

Utah State Tax Commission Tax and Revenue



Utah State Tax Commission

- Monthly webinars of various tax topics.
- Ability to access the recording and presentation after the event.
- Free to all attendees.



Utah State Tax Commission Monthly Webinars

tax.utah.gov/training/webinars

Tax Webinars & Videos

Each month, the Tax Commission holds live public webinars on various tax topics, with access to the recording after the event. We'll also add other training items here as needed. The links will appear below as they're available.

All webinars are held on the third Thursday of each month and begin at **10:00 a.m.**

Category/Tax Type ▼

Date	Title	Category/Tax Type	Links
Jan 19, 2023	What's new this filing season for income tax	Individual Income Tax	MP4 PDF
Feb 16, 2023	Sales Tax licensing requirements and application process	Sales Tax	MP4 PDF
Mar 16, 2023	Who needs to file a Utah Income Tax return?	Individual Income Tax	MP4 PDF
Apr 20, 2023	Sales Tax rates and how to remit taxes	Sales Tax	MP4 PDF
May 18, 2023	Income Tax residency, domicile and special instructions	Individual Income Tax	MP4 PDF
Jun 15, 2023	Basics of what is taxable and what is exempt from Sales Tax	Sales Tax	MP4 PDF
Jul 20, 2023	Income Tax Audit / Exam Process	Tax Audits	MP4 PDF
Aug 17, 2023	Sales and Use Tax on Goods Consumed	Sales Tax	MP4 PDF
Sep 21, 2023	Individual Income Tax in Taxpayer Access Point (TAP)	Taxpayer Access Point (TAP)	MP4 PDF
Oct 19, 2023	Sales Tax Treatment of Real Property vs Tangible Personal Property vs Tangible Personal Property Attached to Real Property	Sales Tax	

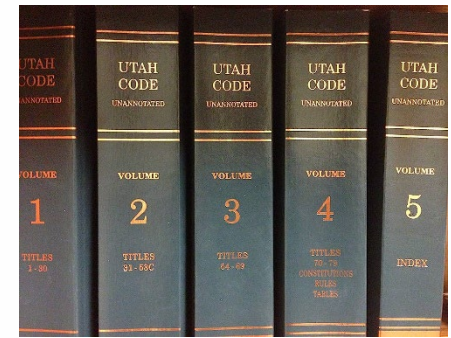


Sales Tax Treatment of Real Property vs Tangible Personal Property vs Tangible Personal Property Permanently Attached to Real Property



Utah Code and Administrative Rules

Sales and Use Tax



- Utah code references:
 - 59-12-102(33) defines “Construction Material”.
 - 59-12-102(92) defines “Permanently attached to real property”
 - 59-12-102(112) defines “Repair and renovation” excluding that done to real property or permanently attached to real property
 - 59-12-102(136) defines “Tangible Personal Property” (TPP) including things that remain TPP regardless of how it is attached
 - 59-12-104 provides several exemptions for contractors and other exemptions for construction materials that DO NOT apply to contractors.
 - 59-12-107 provides rules for accounting methods
 - 59-12-211 provides rules for sourcing transactions





Real Property



What qualifies as real property?

- ***The land itself***
 - **Exception:** Dirt, rocks, and plants that are extracted from the land and sold separately are taxable.
 - ***Permanent structures on the land***
 - A structure is considered “permanent” if attached to the real property through a sub-surface foundation of concrete or steel.
 - ***Tangible personal property that has been converted to real property***
 - Tangible items that are integrated into the land or permanent structures on the land that cannot be removed without substantial effort or damage to the land or structure.
- *Note:** *the last owner of the TPP prior to conversion must pay the sales or use tax.*



Tangible Personal Property

Sales and leases of tangible personal property, products transferred electronically, and certain services **are** taxable to the final consumer.





Tangible Personal Property



What qualifies as tangible personal property?

