

SUMMARY

This document is an explanation of Act 45 of 1998 which created an exemption called "Building Machinery and Equipment" (BME). The BME carve-out sets aside certain materials and items that are commonly used during a construction project with certain exempt entities and designates them exempt from sales tax.

This document was originally used as a guide in a seminar at the Department of Revenue but can be used as a reference for anyone. Please keep in mind that this document and the list that accompanies it is meant only to serve as a guideline and is NOT all-inclusive. Questions about certain items would need to be directed to the Office of Chief Counsel at the Department of Revenue in the form of a letter ruling request.

ACT 45 OF 1998

Act 45 of 1998 defines a real estate structure. Basically, a construction contractor owes tax on all components of a real estate structure. *A real estate structure includes:*

- Airport runways
- Antennas
- Bridges
- Building machinery and equipment-exemption carve-out
- Canopies
- Ceilings
- Conduit
- Dams
- Dikes
- Doors
- Ductwork and coverings for it
- Elevators
- Floors
- Foundations
- Guardrail posts
- Highways
- Insulation
- Junction boxes
- Millwork

Land, developed and undeveloped
Outdoor advertising boards
Outdoor advertising signs
Parking lots
Pipes, fittings, pipe supports and hangers
Receptacle boxes
Recreational courts
Roads .
Roofs
Satellite dishes
Sidewalks
Stadiums and stadium seating
Streets
Structural supports
Structures similar to others in this list
Traffic control devices including traffic signs
Underground tanks
Valves
Walls
Windows and external window coverings
Wire

The Exemption Carve-out:

Building Machinery and Equipment

Generation Equipment

Storage Equipment

Conditioning Equipment

Distribution Equipment

Termination Equipment, which shall be limited to the following:

- (1) Air conditioning limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) Electrical, but not wire, conduit, receptacles and junction boxes;
- (3) Plumbing, but not pipes, fittings, pipe supports and hangers and underground tanks;
- (4) Communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) Alarms limited to fire, security and detection;
- (6) Control system limited to energy management, traffic and parking lot and building access;
- (7) Medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;
- (8) Laboratory system;
- (9) Cathodic protection system; or
- (10) Furniture, cabinetry and kitchen equipment.

The term "building machinery and equipment" also includes (in alphabetical order):

Actuators

Air cleaners

Boilers

Card access devices

Chillers

Dampers
Fans
Floor troughs and grates
Grills
Guardrails
Horns
Humidifiers
Laundry equipment
Medical devices
Motion detectors
Pumps
Registers
Sensors
Speakers
Switchgear
Telephones
Traffic signals

- together with integral coverings and enclosures,
- whether or not the item constitutes a fixture or is otherwise affixed to the real estate,
- whether or not damage would be done to the item or its surroundings upon removal or
- whether or not the item is physically located within a real estate structure.

Other Important Definitions from Act 45

CONSTRUCTION CONTRACT

A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of any real estate structure.

CONSTRUCTION CONTRACTOR

A person who performs an activity pursuant to a construction contract including a subcontractor.

How Do I Know If I Qualify For A Sales Tax Exemption?

Just ask yourself:

Am I a party to a construction contract?

YES

NO

Am I purchasing "building machinery and equipment"?

YES

NO

Is the other party to the contract an exempt entity, such as a charity, a government entity or a qualified business in a Keystone Opportunity Zone?

YES

NO

If the answers to all three questions are YES, you are entitled to an exemption and should submit to your suppliers an exemption certificate, Form REV-1220, claiming the exemption.

Effective Date:

The effective date of Act 45 is **July 1, 1998**. However, this exemption does not apply to fixed price construction contracts entered into prior to July 1, 1998, or entered into under the obligation of an unalterable, formal written bid issued prior to July 1, 1998.

WHAT IF the CONTRACTOR OR TAX-EXEMPT ENTITY PAID TAX on "building machinery and equipment" after JULY 1, 1998?

>The Commonwealth may not be legally entitled to the money,

IF

- -Contractor or the party that actually paid the tax
 - -File a Petition for Refund with the Board of Appeals
 - -Within THREE YEARS of the date of paying the tax (no exceptions; Board of Appeals has no jurisdiction if Petition is filed after three years from the payment date.)
- Petition for Refund (Form REV-65) should include specifics of the purchase; proof of payment of the tax.

Questions already presented:

1. When working for a school district or municipality, when are materials taxable or non-taxable?

Answer: Beginning July 1, 1998, a contractor working for a school district or municipality, may purchase **exempt from tax** any item of property found in the definition of "building machinery and equipment? The contractor owes sales tax on all other components for the project.

To claim the exemption on "building machinery and equipment," the contractor should submit a **Sales Tax Exemption Certificate** to its supplier stating the reason for the exemption. The Department of Revenue suggests using language such as this:

Under Act 45, this property (or service) qualifies as exempt "building machinery and equipment" that will be transferred pursuant to a construction contract to _____, (Here fill in the contract owner) holding Sales Tax Exemption # _____ (Here fill in the # if there is one.)

To qualify for the exemption the contract must be with a:

- Purely public charity, having exemption number beginning with "75", provided the construction is not for an unrelated trade or business;
- The federal government;
- The Commonwealth of PA;
- An instrumentality of the Commonwealth-department, board, commission of the Commonwealth, public authorities;
- A political subdivision-county, city, borough, incorporated towns, townships, school district (with a "76" number, vocational school districts;
- State university;
- Qualified business in a Keystone Opportunity Zone, having a "72" number. The effective date for construction in a Keystone Opportunity Zone is January 1, 1999.

Continuation of Question 1: The example that the person asking the question used is that if something is removable it is non-taxable but if it can't be removed it is taxable.

Answer: Under Act 45 of 1998, the Department no longer can consider how something is attached to a building. Now if a contractor is working for an exempt entity, either a charity, the government or a qualified business in a Keystone Opportunity Zone, he or she can purchase anything in the "building machinery and equipment" category without paying tax by submitting an exemption certificate to the vendor.

Contractors' Purchases for Exempt Entities

Please note that the following list of purchases made by contractors for exempt entities is meant *for* guidance purposes only. It includes an alphabetized listing of materials needed for various parts of a construction contract. Each item is identified as taxable (T) or nontaxable (NT). The list also provides clarifying comments from the Department of Revenue (D /R) as well as supporting legal cites.

Questions may be forwarded to:

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