



Sales and Use Tax Exemptions for Low and Moderate Income Housing Facilities

Purpose: This Policy Statement describes:

- The exemption from sales and use taxes in Conn. Gen. Stat. §12-412(29) for purchases of tangible personal property and services for low and moderate income housing facilities sponsored and owned or operated by nonprofit housing organizations and the expansion of the exemption in 1999 to include projects sponsored and owned or operated by housing authorities and mutual housing associations;
- The procedures that a facility must follow to apply for and obtain a Department of Revenue Services (DRS) determination (a facility approval letter) that a facility qualifies for the exemption;
- How to use **CERT-126**, *Certificate for Exempt Purchases of Tangible Personal Property for Low and Moderate Income Housing Facilities*, to make exempt purchases; **and**
- An exemption in Conn. Gen. Stat. §12-412(100) for sales and purchases of services in connection with low and moderate-income housing facilities situated in Qualified Census Tracts or Difficult Development Areas as designated by the Secretary of the U. S. Department of Housing and Urban Development (HUD).

Effective Dates: Effective for sales and purchases of tangible personal property and services under Conn. Gen. Stat. §12-412(29)(A), and sales and purchases of services under Conn. Gen. Stat. §12-412(29)(B), on and after July 1, 1999. Effective for sales and purchases of services under Conn. Gen. Stat. §12-412(100) on and after January 1, 1997.

Statutory and Regulatory Authority: Conn. Gen. Stat. §12-412(29); Conn. Gen. Stat. §12-412(100), as amended by 2002 Conn. Pub. Acts 103, §14; and Conn. Agencies Regs. §12-426-18(c).

Definitions: A **nonprofit housing organization** is any organization that:

- Has as one of its purposes the development, construction, sponsorship, or ownership of housing for low and moderate income families as stated in its charter or certificate of incorporation if it is incorporated, or its constitution or bylaws, if it is not incorporated;
- Has received an exemption from federal income taxes under Internal Revenue Code (I.R.C.) §501(c); **and**
- Provides in its corporate charter or certificate of incorporation, if incorporated, or its constitution or bylaws, if not incorporated, that no officer, member, or employee will receive or at any time may receive any pecuniary profit from the operation of the organization, except reasonable compensation for services in effecting the purposes of the organization.

A **housing authority**, as defined in Conn. Gen. Stat. §8-39(b), is a Connecticut municipal housing authority created by Conn. Gen. Stat. §8-40 and the Connecticut Housing Authority when exercising its powers under Conn. Gen. Stat. §8-121.

A **mutual housing association**, as defined in Conn. Gen. Stat. §8-214f(b), is a nonprofit corporation approved by the Commissioner of Economic and Community Development that has among its purposes the provision of high-quality, long-term housing for low and moderate-income families as more fully set out in the statute.

Housing facilities are facilities whose primary purpose is to provide safe and adequate housing and related facilities for low and moderate-income families and persons, even if this housing provides other dwelling accommodations in addition to the primary purpose of providing dwelling accommodations for low and moderate-income families.

Related facilities, as used in the definition of housing facilities, are facilities defined in Conn. Gen. Stat. §8-243(d) as “commercial, office, health, welfare, administrative, recreational, community and service facilities incidental and pertinent to housing as determined by the [Connecticut Housing Finance Authority].”

Low and moderate income families, as defined in Conn. Gen. Stat. §8-243(h), are “families and persons who lack the amount of income necessary as determined by the [Connecticut Housing Finance Authority], to rent or purchase safe and adequate housing without special financial assistance not reasonably available.”

Scope of the Exemption in Conn. Gen. Stat. §12-412(29)(A): Conn. Gen. Stat. §12-412(29)(A) provides an exemption from sales and use taxes for the sale or purchase of:

- **Tangible personal property** (a) acquired for incorporation into housing facilities for low and moderate income families and persons, or (b) used and consumed in the operation of the housing facilities; **and**
- **Services enumerated in Conn. Gen. Stat. §12-407(a)(2)** (§12-407(2) until January 1, 2003) that are used and consumed in the development, construction, rehabilitation, renovation, repair, or operation of housing facilities for low and moderate income families and persons.