Tangible Personal Property is property that can be seen, weighed, measured, felt, touched, or is perceptible to the senses in any manner including:

- Electricity
- Water
- Gas
- Steam
- Prewritten software



Tangible Personal Property



What qualifies as tangible personal property?

- *59-12-102 (136) (c)* – Tangible personal property **includes** the following regardless of whether the item is attached to real property:
 - A dishwasher
 - A dryer
 - A freezer
 - A microwave
 - A refrigerator
 - A stove
 - A washer
 - An item similar to any of the above





Items That Are Converted to Real Property

- Construction material such as bricks, lumber, nails, cement, etc.
 - Stop being personal property once they are converted to real property.
- Utility lines and pipelines which are underground or permanently attached above ground.
- Buildings and other improvements converted to real property.





Items That Are Converted to Real Property



- **Fixtures**

- Furnaces, built in air conditioners, hot water heaters, water softeners, water filtration systems, and similar items regardless of how they are attached to real property – 59-12-102(136)(e)
- Sinks, tubs, toilets, doors, light fixtures, etc. that have no useful purpose when not attached to real property, are intended to be there for their entire useful lifetime, and would cause damage to the real property if removed. – 59-12-102(92)



Items that Remain Tangible Personal Property

- Items attached to real property solely for stability
 - 59-12-102(92), R865-19S-58(4)(a), PLR 05-003



Real Property vs TPP

Items that are tangible personal property then converted to real property.

- Is there sales or use tax due on the purchase of that item?
- If so, who pays it?

Sales or use tax is due from the last owner of TPP prior to conversion into real property.

Example: A contractor purchases nails in order to frame a house. The house is then sold.

- The contractor must either pay sales tax when he purchased the nails or pay use tax if he purchased the nails tax free.
- Sales tax is not due on purchase of the home.



Real Property vs TPP

Real Property	Tangible Personal Property (TPP)
Shed permanently attached to a separate foundation	Shed not permanently attached to a separate foundation
Tree in ground	Tree in a pot
Whole house air conditioner	Window air conditioner
Wall to wall carpet	Area Rug
Shutters (custom order)	Curtains
Wired in light	Plug in light
In-ground pool	Above ground pool
In-ground sprinkling system	Above ground sprinkler
Furnace	Plug in heater



Certain Services to Real Property

Certain services to real property are **not** taxable.

- Must ensure that the service is:
 - Being provided to “real property” and not tangible personal property.
 - Not temporarily attached to real property.

Reminder : The last owner of the TPP prior to conversion must pay the sales or use tax on any materials.



Certain Services to Real Property and Tangible Personal Property

Example Scenarios:

1. Certain services to ***real*** property or permanent structures on real property.
2. Certain services to ***tangible*** personal property converted to real property.
3. Certain services to ***tangible*** personal property but not permanently attached to real property.
4. Certain services to ***tangible*** personal property permanently attached to real property.



Certain Services to Real Property

Example 1:

A homeowner hires contractor to furnish and install wall to wall carpet. (furnish and install)

- When the contractor purchases the carpet it is not yet attached to real property, therefore, it is still tangible personal property.
- When the contractor installs the carpet, their install (service) converts the carpet to real property.
- Since the contractor is the last entity to own the carpet while it is still TPP, the contractor is responsible to pay sales or use tax on his cost of the carpet.
- The contractor may **not** charge sales tax to the homeowner for the cost of the carpet or install.



Certain Services to TPP Converted to Real Property

Example 2:

Are services to tangible personal property (TPP) that has been converted to real property taxable?

- Certain services to TPP that has been converted to real property are **not** taxable.
- Usually these are types of items that once installed are considered part of the structure and subsequent owners of the real property expect these items to remain.

