

This letter serves as notice to a seller that your organization qualifies to buy goods and services without paying the Michigan sales or use tax. **TREASURY DOES NOT ISSUE TAX EXEMPT NUMBERS.**

To buy goods and taxable services without paying a sales or use tax, present:

- a copy of this letter, and
- a completed certificate (below) certifying to the seller that the goods or services being purchased are for purposes of the organization and are being paid for from organizational funds. The seller must keep a copy of this certificate with the record of the sale.

Please note the following:

- This exemption does not apply to the purchase of tangible personal property or to the purchase of vehicles that are not used primarily to carry out the purposes of your organization as stated in your bylaws or articles of incorporation.
- Employees or members may NOT use this exemption to purchase goods or services for personal use.

The Michigan Department of Treasury may review your exempt status at any time to verify your eligibility. If the Internal Revenue Service revokes your exempt status, if a Treasury audit discovers non-exempt status, or if for any other reason your organization no longer qualifies for exemption, then your organization is subject immediately to sales or use tax on its purchases.

Please notify us if you have a name or address change.

If you have any questions, please write or call this office at (517) 636-4730.

Sincerely,

Dale P. Vettel,

