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**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2009-05 ST**  
**May 26, 2009**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**Sales/Use Tax – Construction Contracts**

A company is seeking an opinion on whether it is subject to sales/use tax on materials purchased pursuant to construction contracts.

**Authority:** [IC 6-2.5-1-1](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-9](#); [45 IAC 2.2-3-7](#); [45 IAC 2.2-3-10](#); [45 IAC 2.2-4-23](#); Sales Tax Information Bulletin 60 (July 2006)

**STATEMENT OF FACTS**

The company is engaged in converting customer's structures into apartments. The company will construct the apartment within the pre-existing structure. As part of the construction, the company will provide floor coverings, wall coverings, bathrooms, cabinets, sinks, and various appliances. The company will subcontract for the construction services and the company will purchase the various construction materials and other items. The company will construct the property pursuant to lump-sum contracts.

**DISCUSSION**

[IC 6-2.5-4-9](#) provides:

(a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

- (1) is to be added to a structure or facility by the purchaser; and
- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

In general, if a contractor purchases tangible personal property for purposes of adding that property to real estate owned by a third party, the issue becomes whether the construction contract is a "lump sum" or "time and materials" contract.

Under a "lump sum" contract, the contract provides for one set price for all materials and labor provided. Under this type of contract, the contractor is liable for the sales tax on the construction materials purchased, while the value of the contract between the customer and contractor is not subject to sales tax. [45 IAC 2.2-3-10](#); [45 IAC 2.2-4-23](#). This is the type of contract that the company is proposing.

However, under [45 IAC 2.2-3-7\(a\)](#), the rules applicable for construction contractors apply to "converting construction material into realty." "Construction material" is defined under [45 IAC 2.2-3-7\(b\)](#) as:  
any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

For further guidance on what items the Indiana Department of Revenue consider "construction materials," please refer to Sales Tax Information Bulletin 60 (July 2006).

Thus, the question of taxability of a particular item hinges on whether that item is incorporated into a structure or land. In general, the company's materials will be incorporated into the real property, and thus the normal procedures for lump-sum contractors. The contractor pays tax on the materials at the time of purchase and the contract to actually construct the property is exempt.

With regard to appliances, the company is a retail merchant making a retail transaction within the meaning of [IC 6-2.5-4-1](#) and would be required to collect and remit sales tax on those items. The company may purchase those items exempt from sales tax because the contractor is selling those items to the end customer; however, the company must register as a retail merchant with the Indiana Department of Revenue.

Further, if the company does not separately state taxable items (e.g., stoves) from nontaxable items (the actual construction of the real estate), the entire amount of the contract is considered a unitary transaction under [IC 6-2.5-1-1](#) and the entire amount of the contract is subject to Indiana sales tax. If the taxable items are separately stated from the nontaxable items, only the taxable items are subject to sales tax collection requirements.

**RULING**

The company is exempt from collecting sales tax on its construction materials and required to collect sales tax on its sales of appliances.

**CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

**Department of State Revenue**

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