

# Tax Incentive Purchasing Agent Appointment and Certification

**CAUTION:** This Purchasing Agent Appointment and Certification should only be used by applicants for Nebraska tax incentive programs and contractors performing work at a tax incentive project. This appointment **DOES NOT EXEMPT** the purchase of building materials from Nebraska and local sales and use taxes.

## Section 1 — Project Information and Designation as Purchasing Agent

Name and Mailing Address of Prime Contractor		Name and Location of Construction Site	
Name		Name	
Street or Other Mailing Address		Street Address	
City	State	City	State
	Zip Code		Zip Code
Tax Incentive Project Information			
Name of Tax Incentive Applicant		Nebraska ID Number	Tax Incentive Project Number
Application Date	Ending Date of Year of Qualification	Tax Incentive Project's Year End (MM/DD)	
Describe Construction Activity			

Contract is for the following property types:

- Incorporated into real estate  
  Annexed, but not incorporated into real estate  
  Combination of incorporated into real estate **and** annexed, but not incorporated into real estate

### Tax Incentive Program and Computation Method

**Nebraska Advantage Act (LB 312)**

**Computation Method A**

The sales and use tax refund process **uses certifications from the contractor** as the basis for refunds for construction contracts including property incorporated into real estate (for example, buildings) and property annexed, but not incorporated into real estate (for example, equipment).

**Computation Method B**

The sales and use tax refund process uses certifications from the contractor as the basis for refunds for property incorporated into real estate (for example, buildings). The refund of sales and use taxes paid on property annexed, but not incorporated into real estate (for example, equipment) **requires the contractor to provide copies of its purchase invoices for materials** and its Nebraska Use Tax returns.

**Employment and Investment Growth Act (LB 775)**

The sales and use tax refund process uses certifications from the contractor as the basis for refunds for property incorporated into real estate (for example, buildings). The refund of sales and use taxes paid on property annexed, but not incorporated into real estate (for example, equipment) **requires the contractor to provide copies of its purchase invoices for materials** and its Nebraska Use Tax returns.

The undersigned applicant for the Nebraska tax incentive program appoints the named contractor and the contractor's delegated subcontractors as its agents. All contractors and subcontractors must pay or remit the applicable Nebraska and local sales or use taxes on all tangible personal property as required under Nebraska Sales and Use Tax Regulation 1-017. This appointment **DOES NOT EXEMPT** the purchase of building materials from Nebraska and local sales and use taxes. This appointment exists solely for the purpose of establishing that the owner of the property used at a tax incentive project has the right to file a refund claim for the sales and use taxes paid by the contractor or subcontractors on the purchases under this construction contract.

**sign  
here** ▶

\_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Phone Number \_\_\_\_\_  
 Authorized Signature of Applicant  
 \_\_\_\_\_  
 Print Name \_\_\_\_\_ Email Address \_\_\_\_\_

## Section 2 — Delegation of Authority

### Delegation of Prime Contractor's Authority

Name and Mailing Address of Subcontractor	Description of Subcontractor's Construction Activity
Name	
Street or Other Mailing Address	
City	
State	
Zip Code	

The undersigned prime contractor delegates authority to the above-named subcontractor to act as purchasing agent of the named tax incentive applicant. **This appointment DOES NOT EXEMPT the purchase of building materials from Nebraska and local sales and use taxes.**

**sign  
here** ▶

\_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Phone Number \_\_\_\_\_  
 Authorized Signature of Delegating Contractor  
 \_\_\_\_\_  
 Print Name \_\_\_\_\_ Email Address \_\_\_\_\_

**Section 3 — Certification of Completion Percentage by Contractor or Subcontractor**

Attach a copy of page 1 and page 2 of the "Application and Certificate for Payment" or other replacement document issued nearest to each date listed in the table below.

Construction Project Name	Construction Start Date	Construction Completion Date
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Enter the tax incentive project application date, the tax incentive project's year end dates during the construction period, and the percentage of completion. The definition of year depends on the tax incentive project application date.

	Project Dates	Cumulative Percentage Completed to Date
Date of application		
1st – Year end during construction project		
2nd – Year end during construction project		
3rd – Year end during construction project		
4th – Year end during construction project		
5th – Year end during construction project		

**Section 4 — Contractor's or Subcontractor's Certification of Sales and Use Taxes Paid**

Nebraska ID Number	Nebraska Contactor Option
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Based on the review of sales tax paid on invoices from suppliers, use tax reported, and certification of taxes paid by subcontractors; complete the table below, indicate the location in which the tax was paid, the tax rate, and the percentage of materials upon which tax was paid.

