



May 30, 2025

Melissa Gibbons
VP, General Counsel, and Secretary
PaintCare Inc.
901 New York Ave., NW Suite 300 West
Washington, DC 20001

Re: Taxability of Paint Stewardship Assessment

Dear Melissa Gibbons:

You have asked for the Comptroller's Office to review the Maryland Paint Stewardship Act, Chapter 587 of the Acts of 2024, and advise whether the paint stewardship assessment is subject to the Maryland sales and use tax. We have determined that the paint stewardship assessment is included in taxable price and therefore subject to the sale and use tax when the sale of architectural paint is a retail sale or a sale for use. A full explanation is included below.

Environment Article § 9-1733(c) requires that:

...

(ii) A producer shall add the paint stewardship assessment established under an approved Paint Stewardship Program to the cost of all architectural paint sold to retailers and distributed in the State; and

(iii) Each retailer or distributor shall add a paint stewardship assessment to the purchase price of all architectural paint sold in the State.

Tax-General (TG) Article § 11-103 provides that there is a rebuttable presumption that any sale in the State is subject to the sales and use tax.

TG § 11-101(h)(1) states that a "retail sale" means the sale of tangible personal property, a taxable service, a digital code, or a digital product. TG § 11-101(h)(3)(ii)(1) excludes a sale of tangible personal property from the definition of a retail sale if the buyer intends to resell the tangible personal property in the form that the buyer receives it. If the buyer itself uses the tangible personal property, it is not making a purchase for resale.



TG § 11-101(l)(1) defines “taxable price” as the value, in money, of the consideration of any kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the consummation and complete performance of a sale without deduction for any expense or cost, including the cost of:

- (i) any labor or service rendered;
- (ii) any material used; or
- (iii) any property, digital code, or digital product sold.

The paint stewardship assessment imposed under Title 9, Subtitle 17 of the Environment Article is not included among the exclusions from taxable price listed in TG § 11-101(l)(3). As the paint stewardship assessment is required to be added to the purchase price of architectural paint, it is part of the value paid by the buyer for the consummation of the sale and is therefore part of taxable price.

Because the Paint Stewardship Act requires the paint stewardship assessment to be added to the cost of all architectural paint sold by producers to retailers, and also to the purchase price of all architectural paint sold by a retailer or distributor in the State, each sale must be reviewed separately for taxability. In each of the scenarios below, we will assume that the seller meets the definition of a vendor under TG § 11-101(o).

Sale by a paint producer to a distributor or retailer

If a producer makes a sale of architectural paint to a Maryland buyer that is distributor or retailer, and the buyer intends to resell the architectural paint in the form that the buyer receives it, that sale is considered a sale for resale, and it is not subject to the sales and use tax. The buyer is required to provide the vendor (producer) with a resale certificate at the time of sale. Providing the resale certificate informs the vendor of the buyer’s intention to resell the architectural paint, and the vendor is relieved of their obligation to collect the sales and use tax on that sale.

However, if the distributor or retailer buying the architectural paint does not, in fact, resell the paint, but instead ends up using the paint itself, the sale is converted to a sale for use, and the buyer is then responsible for remitting the 6% use tax to the Comptroller based on the taxable price, which includes the amount of the paint stewardship assessment charged by the producer.

Sale by a distributor to a retailer

If a distributor makes a sale of architectural paint to a Maryland buyer that is retailer, and the buyer intends to resell the architectural paint in the form that the buyer receives it, that sale is considered a sale for resale, and it is not subject to the sales and use tax. The buyer is required to provide the vendor (distributor) with a resale certificate at the time of sale. Providing the resale certificate informs the vendor of the buyer’s intention to resell the architectural paint, and the vendor is relieved of their obligation to collect the sales and use tax on that sale.

However, if the retailer buying the architectural paint does not, in fact, resell the paint, but instead ends up using the paint itself, the sale is converted to a sale for use, and the buyer is then responsible for remitting the 6% use tax to the Comptroller based on the taxable price, which includes the amount of the paint stewardship assessment charged by the distributor.

Sale by a retailer to a consumer

A sale of architectural paint by a retailer to a Maryland consumer is a retail sale subject to the sales and use tax. As explained above, the amount of the paint stewardship assessment is included in the taxable price subject to the 6% sales and use tax rate, whether the charge for the assessment is separately stated or not.

Please contact me if you have any additional questions.

Sincerely,

Debora Gorman

Director, Legal Division