

Landscaping Construction Contracts

*Sales Tax Fact Sheet 121B***What's new in 2018**

We clarified when sellers are required to collect local sales taxes. See Local Sales and Use Taxes on page 4.

Minnesota Sales Tax does not apply to landscaping construction contracts for improvements to real property, but sales tax does apply to landscaping maintenance contracts to maintain a pre-existing garden or lawn.

For information see:

- Fact Sheet 121A, *Lawn and Garden Maintenance, Tree and Shrub Services*
- Fact Sheet 121C, *Nursery and Greenhouse Production*

Contracts to improve real property

A landscape construction contract is not taxable. But contractors must pay sales or use tax on the cost of items used to complete the contract. This includes plants, trees, bushes, shrubs, sod, and other materials, supplies, and equipment.

Include the sales or use tax in the material costs to the customer; do not separately state it on the invoice. Generally, you pay sales tax when you purchase materials. But if the seller does not charge Minnesota sales tax, you are responsible to track and pay use tax on the cost of the materials.

Examples of construction contracts include:

- building a deck
- grading an area with a skid steer or adding soil
- installing a brick walkway or driveway
- installing edging, poly, and rock in landscape beds
- spreading mulch as part of the initial construction contract
- installing nightscape lighting
- installing trees, shrubs, and perennials
- installing flower or vegetable plants or sod as part of an initial construction contract
- installing a timber, segmental block, natural stone, or boulder retaining wall
- installing and maintaining underground irrigation and sprinkler systems
- preparation of ground beds for plant material as part of a construction project
- top-dressing an area with soil, which includes reseeding or re-sodding damaged or altered surfaces

Note: Planting trees, shrubs, and perennials is always an improvement to real property, and therefore exempt from sales tax. But planting flowers or vegetables, other than perennials, is only exempt for the initial landscaping construction contract. Seasonal switch-outs of plants and mulch are a taxable gardening service.

For more information, see Fact Sheet 121A, *Lawn and Garden Maintenance, Tree and Shrub Services*.

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.

Note: 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, this exemption does not apply.

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.

Contractor/retailers

Contractors sell and install plants, trees, etc. Retailers sell these items without installation. If you are a contractor and also make retail sales, handle sales tax on your purchases as described below.

If you know how you will use the items:

- If you will use the items in a construction contract, pay sales tax on your purchase.
- If you will sell the items at retail, give the seller a completed Form ST3, *Certificate of Exemption*. Specify the Resale exemption.

If you don't know how you will use the items:

- Determine if you are primarily a contractor or a retailer. If you use at least 50 percent of all business purchases for construction contracts, you are primarily a contractor. Otherwise, you are primarily a retailer. For more information, see Fact Sheet 128, *Contractors*.
- If you are primarily a contractor, pay sales tax on your purchase.

If you are primarily a retailer or wholesaler, give the seller a completed Form ST3, *Certificate of Exemption*. Specify the Resale exemption.

If you purchase items exempt but later use them in a construction contract, you must pay use tax when you take them out of inventory. If the items will be used in an area with local taxes, you must also pay local use tax.

If you sell plants and related items without installation, you must collect sales tax. This includes:

- Shrubs, trees, bushes, sod, etc.
- Lawn or garden materials and supplies
- Sales or leases of indoor plants

You may purchase these items exempt for resale by giving the seller a completed Form ST3, *Certificate of Exemption*.

Contractor/growers

Landscaping contractors who grow their own nursery stock for use in landscaping contracts must pay sales or use tax on the cost of all taxable items used to produce those plants. This includes seed, seedlings, fertilizers, chemicals, water, fuels, etc.

If you sell any of this nursery stock at retail or to another contractor, charge sales tax on the total selling price. Since you already paid tax on your cost of materials, report only the difference between the sales price and your cost of materials to grow the plants when you file your sales and use tax return.

If you grow nursery stock to sell at retail, items used or consumed in production may be purchased exempt. Examples include seeds, seedlings, fertilizers, chemicals, water, or fuels. Give the seller a completed Form ST3, *Certificate of Exemption*. Specify the Agricultural production exemption.

If you primarily grow nursery stock to sell at retail and purchase your inputs exempt but later use the nursery stock in a construction contract, you must pay use tax on the cost of your inputs.

Certain machinery may be purchased exempt (as farm machinery) if it's used directly and principally in the production of trees and shrubs for retail sale. Equipment that is primarily used for landscape installation or construction (such as a skid steer) does not qualify for the farm machinery exemption. For more information, see Fact Sheet 121C, *Nursery and Greenhouse Production*.

