

This document is intended as a self-evaluation compliance tool for Colorado contractor businesses regarding collection and remittance of sales and use tax in state-collected jurisdictions. It does not replace advice from a Colorado Department of Revenue Tax Examiner.

Components of Contractor Compliance

Colorado Department of Revenue
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Introduction

Components of Contractor Compliance helps you self-evaluate if you are viewed as a contractor and, if so, whether you are compliant with rules for **sales** and **use tax** remitted to the state.

Components of Contractor Compliance topics **must be read completely**:

1. Who is a Contractor? - Examples of Types of Contractors
2. Four Things that Affect a Contractor's Tax Obligation
 - a. Type of Contract You Use
 - b. Type of Materials You Buy
 - c. Permits and Place of Delivery
 - d. Tax Exempt and Government Entities
3. Tax Collection
 - a. State and Special Districts
 - b. State-administered City and County Taxes
4. Tax Exempt and Government Entities

FYI Sales 6, which you can view at www.TaxColorado.com, contains **additional important details** about contractors.

Who is a Contractor?

Businesses mistakenly identify themselves as a contractor, or mistakenly do *not* identify themselves as a contractor and, in turn, make mistakes collecting and remitting tax.

A contractor is any individual, partnership, firm, association, corporation, trust estate or joint venture who performs construction work on real property for another party under the terms of an agreement. Construction work means the use of building materials to create, alter or repair real property improvements. Trades typically identified as a contractor are:

- Building construction, alteration and repair
- Road construction
- Grading, excavating and landscaping contractors
- Electrical contractors
- Plumbing and heating contractors
- HVAC contractors
- Any person engaged, under a contractual arrangement, in the construction, reconstruction, or repair of any building bridge or structure.

In addition, businesses involved in the following jobs are contractors if the construction is performed onsite and the items are permanently incorporated into real property:

- Cabinets
- Casework
- Sheet metal
- Glazing

“Subcontractor” has the same meaning as contractor when referring to this list.

Examples of Types of Contractors

This chart provides common examples of contractors. NOTE: The following are example scenarios that do not cover every possible factor of taxation. They are general in nature; if your situation has complex or unusual circumstances, or you have any concerns about collecting tax for any reason, please contact a qualified tax professional.

| Job Example | Conditions of this Job Example | Contractor? |
|--|--|-------------|
| Wall, roof, floor and foundation construction | On-site construction of permanent walls, roofs, floors and foundation structures | Yes |
| Garage Door | Installed into the structure of the building or home | Yes |
| Kitchen appliances | Refrigerators, ovens / stoves (stand-alone) | No |
| Air conditioning unit | System is installed in a way that becomes an integral part of the structure (e.g., integrated with the furnace and HVAC systems as opposed to window insert) | Yes |
| Home theater system and similar audio and visual equipment | Equipment is mounted with brackets onto the wall. | No |
| Parking lot | Asphalt or cement | Yes |
| Window treatments | Venetian blinds, drapes, shutters | No |

Four Things That Affect a Contractor's Tax Obligation

1. Type of Contract You Use

Lump Sum Contract. A lump sum contract **does not separately state the price of building materials and labor**. A contractor using a lump sum contract is treated as the consumer, not the seller, of building materials. Therefore, the contractor pays **sales or use tax** when it purchases or uses building materials. The contractor does not collect **sales tax** from the customer. This contractor does not need a sales tax license.

Time-and-Material Contract. A time-and-material contract **separately states the price for materials and labor**. A contractor using this type of contract is treated as a seller (actually a reseller), not the consumer, of building materials. Therefore, this contractor does not pay **sales or use tax** when acquiring building materials but must collect **sales tax** from its customer. Contractor must have a sales tax license.

Retailer-contractor. This refers to businesses that are both retailers who sell “over-the-counter” finished goods (e.g., pre-made cabinets) and contractors who install over-the-counter goods. If you are a Retailer-Contractor, **please read full descriptions and requirements in FYI Sales 6.**

2. Type of Materials You Buy

Building Materials. Building material is tangible personal property incorporated into real property to such an extent that it loses its identity as tangible personal property and becomes real property, (e.g., dimensional lumber, drywall.) Building material cannot be removed from real property without substantial damage to the real property. Building material is also called a real property “fixture.”

