

TABLE OF CONTENTS

Services to Real Property

Services to industrial, commercial or income-producing real
property 12-407 (2) (i) (I)- 1

Services to Real Property

Sec. 12-407 (2) (i) (I)-1. Services to industrial, commercial or income-producing real property

(a) **In general.** Section 12-407 (2) (i) (I) of the general statutes defines “sale” and “selling” as including the rendering of services to industrial, commercial or income-producing real property. Subsection (b) of this regulation defines the term “real property” and describes the real property that is affected by this regulation. Subsection (c) of this regulation describes the circumstances under which services to real property are considered to be rendered in the construction of new real property and the circumstances under which services to real property are not considered to be rendered in the construction of new real property. Subsection (d) of this regulation defines the term “industrial real property.” Subsection (e) of this regulation defines the term “commercial real property.” Subsection (f) of this regulation defines the term “income-producing real property.” Subsection (g) of this regulation describes the services that are affected by this regulation. Subsection (h) of this regulation pertains to the taxability of charges made by a person rendering services to industrial, commercial or income-producing real property to a property owner. Subsection (i) of this regulation pertains to the taxability of charges made by one person rendering services to industrial, commercial or income-producing real property to another such person reselling such services to a property owner. While this regulation pertains, for purposes of supplementary interpretation, as the phrase is used in section 12-2 of the general statutes, to said section 12-407 (2) (i) (I), the promulgation of this regulation is authorized by section 12-426 (1) of the general statutes.

(b) **Real property.**

(1) The term “real property,” as used in section 12-407 (2) (i) (I) of the general statutes and in this regulation, means property that is considered to be real property under the laws of the State of Connecticut.

(2) The provisions of subdivision (1) of this subsection to the contrary notwithstanding, the repair and maintenance of such property as furnaces (boilers or burners), central air conditioning units, central vacuuming units, manufacturing production machinery, refrigeration units, modular lighting units, pumps, tanks or alarm systems will be considered to be services defined as a “sale” or “selling” under subparagraph (Q) (repair services to any electrical or electronic device) or (DD) (repair or maintenance services to any item of tangible personal property) of section 12-407 (2) (i) of the general statutes, and will not be considered to be services rendered to “real property,” as used in said section 12-407 (2) (i) (I) and in this regulation. However, the repair and maintenance of ducting, piping or wiring for such property will be considered to be services rendered to “real property,” as used in said section 12-407 (2) (i) (I) and in this regulation, and will not be considered to be services defined as a “sale” or “selling” under subparagraph (Q) or (DD) of said section 12-407 (2) (i).

(c) **Construction of new real property.**

(1) **Buildings.** Services to real property are within the purview of section 12-407 (2) (i) (I) of the general statutes if and only if the services are rendered to existing industrial, commercial or income-producing real property. Services to real property that are rendered in the construction of new industrial, commercial or income-producing real property are not within the purview of said section 12-407 (2) (i) (I). Services to real property will be considered to be rendered in the construction of new real property only to the extent that they are directly connected with the

construction of a new building (or a new addition that expands the cubic footage of an existing building); otherwise, services to real property will not be considered to be rendered in the construction of new real property. Where only the external walls and roof of an existing building are left in place, services will nonetheless be considered to be rendered in the construction of new real property, as long as new floors, new internal walls, new support columns and new electrical and mechanical systems are constructed, provided where a structure purported to be a certified historic structure, as defined in 26 U.S.C. § 48 (g) (3) (A), is being substantially rehabilitated, as defined in 26 U.S.C. § 48 (g) (1) (C), and the rehabilitation will be a certified rehabilitation, as defined in 26 U.S.C. § 48 (g) (2) (C), new floors, new internal walls and new support columns will not be required to be constructed to the extent that such construction would prevent such structure from being listed in the National Register or certified as a certified historic structure, as the case may be.

