



**Nebraska Sales and Use Tax**

**Construction Contractor 2016**

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**Today's Agenda**

- Overview of Sales and Use Tax
- Contractor Database
- State Agency Information Sharing
- Contractor Terms
- Contractor Option Transactions
- Contracts with Exempt Entities
- Erosion Control
- Building Materials and Fixtures for a Job Site Outside Nebraska
- Repair/Annexation of Exempt MME

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# Overview of Sales and Use Tax

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Overview of Sales and Use Tax

## What is a Sales Transaction?

- Sales tax is calculated on the gross receipts.
- Delivery location determines the rate of local tax.
- Retailers must collect and report sales tax or document why they didn't.

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Overview of Sales and Use Tax (continued)

## Taxable Services

- Animal specialty services
- Building cleaning
- Computer software training
- Detective services
- Installing/applying tangible personal property
- Motor vehicle towing, washing/waxing, painting
- Pest control services
- Recreational vehicle (RV) park services
- Security services
- Repair labor (with 5 exceptions)

For a complete list of taxable and nontaxable services, see the [Nebraska and Local Sales Tax Information Guide](#) on our website.

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Overview of Sales and Use Tax (continued)

## What is Use Tax?

- Use tax is due when Nebraska sales tax has not been paid on a taxable item or service purchased for use in Nebraska.
- Sales and use tax are not both due on the same transaction.
- The big difference is who remits the tax –
  - Sales tax is collected and remitted by the seller.
  - Use tax is paid directly to the department by the purchaser/consumer.

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Overview of Sales and Use Tax (continued)

### Use Tax and Sales Tax Have These Things in Common -

- They are imposed on the same transactions.
- They have the same exemptions.
- They are calculated at the same rate.
  - Where delivery occurs, or
  - Where first usage in Nebraska takes place.

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# Contractor Database

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Contractor Database

The Nebraska Contractor Registration Act requires contractors and subcontractors doing business in Nebraska to register with the Nebraska Department of Labor.

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Contractor Database

- Every construction contractor making payment to a subcontractor must withhold 5%;
- Unless the subcontractor is registered in the Department of Labor's Contractor Registration Database.

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**Contractor Database (continued)**

- A single definition of “contractor” is used for purposes of the Contractor Registration Act and construction contractor withholding. (This definition is slightly different than the sales and use tax definition of a contractor.)
- A centralized registration system is used for construction contractors.
- The Department of Labor administers the Contractor Database.

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Official Nebraska Government Website

NEBRASKA DEPARTMENT OF LABOR

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Register Renew Registration Search Registered Contractors Pay Fees

Schedule a Boiler or Elevator Inspection or OSHA Consultation

Register a New Contractor	Affidavit for Fee Exemption	Contractors With Outstanding Unpaid Citations
Renew a Contractor Registration	File New Project Permit(s)	
Search Registered Contractors	Contractor Home Page	

**Contractor / Subcontractor Registration Application**

1. Application is for:  2. Application is for:

**United States Citizenship Attestation Form:**  
For the purpose of complying with Neb. Rev. Stat. §§4-108 through 4-114, I attest as follows:

I am a citizen of the United States.  I am a qualified alien under the Federal Immigration and Nationality Act and I agree to provide a copy of my USCIS documentation upon request.

Name:

Alien Number:

~ OR ~

Card Type:

Card Number:

Expiration Date:  /  /

Birth Date:  /  /

# State Agency Information Sharing

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State Agency Information Sharing

## Employee Classification Act LB 563

- Departments of Labor and Revenue.
- Labor will review whether workers are employees (Form W-2) or independent contractors (Form 1099).
- Revenue will review referrals from the Department of Labor.

LB 563 applies only to construction contractors and delivery companies.

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# Contractor Terms

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Contractor Terms

- Construction Contractor
- Contractor Labor
- Building Materials
- Fixtures
- Contractor Options

For more information on Contractors, see [Req-1-017](#).

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Contractor Terms (continued)

### Construction Contractor

- Makes repairs or improvements to real estate or items annexed to real estate.
- Arranges for annexation

Examples you may not have thought about –

- Landscapers who build or repair retaining walls.
- Interior designers who arrange for construction work to be done (hanging wallpaper).
- Providers of restoration services to real estate.