Not converted (TPP)	Converted (Real Property)
area rug	wall to wall carpet
plug in light	wired in light fixture
curtains	custom window shutters



Services to Real Property vs Tangible Personal Property

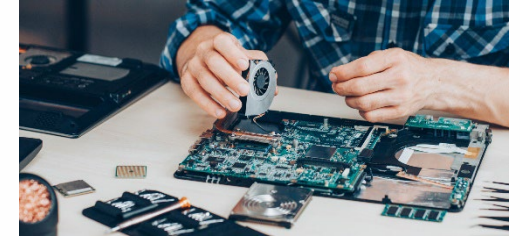
It is not the service being performed that matters, it is what the service is being performed upon that determines taxability.

Taxable Service (TPP)	Non-Taxable Service (Real Property)
Repair a shed not attached to a separate foundation	Repair a shed attached to a separate foundation
Clean or repair an above ground pool	Clean or repair an in ground pool





Taxable Services to TPP



- Labor to repair, renovate and clean tangible personal property or labor to repair, upgrade or maintain products transferred electronically *is* taxable.
 - This includes maintenance agreements.
 - Any charges or services required to complete the taxable service, are also taxable
- Assisted cleaning or washing of tangible personal property if the cleaning or washing labor is not performed by the buyer.



Taxable Services to TPP

Example 3:

A customer purchases a dishwasher from a home improvement retailer and arranges to have it delivered and installed.

- Delivery charges **are not** subject to tax if separately stated on the invoice.
- Installation charges **are not** subject to sales tax if separately stated on the invoice.
- Any later repairs, renovations or washing or cleaning of the dishwasher **are** subject to sales tax.
- A dishwasher is deemed to remain TPP regardless of how it is attached to real property. §59-12-102(136)(c)(i)
 - The charge for the dishwasher **is** taxable.
 - The same would apply for a refrigerator, stove, microwave, washer, or dryer.



Certain Services to TPP Permanently Attached

What is the tax treatment of certain services performed on tangible personal property permanently attached to real property?

- Labor charges for the installation of TPP to real property are **not** taxable if separately stated on the invoice.
- If the tangible property permanently attached is temporarily removed from the real property as part of a repair but repaired on location there is no tax on the repair.
 - If removed from site for repair then it is subject to sales tax – PLR 11-007 & 98-034



Certain Services to TPP Permanently Attached

Example 4:

Are certain services to tangible personal property permanently attached to real property taxable?

Certain services to TPP permanently attached to real property are *not* taxable.

- Although permanently attached to real property these items remain TPP.
- Replacement parts are subject to tax.

Considered converted to real property if:

- Attachment to real property is essential to use the tangible personal property (TPP); ***And***
- This type of TPP when installed becomes part of the real property. (Carpet, custom window shutters, etc..)

Does not include: Items that are attached merely for convenience, stability or an obviously temporary purpose. (television mounted on a wall)



PUBLICATION 42

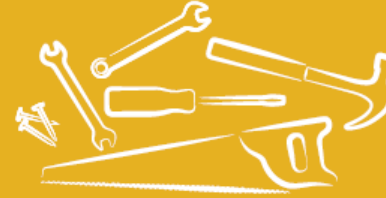
Rev. 6/23



This publication is provided for general guidance only. It does not contain all sales or use tax laws or rules.

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

Utah State Tax Commission
P.O. Box 30412
Salt Lake City, Utah 84130
801-297-7780
1-800-368-8824
tax.utah.gov



If you need an accommodation under the Americans with Disabilities Act, email taxada@utah.gov, or call 801-297-3811 or TDD 801-297-2020. Please allow three working days for a response.

Contents

Introduction.....	1
Real Property	1
Who Must Collect and Pay Sales Tax	2
Purchases of Construction Materials for Resale	2
Incorrect Practices.....	2
Personal Property Permanently Attached to Real Property	3
Repair and Renovation	3
Parts.....	3
Labor.....	3
Appliances	3
Installation.....	3
Fabrication	4
Washing or Cleaning.....	4
Sales of Construction Materials to Tax-Exempt Organizations	4
Sales of Construction Materials for Out-of-State	4
Real Property Contracts	4
Exemption.....	4
Examples.....	6

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.

