

Business tax tip #18

Real Property Contractors and Maryland Taxes

General information

Real property contractors are responsible for several different state taxes and licenses. The information below answers some of the most commonly asked questions about them.

Do I need a construction license?

If you engage in construction activities, you must obtain a construction license annually. The license is valid from May 1st through April 30th and is available from your local [Clerk of the Circuit Court](#).

If you already have a Maryland Home Improvement License, you do not need a construction license. For additional information, visit the [Maryland State Licensing Bureau](#),

Do I have any other registration requirements?

Yes. You need to establish various tax accounts for your business. You can fill out the interactive Combined Registration Application [online](#), and set up sales and use tax, income tax withholding, motor fuel tax and unemployment insurance tax accounts.

You can also obtain a Combined Registration Application from one of the Comptroller's [taxpayer service of fices](#) located throughout Maryland. The addresses and phone numbers of the offices are listed in your local phone directories. Read further to see if you will be responsible for one of these taxes. You may also want to check out [Tax Tip 30 - A Brief Look at Maryland Taxes](#) for other possible obligations. You can also obtain Tax Tip 30 from any of the taxpayer service offices

Who is a real property contractor?

A contractor includes:

- General contractor;
- Special contractor;
- Sub-contractor; or
- Builder

What types of work are done by construction and building contractors?

Examples of construction activities are:

- Constructing or demolishing residential and commercial buildings;
- Road construction;
- Landscaping; and
- Construction for government agencies, schools, churches or hospitals.

What kinds of records do I need to keep?

You should keep the general business records that are appropriate for your type of business. These general business records include a general ledger, subsidiary ledgers, journal entries, bank statements, check stubs, federal and state income tax returns, purchase invoices, sales invoices, contracts, and job files.

Sales and Use Tax

When contractors buy building materials for use in a real property project, they are responsible for paying the tax at the time of purchase. However, they may also purchase materials tax free with a valid resale certificate, if they intend to resell the materials as personal property. A contractor who regularly sells tangible personal property must be licensed to collect sales and use tax in order to use a resale certificate.

Do I have to pay sales and use tax?

Yes. Real property contractors must pay the 6 percent sales tax on building materials and supplies. Items purchased out-of-state, either directly, by mail, Internet or telephone, are also taxable if they are delivered in or brought into Maryland for use in this State. Construction materials, tools, and equipment are examples of taxable out-of-state purchases that may be made by real property contractors.

What purchases can I make without paying sales and use tax?

If you are also a retailer or reseller of supplies and materials, you may purchase materials for resale tax free by issuing a resale certificate to your supplier. You must subsequently collect the sales and use tax from your customers and remit that tax on your sales and use tax return. For example, a contractor who purchases floor covering such as vinyl, tile, and laminate is required to pay the sales tax directly to the supplier because the installation of these flooring materials is considered an improvement to real property. However, a contractor may use a resale certificate to purchase carpet tax free if the carpet is for wall-to-wall installation; in this situation, the contractor must collect the sales tax from its customer.

What is a resale certificate?

A resale certificate states that materials and supplies or taxable services you purchase tax free will be resold, or will be incorporated into tangible personal property or a taxable service that will be sold. For more information about resale certificates, request [Business Tax Tip #4, If You Make Purchases For Resale](#).

I've heard about exemption certificates. Can a contractor use an exemption certificate to buy materials?

Yes. A real property contractor may use an exemption certificate of a private, nonprofit charitable, educational, and religious organization located in Maryland, or a volunteer fire, ambulance, or rescue company or squad located in Maryland, or a nonprofit cemetery located in Maryland, to purchase materials tax free that will be used to construct, improve, alter, or repair the real property of the exempt entity. The materials must be incorporated into the real property of the organization to qualify for exemption. For more information on exemption certificates, request [Business Tax Tip #6, Retail Sales Involving Exemption Certificates](#).

Can a government contractor use the government's exemption certificate to buy materials?

Materials you incorporate into real property owned by governments, diplomatic embassies and credit unions are taxable when purchased. You may not use an exemption certificate held by one of these entities to purchase materials which will be incorporated into real property tax free.

Are a contractor's labor charges taxable?

Labor charges (whether separately stated or lump-sum billed) to install, erect, assemble, or repair *real* property are not taxable.

Separately stated labor charges for installing *personal* property are not taxable either. But when the installation charge is not separately stated, the entire sales price for the personal property, including the installation, is taxable. On the other hand, labor charges for fabricating tangible personal property are taxable whether it is charged separately or on a lump-sum basis. For more information, request [Business Tax Tip #12, Fabrication Labor is Subject to Tax](#).

What is the difference between personal and real property?

The determination as to whether material installed or annexed to real property will become a part of the real property depends primarily on the intention of the person making the annexation. If the intent is for a temporary purpose, the installed or annexed material remains personal property and the contractor can purchase the materials tax free by issuing a resale certificate to the supplier. The contractor must charge the customer the tax on the total charge for the item sold. Examples of such tangible personal property include cabinetry and counters used in a business and modular office furnishing.

However, if the intent is to have the material permanently and substantially improve the land, buildings, or other real property on which it is installed, it is considered real property. The purchase of the materials is taxable to the contractor and no tax is charged to the customer. Examples of real property improvement include built-in residential dishwashers and garbage disposals, kitchen cabinets (commercial or residential), fencing, landscaping, windows, and doors.

Is there any tax on transportation charges?

No. Sales and use tax does not apply to separately stated transportation and delivery charges for building materials delivered directly from a supplier to the purchaser. However, costs for transporting tangible personal property from a third party to a location of the vendor, or from one location of a vendor to another location of the vendor, that are part of the sales price are subject to tax.

Is there any tax on leasing tools, vehicles, equipment, and supplies?