When you perform both landscape construction and landscape maintenance

Purchases of certain items used to provide landscape maintenance services are exempt. (This exemption applies only to businesses providing taxable services. It does not extend to individuals or businesses purchasing materials for their own use.)

If you buy materials exempt from sales tax but use them to provide landscape construction services, you must report and pay use tax on those materials.

For example, you may purchase soil to use in your maintenance projects without paying sales tax. But if you later use the soil in a construction project, you must pay use tax on the soil used for that project.

For more information, see Fact Sheet 121A, *Lawn and Garden Maintenance, Tree and Shrub Services*.

Taxable purchases

While some purchases used to provide your services may be exempt, you must always pay sales tax on certain items or services.

Examples of taxable purchases

- administrative supplies and materials
- building cleaning and maintenance services
- chemicals, cleaning agents, and water used to clean buildings, equipment, and vehicles
- equipment, machinery, accessories, and tools
- fuel, electricity, and gas for space heating or lighting
- furniture and fixtures
- hand tools
- linen supply or other laundry services
- lubricants and antifreeze for vehicles used to haul equipment or employees to job sites
- office supplies
- repair parts for machines and equipment
- security services
- specialty advertising materials
- telephone service
- training materials and supplies

Pay sales tax when you buy these items or report use tax on your cost of the items. See Use tax on page 3.

Note: If you provide nontaxable services, such as landscape construction contracts, you must pay sales or use tax on all material, supplies, and equipment used to provide those services.

Miscellaneous

Delivery charges

If a seller charges the buyer for delivery of taxable items, the delivery charges are also taxable. (Delivery charges are considered part of the sales price, even if they are listed separately on a bill or invoice.)

Delivery charges include any charges by the seller for preparation and delivery to a location specified by the buyer. Examples include transportation, shipping, postage, handling, crating, and packing.

When a third party furnishes and bills for delivery, the charges are not taxable, except for deliveries of aggregate materials or concrete block.

Sales to exempt organizations

Certain organizations qualify for a sales tax exemption, such as nonprofits and federal or local governments. These organizations must give the seller a completed Form ST3, *Certificate of Exemption*, to purchase goods or services without paying sales tax.

If you have a landscaping construction contract with an exempt organization, you must pay sales tax on all trees, plants, or other materials used unless you have a purchasing agent agreement with the organization.

For more information, see:

- Fact Sheet 128, *Contractors*
- Revenue Notice 17-10: Construction Contracts with Exempt Entities

Direct Pay authorization

Businesses that have a Direct Pay authorization cannot buy services exempt from tax.

Equipment sales

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

Use tax

Generally, you pay sales tax at the time of purchase. However, if the seller does not charge Minnesota sales tax on equipment, supplies, or other taxable items for your business, you owe use tax on the purchase price.

Report state and local use when you electronically file your sales and use tax return. For more information, see Fact Sheet 146, *Use Tax for Businesses*.

Note: For companies who do both taxable landscape maintenance and nontaxable landscape installation; if you purchase materials exempt from sales tax but use them in providing nontaxable services, you must pay use tax on those materials.

Local Sales and Use Taxes

If you are located in or make sales into area with a local tax, you may owe local sales or use tax. For more information, see Fact Sheet 164, *Local Sales and Use Taxes*.

Reporting Sales and Use Taxes

When reporting sales and use tax, you will be asked to provide your gross sales. This is all sales; including snowplowing, landscaping, and lawn care. Taxable sales are what you have collected (or should have collected) sales tax on.

Use tax includes items you purchased for your own use or for installation to real property that you have not paid sales tax on.

Keep a record of your filings.

Legal References

Minnesota Statutes 297A.61, subd. 3(g) (6) (vi), Definitions

Minnesota Statutes 297A.67, subd. 25, Maintenance of cemetery grounds

Minnesota Statutes 297A.68

subd. 40, Land clearing

subd. 3, Materials used in providing certain taxable services

Minnesota Statutes 297A.70, subd. 3(a)(9) , Sales of certain goods and services to government

Minnesota Statutes 296A.16, subd 2, Petroleum fuel used in other vehicle; claim for refund

Revenue Notices

00-03, Exemptions: Materials Used or Consumed in Providing Taxable Services

08-07, Lawn and Tree Services

17-10, Construction Contracts with Exempt Entities

Other Fact Sheets

106, *Farm Machinery*

121A, *Lawn and Garden Maintenance, Tree and Shrub Services*

121C, *Nursery and Greenhouse Production*

128, *Contractors*

132, *Isolated and Occasional Sales*

146, *Use Tax for Businesses*

164, *Local Sales and Use Taxes*