

**280-RICR-20-70-54**

## **TITLE 280 – DEPARTMENT OF REVENUE**

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

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

##### **PART 54 – Contractors and Subcontractors**

### **54.1 Purpose**

This regulation implements R.I. Gen. Laws Chapter 44-18. This regulation provides for sales tax liability for purchases by contractors and subcontractors.

### **54.2 Authority**

This regulation is promulgated pursuant to R.I. Gen. Laws Chapter 44-18, R.I. Gen. Laws §§ 44-1-4, 44-18.1-1 and 44-19-33. Additionally these regulations have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35 - Rhode Island Administrative Procedures Act.

### **54.3 Application**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of R.I. Gen. Laws Chapter 44-18 and other applicable state laws and regulations.

### **54.4 Severability**

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

### **54.5 Definitions**

- A. "Contractor" means both contractors and subcontractors and including but not limited to building, electrical, plumbing, heating, painting, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape and roofing contractors or subcontractors.
- B. "Construction contract" means a contract for the repair, alteration, improvement, remodeling or construction of real property.

- C. "Nonresident contractor" means one who does not maintain a regular place of business in this state. A regular place of business shall be deemed to mean and include any bona fide office (other than a statutory office), factory, warehouse or other space in this state at which the taxpayer is doing business in its own name in a regular and systematic manner, and which is continuously maintained, occupied and used by the taxpayer in carrying on its business through its regular employees regularly in attendance. A temporary office at the site of construction shall not constitute a regular place of business.

## **54.6 Contractors and Subcontractors - In General**

### **A. Taxability of Sales to or by Construction Contractors**

1. A contractor shall pay the tax as a consumer on the purchase of all materials, supplies, tools and equipment, including rentals thereof and all replacement parts used by him in fulfilling either a lump-sum contract, a cost-plus contract, a time and material contract with an upset or guaranteed price which may not be exceeded, or any other kind of construction contract except:
  - a. where the contractor contracts to sell materials or supplies at an agreed price and to render service in connection therewith, either for an additional agreed price or on the basis of time consumed, or:
  - b. where such contractor is engaged in the business of selling such materials or supplies at retail.
2. In the case of either §§ 54.6(A)(1)(a) or (b) of this Part, the contractor is a RETAILER and must have a permit to make sales at retail and the contractor shall give the person selling such materials or supplies a resale certificate bearing his/her permit number and collect the tax from the person to whom he/she sells the same. When such use is made of a resale certificate by a contractor, it shall be limited to the exceptions included in §§ 54.6(A)(1)(a) or (b) of this Part above and the contractor shall be held strictly and solely accountable for the collection of the sales tax involved and the payment to the state of all taxes due thereon based upon gross receipts from such retail sales and such contractor shall further be held strictly accountable for the payment of the use tax to this state in the event he/she shall make any use of such property other than retention, demonstration or display while holding it for resale or in the event the contractor shall make out-of-state purchases subject to the use tax.

- B. Tangible Personal Property Fabricated by Contractors. A contractor may in certain instances fabricate part or all of the articles which he/she uses in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or

air conditioning ducts or other items from sheet metal which he or she purchases, and use these articles, pursuant to a contract for the construction or improvement of real property. In such a contract the partly or wholly manufactured articles are not made for resale as tangible personal property but for incorporation into the work to be performed. In this instance the sale of sheet metal to such contractor constitutes a sale at retail by the contractor's supplier within the meaning of the law and the contractor pays the tax as a consumer when he/she buys the same. This is so whether the articles so fabricated are used in the alteration, repair or reconstruction of an old building, or are used in new construction work.

- C. Contractors Who sell Complete Units of Standard Equipment at Retail and Install Same. This regulation is not applicable to contracts whereby the contractor or subcontractor acts as a retailer selling tangible personal property in the same manner as other retailers and is required to install a complete unit of standard equipment, requiring no further fabrication but simply installation, assembling, applying or connecting services. In such instances the contract will not be regarded as one for improving, altering or repairing real property. For example, the retailer of an awning or blind agrees not only to sell it but to hang it; an electrical shop sells electrical fixtures and agrees to install them. A person performing such contracts is primarily a RETAILER of tangible personal property and must have a permit to make sales at retail and should segregate the full retail selling price of such property from the charge for installation, as the tax applies only to the retail price of the property.

