

8130.1200 SALES OF BUILDING MATERIAL, SUPPLIES, OR EQUIPMENT.

Subpart 1. **General rule.** Under Minnesota Statutes, section 297A.61, subdivision 4, paragraph (d), sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders constitute retail sales and are thus taxable.

A. The term "building materials, supplies, and equipment," as used in these rules, refers to property intended to become part of a new building, structure, road or an addition, repair, improvement, or alteration to roads or real estate. A partial list of such materials includes gravel, blacktop, bricks, cement, steel beams and rods, electrical supplies, glass, woodwork, paint and paint supplies, pipes and valves, aluminum sheathing, wood and composition sheathing, lumber, plastics, roofing, and wallboards. Other property usually incorporated into a building or other types of real property includes lighting fixtures, plumbing and bathroom fixtures, furnaces, boilers and heating units for space heating, prefabricated cabinets, and central air conditioning units (for space cooling).

B. The term "real property" includes structures that are permanently affixed to real estate, such as buildings, fixtures, machinery, fences, railroad tracks, grain elevators, bridges, storage bins, silos, outdoor advertising signs, and billboards.

C. Other types of equipment may be incorporated into a new structure or added to an existing structure undergoing repairs, alterations, or improvements in order to enhance the attractiveness of the structure or to increase its rental or sales value. Examples of such equipment are built-in dishwashers, stoves and ranges, garbage disposal units, and air-conditioners installed in openings in outer walls.

Subp. 2. **Contractors and construction activities.** Contractors are generally classified into two broad groups: general contractors and subcontractors.

A. A "general contractor" is a person who contracts to furnish the necessary materials and labor for the performance of a construction contract, and generally is one who contracts to build the entire project or a major portion thereof, or who contracts to install special building equipment, or who repairs or remodels a limited area in a structure at a price that includes machinery, equipment, and installation charges. The person for whom the general contractor performs the work is generally the owner.

B. A "subcontractor" is a person who contracts to furnish the necessary materials and labor for the completion of a portion of the general construction contract at the job site. The subcontractor ordinarily contracts with the general contractor to perform a certain part of the work which the general contractor has undertaken to perform under the general construction contract.

C. The terms "contractor" and "subcontractor" are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or

equipment to construction contractors, for delivery at the job site without any requirement that they install such tangible personal property.

D. The term "construction contract" as used herein refers to a contract under the terms of which a contractor agrees to perform construction activities resulting in an alteration, repair, or improvement of real property. Where machinery or equipment is attached to real property in such a manner and with the intent that it becomes a nontemporary accession to the real property, the contract pursuant to which it is attached shall be regarded as a "construction contract." Any attachment of property by or for a lessor thereof to realty not owned by the lessor where the lessor retains title and ownership of the property shall be considered a temporary accession to the real property and such property therefore retains its character as tangible personal property.

The term "construction contract" shall not include any contract for a sale of machinery or equipment which the seller, pursuant to the contract, will attach to or install upon real property if:

(1) the machinery or equipment is of such size and installed in such a manner that it retains its character as personal property; or

(2) the purchaser is not the owner of the real property to which the property will be attached, and the machinery or equipment can be removed without material injury to the realty; or

(3) the title to the machinery or equipment passes from the seller to the purchaser prior to attachment to or installation on the real property.

E. Such construction activities do not include the sale and installation of an appliance, machinery, equipment, or other item of tangible personal property in such a manner as not to become a permanent part of the real estate. Computers shall be considered to retain their classification and identification as personal property when installed because of such factors as industry standards, custom and practice, usage, and uniqueness. Where a fixed price or lump sum construction contract provides for the incidental transfer of certain tangible personal property and the contractor sells such items only as a part of the construction project, the contractor is not regarded as a retailer provided that such personal property comprises an insubstantial portion of the total contract price.

Example 1. A dealer agrees to replace the old refrigerators with new models in a four-unit dwelling. The sale and installation of the refrigerators does not constitute a construction contract. The transaction represents a sale at retail to the owner of the four-unit dwelling.

Example 2. A computer manufacturer sells and leases computers and also installs them on the customer's property. The sale or lease of a computer, regardless of size, is a sale or

lease of tangible personal property and the installation does not constitute a construction contract.