Consumables. When a contractor purchases consumables (e.g., fuel, acetylene, drop cloths) and construction tools (e.g., scaffolding, cement forms, compressors), **the contractor is the consumer of these materials and must pay sales tax.**

Non-building Materials. When a contractor purchases non-building materials (e.g., kitchen appliances, window treatments), then **the contractor is the retailer of such items and must collect sales tax** from the customer.

3. Permits and Place of Delivery

Local building permits and the place where the contractor takes delivery can affect which local taxes are due.

Local Building Permits. Many state-administered cities and counties assess a **use tax** on building materials. A contractor can purchase building materials from a supplier exempt from state-administered city and county **sales tax** if the contractor presents a building permit to the supplier and picks up the building material from the supplier. Permits do not exempt these purchases from state or special district **sales** (e.g., RTD) and **use taxes**.

Location where Purchaser Takes Delivery. A seller does not collect state-administered city and county **sales taxes** if the seller delivers the goods outside the seller's local tax jurisdiction, regardless of whether the contractor has a building permit. The contractor may be liable for city

and county **use tax** if the purchase is not subject to **sales tax**, but the Department does not administer or collect city and county **use taxes**. For details about city and county **use taxes** and building permits, contact the city or county directly.

4. Tax Exempt and Government Entities

A contractor does not pay or collect tax on building materials when the customer is an exempt entity, such as a charitable organization or religious entity, or government entity, such as the federal, state, and local government and public schools, but the contractor is liable for tax on consumables, construction equipment, and tools used to perform construction services for the tax exempt entity.

Tax Collection

In typical scenarios, the buyer has an obligation to pay tax and the seller has the obligation to collect that tax from the purchaser; this rule is slightly altered for contractors.

A contractor's tax obligation depends on the type of contract the contractor uses. A contractor is treated as a buyer / consumer if using a lump sum contract but treated as a seller if using a time-and-material contract.

We first will talk about how these rules apply to state and special districts taxes and then discuss how these rules apply to state-administered city and county **sales taxes**.

State and Special Districts

State and special districts have both **sales tax** and **use tax** administered by the Colorado Department of Revenue. In general, state and special district **sales tax** or **use taxes** are due if the property is either purchased, stored, used or consumed in the state and, if applicable, in the special district.

The table on the following pages (pages 7 – 8)) explains who must pay state and special district taxes, the type of tax due, and how the tax is calculated. In the next table, we will discuss the contractor's obligation to pay or collect state-administered city and county **sales** and **use taxes**.

| Time-and-Materials Contract | Lump Sum Contract |
|--|---|
| <p>License. Contractor must apply for a Colorado Sales Tax License.</p> | <p>License. Contractor does NOT apply for a Colorado Sales Tax License.</p> |
| <p>Building Materials. Contractor is a seller of building materials when (1) it uses a time-and-material contract with customers or (2) is a retailer-contractor. Remember, however, that the contractor is the consumer, not a retailer, of consumables it uses to perform construction work.</p> | <p>Building and Non-building Materials. Contractor is the consumer of building materials and non-building materials when it uses a lump sum contract to perform construction services.</p> |
| <p>Scenario #1: Contractor enters into a contact with Homeowner to build a garage for \$29,000. Contractor purchases \$15,000 of building materials, such as lumber, roofing materials and wiring from suppliers and the contractor picks up from these materials suppliers. Suppliers are located in the RTD/SCFD special districts but Homeowner is not located in those districts.</p> | |
| <p>RE: Scenario #1 Contractor signs a time-and-materials contract with Homeowner.</p> <p>Contractor charges Homeowner \$19,000.00 including \$4,000.00 in mark-up, for the building materials</p> <p>Contractor does not pay state or special district sales tax to the supplier for the building materials because these are wholesale purchases for resale.</p> <p>Contractor must charge the Homeowner state sales tax on the \$19,000 sale to the Homeowner for the sale of materials but does not charge RTD/SCFD special district sales or retailer's use tax to the Homeowner because neither the sale to the Homeowner nor the Homeowner's use occur in the special districts.</p> <p>Contractor does not charge homeowner sales tax on the price of labor (i.e., time.)</p> | <p>RE: Scenario #1 Contractor signs a lump sum contract with Homeowner.</p> <p>Contractor pays state and RTD/SCFD sales tax because the contractor is the consumer, the sale occurred in the state and in the special districts, and the purchases were not exempt wholesale purchases.</p> <p>Contractor must pay these taxes regardless of whether or not contractor has a building permit.</p> <p>The state and special district taxes are calculated on the \$15,000. Contractor does not collect state or special district taxes from the Homeowner.</p> |