To qualify for the tax exemption for purchases of tangible personal property and services, a low and moderate income housing facility must be:

- Constructed under the sponsorship of a nonprofit housing organization or a housing authority as defined in Conn. Gen. Stat. §8-39(b); **and**
- Either owned or operated by a nonprofit housing organization or housing authority.

This exemption is *facility specific*. Once DRS has determined that a facility is exempt (based on the identity of the persons that sponsor, own, and operate the facility), most persons involved with the construction or operation of the facility may make exempt purchases of tangible personal property or services in connection with the facility provided they properly use **CERT-126**.

Purchasers using the exemption *need not* be nonprofit housing organizations, housing authorities, or other tax-exempt organizations. Nonprofit housing organizations that have been determined by the United

States Treasury Department to be organizations described in I.R.C. §501(c)(3) may also make direct purchases of tangible personal property and services exempt under Conn. Gen. Stat. §12-412(8), and housing authorities may make purchases exempt under Conn. Gen. Stat. §12-412(1)(A). However, the exemption in Conn. Gen. Stat. §12-412(29)(A) allows persons *other than* exempt entities to purchase tangible personal property and services without tax, when the items or services will be used exclusively in connection with facilities approved as provided in this publication.

Persons eligible to use the exemption include sponsors, owners, or operators of facilities, as well as contractors with sponsors, owners, or operators, such as construction contractors, repairers, renovators, landscapers, property managers, and maintenance and janitorial service providers.

Special Exemption for Sales of Services for Mutual Housing Projects: Conn. Gen. Stat. §12-412(29)(B) provides a special exemption for sales and purchases of enumerated services, when the services are used or consumed in the development, construction, renovation, or operation of low and moderate income housing facilities when the facilities are owned or sponsored by a mutual housing association, as defined in Conn. Gen. Stat. §8-214f. The association must operate the facilities as mutual housing at a location that was conveyed to the association by HUD prior to September 1, 1995.

Special Exemption for Sales of Services for Projects in Certain Qualified Areas: Conn. Gen. Stat. §12-412(100) provides a special exemption for sales and purchases of enumerated services that are used or consumed in the development, construction, rehabilitation, renovation, or repair of low and moderate income housing facilities situated in *Qualified Census Tracts* or *Difficult Development Areas* as designated by HUD, provided the development of the facilities is assisted by an allocation of Low Income Housing Tax Credits under I.R.C. §42.

Types of Property and Services Exempted: To be exempt from sales and use taxes, tangible personal property and services must be used *exclusively* for incorporation into or in the development, construction, rehabilitation, renovation, repair, or operation of an approved low and moderate-income housing facility.

Purchases of exempt tangible personal property may include items such as building materials, landscaping materials, appliances, furniture, and fixtures incorporated into or used exclusively in approved facilities during or after their construction or renovation; and maintenance, janitorial, and office supplies used exclusively in the ongoing operation of the facilities.

Purchases of exempt services enumerated in Conn. Gen. Stat. §12-407(a)(2) may include services such as real property renovation, business or property management, janitorial, maintenance, landscaping, security, exterminating, and repair and maintenance to tangible personal property, used exclusively in connection with approved facilities.

Application for Exemption: Persons that wish to use the exemptions under Conn. Gen. Stat. §12-412(29) must complete **Form REG-19, Low and Moderate Income Housing Facilities, Application for a Facility Approval Letter**. The applicant must be the nonprofit housing organization or housing authority that sponsors the construction or renovation of the low and moderate income housing facility, or that owns or will operate the facility. Each application must be filled out completely and accompanied by all information necessary to DRS to determine the eligibility of the facility for the exemption. At a minimum, this information consists of:

1. A full description of the housing project, including its location and its dates of construction and commencement of operation;
2. The certificate of incorporation of the sponsoring organization, if it is incorporated, and the constitution and bylaws of the organization, if it is not, indicating that it qualifies as a nonprofit housing organization (such as the necessary language about its purpose and about officer, member, or employee compensation);
3. A copy of the organization's current, valid determination letter issued by the United States Treasury Department indicating that the organization has received exemption from federal income tax under I.R.C. §501(c);
4. Alternatively, if the sponsoring organization is a housing authority, a letter indicating sponsorship of the project on the housing authority's letterhead, signed by an official of the housing authority;
5. The organizing documents (certificate of incorporation or constitution and bylaws) of the owner and the operator of the facility, if different

from the sponsoring organization, and proof that either the owner or the operator qualifies as a nonprofit housing organization or housing authority;

6. Documentation establishing that the construction project is being sponsored by the sponsoring organization (in the case of sponsorship by a housing authority, see #4, above); **and**
7. Documentation establishing that the facility is being or will be operated by the person identified as the operator (including a copy of the management or operating contract, if available).