Example 3. A leasing company purchases a piece of equipment from company A and leases it to company B. Company A installs the equipment on the property of company B. The sale and installation of the equipment does not constitute a construction contract, since the owner of the equipment is not the same as the owner of the property to which the equipment was installed. The equipment is considered to be tangible personal property and the leasing company purchases the property exempt for resale and collects the sales tax on the lease payments from company B.

Subp. 3. **Construction contracts with exempt entities.** For construction contracts with exempt entities:

A. The exemption from the tax on the sale of tangible personal property to the United States, as well as to corporations and other institutions exempt under Minnesota Statutes, sections 297A.67 to 297A.71, does not extend to building materials, supplies, and equipment purchased by a contractor under an agreement to erect a building or to alter, repair, or improve real estate for such exempt entity unless the sale is specifically exempted under section 297A.71. However, purchases of such building materials, supplies, and equipment by exempt entities are exempt from the sales and use tax.

Example. A school district enters into a contract with a contractor for school construction. The contractor purchases materials for this job from various suppliers. The construction is clearly an alteration or improvement to real property with material purchased by the contractor for use in constructing the school. These transactions constitute retail sales and are subject to the sales tax. Had the school district purchased the materials directly, the purchase of the materials by the school district would have been exempt.

B. If an exempt entity has entered into a fixed price construction contract which covers the complete structure including the materials, and the exempt entity furnishes some or all of the materials to the contractor for a credit against the contract price, a taxable sale occurs when the exempt entity transfers the materials to the contractor.

Example. A school district enters into a contract with a contractor for the construction of a school building. The contractor not only specified the price at which the contractor agreed to deliver the completed school, but made known to the school district the portion of the total cost of construction allocated to building materials and supplies. In addition, the contractor furnished the school district with the names of the several suppliers and the descriptions and price of each item or items furnished by each of such suppliers. Thereafter, the school district purchased the specified items at the price furnished by the contractor and made payments from its own funds to the suppliers. The material and supplies so purchased were thereafter delivered to the contractor and, in return, the school district received credit against the contract price for the payments made by it.

Although the initial purchase of the material and supplies by the school district is exempt, the transfer to the contractor is a transfer of title or possession and taxable as such for the following reason: the contractor has agreed to deliver a completed structure which necessarily includes the materials; during construction of the building the materials will be in the possession of the contractor, who bears the risk of any loss of such materials during construction; and a portion of the contract price is correspondingly reduced by the cost of the materials paid to the supplier by the school district.

C. The transfer of building materials by an exempt entity to its contractor for use in connection with a contract for the erection, alteration, repair, or improvement of realty is not deemed a retail sale (and is thus exempt from the sales or use tax) provided:

- (1) the contract is for labor only;
- (2) all incidents of ownership to the building materials remain in the exempt entity at all times;
- (3) the contractor bears no responsibility for inherent defects in the building materials; and
- (4) the contractor bears no risk of loss of any of the building materials.

D. An exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, may appoint and designate the contractor as purchasing agent for such exempt entity in connection with the construction contract. In such situations the department will recognize the agency relationship asserted only if the written contract clearly sets forth:

- (1) that such appointment has been made;
- (2) that title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the owner or principal at point of delivery;
- (3) that the risk of loss with respect to such materials and supplies is that of the owner or principal; and
- (4) that the owner or principal, and not the agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner.

In the event that the contract in question does not specify as to risk of loss, other competent evidence, such as insurance coverage, will suffice.

Any contractor who has been appointed agent for the purchase of materials and supplies, as specified above, shall furnish adequate notification to all vendors and suppliers of such agency relationship and shall make it clear to such vendors that the obligation for

payment is that of the owner and not the contractor-agent. All purchase orders and other documents furnished to the vendor shall clearly reflect the agency relationship.

Subp. 4. **Contractor-retailer.** A "contractor-retailer" is a person using building materials, supplies, and equipment in the performance of construction contracts, and in addition, is engaged in making retail sales of building materials, supplies, and equipment.

A. A sale by a contractor-retailer of building supplies, materials, and equipment which sales does not provide for installation of the merchandise sold is a sales at retail.

B. A sale by a contractor-retailer of building supplies, materials, and equipment which sale provides for installation of the merchandise is a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials. Two separate contracts executed contemporaneously by a contractor-retailer providing individually for the sale and installation of building materials, supplies, and equipment shall be considered to be a single unified construction contract if that was the intent of the parties as evidenced by their actions. A contractor-retailer who enters into a construction contract with an exempt entity shall pay tax based upon the cost of materials.