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Contractor Terms (continued)

### Contractor Labor

- Annexing building materials to real estate.
- Repair of a structure.
- Repair of building materials that are or will be annexed to real estate.

Example: Hanging drywall.

Charges for contractor labor are not taxable.

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Contractor Terms (continued)

### Contractor Labor

- If you install telephone, cable, or satellite television, or
- perform work for a telephone, cable, or satellite company...

...there are specific sales and use tax regulations governing the taxability of these projects.

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Contractor Terms (continued)

### Building Materials

- Property (including fixtures) that will be annexed to real estate or to an improvement on real estate (see Reg-1-017-02).
- **Does not include:**
  - Tools;
  - Equipment;
  - Supplies; or
  - Other items not annexed.

Example: Rebar embedded in concrete is a building material. Form lumber is not.

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Contractor Terms (continued)

## Fixtures

- Equipment that must be annexed to a building or structure so that it can properly function.
- Fixtures remain identifiable as a separate item.

Example: Water heater.

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Contractor Terms (continued)

## Contractor Options

- Contractor options apply only to construction contractor projects.
- Option chosen determines:
  - How sales and use tax is paid on building materials and fixtures; or
  - If sales tax is collected from the customer on building materials and fixtures
- Audits will be conducted based on the default option or option chosen. If an option is not chosen, default = Option 1.

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## Contractor Transactions

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Contractor Transactions (continued)

## Contractor's Transactions

- Retail sales (TPP & taxable services)
  - Building cleaning
  - Taxable at rate in effect where delivery occurs
- Contractor labor (Not taxable)
- Nontaxable services

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Contractor Transactions (continued)

### Option 1 Contractor

- Transactions with the supplier
  - Purchases building materials and fixtures for resale.
  - Must give Nebraska supplier a properly completed Form 13, Section C, Block 1.
- Transactions with the customer
  - Does not collect sales tax on separately stated labor charges.
  - Must collect sales tax on separately stated charges for building materials and fixtures.
  - If charges for building materials and labor are not separately stated, the entire amount is taxable.

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Contractor Transactions (continued)

### Option 2 Contractor

- Transactions with the supplier
  - Pays sales or use tax on purchases of building materials and fixtures.
- Transactions with the customer
  - Does not collect sales tax on any portion of the invoice. Cannot accept a Form 13.

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Contractor Transactions (continued)

### Option 3 Contractor

- Transactions with the supplier
  - Purchases building materials and fixtures tax-free.
  - Must give Nebraska supplier a properly completed Form 13, Section C, Block 1.
- Transactions with the customer
  - Must remit use tax at the rate in effect at the time and place of withdrawal of building materials and fixtures from inventory.
  - Does not collect sales tax on any portion of the invoice. Cannot accept a Form 13.

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**Form 13,  
Section C,  
Block 1**

**REVENUE** Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption Form 13

Name and Mailing Address of Purchaser		Name and Mailing Address of Seller	
Name		Name	
Street Address		Street or Office/Mailing Address	
City		City	
State		State	
Zip Code		Zip Code	

Check Type of Certificate:  
 Single Purchase    If single purchase is checked, enter the related invoice or purchase order number.  
 Resale    If Resale is checked, this certificate is valid until revoked in writing by the purchaser.

I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:  
**Check One:**  Purchase for Resale (Complete Section A.)     Exempt Purchase (Complete Section B.)     Contractor (Complete Section C.)

**Section A—Nebraska Resale Certificate**

I hereby certify that the purchase, lease, or rental of \_\_\_\_\_ from the seller listed above is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of your business. The property or service will be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property or service to be resold.

I further certify that we are engaged in business as a:     Wholesaler     Retailer     Manufacturer     Leasing

Description of Product or Service Sold, Leased, or Rented: \_\_\_\_\_

My Nebraska Sales Tax Permit Number is 01-\_\_\_\_\_.  
 If none, state the reason: \_\_\_\_\_  
 If none, state the reason: \_\_\_\_\_  
 My Foreign State Sales Tax Number: \_\_\_\_\_ State: \_\_\_\_\_

**Section B—Nebraska Exempt Sale Certificate**

The basis for this exemption is exemption category \_\_\_\_\_ (insert appropriate number for the category of exemption described on the reverse side).  
 If exemption category 2 or 4 is claimed, enter the following information:    Identified Use of Items Purchased: \_\_\_\_\_  
 Description of Items Purchased: \_\_\_\_\_