| | |
|---|--|
| <p>RE: Exempt Entities. Contractor and retailer-contractor do not pay tax when purchasing building materials and do not collect tax from an exempt entity.</p> <p>Contractor and retailer-contractor pay tax on consumables, construction tools and equipment.</p> | <p>RE: Exempt Entities. Contractor and retailer-contractor do not pay tax when purchasing building material.</p> <p>Contractor and retailer-contractor pay tax on consumables and construction tools and equipment.</p> |
|---|--|

State-administered city and county taxes may be affected by a building permit **and** whether the retailer (e.g., a building material supplier) delivers the goods to the contractor outside the city or county. **Building Permit.** A contractor does not pay state-administered city or county **sales tax** on building materials if the contractor picks up the materials from the retailer and presents to the retailer a copy of a building permit issued by a city or county.

The building permit exempts only city and county **sales tax** on “building materials” – it does not exempt state-administered city and county **sales tax** on non-building materials, such as non-fixtures, consumables, and construction tools and equipment. The building permit also does not exempt the purchase of building and non-building material from state or special district **sales or use taxes**.

If the contractor uses a building permit to make purchases exempt from state-administered city and county taxes, then the contractor is likely subject to **use taxes** by the city and county. The Department does not collect **use tax** for these cities and counties. **You should contact the city and county** in which you provide construction services to see what use tax obligations it may have, which may be satisfied when pulling a building permit.

If the contractor does not present a building permit to the retailer, then the normal rules for contractors apply. For example, a contractor’s using a time-and-material contractor purchases the building materials without paying **sales tax** as exempt wholesale purchases for resale; contractors using a lump sum contract pay **sales tax** if the contractor takes delivery from the retailer in the city or county.

Shipment outside seller’s city or county. If the contractor does not have a building permit, then whether the seller collects **sales tax** from the contractor will depend on:

- (1) If the contractor is a consumer (i.e., uses a lump sum contract) or a reseller (i.e., contractor uses a time-and-material contract or is a retailer-contractor) **and**
- (2) If the contractor is a consumer, where the contractor takes delivery of the materials. If contractor takes delivery of materials outside the state-administered city or county in which the seller operates, then the seller does not collect city or county **sales tax** from the contractor, regardless of whether the contractor has a building permit. If the contractor is a reseller, then the seller does not collect **sales tax** regardless of where the contractor takes delivery.

If the contractor does not pay city or county **sales tax** to the seller, the contractor may owe **use tax** to

the city or county in which the construction site is located.

The following table (continued on page 10) explains who must pay state-administered city and county **sales taxes**, the type of tax due, and how the amount of tax is calculated.

| Time-and-Material Contract | Lump Sum Contract |
|---|---|
| <p>Building Material and Non-building Materials Purchases: Exempt as wholesale purchases from state-administered city and county sales tax on as a wholesale purchase for resale.</p> <p>Consumables. Contractor pays city and county sales taxes if the contractor takes delivery of the materials in the city or county where the seller operates. If the purchase is exempt from sales tax, then there is also no state-administered use tax because state-administered cities and counties do not have use tax on any materials other than building materials.</p> | <p>Building and Non-building Materials Purchases: Contractor must pay state-administered city and county sales tax to seller unless: Contractor has a building permit (exemption applies only to building materials picked up from seller) OR Seller delivers materials to contractor outside the city or county in which seller has a business presence. If exception 1 or 2 applies, contractor may be liable for use tax to the city or county where the construction work performed.</p> <p>Consumables. Same rule as contractor using a time-and-material contract.</p> |
| <p>Contractor’s tax collection obligation Collects from customer state-administered city and county sales tax that apply to construction site for sale of building materials and non-building materials, but not on consumables..</p> | <p>Contractor’s tax collection obligation Does not collect state-administered city or county sales tax from customer.</p> |
| <p>Scenario #1. Contractor purchases building materials and construction tools in Arapahoe county and in the RTD special district. The construction site is in the state-administered town of Elizabeth, Elbert county but is not in the RTD district. Contractor has a building permit issued by Elbert County and Elizabeth. Seller delivers the building materials to the construction site. Contractor picks up construction tools from the seller.</p> | |