Publication 42 has examples to help you better understand the distinction between taxable charges for sales, installation and repair.



Common Exemption Mistakes

- If the customer is normally exempt from sales taxes it does not always make the contractor working on their behalf also exempt. The exemption must specifically state that the contractor is exempt on their behalf.
- The TC-721 and TC-721G exemption certificates are carefully worded to try to make these exemptions clear.



Common Mistakes

So when are contractors exempt?

- Federal government contracts – only if construction materials were purchased directly with government funds.
- Utah government contracts – only for projects building a public K-12 school or public transit district building.
- Pollution control – contractor is never exempt.
- Airport exemptions – contractor may be exempt.
- Life science facility exemptions – contractor is exempt.
- 501(c)(3) – contractor is exempt.



Common Mistakes

Co-mingling materials

- Because contractors can be exempt on specific jobs and not on others it is very important that they:
 - Maintain adequate records of what materials they purchased exempt and what they did not.
 - Keep all the materials for a specific exempt job separate from all other materials – even for other exempt jobs.



Common Mistakes

Contractor Tools

- While contractors may be able to buy construction materials for an exempt project tax exempt, other materials that do not become part of the real property do NOT qualify for exemption.
 - Lumber, bricks, nails, sheetrock, insulation, paint, wiring, etc.. that becomes a part of the finished building are construction materials (R865-19S-58)
 - Hammers, saws, hard-hats, back-hoes, construction offices, etc.. do not become part of the finished building and so are NOT construction materials and are not exempt, even if consumed during the project.



Common Mistakes

Colleges and Universities

- Many Utah colleges and universities are part of the Utah System of Higher Education which is considered a political sub-division of the Utah state government.
 - University of Utah, Weber State University, Utah State University, Southern Utah University, Snow College, Utah Tech University, Utah Valley University, and Salt Lake Community College
- Most, but not all colleges and universities are 501(c)(3) organizations
- Additionally, some projects for a university may fall outside of their 501(c)(3) exemption, especially in cases where buildings are to generate profit or not used by faculty, students, or staff.



TC-721 – Exemption Certificate



Utah State Tax Commission

Exemption Certificate

(Sales, Use, Tourism and Motor Vehicle Rental Tax)

Print Form

Clear form

TC-721

Rev. 5/22

tax.utah.gov

Name of business or institution claiming exemption (purchaser)		Telephone number	
Street address	City	State	ZIP Code
Authorized signature	Name (please print)	Title	
Name of Seller or Supplier:		Date	
Sales Tax License Number:		Required for all exemptions marked with an asterisk (*)	

The signer of this certificate MUST check the box showing the basis for which the exemption is being claimed.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION
Keep it with your records in case of an audit.

For purchases by government, Native American tribes and public schools, use form TC-721G.

☐ Construction Materials Purchased for Religious and Charitable Organizations

I certify the construction materials are purchased on behalf of a religious or charitable organization and that they will be installed or converted into real property owned by the religious or charitable organization.

Name of religious or charitable organization:

Name of project:

* ☐ Life Science Research and Development Facility

I certify the purchased: (1) machinery, equipment and normal operating repair or replacement parts have an economic life of three or more years for use in performing qualified research in Utah; or (2) construction materials are for use in the construction of a new or expanding life science research and development facility in Utah.

☐ Out-of-State Construction Materials


I certify I am taking possession in Utah of tangible personal property that will become part of real property in another state that: (1) does not have sales tax, (2) taxes sales at a lower rate, or (3) does not allow credit for tax paid to Utah. I will report the tax on my next Utah return at a rate equal to the lesser of: (1) the rate in Utah where the property was purchased, or (2) the rate in the state where the tangible personal property is converted to real property if that state allows a credit for tax paid to Utah.

