

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders
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**TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX**

Section 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders

- a) Sales to Construction Contractors, Real Estate Developers and Speculative Builders -- When Taxable and When Not Taxable
 - 1) Persons who engage in selling tools, equipment, fuel, supplies and other tangible personal property to construction contractors, real estate developers or speculative builders for use or consumption incur Retailers' Occupation Tax liability when making such sales. Also, persons who (apart from acting as construction contractors themselves) engage in selling building materials, fixtures, plants and other tangible personal property to construction contractors, speculative builders or real estate developers, who convert such items into real estate so as to take such items off the market as tangible personal property, incur Retailers' Occupation Tax liability when making such sales.
 - 2) When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When the construction contractor-installer (whether he is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he will incorporate into real estate for his customer, the tax base is what such construction contractor pays for the materials that he incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item.
 - 3) For information as to who qualifies as a construction contractor, see Section 130.1940(a) and (c) of this Part.
 - 4) Sales of tangible personal property to construction contractors, real estate developers or speculative builders who resell such property in the form of tangible personal property would not be taxable sales, but the construction contractor, real estate developer or speculative builder would be making taxable resales in this situation (see Section 130.1940(b) and (c) of this Part).

- b) When and How Purchasing Contractor May Certify that He Will Assume Accountability for the Tax -- Effect of Such Certification
- 1) When the purchaser of tangible personal property may use such property by converting it into real estate, but may resell such property "over-the-counter" apart from acting as a construction contractor, and where it is impracticable, at the time of purchasing such tangible personal property, for such purchaser to determine in which way he will dispose of the property, such purchaser may certify to his vendor that he is buying all of such tangible personal property for resale and thereafter account to the Department for the tax on disposing of such property.
 - 2) The purchaser may not give such certification to his supplier unless the purchaser, if he will convert the tangible personal property into real estate in this State, agrees to, and does, assume the liability for reporting and paying the tax to the Department in the same form (Illinois Retailers' Occupation Tax, and local Retailers' Occupation Tax if applicable) in which the supplier would have reported and paid such tax if the supplier had accounted for the tax to the Department. This means that if the purchaser uses the tangible personal property by converting it into real estate in this State in any manner, he must include the cost price of such tangible personal property in his reported taxable receipts in his return form to the Department and must pay the State Retailers' Occupation Tax along with any other applicable Retailers' Occupation Taxes (not the Use Tax, but the Retailers' Occupation Tax) thereon to the Department, and must pay the Home Rule Municipal or County Retailers' Occupation Tax thereon, if applicable.
 - 3) The local Retailers' Occupation Tax to be paid by the contractor or builder in this situation shall be paid for the benefit of the entity in which the place of business at or from which the contractor or builder handles the transaction is located, if such entity has adopted the local Retailers' Occupation Tax at the time when the contractor or builder converts the tangible personal property in question into real estate. For example, a contractor who is registered at a location in Springfield, Illinois, and who also sells "over-the-counter" gives the certification described in subsection (b)(2) of this Section when he buys dry wall from a supplier located in Champaign, Illinois. Subsequent to the purchase, the contractor incorporates some of the dry wall into real estate on a job. The contractor must account for the tax by paying the State Retailers' Occupation Tax and the Springfield Home Rule Municipal Retailers' Occupation Tax on his return by including the cost price of the dry wall converted to real estate in his taxable receipts.
 - 4) Such purchaser, who assumes the responsibility for accounting for the tax, must pay State Retailers' Occupation Tax (plus local Retailers' Occupation Tax, if applicable) on the full selling price of the tangible personal property if he resells the property "over-the-counter" to a user (including a construction contractor) apart from acting as a construction contractor himself.
 - 5) A purchaser of this type would have to be registered with this Department under the Retailers' Occupation Tax Act since he would be incurring some Retailers' Occupation Tax liability, so he would be required to furnish his vendor with his

Retailers' Occupation Tax registration number in the certification referred to in subsection (b)(1) of this Section.

