

I N F O R M A T I O N

Nebraska Taxation of Contractors — Option 1

Revised October 1, 2007

For more information,
check our website.



This Information Guide provides an overview of the requirements for contractors operating under Option 1. It is not designed to answer all questions that arise, but is intended to enable a person to become familiar with the main provisions of this contractor option.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the [subscription service](#) at revenue.nebraska.gov to get updates on your topics of interest.

Contractor

Contractor is any person who repairs property annexed to real estate, who annexes building materials and fixtures to real estate, or who arranges for such annexation.

A contractor who elects Option 1 is a retailer of building materials and fixtures purchased and annexed to real estate.

Option 1 contractors must:

- ✓ Obtain a Nebraska Sales Tax Permit by filing a [Nebraska Tax Application, Form 20](#);
- ✓ Register in the Contractor Registration Database (Database) and elect Option 1 by completing the Nebraska Department of Labor's online [Contractor/Subcontractor Registration Application](#) located at www.dol.nebraska.gov. Contractors who do not register and elect a contractor option will be treated as a retailer under Option 1;
- ✓ Withhold 5% of all payments made to other contractors who are not registered in the Database. Contractors that need to be registered are defined in the [Contractor Registration Act, Neb. Rev. Stat. § 48-2103](#) and the [Nebraska Revenue Act, Neb. Rev. Stat. § 77-2701.10](#);
- ✓ Collect and remit the Nebraska and local sales tax on the total amount charged for building materials and fixtures; and
- ✓ Collect and remit the Nebraska and local sales tax on all over-the-counter retail sales and retail sales of taxable services.

Labor Charges

Beginning October 1, 2007, Option 1 contractor labor charges that are separately stated or itemized on the billing invoice are not taxable.

Option 1 contractors are not required to obtain a Nebraska Resale or Exempt Sale Certificate, Form 13, from other contractors to exempt their contractor labor charges from tax.

Option 1 contractors who only charge one amount that includes **both** building materials **and** contractor labor must collect sales tax on the total amount charged.

Building Materials and Fixtures

Building materials are those items that will become real estate or which are annexed to real estate. Examples include lumber, drywall, insulation, and roofing materials.

Building materials do **not** include tools, supplies, property, equipment, or other items that will **not** be annexed to real estate.

Example: Rebar placed in concrete to reinforce it is a building material. Form lumber to form up the concrete as it is poured is **not** a building material.

Fixtures are items that must be annexed to a building or structure in order to properly function, yet remain identifiable as separate items. Examples include water heaters, furnaces, central air conditioners, and built-in dishwashers.

Option 1 contractors may purchase building materials and fixtures tax-free and maintain a tax-free inventory of such items.

When making tax-free purchases of building materials and fixtures, Option 1 contractors must give their suppliers a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section C, Block 1.

Option 1 contractors must collect and remit the Nebraska and applicable local sales tax from their customers, including other contractors, on the total amount charged for building materials and fixtures they annex to real estate, unless the project owner is an exempt entity and the appropriate documentation has been obtained. Please see the “Contracts With Exempt Entities” section on page 3 of this guide.

Option 1 contractors may withdraw from inventory building materials and fixtures intended for annexation to real estate in another state without incurring a Nebraska use tax liability.

Tools, Equipment, Supplies, and Taxable Services

Tools, equipment, and supplies used in the completion of a construction or repair project do not become part of the real estate, structure, or fixture. Option 1 contractors are the consumers of all tools, equipment, and supplies used in completing their construction projects, **including any project for an exempt entity**. Option 1 contractors must pay sales tax on all such items purchased, rented, or leased by them for use in their construction projects—including installation, assembly, disassembly, delivery, and any other charge associated with the purchase or rental of such items. Examples of taxable tools, equipment, and supplies are hammers, sandpaper, lumber to build forms, office equipment, scaffolding, backhoes, cement mixers, and safety equipment such as barriers, fences, and caution tape.

A contractor’s purchase of certain services, such as building cleaning or maintenance services, pest control services, and security services are taxable. Each of these services is specifically taxed, and persons providing such services are **not** performing contractor labor. Option 1 contractors are the consumers of these services and cannot purchase these services tax-free for resale.

Contractors must pay sales tax or remit consumer’s use tax on the above property and services even on a project performed for an exempt entity. Use tax is commonly due on the purchase or rental of such items and services from out-of-state retailers.

Barricades Provided to Contractors

Barricade companies who provide barricades, high intensity lights, arrow boards, cones, and other equipment to Option 1 contractors are leasing these items and are required to collect sales tax. Sales tax is collected on the total amount charged for the equipment and any services included in a lease agreement to place, move, clean, maintain, and repair such items.