* ☐ Electrical Cooperatives

I certify the tangible personal property will be used for the construction, operation, maintenance, repair or replacement of facilities owned by or constructed for a distribution electrical cooperative or a wholesale electrical cooperative as defined in UC §54-2-1.



TC-721G Exemption Certificate for Governments and Schools

	Utah State Tax Commission Exemption Certificate for Governments & Schools (Sales, Use, Tourism and Motor Vehicle Rental Tax)	TC-721G Rev. 5/18
Name of institution claiming exemption (purchaser)		Telephone Number
Street Address	City	State ZIP Code
Authorized Signature	Name (please print)	Title
Name of Seller or Supplier:		Date

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed.

Email questions to taxmaster@utah.gov. You may also write or visit the Tax Commission at 210 N 1950 W, Salt Lake City, UT 84134, or call 801-297-2200 or toll free 1-800-662-4335.

DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION
Keep it with your records in case of an audit.

Print Form

Clear form

- ☐ **UNITED STATES GOVERNMENT OR NATIVE AMERICAN TRIBE**
I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on this form and will be used in the exercise of essential governmental or tribal functions. **NOTE:** Includes sales of tangible personal property to federally chartered credit unions. "Directly" does not include per diem, entity advances, or government reimbursements for employee credit card purchases.
- ☐ **CONSTRUCTION MATERIALS PURCHASED FOR SCHOOLS OR PUBLIC TRANSIT DISTRICTS**
I certify the construction materials purchased are on behalf of a public elementary or secondary school, or public transit district. I further certify the purchased construction materials will be installed or converted into real property owned by the school or public transit district.
Name of school or public transit district: _____
Name of project: _____
- ☐ **FOREIGN DIPLOMAT**
I certify the purchases are authorized by a diplomatic tax exemption card issued by the United States.
Foreign diplomat number: _____
- ☐ **Construction Materials Purchased for Airports**
I certify the construction materials are purchased by, on behalf of, or for the benefit of Salt Lake International Airport, or a new airport owned or operated by a city in Davis, Utah, Washington or Weber County. I further certify the construction materials will be installed or converted into real property owned by and located at the airport.

- ☐ **UTAH LOCAL GOVERNMENTS AND PUBLIC ELEMENTARY AND SECONDARY SCHOOLS**
Sales Tax License No. _____
I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on this form and will be used in the exercise of that entity's essential functions. For construction materials, if the purchaser is a Utah local government, these construction materials will be installed or converted into real property by employees of this government entity.
CAUTION: This exemption does not apply to government or educational entities of other states and is not valid for lodging-related purchases.
- ☐ **UTAH STATE GOVERNMENT**
Sales Tax License No. _____
I certify the tangible personal property or services purchased are to be paid directly with funds from the entity noted on this form and will be used in the exercise of its essential functions. For construction materials, they will be installed or converted into real property by employees of this government entity.
CAUTION: This exemption does not apply to other states and is not valid for lodging-related purchases.
- ☐ **HEBER VALLEY HISTORIC RAILROAD**
I certify these purchases and sales are by the Heber Valley Historic Railroad Authority or its operators and are related to the operation and maintenance of the Heber Valley Historic Railroad.

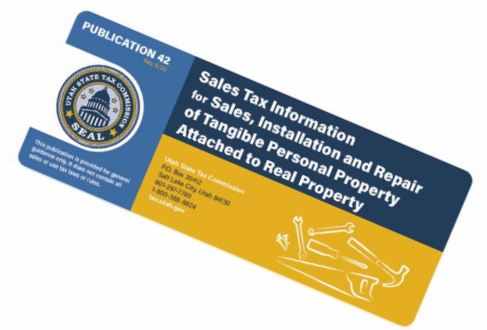


Tax Commission Resources





Sales Tax Publications



tax.utah.gov/forms-pubs

The Tax Commission provides many useful publications regarding sales and use tax based on the type of business you have:

Some sales related publications are:

- **Publication 25** - Sales tax general information
- **Publication 42** - Sales, installation and repair of tangible personal property attached to real property
- **Publication 45** - Nurseries, florists, landscapers and related industries

For a listing of all related publications, please [visit our website](http://tax.utah.gov/forms-pubs).





