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Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.

117-314.1. Sales of Building Materials.

Sales of building materials for use in adding to, repairing or altering real property, are subject to the sales or use tax at the time of purchase even though the property erected therefrom may be subsequently leased or rented to the person who owns or controls the land on which the property is situate. Examples include, but are not limited to, building materials used in constructing grain storage tanks, silos, pre-engineered buildings and other structures.

Conversely, subject to the tax are proceeds from the sale or lease of a manufactured unit delivered and/or set in place on lands owned or controlled by a person other than the seller or lessor. Examples include, but are not limited to, mobile homes, manufactured classrooms and motel units.

117-314.2. Building Materials.

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet

metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

117-314.3. Transferred Property, Use Tax Liability.

Building materials transferred from out-of-state into South Carolina for use, storage, or consumption are assumed to have been purchased for such use, storage, or consumption in South Carolina and are subject to the South Carolina use tax.

The department will allow credit to use tax liability for new and unused building materials transferred out of South Carolina which were purchased out-of-state and on which South Carolina use tax has been paid.

No allowance will be made for outgoing transfers of any tangible personal property, either new or used, the sales of which were subjected to the South Carolina sales tax.

In determining the basis of the tax on transferred property, aside from building materials, the assumption will be that the property was purchased for use, storage, or consumption in South Carolina and that the tax has not been paid thereon. The assumption that the property was purchased for use, storage, or consumption in South Carolina is overcome when it is shown that there has been a real and substantial use of the property outside of this state prior to its transfer into this state in which event the basis for the tax is determined by the proportion of the original purchase price of such property as the duration of time of use in this state bears to the total useful life thereof.

117-314.4. Awnings.

Generally, an awning attached to a building as a permanent fixture is a part of the building and comes within the provisions covering the sale of building materials.

Metal or other permanent type awnings attached to buildings with screws or bolts or otherwise securely attached become a part of the building. The materials from which these awnings are made come within the building material class. When the materials are purchased prefabricated, sales tax is due by the person making the installation to the supplier, if purchased in South Carolina, or use tax is due the state of South Carolina if purchased from an out-of-state seller not registered under the use tax.

Where the person making the installation purchases materials such as sheets of aluminum from which he manufactures the components of awnings the tax is due to the state by such person based upon the fair market value of the components laid down at the job site.

It is the rule of the department that lightly attached cloth awnings do not fall into the building material category and are to be taxed at the sale thereof from the awning dealer to the property owner.

117-314.5. Elevators.

The component parts of an elevator constitute building materials within the meaning of the act. The sale of elevator components to contractors, builders or landowners for use in the form of real estate is, therefore, a retail sale notwithstanding that the purchaser constructs therefrom an elevator which ultimately becomes the property of others.

Where the manufacturer of elevator components uses the products of his manufacture in the performance of a construction contract, he is defined under the statute as the user of such equipment and liable for the tax based upon the reasonable and fair market price thereof at the time and place where such property is used by him.

117-314.6. Pumps.

Well pumps when installed become realty along with well casing, pump house, well connections, etc. The person who installs the pump is the purchaser at retail who must pay sales tax or use tax, as the case may be.

117-314.7. Pump Installed by Contractor.

A contractor who installs a pump for a city or county is required to pay tax on his purchase of the pump. The pump is in the same category as any other building materials which become affixed to realty. When title to a pump installed under contract passes from the contractor to the landowner it has ceased to be personal property and has become real property.

117-314.8. Crossties, Timbers, Etc.

Crossties, switch ties, pilings, bridge timber, telephone and telegraph poles, and crossarms are building materials, also, materials used in the construction of highways, bridges, railroads, telegraph and telephone lines, fences and dams fall within the "building materials" class.

117-314.9. Contractors Equipment, Useful Life of.

The department has determined that Bulletin F of the Internal Revenue Services as revised in 1942, be used to reflect the useful life of motor vehicles, machines, machinery, tools, and other equipment and tangible personal property brought, imported, or caused to be brought into South Carolina for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer, or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipe line, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof.

117-314.10. Machines, Pipe Threading.

Pipe threading machines used for construction purposes by a contractor or other builder do not come within the machine exemption.

117-314.11. Federal Government Construction Contracts.

Sales to, or purchases by, a construction contractor of tangible personal property for use in a federal government construction project in South Carolina for which the contractor has a written contract with the federal government are not subject to the sales and use tax under Code Section 12-36-2120(29) if the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase and such property actually transfer to the federal government in accordance with the contract or the property becomes part of real or personal property owned by the federal government or is to transfer to the federal government.

The purpose of this regulation is to address the application of Code Section 12-36-2120(29) to sales to, or purchases by, a construction subcontractor of tangible personal property for use in a federal government construction project in South Carolina for which the subcontractor has a written contract with a general contractor who has a written contract for the project with the federal government.

For purposes of this regulation, the following example and information will be used to illustrate the application of the exemption:

The federal government is constructing a building on a military base located in South Carolina. After following its contracting procedures, the federal government has entered into a written contract with a general construction contractor ("Contractor A") to construct the building.