Issuance of Facility Approval Letter: When the applicant completes and submits **Form REG-19**, with all necessary documentation, and DRS approves the application, DRS will issue to the applicant a signed, dated facility approval letter on DRS letterhead. The facility approval letter will acknowledge that tangible personal property acquired for incorporation into or used and consumed in the operation of the low and moderate income housing facility named in the letter, and services enumerated in Conn. Gen. Stat. §12-407(a)(2) that are used and consumed in the development, construction, rehabilitation, renovation, repair, or operation of the facility, are exempt from sales and use taxes as of the date specified in the letter.

For projects that are exempt for *services only* under Conn. Gen. Stat. §12-412(29)(B) or Conn. Gen. Stat. §12-412(100), the facility approval letter will indicate this limitation.

Persons wishing to make exempt purchases in connection with the approved facility must attach a copy of the facility approval letter to **CERT-126**.

Use of Contractor's Exempt Purchase Certificate: Conn. Agencies Regs. §12-426-18(c) provides that where a contractor enters into a construction contract with a governmental entity exempt under Conn. Gen. Stat. §12-412(1) or a nonprofit organization exempt under Conn. Gen. Stat. §12-412(8), the contractor may purchase materials and supplies that are to be installed or placed in the projects and will remain in the projects after their completion without payment of tax. However, since 1999, this regulation *no longer* refers specifically to nonprofit housing organizations qualifying under Conn. Gen. Stat. §12-412(29).

If a contractor working on a low and moderate income housing project contracts *directly* with a

nonprofit housing organization exempt from federal income tax under I.R.C. §501(c)(3) or with a Connecticut municipal housing authority, the contractor may use the Contractor's Exempt Purchase Certificate for purchases of tangible personal property only. Contractors should attach a copy of the DRS facility approval letter to the Contractor's Exempt Purchase Certificate.

Use of CERT-126: Many contracts for low and moderate-income housing projects will be with for-profit owners, and *not* with exempt sponsoring entities. Contractors that contract directly with persons other than nonprofit housing organizations or housing authorities for the repair, alteration, improvement, remodeling, or construction of low and moderate income housing facilities *must* use **CERT-126**, and must attach a copy of the facility approval letter to the certificate.

DRS encourages the use of **CERT-126** for all purchases in connection with approved facilities under Conn. Gen. Stat. §12-412(29) and Conn. Gen. Stat. §12-412(100), even when the purchaser is an exempt entity.

Effect on Other Documents: This Policy Statement modifies and supersedes **Policy Statement 96(6.1)**, *Sales and Use Tax Exemption for Low and Moderate Income Housing Facilities*.

Effect of This Document: A Policy Statement is a document issued by DRS that explains in depth a current position, policy, or practice affecting the tax liability of taxpayers.

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For Further Information: Please call DRS during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit inquiries 24 hours a day by calling 860-297-4911.

Forms and Publications: Forms and publications are available all day, seven days a week:

- **Internet:** Preview and download forms and publications from the DRS Web site: **www.drs.state.ct.us**
 - **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
 - **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.
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Paperless Filing Methods (fast, easy, free, and confidential):

- **For business returns:** Use *Fast-File* to electronically file sales and use taxes, business use tax, room occupancy tax, or withholding tax returns over the internet or telephone. Visit the DRS Web site at: **www.drs.state.ct.us** and click on *Business Taxes Fast File Program*.
 - **For resident income tax returns:** Use *WebFile* to file personal income tax returns over the Internet. Visit the DRS Web site at: **www.drs.state.ct.us** and click on *Income Tax WebFiling*.
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