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Sales Tax Information for Sales, Installation and Repair of Tangible Personal Property Attached to Real Property



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Introduction

This publication provides sales tax information relating to sales, installation and repair of tangible personal property attached to real property. See Publication 25 for general sales and use tax information.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede information in this publication.

Real Property

Construction materials and fixtures become real property when used in building construction or real property improvements. Construction materials (bricks, lumber, nails, cement, etc.) typically stop being personal property once they are converted to real property.

Fixtures (furnaces, built-in air conditioning systems, hot water heaters, water softener systems, water filtration systems, sinks, tubs, etc.) become part of the real property after installation because they are an essential part of real property improvement.

Gas, water and electrical lines serving manufacturing equipment are viewed as real property because they usually also serve the property where the manufacturing equipment is housed. For example, the electrical system that supplies manufacturing equipment also usually powers the lights and the office computers. Since the system is an essential part of the real property, it is treated as real property for sales tax purposes. However, if utility service is installed just for the operation of the equipment (and run through a separate meter), the system is not a part of the real property.

Utility lines and pipelines are generally considered real property if they are underground or permanently attached aboveground. The taxability of other utility line or pipeline materials depends on whether they become real property upon installation or remain personal property. See Rule R865-19S-58.

Buildings are considered real property if they are permanently attached to real property, such as a concrete or steel foundation. A foundation is defined as the base of the building that is embedded below the surface of the soil. Buildings that can be moved without serious damage to either the structure or the real property are considered personal property. Even if buildings are rarely or never moved, they remain personal property unless they are attached to the land.

An item that serves a trade or business is considered part of real property if the building is specially designed for the item. For example, a grocery store is built with troughs in the floor to hold refrigeration cases. Or a building may be designed to house a hydraulic hoist which is withdrawn beneath the floor when not in use.

Who Must Collect and Pay Sales Tax

A person who sells personal property to a final consumer must collect tax on the sale. The sale of personal property that has been converted to real property is not subject to sales tax. The person who converts the property to real property must pay tax on the purchase of the material.

An example of personal property converted to real property is a furnish-and-install contract. Under a furnish-and-install contract, a seller converts tangible personal property to real property (the seller becomes a real property contractor). The contractor is the last person to own the materials as tangible personal property. The contractor must pay sales tax on the purchase of the materials, while the transaction between the contractor and the real property owner is not taxable. But, if the property owner purchases construction materials for use by a third-party contractor, it is the property owner and not the contractor who must pay the sales tax. The following examples show the difference.

Example 1:

A homeowner hires a contractor to remodel a basement. Under a furnish-and-install contract, the contractor buys all the building materials and installs them. The contractor must pay sales tax on the purchase of the building materials because the contractor is the last one to own them before they are converted to real property. The contractor then sells the finished real property improvement to the customer. Since sales of real property improvements are not taxable, the contractor's charge to the homeowner is not taxable.

Example 2:

A homeowner hires a contractor to remodel a basement. Under their agreement, the homeowner buys all the building materials and makes them available to the contractor. The homeowner must pay sales tax on the purchase of the building materials.

Example 3:

A seller sells and installs storm doors. The seller also sells doors to homeowners for do-it-yourself installation. When the seller installs a door, the seller is acting as a real property contractor because the door is converted to real property. As a real property contractor, the seller must pay sales tax on the purchase of the door, but charges to the homeowner are not taxable. When the seller sells a door but does not install it, the seller should buy the door tax-free for resale and collect sales tax from the homeowner.

Example 4:

A seller who sells and installs wall-to-wall carpet must pay sales tax on purchases of installation materials. When installed, wall-to-wall carpet becomes part of the real property because it is specially fitted to the structure and is usually meant to remain in place over its useful life. If the seller sells carpeting to a homeowner for installation by the homeowner (or someone else working for the homeowner), the homeowner must pay the sales tax. Carpet tiles also become part of real property after installation. Unattached floor coverings such as throw rugs or oriental carpets remain personal property.

In each of these examples, the contractor must pay sales and use tax on the purchase of an item the contractor sells and installs.

