



State of New Jersey
Division of Taxation
Regulatory Services Branch

LR: 2012-1-SUT
Sales and Use Tax
June 22, 2012

LETTER RULING

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to the service of providing plastic dust and debris interior protection by a subcontractor for a general contractor.

Facts

Taxpayer is a subcontractor who provides plastic dust and debris interior protection services for a general contractor. According to information found on the website, Taxpayer provides the following types of services for general contractors:

- Suspended Cover that prevents falling materials during roof replacement
- Temporary Construction Partitions that keep dust and debris from spreading during construction
- Temporary Area Enclosures that work with your suspended covers to create a totally enclosed space, free of any dust or debris
- High Structure Cleaning of horizontal surfaces in the ceiling area
- Custom Applications specified by engineers and architects that help protect structures from wind, water and other elements

Issue

Should Taxpayer charge and collect New Jersey sales tax on charges for providing plastic dust and debris interior protection services for a general contractor?

Discussion

The Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to tax. N.J.S.A. 54:32B-3(b)(4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property to real property is also subject to tax. N.J.S.A. 54:32B-3(b)(4). A "capital improvement" occurs when tangible personal property is *permanently affixed* to real property (land or buildings) and becomes a permanent part of the real property.

Based on the above facts, the installation of plastic dust and debris interior wraps does not result in an exempt capital improvement since its installation is only temporary. Thus, the installation of plastic dust and debris interior protection wrap is subject to tax pursuant to N.J.S.A. 54:32B-3(b)(2).

Taxable services purchased by a contractor are subject to tax unless such services are performed for a purchasing contractor exclusively for use in fulfilling a contract with an exempt organization. N.J.A.C. 18:24-5.5(a). Tangible personal property installed for the benefit of the contractor, rather than for the property owner, such as the installation of scaffolding, temporary fencing, and temporary lighting during construction, is subject to tax when purchased by the contractor. N.J.A.C. 18:24-5.5(b)(2). Therefore, a contractor is required to pay tax when purchasing plastic dust and debris interior protection wraps described above unless the job is for a federal or New Jersey governmental authority or instrumentality, a qualified Urban Enterprise Zone business, or an exempt organization which has been issued an Exempt Organization Certificate (Form ST-5) by the Division.

Conclusion

Taxpayer is required to charge and collect New Jersey sales tax on charges for providing plastic dust and debris interior protection services for a general contractor.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.