



Associated Subcontractors of Massachusetts, Inc.

One Washington Mall, 5th Floor, Boston, MA 02108

TEL: 617-742-3412 • FAX: 617-742-2331

E-Mail: mail@associatedsubs.com • Web: www.associatedsubs.com

June 8, 2009

The Honorable Steven C. Panagiotakos, Senate Chair
The Honorable Charles A. Murphy, House Chair
Members of the Budget Conference Committee

RE: Request to include a “twilight provision” as part of the proposed Sales Tax increase in the Budget

Dear Chairman Panagiotakos, Chairman Murphy, and Members of the Budget Conference Committee:

The Associated Subcontractors of Massachusetts (ASM) represents hundreds of small business subcontractors who perform most of the work in the construction of buildings across the commonwealth. Like all businesses, our members have concerns about the negative impact of the proposed increase in the sales tax, but also recognize the urgency of the state’s revenue needs in these challenging economic times.

I write today on their behalf not to argue the increase – but to urge you to do what has been done in the past, and include a temporary exemption, or “twilight provision,” to protect bids and/or contracts that predate the increase, with pricing commitments based on the old tax rate. Construction is a unique industry heavy in the use of costly materials that are purchased long after the preparation of bids or signing of contracts. It is also an industry with very thin margins, especially today, and a 25% increase in the sales tax rate translates to significant dollar amounts that will be difficult for companies to absorb.

The history of the sales tax twice shows precedent for such exemption. An emergency act granting an exemption was passed in 1967 shortly after the law was first passed; and a similar provision was included again when the rate was raised from 3 percent to 5 percent in 1975.

Attached with this letter is the language that was included in the 1975 statute. We urge you to include it once again in the current budget proposal. In summary, it provides:

- Exemption for building materials and supplies purchased pursuant to a signed contract that predated the effective date of the tax increase;
- Exemption for building materials and supplies purchased pursuant to a contract signed within 60 days after the effective date, pursuant to a bid submitted before the date.

In fairness, we also support and encourage a similar “twilight provision” in connection with agreements for the sale of goods, and have included that language on the attached sheet as well. These two provisions will have minimal impact on the overall revenue projections for the commonwealth, but will provide significant relief to businesses that are caught in the middle and hard pressed to absorb the unplanned costs. As you may know, the building construction industry, in particular, has been very hard hit in this economy, and this minor change in the sales tax provision will be a small but significant step in helping to prevent financial disaster and save jobs.

Thank you for your consideration.

Sincerely,

Monica Lawton, CEO

Associated Subcontractors of Massachusetts

Proposed “twilight provision” in connection with sales of building materials and supplies, based on identical language that was included in the 1975 statute that increased the sales tax from 3% to 5%, St. 1975 c. 684 § 71:

Sales of building materials and supplies subject to the excise imposed by chapter sixty-four H of the General Laws (sales tax) and the storage, use or other consumption in this commonwealth of building materials and supplies subject to the excise imposed by chapter sixty-four I of the General Laws shall be subject to the rate of tax imposed by said chapters prior to their amendment by the provisions of this act to the extent that such building materials and supplies are to be used in construction, reconstruction, alteration, remodeling or repair of any building or structure pursuant to a contract entered into before the effective date of the relevant provisions of this act or entered into within sixty days after said effective date pursuant to a bid required to be submitted before said date; provided, that such contract is in writing, signed, by the contractor and the party for whom such work is to be performed and imposes an obligation on the part of the contractor to perform such work, without conditions or escalator clauses with respect to said tax; and provided, further, that notice of such contract is given to the commissioner (of revenue) within ninety days of said effective date. For the purposes of this section, the word ‘sales’ is defined to exclude the rental or lease of building materials and supplies.

ASM also supports a “twilight provision” in connection with of sale of goods, based on identical language in St. 1975 c. 684 § 70:

Agreements for the sale of goods subject to the excise imposed by chapter sixty-four H of the General Laws and the storage, use or other consumption in this commonwealth of tangible personal property subject to the excise imposed by chapter sixty-four I of the General Laws entered into before the effective date of this section shall be subject to the provisions of said chapters prior to their amendment by the provisions of this act; provided that such agreements are in writing, signed by the vendor and purchaser, and impose an unconditional liability on the part of the purchaser to buy the goods covered thereby at a fixed price without escalator clause, and an unconditional liability on the part of the vendor to deliver a definite quantity of such goods or at the contract price; and provided further, that delivery is made not later than ninety days after the effective date of the relevant provisions of this act. For purposes of this section, the word “sale” is defined to exclude the rental or lease of tangible personal property.



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June 8, 2009

The Honorable Therese Murray
President
Massachusetts Senate
State House, Room 330
Boston, MA 02108

RE: Request to include a “twilight provision” as part of the proposed Sales Tax increase in the Budget

Dear President Murray:

The Associated Subcontractors of Massachusetts (ASM) represents hundreds of small business subcontractors who perform most of the work in the construction of buildings across the commonwealth. Like all businesses, our members have concerns about the negative impact of the proposed increase in the sales tax, but also recognize the urgency of the state’s revenue needs in these challenging economic times.

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June 8, 2009

The Honorable Robert A. DeLeo
Speaker
Massachusetts House of Representatives
State House, Room 356
Boston, MA 02108

RE: Request to include a “twilight provision” as part of the proposed Sales Tax increase in the Budget

Dear Speaker DeLeo:

The Associated Subcontractors of Massachusetts (ASM) represents hundreds of small business subcontractors who perform most of the work in the construction of buildings across the commonwealth. Like all businesses, our members have concerns about the negative impact of the proposed increase in the sales tax, but also recognize the urgency of the state’s revenue needs in these challenging economic times.

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