

Connecticut Sales and Use Tax for Construction Contractors

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CT Sales Tax

Structure of Sales Tax Law

- Tax is imposed on the “retail sale” of:
 - Tangible personal property; and
 - Enumerated services
 - This means that only certain services specifically referenced by statute are taxable.
- Leases of tangible personal property are considered sales for sales tax purposes. Conn Gen Stat 12-407(a)(2)(J)

CT Sales Tax

Structure of Sales Tax Law

- Nontaxable & Exempt sales
 - Resales: To avoid double taxation, a sale made for resale is not subject to sales tax.
 - Seller should obtain a CT resale certificate;
 - The DRS imposes a “good faith” requirement on this type of certificate.
 - Exempt Purchaser:
 - Certain sales are specifically exempted from sales tax;
 - Sales of normally taxable property or services can be exempt based on identity of the purchaser.

CT Sales Tax

Accrual versus Cash Basis

- In general, every retailer of a taxable item, either property or service, must charge and collect sales tax on taxable sales.
- The sales tax is payable to the DRS by the seller on an accrual basis. This means that the seller may have to pay the tax even before it is actually collected from the buyer.
 - Worthless Account Receivable: DRS permits an accrual reporting taxpayer to make a claim for credit for account receivable (on which sales tax was previously paid). However, receivable must actually have been written off for federal tax purposes.
- Cash Basis Taxpayer: There is a limited exception which permits reporting on a cash basis (as collected) if:
 - Retailer sells only services; and
 - Reports on cash basis for federal income tax purposes.

CT Sales Tax

Basic Sales Tax Rules

- The sales tax applies to taxable sales in Connecticut. Sales made out of state are normally not subject to Connecticut tax.
- Two different rules exist to determine the location of the sale:
 - **Tangible Property:** The location where the property is delivered determines where the sale occurs. Where property is sold for use out-of-state or to a buyer physically located out-of-state, if the property is picked up in Connecticut, this is a Connecticut sale subject to Connecticut sales tax.
 - **Services:** The place of sale when a service is involved is based on where the service is to be used. Under this rule it normally does not matter where the work is actually performed, the important item is where the benefit of the service will be enjoyed.
 - **Example:** If there is a New York project and certain work is done in Connecticut in connection with that job, the service will not be subject to Connecticut sales tax since the ultimate benefit of the services will be in New York.

CT Sales Tax

Resale Exception

- **Resale Exception:** If a taxpayer buys an item of tangible personal property for its business (the first sale) for the purpose of reselling it to a customer (the second sale), the taxpayer does not have to pay sales tax on the first sale. The taxpayer will charge a sales tax to its customer on the second sale (unless the customer is exempt).
 - The Resale Exemption is intended to avoid a double tax on the sale of tangible personal property or enumerated service.
 - The Selling Party on the First Sale should get a properly filled out Resale Certificate from the buyer. If the certificate is accepted in good faith (given the knowledge of the seller), this will normally be accepted as sufficient evidence by DRS that no sales tax had to be charged.
- **NOTE:** As with most certificates, DRS imposes a “good faith” test where one cannot merely close one’s eyes to facts which are known.

CT Sales Tax

Consumption Rule

- **Consumption Rule:** If a taxpayer sells an item to a buyer who consumes the product or enumerated service – i.e., the buyer uses the property for its own purposes or in its business – a sales tax must be charged.
 - This is true even in the business context. There is a clear double tax potential in this rule. If T sells an item to B for \$100 and B uses the item in its business, B will pay \$106. However on B's charge for its work to C, B will include the \$106 charge. If the sale to C is taxable, C will pay another 6% tax on this charge – which produces a double tax.

CT Use Tax

Complementary Tax

- **Use Tax:** This is complementary to the sales tax. It is a tax imposed on the recipient of the property or service.
 - A user of a taxable item in Connecticut (either property or service) must pay the use tax if a sales tax is not charged.
 - DRS takes the position (backed by court decision) that it does not need to look to the retailer for sales tax first before it can charge the consumer. DRS says it can look to the consumer first for use tax. [Some potential exists that the state can collect double taxes on the same transactions through its audits.]
 - “Use” is defined broadly to include “storage, acceptance, consumption, or any other use” Conn Gen Stat sec 12-411.
 - The purchaser is liable for use tax and eliminates this liability by paying the sales tax to the retailer.

CT Use Tax

Complementary Tax

- The law contains a temporary storage exemption which applies to property purchased outside CT for use or for fabrication into property to be used outside of CT.
 - Note a comparable rule does not apply to a sale of property in CT for use outside of CT unless it is delivered by common carrier for use out of CT.