Purchases of Construction Materials for Resale

A contractor must buy construction materials for resale tax-free and collect sales tax from the end consumer if the items are sold as tangible personal property. But the contractor must pay use tax on the purchase of the item if the contractor buys construction materials tax-free for resale, then uses them for personal use or converts them to real property through an installation.

Some contractors engage in both types of transactions, as in the case of a contractor who sells and installs storm doors, but also sells doors directly to customers for installation by someone else.

See Rule R865-19S-58.

Incorrect Practices

A contractor who sells tangible personal property under a furnish-and-install contract may not:

1. collect sales tax on the transaction;
2. offset the sales tax owed on the contractor's purchase of the tangible personal property by any sales tax the contractor incorrectly collected on the furnish-and-install contract; or
3. show the tax owed on the contractor's purchase of construction materials (or any amount that appears to be tax) as a separate item on a customer invoice or contract.

A contractor that incorrectly collects sales tax on property sold under a furnish-and-install contract must pay that tax to the Tax Commission, unless the tax is refunded to the buyer.

Personal Property Permanently Attached to Real Property

The above rules do not apply to sales of items that remain tangible personal property after they are attached to real property. Sales of tangible personal property attached to real property are taxable to the last buyer.

Tangible personal property is considered permanently attached to real property if it must be attached to function correctly and it will remain attached over its useful life. This includes an accessory which is essential to the operation of the tangible personal property. Often, removing permanently attached personal property would seriously damage it or require a major repair of the real property. Permanently attached personal property may be temporarily removed for repair or renovation onsite and still be considered permanently attached.

Permanently attached personal property does not include movable tangible personal property that is attached for convenience, stability or an obviously temporary purpose.

Tangible personal property that is considered permanently attached to real property includes:

- A television antenna or satellite dish, even if it's attached to a house and its wiring is dropped inside. A property owner may or may not remove items like these upon sale of the property. Sales tax is due on the homeowner's purchase of a satellite dish or antenna, even if the seller installs it.
- Above-ground tanks attached to real property, unless they are attached to the real property in a way that they become real property.
- Property attached to oil, gas or water pipelines.

The following items are not considered tangible personal property permanently attached to real property:

- A dishwasher, refrigerator, freezer, microwave, stove, washer, dryer or similar appliance.
- Manufacturing machinery and equipment (including accessories and repair parts), even if the machinery or equipment is attached to real property. A manufacturer can buy or lease manufacturing equipment tax-free upon giving the seller an exemption certificate. Replacement equipment is eligible for an exemption.
- Trade fixtures. Unlike real property fixtures discussed above, trade fixtures can vary from one tenant to another without major change to the building. Examples of trade fixtures include dress racks, display cases, barber chairs, dental chairs and physician tables.

Repair

Sales tax applies to charges for labor and parts to repair tangible personal property. If the item has been permanently attached to real property, the separately-listed labor charges are not taxable. However, charges for the repair parts are taxable.

A dishwasher, freezer, microwave, refrigerator, stove, washer, dryer or similar appliance is not considered permanently attached even when affixed to real property and all repair charges are subject to tax.

If an item is permanently attached to real property, its accessories are also considered permanently attached if they are a necessary part of the item and are installed only to serve the operation of the item.

An item attached to real property may be removed for on-site repairs, but if it is repaired off-site, it reverts to tangible personal property and the repairs are taxable.

Example 1:

A repairman services a built-in refrigerated meat counter in a grocery store. It is attached to the building and should remain in place over its useful life. The building was designed to house the case and moving it would cause major remodeling or repair of the building. Charges for labor to repair the case are not taxable. However, the repairman must collect sales tax on charges for repair parts.

The compressor, control panels, water lines and electrical lines that serve the case are also considered permanently attached to real property. The repairman treats the entire system as a unit.

If the repairman temporarily removes the case from the floor for an on-site repair, labor charges are non-taxable. If the case is removed and repaired off-site, the repair is considered a repair to tangible personal property and the entire charge for parts and labor is taxable.