(2) Site improvements. Services involved in the making of improvements to real property that put the property affected to a new use, such as the construction of roadways, walkways (concrete or asphalt), parking lots, patios (concrete or asphalt), swimming pools, tennis courts or decks, will be considered to be rendered in the construction of new real property, whether or not the making of such improvements is directly connected with the construction of a new building (or a new addition that expands the cubic footage of an existing building). Services involved in the making of improvements to real property that merely enhance an existing use of the property affected, such as the installation of wells, septic systems, utility lines, storm water drainage systems or outdoor lighting systems will not be considered to be rendered in the construction of new real property, unless the construction of such improvements is directly connected with the construction of a new building (or a new addition that expands the cubic footage of an existing building). If the presumption described in subdivision (2) of subsection (g) of this regulation is rebutted, services involved in the construction of improvements to real property such as ponds, walls, fences or gates will not be considered to be rendered in the construction of new real property, unless the construction of such improvements is directly connected with the construction of a new building (or a new addition that expands the cubic footage of an existing building). Services to real property involved in the renovation of existing site improvements will not be considered to be rendered in the construction of new real property, whether or not the renovation of such improvements is directly connected with the construction of a new building (or a new addition that expands the cubic footage of an existing building).

(3) New construction certificate. Unless a certificate, the form of which shall be prescribed by the commissioner, is issued to the service provider by the owner of the property when services to real property are rendered, it shall be presumed that such services are rendered to existing industrial, commercial or income-producing real property. The certificate shall relieve the service provider from the burden of proving that such services were not rendered to existing industrial, commercial or income-producing real property only if taken in good faith from the owner. The good faith of the service provider will be questioned if such provider has knowledge of facts that give rise to a reasonable inference that the certificate is inaccurate.

(d) **Industrial real property.**

(1) In general. The term “industrial real property” means an industrial plant, as the term is used in section 12-412 (18) of the general statutes and in any regulations interpreting said section. The term “industrial real property” also includes ancillary real property, such as shipping docks and warehouses.

(2) Services rendered to tenants. Where services are rendered to a person who has a leasehold interest in industrial real property and who has directly contracted with the service provider for such services, such services will be considered to be services to industrial real property, even if such lessee has no right of reimbursement from the lessor.

(e) Commercial real property.

(1) In general. The term “commercial real property” means real property devoted to, held or leased for commercial use or activity. By way of example and not limitation, commercial use or activity includes buying, selling or leasing of goods or services and any other activity carried on with the public, whether or not for profit. The term “commercial real property” also includes ancillary real property, such as garages and warehouses.

(2) Services rendered to tenants. Where services are rendered to a person who has a leasehold interest in commercial real property and who has directly contracted with the service provider for such services, such services will be considered to be services to commercial real property, even if such lessee has no right of reimbursement from the lessor.

(f) Income-producing real property.

(1) In general. Except as otherwise provided in subdivision (2) of this subsection, the term “income-producing real property” means real property held for or used in the production of income.

(2) Excluded property. The provision of subdivision (1) to the contrary notwithstanding, the term “income-producing real property” does not include—

(A) real property used exclusively for residential purposes and consisting of three or fewer dwelling units, in one of which units the owner resides; and

(B) housing facilities, as the term is used in section 12-412 (29) of the general statutes, owned by an organization that has been ruled by the commissioner to be a nonprofit housing organization, as the term is defined in said section 12-412 (29) and in any regulations interpreting said section.

(3) Services rendered to residential tenants. Where services are rendered to a residential tenant who has directly contracted with the service provider for such services and who has no right of reimbursement from the landlord, such services will not be considered to be services to income-producing real property.

(4) Services rendered to residential condominium associations. Where services are rendered to a residential condominium association which has directly contracted with the service provider for such services, such services will be considered to be services to income-producing real property to the same extent that the number of condominium units not occupied by owners bears to the total number of condominium units. Unless a certificate, the form of which shall be prescribed by the commissioner, is issued to the service provider by the condominium association when services are rendered, it shall be presumed that all condominium units are not occupied by owners. The certificate shall relieve the service provider from the burden of proving that services were not rendered to income-producing real property only if taken in good faith from the condominium association. The good faith of the service provider will be questioned if such provider has knowledge of facts that give rise to a reasonable inference that the certificate is inaccurate.

(5) Services rendered to residential condominium unit owners. Where services are rendered to a residential condominium unit owner who has directly contracted with the service provider for such services, such services will be considered not to be services to income-producing real property if the owner occupies the unit to

which services are rendered, and will be considered to be services to income-producing real property if the owner does not occupy the unit.

(g) Services affected.