Contractor A has hired and entered into a written contract with a construction subcontractor ("Subcontractor B") to construct a certain portion of the building.

Subcontractor B in turn hires and enters into a written contract with a construction subcontractor ("Subcontractor C") to construct a certain portion of the building under its contract.

Contractor A, Subcontractor B, and Subcontractor C each purchase the material necessary to complete the project from various suppliers.

Based on the example and information, the exemption in Code Section 12-36-2120(29) for federal government contracts applies as follows:

1. Sales to, or purchases by, Contractor A of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are exempt from the sales and use tax under Code Section 12-36-2120(29) if the written contract necessitating the purchase provides that title and possession of the property is to transfer from Contractor A to the federal government at the time of purchase or after the time of purchase and such property actually transfers to the federal government in accordance with the contract or the property becomes part of real or personal property owned by the federal government, or is to transfer to the federal government.

2. Sales to, or purchases by, Subcontractor B of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are subject to the sales and use tax since Subcontractor B does not have a written contract with the federal government.

However, if Subcontractor B is an agent for the Contractor A, then sales to, or purchases by, Subcontractor B of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are not subject to the sales and use tax if all other provisions of the exemption found in Code Section 12-36-2120(29) are met and all books and records support the existence of an agency relationship. (See information below concerning an agency relationship.)

3. Sales to, or purchases by, Subcontractor C of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are subject to the sales and use tax since Subcontractor C does not have a written contract with the federal government.

However, if Subcontractor C is a subagent for Subcontractor B and Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A, then sales to, or purchases by, Subcontractor C of tangible personal property for use in a federal government construction project in South Carolina as described in the facts are not subject to the sales and use tax if all other provision of the exemption found in Code Section 12-36-2120(29) are met and all books and records support the existence of an agency relationship. (See information below concerning an agency relationship.)

The Department will recognize the existence of an agency relationship with respect to the exemption in Code Section 12-36-2120(29), such a determination must be made a case-by-case basis and that if it is determined an agency relationship does not exist the Department will assess the applicable party (depending on the facts) under the sales and use tax law (supplier or contractor or subcontractor) for the tax due. (Note: Regardless of the facts and circumstances, the agency must be in writing.) However, the Department has established the following “safe harbor” for which it will recognize an agency relationship with respect to the above facts and the exemption in Code Section 12-36-2120(29):

1. Purchases by Subcontractor B: Contractor A has appointed, in writing, Subcontractor B as its agent when purchasing tangible personal property for the federal government contract and that as a result of this agency relationship Contractor A is liable for payment of such purchases if Subcontractor B fails to pay the supplier and is also liable for the payment of any sales and use tax for any property that was purchased by Subcontractor B in its capacity as agent and that does not qualify for the exemption in Code Section 12-36-2120(29) if Subcontractor B fails to pay the tax.

Purchases by Subcontractor C: Subcontractor B has appointed, in writing, Subcontractor C as its subagent when purchasing tangible personal property for the federal government contract and Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A and that as a result of this subagency relationship Contractor A is liable for payment of such purchases if Subcontractor C fails to pay the supplier and is also liable for the payment of any sales and use tax for any property that was purchased by Subcontractor C in its capacity as subagent and that does not qualify for the exemption in Code Section 12-36-2120(29) if Subcontractors B or C fail to pay the tax.

2. The purchase order of Subcontractor B or Subcontractor C submitted to the supplier must clearly state that Subcontractor B or Subcontractor C is the agent of Contractor A in purchasing the property.

3. Contractor A has applied for and received an exemption certificate from the Department for purposes of the exemption in Code Section 12-36-2120(29). Copies of the application for the exemption, Form ST-10G, can be found on the Department's website at www.sctax.org. The federal contractor's exemption certificate that will be issued by the Department will be Form ST-404.

4. Contractor A must provide a copy of the exemption certificate to Subcontractor B and must have completed Section C of the copy indicating that Subcontractor B and Subcontractor C are its agents in purchasing tangible personal property for the federal construction project. Subcontractor B will in turn provide a copy to its subagent, Subcontractor C.

Note: Only Contractor A can complete Section C of the exemption certificate. Therefore, when Contractor A has specifically granted Subcontractor B the authority to appoint a subagent that can bind Contractor A, Subcontractor B will be required to inform Contractor A, who then must list Subcontractor C as its agent on a copy of the certificate.

5. Subcontractor B or Subcontractor C must provide a copy of the certificate to the supplier when purchasing tangible personal property exempt under Code Section 12-36-2120(29).

6. All books and records support the existence of an agency relationship.

Note: Sale or purchases of tangible personal property used or consumed by the purchaser (contractor or subcontractor) are subject to the tax. The exemption in Code Section 12-36-2120(29) only applies property where title and possession of the property transfers from the contractor or subcontractor to the federal government at the time of purchase or after the time of purchase or the property purchased becomes part of real or personal property owned by the federal government.

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