



**Office of Chief Counsel
Dept. 281061
Harrisburg, PA 17128-1061**



www.revenue.state.pa.us

**GOVERNOR'S OFFICE OF
GENERAL COUNSEL**

DATE: December 29, 2003

TO: Public School Districts, Intermediate Units and
Vocational – Technical Schools

FROM: Jeffery S. Snavely
Deputy Chief Counsel

RE: Public Schools – Information on
Sales, Use and Hotel Occupancy Tax

A. GENERAL

This memorandum was originally issued on March 10, 1988. That original memorandum has been updated to reflect changes in the law, policy and regulations. Written questions in connection with this memorandum may be addressed to the Office of Chief Counsel, Pennsylvania Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, or call the Department's Taxpayer Service and Information Center at (717) 787-1064. The forms referred to in this memorandum and other tax information may be obtained at the Department's website found at www.revenue.pa.state.us.

B. SCHOOL EXEMPTION NUMBER

1. What is the difference between a school exemption number and a sales tax license number?

Public school districts, intermediate units and vocational-technical schools (collectively referred to as "schools") are exempt from paying Pennsylvania sales and use tax as political subdivisions or instrumentalities of the Commonwealth of Pennsylvania. In order to facilitate the schools claiming this exemption, a public school exemption number has been issued to all public school districts, intermediate units and vocational-technical schools. This number is prefixed by the number "76". This school exemption number is for the sole purpose of buying property or services for use by a school or a school organization in connection with its activities. The exemption number is not to be used for purchasing property or services for resale. Schools are not necessarily exempt from collecting Pennsylvania sales tax on their sales of certain property and services. A sales tax license number is for purchasing property or services for resale and for use in collecting and remitting tax to the Department of Revenue.

2. What is the difference between a school organization and a school-related organization?

A school organization is an organization for which the school has fiscal responsibility. School organizations would include a school class, a school choir, a school theatrical group and similar school organizations. A school-related organization is an organization for which the school does not have fiscal responsibility. School-related organizations include PTOs, band boosters and similar organizations. A school-related organization is not permitted to use the school's exemption number in connection with purchases that the organization makes. A school-related organization is required to pay tax upon its purchase of taxable property or services for its own use or for use by a school. However, a school or school organization may use the school exemption number in connection with the purchase of property or services for use by the school or the school organization. Since the school exemption number is issued in the name of the school district, any purchase made with the school exemption number must be in the name of the school. At the same time, a Pennsylvania Exemption Certificate, form REV-1220 ("exemption certificate"), completed in accordance with Attachment "A" of this memorandum should be given to the supplier in lieu of the tax.

3. Does the public school exemption apply to the purchase of an occupancy from a hotel?

No, the public school exemption number may not be used to exempt the purchase of an occupancy of a room or rooms from a hotel by schools or school organizations from either the State Hotel Occupancy Tax or any local taxes on the occupancy of hotel rooms.

4. Does the public school exemption also apply to the purchase or lease of property subject to the Vehicle Rental Tax, Public Transportation Assistance Tax or Local Sales Tax?

Yes. The school enjoys the same exemption under the Vehicle Rental Tax, the Public Transportation Assistance Act and the Local Sales Tax Act as it does under the State sales tax statute.

5. Does the public school exemption apply to the purchase of food or beverages from an eating place?

The school may give an exemption certificate to an eating place in lieu of the applicable sales tax provided the billing of the food and beverages is made directly to the school and payment is made from school funds. If the meals are in connection with the obtaining of an occupancy of rooms from a hotel, the portion of the billing relating to the

meals must be separately stated in order for the school to claim its exemption. This exemption, however, does not apply to the purchase of food or beverages in the name of a representative of the school even though the representative purchases the food or beverages with funds advanced by the school or through a reimbursement from the school for the representative's expenditures. Nor may the exemption number be used where the school is acting as a collection agent for individual purchases of food or beverages by school representatives or others.

