Sales and Use Tax on Building Contractors

Definitions

Fabrication Cost – The cost to a real property contractor to fabricate an item. This cost includes direct materials, labor, and other costs that are allocated to production.

Fabricated Items – Items that contractors manufacture, produce, process, compound, or fabricate for their own use in performing contracts for improvements to real property.

Fixture – An item that is an accessory to the realty, building, other structure, or to land, that retains its separate identity upon installation, but that is permanently attached to the real property. The term "fixture" does not include titled property, machinery, or equipment.

Improvements to Real Property – The activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

Real Property – The surface land, its improvements, and fixtures.

Tangible Personal Property – Personal property that may be seen, weighed, measured, touched, or is in any manner perceptible to the senses.

Types of Real Property Contracts

Generally, transactions that involve items that are permanently installed into a structure, where the items cannot be removed without being destroyed, are classified as real property improvements.

Examples are:

- ✓ Carpeting (permanent)
- ✓ Carpentry
- ✓ Dock, pier, seawall
- ✓ Driveway
- ✓ Electrical system
- ✓ Elevator, escalator
- ✓ Landscaping
- ✓ Masonry work
- ✓ Roofing
- ✓ Tile

The purchase of materials and supplies to improve, alter, or repair land, buildings, homes, or other real property is subject to sales tax and applicable discretionary sales surtax. Real property contractors determine the taxability of purchases and sales of materials and supplies used in performing real property contracts by the pricing arrangement in the contract.

Lump sum, cost plus or fixed fee, guaranteed price, or time and materials contracts -

Contractors who perform lump sum, cost plus or fixed fee, guaranteed price, or time and materials contracts do not sell tangible personal property to the real property owner. Under these types of real property contracts, the

contractor is the final consumer of materials and supplies used in performing the contract. No sales tax is to be collected from the real property owner under these contract types.

Retail sale plus installation contracts -

These contracts are for improvements to real property where the contractor agrees to: 1) sell specifically described and itemized materials and supplies for an agreed price or at the regular retail price; and 2) complete the work for an additional agreed price or on the basis of time spent. All materials that will be incorporated into the work must be itemized and priced in the contract before work begins. The purchaser must assume title to, and risk of loss of, the materials and supplies as they are delivered, rather than accepting title only to the completed work.

Contracts to Install Fixtures -

When installing fixtures, a contractor must pay sales tax and surtax on the purchase of the fixtures and installation materials. No sales tax is collected from the customer. When deciding whether an item is a fixture, consider the:

- ✓ Installation agreement
- ✓ Method of attachment
- ✓ Intent of the parties
- ✓ Permits and licensing

Examples of fixtures:

- ✓ Built-in cabinets, counters, or lockers
- ✓ Central air-conditioning units
- ✓ Elevators and escalators
- ✓ Furnaces
- ✓ Kitchen and bathroom sinks
- ✓ Wired lighting

Contracts to Install Items that Remain Tangible Personal Property –

Contractors who install tangible personal property that remains tangible personal property must collect sales tax and surtax on the total charge. The method of installation is a factor in determining taxability. For example, a mailbox that is bricked into a post beside the road is an improvement to real property; however, when the mailbox is attached to the house or screwed into a wooden post in the ground, it remains tangible personal property.

Examples of items that remain tangible personal property after installation are:

- ✓ Carpets (except those that become real property) and rugs
- ✓ Drapes, curtains, blinds, shades, or slipcovers
- ✓ Equipment used to provide communications services installed on a customer's premises
- ✓ Garbage can receptacles
- ✓ Household appliances (except "built-in" appliances)
- ✓ Lawn markers
- ✓ Mirrors (except those that become real property)
- ✓ Portable ice machines and refrigerators
- ✓ Precast clothesline poles
- ✓ Radio and television antennas
- ✓ Stepping stones
- ✓ Window air-conditioning units

How Is Tax Calculated?

