

SCHAEDLER YESCO EXPO 2022
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WHAT IS PA ACT 45 AND WHY SHOULD I CARE?

PENNSYLVANIA SALES AND USE TAX



PA collects over \$11 billion in sales and use tax annually



One Third of General Fund



PIT \$14 B, Corp Tax \$5 B, Fuel Tax \$2 B



Sales Tax on Construction Materials estimated at \$700,000,000

PRE ACT 45



Before 1998, contractors paid tax on property that became a permanent part of the real estate. Property that remained tangible personal property upon installation was nontaxable (resale).



Terms not defined in statute.



Contractors claimed property remained TPP and Revenue claimed property became part of the real estate.

PRE ACT 45 (CONT.)



Caused appeals, litigation,
uncertainty.



*Beck Electric Construction,
Inc.* (Pa. Supreme Ct. 1977)



Act 45 was intended to clarify the issue by
detailing in the law what property was
taxable/nontaxable in construction
contracts with exempt entities.

ACT 45 –
APPLICABLE
TO
CONTRACTS
WITH
EXEMPT
ENTITIES
ONLY

Act 45 applies only to construction contracts with these
"Exempt Entities":

1. Governments

- Federal
- Commonwealth of Pennsylvania
- PA Local Governments including cities towns, boroughs and townships
- School Districts ("76")
- Municipal Authorities – water, sewer, parking, industrial development
- Any agency, commission or department of any of the above

Not other states or their local governments

ACT 45 –
APPLICABLE
CONTRACTS
(CONT.)

2. Institutions of Purely Public Charity
("75" Organizations)

- Non Profit Schools (registered with PA Dept of Education)
- Religious Organizations
- Charitable Organizations
- Volunteer Fire Companies and Relief Associations

Property cannot be used in an unrelated trade or business.

BM&E TEST (CONT.)

REAL ESTATE STRUCTURE – EVERYTHING THAT IS DONE IN THE CONTEXT OF A CONTRACT FOR AN EXEMPT ENTITTY

BM&E	Guardrail Posts	Pipes	Fittings	Pipe Supports and Hangers
Valves	Ductwork	Underground Tanks	Wire	Conduit
Receptacle and Junction Boxes	Insulation	Coverings for the above property	Concrete Windows Shingles	Wood (2x4) Beams Asphalt

WWW.REVENUE.PA.GOV/TAXTYPES/SUT/DOCUMENTS/ACT_45_1998.PDF

BM&E is only a small part of “Real Estate Structure”
The link below provides the list found in the law.

[Building Machinery and Equipment - Summary Act 45 of 1998
Website.doc \(pa.gov\)](#)

ACT 45 EXEMPTION – BUILDING MACHINERY & EQUIPMENT TEST

Four Part BM&E Test

Building Machinery and Equipment is :

1. One of the following type of equipment:

- Generation Equipment
- Storage Equipment
- Conditioning Equipment
- Distribution Equipment, or
- Termination Equipment

BM&E TEST (CONT.)

2. And the equipment must be part of one of the following systems:
 - (1) air conditioning limited to heating, cooling, purification, humidification, dehumidification and ventilation;
 - (2) electrical;
 - (3) plumbing;
 - (4) communications limited to voice, video, data, sound, master clock and noise abatement;
 - (5) alarms limited to fire, security and detection;

BM&E TEST (CONT.)

- (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.

BM&E TEST (CONT.)

3. Specific Items That Are BM&E:

- (a) Boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment,
- (b) together with integral coverings and enclosures,
- (c) 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.**

ACT 45 - CONTRACTORS' PURCHASES FOR EXEMPT ENTITIES (FOR GUIDANCE ONLY)

WWW.REVENUE.PA.GOV/TAXTYPES/SUT/DOCUMENTS/CONSTRUCTION_CONTRACTORS.PDF

Act 45 - Contractors' Purchases for Exempt Entities (For Guidance Only)

