

MEMORANDUM

TO: Richard Dotson, Director Audit

FROM: Mark Haskins, Director-Policy Development

SUBJECT: Response to Request for Clarification of PD 04-122

DATE: February 12, 2008

This memorandum responds to your request for clarification of the Public Service Corporation Exemption Repeal Guidelines, Public Document (“PD”) 04-122 (August 30, 2004). You have requested clarification concerning the section entitled, “Contractor’s Use Tax.” The second paragraph of that section states:

Effective September 1, 2004, contractors purchasing and installing tangible personal property for a public service corporation that is directly used in the rendition of its public service, will be considered the user and consumer of all tangible personal property consumed by them in the performance of the contract and must pay the sales or use tax on such property at the time of purchase.

You are concerned that this paragraph could be interpreted to mean that all contractors who purchase tangible personal property, whether such property will be used in a real property contract or contracts for the sale of tangible personal property, are required to pay use tax on these items at the time of purchase. You contend that contractors who sell tangible personal property outside of real property contracts must collect sales tax on the sale and remit the tax to the state.

Policy Development’s intent in issuing PD 04-122, was to address real property contractors who purchase and install exempt tangible personal property for a public service corporation. Thus, the use of the term “contractors” in this section was meant to refer to real property contractors. Policy Development did not intend to imply that all contractors purchasing and installing tangible personal property for a public service corporation would be deemed the user and consumer of all tangible personal property consumed by them in the performance of the contract.

I hope this provides the clarification you requested concerning the application of the sales and use tax to contractors who sell tangible personal property outside of real property contracts.