| Time and Materials Contract | Lump Sum Contract |
|--|--|
| <p>RE: Scenario #1 State /Special District Tax Contractor does not pay state or RTD sales tax to seller on the building materials because contractor will resell building materials to customer.</p> <p>Contractor collects state sales tax from customer on the building materials calculated on price paid by customer (including any mark-up by contractor.) Contractor does not collect RTD sales or use tax from customer because the sale to, and use by, the customer was not in RTD.</p> <p>Contractor pays seller state and RTD sales tax on purchases of tools because these were not exempt wholesale purchases and the contractor picked up the tools from the seller who is located in the state and in RTD.</p> | <p>RE: Scenario #1 State /Special District Tax Contractor pays state sales tax to seller for building materials. Contractor pays state and RTD sales tax on tools because contractor picked up the materials from seller in the state and in the RTD district.</p> <p>Contractor does not owe use tax to RTD on building materials because the seller delivered these materials to the construction site which is outside RTD district.</p> |
| <p>State-administered city and county taxes: Seller does not collect Arapahoe County sales tax on building materials because contractor is (1) reselling the building materials (exempt wholesale purchase for resale) and (2) taking delivery of the materials (both building and non-building materials) outside Arapahoe County in which the seller is located. Seller collects Arapahoe County sales tax on construction tools. Seller does not collect sales tax for the town of Elizabeth or Elbert County because seller does not have a business presence in those jurisdictions.</p> <p>Contractor does not collect sales taxes for the town of Elizabeth and Elbert County on the building materials because the contractor has a building permit.</p> <p>Contractor should contact local jurisdictions to determine its use tax obligations</p> | <p>State-administered city and county taxes: Seller does not collect Arapahoe County sales tax on building because seller delivered the materials to a location outside Arapahoe County. Seller collects Arapahoe county sales tax on tools because the contractor picked up the tools from the seller. Seller does not collect sales tax for the town of Elizabeth or Elbert County because seller does not have a business presence in either of those jurisdictions.</p> <p>Contractor may owe use taxes to town of Elizabeth and Elbert County, but those uses taxes are administered and collected by the city and county.</p> <p>Contractor should contact local jurisdictions to determine use tax obligations.</p> |

Tax Exempt and Government Entities

A contractor does not pay or collect tax on building materials when the customer is an exempt entity, such as a charitable organization or religious entity, or government entity, such as the federal, state, and local government and public schools, but the contractor is pays tax on consumables, construction equipment and tools used to perform construction services for the tax exempt entity.

If an entity claims to be exempt and it is not a government entity, obtain a copy of its exemption certificate issued by the department (government entities are not issued exemption certificates) for your records. The exemption applies only in the following circumstances:

- Building materials for construction work on property that is both owned **and** used by tax-exempt organization. For example, if a building is owned by a city but the city leases it to a private enterprise, then the exemption does not apply if the government entity or tenant contract for tenant-finish construction services because the city is not using the building.
- Building materials for buildings leased by a tax-exempt organization. For example, city leases office space from a private enterprise and hires a contractor to renovate the space. The exemption applies because the city's lease is considered an ownership interest and it uses the space.
- The construction work must be paid for using funds directly from the exempt entity.
- The exemption applies only to building material. A contractor's purchase and use of non-building materials, such as consumables, non-fixtures, and tools and equipment are subject to **sales** and **use taxes**.

A DR 0172 Contractor Application for Exemption Form must be completed to apply for an Exemption Certificate, which will be issued **ONLY** to general contractors, not subcontractors.

Requirements of Exemption Application:

- Completed DR 0172 form
- Copies of Contract or agreement page identifying the contracting parties
- Bid amount
- Type and Scope of Work
- Signatures of contracting parties

Common Errors made:

- Failure to attach copies of the contract or agreement pages identifying the contracting parties and signatures of the contracting parties
- Contract not signed by an agent of the exempt organization
- Colorado wage withholding tax account was omitted or was incorrect
- Exempt agency's account number (98#) was omitted or was incorrect
- Bid amount is not listed on the application, or did not match the contract amount
- Contract page listing the bid amount not attached

Fax:

The following number is for application submissions **ONLY**, not for general use.

303-866-3211