

REG-1-017, Contractors

017.01 Gross receipts from construction projects or the repair of real estate or fixtures are generally exempt from sales or use tax, except as otherwise stated in this regulation. In most cases, sales or purchases of building materials are taxable.

017.02 The following definitions will be used for all regulations in Title 316, Chapter 1.

017.02A Annexed means attached to real estate so that: (1) the property becomes real estate,; or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional.

017.02B Building means any free-standing structure enclosed within a roof and exterior walls. It does not have to be enclosed on all sides. It is designed for the housing, shelter, enclosure, and support of individuals, animals, manufacturing, or property of any kind. It must be annexed to the land.

017.02B(1) A building includes manufactured housing that is either set up for occupancy as a dwelling according to local building codes, or that is permanently annexed to real estate. (See Reg-1-018, Rent or Lease of Tangible Personal Property.)

017.02C Building materials mean any property, including fixtures, that will be annexed to the land or an improvement on the land. Building materials do not include tools, supplies, or any items that will not be annexed.

017.02D Contractor means any person who repairs property annexed to, or who annexes property to, real estate, including leased property, by attaching building materials to the annexed property or improvement being built or repaired, or who arranges for annexation of property.

017.02E Demarcation point means the point at which the wire or cable that is owned and maintained by a telephone or cable company is connected to the inside station wiring owned by and dedicated to the customer's use.

017.02F Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item. Examples are central air conditioners, water heaters, garbage disposals, built-in dishwashers, and furnaces.

017.02G Live plants means and includes trees, shrubs, flowers, and sod. Live plants do not include seeds.

017.02H Option 1 contractor means a contractor who has elected to be taxed as a retailer of building materials with a tax-exempt inventory or a contractor who has not made an election. See section 017.05 of this regulation.

017.02I Option 2 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-paid inventory. See section 017.06 of this regulation.

017.02J Option 3 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-free inventory. See section 017.07 of this regulation.

017.02K Recognized trade professional means any person required to be licensed to practice his or her trade, such as a plumber or electrician.

017.02L Supplies mean items consumed or used during construction that do not become a part of the building or structure.

017.02M Structure means any construction composed of building materials arranged and fitted together in some way and annexed to land, such as a bridge, highway, street light, dam, television tower, fence, sewer, water line, or billboard.

017.03 Contractors may choose how they want to treat building materials for tax purposes. There are three options available to the contractor for the taxation of building materials. The choice of an option is made by the Nebraska Department of Labor's online Contractor/Subcontractor Registration Application located at www.dol.nebraska.gov. The contractor/subcontractor registration information, including the contractor option elected, is displayed in the Contractor Registration Database. Before performing any construction work in Nebraska, a contractor must be registered in the Contractor Registration Database.

017.03A The option selected applies to all construction contracts. A contractor may not operate under more than one option at the same time.

017.03B If the registration application is not completed or an election is not made, the contractor will be treated as a retailer under Option 1 for sales and use tax purposes.

017.04 Contractors may change their option using the 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.

017.04A Any contractor who changes from a tax-free inventory (Option 1 or Option 3) to a tax-paid inventory (Option 2) must remit use tax to the Department of Revenue (Department) on all building materials in inventory on the date the change is effective. The contractor must also begin paying sales tax on all purchases as of the date the change is effective. Option 1 contractors must also remit use tax on any building materials on which sales or use tax has not already been paid or collected that has been incorporated into an ongoing project.

017.04B Any contractor who changes from a tax-paid inventory (Option 2) to a tax-free inventory (Option 1 or Option 3) will receive a credit for the sales or use tax previously paid on its 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 Department that details the amount of credit to which it is entitled. The credit will be placed on the contractor's account and can be used as the building materials that were in inventory are annexed and payments become due to the Department. The contractor is not entitled to a refund of any sales or use tax previously paid on the building materials in inventory.

017.05 OPTION 1-To be treated as a retailer with a tax exempt inventory.

017.05A Option 1 contractors are retailers of building materials that become annexed. All Option 1 contractors must have a Nebraska Sales Tax Permit.

017.05B Option 1 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 1 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.05C Buildings and Structures, Construction and Repair.

017.05C(1) Option 1 contractors must collect sales tax from all of their customers, including contractors, on the total amount charged for building materials they annex to real estate or use to repair fixtures or property annexed to real estate, even if they sell a building or structure.

