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Tax Bulletin ST-130 (TB-ST-130)

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Please note: This bulletin does not apply to Direct Payment Permit holders.

Introduction

As a contractor, you generally must pay sales tax to your suppliers when you buy materials and supplies, and you must collect sales tax on certain jobs you perform for your customers. If you are registered for sales tax purposes, you can claim credits for sales tax you paid on some of the materials you use in these jobs and apply the credits against the tax you owe on your sales tax return.

This bulletin explains:

- what types of jobs qualify for a sales tax credit;
- what types of materials and supplies are eligible for a credit;
- sales tax rules for materials used in a capital improvement project;
- when you may claim credits;
- how to take a credit; and
- what documents you need to prove you are eligible for the credit.

You can apply for a refund of the sales tax instead of a credit. If you are not required to be registered for sales tax purposes, you must apply to the Tax Department for a refund of sales tax. For information about applying for refunds of sales tax, see Tax Bulletin *How to Apply for a Refund of Sales Tax* (TB-ST-350).

Any credit taken on your sales tax return is considered an application for credit and must be substantiated and is subject to review by the Tax Department.

Qualifying to take a credit

In general, you can take a sales tax credit on your return if you:

- paid sales tax on building materials to a supplier;
- transferred those materials to your customer in a taxable repair, maintenance, or installation service; and
- charged sales tax to your customer.

In most cases, this means that you can take a credit when the work you perform is classified as a taxable repair, maintenance, or installation service, but not when it is classified as a capital improvement. See *Publication 862, Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, for a list of the types of jobs that are classified as repairs, maintenance, and installations, and those that are classified as capital improvements.

Subcontractors

If you work as a subcontractor performing taxable services you must be registered for sales tax purposes. You may accept *Form ST-120.1, Contractor Exempt Purchase Certificate*, from the prime contractor instead of charging sales tax. You are still eligible for a credit for the sales tax paid on those materials as long as the job qualifies as a taxable repair, maintenance, or installation service.

If you are a subcontractor and are not registered for sales tax purposes, you may not accept any exemption certificate other than *Form ST-124, Certificate of Capital Improvement*.

Materials used in a taxable repair, maintenance, or installation service

When you buy materials from your supplier and those materials are transferred to your customer as part of a taxable repair, maintenance, or installation service, you must pay sales tax at the time of purchase. However, the tax you paid on these materials qualifies for a sales tax credit. This includes materials such as:

- plywood, drywall, shingles, and 2 x 4s;
- nails, screws, bolts, and staples;
- electrical materials;
- plumbing materials; and
- landscaping materials.

You cannot claim a credit for sales tax paid on materials, supplies, or other items that are not transferred to your customer as part of the job you perform. This is true even if the cost of those materials, supplies, or other items was included in your charge to your customer for the job performed. Some typical items used by contractors that you may **not** take a credit for include:

- tools, such as hammers, paint brushes, etc.;
- consumable supplies, such as sandpaper and garbage bags;
- cell phones, pagers, and office supplies;
- drop cloths;
- uniforms, clothing, and work boots;
- equipment or tools you rent;
- gases used in plumbing, welding, etc.; and
- vehicles and fuels used in vehicles

These are items that you use to perform the job and are not considered transferred to the customer, even if you leave the items behind with the customer. The materials must become part of the taxable repair, maintenance, or installation service to qualify for the credit.

Materials used in a capital improvement project

When you buy building materials and supplies for use in a capital improvement, you must pay sales tax to your supplier. If your customer gives you a properly completed *Form ST-124, Certificate of Capital Improvement*, when you bill your customer for the capital improvement work, you should not charge any sales tax to your customer for either the materials or labor for the project. Since you used these materials to perform the capital improvement, you cannot take a credit for the sales or use tax you paid on materials used in these jobs except under certain circumstances.

If you collect sales tax from your customer on your charge for a capital improvement because you did not receive a properly completed capital improvement certificate, you must pay that money over to the Tax Department with your sales tax return. If your customer later gives you a properly completed capital improvement certificate and asks you to return the sales tax the customer paid to you, you may refund the tax. If you have already filed your return and paid that amount to the Tax Department, and you refund it to your customer, you can apply for a refund or credit with your next sales tax return. Instead of asking you to refund the money, the customer can apply directly to the Tax Department for a refund of the sales tax the customer paid to you on your charge for the capital improvement work. Regardless of which course of action is followed, you cannot take a credit on your sales tax return for the sales tax you paid on the materials you used in the project, since, as the contractor you are the end user of those materials and are liable for the tax on the purchase.