Example 2:

A repairman services a portable refrigeration case in a grocery store. The case sits in an aisle near an electrical outlet. It may be shifted easily from place to place as needed, but when used it is screwed into the floor so it will not fall or move. The case is not permanently attached and charges for labor to repair it are taxable. The repairman must collect sales tax on charges for repair parts.

Example 3:

A repairman services a built-in dishwasher. Even though the dishwasher is affixed to real property it is not considered permanently attached. Charges for labor and parts to repair the dishwasher are subject to sales tax.

Installation

Charges for labor to install tangible personal property to real property are not subject to sales tax, even if the personal property is not actually converted to real property. The exemption for installation charges only applies if the charges are listed separately on the invoice.

Example 1:

An installer screws a piece of manufacturing equipment into the floor. Even though the connection does not convert the equipment to real property, the installation charges are exempt if listed separately. If the installer merely plugs the equipment into an electrical outlet, the connection to the real property does not qualify for this exemption.

Example 2:

A dealer sells a satellite dish and attaches it to the customer's home. Although the satellite dish is not converted to real property, charges for labor to install it to the real property are not taxable if listed separately. In this case, the sale of the dish is taxable (because it is tangible personal property), but the labor charges to install it are not taxed.

Example 3:

A dealer sells and installs insulation on above ground pipes that are attached to real property but are not part of the real property. Because the above ground pipes are permanently attached to real property, the charges for the installation are not taxable if listed separately on the invoice. Charges for the sale of the insulation are subject to tax.

Fabrication

Charges to fabricate tangible personal property are taxable and must be included in the sales price, before tax is calculated.

Example:

A dealer uses construction materials to create sections of fence that will be sold through a home improvement center. The finished product is tangible personal property and sales tax is calculated on the total sales price, including labor and materials.

See Tax Commission Rule R865-19S-51.

Washing or Cleaning

Sales tax applies to charges for washing or cleaning tangible personal property, including tangible personal property permanently attached to real property. Charges for cleaning and washing real property are not subject to tax.

Sales of Construction Materials to Tax-Exempt Organizations

This section covers government agencies, public transit districts, subcontractors of public transit districts, public schools and religious or charitable organizations.

Sales of construction materials made directly to federal government agencies are exempt from sales tax if the federal agency pays the seller directly.

Sales of construction materials to State of Utah agencies and Utah local governments (counties, or cities, etc.) are exempt from sales tax if the agency pays the seller directly and the items are converted to real property by employees of the government entity. The buyer must complete an exemption certificate for the seller's tax records. No exemption is allowed for purchases by governments of other states or countries.

Sales of construction materials made directly to public transit districts are exempt from sales tax. Also, sales of construction materials to subcontractors of public transit districts are exempt if the tangible personal property is clearly identified and installed or converted to real property owned by the public transit district. A contractor must provide the supplier an exemption certificate, form TC-721G.

Sales of construction materials to public schools or religious or charitable organizations are tax exempt if bought directly by the organization or a contractor working for the organization. A contractor must provide the supplier an exemption certificate, form TC-721 (for religious or charitable organizations) or TC-721G (for public schools). The certificate must identify the contractor as the buyer claiming the exemption. In the case of an audit, the contractor must be able to show (through the contract, purchasing systems, job costing systems, etc.) that the items bought tax-free with the exemption certificate have been built into the real estate of the exempt institution.

Note: The exemption for construction materials (items that become real property upon installation) described above allows the contractor to buy materials on behalf of the institution. This exemption does not extend to items bought by the institution that remain tangible personal property even when affixed to real property. Such items may be bought tax-free by the exempt entity, so long as they are bought directly by the institution and not the contractor.

Example 1:

A public school hires a contractor to add a wing to its existing building. The contractor agrees to buy and install all building materials, including lockers and a hallway display case. The addition is specially designed with a recess in the wall where the lockers and display case will be permanently attached. In this example, the lockers and the display case will both become real property upon installation and the contractor may buy them tax free on behalf of the school.

An exemption certificate must be completed by an authorized agent of the school or by the contractor, who is authorized to buy construction materials on the school's behalf.

