



FYI Sales 6

Contractors and Retailer-Contractors -- Definitions and Sales Tax Requirements

GENERAL INFORMATION

Contractor

The definition of "contractor" for Colorado sales tax purposes is any entity or person who bids for and performs work on real property for another party pursuant to an agreement.

This includes but is not limited to:

- building contractors;
- foundation, curb, parking lot contractors;
- painting, stucco, brick and other finish contractors;
- roofing contractors;
- road, grading and excavating contractors;
- electrical, plumbing and heating/air conditioning contractors.

This definition also applies to persons involved in cabinet, casework, sheet metal, glazing and other such trades when they construct components on site for permanent incorporation into real property. It also includes any other person engaged in the construction, reconstruction or significant repair of any building, bridge or structure under a contractual arrangement. It does not mean any individual who is working for a salary or wages. For state sales tax purposes, subcontractor has the same meaning as contractor.

The following information pertains to the contractor's operation only when work is actually being performed under a real property contract. Aspects of the contractor's business not involved in real property contract construction work are subject to regular sales tax regulations. In any case, a business is liable for sales or use tax on all tools and equipment used, whether on lease/rental costs or on purchase costs. Information is also available in FYI Sales 18, Special Regulation: Contractors.

BILLING AND CONTRACTS

The method of billing and type of contract can affect the way tax is imposed on or by a contractor.

Time and material billing: The contractor who invoices separately for labor and materials must have a sales tax license and charge applicable taxes on the marked up billing price of all materials. The contractor is liable for use tax on the cost of all supplies not separately billed to the customer, as well as on tools and equipment. A time and materials agreement cannot be treated as a lump sum contract for sales/use tax purposes.

Lump sum contract: A contractor cannot treat this type of contract as time and materials for sales tax purposes. All supplies and materials are taxable on the contractor's cost, either through sales tax paid to the vendor or use tax paid by the contractor on the Consumer Use Tax Return (DR 0252). The contractor is liable for sales/use tax on the cost of all supplies and materials becoming part of the real property, supplies not becoming part of real property, as well as on all tools and equipment. Local taxes are paid in conjunction with building permits

RETAILER-CONTRACTOR

The definition of "retailer-contractor" for Colorado state sales tax purposes is a contractor who is also a retail merchant of building supplies or construction materials (that is one who purchases such property specifically for resale, repair work, time and material jobs, as well as lump sum construction contracts.) In other words, a retailer-contractor serves as the retail merchant of the same materials/goods that are used or made in the course of executing a real property contract.

A retailer-contractor operates a business that purchases to sell (without real property construction, but sometimes with installation), and also purchases to use in contractual work. These two activities are treated differently — the first much like any "store," and the second (real property construction) like a contractor.

A retailer-contractor buys tax free for both resale and for contract use because the purpose for which the purchases will be used is unknown at the time of purchase. The purchases made by the retailer-contractor that are later sold as a part of the sales business will be subject to standard sales tax laws and regulations, and are subject to tax on the full selling price including all markup charges passed on to the buyer. The purchases made by the retailer-contractor that are subsequently used in contractual real property construction are subject to tax on the full purchase cost, remitted to the state as state and other sales tax on line 10 of the "Retail Sales Tax Return" (DR 0100), including applicable local and special district taxes, or to localities through their forms or building permits.

A retailer-contractor has a significant burden to keep good books and records, particularly since the retailer-contractor may be operating two distinct types of businesses.

The requirements are no different from those imposed both on stores and on contractors. If a contractor operates a store and never draws on that store's inventory for contractor's supplies, and the store never draws on the contractor's supplies for its inventory, the store can be licensed as a retailer and the contractor can operate without a sales tax license and pay tax on all purchases. However, if the businesses operate without a complete distinction in inventory and supplies, they must have adequate records to create this division through the hard copy records.

DO YOU NEED A SALES TAX LICENSE?

Contractors performing only lump-sum contracts on real property should **not** obtain a Colorado sales tax license. They must pay all applicable Colorado sales and use taxes on all purchases of building supplies, construction materials and all other tangible personal property. The only non-taxable purchases of building materials a contractor may make are those for construction work for tax-exempt organizations. (See section below on "Tax-Exempt Construction Projects.")

