

Nebraska Taxation of Contractors General Information

Revised October 1, 2007

For more information,
check our Web site.



This Information Guide provides general information for contractors performing work in Nebraska, and is intended to enable a person to become familiar with Nebraska taxation and licensing requirements. For more information, please see the Nebraska Taxation of Contractors Information Guides for Option 1, Option 2, and Option 3 Contractors; the Nebraska Nonresident Contractor Program Information Guide, and the Well Drilling and Irrigation Industry Information Guide.

Contractors. A contractor is any person who repairs property annexed to real estate, who annexes building materials and fixtures to real estate, or who arranges for such annexation.

All contractors must:

- ✓ Obtain a Nebraska Sales Tax Permit by filing a Nebraska Tax Application, Form 20, provided the contractor makes over-the-counter retail sales or sales of taxable services;
- ✓ Elect a contractor option by filing a Nebraska Sales and Use Tax Election for Contractors, Form 16, or Nebraska Registration Application for Nonresident Contractor, Form 24; and
- ✓ Collect and remit the Nebraska and local sales tax on over-the-counter sales and charges for taxable services.

Building materials are those items that will become real estate or which are annexed to real estate. Examples include lumber, drywall, insulation, and roofing materials.

Building materials do **not** include tools, supplies, property, equipment, machinery, or other items purchased or rented that will **not** be annexed to real estate.

Example: Rebar placed in concrete to reinforce it is a building material. Form lumber to form up the concrete as it is poured is not a building material.

Fixtures are building materials that must be annexed to a building or structure in order to properly function, yet remain identifiable as separate items. Examples include water heaters, furnaces, central air conditioners, and built-in dishwashers.

Choosing an Option

All contractors, both resident and nonresident, have three options from which to choose regarding how they will satisfy their sales and use tax liability on building materials and fixtures.

A Nebraska Sales and Use Tax Election for Contractors, Form 16, is used to choose the contractor option under which they will operate. Nonresident contractors make this election on the Nebraska Registration Application for Nonresident Contractor, Form 24. This election must be filed with the Department of Revenue within three months after beginning to operate as a contractor. Contractors who do not make a “contractor election” will be treated as an Option 1 contractor.

Changing Options. Contractors may change their option by filing another Form 16. However, contractors may not operate under more than one option at a time. All jobs in progress must be under the same option.

The options **do not** apply to over-the-counter sales (see the “Over-the-Counter Sales” section for more details) or the purchase or rental of tools, equipment, supplies, and taxable services.

All building materials and fixtures are taxable according to the contractor option chosen.

Option 1. Beginning October 1, 2007, Option 1 contractor labor charges that are separately stated on the billing invoice are not taxable. Option 1 contractors will not be required to obtain a Nebraska Resale or Exempt Sale Certificate, Form 13, when billing other contractors for contractor labor charges.

Option 1 contractors must continue to collect sales tax on the amounts billed to other contractors and project owners for building materials they annex during the project. Option 1 contractors who only charge one amount for building materials and contractor labor must continue to collect sales tax on the total amount charged.

Option 1 contractors can continue to purchase building materials and fixtures tax-free by giving a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section C, Block 1, to the supplier.

Option 2. Beginning October 1, 2007, Option 2 contractor labor charges are not taxable. Option 2 contractors will not be required to obtain a Nebraska Resale or Exempt Sale Certificate, Form 13, when billing other contractors for contractor labor charges.

Option 2 contractors will continue to pay sales tax on their purchases of building materials and fixtures. Consumer's use tax must be remitted when purchasing such items where applicable sales tax has not been paid (e.g., from an out-of-state supplier or over the Internet).

Option 3. Beginning October 1, 2007, Option 3 contractor labor charges are not taxable. Option 3 contractors will not be required to obtain a Nebraska Resale or Exempt Sale Certificate, Form 13, when billing other contractors for contractor labor charges.

Option 3 contractors can continue to purchase building materials and fixtures tax-free by giving a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section C, Block 1, to the supplier.

Option 3 contractors will continue to remit use tax on building materials and fixtures withdrawn from inventory. The use tax is computed at the rate in effect at the time and place of withdrawal from inventory.

A detailed information guide for each option is available on the department's Web site.

Tools, Equipment, and Supplies

Tools, equipment, and supplies are those items used in the completion of a construction or repair project that do not become part of the real estate, structure, or fixture. Contractors are the consumers of all tools, equipment, and supplies used in completing their construction projects, **including any project for an exempt entity**. They must pay sales tax on all such items purchased, rented, or leased by them for use in their construction projects—including installation, assembly, disassembly, delivery, and any other charge associated with

the purchase or rental of such items. Examples of taxable tools, equipment, and supplies are hammers, sandpaper, lumber to build forms, office equipment, scaffolding, backhoes, cement mixers, and safety equipment such as barriers, fences, and caution tape.

Barricades Provided to Contractors

Barricade companies who provide barricades, high intensity lights, arrow boards, cones, and other equipment to contractors are leasing these items and are required to collect sales tax. Sales tax is collected on the total amount charged for the equipment and any services included in the leasing agreement to place, move, clean, maintain, and repair these items.

Contractors cannot use a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment, Form 17, issued by an exempt entity to exempt the rental of such items from tax. Tax is due regardless of whether these items are required at the job site to comply with governmental or private contract specifications to protect workers and provide traffic control.