Lump sum, cost plus or fixed fee, guaranteed price, or time and materials contracts –

Contractors who purchase materials and supplies for use in a **lump sum, cost plus or fixed fee, guaranteed price, or time and materials contract** must pay sales tax and applicable discretionary sales surtax to the dealers selling them the materials and supplies. When the items are delivered to a county imposing a surtax, surtax is due at the rate imposed by that county.

Contractors purchasing materials and supplies outside Florida for use in performing these types of contracts, must pay use tax and surtax to the Department. Surtax is due at the rate imposed by the county where the items are delivered. Contractors not required to register with the Department must pay use tax on the materials and supplies purchased outside Florida; however, no surtax is due.

Contractors who manufacture, produce, compound, process, or fabricate items used in performing these types of real property contracts, must pay use tax and surtax on the fabrication cost of the items used in fabrication. When the item is fabricated for use at a manufacturing plant site located within a surtax county, surtax is due at the rate where the plant is located.

Fabrication costs include the cost of direct materials on which Florida sales tax and surtax has not been paid, labor or service costs, and transportation charges. When a contractor fabricates an item at the job site, fabrication labor is not included in the fabrication cost of the item.

Discretionary sales surtax applies to the first $5,000 of the sales amount on the sale or use of materials and supplies or on the fabrication cost for items used in performing these real property contracts. (See Rule 12A-15.008, Florida Administrative Code (F.A.C.), *Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax*.)

Retail sale plus installation contracts –

Contractors who sell materials that are specifically described and itemized in a retail sale plus installation contract must collect sales tax and surtax on the sales price of the materials. Surtax is due at the rate imposed by the county where the items are delivered.

Construction for Tax-Exempt Entities

Florida law provides that the purchase of construction materials or supplies by a contractor is subject to Florida sales tax and surtax at the time of the sale, even if the purchase is for, or on behalf of, a tax-exempt or governmental entity.

However, the tax-exempt entity may buy materials or supplies used in a real property contract tax exempt when:

- ✓ The materials and supplies are purchased directly by the tax-exempt entity. If a purchase order is issued, the purchase order must be issued by the tax-exempt entity.
- ✓ The tax-exempt entity assumes the risk of loss of the materials at the time of purchase.
- ✓ The tax-exempt entity takes title of the materials upon delivery to the jobsite.
- ✓ Any invoice or billing issued for the materials purchased must be issued directly to the tax-exempt entity.
- ✓ The tax-exempt entity provides the materials vendor a copy of its Florida *Consumer's Certificate of Exemption* (Form DR-14); or the vendor may obtain an authorization number issued by the Department to document tax-exempt sales made to the entity.
- ✓ Payment for the materials purchased must be issued by the tax-exempt entity directly to the materials vendor.

Governmental entities (excluding the federal government) must issue a *Certificate of Entitlement* to each vendor and contractor to purchase materials and supplies tax exempt for use in public works contracts. (See Rule 12A-1.094, F.A.C., *Public Works Contracts*, for a suggested certificate.) The *Certificate of Entitlement* certifies that:

- ✓ The materials and supplies purchased will become part of a public facility.
- ✓ The governmental entity will be liable for any tax, penalty, or interest due if the Department later determines that the items purchased do not qualify for exemption.
- ✓ The criteria established in Rule 12A-1.094, F.A.C., are being followed.

Who Must Register to Collect Tax?

Any contractor who:

- ✓ Sells tangible personal property must register with the Department.
- ✓ Performs real property contracts **and** sells tangible personal property at retail must register with the Department.
- ✓ Fabricates items for use in real property contracts and owes use tax on the fabrication cost of the items must register with the Department.

You can register to collect and report tax through our website at floridarevenue.com. The site will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Florida Business Tax Application* (Form DR-1). After we approve your registration, you will receive a *Certificate of Registration* (Form DR-11) and a *Florida Annual Resale Certificate for Sales Tax* (Form DR-13). If you are not filing electronically, we will mail paper tax returns to you.

