

## **280-RICR-20-70-13**

# **TITLE 280 – DEPARTMENT OF REVENUE**

## **CHAPTER 20 – DIVISION OF TAXATION**

### **SUBCHAPTER 70 – SALES AND USE TAX**

Part 13 - Materialmen - "Pay When Paid Remittance Method"

#### **13.1 Purpose**

Retailers of tangible personal property must remit tax on the entire amount of the gross receipts from a transaction on the return for the period in which the transaction takes place. The "pay when paid" provisions allows certain retailers of building materials (with respect to such materials) an exception to this general rule beginning with sales made on or after January 1, 2003.

#### **13.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-1-4 and 44-19-33. The rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws §§ 42-35-1 *et seq.* of the Rhode Island Administrative Procedures Act.

#### **13.3 Definitions**

- A. "Materialman" means a retailer of lumber who is engaged in the business primarily of selling lumber and building supplies to contractors to be used in the construction, erection, alteration, repairing of buildings or other structures or in the making of any other improvements on land or the preparation thereof, and whose lumber and building materials comprise at least fifty percent (50%) of their total sales and who may file a notice of intention to claim a lien pursuant to R.I. Gen. Laws § 34-28-4, for the materials sold.
- B. "Building materials" means materials that are incorporated as an improvement or repair to real property. The term also includes tools and other items that are used to improve real property.
- C. "Contractor" means a general contractor, a subcontractor, a repairman, or a property owner acting as his or her own general contractor.

#### **13.4 Qualifying for "Pay When Paid" Status**

- A. A retailer seeking Division of Taxation permission to collect and remit sales tax on a qualifying transaction when actually paid by a contractor must file an

application by February 1 of each year and demonstrate to the satisfaction of the Tax Administrator that for six (6) consecutive months within the most recent twelve (12) month period that:

1. The retailer is primarily engaged in selling lumber and building materials to contractors, subcontractors, or repairmen; and
  2. At least 50% of the retailer's total sales were sales of lumber and building materials to contractors; and
  3. The retailer is authorized under R.I. Gen. Laws Chapter 34-28 to file mechanic's lien on real property for material sold.
- B. A retailer seeking to qualify for "Pay When Paid" must file Form AMP by February 1 of each year.

### **13.5 In-House Credit Only**

The provisions of the "pay when paid" method relate only to the in-house credit extended by the materialman. In the event that a materialman finances any portion of the receipts or consideration from a sale, including any tax due thereon, directly or indirectly, with any person (other than a contractor, subcontractor or repairman) whether by factoring or any other means, then the materialman shall be deemed to have received payment of such receipts from such contractor, subcontractor or repairman and shall be required to pay over tax on such sales with the next return due.

### **13.6 Record-Keeping**

- A. In addition to the usual record-keeping requirements for retailers, a materialman using the "pay when paid" method must keep the following records for each sale made:
1. The date of the sale;
  2. Proof that the sale meets the qualifications for the "pay when paid" method;
  3. The amount of credit, if any, extended by the materialman to the contractor for each sale;
  4. The terms for payment of the purchase price or repayment of any credit; and
  5. The date or dates on which the purchase price is paid or the credit is repaid, in whole or in part, and the amount of each payment or repayment.

- B. The records, along with the approval letter from the Tax Division for each year the materialman qualifies to use this method, must be kept for three years from the date the tax on each sale is paid over to the Tax Division in full; provided, however, that the Tax Administrator may require they be kept for a longer period.

### **13.7 Tax Due Within One Year After Sale**

If a materialman does not collect the full tax on a transaction qualifying for "pay when paid" treatment within a year from the date of the transaction, the materialman must remit any remaining tax due on the full gross receipts (whether or not full payment for the tangible personal property has been received) with the return for the period that includes the date that is the one year anniversary of the transaction.

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