Option 1 contractors cannot use a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment, Form 17, issued by an exempt entity to exempt the rental of such items from tax. Tax is due regardless of whether these items are required at the job site to comply with governmental or private contract specifications or to protect workers and provide traffic control.

Billing Another Contractor

Option 1 contractors who bill another Option 1, Option 2, or Option 3 contractor are only required to collect sales tax on the total amount charged for the building materials and fixtures they annex to the project provided the labor charge is separately stated. Option 1 contractors who only charge one amount for the building materials and contractor labor must collect sales tax on the total amount charged. The Option 1, Option 2, or Option 3 contractor cannot issue a Nebraska Resale or Exempt Sale Certificate, Form 13, to forego the payment of tax.

Billing the Project Owner

Option 1 general or prime contractors who bill the project owner must collect sales tax on the total amount charged for the building materials and fixtures they annex to the project.

Example: An Option 1 contractor is hired as a general contractor to remodel a kitchen for \$30,000. The project is located in a city with a 1.5% local tax rate for a total rate of 7.0%. The general contractor will provide and install new cabinets. The general contractor hires an Option 1 electrician and an Option 2 or Option 3 plumber. The Option 1 electrician must collect sales tax from the general contractor on its **separately** stated charge for materials.

Sample invoice from the Option 1 electrician to the Option 1 general contractor:

Labor	\$2,000.00
Materials (wire, lights)	600.00
Sales tax (\$600 x 7.0%)	<u>42.00</u>
Total amount due	\$2,642.00

If the Option 1 electrician chooses to charge a single amount for its materials and labor, the total charge is taxable.

An Option 1 contractor cannot purchase annexed building materials and fixtures tax-free for resale from another Option 1 subcontractor.

Regardless of its billing method, the Option 2 or Option 3 plumber will not collect sales tax from the general contractor on any portion of its bill.

Sample invoice from an Option 2 or Option 3 plumber to the Option 1 general contractor:

Plumbing for kitchen remodel	<u>\$3,000.00</u>
Total amount due	\$3,000.00

The Option 1 general contractor must collect sales tax on the total amount charged for the cabinets annexed by the general contractor. The Option 1 general contractor will not collect tax on its own contractor labor charges or on any amounts charged by its subcontractors, provided such amounts are separately stated.

Sample invoice from the Option 1 general contractor to the project owner:

Cabinets	\$10,000.00
Contractor labor -	
Remodel	13,658.00
Electrician	2,642.00
Plumber	<u>3,000.00</u>
Subtotal	\$29,300.00
Sales tax on cabinets (\$10,000.00 x 7%)	<u>700.00</u>
Total amount due	\$30,000.00

Contracts with Exempt Entities

Most nonprofit organizations are **NOT** exempt from sales tax in Nebraska. In addition, not all governmental units are exempt from Nebraska sales tax. The following Nebraska Sales and Use Tax Regulations identify those entities that are exempt from sales and use tax:

- 1-072 United States Government and Federal Corporations;
- 1-090 Nonprofit Organizations;
- 1-091 Religious Organizations;
- 1-092 Educational Institutions; and
- 1-093 Governmental Units.

Option 1 contractors who perform work for a qualified exempt entity or an exempt governmental unit, and subcontract

out some of the work, must obtain a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17 **and** a Form 13, Section B, from the exempt project owner. The Form 17 must be completed and issued before any building materials are annexed.

If an Option 1 contractor is the only contractor involved in performing work for a qualified exempt entity or exempt governmental unit, only the Form 13, Section B, must be obtained from the exempt project owner. The Form 17 is not necessary in this situation.

Option 1 subcontractors must obtain from the general contractor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the Purchasing Agent Appointment, Form 17. Upon receipt of these two forms, the Option 1 contractor will not collect sales tax from the general contractor.

Form 17 cannot be used to purchase or lease tax-free any tools, equipment, supplies, barricades, or other items that will not be annexed to real estate.

Installation and Repair of Manufacturing Machinery and Equipment

Option 1 contractors can purchase qualified manufacturing machinery and equipment tax-free by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

Option 1 contractors can sell qualified manufacturing machinery and equipment to a manufacturer tax-free provided the manufacturer furnishes a Nebraska Resale or Exempt Sale Certificate, Form 13, Section B.

Option 1 contractors installing or repairing manufacturing machinery and equipment and billing the manufacturer are not required to collect sales tax on the amounts charged for either the parts or the repair labor.

