

INFORMATION BULLETIN # 60

SALES TAX

APRIL 2011

(Replaces Bulletin #60 dated July 2006)

DISCLAIMER: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Information in the bulletin that is inconsistent with any law, regulation, or court decision is not binding on either the Department or the taxpayer. Therefore, this information should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Construction Contractors Tax Responsibility

REFERENCES: IC 6-2.5-1-5; IC 6-2.5-3-2; IC 6-2.5-3-3; IC 6-2.5-4-1; IC 6-2.5-4-9; IC 6-2.5-5-3; IC 6-2.5-8-9; 45 IAC 2.2-3-7 through 45 IAC 2.2-3-12; 45 IAC 2.2-4-21 through 45 IAC 2.2-4-26

INTRODUCTION

The general rule for the application of sales and use tax is that all sales of tangible personal property are taxable and sales of real property are not. This general rule is not changed when a construction contractor converts tangible personal property into real property by attachment. All construction materials purchased by a construction contractor are subject to tax.

DEFINITIONS

- A. "Construction contractor" means anyone who is obligated to furnish the necessary labor and construction material to improve real property. This includes a general or prime contractor, subcontractor, or specialty contractor. The term also includes persons engaged in building, cement work, carpentry, plumbing, heating and cooling, electrical work, roofing, wrecking, excavating, plastering, tile work, road construction, landscaping, installing underground sprinkler systems, or making other improvements to real property.
- B. "Construction materials" means any tangible personal property intended for incorporation in or improvement to real property. Improvements include both new installations and repairs to existing improvements to real property.

Examples of "construction materials" that may be incorporated into real property include doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, carpeting, and fencing.

Examples of items that are not “construction materials” and therefore remain tangible personal property include personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, clothes washers and dryers, and window air conditioning units.

- C. “Lump sum contract” is a contract in which all of the charges are quoted as a single price. A construction contractor may furnish a breakdown of the charges for labor, materials, and other items without changing the nature of the lump sum contract.
- D. “Time and material contract” is a contract in which all the charges for labor, construction materials, and other items are stated separately.
- E. “Manufacturer contractors” are construction contractors that manufacture, fabricate, or assemble raw materials into new components to be used as construction materials to satisfy their obligation to perform a construction contract.

LUMP SUM CONTRACTORS

If a construction contractor purchases construction materials pursuant to a lump sum contract, the construction contractor pays either (1) sales tax at the time the construction materials are purchased; or (2) use tax at the time the construction materials are incorporated into real property if the contractor purchased or acquired the construction materials exempt from sales tax and the owner of the real property could not have purchased the materials exempt from sales tax (as evidenced by a customer’s properly completed ST-105 General Sales Tax Exemption Certificate).

TIME AND MATERIAL CONTRACTORS

If a construction contractor purchases construction materials to be used in a time and material contract, the construction contractor is a retail merchant and may purchase the construction materials exempt from sales tax. However, the construction contractor must collect sales tax on the resale of the construction materials and remit the sales tax, unless the customer presents a properly completed ST-105 General Sales Tax Exemption Certificate.

MANUFACTURER CONTRACTORS

Tangible personal property manufactured, fabricated, or assembled inside or outside Indiana is subject to use tax if the property is used, stored, consumed, or distributed in the state.

When operating pursuant to a lump sum contract, a manufacturer contractor shall pay sales tax on the cost of the raw materials at the time of purchase or use tax on the cost of the raw materials when the materials are converted into a new component for construction into real property. When operating pursuant to a time and material contract, a manufacturer contractor may purchase the raw materials exempt for resale by submitting a properly completed ST-105 General Sales Tax Exemption Certificate to the retailer. Note: when a manufacturer contractor purchases pre-fabricated materials for conversion into real property, the manufacturer contractor must pay sales tax on the entire retail unitary transaction, including any labor charges associated with the fabrication of the materials.

CONTRACTOR'S PURCHASES OF EQUIPMENT

Utilities, machinery, tools, forms, supplies, equipment, or any other items used or consumed by the construction contractor and which do not become incorporated into real property are not exempt regardless of the exempt status of the person for whom the contract is performed.

However, a construction contractor's purchase of **public safety equipment** required by contract to be used in the construction and repair of public roads, bridges, highways, and other public infrastructure for a governmental entity is exempt from sales and use tax. Examples include, but are not limited to, traffic signals; signs; barrels; barricades; temporary pavement markings; materials to construct temporary traffic lanes, roads, and bridges; erosion control and drainage materials; aggregates used to set grades; and field offices and communications equipment, provided such offices and equipment are exclusively for the use of government representatives.

Safety equipment or items used or worn by employees of the construction contractor are not exempt under this provision. Examples of taxable safety equipment or items include, but are not limited to, hardhats, safety glasses, safety vests, and pest control.

CONTRACTOR'S REGISTRATION

Time and material construction contractors are retail merchants and must register with the Indiana Department of Revenue (the Department) to purchase construction materials exempt from sales and use tax.

Lump sum construction contractors must also register with the Department as retail merchants to purchase construction materials exempt from sales and use tax. However, when completing a construction project pursuant to a lump sum contract, a contractor is not a retail merchant for the purposes of IC 6-2.5-8-9 and may not accept a direct payment permit in lieu of an exemption certificate.

EXEMPTIONS FROM SALES AND USE TAX

A. Time and material construction contractors that receive exemption certificates from nonprofit, Federal or Indiana governmental entities may then perform the contract without obligation for the collection and remittance of sales and use taxes on construction materials purchased. The exemption certificate must be retained by the construction contractor for a period of three years from the end of the year in which the construction materials were purchased or sold.

Time and material construction contractors are responsible for use tax when materials purchased exempt from tax are later used in a lump sum contract.

B. Lump sum construction contractors may accept an exemption certificate from a nonprofit, Federal or Indiana governmental entity, but they may not reissue it to any supplier of construction materials. The lump sum contractor must issue its own exemption certification to the supplier.

C. A construction contractor receiving an exemption certificate for a particular job should issue its own ST-105 exemption certificate to subcontractors. Construction contractors and subcontractors must be registered as retail merchants to issue their own exemption certificates (ST-105).

DIRECT PAYMENT PERMITS

Direct payment permits do not certify that the issuer is entitled to an exemption and may not under any circumstances be issued to or accepted by flat bid (lump sum) contractors.

ASPHALT MANUFACTURERS

Asphalt manufacturers are entitled to a manufacturing exemption for sales and use taxes (under Indiana Code IC 6-2.5-5) for the asphalt plant and pavers, including repair parts and fuel for the respective equipment. Asphalt manufacturers are granted an exemption from sales and use taxes for dump trucks used to transport “hot mix asphalt” from their asphalt plant to the job site.

No exemption from sales and use tax is available to the extent that the respective dump trucks are ever used to haul “raw materials.”

No exemption from sales and use tax is available for dump trucks if the construction contractors do not produce “hot mix asphalt.”

No exemption from sales and use tax is available for graders, rollers, distributors, front-end loaders, and other construction equipment.

Actual records must be maintained to document the exempt usage, if any.

STREETS AND SEWERS

Construction contractors acquiring construction materials for incorporation as an integral part of a public street or public water, sewage, or other utility service system are exempt from sales and use tax on the purchase of the construction materials. The public street or public utility service system must be required under an approved subdivision plot and must be accepted by the appropriate Indiana political subdivision to be publicly maintained after its completion.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner