What’s New in 2014
The sales and use tax on repair and maintenance of certain business equipment has been repealed effective April 1, 2014.

This fact sheet explains how sales and use tax applies:

- To contractors and subcontractors who build, alter, repair, or improve real property
- If a contractor also sells products at retail

You must register to collect sales tax if you:

- Sell products at retail
- Sell fabrication labor
- Owe use tax—even if you make no retail sales

Definitions

**Building materials**
Items intended to become: 1) part of a building, structure, or road; or 2) part of an addition, improvement, repair or alteration to real property.

**Construction contract**
The sale of building materials that includes the installation of those materials into real property.

**Contractor or subcontractor**
A business that provides contracts to furnish materials and labor to build, alter, repair, or improve real property.

**Contractor-retailer**
A business that contracts to improve real property and also makes retail sales of building materials, supplies, equipment, or other tangible items.

**Fabrication labor**
Labor that results in a new or altered product (see page 5).

**Landscapers**
Contractors, for sales and use tax purposes. For more information, see Fact Sheet 121B, Landscaping Construction Contracts.

**Materials-only contract**
The sale of building materials without installation. This is a retail sale.

**Retailer**
A business that sells building materials but does not install the items.

**Real property**
Land and structures that are attached to land, such as buildings, fixtures (such as plumbing and light fixtures), fences, railroad tracks, grain elevators, bridges, storage bins, silos, utility poles, and billboards.

**Retail sale**
The sale of building materials, supplies, equipment, or other tangible items that are not installed into real property by the seller or seller’s agent.

Guidelines for contractors and subcontractors

Contractors or subcontractors must pay sales or use tax on the cost of all materials, supplies and equipment to complete a construction contract.

If you’re a contractor or subcontractor pass this tax on to your customers as part of the materials cost. Do not itemize it separately on customer invoices, and do not charge sales tax on construction contracts.

Building materials and other items that are installed into real property are taxable at the time of purchase. Generally, you pay sales tax when you buy materials,
supplies, and equipment. However, if the supplier does not charge Minnesota sales tax, you owe use tax on the purchase price. (See “Use tax,” below.)

**Note:** Bleachers and lockers, even when bolted to real property, are a tangible item. The installer must charge their customer sales tax on the item and on the labor to install the item. For more information, see: Revenue Notice 04-04, Distinguishing Between Real Property and Tangible Personal Property; and Fact Sheet 152, Labor – Installation, Fabrication, Construction, and Repair.

**Repairs to real property**
Sales and use tax on the repair and maintenance of certain business equipment and machinery has been repealed effective April 1, 2014.

You’re improving real property when you:

- Repair, replace, or install items such as furnaces, garbage disposals, built-in dishwashers and stovetops, water heaters and softeners, and central air conditioners
- Work on plumbing or electrical wiring

The sale is a construction contract. As a contractor, you must pay the sales or use tax on the purchase price of materials used.

If you sell repair parts or materials to your customer without installation, you’ve made a retail sale. See Guidelines for contractor-retailers on page 4.

**Purchases**
You owe Minnesota sales or use tax when you buy materials, supplies, and equipment for use in Minnesota. You also owe local sales or use tax if the items are installed in an area that has a local tax.

Delivery charges for these items are also taxable. For more information, see Fact Sheet 155, Delivery Charges.

Equipment and machinery used for construction does not qualify for the capital equipment or the farm machinery exemptions.

Utilities supplied for residential heating during construction of a residence are not taxable.

**Use tax**
If you buy materials, supplies, and equipment for use in Minnesota and the seller does not charge Minnesota sales tax on the purchase invoice, you must report and pay use tax to the Department of Revenue. You must also report and pay local use tax if the materials are for a construction project in an area with a local tax.

If you were required to pay sales tax to another state for the materials, you’re eligible for credit against the Minnesota use tax. The percent of use tax due is the difference between the Minnesota rate and the rate of sales tax paid to the other state.

For more information, see Fact Sheet 146, Use Tax for Businesses.

**Contracts with exempt organizations**
You owe sales tax when you contract with exempt organizations such as churches, schools, and government agencies. An organization’s exempt status cannot be used to buy materials exempt for use in a lump-sum contract covering both labor and materials for the construction, alteration, or repair of a building or facility.

You may buy materials tax exempt only when the exempt organization designates you as its purchasing agent. The written contract must clearly show that:

1. the appointment has been made;
2. the exempt organization takes title to all materials and supplies at the point of delivery;
3. the risk of loss for all materials and supplies is that of the exempt organization; and
4. the exempt organization has responsibility for all defective materials and supplies including those incorporated into realty.

These requirements apply to the prime contractor and subcontractors who supply both materials and labor.

To claim exemption, give the supplier a completed Form ST3, Certificate of Exemption. At the top of Form ST3, check that you are a contractor and have a purchasing agent agreement with an exempt organization. Enter the exempt organization and specific project. Use the applicable exemption code and write in “Purchasing agent agreement with exempt organization.”

You must keep documentation to show that a purchasing agent relationship exists, such as:

- a letter indicating the above information;
- copies of the page(s) of the written contract showing items 1-4 above; and
- evidence of the organization’s exempt status.

You must also keep records identifying all materials and supplies purchased for the exempt project.

The exemption only applies to building materials, equipment, and supplies that become part of the improvement to real property. An exempt organization cannot appoint a contractor as its purchasing agent for
the purchase or lease of equipment used by the contractor in completing the construction contract.

For more information, see Revenue Notice 95-05, Construction Contracts-Purchasing Agent Exemption.

Direct pay companies
Companies that have Minnesota direct pay authorization can only assign their direct pay status to a contractor when there is a valid purchasing agent agreement between the contractor and the direct pay company.

Direct pay authorization is issued by the Minnesota Department of Revenue and allows qualifying businesses to pay sales tax directly to the department instead of to the seller at the time of purchase.

Contracts outside Minnesota
Materials delivered to contractors in Minnesota for use in an out-of-state contract are subject to Minnesota tax unless the materials are not subject to tax in the state or country where the contract work is done.

You must give your vendor a completed Form ST3, Certificate of Exemption. For more information, see Fact Sheet 110, Items for Use Outside Minnesota.

Materials delivered by a vendor directly to a construction site outside Minnesota are not subject to Minnesota tax.

Building cleaning and maintenance
Cleaning, maintenance, disinfecting, and exterminating services are taxable when you buy the services as part of a contract for the construction, reconstruction, or remodeling of a building or residence.

Final cleaning, including duct cleaning, of a building after construction, is also taxable.

These services are also taxable when performed at your office or place of business.

Separate charges for the removal of construction debris or demolition waste are not taxable.

Land clearing contracts
A land-clearing contract is for the initial removal of trees, bushes, shrubs, and stumps to develop a site. These services are exempt when sold to contractors or subcontractors as part of a land-clearing contract.

This exemption does not apply if the trees, stumps, bushes, and shrubs are being removed for remodeling, improvement, or expansion of an existing structure, rather than to develop the entire site.

Examples
- A developer purchases an empty lot to build new housing or a commercial building. The developer contracts with a landscaper to remove trees and stumps on the site. These services are exempt from sales tax because it is a new site being developed.
- A homeowner has a large area of land between his or her maintained lawn and a nearby river. The homeowner decides to clear the land and install a garden and dock. In this case, the land-clearing services are taxable because it is a pre-existing site that is being expanded.

Surety deposits for out-of-state contractors
By law, 8 percent of each payment to out-of-state contractors for work done in Minnesota must be withheld as a surety deposit on any contract that exceeds or that can reasonably be expected to exceed $50,000.

However, this requirement may be waived if certain conditions are met. For more information, see Withholding Tax Fact Sheet 12, Surety Deposits for Out-of-State Construction Contractors.

Withholding affidavit for contractors
A Withholding Affidavit for Contractors (IC-134) must be certified by the Department of Revenue before final payment is released on government contracts of any amount. For more information, see Withholding Tax Fact Sheet 13, Construction Contracts with State or Local Government Agencies.
Guidelines for contractor-retailers

If you are a contractor and also make retail sales, the rules for when and how you pay tax on your purchases depend on:

- Whether you know how the items will be used when you buy them
- Whether they will be used in a construction contract or sold at retail
- In some cases, whether you are “primarily a retailer” or “primarily a contractor”

If you know how the items will be used when you buy them

The sales tax treatment of your purchase depends on how you will use or resell the items.

- If the items will be used in a construction contract, pay sales tax when you buy them.
- If the items will be sold at retail, give the seller a completed Form ST3, Certificate of Exemption.

Examples

A carpet dealer sells carpeting either with or without installation.

- **Situation 1:** A contractor orders carpet and contracts with the dealer to install it in homes that the contractor is building. The sale is a construction contract because installing carpet is an improvement to real property. The carpet dealer must pay tax on all purchases of carpet, materials, supplies, and equipment used to install the carpet. The carpet dealer does not charge tax to the contractor.

- **Situation 2:** An individual special orders carpet that he intends to install himself in his basement. This is a retail sale. The carpet dealer must charge the customer sales tax on the selling price of the carpet.

If you don’t know how the items will be used when you buy them

It depends on if you are primarily a contractor or primarily a retailer. You are:

- *primarily a contractor* if at least 50 percent of your business purchases are used for construction activity (See the next column for more information.).

- *primarily a retailer* if at least 50 percent of your business purchases are for retail sales (See the next page for more information.)

If you are primarily a contractor

Pay sales tax on all purchases. If you later sell any of these items at retail, deduct the cost of the materials you already paid tax on when you file your sales and use tax return.

<table>
<thead>
<tr>
<th>For This Type of Sale</th>
<th>Handle the Tax This Way</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contract</td>
<td>Do <strong>not</strong> itemize tax on your customer’s invoice On your sales tax return, report the total contract amount as Gross Receipts</td>
</tr>
</tbody>
</table>
| Retail Sales          | Charge sales tax on the total selling price Itemize tax on your customer’s invoice On your sales tax return:  
- Report the total sales as Gross Receipts  
- Report the difference between the sale price and your cost of materials as General Rate Sales |

Example

A roofer who usually installs or repairs roofs pays sales tax on all purchases of materials. One customer buys shingles for $100 from the roofer with no installation. This is a retail sale, and the roofer must charge the customer sales tax of $6.88 (currently 6.875 percent of $100).

The roofer paid $70 plus $4.81 sales tax to his supplier when he bought the shingles. To report the sale and get credit for the sales tax already paid on the shingles, the roofer includes this sale when he files his sales and use tax return as follows:

```
Gross Receipts 100
General Rate Sales 30
($100 sales price - $70 cost)
```

Sales tax is never included in the retail price or the cost of materials when calculating general rate sales.

Keep your receipts and invoices. Your records must show that you paid sales tax on your materials.
If you are primarily a retailer
Do not pay sales tax on your purchase. Give the supplier a completed Form ST3, Certificate of Exemption. Collect sales tax from your customer when you sell taxable items at retail.

If any items purchased exempt for resale are later used in a construction contract, you must report the cost of the items as Use Tax purchases when filing your sales and use tax return.

Example
A dealer sells appliances including garbage disposal units. Most sales are over-the-counter retail sales so the dealer is primarily a retailer. Occasionally, a customer wants the dealer to install a garbage disposal.

The sale and installation of the garbage disposal is a contract for the improvement of real property. The dealer charges the customer $139 for the installed unit.

The dealer must report the cost of the garbage disposal unit as Use tax purchases when filing the sales and use tax return.

<table>
<thead>
<tr>
<th>For This Type of Sale</th>
<th>Handle the Tax This Way</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Contract</td>
<td>Do not itemize tax on your customer's invoice</td>
</tr>
<tr>
<td></td>
<td>On your sales tax return:</td>
</tr>
<tr>
<td></td>
<td>• Report the total contract amount as Gross Receipts</td>
</tr>
<tr>
<td></td>
<td>• Report your cost for materials as Use Tax purchases</td>
</tr>
<tr>
<td>Retail Sales</td>
<td>Charge sales tax on the total selling price</td>
</tr>
<tr>
<td></td>
<td>Itemize tax on the your customer's invoice</td>
</tr>
<tr>
<td></td>
<td>On your sales tax return, report the total sales price as Gross Receipts and General Rate Sales</td>
</tr>
</tbody>
</table>

### Miscellaneous Information

#### Contractors improperly charging sales tax
If a contractor improperly charges a customer sales tax on an improvement to real property, and the customer files a purchaser refund claim, The Department of Revenue may assess sales or use tax against the contractor on the cost of materials used in the construction contract.

#### Fabrication labor
Fabrication labor makes or creates a product or alters an existing product into a new or changed product.

Fabrication labor is taxable when the customer provides the materials, either directly or indirectly.

For more information, see Fact Sheet 152, Labor – Installation, Fabrication, Construction, and Repair.

#### Sales of aggregate and gravel, crushed rock, sand, or dirt

##### Construction contract
Contracts that require the seller of aggregate to deliver and spread or place the aggregate, gravel, or similar materials in such a way that no further leveling or movement is required by the purchaser are improvements to real property. Contractors must pay sales or use tax on their cost of any taxable products or services used to complete the contract. Construction contracts are not taxable to the customer.

##### Retail sale
If aggregate material is dumped in a pile, or if the contract does not require the seller to deposit the aggregate material in such a way that no further leveling or movement is required, it is a sale of tangible personal property and the seller must charge sales tax on both the material and the delivery charges.

Delivery (hauling) of aggregate materials and concrete block is generally taxable, whether delivered by the seller or a third party hauler. Sales tax applies to the delivery charges even if the aggregate will be used to make an improvement to realty and regardless of how deposited at the delivery site. However delivery of aggregate by a third party hauler is exempt if the aggregate is to be used for road construction.

For more information, see:
- Fact Sheet 155, Delivery Charges
- Revenue Notice 02-12, Taxable Delivery Charges – Aggregate Materials
- Revenue Notice 02-17, Taxable Sales - Delivery of Aggregate Materials and Concrete Block

#### Examples
- A seller of aggregate enters into a contract for the improvement to real property. This could be a contract...
to build a road, build a parking lot, or any other contract that results in the improvement to real property. Under the contract the seller provides aggregate which they haul to the construction site in their own vehicles and spread and level the gravel in such a way that no further leveling or movement of the aggregate is required. Since this is a contract for the improvement to real property, the charges by the seller to the purchaser are not taxable. The aggregate seller is responsible for paying sales or use tax on their cost of any taxable products or services used to complete the contract.

- A construction company buys aggregate material to use in the construction of a parking lot. The company hires a third party hauler to pick up the aggregate at the seller’s pit and to deliver it to the construction site. The company owes sales or use tax on their purchase of the aggregate and the third party delivery charges. The delivery charge is taxable even if the hauler is required to spread or level the aggregate material on the parking lot for the purchaser. Charges by the construction company to their customer are not taxable.

**Note:** Sales to cities, counties and townships are generally not taxable. For more information, see Fact Sheet 176, Local Governments.

**Ready-mixed concrete and trucks**

**Sales price**
The taxable sales price of ready-mixed concrete sold from a ready-mixed concrete truck includes transportation, delivery, or other service charges. No deduction is allowed for these charges, even if the charges are separately stated.