(1) In general. Except as otherwise provided in subdivision (2) of this subsection, services to industrial, commercial or income-producing real property mean those services set out in section 12-407 (2) (i) (I) of the general statutes (namely, management, electrical, plumbing, painting and carpentry services) and include but are not limited to such services affecting real property as roofing, siding, excavating, foundation work, plastering, heating, air conditioning, ventilation, welding, flooring, sandblasting, carpeting, elevator or escalator work, wallpapering, masonry, refuse removal, demolition and structural inspection.

(2) Services elsewhere described. Any provision of subdivision (1) of this subsection to the contrary notwithstanding, services to industrial, commercial or income-producing real property do not include the rendering of services defined as a “sale” or “selling” under subparagraph (F) (architectural, building engineering and building planning or design services), subparagraph (S) (land surveying services), subparagraph (V) (locksmith services), subparagraph (X) (landscaping and horticultural services), subparagraph (Y) (window cleaning services), subparagraph (Z) (maintenance services), subparagraph (AA) (janitorial services), subparagraph (BB) (exterminating services) or subparagraph (CC) (swimming pool cleaning and maintenance services) of said section 12-407 (2) (i). The services involved in the construction of irrigation systems, lawn sprinkler systems, patios (other than concrete or asphalt) and walkways (other than concrete or asphalt) will be treated as services defined as a “sale” or “selling” under subparagraph (X) of said section 12-407 (2) (i). The services involved in the construction of ponds, walls, fences or gates will be presumed, until the contrary is established, to be services defined as a “sale” or “selling” under subparagraph (X) of said section 12-407 (2) (i). This presumption may be rebutted only if the service provider clearly establishes that the services rendered are not intended to be landscaping services. For example, a service provider installing a chain-link fence that encloses a swimming pool and that is installed to comply with a law requiring that swimming pools be enclosed can establish that the services rendered are not intended to be landscaping services.

(h) Taxability of charges made by service provider to owner.

(1) Where a service provider is considered to have consumed materials or supplies used by such provider in fulfilling a construction contract, the portion of such provider’s charge that is attributable to the cost to such provider of such materials or supplies shall not be treated as a charge for services to industrial, commercial or income-producing real property. The service provider shall give a bill or invoice to the property owner that either separately states the charge for such services and the cost to such provider of such materials or supplies or, in the alternative, states only the total charge, including the charge for the services and the tax thereon, together with the words “tax included.”

(2) In the event that a construction contractor, in fulfilling a construction contract, purchases services to industrial, commercial or income-producing real property from a construction subcontractor for resale to the property owner, and such subcontractor accepts a resale certificate from such contractor, then the cost of materials or supplies used by such subcontractor in fulfilling the subcontract may be taken into account by such contractor on the bill or invoice to the property owner as long as such subcontractor gives a bill or invoice to such contractor that separately states the charge for such services and the cost to such subcontractor of the materials or supplies considered to have been consumed in fulfilling the subcontract.

(3) The term “construction contract” means a contract for the repair, alteration, improvement, remodeling or construction of real property. Materials or supplies are considered to be used in fulfilling a construction contract when they are physically incorporated in and become a permanent part of real property.

(i) Taxability of charges made by one service provider to another provider reselling to owner.

(1) Where a service provider renders services to industrial, commercial or income-producing real property to another service provider who will resell such services to the owner of the real property, such service provider may either accept a resale certificate from the reseller of such services or, in the alternative, refuse to accept such resale certificate.

(2) If the service provider accepts a resale certificate from such reseller, the bill or invoice to such reseller shall either separately state the charge for the services and the cost to such provider of the materials or supplies used by such provider in fulfilling a construction contract or, in the alternative, state only the total charge, including the charge for the services, together with the words “tax not included.”

(3) If the service provider refuses to accept a resale certificate from such reseller, the bill or invoice to such reseller shall either separately state the charge for the services and the cost to such provider of the materials or supplies used by such provider in fulfilling a construction contract or, in the alternative, state only the total charge, including the charge for the services and the tax thereon, together with the words “tax included.”

(4) The term “construction contract” means a contract for the repair, alteration, improvement, remodeling or construction of real property. Materials or supplies are considered to be used in fulfilling a construction contract when they are physically incorporated in and become a permanent part of real property.

(Effective April 23, 1991)