Relevant Supreme Court Decisions

- Utah Supreme Court cases that help describe factors to be considered when determining whether personal property becomes converted to real property upon installation.
 - [Nickerson Pump & Machinery Co v. State Tax Commission](#)
 - [Chicago Bridge & Iron Co. v. Utah State Tax Commission](#)
 - [B-J Titan Services v. Utah State Tax Commission](#)



Tax Commission Resources

Contact Us	
Practitioner Hotline	801-297-7790 or 1-800-662-4335 ext. 7790
Customer Service – payment processing & liens	801-297-2200 or 1-800-662-4335
Taxpayer Resources Unit – basic tax questions	801-297-7705 or 1-800-662-4335 ext. 7705
TAP Support	801-297-3996 or 1-800-662-4335 ext. 3996 Email: tapsupport@utah.gov
Taxpayer Advocate Service	801-297-7562 or 1-800-662-4335 ext. 7562
Email	taxmaster@utah.gov
Online Resources	
Tax Commission Website	tax.utah.gov
Forms and Publications	tax.utah.gov/forms
Online Services (TAP)	tap.utah.gov
Sales and Use Tax Information	tax.utah.gov/sales
Tax Training	tax.utah.gov/training



Sales and Use Tax Workshops

tax.utah.gov/training/workshops/sales-use-tax

Sales & Use Tax Workshop

Tax Instruction & Training

Tax Workshops +

- Small Business Employer Tax Workshop
- Sales & Use Tax Workshop**
- Pay the IRS Less Without Going to Jail
- Tax Webinars & Videos

This free workshop helps new business owners understand the basics of Utah's sales and use tax, including:

- Licensing requirements
- Tax rates
- Filing returns
- Remitting tax
- The basics of what is taxable versus what is exempt

Registration is required—see below.

Scheduled Dates

Please note: All workshops are currently only held online.

All workshops are taught from **9:00 a.m. to 11:30 a.m.** GoTo Meetings are held online and you'll receive instructions when registering.

- Tuesday, January 17, 2023
- Wednesday, April 26, 2023
- Wednesday, July 19, 2023
- Wednesday, October 25, 2023

Location

- Currently all workshops are online
- You will receive the link when registering

To Register

Email: taxtraining@utah.gov

Registration requests are accepted until one week before each class

CPE Credits are not offered for workshops offered by the Tax Commission

We have four scheduled workshops throughout the year. Please use the email below to register and you will be sent information to access the workshop. Check the link above for future dates.

If you would like a recording of the workshop, please send an email to taxtraining@utah.gov and we can send it to you by email. We encourage you to attend on these dates so you will have opportunities to ask questions.



Sales Tax Check up

tax.utah.gov/training/sales-tax-checkup

Sales Tax Check Up



Register at salestaxcheckup@utah.gov

Let us help with your sales and use tax reporting by conducting a Sales Tax Check Up. A tax examiner will visit you to educate you on how to properly account for and report your sales and use taxes. You will receive instructions specific to your business and accounting software regarding:

- Which report(s) to use to file sales and use tax returns
- What documentation is needed for exempt sales
- Identify transactions subject to sales or use tax
- What tax rates and correct taxing jurisdiction to use
- How to correctly accrue and report use tax
- What appropriate adjustments to make

Sales Tax Check Ups are meant to be educational only, and no tax assessments are made. A tax examiner can answer your specific questions. To register for a Sales Tax Check Up, contact us at salestaxcheckup@utah.gov.



THANK YOU FOR VIEWING THIS WEBINAR