Materials Needed	T/NT	Comments	Cite(s)
Casework (cont.):			
Upholstered bench	NT		72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Upholstered daybed	NT		72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Upper transaction counter	NT		72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Whiteboard, bulletin boards, tackboards, chalkboards	T	D/R - Taxable as property other than BME obtained pursuant to a construction contract. 72 P.S. § 7201(o)(17).	72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Wood veneer face panels	NT/T	D/R - NT when used for cabinetry; T when used on walls.	72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Work rom ktchenette	NT		72 P.S. § 7201(pp)(10); 72 P.S. § 7204(10)
Ceilings - Accoustical Panel:			
Suspended acoustic panel ceilings	T		72 P.S. § 7202(a)
Suspended soffit system @ patient rooms	T		72 P.S. § 7202(a)
ACT-3, 24" x 24" clean room mylar, w/ 15/16" grid	T		72 P.S. § 7202(a)
ACT-1, 2' x 2' Armstrong Omega	T		72 P.S. § 7202(a)
ACT-2, 2' x 2' Armstrong Dune	T		72 P.S. § 7202(a)
ACT-3, 2' x 2' Armstrong clean room mylar	T		72 P.S. § 7202(a)

CLAIMING BM&E EXEMPTION



A Construction Contractor must give a Pennsylvania Exemption Certificate (REV-1220) to Seller.



The Certificate is a Unit Exemption Certificate which is for a single transaction. Certificate must be linked to a specific contract number. Seller must maintain records linking the Certificate to specific invoices.



Seller is responsible for knowing what qualifies for BM&E although if tax is charged incorrectly both Seller and contractor may be held liable for unpaid tax. If Seller has a question whether property is BM&E, Seller should contact Revenue.



Certificate must otherwise be properly completed.



PENNSYLVANIA EXEMPTION CERTIFICATE

- STATE AND LOCAL SALES AND USE TAX
- STATE 6% AND LOCAL 1% HOTEL OCCUPANCY TAX
- PUBLIC TRANSPORTATION ASSISTANCE TAXES AND FEES (PTA)
- VEHICLE RENTAL TAX (VRT)
- ADDITIONAL LOCAL, CITY, COUNTY HOTEL TAX *

This form cannot be used to obtain a Sales Tax Account ID, PTA Account ID or Exempt Status.

(Please Print or Type)
**Read Instructions
 On Reverse Carefully**

THIS FORM MAY BE PHOTOCOPIED – VOID UNLESS COMPLETE INFORMATION IS SUPPLIED

CHECK ONE: PENNSYLVANIA TAX UNIT EXEMPTION CERTIFICATE (USE FOR ONE TRANSACTION)
 PENNSYLVANIA TAX BLANKET EXEMPTION CERTIFICATE (USE FOR MULTIPLE TRANSACTIONS)

Name of Seller, Vendor or Lessor

Street	City	State	ZIP Code
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NOTE: Do not use this form for claiming an exemption on the registration of a vehicle. To claim an exemption from tax for a motor vehicle, trailer, semi-trailer or tractor with the PA Department of Transportation, Bureau of Motor Vehicles, use one of the following forms:

- FORM MV-1**, Application for Certificate of Title (first-time registrations)
- FORM MV-4ST**, Vehicle Sales and Use Tax Return/Application for Registration (other registrations)

Property and services purchased or leased using this certificate **are exempt** from tax because: (Select the appropriate paragraph from the back of this form, check the corresponding block below and insert information requested).

- 1. Property or services will be used directly and predominately by purchaser in performing purchaser's operation of: _____
- 2. Purchaser is a/an: _____ holding Sales Tax Exemption Number _____
- 3. Property will be resold under Account ID _____ (If purchaser does not have a PA Sales Tax Account ID, include a statement under Number 8 explaining why a number is not required).
- 4. Property or services will be used directly and predominately by purchaser performing a public utility service.
 PA Public Utility Commission PUC Number _____ and/or U.S. Department of Transportation MC/MX _____
- 5. Exempt wrapping supplies, Account ID _____ (If purchaser does not have a PA Sales Tax Account ID, include a statement under Number 8 explaining why a number is not required).
- 6. Canned computer software purchased by a financial institution subject to the Bank and Trust Company Shares Tax (Article VII) or the Mutual Thrift Institutions Tax (Article XV).
- 7. Canned computer software licenses that are billed to a PA address but used outside of PA. The total number of software licenses purchased for invoice # _____ is _____. The total number of users accessing and using the software outside PA is _____
- 8. Other _____
 (Explain in detail. Additional space on reverse side).

I am authorized to execute this certificate and claim this exemption. Misuse of this certificate by seller, lessor, buyer, lessee or their representative is punishable by fine and imprisonment.

