

I N F O R M A T I O N

Nebraska Taxation of Contractors — Option 2

Revised October 1, 2007

For more information,
check our website.



This Information Guide provides an overview of the application of sales and use tax to contractors operating under Option 2. It is not designed to answer all questions that might arise, but is intended to enable a person to become familiar with the main provisions of this contractor option.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the [subscription service](http://revenue.nebraska.gov) at revenue.nebraska.gov to get updates on your topics of interest.

Contractor

Contractor is any person who repairs property annexed to real estate, who annexes building materials and fixtures to real estate, or who arranges for such annexation.

A contractor who elects Option 2 is the consumer of building materials and fixtures purchased and annexed to real estate.

Option 2 contractors must:

- ✓ Obtain a Nebraska Sales Tax Permit by filing a [Nebraska Tax Application, Form 20](#), provided the Option 2 contractor makes over-the-counter retail sales or sales of taxable services;
- ✓ Register in the Contractor Registration Database (Database) and elect Option 2 by completing the Nebraska Department of Labor's online [Contractor/Subcontractor Registration Application](#) located at www.dol.nebraska.gov. Contractors who do not register and elect a contractor option will be treated as a retailer under Option 1;
- ✓ Withhold 5% of all payments made to other contractors who are not registered in the Database. Contractors that need to be registered are defined in the [Contractor Registration Act, Neb. Rev. Stat. § 48-2103](#) the [Nebraska Revenue Act, Neb. Rev. Stat. § 77-2701.10](#);
- ✓ Maintain a tax-paid inventory of building materials and fixtures by paying tax on these items at the time of purchase; or if purchasing from out-of-state suppliers, remit consumer's use tax; and
- ✓ Collect and remit the Nebraska and local sales tax on over-the-counter sales and charges for taxable services.

Labor Charges

Beginning October 1, 2007, Option 2 contractor labor charges are not taxable.

Option 2 contractors are not required to obtain a Nebraska Resale or Exempt Sale Certificate, Form 13, from other contractors to exempt their contractor labor charges from tax.

Building Materials and Fixtures

Building materials are those items that will become real estate or which are annexed to real estate. Examples include lumber, drywall, insulation, and roofing materials.

Building materials do **not** include tools, supplies, property, equipment, or other items that will **not** be annexed to real estate.

Example: Rebar placed in concrete to reinforce it is a building material. Form lumber to form up the concrete as it is poured is **not** a building material.

Fixtures are items that must be annexed to a building or structure in order to properly function, yet remain identifiable as separate items. Examples include water heaters, furnaces, central air conditioners, and built-in dishwashers.

Option 2 contractors must pay sales tax on all purchases of building materials and fixtures and maintain a tax-paid inventory. Option 2 contractors must remit consumer's use tax on all purchases of building materials and fixtures on which no Nebraska sales tax was paid. When building materials and fixtures are delivered by a supplier to the job site they are taxed at the rate in effect at the job site.

Option 2 contractors cannot obtain a refund or credit of tax previously paid on building materials and fixtures withdrawn from inventory in Nebraska for annexation to real estate in another state **unless** such building materials and fixtures were purchased from an out-of-state supplier who is not required to collect Nebraska sales tax.

Tools, Equipment, Supplies, and Taxable Services

Tools, equipment, and supplies used in the completion of a construction or repair project do not become part of the real estate, structure, or fixture. Option 2 contractors are the consumers of all tools, equipment, and supplies purchased and used in completing their construction projects, **including any project for an exempt entity**. Option 2 contractors must pay sales tax on all such items purchased, rented, or leased by them for use in their construction projects – including installation, assembly, disassembly, delivery, and any other charge associated with the purchase or rental of such items. Examples of taxable tools, equipment, and supplies are hammers, sandpaper, lumber to build forms, office equipment, scaffolding, backhoes, cement mixers, and safety equipment such as barriers, fences, and caution tape.

A contractor's purchase of certain services, such as building cleaning services, pest control services, and security services

are taxable. Each of these services is specifically taxed, and persons providing such services are **not** performing contractor labor. Option 2 contractors are the consumers of these services and cannot purchase them tax-free for resale.

Contractors must pay sales tax or remit consumer's use tax on the above property and services even on projects performed for an exempt entity. Use tax is commonly due on the purchase or rental of such items and services from out-of-state retailers.

Barricades Provided to Contractors

Barricade companies who provide barricades, high intensity lights, arrow boards, cones, and other equipment to Option 2 contractors are leasing these items and are required to collect sales tax. Sales tax is collected on the total amount charged for the equipment and any services included in a lease agreement to place, move, clean, maintain, and repair such items.

