New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

TSB-M-99(2)S
Sales Tax
March 29, 1999

Materialmen - Pay When Paid

Governor George E. Pataki has signed into law a provision allowing certain *materialmen* (defined below) to elect to remit sales tax when they actually receive payment on sales of qualifying building materials and certain services performed on such materials from contractors. However, in all cases, the tax must be remitted within one year of the date of sale. (See Tax Law, section 1132(a)(2)).

Generally, sales tax is required to be remitted to the Tax Department with the sales tax return filed for the period in which the sale occurs, without regard to when the vendor actually receives payment from the customer. A sale occurs when property is delivered or a service is performed. Subject to the conditions noted below, qualifying materialmen may elect to postpone remitting the sales tax until they receive payment (*pay-when-paid*) on qualifying sales to contractors. A qualifying sale is a sale of building materials (defined below), or services to such building materials, for use in improving real property, provided the sale is made to a contractor on credit granted by the materialmen.

When a *materialman* who has made the election receives payment of the purchase price or any portion of the purchase price on a qualifying sale from the contractor, the materialman must collect the sales tax due on the amount of the payment and remit it with the report for that period.

One year from the date of sale, the materialman must remit any remaining balance of sales tax due on the full purchase price even if the materialman has not been paid for the materials or services by the contractor or collected sales tax from the contractor. The sales tax must be remitted with the sales and use tax return for the period that includes the date which is one year after the date of sale.

Definitions for Pay-When-Paid Option

For purposes of this provision, the term *contractor* includes a contractor, a subcontractor, a repairman, and a property owner acting as his or her own contractor.

The term materialman is limited to any seller of building materials and related services who, **by June first** of any year:

- was a materialman within the meaning of section 2 of the Lien Law[1] during any two sales tax quarters within the most recent four consecutive sales tax quarters;
- was primarily engaged (more than 50% of sales) in selling building materials to contractors for the improvement of real property;
- was authorized by the Lien Law to file a mechanics lien upon such real property and improvement; and
- files an application by June 1 of any year electing to remit sales and use tax under the pay-when-paid rules for the twelve month period beginning June 1 and ending the following May 31. The application must be filed annually.

The term *building materials* is limited to building materials which are incorporated into real property as a capital improvement or repair, and to tools and other items that are used to improve real property.

[1] In general, the Lien Law defines a "materialman" as any person who furnishes material or the use of machinery, tools, or equipment, or compressed gases for welding or cutting, or fuel or lubricants for the operation of machinery or motor vehicles, to an owner, contractor or subcontractor, for the improvement of real property.

Annual Application for Materialman Pay-When-Paid Option

Vendors electing to use the pay-when-paid option should file a **Pay-When-Paid** application by June 1 of each year.

Application of Payments Received on Account

Payments received on account from a contractor should be applied in accordance with the accounting method regularly used by the materialman.

Selling or Pledging Accounts Receivable

If a materialman sells, assigns or pledges as collateral **only** accounts receivable from qualifying sales, sales tax will be due on the amount of the qualifying sales and must be reported on and remitted with the sales tax return filed for the period in which the sale, assignment or pledge of the receivable occurs.

However, if a materialman pledges as collateral a combination of accounts receivable from qualifying sales **and** any other assets such as accounts receivable from non-qualifying sales, inventory, equipment or securities, sales tax will not be due until the materialman actually receives payment from the contractor or one year after the date of sale, whichever is earlier.

Uncollectible Accounts

If a receivable from a qualifying sale is ascertained to be uncollectible (worthless, as determined for federal income tax purposes), either in whole or in part, the materialman may apply for a refund or credit of the tax paid on the portion of the receivable ascertained to be uncollectible. The materialman must apply for the credit or refund within three years from the date the tax was payable by the materialman to the New York State Department of Taxation and Finance, applying the pay-when-paid rules described herein. A credit is claimed on a quarterly sales tax return and a refund is claimed by filing form AU-11.

Recordkeeping

In addition to the general record keeping requirements for all sales tax vendors, a materialman using the pay-when-paid option is required to keep the following records with respect to each sale of building materials or services to a contractor:

(1) the date of the sale;
(2) proof (such as an invoice) that the sale is a sale of building materials or related services as described herein;
(3) the amount of credit, if any, extended by the materialman to the contractor for the sale;
(4) the payment terms; and
(5) the date or dates on which the purchase price is paid, in part or whole, and the amount of each payment or repayment.