017.05C(2) Option 1 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.05C(3) Fabrication, production, or repair labor performed by another person on building materials for an Option 1 contractor are part of the cost of the building materials. The Option 1 contractor must collect sales tax on the total amount charged to the customer for building materials, including these labor charges, which are annexed to real estate by the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4) Option 1 contractors will not normally collect sales tax on separately stated labor charges of the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4)(a) Option 1 contractors who charge one amount for both building materials and labor must collect sales tax on the total amount charged.

017.05C(5) Option 1 contractors may purchase all building materials and other property for resale without paying sales tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.05C(5)(a) Option 1 contractors must pay sales tax or remit use tax on all charges for building materials annexed by another Option 1 subcontractor.

017.05C(5)(b) Option 1 contractors are not required to remit use tax on building materials annexed in a construction project that is in another state or in a construction project that is outside the United States.

017.05C(5)(c) Option 1 contractors may purchase for resale any fabrication, production, or repair labor performed by another person on building materials that will be annexed to real estate by the Option 1 contractor.

017.05D Property not Annexed.

017.05D(1) Option 1 contractors are retailers of building materials or other property that is not annexed. Option 1 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.05D(2) Option 1 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.05D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.05D(3)(a) Option 1 contractors who only install silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.05D(3)(b) Option 1 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.05D(3)(c) Option 1 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person

who only installs silt fencing. Option 1 contractors cannot purchase silt fencing tax-exempt for resale.

017.05D(4) Option 1 contractors must collect sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 1 contractor (Reg-1-082, Labor Charges.).

017.05D(5) Option 1 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.05E Telephone, Cable, Satellite Services, and Other Utilities.

017.05E(1) Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services on the general distribution system or on the customer's side of the demarcation point must collect sales tax on the total amount charged for the materials and labor regardless of whether the property is annexed or remains tangible personal property.

017.05E(2) If any or all of the charge for installation of tangible personal property is paid to the Option 1 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third-party service provider (Reg-1-081, Community or County Antenna Television Services.)

017.05E(3) Option 1 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.05F Manufacturing Machinery and Equipment. (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.05F(1) Option 1 contractors will not collect sales tax on qualifying manufacturing machinery and equipment sold to a manufacturer whether the equipment remains tangible personal property or is annexed if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer. (Reg-1-107, Manufacturing Machinery and Equipment Exemption.)

017.05F(2) Option 1 contractors will not collect sales tax on the installation or repair of qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(3) Option 1 contractors will not collect sales tax on the amount charged for repair or replacement parts or accessories purchased for use in maintaining, repairing, or refurbishing qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(4) Option 1 contractors may purchase qualified manufacturing machinery and equipment for resale by issuing a properly completed Resale or Exempt Sale Certificate, Form 13, to the seller.

017.05G Live Plants.

017.05G(1) Option 1 contractors planting live plants must collect sales tax on the total amount charged for the live plants and on the labor charge for installation of the live plants.

017.05G(2) Option 1 contractors who annex building materials and install live plants, must collect sales tax on the total amount charged, unless the labor charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.05G(3) Option 1 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.05H Exempt Organizations and Exempt Governmental Units.

017.05H(1) Option 1 contractors annexing building materials for exempt organizations or exempt governmental units will not collect tax on the building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.05H(2) Option 1 contractors will not collect sales tax on qualified materials for use in a community-based energy development (C-BED) project.

017.05I Direct Pay Permits.

017.05I(1) Option 1 contractors who annex building materials for a project owner holding a valid direct pay permit may accept a copy of the direct pay permit and will not collect sales tax on the amount charged directly to the project owner for the building materials.

017.06 OPTION 2-To be treated as a consumer with a tax-paid inventory.

017.06A Option 2 contractors are consumers of building materials that become annexed. Option 2 contractors who make sales described in subsections 017.06D, 017.06E, or 017.06G are retailers and must have a Nebraska Sales Tax Permit.

017.06B Option 2 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 2 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.06C Buildings and Structures, Construction and Repair.

017.06C(1) Option 2 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.06C(2) Option 2 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.06C(3) Option 2 contractors must pay sales tax on all building materials and other taxable items when purchased or received.

017.06C(3)(a) Option 2 contractors must remit use tax directly to the Department on all building materials and other taxable items on which no sales tax has been paid when the materials or other items are received.