Leased tools, vehicles, equipment, and supplies are subject to sales and use tax. Rental of a vehicle or equipment with an operator is also taxable if the customer controls how the equipment is used. However, if you can provide clear and convincing documentation that the equipment is for the performance of a specific job, in a manner determined by the owner of the equipment or its operator, no tax is due.

Do I have to pay taxes on equipment I bring into Maryland?

No, provided you paid at least the applicable Maryland sale tax rate to another state when you bought or lease the equipment. With limited exceptions, the Maryland sales tax rate is currently at 6 percent.

If you did not pay at least the applicable Maryland sales tax rate on the purchase in another state, you would owe Maryland sales and use tax based on the difference between the rate of tax you paid in that state and the applicable Maryland sales tax rate. You may reduce the sales price by a 10 percent

depreciation allowance for each full year that you used the property outside Maryland.

Does the tax apply to goods purchased out-of-state that I bring into Maryland for installing or repairing real property?

No, if you paid at least the applicable Maryland sales tax rate to another jurisdiction on the cost of the materials or on the cost of fabricating them. With limited exceptions, the Maryland sales tax rate is currently at 6 percent.

If you paid no tax or a tax of less than the applicable Maryland sales tax rate on the goods you bring in from another state, you would owe Maryland sales and use tax based on the difference between the rate of tax you paid in that state and the applicable Maryland sales tax rate. The value of your own labor added to the materials is not taxed.

Is there any tax on modular homes and trailers?

The sales tax is applied to 60 percent of the price of the first retail sale of modular homes and trailers. Resale of a modular home is not taxable.

What are my Maryland sales and use tax liabilities when I'm involved in an out-of-state construction contract?

The sales and use tax does not apply to personal property that is bought outside Maryland if it is intended exclusively for use in another state. If you buy materials in Maryland for a real property contract in another state, you must pay the Maryland sales tax on the materials. You may apply for a refund of the taxes paid if the purchase of materials would not have been subject to sales and use tax in the state where you used it.

Motor Fuel Tax

Is the motor fuel I use in my heavy equipment subject to the tax?

Dyed diesel fuel used in off-road construction equipment or for any other nontaxable use is subject to the 6 percent sales tax, but it is exempt from motor fuel tax.

Are there specific provisions for fuel taxes on power take-off vehicles?

Yes. A refund claim may be filed for tax paid, subject to certain percentage limits, on motor fuel used in any of the following vehicles that have pumping or other equipment mechanically or hydraulically driven by the engine that propels the vehicle:

<u>Type of vehicle</u>	<u>Maximum % refund for motor fuel tax paid</u>
▪ Concrete mixing or concrete pump	35%
▪ Motor fuel delivery	10%
▪ Solid waster compacting	15%
▪ Well-drilling	80%
▪ Farm equipment registered as a vehicle for highway use that is designed or adapted solely and used exclusively for bulk farm spreading of agriculture liming materials, chemicals, or fertilizer	55%

What about special fuels?

Special fuel is a product, other than gasoline, that is usable as fuel in an internal combustion engine. Clear diesel fuel (not dyed diesel fuel) and other clean-burning fuels are subject to motor fuel tax, but are exempt from the 6 percent sales tax.

A special fuel user may obtain a license and an exemption certificate, which authorizes the holder to acquire special fuel in bulk without paying the motor fuel tax. Monthly tax returns are filed reporting both nontaxable and taxable uses (on-road public highway), the latter which requires motor fuel tax to be paid.

Do I need special registrations for the vehicles I use?

Yes. If you operate a qualified motor vehicle in more than one jurisdiction, and you are based in Maryland obtain an IFTA (“International Fuel Tax Agreement”) license from the Comptroller. A qualified motor vehicle is one which: (1) has three or more axles; (2) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds; or (3) is used in combination, when the weight of such combination exceeds 26,000 pounds. Examples are three-axle trucks, tractor-trailer rigs, dump trucks, delivery trucks and other heavy-weight vehicles.

You can apply for an IFTA license [online](#). For more information about the IFTA license and decals visit the [website](#).

Income Tax What do I need to know about income taxes?

If you hire people to work for you, you need to withhold income taxes from their wages. You can set up income tax withholding and other tax accounts by filling out a [Combined Registration Application online](#). The application is also available from our taxpayer service offices.

What about my own tax obligations?

They depend on what type of company you have:

- **Sole proprietors** who are Maryland residents must file Maryland personal income tax Form 502. You will also need to make quarterly estimated tax payments on any income that's not subject to withholding.
- **Nonresident sole proprietors** must file Maryland Form 505. They must also make quarterly estimated payments.
- **C corporations** must file Maryland Form 500 and attach a copy of federal Form 1120. A corporate group and publicly traded corporation are also subject to special [reporting requirements](#).
- **S corporations** must file Maryland Form 510.
- **Partnerships** must file Maryland Form 510.
- **Limited liability companies** must file Maryland Form 510 unless they are disregarded as separate entities under federal law.
- **S corporations, partnerships and limited liability companies** are pass-through entities. This means that income earned by the entity passes through to the personal income tax returns of the shareholders, partners or members. If any of the shareholders, partners or members are not Maryland residents, the entity or business itself must make estimated tax payments on behalf of those nonresidents. Maryland residents are responsible for making their own estimated tax payments.

For more information on your income tax responsibilities, call [Taxpayer Service](#) at 410-260-7980 from Central Maryland, or toll-free 1-800-MD TAXES (1-800-638-2937) from elsewhere.

Should I file my reports if I have no tax due?

You must file your employer withholding, motor fuel tax, IFTA and sales and use tax returns even when no tax is due. But the good news is that you can file sales and use tax and withholding returns by phone if no tax is due, by calling 410-260-7225. More than one return can be filed with a single call.