

Contractors who perform construction work on real property are subject to a number of special tax rules based on various factors. Depending on circumstances, a contractor may be considered a consumer and required to pay sales tax on purchases they make. Under other circumstances, contractors may be considered retailers and required to collect sales tax from their customers. This FYI discusses who qualifies as a contractor, the tax treatment for purchases and sales a contractor might make, the tax implications of contract terms, sales tax licensing requirements applicable to contractors, and the application of city, county, and special district sales and use taxes to contractors.

WHO IS A CONTRACTOR?

For the purpose of the special tax rules discussed in this FYI, the term “contractor” refers to any entity or person (including individuals, partnerships, firms, associations, corporations, trusts, estates, or joint ventures) who performs construction work on real property for another party under the terms of an agreement. The following list includes some common types of contractors:

- building contractors;
- road contractors;
- grading and excavating contractors;
- electrical contractors;
- plumbing and heating contractors;
- anyone engaged, under a contractual arrangement, in the construction, reconstruction, or repair of any building, bridge or structure; and
- any subcontractor that performs the kind of work described above.

Who is a retailer-contractor?

A retailer-contractor is a contractor who also makes retail sales of construction and building materials, non-building materials, or both. A retailer-contractor generally makes retail sales in one of two ways:

- 1) in the fulfillment of time-and-materials contracts (see the section titled *Tax implications of building and construction contracts*, below), or
- 2) as retailers who make “over-the-counter” sales of non-building materials (see the section entitled *Non-building materials*, below) that the retailer may or may not install for the customer.

A retailer-contractor must obtain a sales tax license, may purchase items for resale tax-free, and must keep detailed records to demonstrate the collection and/or payment of all applicable sales and use taxes on all purchased items. See the section entitled *Licensing, filing, and record-keeping requirements*, below, for additional information.

Who is not a contractor?

An individual working for a salary or wages is not considered a contractor.

TAX IMPLICATIONS OF CONSTRUCTION AND BUILDING CONTRACTS

Contractors may enter into different types of contractual agreements with their customers and the terms of the contract may affect the taxation of construction and building materials the contractor purchases and sells. The information in this section pertains specifically to construction and building materials and does not apply to other purchases a contractor may make.

Lump-sum contracts

In a lump-sum contract, a single price is stated for the entire contract; the contract **does not state the price of construction and building materials separately from the price of labor**. For lump-sum contracts, the contractor is treated as the consumer of all construction and building materials included in and associated with the contract. Therefore, the contractor pays sales tax on the purchase of such materials or use tax if the seller did not collect sales tax from the contractor at the time of the sale. However, any non-building materials a contractor may sell and/or install are not considered part of a building contract (see the section entitled *Non-building materials*, below, for additional information on their tax treatment). **A contractor does not need a sales tax license for lump-sum contracts.**

Time-and-materials contracts

Time-and-materials contracts **state the price for construction and building materials separately from the price of labor**. Under this type of contract, the contractor is treated as a retailer, not the consumer, of the construction and building materials. A contractor does not pay sales or use tax on construction and building materials acquired for a time-and-materials contract. Instead, the contractor must collect sales tax from its customer on the marked up price of the materials included in the time-and-materials contract and remit the collected tax to the Department of Revenue. **A contractor that enters into time-and-materials contracts must have a sales tax license.**

The following table presents an example that contrasts the tax treatment of construction and building materials for lump-sum and time-and-materials contracts.