6. May the school exemption number be used by a construction contractor to purchase materials for a school contract?

No, a school's exemption number is personal and may not be transferred to another. A construction contractor, however, is exempt from sales tax on the purchase of certain "building machinery and equipment" that will be transferred to a school in conjunction with a construction contract. Section 201(pp) of the Tax Reform Code, 72 P.S. § 7201(pp), provides a listing of the exempt "building machinery and equipment." Items that become part of a real estate structure and that do not meet the definition of building machinery and equipment are not exempt from tax even if the items are for a school contract.

Since a vendor of tangible personal property is required to collect sales tax from a customer unless the customer provides a valid exemption certificate, the contractor must provide the supplier with an exemption certificate to obtain the exemption for those items that meet the definition of building machinery and equipment. To claim this exemption, the construction contractor should complete the exemption certificate by including on line 7 the statement below:

Property or services qualify as building machinery and equipment and will be transferred pursuant to a construction contract to [name of school].

If a contractor's purchase includes both exempt building machinery and equipment and non-exempt property, the vendor and the contractor must maintain records sufficient to permit the Department to ascertain whether the items purchased were in fact exempt building machinery and equipment.

7. If the school purchases the materials and separately contracts with the contractor to install the materials, may the school use its exemption number to purchase

materials that will be installed by a contractor without the contractor having any liability for use tax?

Yes, A school may use its exemption number to purchase building materials provided the materials are purchased in the name of the school and the school independently contracts with the supplier for the materials. If the school has a separate contract with the supplier and the construction contract is for labor only, neither the school or construction contractor is required to pay tax on the materials. Again, as in the case of other purchases, the school would be required to tender an exemption certificate to the supplier.

If the construction contractor's agreement with the school includes consideration for the materials needed for the project or the school has two separate agreements with the contractor- one for materials and one for installation, the construction contractor will be liable for use tax on those materials obtained by the school for the contractor. The sales and use tax law provides that the obtaining of materials by a contractor to be used pursuant to a construction contract is a taxable use. Thus, the contractor's permitting the school to obtain materials required by the agreement does not obviate the contractor's taxable use of non-building machinery and equipment items. For example, a construction contractor bids \$50,000 for the renovation of the football stadium. The school district purchases the materials for the contract directly from the supplier and pays the supplier \$20,000. The contractor installs the materials and is paid \$30,000 crediting the school district \$20,000 for the materials purchased directly from the suppliers. The contractor is liable for use tax on the non-building machinery and equipment materials purchased by the school.

8. When using the school exemption number, must the purchase order, sales invoice and exemption certificate always reflect the name of the school?

Yes, it is absolutely necessary that the name appearing on the exemption certificate, purchase order and sales invoice reflect the name of the school holding the exemption number.

9. What procedure does the school follow in claiming its exemption?

The school should submit an exemption certificate (Form REV-1220) to its supplier. This certificate may be used for a single (unit) or multiple purchases (blanket) by checking the applicable block on the certificate. If a school buys only exempt items from a supplier, it is recommended that the "blanket" block be checked. A "blanket" certificate once submitted to a supplier may be referred to in connection with all future exempt purchases from the supplier without completing additional copies of the certificate. The same form may be used in claiming an exemption from local sales tax.

However, if the school wants to limit the certificate to a single purchase, the block marked “unit” may be checked. A supplier is not permitted to accept the same “unit” certificate in connection with future purchases without obtaining an additional exemption certificate. The “name of purchaser” must in all cases be the name of the school holding the exemption number. (See sample Exemption Certificate, Attachment “A”).

C. SALES BY SCHOOL ORGANIZATIONS AND SCHOOL-RELATED ORGANIZATIONS

1. Are school organizations (i.e., organizations for which the school has fiscal responsibility) and school-related organizations permitted to pay tax to their suppliers on purchases of property for resale rather than collect sales tax?

a. School and School Organizations

There are two situations in which a school or school organization may elect to pay tax to the supplier as an alternative to collecting sales tax upon the sale. The first situation is the purchase of taxable property that the school or the school organization will resell to the public, as a fundraising activity. The second situation is the purchase of yearbooks that will be sold to students. If the school or school organization purchases any other type of taxable property for resale (other than food or beverages sold on the school premises which will be discussed later) the school is required to have a sales tax license number with which to collect and remit sales tax to the Department. For example, sales from a school book store, sales of taxable property or services by a vo-tech school to the public or sales of student pictures or class rings by a school are subject to sales tax and would require the collection and remission of the tax to the Department.