C. A contractor-retailer sells property under both of the following two circumstances.

(1) When certain property is sold without providing for installation, the sale constitutes a sale at retail. For example, the sale by a plumbing contractor of a water heater without installation is a sale at retail.

(2) When a contractor-retailer sells certain property either installed or without installation, at the purchasers' option, and such property is sold with installation which causes it to become incorporated as a part of the realty, that sale shall be regarded as a construction contract and tax shall be paid by the contractor-retailer upon the cost of materials. For the purposes of such a transaction, retailer is deemed to be contractor and the purchase of the supplies and equipment used in installing the property constitutes a retail sale to the contractor.

D. Persons primarily engaged in the making of retail sales of building materials, supplies, and equipment used in construction, alteration, repair, or improvement of real property, and who are also engaged as contractors in building, altering, repairing, or improving real property, shall report and pay their sales or use tax liability in accordance with the following.

(1) If at the time such person makes a purchase of specific items and knows of the use to which such items are to be put, the person shall either:

(a) furnish an exemption certificate if such items are being acquired for the purpose of resale; or

(b) pay the sales tax to the seller if the items in question are to be used by such person in the construction, alteration, repair, or improvement of real property.

(2) If at the time such person makes a purchase of certain items but does not know the precise utilization of such items, and if business activities during the prior calendar year reflect that 50 percent or less of such purchases were sold at retail, then the person shall pay the sales tax to the supplier on all such purchases. If the person later sells any of such items at retail, he or she may take a proper deduction on the sales and use tax return.

(3) If the person's business activities during the prior calendar year reflect that more than 50 percent of such purchases were sold at retail, he or she may use a fully completed resale exemption certificate for the purchase of all such items.

E. The accounting records of a contractor-retailer must clearly reflect the use made of items purchased for both the preceding and current calendar year. These records must be in such form that the commissioner may determine readily that the proper sales and use tax liability is being reported and paid.

Example 1. In March, a contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. As primarily a contractor, the contractor-retailer paid the sales tax due. During this same month, the contractor-retailer sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. The contractor-retailer reports gross receipts from retail sales of \$675. The sales tax due and owing from the contractor-retailer is \$43.88 (6.5 percent of \$675). Since the contractor-retailer is entitled to offset the tax paid on the property sold at retail, the following calculation is made for the sales and use tax reported for the month of March:

Gross sales	\$ 675.00
Deductions	\$ 500.00
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Net sales	\$ 175.00
Purchases subject to use tax	\$ -0-
Total taxable amount	\$ 175.00
Total tax due	\$ 11.38

Deductions are calculated as follows:

Cost of goods sold:

2 bathtubs at \$150.00 each	\$ 300.00
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5 bathroom sinks at \$40.00 each	\$ 200.00
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Total cost of goods sold	\$ 500.00

Example 2. A contractor-retailer purchased ten bathtubs at \$150 each and 20 bathroom sinks at \$40 each. Being primarily a retailer, the contractor-retailer paid no tax at time of purchase, but gave the supplier an exemption certificate. Thereafter, in March, the contractor-retailer sold at retail two bathtubs at \$200 each and five bathroom sinks at \$55 each. In addition, the contractor-retailer utilized three bathtubs and six bathroom sinks in contracting activities. The contractor-retailer makes the following calculation for the sales and use tax reported for the month of March (for purposes of this example, it is assumed that in March no other sales were made at retail and no other material, etc., were used in contracting activities):

Gross sales	\$ 675.00
Deductions	\$ -0-
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Net sales	\$ 675.00
Purchases subject to use tax*	\$ 690.00
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Total taxable amount	\$ 1,365.00
Total tax due	\$ 88.73

*The amount subject to use tax is calculated as follows:

3 bathtubs purchased at \$150 each	\$ 450.00
6 bathroom sinks purchased at \$40 each	\$ 240.00
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Total	\$ 690.00

Subp. 5. [Repealed, L 2005 c 151 art 7 s 23]

Subp. 6. [Repealed, L 2005 c 151 art 7 s 23]

Statutory Authority: *MS s 14.388; 270C.06; 297A.29*

History: *17 SR 1279; L 2005 c 151 art 1 s 114; art 7 s 23; 31 SR 449*

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