<p>Example: The contractor enters into a contract with a homeowner to build a garage for a total contract price of \$29,000. The contractor purchases \$15,000 of construction and building materials for the fulfillment of this contract.</p>	
Time-and-Materials Contract	Lump-Sum Contract
<p>The time-and-materials contract separately states a price of \$19,000 (including \$4,000 in mark-up) for the construction and building materials and a price of \$10,000 for labor.</p> <p>The contractor does not pay sales tax when purchasing construction and building materials for the time-and-materials contract. The contractor presents his or her sales tax license at the time of purchase in order to make these purchases tax-free.</p> <p>The contractor must collect state sales tax from the homeowner on the \$19,000 price for the construction and building materials included in the time-and-materials contract. See the section entitled <i>State-administered city, county, and special district taxes</i>, below, for information about local sales taxes.</p> <p>The contractor does not collect sales tax from the homeowner on the price of labor stated in the time-and-materials contract.</p>	<p>The lump-sum contract states a total contract price of \$29,000 and does not separately state prices for construction and building materials and labor.</p> <p>The contractor pays state sales tax on the \$15,000 purchase price when purchasing construction and building materials for the lump-sum contract. See the section entitled <i>State-administered city, county, and special district taxes</i>, below, for information about city, county, and special district sales taxes.</p> <p>The contractor does not collect any sales tax from the homeowner.</p>

Tax-exempt construction projects

Construction and building materials a contractor purchases for use in construction projects for tax-exempt entities are exempt from state sales and use tax. The sales and use tax exemption applies only to construction and building materials that become part of structures, highways, roads, streets, or other public works owned and used by a tax-exempt entity. The following entities are tax-exempt.

- 1) **Governmental entities** (including the United States, the State of Colorado, and any city, county, or special district in Colorado), their departments, and institutions, but only in their governmental capacities
- 2) **Charitable organizations** in the conduct of their regular charitable functions (see 1 CCR 201-4, Reg. 39-26-718(2) for information about charitable organizations), but only in the conduct of their regular charitable functions and activities
- 3) **Schools**, other than schools held or conducted for private or corporate profit

The exemption does not apply to purchases or rentals of equipment, supplies, or tools by the contractor that she or he uses to perform construction services for a tax-exempt entity.

A contractor must apply for an exemption certificate prior to starting work on any tax-exempt construction project. See the section entitled *Exemption certificates for tax-exempt construction projects*, below, for information about how to obtain an exemption certificate for a tax-exempt construction project.



TAX TREATMENT FOR CONTRACTORS' PURCHASES AND SALES

Contractors may make various types of purchases for the fulfillment of a construction and building contract, including construction and building materials, non-building materials, equipment, supplies, electricity, and fuel. The tax treatment of such purchases varies depending on the type.

Construction and building materials

Construction and building materials are materials that are incorporated into real property to such an extent that they lose their identity as tangible personal property and become an integral, permanent, and inseparable part of real property. Dimensional lumber and drywall are examples of construction and building materials. The tax treatment of construction and building materials depends on whether they are used as part of a lump-sum contract or a time-and-materials contract (see the section titled *Tax implications of building and construction contracts*, above).

A retailer-contractor may purchase construction and building materials tax-free for resale, either as is or as part of a time-and-materials contract, but must collect sales tax on the marked up price the retailer-contractor charges the customer for the construction and building materials. If a retailer-contractor uses for a lump-sum contract construction and building materials that were purchased tax-free, the retailer-purchaser must pay the applicable sales or use tax on such materials. See the section entitled *Licensing, filing, and record-keeping requirements*, below, for information about remitting sales tax on such materials.

Non-building materials

Certain items a contractor may buy or sell do not qualify as construction and building materials because they are a complete unit not made to order or because they are not incorporated into real property in such a way as to become integral and inseparable parts of the real property. If a contractor sells such non-building materials, the contractor is considered the retailer of such items and must collect sales tax from the customer (see the section entitled *Who is a retailer-contractor?*, above). Examples of non-building materials include:

- stoves
- refrigerators
- furnaces
- air conditioners
- washing machines
- dryers
- carpets
- electrical fixtures
- ready-made cabinets
- storm doors
- garage doors
- storm windows
- screens
- sod

Equipment and supplies

Contractors are consumers of any equipment and supplies they use in their work and must pay sales tax on these items at the time of purchase.

Electricity and fuel

The purchase and use of electricity and most fuels for the construction of real property are exempt from Colorado sales tax.