b. School-Related Organizations

There is one situation in which a school-related organization may elect to pay tax to the supplier as an alternative to collecting tax. If the school-related organization sells taxable property to the public as a fundraising activity, it may elect to pay tax to the supplier upon the taxable property it will resell to the public. If a school-related organization uses this exception exclusively, it is not required to obtain a sales tax license number nor collect tax on the taxable property and services it sells.

2. Should the school as well as each school organization obtain a sales tax license number for use in remitting tax to the Department?

No, for several reasons the Department requests that the school’s sales and use tax license number be used to remit all sales taxes collected by the school and its school organizations. First, the school has the personnel continuity and the expertise to submit

properly the required sales tax returns. Secondly, a uniform procedure is the most desirable for everyone. And third, it would not be cost effective for the Department to issue sales tax license numbers to hundreds of organizations that may collect small amounts of sales tax.

3. What responsibility does the school organization or school-related organizations have with respect to the purchase and sale of nontaxable property?

Any nontaxable property purchased by a school organization or school-related organization may be purchased and resold without the payment or collection of tax. A school organization or school-related organization need not submit an exemption certificate to the supplier of property that is not subject to tax. For example, a school organization purchases cookies for fundraising purposes. Cookies are not subject to sales tax (unless sold from an eating establishment). The school organization need not pay sales tax at the time of purchase nor submit an exemption certificate to the supplier in connection with the purchase of the cookies for resale to the public. (See also later questions relating to taxable and nontaxable property.)

4. A school organization or a school-related organization purchases taxable property it will sell to the public as a fundraising activity and chooses to pay tax upon the purchase price billed by the supplier. If the supplier is not licensed with the Pennsylvania Department of Revenue for the collection and remission of tax, how is the tax paid?

If the school organization or school-related organization holds a sales and use tax license number, the tax may be reported and remitted with the school's or school organization's regular sales and use tax return. The amount of state tax (six percent of the invoice total including delivery, postage, freight, etc.) should be inserted on line "6" of the tax return as "use tax." If sales are made in a county imposing local sales and use tax, the amount of local tax may be inserted on the same return. This would satisfy the payment of tax on the purchase.

If a school-related organization does not hold a sales and use tax license number and does not remit regular tax returns, the applicable state and local tax must be remitted to the Department through the use of Form PA-1 "Use Tax Return." (See sample Use Tax Return, Attachment "B".) The use tax return form may be obtained from the Department or at the Department's website. This return represents a one-time filing without the need to file subsequent returns unless additional taxable sales are made. The sales tax law includes both a "sales" and a "use" tax. Generally speaking, any sales made within the geographical boundaries of Pennsylvania are subject to sales tax. Where taxable property is purchased outside of Pennsylvania or if the vendor does not collect the sales tax, the purchase is subject to "use" tax. The state rate of both taxes is the same – six percent. Currently, the local rate of both taxes is the same – one percent

in Allegheny and Philadelphia counties. Thus, the failure to pay sales tax upon the purchase of taxable property automatically involves the payment of use tax as described above.

5. The sale of food or beverages on school property in the ordinary course of the school's activities is exempt from tax. How does a school claim an exemption at the time of purchasing soft drinks?

The law excludes from tax the sale of food or beverages at or from a school in the ordinary course of its activities. Therefore, sales of food, soft drinks or other beverages primarily for consumption by the faculty and students, from the school cafeteria, from vending machines located on school property or from an eating stand located on school property during athletic contests are not subject to tax. Almost all food and beverages are exempt from tax unless purchased from an eating establishment. When purchasing nontaxable food and beverages from a supplier the school need not give an exemption certificate to the supplier. If the school is purchasing taxable food or beverage items, such as soft drinks, the school gives its soft drink supplier an exemption certificate claiming the resale exemption. See Attachment "C" for an example of a properly completed exemption certificate claiming the resale exemption. The school should never use its exemption number in connection with the purchase of property for resale. If the school is purchasing the soft drinks to be given to its students or faculty, it may use its exemption number.