If exemption category 3 or 4 is claimed, enter your Nebraska Exemption Certificate number: 05-\_\_\_\_\_. Do not enter your Federal Employer ID Number.  
 If exemption category 6 is claimed, the seller must enter the following information and sign this form below:  
 Description of Items Sold: \_\_\_\_\_    I am a Federal/State/Local Government     Yes     No    Has item been purchased by seller?     Yes     No

**Section C—For Contractors Only**

1. Purchase of building materials or fixtures.  
 As an Option 1 or Option 3 contractor, I hereby certify that the purchase of building materials and fixtures from the seller listed above are exempt from Nebraska sales tax. My Nebraska Sales or Use Tax Permit Number is: \_\_\_\_\_

2. Purchase made by an Option 2 contractor under a Purchasing Agent Appointment on behalf of \_\_\_\_\_ (insert entity)  
 As an Option 2 contractor, I hereby certify that the purchase of building materials and fixtures from the seller listed above is exempt from Nebraska sales tax pursuant to the attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17.

For information, resale or other purposes, the certificate is not valid for use for resale, rental, or lease in the normal course of your business. The property or service will be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property or service to be resold. The certificate is not valid for use for resale, rental, or lease in the normal course of your business. The property or service will be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property or service to be resold. The certificate is not valid for use for resale, rental, or lease in the normal course of your business. The property or service will be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property or service to be resold.

sign here: \_\_\_\_\_  
 Authorized Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Do not send this certificate to the Nebraska Department of Revenue. Keep it as part of your records.  
 Sellers cannot accept incomplete certificates.  
 revenue@nebraska.gov, 800-742-3474, 402-471-5279    A-14-103 Rev. 10/2014    Issuance to 10/1/2015

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Contractor Transactions (continued)

### Important Contractor Reminder!

Building materials do not include tools, equipment, or services that do not become annexed to real estate.

Contractors must pay sales and use tax on purchases of these items!

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Contractor Transactions (continued)

- Use tax is due when an Option 2 contractor purchases:
  - Building materials or fixtures picked up in another state
  - Building materials or fixtures delivered to the job site by a supplier who does not charge sales tax
- Use tax is due when on an Option 3 contractor withdraws building materials and fixtures out of inventory.
- Use tax is due when any contractor withdraws tax-free inventory for business or personal use.
  - Dry wall contractor repairs his own home
  - Plumbing contractor installs a new faucet in the office restroom

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Contractor Transactions (continued)

### Building Cleaning and Pest Control Services

- These services are not “contractor labor”, so are taxable (even when performed at the construction site).
- Contractors must pay sales tax on purchases of these services, even if the project owner is an exempt entity.

Example: Termite treatment, or a 3<sup>rd</sup> party crew hired to clean up inside a building.

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Contractor Transactions (continued)

### Cleaning annexed equipment is taxable building cleaning when the equipment is real property

If the annexed equipment facilitates the function of the building...

and

is intended to stay with the building...

then

the equipment is considered real property.

Examples:

- Furnace
- Air conditioner
- Water heater

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Contractor Transactions (continued)

**Cleaning annexed equipment is not taxable building cleaning when the equipment is TPP**

If the annexed equipment facilitates the function of the business...

and

is **not** intended to stay with the building...

then

the equipment is considered tangible personal property. The cleaning of the equipment is not taxable.

Examples:

- Commercial ice maker
- Commercial oven

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Contractor Transactions (continued)

**Warranties & Guarantees**

- Taxable when the item or service covered is taxable
- Tax exempt when covering items annexed to real estate

(Refer to Regulation 1-074 – Warranties & Guarantees for more information)

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Contractor Transactions (continued)

**Warranties & Guarantees**

- Taxable
  - Charges invoiced for more than what the warranty covers
  - Deductibles
- Tax-exempt
  - Parts used and labor performed under warranty covering tangible personal property

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**Contracts with Exempt Entities**

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## Contracts with Exempt Entities

How do I know if the project owner is an exempt entity?

- Governmental Entity information guide (Reg-1-093)
- Nonprofit information guide (Reg-1-090)
- Nonprofit Healthcare Facilities (Reg-1-090)
- Contact the Department

Reminder: Not all nonprofits or governmental units are exempt from sales tax!