**Trucks**
Purchases of ready-mixed concrete trucks are exempt from the sales tax on motor vehicles.

**Fuel**
Purchases of fuel for ready-mixed concrete trucks are subject to petroleum excise tax.

**Fuel to run power take-off units**
Purchases of fuel to run the power take-off units on ready-mixed concrete trucks may be eligible for a refund of petroleum tax. To request a refund, submit a completed Form PDR-1, Minnesota Motor Fuel Refund.

- If the ready-mix is sold without installation, the industrial production exemption applies and no use tax is due on the fuel used to run the power take-off unit.

- If the ready-mix is used in a construction contract, you must pay use tax on the fuel to run the power take-off unit. Report the amount as Use tax purchases when filing your sales and use tax return.

**Leases of trucks, repair and replacement parts**
Leases and purchases of repair or replacement parts for ready-mixed concrete trucks, may be eligible for the capital equipment exemption if the truck is used 50 percent or more of the time to sell ready-mix at retail (without installation).

For more information, see Fact Sheet 103, Capital Equipment.

**Equipment sales and rentals**
If you rent your construction equipment (without an operator) to another contractor, you must charge sales tax on the rental price.

If you sell equipment or other items that were used in your business, those sales may be subject to tax. For more information, see Fact Sheet 132, Isolated and Occasional Sales.

**Local sales and use taxes**
You may owe local tax if you are located or working in an area with a local tax.

Contractors who take delivery of materials in an area with local tax must pay that local tax on the material, even though the materials may be used in a contract outside the local tax area.

For more information, see Fact Sheet 164, Local Sales and Use Taxes.

**Helpful hints**

Some businesses have a difficult time determining the actual material cost when billing retail sales or construction contracts. The following suggestions provide some general guidelines to help make this determination.

- For construction contracts, note the material cost on the office copy (not the customer copy) of the sales invoice. If you buy materials exempt for resale, the material cost to be reported as Use tax purchases when electronically filing your sales and use tax return can be easily determined at month end by adding the figures noted on the office copies.

- If the mark-up percentage used by the contractor-retailer is uniform for all materials, a percentage may be used to determine the material cost.

- If inventory records are updated from sales invoices, this would be a convenient time to ensure that the
correct material cost is noted on invoices that involve retail sales. If you have paid tax on material purchases, this would allow you to accurately calculate tax owed on the markup amount.

- Use the worksheet on page 4 of Fact Sheet 146, Use Tax for Businesses, to track your use tax owed.

- The accounting records of a contractor-retailer must clearly reflect the use of all items purchased. These records should substantiate the proper sales and use tax liability.

**Legal References**

Minnesota Statutes 297A.61  
  subd. 3(g)(6)(iii), Building cleaning and maintenance  
  subd. 4, Retail sale

Minnesota Statutes 297A.68  
  subd. 14, Property in transit  
  subd. 2(b)(2), Materials consumed in industrial production  
  subd. 5(b)(8), Capital equipment  
  subd. 40, Land clearing

Minnesota Statutes 297A.70, Exemptions for governments and nonprofit groups

**Revenue Notices**

95-05, Construction Contracts - Purchasing Agent Exemption  
99-16, Sales Tax Exemption for Towns  
02-12, Taxable Delivery Charges – Aggregate Materials  
02-17, Taxable Sales – Delivery of Aggregate Materials and Concrete Block (modified 6/08)  
04-04, Distinguishing Between Real Property and Tangible Personal Property

**Other Sales Tax fact sheets**

112, Building Cleaning and Maintenance  
121B, Landscaping Construction Contracts  
146, Use Tax for Businesses  
150, Manufactured Homes, Park Trailers, and Modular Homes  
152, Labor – Installation, Fabrication, Construction, and Repair  
155, Delivery Charges  
164, Local Sales and Use Taxes  
176, Local Governments – Cities, Counties, and Townships

**Withholding Tax Fact Sheets:**

12, Surety Deposits for Out-of-State Construction Contracts  
13, Construction Contracts with State or Local Government Agencies