Example 2:

A public school hires a contractor to install two rows of free-standing lockers. These lockers do not become real property upon installation, so they are not exempt construction materials that the contractor can buy on the school's behalf. However, a contractor with a sales and use tax license may buy the lockers tax-free under the resale exemption and then sell them tax-free to the school under the exemption for sales to government entities. The contractor must give a completed resale exemption certificate to the locker vendor and get an exemption certificate, purchase order, check or voucher from the school to prove the exemption.

See Tax Commission Rules R865-19S-58 and R865-19S-78.

Sales of Construction Materials for Out-of-State Real Property Contracts

Exemption

Purchases of tangible personal property that is later made part of real property outside of Utah are exempt from sales and use tax if:

1. the other state does not charge a sales, use, gross receipts or similar tax; or
2. the other state does charge a sales, use, gross receipts or similar tax but does not allow a credit for Utah sales and use tax.

Example 1:

ABC Construction, Inc. (ABC) in Cedar City has a contract to build a restaurant in Montana. ABC buys and receives materials for the contract at its Utah facility and then ships them to Montana. Montana does not tax ABC on the materials. ABC may buy the materials tax-free.

Example 2:

ABC Construction, Inc. (ABC) in Cedar City has a contract to build a hotel in Nevada. ABC buys and receives materials for the contract at its Utah facility and then ships them to Nevada. Nevada taxes ABC on the materials and does not allow a credit for tax paid to Utah. ABC may buy the materials tax-free.

Refund

Sales tax paid between July 1, 2004 and June 30, 2008 on tangible personal property purchases that qualify for this exemption may be refunded to the buyer if the buyer has not claimed the exemption. Buyers may submit refund claims directly to the Tax Commission through June 30, 2011. Include copies of the contract, invoices or receipts showing the Utah sales tax paid and proof of payment.

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need additional information, call 801-297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster@utah.gov.

Examples

The following table contains examples to help you better understand the distinction between taxable charges for sales, installation and repair.

