



Sales and Use Tax on Construction, Improvements, Installations and Repairs

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In Florida, the taxing of property improvements, installation, and repairs varies according to the exact nature of the transaction.

This publication can help you determine:

- If you need to pay sales and use tax when you buy parts and materials.
- If you need to charge tax to your customers.

It will also explain what documentation you need to buy parts and materials tax-exempt.

Definitions

Real property — The land, its improvements, and fixtures; also called “realty” and “real estate.”

Improvements to real property — include the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

Fixture — An item that is permanently attached to the realty, building, other structure, or land, that keeps its separate identity after installation. All repairs are treated as repairs to real property. The term “fixture” does not include titled property, machinery, or equipment.

Tangible personal property — Personal property that you can see, weigh, measure, touch, or is in any manner perceptible to the senses, but not permanently attached to real property.

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

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

Real Property

Generally, transactions that involve items that are permanently installed into a structure, where they cannot be removed without destroying them, are classified as real property and are not subject to sales tax. You should also consider the pricing arrangement in the contract when determining whether to charge tax.

Examples of Real Property

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

Types of Contracts

Under **lump sum, cost plus, fixed fee, guaranteed price, or time-and-materials real property contracts**, the contractor is the final consumer of materials and supplies and:

- Must pay sales tax to suppliers on all purchases, including those made for the contractor's own use.
- Should not charge tax to the customer.

Contractors who perform taxable fabrication must pay use tax on the fabricated cost of the items fabricated. When calculating use tax on the cost of items of tangible personal property manufactured, produced, compounded, processed, or fabricated, the contractor should:

- Include the cost of the direct materials used to fabricate an item if the contractor did not pay tax to the materials vendor on the purchase of the materials.
- Exclude the cost of the direct materials if the contractor paid tax when it purchased the materials.

Retail sale plus installation contracts are contracts for improvements to real property where the contractor or subcontractor lists and prices in the contract **all materials** to be used **before** the work begins. The contractor or subcontractor also must agree to:

- Sell specifically described and listed materials and supplies at an agreed price or regular retail price, **and**
- Complete the work for either an additional agreed price or based on time used.

Since the sale of the materials is a separate transaction from the installation, the customer must assume title and risk the loss of the materials and supplies as delivered, rather than accepting only title to the completed work.

A contractor who performs retail sale plus installation contracts:

- Should buy the materials tax-exempt for resale.
- Should charge the customer tax on all materials.

Use of Materials

Tax is due on the use of goods by the contractor. The contractor is responsible for the tax if sales tax was not paid at the time of purchase.

Contractors may manufacture or fabricate a finished product from raw materials for use in a contract. Contractors owe tax on the manufactured cost of such products. For example, a cabinet maker/installer must pay sales tax on the manufactured cost of the cabinet.

If a contractor fabricates a product at the job site, fabrication labor is exempt from tax. Only the cost of the materials is subject to tax.

Construction for Tax-Exempt Entities

The contractor cannot use an entity's tax-exempt status to purchase materials used under a construction contract for the entity. Contractors owe tax on these purchases. However, the tax-exempt entity may buy the materials directly from the materials vendor and pay no tax when certain conditions are met:

- The tax-exempt entity must issue its purchase order and a copy of its exemption certificate, and make payment directly to the materials vendor.
- The vendor must directly invoice the tax-exempt entity.
- The tax-exempt entity must take title to the materials upon delivery to the jobsite; it must assume the risk of loss of the materials at the time of purchase.
- The seller of the materials or supplies must receive a purchase order and a copy of an exemption certificate issued directly from the tax-exempt entity **before** shipment or delivery. If the vendor does not receive this documentation, the vendor must collect sales tax from the contractor who placed the order.

Effective January 2, 2011, governmental entities (excluding the federal government) must issue a Certificate of Entitlement to each vendor and contractor to purchase supplies and materials tax-exempt for use in public works contracts. 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.

For more information, see Tax Information Publication 10A01-18. The contractor cannot reverse and/or rebill an otherwise taxable purchase after shipment or delivery.