If you purchase materials in one locality (county/city) in New York and pay the local sales tax there, and then use the materials in another locality in this state, you must pay the local tax due where you use the materials and you should take a credit for the local tax you paid when you purchased those materials. If the local tax rates in the two localities are the same, you will not owe more money, but you must still make the entries on your sales tax return to ensure that the credit is applied against the purchase jurisdiction and tax due is paid to the jurisdiction where materials were used.

If you paid a higher rate of local tax where you purchased the materials, and you later use the materials in a different locality in this state that has a lower rate of tax, you will end with a net dollar credit or refund in the amount of the difference between the higher rate you paid and the lower rate due in the locality where you used the materials.

On the other hand, if you paid tax at a local rate that is lower than the rate where you use the materials, then you will owe the higher rate to the locality where the materials are used.

But in each of these cases, (same local rate, purchase locality rate is higher than the use locality rate, purchase locality rate is lower than the use locality rate), you must still take the credit for the original local tax paid and pay the new local tax, to ensure that the locality where the materials are used gets the benefit of its tax and the locality that originally received the tax is charged.

Example: You go to your supplier in County A, which has a 7% sales tax rate, and purchase 2 x 6s to build a deck. You take the lumber with you to perform the job in County B, which has an 8% sales tax rate. Even though the job qualifies as a capital improvement, sales tax is still due on the materials in County B at the higher rate because that is the county where the materials are being used by you. When you file your sales tax return, you must pay the 8% use tax due on the 2 x 6s on the County B jurisdiction line, but you are allowed a sales tax credit for the 7% sales tax you paid to County A.

Work performed for exempt organizations and governmental entities

If you perform a job for an exempt organization or governmental entity, you will not charge sales tax on the work, whether it's a capital improvement or repair and maintenance job. Building materials transferred to the customer in performance of the job can be purchased without the payment of sales tax using *Form ST-120.1, Contractor Exempt Purchase Certificate* (Box D). If you did not use the exemption certificate when you purchased the materials, you may take a credit for sales tax paid on the purchase of materials that were used in the project. You cannot take a credit for sales tax paid on other supplies even though they may be used in an exempt job.

Lump-sum contracts

If you enter into a unit-price construction contract or have a preexisting lump-sum contract with a customer, and during the contract period the State or local sales tax rate is increased, you may be eligible for a credit for the additional sales tax you pay on property purchased after the rate change has gone into effect that is incorporated into the project.

Example: You enter into an irrevocable contract at a time when the sales tax rate is 7%. During the course of the project, the sales tax rate increases to 8%. You will have to pay 8% sales tax on future purchases of building materials without having the ability to charge your customer the higher rate to recoup your expenses. In these circumstances, you can take a credit for the additional tax paid (1%) on those materials purchased after the rate increase and used solely in that contract.

Other situations where you may take a credit

Contractors and subcontractors can take a credit for state sales tax and some local sales taxes paid on certain construction materials incorporated into a project in an Empire Zone. See *Publication 30, A Guide to Sales and Use Tax Incentives Within Empire Zones*, for detailed information.

If you purchase materials and pay sales tax in New York and you later use these materials in a job outside New York State, you are allowed to take a credit for the sales tax paid to New York.

You can also take a credit in the following situations:

- You charge your customer sales tax in error and later give the customer a refund of the tax.
- You overpaid the sales tax.
- You paid sales tax by mistake.

For more information on claiming a sales tax credit in these three instances, see Tax Bulletin *Sales Tax Credits (TB-ST-810)*.

Contractor retail sales

Occasionally, contractors make retail sales to their customers. For example, when you build a house for someone, you may arrange for the purchase and delivery of the washer and dryer for the customer. If you are registered for sales tax, these items can be purchased without paying sales tax using *Form ST-120.1, Contractor Exempt Purchase Certificate* (Box D). You will then have to collect sales tax from the customer on the sale of the washer and dryer.