Option 2 contractors cannot use a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment, Form 17, issued by an exempt entity to exempt the rental of such items from tax. Tax is due regardless of whether these items are required at the job site to comply with governmental or private contract specifications or to protect workers and provide traffic control.

Billing Another Contractor

Option 2 contractors will not collect tax from any contractor on any portion of the bill relating to the repair or improvement of real estate.

Billing the Project Owner

Option 2 general or prime contractors who bill the project owner do not collect sales tax on any portion of the invoice relating to the repair or improvement of real estate.

Example: An Option 2 contractor is hired to remodel a customer's kitchen. The invoice to the customer should state something to the effect:

Materials and labor	<u>\$2,500.00</u>
Total amount due	\$2,500.00

Example: An Option 2 contractor is hired as a general contractor to remodel a kitchen for \$30,000. The project is located in a city with a 1.5% local tax rate for a total rate of 7.0%. The general contractor will provide and install new cabinets. The general contractor hires an Option 1 electrician and an Option 2 or Option 3 plumber. The Option 1 electrician must collect sales tax from the general contractor on its **separately** stated charge for materials.

Sample invoice from the Option 1 electrician to the Option 2 general contractor:

Labor	\$2,000.00
Materials (wire, lights)	600.00
Sales tax (\$600 x 7.0%)	<u>42.00</u>
Total amount due	\$2,642.00

If the Option 1 electrician chooses to charge a single amount for both its materials and labor, the total charge is taxable.

An Option 2 contractor cannot purchase annexed building materials and fixtures tax-free for resale from an Option 1 subcontractor.

Regardless of its billing method, the Option 2 or Option 3 plumber will not collect sales tax from the general contractor on any portion of its bill.

Sample invoice from the Option 2 or Option 3 plumber to the Option 2 general contractor:

Plumbing for kitchen remodel	<u>\$3,000.00</u>
Total amount due	\$3,000.00

The Option 2 general contractor will not collect sales tax from its customers on any portion of its bill.

Sample invoice from the Option 2 general contractor to the project owner:

Materials and labor for remodeled kitchen	<u>\$30,000.00</u>
Total amount due	\$30,000.00

Contracts With Exempt Entities

Most nonprofit organizations are **not** exempt from sales tax in Nebraska. In addition, not all governmental units are exempt from Nebraska sales tax. The following Nebraska Sales and Use Tax Regulations identify those entities that are exempt from sales and use tax:

- 1-072 United States Government and Federal Corporations;
- 1-090 Nonprofit Organizations;
- 1-091 Religious Organizations;
- 1-092 Educational Institutions; and
- 1-093 Governmental Units.

When performing work for a qualified exempt entity or an exempt governmental unit, the Option 2 contractor must obtain a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from the exempt project owner. The Form 17 must be completed and issued before any materials are annexed.

The Form 17 can **only** be used for making tax-free purchases of building materials and fixtures that will be annexed to the specific project identified on the Form 17. Form 17 cannot be used to purchase or lease tax-free any tools, equipment,

supplies, barricades, or other items that will not be annexed to real estate.

In order to purchase building materials and fixtures tax-free for a project with an exempt entity, Option 2 contractors must give their suppliers a copy of the Form 17, and a properly completed Form 13. Form 13 is completed by the contractor indicating the name of the exempt project owner and must be signed by the contractor.

Option 2 contractors may withdraw tax-paid building materials and fixtures from inventory for incorporation into an exempt project. To recover the tax paid on the building materials, the Option 2 contractor may take a credit against its current consumer's use tax liability or file a Claim for Overpayment of Sales and Use Tax, Form 7, and receive a refund of the tax paid on such building materials and fixtures.

Installation and Repair of Manufacturing Machinery and Equipment

Option 2 contractors are consumers of all manufacturing machinery and equipment purchased and annexed by them. Option 2 contractors must pay tax on purchases of such machinery and equipment regardless of the fact the machinery and equipment will be used by a manufacturer. In addition, Option 2 contractors who repair qualified manufacturing machinery and equipment must pay tax on their purchase of repair or replacement parts.

Other Retail Sales

Building Cleaning Services

Persons providing building cleaning services are **not** performing contractor labor. Option 2 contractors who perform building cleaning services are retailers and must continue to collect and remit sales tax on the total amount charged. Sales tax must be paid on purchases of equipment and supplies used in performing these services.

Building cleaning services include, but are not limited to, cleaning central air conditioning units, furnaces, sewers, drains, and other property located in or attached to a building.

