

FYI – For Your Information

Contractors and Retailer-Contractors

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, sheetmetal, glazing and other such trades when they construct materials 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.

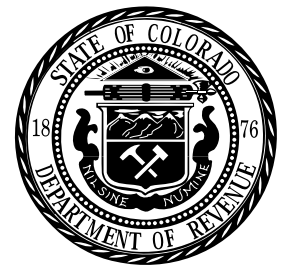
The following regulations govern the contractor’s operation only when work is actually being performed under a real property contract. Aspects of the contractor’s business not involved in real property contract construction work are subject to regular sales tax regulations. In any case, a business is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

BILLING AND TYPES OF CONTRACTS

Types of billing and types 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



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Taxpayer Service Division
1375 Sherman St.
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Sales Tax: (303) 232-2416
Withholding Tax: (303) 232-2416
Income Tax: (303) 232-2446
Severance Tax: (303) 232-2446
Fuel Tax: (303) 232-2451

contractor's cost, either through sales tax paid to the vendor or use tax paid by "Colorado Consumer Use Tax Return" (DR 0252). The contractor is liable for sales/use tax on the cost of all 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, i.e., 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 "Combined 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 should **not** obtain Colorado sales tax licenses. 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 sales tax licenses 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, complete and submit to the Department of Revenue a "Colorado Business Registration" (CR 100) with the appropriate fee. You will be sent a sales tax license, which enables you to purchase tax free items for resale to retail customers. Allow four to six weeks for processing of the license. Like all other retail vendors, you must collect and remit to the DOR 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/Metropolitan Baseball Stadium District (RTD/CD/BD) 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/BD, you also pay RTD/CD/BD 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/BD tax, if applicable) to the Department of Revenue. The consumer use tax rate is the same as the state sales tax rate. Use a "Colorado 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 or leased 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 to the Department of Revenue an “Application for Exemption Certificate” (DR 0172). A prime contractor obtains one certificate for the project. The prime contractor then issues certificates to all the project’s subcontractors. [§39-26-114(1)(a)(XIX) and 39-26-114(1)(d) 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.

FURTHER INFORMATION

For more information on related topics, consult the following DOR publications:

- FYI General 1 “Department of Revenue Publications”;
- FYI General 8 “The FYI Program - Index and General Information”;
- FYI General 10 “Consumer Use Tax”;
- FYI Sales 1 “How to Document Sales to Tax-Exempt Organizations”;
- FYI Sales 9 “Sales Tax Licenses”;
- FYI Sales 62 “Guidelines For Determining When to Collect State-Collected Local Sales Taxes”;

- FYI Sales 63 “Sales Tax Exemptions For Government Purchases”;
- “Colorado Sales/Use Tax Rates” (DRP 1002).

Single FYIs are free from the Taxpayer Service Division. They may be obtained at any statewide taxpayer service center; or by writing to the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261; or by calling the DOR Forms Hotline at (303) 232-2414. Please use the FYI number (General 1, Sales 2, etc.) when ordering FYI publications. FYIs and commonly used forms are available on the Internet at www.state.co.us under “Government” and “Department of Revenue.”

For a complete set of FYIs (approximately 130, on sales, income, excise and withholding taxes), you may purchase *The Complete Book of FYIs* at low cost from the State Forms Center, Division of Correctional Industries, 4200 Garfield St., Denver, CO 80216. An order form is contained in FYI General 1, or call the State Forms Center, (303) 321-4164, for ordering information.