Name of Purchaser or Lessee	Signature	EIN	Date
Street	City	State	ZIP Code

GENERAL INSTRUCTIONS

Those purchasers set forth below may use this form in connection with the claim for exemption for the following taxes:

- a. State and local sales and use tax;
- b. PTA rental fee or tax on leases of motor vehicles;

- c. Hotel occupancy tax (state 6%, Philadelphia 1%, Allegheny 1%) if referenced with the symbol (♦);
- d. PTA fee on the purchase of tires if referenced with the symbol (+);
- e. Vehicle rental tax (VRT).

EXEMPTION REASONS

1.) Property and/or services will be used directly and predominately by purchaser in performing purchaser's operation of:

- A. Manufacturing
- B. Mining
- C. Dairying
- D. Processing
- E. Farming
- F. Shipbuilding
- G. Timbering

This exemption is not valid for property or services used in: (a) constructing, repairing or remodeling of real property, other than real property used directly in exempt operations; or (b) maintenance, managerial, administrative, supervisory, sales, delivery, warehousing or other nonoperational activities. This exemption is not valid for vehicles that are required to be registered under the Vehicle Code, as well as supplies and repair parts for such vehicles, the PTA tire fee, and certain taxable services.

2.) Purchaser is a/an:

- + A. Instrumentality of the commonwealth (to include public schools and state universities).
- + B. Political subdivision of the commonwealth (includes townships and boroughs).
- + ● C. Municipal authority created under the Municipality Authorities Acts.
- + ● D. Electric cooperative corporations created under the Electric Cooperative Law of 1990.
- + ● E. Cooperative agricultural associations required to pay corporate net income tax under the Cooperative Agricultural Association Corporate Net Income Tax Act (exemption not valid for registered vehicles).
- + ● F. Credit unions organized under Federal Credit Union Act or Commonwealth Credit Union Act.
- + ● G. U.S. government, its agencies and instrumentalities.
- + ● H. Federal employee on official business (exemption limited to hotel occupancy tax only. A copy of orders or statement from supervisor must be attached to this certificate).
- + I. School bus operator (This exemption certificate is limited to the purchase of parts, repairs or maintenance services upon vehicles licensed as school buses by the PA Department of Transportation).
- + J. Charter Schools and Community Colleges.

Renewable Entities beginning with "75":

- K. Religious Organization
- L. Nonprofit Educational Institution
- M. Charitable Organization

Permanent Exemptions beginning with the two numbers "75":

- N. Volunteer Fire Company
- O. Relief Association

Special Exemptions

- R. Keystone Opportunity Zone (beginning with two digit 72 account number)
- S. Tourist Promotion Agency

Exemptions for exempt organizations K through S are limited to purchases of tangible personal property or services for use and not for sale. Exempt organizations K - O above, shall have an sales tax exemption certificate number assigned by the PA Department of Revenue. Exempt organizations K-O above, are not exempt for purchases used for the following: (1) constructions, improvement, repair or maintenance or any real property, except supplies and materials used for routine repair or maintenance of the real property; (2) any unrelated activities or operation of a public trade or business; or (3) equipment used to maintain real property.

- 3.) Property and/or services will be resold or rented in the ordinary course of purchaser's business. If purchaser does not have a PA Sales Tax Account ID (8 digit number assigned by the department), complete Number 8 explaining why such number is not required. This exemption is valid for property or services to be resold: (1) in original form; or (2) as an ingredient or component of other property.
- 4.) Property or services will be used directly and predominately by purchaser in the production, delivery or rendition of public utility services as defined by the PA Utility Code.
This exemption is not valid for property or services used for the following: (1) construction, improvement, repair or maintenance of real property, other than real property used directly in rendering the public utility services; or (2) managerial, administrative, supervisor, sales or other nonoperational activities; or (3) vehicles, as well as supplies and repair parts for such vehicles, unless the predominant use is for providing a common carrier service; or (4) tools and equipment used but not installed in maintenance of facilities or direct use equipment. Tools and equipment used to repair "direct use" property are exempt from tax.
- 5.) Vendor/seller purchasing wrapping supplies and nonreturnable containers used to wrap property which is sold to others.
- 6.) Canned computer software or services to canned computer software directly utilized in conducting the business of banking purchased by a financial institution subject to the Bank and Trust Company Shares Tax (Article VII) or the Mutual Thrift Institutions Tax (Article XV).
- 7.) Seller is required to collect tax on canned software accessed remotely when the user is located in PA. If the billing address is a PA address, the presumption is that all users are located in PA. Purchaser is responsible for apportioning and remitting the tax due to each taxing jurisdiction and must provide the total number of licenses purchased and the number of those licenses used outside PA on Line 8. Please note that any unused licenses will be considered to be allocated to PA.
- 8.) Other (Attach a separate sheet of paper if more space is required).

