

103 KAR 26:070. Construction contractors.

RELATES TO: KRS 139.210, 139.240, 139.260, 139.270, 139.310, 139.340, 139.710, 139.730
STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: To interpret the sales and use tax law as it applies to transactions involving contractors making improvements to real property.

Section 1. All sales to contractors, subcontractors, builders or owners of building materials, fixtures and supplies which are to be incorporated or fabricated into any structure or improvement to real estate by the process of erecting, remodeling, or repairing such structure or improvement are subject to the sales or use tax at the time of sale to the contractor, subcontractor, builder or owner. This applies irrespective of the type of contract (lump sum and materials, cost plus fixed fee, or other) for which the purchase is made. A person, firm, association, partnership or corporation engaged exclusively in construction work as a contractor or subcontractor is not required to hold a retail sales tax permit and such a permit will not be issued to these persons.

Section 2. Definitions. (1) The terms "contractor" and "subcontractor" are used herein in the common and ordinary acceptance of the terms and include both general contractors and subcontractors engaged in such building trades as carpentry, bricklaying, wall to wall carpeting, cement work, steel work, plastering, sheet metal work (including aluminum siding), roofing, tile and terrazzo work, cabinet work, electrical work, plumbing, central heating and air conditioning, painting, interior decorating, and storm window and permanent awning work. The terms "contractor" and "subcontractor" as used herein do not include any person who repairs tangible personal property.

(2) The term "construction contract" as used herein means a contract for erecting, remodeling, or repairing a building or other structure on land and includes lump sum, cost plus, and time-and-materials contracts, but does not include a contract for the sale and installation of machinery, appliances or equipment which the contractor has sold but which do not become part of the real property. (In this latter case, the contractor must apply for a retail sales and use tax permit and remit tax on his sales price of the machinery, appliances or equipment.) Examples of taxable sales include refrigerators, oven-ranges and dishwashers which are not built-in, laundry appliances, window unit air conditioners and space heaters.

(3) The term "materials" means all of the tangible personal property, other than fixtures, which enters into and becomes a permanent part of a structure. Examples of materials are: bricks, builders hardware, cement, gravel, sand, macadam, asphalt, lumber, electrical wiring, wall board and coping, roofing, guttering, aluminum siding, storm doors and windows, and cabinets.

(4) The term "fixtures" means things which are accessory to a building and do not lose their identity as accessories but which do become a permanent part of the realty. Examples of fixtures are: lighting fixtures, plumbing fixtures, hot water heaters, furnaces, boilers, central heating units, elevators, hoists, burglar and fire alarm fixtures, central air conditioning and built-in refrigeration units, built-in oven-ranges and dishwashers, and cabinets.

(5) The term "improvements to real estate" as used in this administrative regulation includes, but is not limited to, buildings, roads, sewers, dams, railroads, and fences.

Section 3. A contractor may not claim that the purchase of materials or fixtures is not subject to the tax because the property is to be used in fulfilling a contract with the federal government, state government or political subdivision thereof, or any department, agency, or instrumentality of the federal government, state government or political subdivision thereof, or with a religious, educational, or charitable institution.

Section 4. A Kentucky supplier and any out-of-state supplier who is the holder of a permit for collection of the use tax, shall bill and collect Kentucky tax from the contractor. A contractor, unless he falls within the exception described in Section 5 of this administrative regulation, will not be the holder of a retail sales and use tax permit and is not entitled to execute a resale certificate. The supplier is not to accept any number of the series 900000 as evidence that the purchaser is the holder of a permit. Such numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. Nor is the supplier to accept any resale certificate from a contractor-retailer who holds a permit under the exception to this rule, for any materials or supplies which the supplier, in fact, knows are to be used by such purchaser in his own construction business. Any contractor, subcontractor, builder or owner who purchases such items from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay such use tax directly to the cabinet on a Consumer's Use Tax Return based upon his purchase price of the property.

Section 5. In some instances, contractors and subcontractors are in a dual business which includes selling machinery, appliances or equipment as described in Section 2 of this administrative regulation or reselling to the general public on an "over-the-counter" basis the same type of building materials and supplies as is used by them in their own construction work. A person operating such a dual business is referred to in this administrative regulation as a contractor-retailer, and constitutes the sole exception under which a contractor will be issued a permit. Because of the retail business he operates, such a contractor-retailer must make application for a Retail Sales and Use Tax Permit. Upon issuance of the permit, a contractor-retailer may then execute resale certificates for the machinery, appliances or equipment purchased for resale and for all items of inventory which he purchases for resale in his retail business. He may also issue a resale certificate for any items that he regularly holds in stock when he does not know at the time of purchase whether such items will be resold or used by him in his own construction business.

Section 6. In the event any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies he uses in his construction business, the tax shall apply to the sales price to him of all tangible personal property which enters into the manufacture of such materials or supplies.

Section 7. Any contractor-retailer who has no fixed place of business from which he regularly operates may be required to post a security as provided in KRS 139.660. (SU-54-2; 1 Ky.R. 703; eff. 5-14-1975; 17 Ky.R. 1128; eff. 11-21-1990; TAm eff. 5-20-2009; TAm eff. 6-22-2016.)