Tangible Personal Property

Generally, when installing or repairing tangible personal property, parts and labor are taxable. If the job is "labor only" it is not taxable, but the repairer must document that no parts or other items were incorporated into or attached to the repaired item.

Examples of Tangible Personal Property

- Carpets (except those that become real property) and rugs
- Computer system components
- Drapes, curtains, blinds, shades, slipcovers, etc.
- Freestanding shelving
- Furniture and mirrors
- Garbage receptacles
- Household appliances (unless built-in and wired)
- Lawn markers and stepping-stones
- Machinery and equipment
- Portable ice machines and refrigerators
- Precast clothesline poles
- Telephone and telegraphic equipment
- Television satellite dishes and TV and radio antennas
- Window air-conditioners

Sometimes, 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. But if the mailbox is attached to the house or screwed into a wooden post in the ground, it is tangible personal property.

Taxes on Installation of Tangible Personal Property

Contractors and manufacturers who provide and install items of tangible personal property are considered to be retail dealers and:

- Should buy the materials tax-exempt for resale.
- Should charge sales tax on the full price, including installation, materials and any other charges.

Taxes on Repairs and Improvements to Tangible Personal Property

When repairing or improving tangible personal property, the repairperson:

- Should buy the repair materials tax-exempt for resale.
- Should charge the customer tax on labor and materials, if parts are used in the repair.

Parts and Materials

A repairperson may buy materials and parts tax-exempt if the materials and parts become part of the tangible personal property being repaired. These include welding rods, solder, paint, thinner, oil, bolts, nuts, etc. Materials used to make the repair that **do not** become a part of the property are taxable to the repairer as overhead items. These include tools, sandpaper, steel wool, flux, detergents, etc.

Repair Labor Only

Charges for repairs of tangible personal property needing only labor or service are not taxable. The repairperson must keep documentation to prove no tangible personal property was joined with or attached to the repaired item. Sales tax applies even if the parts are provided at no charge.

Charges for fabrication are taxable. Fabrication occurs when material is cut, threaded, shaped, bent, welded, sheared, punched, drilled, machined, or is changed from its original state, because of work performed on it.

Repairs Shipped In/Out of State

When tangible personal property is shipped into Florida, repaired, and then shipped back to its owner outside the state by common carrier or mail, the amount charged for the repair is exempt. If the tangible personal property is sent out of Florida to be repaired and then returned to Florida, the transaction is taxable.

Maintenance or Service Warranty Contracts

Maintenance or service warranty contracts covering taxable, tangible personal property are taxable. A service warranty is defined as any contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. This does not include contracts or agreements covering tangible personal property that becomes a part of real property. The sale of an extended warranty for the maintenance, repair, or replacement of tangible personal property that is not incorporated into real property is subject to sales tax.

Commercial vs. Residential Appliances

Commercial appliances (such as dishwashers, stoves, and refrigerators) are considered machinery and equipment when used in a business. The contractor should charge the customer tax on the appliance and labor.

Free-standing residential appliances are tangible personal property. The contractor should charge the customer tax on the appliance and labor.

Hard-wired/permanently installed residential appliances become real property. The contractor should pay tax when buying the appliance and should not charge the customer tax on the appliance or labor.

Fixtures

When installing fixtures, the contractor:

- Should pay sales tax when buying the materials.
- Should not charge the customer tax on materials or labor.

Types of fixtures include:

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

When deciding whether an item is a fixture, consider:

- Method of attachment
- Intent of the parties
- Real property law
- Customization
- Permits and licensing
- Legal agreements

Mobile Home Repairs and Improvements

The contractor needs to look at the actual repair job to determine if the repair is to real property or tangible personal property. To determine how sales or use tax applies to a job, check the decal that is on the home.