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## Contracts with Exempt Entities (continued)

Be sure to get a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17.

Form 17 supports why tax was not paid or collected on building materials and fixtures for construction projects for exempt entities.

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## Contracts with Exempt Entities (continued)

### Option 1 Prime Contractors

- Receive Form 17 and Form 13 from project owner prior to the start of the project.
- Complete the Delegation of Prime Contractor's Authority portion of the Form 17.
- Complete a Form 13 and provide it with a copy of the Form 17 to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.

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## Contracts with Exempt Entities (continued)

### Option 2 and 3 Prime Contractors

- Complete a Form 13 and provide it with a copy of the Form 17 to Option 1 subcontractors.
- Provide copies of the Form 17 to any Option 2 or 3 subcontractors on the project so they can buy building materials and fixtures sales tax exempt.

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Contracts with Exempt Entities (continued)

## Form 17

<b>REVENUE</b>		<b>Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax</b>	<b>FORM 17</b>
<b>PURCHASING AGENT APPOINTMENT</b>			
Name and Address of Prime Contractor		Name and Address of Governmental Unit or Exempt Organization	
Name		Name	
Street or Other Mailing Address		Street or Other Mailing Address	
City	State	Zip Code	City
			State
			Zip Code
Name and Location of Project		Appointment Information	
Name		Effective Date (see instructions)	
Street or Other Mailing Address		Expiration Date	
City	State	Zip Code	Nebraska Exemption Number (Exempt Organizations Only)
Identify Project			
The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's designated subcontractors as its agent to purchase and pay for building materials that will be assessed to real estate by the tax exempt construction project stated above.			
sign here		Authorized Signature of Governmental Unit or Exempt Organization	
		Title	
		Date	
<b>DELEGATION OF PRIME CONTRACTOR'S AUTHORITY</b>			
Name and Address of Subcontractor		Delegation Information	
Name		Effective Date	
Street or Other Mailing Address		Expiration Date	
City	State	Zip Code	Position of Project
The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.			
sign here		Signature of Prime Contractor or Authorized Representative	
		Title	
		Date	

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Contracts with Exempt Entities (continued)

## Option 1 Subcontractors

- Purchase building materials & fixtures sales tax exempt by giving Form 13, Section C, Block 1 to their Nebraska supplier.
- Do not collect sales tax on items when they obtain a properly completed Form 17 and Form 13 prior to the start of the project.

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Contracts with Exempt Entities (continued)

## Option 2 Subcontractors

- Purchase building materials and fixtures sales tax exempt by giving –
  - A copy of Form 17, and
  - Form 13, Section C, Block 2 to their Nebraska supplier.

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Contracts with Exempt Entities (continued)

## Option 3 Subcontractors

- Purchase building materials & fixtures sales tax exempt by giving Form 13, Section C, Block 1 to their Nebraska supplier.
- Do not owe use tax on items when they obtain a properly completed Form 17 prior to the start of the project.

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Contracts with Exempt Entities (continued)

### **Form 17 For All Contractors**

- Only building materials and fixtures that become annexed to real estate may be purchased sales tax exempt.
- Contractors must pay sales or use tax on all purchases or rentals of equipment, tools, and taxable services used to complete the project.

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Contracts with Exempt Entities (continued)

### **Refunds on Sales and Use Taxes Paid on Exempt Projects**

- If a Form 17 is issued to the contractor prior to the contractor annexing building materials, the contractor can request a refund.
- If a Form 17 is not issued to the contractor in a timely manner, only the project owner can request a refund.
- The following are not allowed a refund:
  - United States Government; ○ Nebraska University; and
  - Nebraska State College; ○ State of Nebraska.

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Contracts with Exempt Entities (continued)

### **Routine, On-call Repairs for Exempt Entities**

- Contractors who are on-call for exempt entities may obtain a Form 17 for routine, on-call repair.
  - There must be a written agreement.
  - Form 17 is good for up to one year.
  - Option 1 contractors must also obtain a Form 13.