017.06C(3)(b) Option 2 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.06C(3)(c) Option 2 contractors must pay sales or remit use tax on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 2 contractor. (Reg-1-082, Labor Charges.)

017.06C(4) Option 2 contractors are not allowed a credit or refund for sales or use taxes paid on building materials subject to sales tax, that are withdrawn from tax-paid inventory for annexation to real estate in another state.

017.06C(4)(a) Option 2 contractors may receive a credit or refund for use tax paid on building materials that are withdrawn from inventory for annexation to real estate in another state only if the seller of the building materials is not licensed to collect sales tax in this state and is not engaged in business in this state. (Reg-1-004.02 for definition of "engaged in business in this state.")

017.06C(4)(b) Option 2 contractors may receive a credit or refund of tax paid on building materials used in a construction project that is outside the United States.

017.06D Property not Annexed.

017.06D(1) Option 2 contractors are retailers for any sales of building materials or other property that is not annexed. Option 2 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.06D(1)(a) When retail sales of tax-paid inventory items are made, the Option 2 contractor must collect sales tax on the full sales price. The tax reported to the Department will be the difference between the Nebraska and local option tax the contractor previously paid on the items and the tax collected from the customer.

017.06D(2) Option 2 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.06D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.06D(3)(a) Option 2 contractors who only installs silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.06D(3)(b) Option 2 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.06D(3)(c) Option 2 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing.

017.06D(4) Option 2 contractors must collect sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 2

contractor (Reg-1-082, Labor Charges.)

017.06D(5) Option 2 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.06D(6) Option 2 contractors may purchase items tax-exempt when these items will be resold without being annexed.

017.06E Telephone, Cable Satellite Services, and Other Utilities.

017.06E(1) Option 2 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunications services must collect sales tax as follows:

017.06E(1)(a) Option 2 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.

017.02E(1)(b) Option 2 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

017.02E(1)(c) Except as provided in subsection 017.06E(1)(b), Option 2 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.02E(1)(d) Option 2 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.06E(2) Option 2 contractors must pay sales tax or remit use tax on all of their purchases of wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite services, and mobile telecommunications services.

017.02E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 2 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third party service provider. (Reg-1-081, Community and County Antenna Television Service.)

017.06F Manufacturing Machinery and Equipment. (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.06F(1) Option 2 contractors must pay sales tax or remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a manufacturer.

017.06F(1)(a) Option 2 contractors cannot purchase these items without paying tax even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.06F(2) Option 2 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.

017.06G Live Plants.

017.06G(1) Option 2 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.06G(2) Option 2 contractors who annex building materials and install live plants must collect sales tax on the total amount charged, unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.06G(3) Option 2 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.06H Exempt Organizations and Exempt Governmental Units.

017.06H(1) Option 2 contractors annexing building materials for exempt organizations or exempt governmental units may purchase building materials without paying the sales or use tax when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.06H(2) Option 2 contractors may purchase qualified materials for use in a community-based energy development (C-BED) project tax exempt.

017.06I Direct Pay Permits.

017.06I(1) Option 2 contractors must pay sales tax or remit use tax on building materials annexed even if they have a copy of the direct pay permit from the project owner.

017.07 OPTION 3-To be treated as a consumer with a tax EXEMPT inventory.

017.07A Option 3 contractors are consumers of building materials that become annexed. Option 3 contractors who make sales described in subsections 017.07D, 017.07E, or 017.07G are retailers and must have a Nebraska Sales Tax Permit.

017.07B Option 3 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 3 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.07C Buildings and Structures, Construction and Repair.

017.07C(1) Option 3 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.07C(2) Option 3 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.07C(3) All building materials and other property that will be resold may be purchased for resale purposes without paying tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.07C(3)(a) Option 3 contractors must remit use tax directly to the Department on all building materials when the building materials are removed from inventory or when received at the job site.

017.07C(3)(b) Option 3 contractors must remit use tax directly to the Department on all other taxable property on which no sales tax was paid when the property is received.

017.07C(3)(c) Option 3 contractors must remit use tax directly to the Department on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 3 contractor. (Reg-1-082, Labor Charges.)

017.07C(4) Option 3 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.07C(5) Option 3 contractors must remit use tax on building materials purchased with a resale certificate that are withdrawn from inventory for annexation to real estate in another state.