- If the mobile home has an “RP” (real property) decal, it is considered real property.
 - ✓ Repairs to the actual mobile home or permanent attachments, including built-in appliances, are treated as the repair of real property.
 - ✓ The repairperson should pay tax on all materials used to complete the repair. The customer should not be charged tax.
- If the mobile home has an “MH” (mobile home) decal, all repairs, permanent attachments, and built-in appliances are treated as the repair of tangible personal property. This includes repairs to the roof, plumbing, and central air-conditioning system.
 - ✓ The repairperson should buy the materials tax-exempt for resale and charge tax to the customer on the entire repair bill (including labor) unless the repair invoice shows no parts were used (job is labor only).
- A mobile home with no MH or RP decal is treated as tangible personal property.
 - ✓ The repairperson should buy the materials tax-exempt for resale and charge tax to the customer on the entire repair bill (including labor) unless the repair invoice shows no parts were used (job is labor only).

Who Must Register to Collect Sales Tax?

Persons who are in the business of repairing tangible personal property should register as a dealer to collect sales and use tax and discretionary sales surtax. Discretionary sales surtax is a sales tax imposed by most Florida counties.

Contractors should not register unless they must pay tax on the cost of items made (fabricated) for use in fulfilling contracts. However, a contractor who performs real property contracts **and** sells tangible personal property at retail must register as a dealer.

You can register to collect and/or report tax through our Internet site. 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 *Application to Collect and/or Report Tax in Florida* (Form DR-1).

After we approve your registration application, you will receive a *Certificate of Registration* (Form DR-11), an *Annual Resale Certificate* (Form DR-13), and your tax return forms.

Buying Materials and Parts Tax-Exempt

The *Annual Resale Certificate* allows you to buy materials and parts tax-exempt that you intend to resell or incorporate into the finished product. You must give a signed copy of your current *Annual Resale Certificate* to your supplier when making purchases for resale.

If materials bought for resale are later used (not resold), you must report and pay use tax on those items, plus any applicable discretionary sales surtax, penalties and interest. There are additional liabilities for intentional misuse of a resale certificate.

If a contractor purchases materials from an out-of-state business that is not registered to collect Florida sales tax, the contractor is liable for use tax and surtax when the materials are imported into Florida.

What Is The Tax Rate?

Florida's sales tax rate is six percent; however, there is a "bracket system" for collecting sales tax on any part of a sale that is less than a whole dollar. Most Florida counties levy a discretionary sales surtax on transactions that are subject to sales and use tax. Dealers must collect the surtax along with the sales tax.

Discretionary Sales Surtax

The discretionary sales surtax rate depends on the county.

- When making a repair, calculate the surtax using the tax rate of the county where the repair is done.
- When making real property improvements, calculate the tax using the tax rate of the county in which the consumer, usually the contractor, takes delivery of the tangible personal property.
- For retail sale plus installation contracts, calculate the tax using the tax rate of the county in which the improvements or repairs take place.
- If a contractor pays use tax for using materials to fabricate items at the contractor's shop, calculate the tax using the tax rate of the county in which the fabrication occurs.

You can get a *Discretionary Sales Surtax* brochure (Form GT-800019) and a list of surtax counties and rates (Form DR-15DSS) from our Internet site at www.myflorida.com/dor.

For More Information

Visit our web site at www.myflorida.com/dor to learn more.

Read these brochures:

- *Florida's Sales and Use Tax*
- *Florida's Discretionary Sales Surtax*
- *Sales and Use Tax on Repair of Tangible Personal Property*
- *Sales and Use Tax on Mobile and Prefabricated Home Repair, Remodeling, and Additions*

View tutorials on filing and paying sales tax.

Visit our online Tax Law Library to read:

- Rule 12A-1.006, Florida Administrative Code; *Charges by Dealers Who Adjust, Apply, Alter, Install, Maintain, Remodel, or Repair Tangible Personal Property.*
- Rule 12A-1.051(2),(17),(18), F.A.C.; *Sales to or by Contractors Who Repair, Alter, Improve and Construct Real Property.*
- Rule 12A-1.016 (3)(b), F.A.C.; *Sales; Installation Charges.*
- Rule 12A-1.043, F.A.C.; *Manufacturing* (includes fabrication)
- Rule 12A-1.105, F.A.C., *Service Warranties.*
- Rule 12A-1.094, F.A.C., *Public Works Contracts.*