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Above-ground pipes that are permanently attached	Treat as personal property and taxable to the final buyer.	Nontaxable if attached to the well.	Nontaxable if attached to the well.
Automated pool cover	An automated cover for an in-ground pool is treated as real property if it is built in and specially fitted to the pool. A portable pool cover or a cover for an unattached, above-ground pool is treated as personal property taxable to the final buyer.	Nontaxable if the cover is built in and specially fitted to an in-the-ground pool and the cover must be attached to work properly.	Nontaxable if the cover is built in and specially fitted to an in-the-ground pool and the cover must be attached to work properly.
Automated teller machine (ATMs)	Treat as construction materials taxable to the contractor if built into the building. Freestanding ATM machines are treated as personal property and are taxable to the final buyer.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.
Bank vault	Treat as real property taxable to the contractor unless freestanding.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.
Cable TV lines	Generally treat as real property of the cable company (like utility lines).	Nontaxable	Nontaxable
Commercial gas dryer at a laundromat	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Commercial Gas Stove in a Restaurant	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Commercial Ice Machine at a Convenience Store	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Construction crane	Treat as sale of personal property taxable to the final buyer.	Taxable	Taxable. The item is not designed to remain at one site over its useful life.
Conveyor belt (manufacturing facility)	Treat as personal property taxable to the final buyer.	Taxable	Taxable
Custom made blinds and shutters installed by the seller (blinds or shutters fitted to the interior of the window opening that cannot be resized or moved to another window.)	Treat as sale of real property.	Nontaxable	Nontaxable
Dishwasher	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Dock leveler	Treat as real property and taxable to the contractor if constructed as part of the dock and the dock is part of realty. Treat as personal property and taxable to the final buyer if merely fastened or attached to the dock after the fact.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.
Elevators	Treat as real property and taxable to the contractor.	Nontaxable	Nontaxable
Freezer	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Hot tub	If permanently built into the building or the ground, it is treated as real property and taxable to the contractor. Treat as personal property taxable to the final customer if portable or freestanding.	Taxable unless permanently built into the building, such as a tub recessed into the floor.	Taxable unless permanently built into the building, such as a tub recessed into the floor.
Hot water heaters	Treat as real property taxable to the seller, if sold under furnish-and-install contract. If sold to the buyer for installation by someone other than the seller, treat as personal property taxable to the final buyer.	Nontaxable	Nontaxable
Lathe (manufacturing facility)	Treat as personal property taxable to the final buyer.	Taxable	Taxable
Lockers	Lockers built into the recess of a wall specially built for them are treated as real property. Freestanding lockers are treated as personal property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.
Microwave oven	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
MRI machine in a hospital	Treat as sale of personal property taxable to the property owner as final buyer.	Nontaxable if attachment, other than power supply, is necessary for the machine to work and the way it is attached suggests it will stay in the same place over its useful life.	Nontaxable if attachment, other than power supply, is necessary for the machine to work and the way it is attached suggests it will stay in the same place over its useful life.
Oil drilling rig	An oil well casing is treated as real property, but a drill rig that is moved from place to place is treated as personal property taxable to the final buyer.	Taxable	Taxable
Overhead crane (industrial plant)	Treat as sale of personal property taxable to the property owners as final buyer unless the crane is installed as part of the building construction process and the building is specially adapted to its use. In these cases, treat as construction materials.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Portable building	Treat as real property taxable to the contractor if permanently attached to a foundation. Treat as personal property taxable to the final buyer if freestanding or left on wheels or skids.	Nontaxable if attached to a foundation, pad or real property. Taxable if left on wheels, skids or freestanding.	Nontaxable if attached to a foundation, pad or real property. Taxable if left on wheels, skids or freestanding.
Printing press	Treat as sale of personal property taxable to the final buyer.	Taxable	Taxable
Residential gas barbeque	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Residential gas dryer	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Residential gas stove	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Residential refrigerator with ice maker	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Restaurant oven/grill	Treat as sale of personal property taxable to the property owner as final buyer.	Taxable*	Taxable
Safety deposit boxes	A bank of safety deposit boxes built into a recess in the wall is treated as real property taxable to the contractor.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.	Nontaxable if built into the building. Taxable if freestanding or not permanently attached to real property.
Shed/garage	Treat as sale of personal property taxable to the final buyer if freestanding or left on the shed's foundation. Treat as real property taxable to the contractor if permanently attached to a separate foundation.	Taxable if left freestanding or on its own foundation. Nontaxable if permanently attached to a separate foundation.	Taxable if left freestanding on its own foundation. Nontaxable if permanently attached to a separate foundation.
Theater seats	Treat as real property taxable to the contractor if attached during construction and if the building is specially designed for the seats.	Nontaxable if the building was specially designed for the seats and the way they are attached suggests they will stay in the same place over their useful life.	Nontaxable if the building was specially designed for the seats and the way they are attached suggests they will stay in the same place over their useful life.
Underground tank installed under "furnish-and-install" contract	Treat as construction materials taxable to the contractor.	Nontaxable	Nontaxable
Underground tank sold for installation by someone other than the seller or the seller's installer	Treat as personal property taxable to the buyer.	Nontaxable	Nontaxable
Wall-to-wall carpet	Treat as real property taxable to the seller, if sold under furnish-and-install contract or by someone working for the seller. If sold to the buyer for installation by someone other than the seller, treat as personal property taxable to the final buyer.	Nontaxable	Nontaxable

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Water filtration system (includes well pumps)	Treat as real property taxable to the seller, if sold under furnish-and-install contract or by someone working for the seller. If sold to the buyer for installation by someone other than the seller, treat as personal property taxable to the final buyer.	Nontaxable	Nontaxable
Water softener system	Treat as real property taxable to the seller, if sold under furnish-and-install contract or by someone working for the seller. If sold to the buyer for installation by someone other than the seller, treat as personal property taxable to the final buyer.	Nontaxable	Nontaxable
Window Coverings, Draperies and Rods	Treat as sale of personal property taxable to the property owner as final buyer.	Nontaxable if installation charges are listed separately.	Nontaxable if installation charges are listed separately.

*Separately stated charges to attach this item to real property are exempt.