If you pay tax on the purchase of the washer and dryer, you can take a credit for the sales tax you paid on your purchase against the tax you collect from the customer. The same would be true if you resold leftover lumber or plumbing supplies that you did not install.

When and how to take a credit

You are allowed to take a credit and subtract the credit amount from the amount of sales tax due when you file your sales tax return. Any credits claimed must be reported in Step 5 of your sales tax return. In addition, you must file a completed *Form AU-11, Application for Credit or Refund of Sales or Use Tax*, and attach proof of your eligibility for the credit. (See Documentation required below).

The taxable sale and the tax due on the sale are reported on your sales tax return that covers the period when the work is performed, even if you have not yet received payment from your customer. In certain jobs, it may take longer than one reporting period to complete the job.

You cannot take a credit for tax you paid on materials at the time of purchase until you use the materials in the performance of a job, and you report that sale on your return. If you purchase certain items in bulk and use them over a period of time, you have to wait and take the sales tax credit as you use the items in jobs where you charge sales tax to your customer. (See examples below.)

Example: You are hired to repaint a customer's living room. This is a job where you will charge your customer sales tax. You go to the supplier and purchase paint for \$50.00 and pay 8% sales tax (\$4.00) for a total of \$54.00.

Paint	\$50.00
Sales Tax @ 8%	4.00
	<hr/>
Total	\$54.00

When you bill your customer, you charge for the paint you purchased. For this example, we will say that you normally charge a 15% markup on your materials. You will also charge for labor, and 8% sales tax on the entire charge.

Paint	\$57.50(which includes your markup)
Labor	600.00
	<hr/>
Subtotal	\$657.50
Sales tax @ 8%	52.60
	<hr/>
Charge to Customer	\$710.10

At this point, sales tax has been paid twice on the same paint; once when you bought it at the supplier, and again when you charge your customer for the job. When you file your sales tax return, you are then eligible to take a credit for the sales tax you paid when you purchased the paint.

When you file your sales tax return, you will show your taxable sales of \$657.50 (your charge for materials and labor for the job) and show the \$52.60 in sales tax due, on the reporting line for the county where you worked. In the section for reporting credits (Step 5 of the sales tax return), you can then take a credit for the \$4.00 in sales tax that you paid to your supplier. Then in Step 6, you will calculate the sales tax due by subtracting the \$4.00 credit amount from the \$52.60 in sales tax charged to your customer, and only send in the difference of \$48.60 with your sales tax return.

Remember, you must file a properly completed *Form AU-11* to apply for sales tax credits. You may then use these credits as a subtraction from the tax due when you file your return. See Step 5 of the return.

All credits are subject to Tax Department review (audit). You may file your *Form AU-11* before you file your quarterly return; however, we will not review your credit application until we receive your quarterly return showing the credit. For detailed information on how to claim a credit, see Tax Bulletin *Sales Tax Credits (TB-ST-810)*.

Documentation required

You will need to document any of the credits described above with copies of the following:

- purchase invoices showing sales tax paid to your supplier on the purchase of the materials;
- contracts or sales invoices to your customer for your services documenting the materials that were used to complete the project, or bills or invoices showing that materials or supplies were resold as a retail sale;
- customer contracts, bills or invoices showing that the service rendered was a repair, maintenance, or installation service; or
- any other documentation, including copies of exemption certificates received from your customers, showing you are entitled to a credit for tax paid.

All purchase invoices must separately state the sales tax due and paid, and all customer invoices must separately state the sales tax collected. All contracts that are executed as *cost-plus* contracts must clearly state that the estimate is based on *cost-plus* in order for the purchase and sales invoices to accurately document the sales tax credit due.

Examples

Example: You buy \$100 worth of materials to use in a taxable repair job for a customer. You pay \$100 for the materials and \$8 in sales tax ($\$100 \times 8\%$) to your supplier. You then bill your customer \$100 for materials, \$200 for labor (for a total of \$300), and charge your customer \$24 in sales tax ($\$300 \times 8\%$). If that was the only job you did all quarter, when you fill out your sales tax return you will show the \$300 in taxable sales and \$24 in tax due. You are then allowed to subtract a credit for the \$8 in tax you already paid to the supplier on those same materials. When you complete your return, you will report \$24 in tax due in Step 3 of the sales tax return, and then report the \$8 credit in Step 5. In Step 6, you will subtract the \$8 credit from the \$24 tax, and pay the difference of \$16 to New York with your sales tax return.