Taxable Services

A contractor who also performs building cleaning services must continue to collect and remit tax on the total amount charged for such services. Examples of building cleaning services include cleaning items such as central air conditioning units, heating and cooling air ducts, furnaces, chimneys, sewers, gutters, and drains. Please refer to Nebraska Sales and Use Tax Regulation 1-098, Building Cleaning and Maintenance for additional information. Use tax is commonly due on the purchase or rental of such items and services from out-of-state retailers.

Over-the-Counter Sales

Over-the-counter sales are transactions where the terms of the sale do not require the seller to annex building materials or fixtures to real estate, or to arrange for such annexation.

Example: Customer buys a faucet, takes it home and either installs it, or makes arrangements with someone other than the seller to install it.

Contractors making over-the-counter sales must collect and remit Nebraska and applicable local sales tax on the **total** sales price, including all amounts charged to build or assemble the item sold.

Contracts With Exempt Entities

Most nonprofit organizations are **not** exempt from sales tax in Nebraska. In addition, not all governmental units are exempt from Nebraska sales tax. The following Nebraska Sales and Use Tax Regulations identify those entities that are exempt from sales and use tax:

1-072 United States Government and Federal Corporations;

- 1-090 Nonprofit Organizations;
- 1-091 Religious Organizations;
- 1-092 Educational Institutions; and
- 1-093 Governmental Units.

The tax-free purchase of building materials or fixtures for a specific project a contractor is performing for an exempt entity is allowed when a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, has been obtained from the exempt entity. Form 17 **must** be obtained **before** any materials are annexed. Form 17 can **only** be used for making tax-free purchases of building materials and fixtures that will be annexed to the specific project identified on Form 17. It cannot be used to purchase or rent any tools, supplies, equipment (i.e., barricades, scaffolding, machinery) or other items used to complete the project identified on Form 17. These tools and equipment do not become annexed to real estate.

Installation and Repair of Manufacturing Machinery and Equipment

Please refer to the Information Guides for Option 1, Option 2, or Option 3 contractors to determine the taxability of machinery and equipment installed or repaired by a contractor.

Warranties, Guarantees, and Service and Maintenance Agreements

Effective October 1, 2007, sales of warranties, guarantees, and service or maintenance agreements that only cover the repair of items annexed to real estate are not taxable.

For example, warranties, guarantees, and service and maintenance agreements that only cover repairs of a building or fixtures such as hot water heaters, garbage disposals, and central heating and air conditioning units, are not taxable.

Option 1 contractors must remit use tax on all parts and materials purchased or withdrawn from inventory and used to repair the building or replace or repair the fixtures that are covered by the warranty or service agreement. In addition, Option 1 contractors are required to collect sales tax on any charges for parts not covered under the warranty or service agreement.

Option 2 and Option 3 contractors must pay or remit tax on their cost of the parts and materials used to replace or repair the annexed property or fixtures whether or not covered by the warranty or service agreement.

If an agreement that covers both buildings or fixtures and non-annexed appliances or taxable services is sold for one amount, the entire amount charged for the agreement is taxable. See above paragraphs for the taxability of parts used for repairs to buildings and fixtures. Sales and use tax

does not apply to parts and materials used, and services performed, in fulfilling the obligations under an agreement to repair or replace non-annexed appliances, provided there is not an additional charge for such items.

Nonresident Contractors

Nonresident contractors have the same tax responsibilities as resident contractors. However, they must also comply with certain registration and bonding requirements (see the Nonresident Contractors Information Guide).

A nonresident contractor is a contractor who is neither domiciled in, nor maintains a place of business in, Nebraska for more than six months of a year. **A project site does not qualify as a place of business.**

Any resident contractor contracting with any nonresident subcontractor must withhold sufficient money on the contract or contracts to guarantee that all taxes, including contributions due under the Employment Security Law, accruing to the state of Nebraska and its political subdivisions will be paid when due. Failure to withhold the funds will render the resident contractor directly liable for the taxes and contributions that the nonresident subcontractor may have owed.

General Information

Reporting and Remitting the Tax. Contractors will report and remit the tax on a Nebraska and Local Sales and Use Tax Return, Form 10. To properly complete the Form 10, Schedule III (which is on the back of the Form 10) should be completed first.

Lines 1-15 of Schedule III are used to calculate any difference between gross receipts and the net taxable amount (the amount subject to sales tax).

Lines 16-21 of Schedule III are used to calculate any consumer's use tax owed.

Record Keeping. Contractors are required to keep Forms 13, Forms 17, construction contracts, building permits, purchase orders, billing invoices, and any other information necessary to document the taxes paid on building materials and fixtures, tools, equipment, supplies, and taxable services.

Other Information. Contractors seeking additional information are encouraged to review the resources contained on our Web site under Contractor Information. The department also conducts educational seminars (dates are posted on our Web site, www.revenue.ne.gov). You may also contact us by calling the telephone numbers listed below.

Taxpayer Assistance. For additional information, please contact the Nebraska Department of Revenue, P.O. Box 94818, Lincoln, NE 68509-4818, or call 1-800-742-7474 (toll free in NE and IA), or 1-402-471-5729.