

Sales and Use Tax on Fabrication of Asphalt

Sales &
Use tax
notice

Effective for contracts dated on or after October 1, 2000, asphalt fabricators who use asphalt in the performance of a contract must remit use tax based on the fair market value of the asphalt. Tax should be computed upon the amount the asphalt fabricator would charge for the asphalt if it were sold and delivered in an arms length transaction. A \$1 per ton plus materials cost taxable base **will not** be accepted as fair market value for contracts dated on or after October 1, 2000. The department will instead accept, as the fair market value, \$5 per ton plus materials cost as the tax base.

such person so using the tangible personal property shall pay the tax herein levied **on the fair market value of such tangible personal property when used**, without any deductions whatsoever; provided, that the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

This method of valuation is required by Tenn. Code Ann. Section 67-6-209(a), which states:

TENN. COMP. R. & REGS. 1320-5-1-1.03(1)(a) further provides:

- (a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, other than:
 - (1) Any severed from the earth and moved from one place to another on the same construction or job site; and
 - (2) Dirt, soil, earth or any other kind of material when used for fill, whether from the same construction or job site or elsewhere;

Any manufacturer, producer, compounder, or contractor who builds, makes, compounds, or otherwise fabricates tangible personal property in a manner changing the form of the property used, and then uses the property shall be liable for use tax upon the fair market value of the fabricated property.

“Fair market value” is the price a willing seller would accept and a willing buyer would offer where the buyer and seller are unrelated.

Asphalt fabricators that qualify as contractor/dealers (they both sell asphalt directly to customers at retail without applying it and use it in fulfilling

contract obligations) may purchase their materials on a certificate of resale. They then must collect and remit tax on sales of asphalt. If they use the asphalt instead of selling it, then they must pay tax on the fair market value as discussed above.

Asphalt fabricators that do not sell any of their asphalt at retail may not purchase materials on a certificate of resale. They must remit tax on the fair market value of the fabricated asphalt and may deduct from that amount any tax already paid on materials.

A contractor that purchases asphalt for use in fulfilling a contract must either pay sales tax on that purchase or pay use tax, measured by the purchase price of

the asphalt. See Tenn. Code Ann. Section 67-6-209(b)

Use of asphalt by an asphalt fabricator or installer in the performance of a contract with a governmental or other tax-exempt entity subjects the asphalt fabricator or installer to the payment of use tax. Use tax is due even if the asphalt is provided by the governmental or other tax-exempt entity. However, if asphalt is sold directly to the exempt entity without installation or use by the asphalt seller, then the sale is exempt from sales tax.

Have questions or comments? Please let us know. [Contact us.](#)

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