The *Florida Annual Resale Certificate for Sales Tax* is used for tax-exempt purchases you intend to resell. Contractors who enter into **retail sale plus installation contracts** and sell materials to the real property owner that are specifically described and itemized in the contract may use their *Florida Annual Resale Certificate for Sales Tax* to purchase the materials tax exempt.

Contractors who perform **lump sum, cost plus or fixed fee, guaranteed price, or time and materials contracts** do not sell tangible personal property and may not purchase materials and supplies for these contracts tax exempt.

If the goods bought for resale are later used (not resold), you must report and pay use tax and surtax on those items. Florida law provides for criminal and civil penalties for fraudulent use of a *Florida Annual Resale Certificate for Sales Tax*. (See brochure GT-800060, *Florida Annual Resale Certificate for Sales Tax*.)

When Is Tax Due?

Returns and payments are due the first day of the month and late after the 20th of the month following each reporting period, whether you are filing monthly, quarterly, twice a year, or yearly. If the 20th falls on a Saturday, Sunday, or state or federal holiday, returns and payments will be timely if they are postmarked on the first business day after the 20th. **Florida law requires you to file a tax return even if you do not owe sales and use tax.**

Electronic Filing and Payment

We offer the use of our free and secure website to file and pay sales tax. You also have the option of buying software from a software vendor. For more information on electronic filing and payment options, visit our website.

You may voluntarily file and pay taxes electronically; however, if you pay $20,000 or more in sales and use tax between July 1 and June 30 (the state fiscal year), you must use electronic funds transfer (EFT) for the next calendar year to pay your taxes.

If you make tax payments using electronic funds transfer (EFT), you must initiate electronic payments no later than 5:00 p.m., ET, on the business day before the 20th.

Penalty and Interest

Penalty – If you file your return or pay tax late, a late penalty of 10 percent of the amount of tax owed, but not less than $50, may be charged. The $50 minimum penalty applies even if no tax is due. Penalty will also be charged if your return is incomplete.

Interest – A floating rate of interest applies to underpayments and late payments of tax. Current and prior period interest rates are posted on our website.

Reference Material

Tax Laws – Our online Revenue Law Library contains statutes, rules, legislative changes, opinions, court cases, and publications. Search the library for:

- ✓ Rule 12A-1.016, F.A.C. - *Sales; Installation Charges*
- ✓ Rule 12A-1.043, F.A.C. - *Manufacturing (includes fabrication)*
- ✓ Rule 12A-1.051, F.A.C. - *Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property*
- ✓ Rule 12A-1.094, F.A.C. - *Public Works Contracts*
- ✓ Rule 12A-15.008, F.A.C. - *Construction Contractors Who Repair, Alter, Improve, and Construct Real Property; Refund of Surtax*

Brochures – Download these brochures from our "Forms and Publications" page:

- ✓ *Florida's Discretionary Sales Surtax* (GT-800019)
- ✓ *Florida Annual Resale Certificate for Sales Tax* (GT-800060)
- ✓ *Sales and Use Tax on Repair of Tangible Personal Property* (GT-800010)
- ✓ *Sales and Use Tax on Mobile and Manufactured Home Repairs and Improvements* (GT-800069)

Contact Us:

Information, forms, and tutorials are available on our website at floridarevenue.com.

To speak with a Department representative, call Taxpayer Services 8:00 a.m. - 5:00 p.m. ET, Monday through Friday, excluding holidays, at 850-488-6800.

To find a **taxpayer service center** near you, go to: floridarevenue.com/taxes/servicecenters

For a written replies to tax questions, write to:

Taxpayer Services - MS 3-2000
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0112

Get the Latest Tax Information:

Subscribe to Receive Email Alerts from the Department.

Subscribe to receive an email for due date reminders, Tax Information Publications (TIPs), or proposed rules. Subscribe today at floridarevenue.com/dor/subscribe.