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Contractor Option Transactions (continued)

### **Landscapers**

- Retail Sales
  - Live plants including sod
  - Labor charges to plant them
  - Pest control services (ex. grub control)
- Contractor Labor
  - Building or repairing retaining walls
  - Adding dirt for berms, or fountains in ponds
  - Installing and repairing underground sprinkler systems
- Nontaxable Services
  - Lawn mowing, fertilizing, or snow removal

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# Erosion Control

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## Erosion Control Issues

### Retail Sales

- Rock and gravel
  - Considered a retail sale when it is just dumped at a location. Collect tax from the customer.
- Silt fencing and erosion control checks and the labor to install them when not part of a construction project
  - Sales tax should be collected from the customer on materials and installation labor.

Silt fencing and erosion control checks remain tangible personal property after installation.

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Erosion Control Issues(continued)

### Contractor Labor

- The labor to install silt fencing and erosion control checks in addition to contractor labor
  - The labor is contractor labor. The contractor is the consumer of the materials for these items and must pay sales tax on them.

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Erosion Control Issues(continued)

### Contractor Labor

- Spreading rock and gravel
- Spreading hay or straw over seed
- Drilling seed and hydro-seeding
- Installing erosion control netting
- The labor to apply erosion control blankets, mulch, and seed

Tax the building materials for these items according to contractor option.

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Erosion Control Issues(continued)

## Nontaxable services

- Demolition and earth moving
  - When performed on a stand alone basis, this service is nontaxable.

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# Energy Source

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## Energy Source Utility Exemption

The seller is not responsible for collecting sales tax on sales of dyed diesel fuel when delivery takes place by

- Pumping it into a bulk tank equipped with a hose and nozzle;
- Pumping it directly into the fuel tank of an off-road vehicle;
  - Farm tractor      ○ Bulldozer      ○ Excavator
  - Combine          ○ Road grader      ○ Boat
- Pumping it directly into a supply tank that fuels equipment that generates electricity; or
- Pumping it directly into a supply tank that fuels stationary crop irrigation equipment.

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## Taxable Energy Source

Dyed diesel fuel is subject to sales and use tax when:

- Used in certain equipment
  - Reefer unit
  - De-watering equipment
  - Diesel powered light tower equipment
  - Diesel powered air compressor

Refer to Sales and Use Tax Regulation 1-089-  
Energy Source Utility Exemption, for more information.

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# Building Materials and Fixtures for a Job Site Outside Nebraska

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Job Site Outside Nebraska

## Option 1

No Nebraska sales or use tax liability

- When withdrawing building materials and fixtures from tax-free inventory
- When building materials and fixtures are annexed to real estate in the other state.

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Job Site Outside Nebraska (continued)

## Option 2

No Nebraska sales tax credit or refund

- When withdrawing building materials and fixtures from tax-paid inventory.
- Credit for sales tax paid may be available from the other state.
- They may have the supplier deliver materials to the job site out-of-state and pay no Nebraska sales or use tax.

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Job Site Outside Nebraska (continued)

## Option 3

Remits use tax to Nebraska

- When withdrawing building materials and fixtures from tax-free inventory.
- At the rate in effect at the time and place inventory is withdrawn.
- They may have the supplier deliver materials to the job site out-of- state and pay no Nebraska use tax.

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# Repair or Annexation of Exempt Manufacturing Machinery and Equipment (MME)

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- When work on MME involves charges for contractor labor:
  - Contractor labor is sales tax exempt; and
  - The contractor option chosen determines the taxability of purchases of MME, or any repair parts.

MME

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## Option 1

- Obtains Form 13, Section B, Category 5 from the manufacturer.
- May purchase MME sales tax exempt.
- Does not collect sales tax on MME, provided a completed Form 13 is received from the manufacturer.

MME (continued)

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## Form 13, Section B

MME (continued)

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MME (continued)

### Options 2 and 3

- These contractors owe sales or use tax on MME and on parts purchased and annexed to manufacturer's real estate.
- Cannot accept a Form 13, Section B, Category 5 from the manufacturer.
- But, a manufacturer can purchase MME sales tax exempt directly from a 3<sup>rd</sup> party vendor.

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### Agenda Summary

- Overview of Sales and Use Tax
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Margaret Akin  
(308)633-2234

[margaret.akin@nebraska.gov](mailto:margaret.akin@nebraska.gov)

Steve Drzaic  
(402)595-2078

[steve.drzaic@nebraska.gov](mailto:steve.drzaic@nebraska.gov)

Taxpayer assistance  
800-742-7474

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Thank you!

General STX  
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