STATE-ADMINISTERED CITY, COUNTY, AND SPECIAL DISTRICT TAXES

This section pertains only to city, county, and special district sales and use taxes that are administered by the Department. For information about the sales and use taxes administered by home rule cities, please contact the applicable home rule city directly. Contact information for home rule cities can be found in Department publication "Colorado Sales/Use Tax Rates" (DR 1002), available online at colorado.gov/tax.

Construction and building materials and other contractor purchases may be subject to city, county, and special district sales or use taxes. See "Colorado Sales/Use Tax Rates" (DR 1002) or colorado.gov/revenueonline for information about local tax rates and exemptions. Except as described below, or in the case of a retailer-contractor who presents a sales tax license at the time of purchase, a seller must collect and a contractor must pay state and local sales taxes whenever the contractor takes possession of the purchased materials at the seller's store or the seller delivers the purchased materials to a construction site within the same taxing jurisdiction (city, county, or special district) as the seller's store. However, the applicability of city, county, and special district taxes to the sale of construction and building materials may depend on whether a building permit is presented at the time of sale, whether the seller delivers the materials to the contractor and, if so, the location of delivery.

Local building permits

Under Colorado law, no city or county sales tax is imposed on the sale of construction and building materials if **all** of the following conditions are met:

- 1) the purchaser picks up the materials from the seller's location,
- 2) the purchaser presents to the seller a building permit or similar documentation, **and**
- 3) the building permit or similar documentation shows that local use tax has been paid or is required to be paid.

Building permits do not affect the collection and payment of state or special district taxes on construction and building materials. For details about city and county building permits, please contact the applicable agency of the city or county directly.

Delivery by seller, agent, or common carrier

If a seller, the seller's agent, or a common carrier delivers any purchased item into a state-administered city or county in which the seller has no permanent place of business, the seller does not collect the state-administered city and county sales tax. Cities and counties may impose a use tax on such delivered purchases for which the contractor may be liable, but the Department does not administer or collect city and county use taxes. For details about city and county use taxes, please contact the city or county directly.

A seller may be required to collect special district sales or use taxes on the delivery of purchased items, including construction and building materials, into a special district, even if the seller has no permanent place of business within the special district. See FYI Sales 62 and "Colorado Sales/Use Tax Rates" (DR 1002) for information about the collection of special district sales and use tax on delivered items.

LICENSING, FILING, AND RECORD-KEEPING REQUIREMENTS

Depending on the various circumstances discussed above, a contractor may be required to obtain and maintain a valid sales tax license, collect sales tax, file sales or use tax returns, obtain an exemption certificate for a tax-exempt project, and/or maintain records of all purchases and sales.

Sales tax licenses

Contractors performing only lump-sum contracts on real property should not obtain a Colorado sales tax license. These contractors must pay all applicable Colorado sales and use taxes to the seller at the time the contractor makes a taxable purchase and in accordance with local permitting requirements.

Retailer-contractors must apply for, obtain, and maintain a valid Colorado sales tax license. This requirement applies to retailer-contractors that sell raw, unaltered construction and building materials (through a retail store, for example), as well as to retailer-contractors that enter into time-and-materials contracts. Retailer-contractors can apply for a state sales tax license online at Colorado.gov/cbe or by submitting a completed Colorado Sales Tax/Withholding Account Application (CR 0100). See FYI Sales 9 and Colorado Sales and Use Tax General Information and Reference Guide (DR 0099) for additional information.

Sales tax collection and filing

A retailer-contractor's sales tax license enables him or her to purchase items tax-free for resale to customers. Retailer-contractors must, like any other retailer, collect and remit to the Department of Revenue all state and state-administered local sales taxes on all retail sales. The requirement to collect tax applies to any non-building materials the retailer-contractor sells, as well as any construction and building materials the retailer-contractor sells through a time-and-materials contract. A retailer-contractor should not collect tax on installation or labor charges if such charges are listed separately on the bid proposal, sales invoice, or contract.