	Tax Rate Paid	Percentage of Materials Upon Which Tax Was Paid
Nebraska	5.5%	

City or County	Tax Rate Paid	Percentage of Materials Upon Which Tax Was Paid

**Section 5 — Certification of Materials Percentage – Property Annexed to Real Estate**

Provide the following table information to report the percentage of materials in the contract for property annexed, but not incorporated into real estate. The cost of materials must not include any mark-up or overhead costs. Exclude the cost of equipment rental and items which do not remain a part of the project (for example, tools, meals, etc.).

1 Cost of direct material purchases . . . . .	<b>1</b>	
2 Cost of taxable property purchased from Option 1 contractors . . . . .	<b>2</b>	
3 Total cost of materials (add lines 1 and 2) . . . . .	<b>3</b>	
4 Total contract price . . . . .	<b>4</b>	
5 Materials percentage (divide line 3 by line 4) . . . . .	<b>5</b>	

As the authorized person for the named contractor or subcontractor, I certify that the contractor or subcontractor acted as purchasing agent for the tax incentive applicant for materials purchased for annexation or incorporation at this project location. I understand that the Nebraska Department of Revenue (Department) will rely on the certification made in calculating the refund of sales or use taxes to the tax incentive applicant or to the owner of the building, and that the contractor is jointly liable with the applicant for misstatements in this certification, including statements made by subcontractors, which result in the Department refunding sales and use taxes that were not paid.

**sign here**

Authorized Signature of Contractor	Title	Date	Phone Number

Print Name	Email Address

## Instructions

**Who May Issue a Tax Incentive Purchasing Agent Appointment and Certification.** The Tax Incentive Purchasing Agent Appointment and Certification is issued by a tax incentive applicant to appoint a contractor as a designated purchasing agent. The purchasing agent completes the form to delegate authority to any subcontractors and to certify sales and use taxes paid for a construction contract, which includes both labor and materials, at a Nebraska tax incentive project.

The Nebraska Department of Revenue (Department) will rely on the certification made in calculating the refund of sales or use taxes to the tax incentive applicant or to the owner of the building. The contractor is jointly liable with the applicant for misstatements in this certification, including statements made by subcontractors, which result in the Department refunding sales and use taxes that were not paid.

### Terms

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

**Contractor.** A contractor is any person who annexes property to real estate by attaching building materials to the annexed property or to an improvement being built or repaired, or who arranges for annexation of property. A contractor also includes any person who repairs annexed property.

**Fixture.** A fixture is 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 include central air conditioners, water heaters, garbage disposals, and furnaces.

**Property annexed, but not incorporated into real estate.** Property annexed, but not incorporated into real estate is property that is attached to, but does not become real estate, where the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional. Property annexed, but not incorporated into real estate includes items such as manufacturing equipment and tanks that meet the requirements stated above for installation or removal.

**Property incorporated into real estate.** Property incorporated into real estate are items included in the valuation of a parcel for property tax purposes, including buildings, fixtures, and structures.

**Recognized trade professional.** A recognized trade professional is any person required to be licensed to practice a trade, such as a plumber or electrician.

**Structure.** A structure is any construction composed of building materials arranged and fitted together in some way and annexed to land, such as a television tower, fence, sewer, water line, or billboard.

### Year

**Tax Incentive Project Applications Dated Before September 6, 2013.** The year is the federal taxable year of the taxpayer.

**Tax Incentive Project Applications Dated on or After September 6, 2013.** The year is a calendar year.

### Computation Methods

A Nebraska Advantage Act applicant with an application date on or after July 15, 2010 must use Computation Method A.

A Nebraska Advantage Act applicant with an application date on or before July 14, 2010 must make a one-time election (see Nebraska Advantage Act Election of Contractor's Computation Method, Form 312E) to compute all sales and use tax refunds for transactions with contractors at the project under Computation Method A or Computation Method B. The computation method selected is binding and applies to refund calculations for all property acquired by the applicant from a contractor for the life of the project.

An Employment and Investment Growth Act (LB 775) applicant must use Computation Method B.

The Contractor's Calculation Guide below summarizes the calculation methods for various types of property acquired by the applicant from an Option 2 or 3 contractor. The information required from the contractor and the calculation of the refund differs for Computation Method A and Computation Method B.