Filing of Returns and Payment of Taxes

Qualifying sales are to be reported as gross sales on the return covering the period in which the sale is made. Sales which will be reported by a materialman using the pay-when-paid option, must not be shown as taxable sales on the sales and use tax return for the period in which the sale is made (except when a part payment is received during that period). Instead, the receipts from each payment are to be reported as taxable sales on the sales and use tax return submitted for the period in which the payment is received. However, the sales tax must be computed using the combined state and local sales tax rate in effect for the applicable locality at the time the sale occurs and not when payment is received. In the case of a sales tax rate change in the applicable locality since the time of the sale, the materialman will have to manually enter the correct name of the taxing jurisdiction, the jurisdiction code that was in effect when the sale was made, the amount received for the taxable sale, the tax rate and the sales tax due on one of the blank lines, beneath the taxing jurisdiction listings, provided on page 3 of the sales tax return being filed. This method must be employed to report any payments on account received from a contractor when the pay-when-paid option is being utilized by the materialman. If the correct jurisdiction code is not known, the materialman should call the Business Tax Information Center at 1 800 972-1233.

Example 1:

A building materials supplier qualifies as a materialman as of June 1 and chooses the pay-when-paid option.

In July of the same year, the supplier sells $30,000 of building materials to a contractor who is building a house. The supplier delivers the material to the job site in XYZ County. The supplier bills the contractor $32,400 ($30,000 for materials plus $2,400 for 8% (4% state and 4% local (XYZ County) sales tax). The agreement between the contractor and the supplier is that the contractor will pay the bill when the house is sold. The house is sold in November of the same year and the contractor pays the supplier the total amount owed of $32,400.

The supplier files sales and use tax returns quarterly. The supplier reflects the $30,000 sale of building materials as a gross sale, but not as a taxable sale, on its return for the quarter ended August 31. Because payment is received in November, the sale will be reported as a taxable sale by using the appropriate line for XYZ County on the sales and use tax return filed for the period September 1 through November 30.

Example 2:

Assume the same facts as stated in Example 1, except that the XYZ local sales tax rate was reduced to 3 ½% effective September 1.

As in Example 1, the supplier reflects the $30,000 sale of building materials as a gross sale, but not as a taxable sale, on its return for the quarter ended August 31. Because payment is received in November, the supplier will report the sale as a taxable sale on the sales and use tax return filed for the period September 1 through November 30. However, since the sale was made when the sales tax rate in XYZ County was at 8%, the supplier will not report the sale on the 7 ½% line provided for XYZ County. Instead, on one of the blank lines provided on page 3, beneath the last listing of taxing jurisdictions, the supplier will manually enter XYZ County, the jurisdiction code for XYZ County in effect at the time of the sale, the taxable sale of $30,000, the tax rate at the time of the sale of 8%, and the sales tax of $2,400.

Example 3:

In February, a building materials supplier located in Schenectady County sells $10,000 of materials to a contractor. The contractor requests delivery of the materials to a job site in Albany County. The building materials supplier bills the contractor $10,800 ($10,000 for materials plus $800 for 4% state and 4%local (Albany County) sales tax). The contractor makes a payment of $2,700 each month during March, April, May, and June.

The building materials supplier files sales and use tax turns quarterly.

As of June 1 of the previous year, the building materials supplier qualified as a materialman and for sales tax reporting purposes chose the pay-when-paid option. Accordingly, the total sale of $10,000 is reported as a gross sale, but not as a taxable sale, on the supplier's return for the period December - February. The supplier will report $7,500.00 as a taxable sale and $600.00 as sales tax on the Albany County line of the supplier's quarterly sales and use tax return for the period March - May.

The final payment of $2,700.00 is to be reported as a taxable sale of $2,500.00 and sales tax of $200.00 on the Albany County line of the quarterly sales and use tax return for the period June - August.

Example 4:

Assume the same facts as in Example 3 with the exception that the building materials supplier files sales and use tax returns part-quarterly (monthly).

A taxable sale of $2,500.00 and sales tax of $200.00 is required to be reported on each part-quarterly (monthly) return filed for the months of March, April, May and June.

Cash Sales and Sales to Other Than Contractors

Receipts from cash sales, third party credit cards, and so forth, do not qualify for the pay-when-paid option. Sales tax must be collected on these receipts at the time of the sale, and remitted with the sales and use tax return filed for the period in which the sale occurs.

Effective Date

The pay-when-paid amendment to the Tax Law applies to qualifying sales made and uses occurring on or after June 1, 1999, including those made or occurring under a contract entered into prior to June 1, 1999.

(See Tax Law, section 1132(a)(2)).