



## **COLORADO**

### **Department of Revenue**

Taxation Division

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GIL 25-004

March 24, 2025

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXX

Re: Sales and use tax due on the fabrication and installation of a staircase system into real property by a construction subcontractor

Dear XXXXXXXXXX:

You submitted a request for a general information letter regarding the sales and use tax due on the fabrication and installation of a staircase system into real property by a construction subcontractor. The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

### **Issue**

Whether labor costs are included in the calculation of sales and use tax on the purchase of materials for and the fabrication of a staircase system into real property by a construction subcontractor.

### **Discussion**

Colorado generally imposes sales and use tax on the retail sale of tangible personal property.<sup>1</sup> The term "tangible personal property" means "corporeal personal property" and generally "embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances that are dealt in and capable of being possessed and exchanged."<sup>2</sup> This includes tangible personal property purchased, delivered, stored, used, or consumed by construction contractors in the state for the purpose of being built into a building or structure.<sup>3</sup> This specific category of taxable tangible personal property is often referred to as "construction and building materials." The phrase "construction and building materials" is not defined in statute or rule, though the Court of Appeals has explained that, in the context of imposing tax on such tangible personal property, the plain meaning of the phrase "construction and building materials" suggests that such

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<sup>1</sup> Sections 39-26-104(1)(a) and 39-26-202(1), C.R.S.

<sup>2</sup> Section 39-26-102(15)(a)(I), C.R.S.

<sup>3</sup> 1 CCR 201-5, Special Rule 10, paragraph (2).

materials must necessarily lose their identity and become a permanent part of the realty during construction.<sup>4</sup>

Because sales and use tax is imposed on the purchase or use of construction and building materials that lose their identity and become a permanent part of the realty during construction, the Department must determine when the sales or use tax applies. Through the application of 1 CCR 201-5, Special Rule 10, this determination is based on the type of contract entered into by a contractor for a construction project. Construction contractors that operate under a lump-sum contract, where the price of materials and labor are not separately stated, are treated as the consumer of all construction and building materials they purchase for a project and are therefore required to pay state sales and use tax on such materials.<sup>5</sup> Construction contractors that operate under a time-and-materials contract, where materials and labor are separately stated, are treated as retailers, not consumers, of all construction and building materials. As such, these contractors do not pay sales tax on materials at the time of purchase, but instead must collect the tax from their customers on the marked-up price of the materials and remit the tax to the Department.<sup>6</sup> Under a time-and-materials contract, the construction contractor does not collect sales tax on the separately stated price of labor.<sup>7</sup>

Special Rule 10 also specifically addresses subcontractors. A subcontractor who purchases construction and building materials for use in their job is the consumer of those materials and is liable for the payment of state sales and use tax on the purchase of those materials by the subcontractor.<sup>8</sup> In cases where a subcontractor uses the construction and building materials they purchased for a construction project to fabricate an item before building that item into a building or structure such that it becomes an integral, permanent, and inseparable part of the real property, the subcontractor's fabrication labor is not subject to sales and use tax.<sup>9</sup>

### **Miscellaneous**

This letter represents the good-faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at [Tax.Colorado.gov](http://Tax.Colorado.gov) for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue

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<sup>4</sup> *Bd. of Cnty. Comm'rs v. ExxonMobil Oil Corp.*, 192 P.3d 582, 587 (Colo. App. 2008).

<sup>5</sup> 1 CCR 201-5, Special Rule 10, paragraphs (2) and (5).

<sup>6</sup> *Id.* at (3); see also 1 CCR 201-5, Special Rule 10, paragraph (5) (requiring that a contractor who enters into a time-and-materials contract must have a sales tax license).

<sup>7</sup> 1 CCR 201-5, Special Rule 10, paragraph (3); see also Department publication: *Construction Contractors, FYI Sales 6*.

<sup>8</sup> 1 CCR 201-5, Special Rule 10, paragraphs (1) and (6).

<sup>9</sup> *Cf. Int'l Bus. Machs. Corp. v. Charnes*, 601 P.2d 622, 625-26 (Colo. 1979).