



STATE OF TENNESSEE

Sales Tax Issues for Contractors
May 2022

OVERVIEW – Sales Tax Issues for Contractors



GENERAL SALES TAX LAWS



HOW SALES TAX LAWS APPLY
TO CONTRACTORS

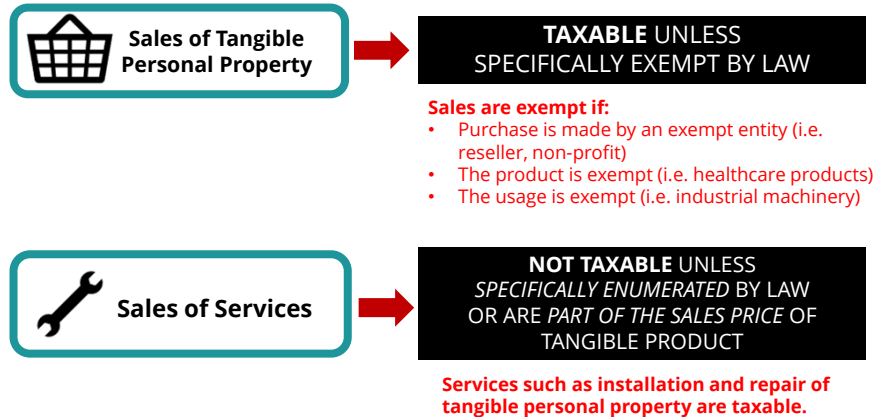


RESOURCES/Q&A



SALES TAX LAW

The "Retailers' Sales Tax Act" imposes tax on tangible personal property and certain enumerated services. Tenn. Code Ann. Title 67, Chapter 6, Part 2



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CONTRACTORS: GENERAL RULES

PAYING SALES TAX

- A contractor is the user and consumer of what they acquire when they perform a contract (lumber, paint, brick, etc.)
 - Contractors pay sales tax on these items when they are purchased in TN
 - Contractors pay use tax on these items when they are purchased outside of TN

CHARGING SALES TAX

- Services provided to tangible personal property: charge sales tax
- Sales tax of tangible personal property sold to a customer: charge sales tax (Resale Certificate to purchase the items may be used)
- Products and/or services provided to real property; DO NOT charge sales tax
 - Contractors may include the sales tax they pay on materials in the price of the bid/invoice. Customers should not be directly billed for sales tax by contractors for services to real property.



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TANGIBLE VS. REAL PROPERTY

Tangible personal property - personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.

- Installation and repair of tangible personal property is **taxable**.



Real property - property that becomes attached to realty. Although real property can be seen/touched/etc, it is not taxed in the same manner as tangible personal property.

- The **sale/repair/installation** of property that becomes a fixture is **not subject to the sales and use tax**.
 - *The person/entity installing or repairing the real property is subject to sales or use tax on the purchase of property being installed and any materials used in the installation or repair.*



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TAXABLE REPAIR AND INSTALLATION SERVICES

Repair services of *tangible personal property* are taxable and include:

- ✓ Work done to preserve or restore tangible personal property
- ✓ Mending or correcting
- ✓ Alterations
- ✓ Refinishing
- ✓ Cleaning that is a necessary part of any repair work
- ✓ Service calls where any repair work is done or contemplated
- ✓ Changes in the size, shape, or content

Charges for installing and repairing *tangible personal property* that **remains tangible personal property after installation are taxable.**



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TANGIBLE VS. REAL PROPERTY, EXAMPLES

Real Property – <u>DON'T CHARGE TAX ON REPAIR/INSTALLATION</u>	Tangible Personal Property – <u>CHARGE TAX ON REPAIR/INSTALLATION</u>
Building on a foundation	Portable building
Carpet laid in a building	Rug
HVAC unit	Window air conditioner
Custom window treatment	Curtains purchased from general inventory at stores
Custom built-in bookshelf	Removable bookshelf (furniture)
In-ground swimming pools/spas	Above ground swimming pools/spas installed 6-8 inches below ground on sand and concrete
Custom Shutters, Custom Awnings, and Custom Carports	In-stock versions that can be removed without causing damage
Built-in appliances	Removable appliances

"CAN YOU TAKE IT WITH YOU WHEN YOU MOVE?"

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SALES PRICE

The sales price may include:

- Cost of the *property sold and materials used*
- *Labor/service costs*
- *Interest*
- *Losses*
- *Transportation costs (incoming freight)*
- *Taxes imposed on the seller*
- *Any expenses of the seller*
- *Charges for any services necessary to complete the sale*
- *Delivery charges*
- *Installation charges*

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CONTRACTOR – DEALERS

Contractor-Dealers are entities that acquire items and may either sell the products to customers or use them in the performance of a contract.

- Contractor-Dealers buy all their goods using their sales tax resale certificate.
 - Sales to customers without installation are reported as taxable sales
 - Items withdrawn from inventory when used to perform a contracted installation must be reported on Line 2 of the sales tax return as use tax
 - Sales in interstate commerce are exempt



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SALES TAX EXEMPTIONS

- **Entity-based:** depends on who the purchaser is or what they do
 - Example - qualified farmers, manufacturers, non-profits, reseller, etc
 - Most require exemption certificate – *these are rare for contractors*
- **Product-based:** statute determines what products are exempt
 - Example - textbooks, newspapers, healthcare products, etc
 - *This exemption generally would not apply to contractors*
- **Use-based:** depends on how the product is used
 - Example – pollution control, green energy production, etc
 - Most require exemption certificate

Next, we will explore what effect exemptions may have on charging sales tax and whether the contractor should pay sales tax on materials used in a project for an exempt customer!



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CONTRACTORS AND EXEMPT ENTITIES

Contractors **may not use** an exempt organization's authorization for exemption to make tax-exempt purchases to fulfill contracts with a tax-exempt organization.

- Exempt entities must purchase their own materials using their own exemption certificates. Funds must be directly from the organization.
- CHURCHES: A church may purchase materials used by a contractor in church construction using the church's certificate for exemption from *state and local taxes*.
- A private, non-profit college or university may purchase materials used by a contractor in construction using their certificate for exemption from *state tax only*.



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CONTRACTORS – POLLUTION CONTROL/GREEN ENERGY /INDUSTRIAL MACHINERY EXEMPTIONS

A contractor can be issued an exemption certificate if the contractor provides or installs items that will be owned or leased by the qualifying customer.

- An application must be submitted for each project.
 - Upon approval, separate exemption certificates will be issued to the business and to each qualifying contractor.
 - The contractor's exemption certificate will be valid only for a specific purchaser's project.
 - Each entity (business or contractor) that is issued an exemption certificate must have a location ID under its sales and use tax account that matches the location of the project on the application.
- Exemption certificates may be issued retroactively.
 - If the sales and use taxes have already been paid by the contractor, the approved application, contract information, refund claim and copies of purchase invoices will be used to support a refund or credit directly to the purchaser.



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RESOURCES

From TN.gov/Revenue.....

- General Information: Taxes > Sales & Use Tax
- FAQ Articles: Revenue Help > Sales & Use Tax
- Webinars: Taxpayer Education > Tax Webinars > Webinar Video Archive
 - Completing the Sales Tax Return
 - Services Subject to Sales Tax
 - Exemption Specific Webinars: Certified Green Energy, Pollution Control, Industrial Machinery



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CONTACT US

Please submit specific account-related questions, or any questions that do not get addressed in this webinar to directly us!



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