017.07C(5)(a) Option 3 contractors are not required to remit use tax on building materials used in a construction project that is outside the United States.

017.07C(5)(b) Option 3 contractors are not required to remit use tax on building materials withdrawn from inventory for annexation to real estate in another state if the seller of the building materials is not engaged in business in this state and is not licensed to collect sales tax in this state (Reg-1-002, Consumer's Use Tax). (See also Reg-1-004.02 for the definition of "engaged in business in this state.")

017.07D Property not Annexed.

017.07D(1) Option 3 contractors are retailers for any sales of building materials or other property that is not annexed. Option 3 contractors must collect sales tax on the total amount charged.

017.07D(2) Option 3 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.07D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.07D(3)(a) Option 3 contractors hired only to install silt fencing are making retail sales and must collect tax on the total amount charged.

017.07D(3)(b) Option 3 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing and must remit use tax on their cost of the silt fencing materials.

017.07D(3)(c) Option 3 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person

who only installs silt fencing. Option 3 contractors cannot purchase silt fencing tax-exempt for resale.

017.07D(4) Option 3 contractors must collect and remit sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 3 contractor.

017.07D(5) Option 3 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and to must collect and remit sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.07D(6) Option 3 contractors will not remit use tax on items that are resold without being annexed.

017.07E Telephone, Cable, Satellite Services, and Other Utilities.

017.07E(1) Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services providers must collect sales tax as follows:

017.07E(1)(a) Option 3 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point, (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.

017.07E(1)(b) Option 3 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

017.07E(2)(c) Except as provided in 017.07E(1)(b), Option 3 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.07E(1)(d) Option 3 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.07E(2) Option 3 contractors must remit use tax on all wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite, services, and mobile telecommunication services.

017.07E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 3 contractor by a third-party service provider, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid to the Department by the third-party service provider (Reg-1-081, Community and County Antenna Television Service.)

017.07F Manufacturing Machinery and Equipment (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.07F(1) Option 3 contractors must remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a

manufacturer.

017.07F(1)(a) Option 3 contractors must remit use tax on these items even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.07F(2) Option 3 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.

017.07G Live Plants.

017.07G(1) Option 3 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.07G(2) Option 3 contractors who annex building materials and install live plants must collect sales tax on the total amount charged unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.07G(3) Option 3 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.07H Exempt Organizations and Exempt Governmental Units.

017.07H(1) Option 3 contractors annexing building materials for exempt organizations or exempt governmental units are not required to remit use tax on building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.07H(2) Option 3 contractors are not required to remit use tax on their cost of qualified materials for use in a community-based energy development (C-BED) project.

017.07I Direct Pay Permits.

017.07I(1) Option 3 contractors must remit use tax on building materials annexed even if they have a copy of the direct payment permit from the project owner.

017.08 PROJECTS FOR EXEMPT ORGANIZATIONS AND EXEMPT GOVERNMENTAL UNITS

017.08A Qualified exempt organizations and exempt governmental units are listed in Reg-1-012, Exemptions. The following procedures allow the exempt organizations or exempt governmental units to have construction completed without the payment of tax on building materials which are physically annexed to the building or structure and which subsequently are owned by the exempt governmental unit or exempt organization. The contractor must pay sales tax or remit use tax on its purchases or rentals of tools, supplies, equipment, scaffolding, barricades, and on all purchases of taxable services such as building cleaning, pest control and security services.

017.08A(1) An exempt organization or exempt governmental unit may furnish building materials. The organization or governmental unit will issue a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, to the retailers of the building materials.

017.08A(2) The exempt organization or exempt governmental unit, as project owner, may be entitled to a refund of tax paid on building materials. The United States government, the

state, and educational institutions under the governance of the University of Nebraska Board of Regents, or State College Board of Trustees will not receive any refunds.

017.08A(2)(a) If the exempt organization or exempt governmental unit will not appoint the contractor as a purchasing agent, the Option 2 or Option 3 contractor must pay sales tax or remit use tax on all building materials. The exempt organization or exempt governmental unit may obtain a refund of the tax paid if:

017.08A(2)(b) The Option 2 or Option 3 contractor provides the exempt organization or exempt governmental unit with a certified statement of the tax paid on the building materials by the contractor and all subcontractors, and

017.08A(2)(c) The exempt organization or exempt governmental unit applies for a refund from the Department. The exempt organization or exempt governmental unit may apply for a refund of any sales tax it paid directly on building materials, and any sales or use tax paid or remitted on building materials by Option 2 or 3 contractors as shown on a certified statement from the contractor.