D. Modular Homes

1. The following provisions of this regulation relating to modular homes, effective January 1, 1992, were issued in response to major changes in the prevalent business practices by out-of-state manufacturers in the modular home industry and set forth the Division of Taxation's sales and use tax treatment of the various methods of doing business within that industry.
2. For the purposes of this regulation, a manufacturer of modular homes in making sales of such property to builder dealers will be treated as a contractor who will owe use tax on the cost of the materials only if the following conditions are met:
  - a. The actual placement is accomplished solely by employees of the manufacturer or a subcontractor working under the direct supervision and control of the manufacturer. The manufacturer completes delivery and installation by affixing the modules to the foundation, by aligning the modules, bolting them together, installing support columns, and making the building weather-tight.

- b. Employees or agents of the builder-dealer do not participate in transporting, transferring, attaching, erecting, or weather-proofing the building.
- c. If the transaction between the manufacturer and the builder-dealer is not as enumerated above then such transaction will be considered a retail sale of tangible personal property and sales or use tax must be charged on the full retail selling price including charges for transportation which occur prior to the passage of title.

## **54.7 Contracts with Exempt Agencies, Institutions and Organizations**

- A. Contractors performing construction contracts for the Federal Government, its agencies or instrumentalities, this state, or any other state of the United States of America, its agencies, any city, town, district, or other political subdivision of said states, hospitals not operated for profit, educational institutions not operated for profit, churches, orphanages, and other institutions or organizations operated exclusively for religious or charitable purposes, may purchase without payment of the tax, materials and supplies which are essential to the construction project and which are to be utilized in the construction thereof.
- B. Exemption applies only to materials and/or supplies essential to the project which are to be utilized in the construction of the project. Therefore, items such as temporary signs, barricades, barrels, etc. do not qualify for exemption. Also, materials and supplies purchased extax which are not earmarked for a particular exempt project will be deemed taxable.
- C. Exemption hereunder does not apply to tools and equipment and parts therefor and tax applies to the sale or rental of such tools and equipment to contractors.
- D. In order to purchase qualifying materials and supplies without payment of the tax the contractor shall provide suppliers with a Contractor's Exemption Certificate in the form set forth herein, showing the reasons for exemption; and the contractor's records must show the disposition of all property so purchased. If any such property is then used for a nonexempt purpose, the contractor must pay the tax on the property so used.

## **54.8 Nonresident Contractors**

- A. Any individual, partnership, joint venture, corporation, state, municipal government or exempt organization awarding a construction contract in Rhode Island to a nonresident contractor (as hereinafter defined) is required, pursuant to R.I. Gen. Laws § 44-1-6, as last amended, to withhold 3% of the contract price to secure payment of any sales and use tax or income tax withheld, or both, that may be due to the State of Rhode Island in carrying out the contract.

- B. Upon completion of the contract, the nonresident contractor is required to notify the Tax Administrator in writing by certified or registered mail (in duplicate) to audit his/her records for the particular project. At such time the contractor is required to have available on the job site or within this state, sales and use tax records and employees' personal income tax withheld records.
- C. Receipted copies of this request are to be furnished by the Tax Administrator to the nonresident contractor and to the person holding the funds.
- D. The Tax Administrator shall, within 30 days after receipt of the request, audit the records and provide by certified mail to the person holding the funds and to the nonresident contractor, either a certificate of no tax due or a notice of taxes due.
- E. The person holding the funds is required to pay over to the Tax Administrator the amount set forth in the notice of taxes due, including interest and penalties, but not in excess of 3% of the contract price. Monies withheld in excess of taxes due the Tax Administrator may be paid over to the nonresident contractor.
- F. If the Tax Administrator does not furnish a certificate of no tax due or a notice of taxes due within 30 days after receipt of the request for the making of the audit, the person holding the funds may remit the full amount due to the nonresident contractor. The Tax Administrator shall not have any claim against such funds in the hand of the person holding the funds.

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Type of Filing: Refile Capabilities

**Department of State**

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Regulation Effective Date

Original Signing Date

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Department of State Initials

Department of State Date