
STATE TAX REVIEW

the collection of recovered materials for delivery to a material recovery processing plant. However, motor vehicles used on highways are not exempt. Previously, facilities and collection/delivery equipment were not exempt.

Drug samples exempt from sales tax: Samples of prescription drugs dispensed by a medical practitioner and materials used to manufacture those samples are exempt from sales tax.

Local economic development sales tax: The counties of Johnson, Schuyler, Scotland, Clark, Lewis, and Knox, and any city within these counties may impose, subject to voter approval, a sales tax on all retail sales within the county or municipality of items to be used solely for local economic development purposes. The maximum rate is 1% for municipalities and 0.5% for counties. Such tax would be in addition to any and all other sales taxes allowed by law. (H.B. 1237, Laws 1996, effective August 28, 1996.)

See also H.B. 1237, Laws 1996, under "Sales and Use Taxes."

Defense Contractor Entitled to Refund

A federal defense contractor was entitled to a refund of Missouri use tax paid on overhead materials that were used for government contract work because title to the materials vested in the government and the materials were held solely for resale as indirect cost items.

Under Missouri sales and use tax law, the government became the purchaser when the material was allocated to the government upon delivery to the contractor, who allocated the costs of materials among its various contracts with the government and commercial entities. The contractor did not "use" the material prior to allocating or charging the costs to the government. Under the contract provisions, the government agreed to take title of the overhead materials, knew what items were included in the charges, and paid the contractor for those materials.

To require the contractor to physically segregate or specifically mark the materials as government property in order to distinguish them from commercial property would defeat the purpose of a more efficient and less costly accounting system without furthering the purpose of the legislature's resale exclusions. (*McDonnell Douglas Corp.*, Missouri Administrative Hearing Commission, No. 94-001238RV, August 2, 1996.)

Furniture Delivery and Installation Charges Taxable

A waterbed and furniture retailer was liable for Missouri sales tax on its delivery and installation services because the retailer and the purchasers in the transac-

tions intended for the services to be a part of the sales.

The retailer treated the service price as part of the furniture price on its sales tickets, in calculating commissions, and when collecting sales tax. Further, the furniture was not released until payment for the service was made. Also, the retailer controlled price, personnel, and means of delivery.

The retailer benefited financially from the service because it would probably lose sales if the delivery services for the large and heavy furniture were not offered, and, if viewed in isolation, the services were not self-supporting. The retailer insured the furniture against loss and filed the claim with the insurer if the loss occurred, which indicated that title to and risk of loss on the furniture did not pass until the service was performed. Finally, no evidence was presented showing that any customer intended any service to be separate from any sale. (*Royal Waterbeds, Inc.*, Missouri Administrative Hearing Commission, No. 95-002014RV, July 19, 1996.)

■ NEW YORK

Basement Waterproofing Qualified as Capital Improvement

Labor and materials furnished to customers in connection with the installation of a basement waterproofing system were exempt from New York sales and use tax because the system qualified as a capital improvement.

The taxpayer installed waterproofing systems for leaking basement wall cracks. The system utilized permanently installed vertical piping and a fiberglass drain board extending beneath the floor level to channel leaking water into a floor drainage system with a sump pump. The taxpayer did not repair, patch, or inject filler into the wall cracks.

The waterproofing system qualified as a capital improvement because it

- added value to the property or extended the useful life of the property,
- was affixed to the property so that removal would cause material damage, and
- was intended to be permanent.

(*Sta Dry Systems, Inc.* (Advisory Opinion), New York Commissioner of Taxation and Finance, TSB-A-96(42)S, July 9, 1996.)

Contractor Not Required to Pay Tax on Services of Subcontractors

A taxpayer was not required to pay New York sales tax on services purchased from subcontractors for resale.