Lump-sum subcontractors, like contractors, will not be issued a sales tax license and must pay all applicable sales and use taxes on their purchases.

Retailer-contractors must open and maintain Colorado sales tax accounts. If you are a retailer-contractor, apply for a state sales tax license online at www.Colorado.gov/coloradobusinessexpress and receive your Colorado Account Number (CAN) license number immediately. If you cannot apply online, you may complete and mail in the Colorado Sales Tax/Withholding Account Application (CR 0100). You will receive your license and account number by mail. Allow four to six weeks for processing. The sales tax license enables you to purchase tax-free items for resale to retail customers. Like all other retail vendors, you must collect and remit to the Department of Revenue all state and state-administered local sales taxes on all retail sales. You will receive sales tax returns for this purpose.

You must pay sales tax based on the acquisition costs of any items removed from stock for use in your contract operations. Contractors who purchase materials which are then fabricated and installed into real property must pay sales or use tax on the cost of the materials used. **Exception:** Materials for construction work on property owned by tax-exempt organizations are non-taxable.

Retailer-contractors who make over-the-counter sales of a complete unit with an agreement for installation of the unit must collect sales taxes from the purchaser on the sales price of the unit. Such sales are not building contracts; they are retail sales. The term "unit" includes stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors and windows, screens, sod and similar items. Installation charges are not taxable, **if listed separately** from the sales price of the unit on the bid proposal and invoice.

SALES OR USE TAX?

You must pay all state and local sales taxes to the vendor on all materials you purchase and take possession of at the store, regardless of the location of the construction site. You must also pay all state and local sales taxes to the vendor on all materials you purchase that the vendor delivers to a construction site within the same taxing jurisdiction as that in which the vendor's store is located. These include any state-administered city, county and Regional Transportation District/Scientific and Cultural Facilities District (RTD/CD) sales taxes that apply to the area in which the vendor's store is located. **Exception:** On the sale of construction materials, if the purchaser presents to the retailer a building permit showing a use tax for the municipality has been paid, sales tax is not due for any municipality. If the purchaser presents to the retailer a building permit that proves a use tax has been paid to the county, sales tax would not be due for any county on the sale of construction materials.

If the vendor delivers materials to a construction site outside the local taxing jurisdiction in which the store is located, pay sales tax to the vendor as indicated in the examples below.

Example 1:

Vendor delivers materials outside the city or county limits in which the store is located. You pay state sales tax only. Exception: If the vendor and the delivery site are both within the RTD/CD, you also pay RTD/CD sales tax.

Example 2:

Vendor delivers materials outside the city limits of the city in which the store is located, but within the same county. If there is a county sales tax, you pay both state and county sales taxes.

If the vendor is located outside of Colorado, you must pay either retailer's use tax to the vendor, if the vendor has a Colorado retailer's use tax license, or you must pay Colorado state consumer use tax (and RTD/CD tax, if applicable) to the Department of Revenue. The consumer use tax rate is the same as the state sales tax rate. Use the Consumer Use Tax Return (DR 0252) to report and remit consumer use tax.

Local use tax is a use tax that cities and counties may impose on materials and supplies used in construction projects within their jurisdictional boundaries. If you purchased items in a different jurisdiction from that in which your construction site is located, be sure to contact local officials to find out whether you must pay local use tax, procedures for doing so and whether you are entitled to credit for sales taxes paid. The Department of Revenue does not administer or collect local use taxes.

TAX-EXEMPT CONSTRUCTION PROJECTS

As noted above, building materials for construction work on property owned and used by tax-exempt organizations—religious, charitable and governmental—may be purchased tax free. Building materials for leased buildings may also be purchased tax free if paid for by the tax-exempt organization. To obtain an exemption certificate for each tax-exempt construction project, complete and submit the Contractor Application for Exemption Certificate (DR 0172) to the Department of Revenue. A prime (general) contractor obtains one certificate for the project. The prime (general) contractor then issues certificates to all the project's subcontractors. [§39-26-708 (1) and 39-26-708 (3), C.R.S.]

The sales and use tax exemption applies to materials that become part of the structure, highway, road, street or other public works owned and used by the tax-exempt organization. Also, electricity and most fuels consumed in performing real property construction are exempt. The purchase or rental of equipment, supplies, and other materials by the contractor is taxable.

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.