017.08A(3) The exempt organization or exempt governmental unit may appoint the contractor as a purchasing agent. The contractor may then purchase building materials tax-free. The appointment as a purchasing agent for the exempt organization or exempt governmental unit must be made before the building materials are annexed.

017.08A(3)(a) The contractor will delegate to all subcontractors the authorization as purchasing agent.

017.08A(3)(b) The contractor or subcontractors will provide an exempt sale certificate and a copy of the purchasing agent appointment to suppliers when purchasing the building materials to be annexed.

017.08A(3)(c) The appointment must be made using a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or a previously approved substitute form containing the same information.

017.08A(3)(d) The United States government may use its own forms to make the purchasing agent appointment. If the United States government chooses not to issue a purchasing agent appointment, the building materials will be taxable.

017.08A(3)(e) The applicable Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or exempt sale certificate will be kept by the contractor or subcontractor who has been appointed or delegated as purchasing agent.

017.08A(4) When a contractor is operating under Option 1, and is the only contractor involved in the project, that contractor may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, from the exempt organization or exempt governmental unit. The Option 1 contractor will not charge sales tax to the exempt organization or exempt governmental unit.

017.08A(5) When the contractor is operating under either Option 2 or Option 3, the contractor cannot accept an exempt sale certificate from the exempt organization or

exempt governmental unit. The exempt organization or exempt governmental unit must appoint the Option 2 or Option 3 contractor as its purchasing agent, buy the materials, or apply for a refund of sales tax that is paid.

017.08B When an organization is required to be licensed, certified, approved, or accredited in order to be an exempt organization, but the organization was not licensed, certified, approved, or accredited at the time of the construction, the organization cannot issue either a purchasing agent appointment or an exemption certificate. When the organization becomes licensed, certified, approved, or accredited upon completion of the project, the exempt organization may apply for a refund of the tax remitted or collected by the contractors.

017.08C Generally, a contractor cannot obtain a refund of any tax remitted or collected on a project for an exempt organization or exempt governmental unit. The refund will normally be paid to the exempt organization or exempt governmental unit. A contractor may only obtain a refund or credit of tax paid on building materials when the contractor was appointed as a purchasing agent before the materials were annexed and the contractor paid tax on the building materials.

017.09 FIXED PRICE CONTRACTS

017.09A A contractor using fixed-price contracts may owe the state additional tax or may receive a refund of tax on building materials used in fixed-price contracts when there is a tax rate change.

017.09A(1) If the tax rate is decreased during the term of the fixed-price contract, the contractor must remit to the Department the difference between the tax actually paid on building materials and the tax that would have been paid at the tax rate in effect prior to the decrease, provided the amount of such payment exceeds ten dollars.

017.09A(2) If the tax rate is increased during the term of a fixed-price contract, the contractor must pay to the Department the sales or use tax at the increased rate on all materials purchased. The contractor may receive a refund of the amount of the additional sales or use tax paid because of the rate increase, provided the amount of the additional sales or use tax exceeds ten dollars.

017.09A(2)(a) The contractor must submit a copy of the contract and any other appropriate evidence to document the amount of additional sales or use tax paid on the building materials in the project.

017.09A(3) A change in the property taxed or exempted from tax is not a tax rate change for the purposes of this subsection.

017.09A(4) An adoption, repeal, or change in the rate of a local option tax is a tax rate change for purposes of this subsection and may result in a refund, or require the payment of additional tax.

017.09B An owner of a construction project completed using a fixed-price contract may owe the state additional sales or use tax on contractor labor in fixed-price contracts when the taxability of contractor labor changes.

017.09B(1) If the sales or use tax on contractor labor no longer applies to a construction project during the term of the fixed-price contract, the owner of the construction project must pay to the contractor or the Department, the difference between the sales or use tax actually paid on contractor labor and the sales or use tax that would have been paid prior to the change, provided the amount of such payment exceeds ten dollars.

(Section 48-2117, R.S. Supp. 2009 and sections 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2701.44, , 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33, 77-2704.44, and 77-2704.55, R.R.S., 2009. June 6, 2011.)