



Sales and Use Tax On Building Contractors

Definitions

Fixture – An item that is attached to real property in a permanent manner and becomes an accessory to a building, other structure, or land but does not lose its identity when installed. Mobile homes are not fixtures unless assessed as real property. Industrial/commercial machinery and equipment are not fixtures.

Real property – The land, its improvements, and fixtures; also called “realty” and “real estate.”

Tangible personal property – Personal property that you can see, weigh, measure, touch, or is in any manner perceptible to the senses, including electric power or energy.

What is Taxable?

Purchase of Construction Materials and Supplies

The purchase of materials and supplies to improve, alter, or repair land, buildings, homes, or other real property is taxable. Real property contractors determine the taxability of purchases and sales by the pricing arrangement in the contract.

Contractors who perform **lump sum, cost plus, fixed fee, guaranteed price, or time-and-materials real property contracts** do not resell tangible personal property to the real property owner, but use the property for real property improvement. Contractors must pay sales tax and surtax to their suppliers on all purchases for these types of contracts. Contractors must also pay tax on all materials made for the contractor’s own use in performing such contracts. Contractors should not charge tax to their customers, because they are not engaged in selling tangible personal property, even if the contractor itemizes charges for materials and labor in the proposals or invoices. Contractors should not register as dealers unless they must pay tax on the cost of items made (fabricated) for use in fulfilling contracts. However, a dual operator who performs real property contracts **and** sells tangible personal property at retail must register as a dealer.

Contractors are the ultimate consumers of materials and supplies used to perform real property contracts and must pay tax on the costs of those materials and supplies, unless the contractor is under a retail sale plus installation contract. Contractors who perform taxable fabrication must either pay tax to their suppliers when purchasing materials for fabrication or pay use tax when the materials are incorporated into a fabricated item.

Sale of Materials

Retail sale plus installation contracts are contracts for improvements to real property in which the contractor or subcontractor agrees to:

- Sell specifically described and listed materials and supplies at an agreed price or regular retail price, **and**
- Complete the work for either an additional agreed price or based on time used.

For a contract to fit in this category the contractor or subcontractor must list and price in the contract, all materials to be used before the work begins. If the contract lists only some of the materials, the contract is not included in this category. Since the sale of the materials is a

separate transaction from the installation, the purchaser must assume title and risk the loss of the materials and supplies as delivered, rather than accepting only title to the completed work.

A contractor who performs retail sale plus installation contracts must collect sales tax and the applicable discretionary sales surtax from customers and pay the taxes to us. See "Registering to Collect Sales Tax."

Use of Materials

Tax is due on the use of goods by the contractor. The contractor is responsible for the tax if sales tax was not paid at the time of purchase.

If a contractor purchases materials from an out-of-state business that is not registered to collect Florida sales tax, the contractor is liable for use tax and surtax when the materials are imported into Florida.

Contractors may manufacture or fabricate a finished product from raw materials for use in a contract. Contractors owe tax on the manufactured cost of such products. For example, a cabinet maker/installer is required to pay sales tax, plus any county-imposed tax (discretionary sales surtax), on the manufactured cost of the cabinet.

If a contractor fabricates a product at the job site, fabrication labor is exempt from tax. Only the cost of the materials is subject to tax.

Construction for Tax-Exempt Entities

Florida law provides that the purchase of construction materials or supplies by a contractor is subject to Florida sales tax at the time of the sale, even if the purchase is for or on behalf of a tax-exempt or governmental entity.

In order to purchase construction materials or supplies exempt from Florida sales tax, the vendor must receive a purchase order and a copy of an exemption certificate issued directly from the tax-exempt entity before shipment or delivery. If the vendor does not receive this documentation, the vendor must collect sales tax from the contractor who placed the order. For more information on public works contracts, see Rule 12A-1.094, Florida Administrative Code.

Reversing and/or rebilling an otherwise taxable purchase after shipment or delivery is contrary to Florida law.

Discretionary Sales Surtax

Most Florida counties levy a discretionary sales surtax on transactions that are subject to sales and use tax. Calculate the tax using the tax rate of the county in which the consumer, usually the contractor, takes delivery of the tangible personal property. In the case of retail sale plus installation contracts, calculate the tax using the tax rate of the county in which the improvements or repairs take place. If a contractor pays use tax for using materials to fabricate items at the contractor's shop, calculate the tax using the tax rate of the county in which the fabrication occurs. You can get a *Discretionary Sales Surtax* brochure (Form GT-800019) and a list of surtax counties and rates (Form DR-15DSS) from our Internet site at www.myflorida.com/dor.

Registering to Collect Sales Tax

You can register to collect and/or report tax through our Internet site. The site will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Application to Collect and/or Report Tax in Florida* (Form DR-1).

After we approve your registration application, you will receive a *Certificate of Registration* (Form DR-11), an *Annual Resale Certificate* (Form DR-13), and your tax return forms. The *Annual Resale Certificate* allows you to purchase materials tax-exempt that you intend to list and resell. You must give a signed copy of your current annual resale certificate to your supplier when making purchases for resale.

If materials purchased for resale are later used (not resold), you must report and pay use tax on those items, plus any applicable discretionary sales surtax, penalties and interest. There are additional liabilities for intentional misuse of a resale certificate.

When Tax is Due

Returns and payments are due on the 1st and late after the 20th day of the month after the date of transaction, no matter when you receive payment from the customer. For example, if the transaction takes place on the 1st of one month, then tax is not due until the 1st of the next month.

Reference Material

Tax Laws – Our online Tax Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the law library for Rule 12A-1.051, Florida Administrative Code, *Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property*.

Brochures – Download these brochures from our “Forms and Publications” page:

- *Florida’s Sales and Use Tax*
- *Discretionary Sales Surtax*
- *Repair of Tangible Personal Property*

For Information and Forms

Information and forms are available on our Internet site at: www.myflorida.com/dor

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671.

Persons with hearing or speech impairments may call our TDD at 800-367-8331 or 850-922-1115.

For a written reply to tax questions, write:

Taxpayer Services
Florida Department of Revenue
5050 W Tennessee St Bldg L
Tallahassee FL 32399-0112

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- Tax Information Publications (TIPs).
- *Facts on Tax*, a quarterly publication.
- Proposed rules, notices of rule development workshops, and more.

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