Over-the-Counter Sales

Over-the-counter sales are transactions where the terms of the sale do not require the Option 2 contractor to annex building materials or fixtures to real estate, or to arrange for such annexation.

Example: Customer buys a faucet, takes it home and either installs it, or makes arrangements with someone other than the Option 2 contractor to install it.

Option 2 contractors making over-the-counter sales must collect the Nebraska and applicable local sales tax on the

total sales price, including all amounts charged to build or assemble the item sold.

Option 2 contractors making over-the-counter sales of their tax-paid building materials can obtain a credit for the tax paid on such materials by taking an adjustment on the [Nebraska Net Taxable Sales and Use Tax Worksheets](#) on the Department's website.

Warranties, Guarantees, and Service and Maintenance Agreements

Effective October 1, 2007, sales of warranties, guarantees, and service or maintenance agreements that only cover the **repair** of items annexed to real estate are not taxable.

For example, warranties, guarantees, and service and maintenance agreements that only cover repairs to a building or to fixtures such as hot water heaters, garbage disposals, and central heating and air conditioning units, are not taxable.

Option 2 contractors must pay or remit tax on their cost of the parts and materials used to replace or repair annexed property or fixtures whether or not covered by the warranty or service agreement.

If an agreement that covers both buildings or fixtures and non-annexed appliances is sold for one amount, the entire amount charged for the agreement is taxable. See above paragraphs for the taxability of parts used for repairs to buildings and fixtures. Sales and use tax does not apply to parts and materials used, and services performed in fulfilling the obligations under an agreement to repair or replace non-annexed appliances, provided there is not an additional charge for such items.

If an agreement that covers both buildings or fixtures and building cleaning services is sold for one amount, the entire amount charged for the agreement is taxable.

Nonresident Contractors

A nonresident contractor is a contractor who is neither domiciled in, nor maintains a place of business in, Nebraska for more than six months of a year.

Nonresident contractors have the same tax responsibilities as resident contractors. All contractors, including nonresident contractors, are required to register their business on the Database. There are additional registration fees and each project performed in Nebraska by a nonresident contractor is required to be registered in the Database. Registration is done at www.dol.nebraska.gov.

General Information

Consumer's Use Tax

Consumer's use tax is a complement to the Nebraska sales tax. It is imposed at the same rate and on the same transactions as

the sales tax. Certain locations in Nebraska have a local sales tax in addition to the state sales tax. Local consumer's use tax is due whenever Nebraska consumer's use tax is owed.

Consumer's use tax is remitted directly to the state by the purchaser when sales tax has not been collected by the seller. Please refer to our Information Guide titled "Consumer's Use Tax" for more information.

Reporting and Remitting the Tax. Option 2 contractors who have a sales tax permit can use their Nebraska and Local Sales and Use Tax Return, Form 10, to remit sales tax they collect from their customers, as well as any consumer's use tax owed. To assist you in completing your Form 10, please use the [Nebraska and Net Taxable Sales and Use Tax Worksheets](#) on the Department of Revenue's website.

Option 2 contractors who do not have a sales tax permit but have a consumer's use tax liability to report must file a Nebraska and Local Consumer's Use Tax Return, Form 2.

Changing Options. Option 2 contractors may change their option using the Nebraska Department of Labor's website www.dol.nebraska.gov for contractor/subcontractor registration. The new contractor option applies to all contracts in progress and also to all new contracts.

Option 2 contractors who change from a tax-paid inventory to a tax exempt inventory (Option 1 or Option 3) will receive a credit for the sales or use tax previously paid on their building materials in inventory at the time the contractor option change becomes effective. To receive the credit, the contractor must submit a signed statement to the Nebraska Department of Revenue detailing the amount of credit requested. The credit will be placed on the contractor's sales and use tax account and can be used as the building materials that were in inventory are annexed and payments become due to the Department. The Option 2 contractor is not entitled to a refund of any sales or use tax previously paid on the building materials in inventory.

Record Keeping. Contractors are required to keep Forms 13, Forms 17, construction contracts, billing invoices, and any other information necessary to accurately describe and document the construction that was completed.

Other Information. Contractors seeking additional information are encouraged to review the resources contained on our website under Contractor Information. The department also conducts educational seminars (dates are posted on our website, revenue.nebraska.gov).

Taxpayer Assistance. For additional information, please contact the Nebraska Department of Revenue, PO Box 94818, Lincoln, NE 68509-4818, or call 800-742-7474 (NE and IA), or 402-471-5729.