

103 KAR 26:070. Contractors.

RELATES TO: KRS 139.210, 139.240, 139.260, 139.270, 139.310, 139.340, 139.660, 139.710, 139.730

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to transactions involving contractors, subcontractors, and contractor-retailers making improvements to real property.

Section 1. Definitions.

(1) "Construction contract" means a contract:

(a)

1. For erecting, remodeling, or repairing a building or other structure on land; or
2. Replacing, furnishing, or installing materials or fixtures permanently to real property; and

(b)

1. Includes lump sum, cost plus, and time-and- materials contracts; and
2. Includes a contract for the sale and installation of machinery, appliances, or equipment which the contractor has sold and permanently affixed to real property.

(2)

(a) "Contractor" and "subcontractor" means the common and ordinary acceptance of the terms and includes both general contractors and subcontractors engaged in such building trades as:

1. Carpentry;
2. Bricklaying;
3. Wall to wall carpeting;
4. Cement work;
5. Steel work;
6. Plastering;
7. Sheet metal work (including aluminum siding);
8. Roofing;
9. Tile and terrazzo work;
10. Cabinet work;
11. Electrical work;
12. Plumbing;
13. Central heating and air conditioning;
14. Painting;
15. Interior decorating;
16. Storm window work; or
17. Permanent awning work.

(b) "Contractor" and "subcontractor" does not include any person who repairs tangible personal property.

(3) "Contractor-retailer" means contractors and subcontractors that operate in a dual business, which includes selling machinery, appliances, or equipment, 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, along with their sales of construction contracts. Examples of machinery, appliances, or equipment sold by contractor-retailers include:

(a) Refrigerators;

- (b) Oven-ranges and dishwashers which are not built-in;
 - (c) Laundry appliances;
 - (d) Window unit air conditioners; or
 - (e) Space heaters.
- (4) "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:
- (a) Lighting fixtures;
 - (b) Plumbing fixtures;
 - (c) Hot water heaters;
 - (d) Furnaces;
 - (e) Boilers;
 - (f) Central heating units;
 - (g) Elevators;
 - (h) Hoists;
 - (i) Security and fire alarm fixtures;
 - (j) Central air conditioning;
 - (k) Built-in refrigeration units;
 - (l) Built-in oven-ranges and dishwashers;
 - (m) Storm doors and windows; or
 - (n) Cabinets.
- (5) "Improvements to real estate" means improvements such as those made to:
- (a) Buildings;
 - (b) Roads;
 - (c) Sewers;
 - (d) Dams;
 - (e) Railroads; or
 - (f) Fences.
- (6) "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:
- (a) Bricks;
 - (b) Builders hardware;
 - (c) Cement;
 - (d) Gravel;
 - (e) Sand;
 - (f) Macadam;
 - (g) Asphalt;
 - (h) Lumber;
 - (i) Electrical wiring;
 - (j) Wall board and coping;
 - (k) Roofing;
 - (l) Guttering; or
 - (m) Aluminum siding.

Section 2. Sales to Contractors.

- (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, replacing, or repairing the 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.

(2) A contractor, subcontractor, or builder shall not claim that the purchase of materials or fixtures is exempt from the tax because the property is to be used in fulfilling a construction 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 3. Contractors Not Issued a Sales Tax Permit. 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 a permit will not be issued to these persons.

Section 4. Contractor-retailers. A contractor-retailer constitutes the sole exception under which a contractor will be issued a sales tax permit. Because of the retail business operated, a contractor-retailer shall make an 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 purchased for resale in their retail business. The contractor-retailer may also issue a resale certificate for any items that they regularly hold in stock if they do not know at the time of purchase whether the items will be resold or used in their own construction business.

Section 5. Suppliers.

(1) 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 it falls within the exception described in Section 4 of this administrative regulation, will not be the holder of a retail sales and use tax permit and shall not execute a resale certificate.

(2) The supplier shall not accept any number of the 900000-series as evidence that the purchaser is the holder of a permit. These numbers are issued to contractors for the purpose of reporting on a Consumer's Use Tax Return. The supplier shall not 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 the purchaser in his or her own construction business.

(3) Any contractor, subcontractor, builder, or owner who purchases tangible personal property or digital property from an out-of-state supplier who is not licensed to collect the Kentucky use tax shall report and pay the use tax directly to the department on a Consumer's Use Tax Return based upon the purchase price of the property.

Section 6. Contractors Manufacturing Their Own Materials or Supplies. If any contractor, subcontractor, builder, or contractor-retailer is the manufacturer of the building material or supplies they used in their construction business, the tax shall apply to the purchase price of all tangible personal property which enters into the manufacture of the materials or supplies.

Section 7. Contractors With No Fixed Place of Business. Any contractor-retailer without a fixed place of business from which they regularly operate may be required to post a security as provided in KRS 139.660.

Section 8. Contractor Examples and Scenarios. The list in this section shall provide general examples and the taxable treatment for certain common scenarios encountered by contractors.

(1) An entity that contracts for the provision and installation of wall-to-wall carpeting into real property is a contractor. The contractor shall pay sales or use tax on the purchase of the carpet, materials, fixtures, and any other tangible personal property that goes into the charge to the customer on the cost of the construction contract.

(2) An entity which installs a sidewalk into real property is a contractor. The contractor shall pay sales or use tax on their purchase of the concrete, supplies, materials, fixtures, and any other tangible personal property that goes into the provision of the construction contract. The contractor shall not bill sales tax as a separate charge to the customer on the cost of the construction contract.

(3) An entity that repairs a hot water heater that has been installed into real property is a contractor. The contractor shall pay sales or use tax on their purchase of the supplies, materials, fixtures, and any other tangible personal property that goes into the repair of the hot water heater. The contractor shall not bill sales tax as a separate charge to the customer on the cost of the repair.

(4) A contractor that sells and delivers a freestanding refrigerator is operating as a contractor-retailer. The contractor-retailer may issue a resale certificate for the purchase of the refrigerator to be resold. The contractor-retailer shall charge sales tax on the retail sale of the refrigerator to the end customer along with any delivery or installation charges associated with the sale of the refrigerator.

(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; 46 Ky.R. 571, 1085; eff. 11-1-2019.)