Other Retail Sales

Building Cleaning Services

Persons providing building cleaning services are **not** performing contractor labor. Option 1 contractors who perform building cleaning services are retailers and must continue to collect and remit sales tax on the total amount charged. Sales tax must be paid on purchases of equipment and supplies used in performing these services.

Building cleaning services include but are not limited to, cleaning central air conditioning units, furnaces, sewers, drains, and any other property located in or attached to a building.

Over-the-Counter Sales

Over-the-counter sales are transactions where the terms of the sale do not require the Option 1 contractor to annex the building materials or fixtures to real estate, or to arrange for such annexation.

Example: Customer buys a faucet, takes it home and either installs it, or makes arrangements with someone other than the seller to install it.

Option 1 contractors making over-the-counter sales must collect and remit the Nebraska and applicable local sales tax on the **total** sales price, including all amounts charged to build or assemble the item sold.

Warranties, Guarantees, and Service and Maintenance Agreements. Effective October 1, 2007, sales of warranties, guarantees, and service or maintenance agreements that only cover the repair of items annexed to real estate are not taxable.

For example, warranties, guarantees, and service and maintenance agreements that only cover repairs to a building or to fixtures such as hot water heaters, garbage disposals, and central heating and air conditioning units, are not taxable.

Option 1 contractors must remit use tax on all parts and materials purchased or withdrawn from inventory and used to repair a building or to replace or repair fixtures that are covered by a warranty or service agreement. In addition, Option 1 contractors are required to collect sales tax on any charges for parts not covered under the warranty or service agreement.

If an agreement that covers both buildings or fixtures and non-annexed appliances is sold for one amount, the entire amount charged for the agreement is taxable. See above paragraphs for the taxability of parts used for repairs to buildings and fixtures. Sales and use tax does not apply to parts and materials used, and services performed in fulfilling the obligations under an agreement to repair or replace non-annexed appliances, provided there is not an additional charge for such items.

If an agreement that covers both buildings or fixtures and building cleaning services is sold for one amount, the entire amount charged for the agreement is taxable.

Nonresident Contractors

A nonresident contractor is a contractor who is neither domiciled in, nor maintains a place of business in, Nebraska for more than six months of a year.

Nonresident contractors have the same tax responsibilities as resident contractors. All contractors, including nonresident contractors, are required to register their business on the Database. There are additional registration fees and each project performed in Nebraska by a nonresident contractor is required to be registered in the Database. Registration is done at www.dol.nebraska.gov.

General Information

Consumer's Use Tax

Consumer's use tax is a complement to the Nebraska sales tax. It is imposed at the same rate and on the same transactions as the sales tax. Certain locations in Nebraska have a local sales tax in addition to the state sales tax. Local consumer's use tax is due whenever Nebraska consumer's use tax is owed.

Consumer's use tax is remitted directly to the state by the purchaser when sales tax has not been collected by the seller. Please refer to our Information Guide titled "Consumer's Use Tax" for more information.

Reporting and Remitting the Tax. Option 1 contractors who have a sales tax permit can use their Nebraska and Local Sales and Use Tax Return, Form 10, to remit sales tax they collect from their customers, as well as any consumer's use

tax owed. To assist you in completing your Form 10, please use the [Nebraska Net Taxable Sales and Use Tax Worksheets](#) on the Department of Revenue's website.

Changing Options. Option 1 contractors may change their option using the Department of Labor's website www.dol.nebraska.gov for [Nebraska Contractor/Subcontractor Registration](#). The new contractor option applies to all contracts in progress and also to all new contracts.

Option 1 contractors who change from a tax exempt inventory to a tax-paid inventory (Option 2) must remit use tax to the Department of Revenue on all building materials in inventory on the date the change is effective. State and local use taxes must be reported on lines 4 and 5 of the Form 10. An Option 2 contractor must pay sales tax on all purchases of building materials as of the date the change is effective. Option 1 contractors who change to Option 3 must begin remitting use tax on any building materials removed from inventory or when received at the job site.

Record Keeping. Contractors are required to keep Forms 13, Forms 17, construction contracts, and any other information necessary to accurately describe and document the construction that was completed.

Other Information. Contractors seeking additional information are encouraged to review the resources contained on our website under Contractor Information. The department also conducts educational seminars (dates are posted on our website, revenue.nebraska.gov).

Taxpayer Assistance. For additional information, please contact the Nebraska Department of Revenue, PO Box 94818, Lincoln, NE 68509-4818, or call 800-742-7474 (NE and IA), or 402-471-5729.