

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.1940 Construction Contractors and Real Estate Developers

**TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX**

Section 130.1940 Construction Contractors and Real Estate Developers

a) Definitions

- 1) "Construction Contractor." The word "construction contractor" when used in this Subpart includes general contractor, subcontractor and specialized contractor such as a landscape contractor. "Contractor" means any person who is engaged in the occupation of entering into and performing construction contracts for owners.
- 2) "Owner" means any person who enters into a contract with a contractor relative to the construction of a structure.
- 3) "Construct" means build, erect, construct, reconstruct, install, plant, repair, renovate or remodel.
- 4) "Structure" includes any building, house, edifice, tunnel, sewer, highway, road, bridge or any other type of structure, or any part thereof (including any system of plumbing, heating, ventilating, refrigerating, air conditioning, or any part thereof), or any other improvement to real estate.
- 5) "Materials" means all of the tangible personal property, including fixtures, which enter into a structure or otherwise become incorporated into real estate.
- 6) "Construction Contract" means a contract, written or oral, to "construct" (as that term is defined in subsection (a)(3) above), a "structure" (as that term is defined in subsection (a)(4), above) or to otherwise incorporate tangible personal property into real estate.
- 7) "Real Estate Developer" means any person engaged in the business of transferring title (legal or equitable) to real estate to others. The term does not include an isolated or occasional sale of real estate by a person not engaged in the business of selling real estate, and the term does not include a person who acts merely as agent for a commission to bring sellers and buyers of real estate together without ever actually taking either the legal or the equitable title to the real estate.

b) Construction Contractors--When Liable For Tax

- 1) Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property without installation to purchasers for use or consumption.
- 2) A construction contractor incurs Retailers' Occupation Tax liability when he sells furniture and furnishings, curtains, drapes, floor covering (except when he cements or otherwise permanently affixes the floor covering to a portion of the building), trade fixtures and machinery (unless in the case of machinery Section 130.2115(b) of this Part applies) to purchasers for use or consumption, with or without installation by the seller, whether or not the seller furnishes and installs such items as a part of a construction contract. The same is true where he purchases and sells in finished form gas or electric stoves, refrigerators, washing machines, portable ventilating units and other portable equipment of this kind, which may be connected to and operated from a building's electrical, plumbing or other specialized system, but which is not actually a part of any such system and is considered to remain personal property when installed, even if the contractor does install such equipment pursuant to a construction contract.
- 3) For information concerning the seller's taxability on receipts from installation charges where the seller is taxable notwithstanding his installation of the item, see Section 130.450 of this Part.
- 4) If the seller is taxable notwithstanding installation, but the sale and installation are made by the seller pursuant to his performance of a construction contract, the seller's receipts from that part of the transaction which actually comprises the construction contract are not subject to the Retailers' Occupation Tax. In this situation, if a separate charge is made for the tangible personal property as to which the construction contractor is taxable, the value of such property for purposes of computing the Retailers' Occupation Tax is the amount charged for such property, but not less than the cost of such property to the construction contractor. If no separate charge is made in this situation for the tangible personal property as to which the construction contractor incurs Retailers' Occupation Tax liability, the value of such property for computing the Retailers' Occupation Tax is the cost of such property to the construction contractor.

c) Construction Contractors--When Not Liable For Tax

A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate. (See also Section 130.2075 of this Part.)

- 1) For example, a construction contractor does not incur Retailers' Occupation Tax liability on receipts from selling and installing screen doors and windows; storm doors and windows; weather stripping; insulation material; Venetian blinds; window shades; awnings; cabinets built into the structure; floor coverings cemented or otherwise permanently affixed to the structure by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking

strips" or "tack-down strips"), but not including floor coverings that are area rugs or that are attached to the structure using only two-sided tape; plumbing systems or parts thereof, such as bathtubs, lavatories, sinks, faucets, water pumps, water heaters, water softeners, water pipes, etc.; heating systems or parts thereof, such as furnaces, stokers, boilers, heating pipes, etc.; ventilation systems or parts thereof; commercial refrigeration systems or parts thereof; electrical systems or parts thereof; brick; lumber; sheet metal; roofing materials, and other similar items.

- 2) A landscape contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property incorporated into real estate as an integral part thereof for an owner when furnished and installed as an incident to a landscape contract. For example, a landscape contractor does not incur Retailers' Occupation Tax liability on receipts from selling and installing plants such as trees, shrubs, seedlings, sod and grass seed when planted in the ground, including fertilizer, mulch and soil incorporated into the ground in connection with such planting (plants sold in pots or other containers without being planted in the ground by the landscape contractor are not deemed to be planted in the ground).
 - 3) Construction contractors who contract for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems incur Use Tax, rather than Retailers' Occupation Tax, liability on those items if they are sold at one specified contract price. This provision applies to all of the items in this subsection (c)(3) even if they are not incorporated into real estate.
- d) Real Estate Developers
- 1) A real estate developer does not incur Retailers' Occupation Tax liability on his receipts from selling real estate. However, for information concerning the fact that a real estate developer is taxable on his cost price of the tangible personal property that he purchases and incorporates into real estate, see Section 130.2075 of this Part.
 - 2) A real estate developer incurs Retailers' Occupation Tax liability when transferring, to a user, tangible personal property which he purchases and sells in a finished form, and which remains personal property when installed, even though he includes the transfer of such tangible personal property in his sale of or his contract to sell real estate. The value of such tangible personal property for computing Retailers' Occupation Tax is the amount charged for such tangible personal property by the transferor if a separate charge is made, but not less than the cost of such tangible personal property to the transferor. If no separate charge is made for such tangible personal property, the value of such property for computing Retailers' Occupation Tax is the cost of such property to the transferor.
- e) Certain sales of building materials purchased for incorporation into real estate located in an enterprise zone are exempt from Retailers' Occupation Tax liability (see Section 130.1951 of this Part). Certain sales of building materials purchased for incorporation into real estate located in an area designated by the Department of Commerce and

Community Affairs under Section 5.5 of the Illinois Enterprise Zone Act are exempt from Retailers' Occupation Tax liability (see Section 130.1952 of this Part).

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)