Example: You are hired by Mr. N to repair his porch railing. You go to a local supplier and purchase lumber for \$90, nails for \$20, and a new hammer for \$40, and pay \$10.50 in sales tax (at 7% of \$150), for a total of \$160.50. You charge Mr. N \$200 for labor, \$75 for materials, plus \$19.25 sales tax (7% on the total charge). You use half of the lumber and one quarter of the nails purchased to repair the railing. You also use the new hammer to make the repair. You are entitled to a \$3.50 credit ($\$50 \times 7\%$) for the sales tax paid on the materials that were incorporated into the railing (\$45 for lumber and \$5 for nails). No credit can be taken on the sales tax paid on the purchase of the hammer.

Your purchases	Lumber		\$90.00
	Nails		20.00
	Hammer		40.00
	Subtotal		\$150.00
	Tax @ 7%		10.50
	Total		\$160.50
Invoice to Mr. N	Materials		\$75.00
	Labor		200.00
	Subtotal		\$275.00
Tax @ 7%		19.25	
	Total		\$294.25

The credit you have available to you is based on your cost of materials, not on your marked-up charge to your customers.

Cost of lumber used in job	\$45.00
Cost of nails used in job	5.00
	\$50.00
Subtotal	\$50.00
Tax paid on materials used at 7%	\$3.50

A month later you incorporate the remaining lumber and nails into other repair, maintenance, or installation jobs. You may now take credit for the remainder of the sales tax you paid (\$10.50 - \$2.80 on hammer - \$3.50 credit already taken = \$4.20 remaining credit) when you report the receipts for these jobs.

You must also submit Form AU-11 showing the amount of the credit you are claiming along with all supporting documentation, including a copy of your purchase invoice showing the sales tax paid to your supplier, and a copy of the sales invoice to Mr. N showing the sales tax collected.

Example: After completing the repair of the porch described in the preceding example, Mr. N asks if he can purchase the leftover lumber and nails because his son wants to build a doghouse. You agree to sell the remaining lumber and nails to Mr. N for a small mark-up in price. Your invoice to Mr. N would look like this:

Lumber	\$55.00
Nails	15.00
	\$70.00
Subtotal	\$70.00
Tax @ 7%	4.90
	\$74.90
Total	\$74.90

The sale of the lumber and nails is a retail sale. When you file your sales tax return for that period, you will include the \$70 as part of your taxable sales on Step 3 of your return and include the \$4.90 as part of your sales tax due. You may then claim the credit for the \$4.20 you paid in sales tax to your supplier on Step 5 of your return and remit the difference in the tax due with your return. You must also submit Form AU-11 to show the amount of the credit you are claiming, along with copies of all supporting documentation, including your purchase invoice for the materials and a copy of your sales invoice showing the charge to Mr. N.

Example: Mr. O hires you to add an entire porch to his house. You purchase materials for \$650 and pay \$45.50 in sales tax (at 7%). You charge Mr. O \$2,700, (\$2,000 for labor and \$700 for materials). Because this is a capital improvement, you will not charge Mr. O sales tax. You should obtain a properly completed Form ST-124, Certificate of Capital Improvement, from Mr. O for your records. You cannot take any credit for sales tax paid on the materials for the job because you will not collect sales tax from your customer. The sales tax you paid to your supplier on your materials is an expense to you, and you should include it as part of the cost of the materials in your quote to your customer.

The invoice to Mr. O may appear like this:

Construction of new porch	
Materials	\$700
Labor	2,000
	\$2,700
Total	\$2,700

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. They are accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin.

References and other useful information

Tax Law: Sections 1119 and 1139

Regulations: Part 534 and part 541

Publications:

Publication 30, A Guide to Sales and Use Tax Incentives Within Empire Zones

Publication 862, Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property

Bulletins:

How to Apply for a Refund of Sales and Use Tax (TB-ST-350) Sales Tax Credits (TB-ST-810)