- 6) The tax involved in this Section is State Retailers' Occupation Tax and Use Tax and local Retailers' Occupation Tax, but not State or local Service Occupation Tax or Service Use Tax.
- 7) Purchasing contractors may not give this certification to make purchases from out-of-enterprise zone (see Section 130.1951 of this Part) retailers with resale certificates and then claim they are retailers entitled to claim the enterprise zone exemption to avoid the tax on sales of building materials.

c) Use Tax on Out-of-State Purchases

Tangible personal property bought outside this State either by Illinois or out-of-State construction contractors or builders in such a way that the seller does not incur Retailers' Occupation Tax liability and used in this State for building purposes is subject to the Use Tax. If the purchaser buys such tangible personal property from an out-of-State seller who is registered with the Department as a Use Tax collector, the purchaser should pay the Use Tax to such seller unless the purchaser is also a retailer and elects to assume responsibility for accounting for all the tax on such materials. If the purchaser buys such materials outside Illinois from an unregistered seller, the purchaser should pay the Use Tax directly to this Department. No local Retailers' Occupation Tax is applicable in this situation.

d) Sales of Materials to Construction Contractors Acting for Exclusively Charitable, Religious or Educational Organizations or Institutions, or for Governmental Bodies

- 1) Sales of materials to construction contractors for incorporation into real estate owned by exclusively charitable, religious or educational institutions or organizations, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, or for incorporation into real estate owned by governmental bodies, are exempt from Retailers' Occupation Tax and Use Tax. The intent of the Legislature was to relieve the above-designated kinds of purchasers from the burden of tax on their purchases whether the purchases are made directly or indirectly by these organizations. Therefore, the exemption applies to their indirect purchase of building materials.
- 2) However, effective March 17, 1965, this exemption does not extend to sales of materials to construction contractors for incorporation into real estate owned by a national bank, a State-chartered bank or a Federally or State-chartered savings and loan association (see Section 130.2085 of this Part). Sales of materials to, and purchases of materials by, such construction contractors are taxable sales and purchases.
- 3) Also, sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real

estate are taxable sales regardless of who the contractor's customer may be, and this has been true since the beginning of the Act.

- 4) A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his purchases are for conversion into real estate under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting.

e) Sales of Materials to Construction Contractors for Incorporation into Public Improvements Which Are Required to be Transferred to a Unit of Local Government Upon Completion

For the same reason stated in subsection (d) of this Section, sales to construction contractors of materials which will be physically incorporated into public improvements, the ownership of which is required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement are exempt from Retailers' Occupation Tax and Use Tax. The supplier shall have among his records the active registration number issued by the Department to the governmental unit to which the public improvements will be transferred upon completion. The pre-development transfer requirement may take the following forms:

- 1) Where language in the local governmental unit's subdivision ordinance explicitly requires that title to public improvements be transferred to the local governmental unit upon completion, the pre-development transfer requirement is satisfied as to all public improvements (such as roads and streets, sidewalks, sanitary sewer systems and storm water drainage systems) actually required to be transferred under the terms of that ordinance;
- 2) Where language in a pre-development agreement between the local governmental unit and a developer explicitly requires that title to public improvements be transferred to the local governmental unit upon completion, the pre-development transfer requirement is satisfied as to all public improvements actually required to be transferred under the terms of that pre-development agreement;
- 3) Where a plat of subdivision, formally approved by a municipality, has been recorded with the County Recorder of Deeds and where that recorded plat contains a public dedication of improvements, the pre-development transfer requirement is satisfied as to roads and streets located within the corporate limits of the approving municipality and any other improvements located within the corporate limits which are dedicated on the plat to the public use and for no other purpose;
- 4) Where a plat of subdivision, formally approved by a county with fewer than 500,000 inhabitants which has established regulations regarding location, width and course of roads and streets, has been recorded with the County Recorder of

Deeds and where that recorded plat contains a public dedication of roads and streets located in the unincorporated area of the approving county, the pre-development transfer requirement is satisfied as to those public roads and streets. In this context, only grading and surface materials which actually become part of the roadbed and materials incorporated into curbs and gutters qualify for the exemption. Other items such as catchbasins, drainage pipe or materials incorporated into sidewalks do not qualify for the exemption.

(Source: Amended at 25 Ill. Reg. 10917, effective August 13, 2001)