6. Could you provide a listing of taxable and nontaxable items which a school, school organization or school-related organization might sell?

Examples of taxable property: automotive parts; appliance parts; books (other than textbooks); calendars; candles; cosmetics and soap products; dictionaries; greeting cards, Christmas cards, etc.; wrapping paper; notebooks and notebook paper; pens and pencils; stadium cushions; stationery and stationery supplies; class rings; graduation caps and gowns; and school yearbooks. The sale of magazine subscriptions (which involve multiple copies) is exempt from sales tax. However, the sale of individual copies of magazines continues to be subject to tax. If a vo-tech school sells repair services to motor vehicles, appliances or other tangible personal property, both the labor and the material portion of the bill is subject to tax. In this situation, the purchase by the school of the materials used and transferred in the repair is exempt from tax pursuant to the resale exemption. Sales involving property having a total price of ten cents or less are not subject to tax.

Examples of nontaxable property: Candy; food (unless sold from an eating place, not located on school property), including sandwiches, hoagies, cakes, cookies, fruits and vegetables; clothing for everyday wear; emblems for clothing; varsity jackets;

nonprescription drugs and medical supplies; gym suits; and textbooks (when sold by the school and are required for use in the educational curriculum). Remember, nontaxable items may be purchased for sale without the use of an exemption certificate.

7. What procedure does a school or school-related organization follow in claiming an exemption in connection with the purchase of taxable property or services for resale?

Previously, in this memorandum, we pointed out that with respect to fundraising sales, schools and school-related organizations may pay tax directly to the supplier in full satisfaction of its sales and use tax responsibilities. The procedure described in this question relates to the purchase of items where the school or school-related organization is required to collect and remit sales tax on the resale of the purchased items. At the time of making purchase of the property, the school or school-related organization should submit an exemption certificate to its supplier claiming the resale exemption. The certificate may be used for a single (unit) or multiple purchases (blanket) by checking the applicable block on the certificate. The “name of purchaser” must in all cases be the name of the school or school-related organization holding the sales tax license number. The purchase order and sales invoice also should reflect the name set forth on the exemption certificate. Block “3” on the face side of the exemption certificate should be checked and the school’s or school related organization’s sales tax license number inserted to the right of that block. (See sample Exemption Certificate, Attachment “C”.)

8. Are barber and beautician services sold to the public by a vo-tech school subject to tax?

No, charges for barber and beautician services are not taxable. However, charges for services to wigs, hairpieces and similar items by a school would be subject to tax.

9. What procedure does a school or a school-related organization follow in obtaining a sales tax license number?

If a school or school-related organization makes no sales of taxable property or services, it is not required to obtain a sales tax license number. All schools likely hold a sales tax license number so that an additional number is not required. Schools and school-related organizations which currently do not hold a sales tax license number but will require one for future sales, should submit to the Department a completed form PA-100 Pennsylvania Enterprise Registration Form. The completed form should be returned to the address noted on the upper left-hand corner of the face side of the application. This form may also be completed online at www.revenue.pa.state.us. Please note that the filing of this form will be for a permanent sales tax license number that will involve the filing of regular sales tax returns whether or not any tax is collected.

10. If a school or school-related organization finds it does not need a sales tax license number after one has been obtained, what procedure should be used to cancel its sales tax license number?

The school or school-related organization will receive a booklet that contains all of the required returns that must be filed during that calendar year. On the last page of that booklet, there is a form (REV-1706) captioned "Sales Tax License Cancellation." Schools and school-related organizations desiring to cancel their sales tax number should complete this form and return it to the address noted on the form. Upon receipt of this cancellation notice, the Department will cancel the school's or school-related organization's sales tax license number. The school and school-related organization, however, are required to file returns until the date the sales tax license is cancelled.

Attachments

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