Contractor's Calculation Guide		
Property Type	Computation Method A	Computation Method B
Incorporated into real estate	Contractor's calculation using 50%	Contractor's calculation using 50%
Annexed, but not incorporated into real estate	Contractor's calculation using materials percentage	Contractor's verified tax paid
Single contract including both property incorporated into real estate and property annexed, but not incorporated into real estate	Contractor's calculation using 50%	Contractor's verified tax paid

**Contractor's Calculation Using 50% (Computation Methods A and B).**

- The statutory presumption is that 50% of a construction contract, which includes labor and materials, is the cost of materials, including sales or use taxes.
- The contractor must provide certification of tax paid (Section 4 of this form) that states the taxed percentage, which is the percentage of building materials upon which Nebraska and local sales and use taxes were paid.
- $$\frac{(\text{Contract price} \times 50\%)}{1 + \text{Tax Rate}} \times \frac{\text{Tax Rate}}{\text{Tax Rate}} \times \frac{\text{Taxed Percentage (Section 4)}}{\text{Taxed Percentage (Section 4)}}$$

**Contractor's Calculation Using Materials Percentage (Computation Method A).**

- The general contractor's certification of the materials percentage (Section 5 of this form) for property annexed to, but not incorporated into real estate at the project, is used to determine the cost of materials, including sales or use tax.
- The contractor must provide certification of tax paid (Section 4 of this form) that states the taxed percentage, which is the percentage of building materials upon which sales and use taxes were paid.
- $$\frac{[\text{Contract price} \times \text{Materials Percentage (Section 5)}]}{1 + \text{Tax Rate}} \times \frac{\text{Tax Rate}}{\text{Tax Rate}} \times \frac{\text{Taxed Percentage (Section 4)}}{\text{Taxed Percentage (Section 4)}}$$

**Contractor's Verified Tax Paid (Computation Method B).**

The actual sales and use taxes paid by the contractor on purchases of building materials or annexed property is refunded. The contractor and subcontractor must provide detailed evidence of the sales or use taxes paid (for example, the contractor's invoice copies and listings supporting the [Business Nebraska and Local Use Tax Return, Form 2](#)).

**Completion of Form 312C.** Sections 1, 3, and 4 must be completed for each contract completed for the tax incentive applicant at the project. Section 2 must be completed if the contractor who is acting as purchasing agent for the tax incentive applicant delegates this authority to any subcontractor. Section 5 is only required for a contract for property annexed, but not incorporated into real estate, completed for a Nebraska Advantage Act applicant using Computation Method A.

**Section 1.** The tax incentive applicant must complete this section to designate the contractor as a purchasing agent for purposes of [Neb. Rev. Stat. §§ 77-4106\(3\)](#) and [77-5726\(3\)](#), or the provisions of the contract must include the information for this section.

This section must be signed by the applicant's owner, partner, member, corporate officer, or other individual authorized to sign by a [power of attorney](#) on file with the Department or attached to this form.

**Section 2.** The prime contractor may delegate to its subcontractors the authority to act as a purchasing agent of the tax incentive applicant. The subcontractors must provide the contractor information for the sales or use taxes paid on materials incorporated into or annexed, but not incorporated into real estate. This section must be signed by an owner, officer, or an authorized power of attorney for the delegating contractor.

**Section 3.** Enter the cumulative percentage of the contract completed on each date. The contractor must certify the percentage of completion at those points in time which are critical to the determination of tax benefits under the tax incentive program. The date of application is the starting point for a tax incentive project. The end of the tax incentive applicant's project year is used to calculate tax investment for the project.

**Section 4.** State the percentage of materials upon which Nebraska sales or use taxes and any applicable local sales or use taxes were paid by an Option 2 or 3 contractor.

**Section 5.** Calculate the portion of the labor and materials contract upon which Nebraska or local sales or use taxes were paid by an Option 2 or 3 contractor.

**Line 1.** Enter the cost of materials before mark-up. Only include materials purchased by the contractor that remain with the tax incentive project. Items such as equipment rental and meal reimbursements should not be included.

**Line 2.** Enter the total costs for which taxes were paid to an Option 1 contractor. This would include labor cost for periods in which contractor labor was subject to tax.

Sections 3, 4, or 5 must be signed by an owner, officer, or an authorized power of attorney for the contractor or subcontractor.

**For Additional Information.** If you have any questions or need further assistance, send an email to [rev.incentives@nebraska.gov](mailto:rev.incentives@nebraska.gov), or visit the Department's website at [revenue.nebraska.gov](http://revenue.nebraska.gov).