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DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
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## DIVISION OF REVENUE

### TECHNICAL INFORMATION MEMORANDUM 97-3

September 9, 1997

### SUBJECT: HOUSE BILL 678

This Technical Information Memorandum constitutes the final regulation set forth in "Proposed Tax Ruling 97-3" issued August 19, 1997.

#### A. REGULATORY AUTHORITY

This regulation is issued and published pursuant to the authority granted the Director of Revenue in section 563 and the requirements of 2103(c) of Title 30 of the Delaware Code. These regulations were noticed in accordance with law on or about June 15, 1997.

#### B. HOUSE BILL 678 AND THE CONTRACTOR'S LICENSE TAX

Advice has been requested regarding the interplay between section 2120(b) added to Part III, the Occupational and Business Licenses and Taxes, by House Bill 678 signed into law on June 20, 1996, and the deduction from a contractor's gross receipts for sums paid to subcontractors.

#### C. ISSUES AND ANALYSIS

Contractors are subject to a license tax on their gross receipts. Gross receipts are defined in section 2501(5) to include all sums received by a contractor for any work done or materials supplied in connection with any real property located in this State. The gross receipts of a contractor do not include sums paid to a subcontractor by the contractor if the subcontractor is subject to the provisions of Chapter 25 with respect to the sums. It is obviously the intent of the legislature that the contractor and each of the subcontractors pay one gross receipts tax on sums paid to and retained by them for their own work rather than subject payments to duplicative taxation, once when paid to the contractor, and then again when paid to the subcontractor.

The provisions of 2120(b) added by House Bill 678 are designed according to the Bill's synopsis to relieve very closely related businesses from paying gross receipts taxes on transactions among themselves. The act defines "related entities" as entities owned by the same five or fewer individuals or by members of a family. The provisions state that "gross receipts" shall not include amounts received from a related entity.

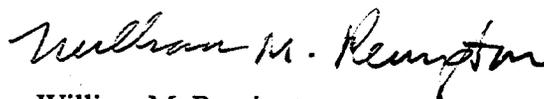
The issue addressed in this regulation is whether a contractor may deduct from gross receipts under section 2501(5) amounts paid to a subcontractor where the subcontractor is a related entity within the meaning of section 2120(b); and where the subcontractor would, because of the relationship to the contractor, have no gross receipts subject to tax.

D. REGULATION

Reading the two provisions in harmony to further the legislative intent of each of them, the Division holds that since a related entity-subcontractor would have no gross receipts by virtue of section 2120(b), the contractor has not paid any sums with respect to, which the subcontractor is subject to the provisions of Chapter 25, within the meaning of section 2501(5).

Therefore, the contractor cannot deduct from gross receipts sums paid to a related entity-subcontractor, and the related entity-subcontractor has no tax liability with respect to any sums paid by the contractor.

Questions about this regulation may be directed to John J. Maciejewski, Assistant Director of Business Taxes, at 577-3321.



William M. Remington  
Director  
Delaware Division of Revenue