* Employees or representatives of the Commonwealth traveling on Commonwealth duty are exempt from any taxes on hotel stays or room rentals

CLAIMING BM&E EXEMPTION (CONT.)

On Line 8 of the Certificate language similar to the following must be inserted:

For “75” Organizations

Under Act 45, the property purchased qualifies as exempt "building machinery and equipment" that will be transferred pursuant to construction contract number XXXXXXXX to (Insert Name of Exempt Entity) holding Sales Tax Exemption Number 75XXXXXX.

For Governmental Entities

Under Act 45, the property purchased qualifies as exempt "building machinery and equipment" that will be transferred pursuant to construction contract number XXXXXXXX with (Insert Name of Governmental Entity).

ARE YOU ENTITLED TO AN EXEMPTION

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?**
- Ask yourself:
 - Am I a party to a construction contract?
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**
 - Am I purchasing "building machinery and equipment"?
YES **NO**

On Line 8 of the Certificate language similar to the following must be inserted:

“Property purchased qualifies as equipment, machinery, parts and foundations therefore, or supplies that will be transferred pursuant to construction contract number XXXXXX and used by [Insert name of exempt business] for use directly in [Insert type of exempt business operation].”

CLAIMING BUSINESS EXEMPTION (CONT.)

If a Contractor gives a properly completed Certificate to Seller and Seller maintains proper documentation linking the Certificate to invoices, then Seller is not responsible for collecting sales tax on property sold. If Department of Revenue determines that property was not properly taxed (not directly used) then Revenue may assess the Contractor for tax due.

The Contractor claiming this exemption also must obtain a Pennsylvania exemption certificate from the business with whom the contract has a construction contract.

CLAIMING BUSINESS EXEMPTION (CONT.)

OTHER EXEMPTIONS APPLICABLE TO CONSTRUCTION CONTRACTS

Property which is directly and predominantly used in the following operations is exempt from tax when purchased by a contractor:

- Manufacturing
- Processing
- Farming/Dairying
- Public Utility
- Mining
- Printing
- Photography

Line 1 of the business's exemption certificate must be checked along with a description of the business's operations – manufacturing, farming, etc

Even with the business's certificate, it is Revenue's policy to assess the Contractor, not the business, if it is determined that the property is not exempt from tax (not directly used). A Contractor may protect itself by including an indemnification clause in contracts.

CLAIMING BUSINESS EXEMPTION (CONT.)

OTHER EXEMPTIONS APPLICABLE TO CONSTRUCTION CONTRACTS



This applies to directly used machinery, equipment, supplies and parts and repairs to directly used property.



Does not apply to general lighting, heating and cooling, offices, or parking lots, outside lighting, or other non-direct use areas.



Does not apply to property used in pre-operational or post-operational areas.



Last transformer rule.

OTHER EXEMPTIONS APPLICABLE TO CONSTRUCTION CONTRACTS

Development Zones

- Keystone Opportunity Zone
- KOEZ

CLAIMING BUSINESS EXEMPTION



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Certificate must otherwise be properly completed.



Property shipped out of PA by the seller or an interstate carrier is not subject to PA tax. May be subject to tax in the delivery state (Purchaser must take delivery OOS).



Sales Not Involving Installation – The sale of items without installation is a taxable retail sale unless the purchaser is exempt. Seller may purchase items tax free using the resale exemption. However, sales tax may be due on the total sales price to the customer.



Building materials and supplies used for the construction or repair of an animal housing facility, regardless if the sale is made to the purchaser directly or pursuant to a construction contract. (2019)

OTHER EXEMPTIONS

REFUNDS



If a Contractor erroneously paid tax on "building machinery and equipment" or on property directly used in an eligible business operations or for any other reason the Contractor may get a refund of tax paid.



File a Petition for Refund with the Board of Appeals



Within THREE YEARS of the date of paying the tax (no exceptions)



Petition for Refund (Form REV-65) should include specifics of the purchase; proof of payment of the tax and why purchases are exempt.

ADDITIONAL INFORMATION

Department of Revenue website:

www.revenue.pa.gov

Contact Revenue by email or phone:

“Contact Us” tab on website

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