Retailer-contractors must file regular sales tax returns. See FYI Sales 9, Colorado Sales and Use Tax General Information and Reference Guide (DR 0099), and Colorado Retail Sales Tax Return (DR 0100) for information about filing requirements and filing frequency. In addition to tax on sales he or she makes, a retailer-contractor must also report and remit sales tax on any items removed from stock for his or her own use, such as for the fulfillment of a lump-sum contract (see line 10 of the Colorado Retail Sales Tax Return). Retailer-contractors are not required to collect or remit tax for any tax-exempt construction projects (see the section titled *Tax-exempt constructions projects*, above), regardless of whether the project is constructed pursuant to a lump-sum or time-and-materials contract.

Consumer use tax

Contractors and retailers are required to remit consumer use tax for any taxable items for which they have not otherwise remitted sales or use tax, including purchases made from vendors located outside of Colorado who do not collect Colorado sales or use tax. See FYI General 10 for additional information about consumer use tax payment and filing requirements.

Exemption certificates for tax-exempt construction projects

A contractor must complete and submit a Contractor Application for Exemption Certificate (DR 0172) to the Department of Revenue for any tax-exempt construction project (see *Tax-exempt construction projects*, above). Along with the completed application, the contractor must submit a copy of the contract or agreement page identifying:

- 1) the contracting parties;
- 2) the bid amount;
- 3) the type and scope of work; and
- 4) signatures of contracting parties.

An exemption certificate will not be issued for any application that is not complete, accurate, and signed or for any application submitted without a fully executed contract or agreement page identifying all of the required information listed above.

The contractor must obtain a separate certificate for each tax-exempt construction project. A prime (general) contractor must obtain one certificate for the project and issue copies of the certificate to any subcontractor performing work for the project.

Record-keeping requirements

Contractors and retailer-contractors must maintain records sufficient to demonstrate the collection and remittance of all applicable state and local sales and uses taxes. Such records include, but are not limited to, copies of receipts, contracts, and sales and use tax returns filed.

ADDITIONAL RESOURCES

- *Colorado statutes and regulations*
 - 1 CCR 201-5, SR-10. Contractors
 - 1 CCR 201-4, Reg. 39-26-102.15 - definition of tangible personal property
 - § 39-26-708, C.R.S. Construction and building materials (for exempt construction contracts)
 - 1 CCR 201-4, Reg. 39-26-708.1 - exempt construction contracts
 - 1 CCR 201-4, Reg. 39-26-708.3 - exempt construction contracts
 - 1 CCR 201-4, Reg. 39-26-718 - charitable organizations
 - § 29-2-105, C.R.S. Contents of sales tax ordinances and proposals
 - § 29-2-109, C.R.S. Contents of use tax ordinances and proposals
 - § 39-26-102(19), C.R.S. - wholesale sales
 - § 39-26-103, C.R.S. - retailer licensing requirements
 - § 39-21-113, C.R.S. and 1 CCR 201-1, Reg. 39-21-113 - record keeping requirements
- *Colorado court cases*
 - *Bd. of County Comm'rs of Rio Blanco v. ExxonMobil*, 192 P.3d 582 (Colo. App. 2008) - definition of construction and building materials
 - *Craftsman Painters & Decorators, Inc. v. Carpenter*, 111 Colo. 1, 137 P.2d 414 (1942) - contractor's liability for use tax
 - *Raynor Door, Inc. v. Charnes*, 765 P.2d 650 (Colo. App. 1988) - tangible personal property used in construction
 - *Noble Energy v. Colo. Dept. of Rev.*, 232 P.3d 293 (Colo. App. 2010) - tangible personal property used in construction



- *Colorado forms, publications, and other guidance*
 - PLR 17-006 - regarding definition of “construction and building materials”
 - GIL 17-001 - regarding installation of audio-visual equipment
 - GIL 15-002 - regarding contractor exemption certificates
 - GIL 15-011 - regarding installation of audio-visual equipment
 - GIL 15-015 - regarding lump-sum and time-and-materials contracts
 - PLR 13-004 - regarding lump-sum and time-and-materials contracts
 - GIL 13-018 - regarding lump-sum and time-and-materials contracts

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado’s tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.