CT Use Tax

Complementary Tax

- Purchaser may have to prove to DRS that it has, in fact, paid the appropriate sales tax to avoid imposition of the use tax.
 - Sales tax separately stated on the invoice.
 - Must review to determine that it is CT sales tax.
 - “Tax included” invoicing is also sufficient under Conn Gen Stat sec 12-408(4).

CT Use Tax

Complementary Tax

- Nontaxable & Exempt purchases:
 - Exemptions generally track the sales tax exemptions.
 - Resale: Purchases for resale are not subject to use tax (similar to the sales tax rules).
- Credit for sales tax paid in other jurisdictions.
 - Credit can be taken if the tax was **properly** paid in the other jurisdiction.

CT Sales Tax

Taxation Presumptions

- All receipts from sale of tangible personal property are presumed to be subject to sales tax. Conn Gen Stat sec 12-410(1).
- Services are taxable only if they fall under the list of services enumerated in the statute.
 - However all receipts from the sale of “enumerated services” are presumed taxable.
 - This requires a close analysis of the particular facts. A transaction may fall out of one enumerated service but fall within another.

CT Sales Tax – Contractors

Basic Contractor Rules

- A contractor for sales/use tax purposes includes both subcontractors and general contractors.
- Primary statutory and regulatory rules
 - There is no special statutory language on contractors.
 - DRS reg 18 (i.e., section 12-426-18) on contractors and subcontractors present the basic rules on the application of sales tax to contractors. This reg has been in existence for a long time.
- DRS reg 12-407(2)(i)(I) on services to industrial, commercial or income-producing real property applies to more than just contractors. However, this reg contains the basic rules concerning the taxation of the service portion of a contractor's work.
 - This reg was written as a portion of the cooperative effort between DRS and business representatives.

CT Sales Tax – Contractors

Basic Definitions

- **Lump Sum/Fixed Fee Contracts:** Contract provides for a single price for the total work on the construction project. [Normally not subject to adjustment due to higher costs than anticipated.
 - **Example:** Contractor contracts to install a new roof for \$10,000. Contractor cannot charge extra – even if more material is used or time is spent.
- **Cost-Plus Contract:** Provides for reimbursement of allowable or otherwise defined costs incurred plus a fee representing profit. These normally require the contractor to use best efforts to accomplish the scope of work in a specific time frame and a stated dollar limitation.
 - **Example:** Contractor agrees to install a new roof whereby owner will pay contractor (reimburse) for cost of materials and labor plus 15%. The work is to be performed by a specific date with a maximum number of labor hours.

CT Sales Tax – Contractors

Basic Definitions

- **Time and Material Contract** (with an Upset or Guaranteed Price not to be exceeded):
 - Contractor is paid on the basis of direct labor hours at a fixed hourly rate (which covers the cost of direct labor, indirect expenses and profit) plus the cost of materials and other costs. This type of contract compensates the contractor performance on the basis of effort expended in fulfilling the contract with a guaranteed maximum cost.
 - **Example:** Contractor agrees to install new roof where contractor is compensated at a rate of \$75 per hour plus cost of materials with the entire cost for time and materials not to exceed \$2,500.

CT Sales Tax – Contractors

Basic Definitions

- “Contractor” means both a general contractor and a subcontractor.
 - Includes building, electrical, plumbing, heating, painting, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape and roofing contractors.
- Construction contract means a contract for the repair, alteration, improvement, remodeling or construction of real property.

CT Sales Tax – Contractors

Overview of Taxation Scheme

- Contractors/subcontractors are taxable on the materials which they use in their jobs [with very few exceptions].
 - The contractors are deemed to be the consumer of the tangible personal property since they produce real property. They use the personal property in the production of the real property.
 - Since the sales tax is paid by the contractor on the purchase of materials, no sales tax is charged for the materials portion of the job, if separately stated from the service portion of the job.
 - Exception: Materials which become a part of the project for exempt organizations are exempt from sales tax.
- The sales tax applies only to the service portion to **existing** industrial, commercial or income producing real estate.
 - This rule exempts from the tax service with respect to residential property and new construction (for any type of property).
 - Service to exempt projects are also exempt.

CT Sales Tax – Contractors

Overview of Taxation Scheme

- While the tax does not apply to the amount charged for services performed in connection with new construction, the contractor must still pay a tax on the **materials** used in the job.
- Renovation work to existing income-producing, industrial and commercial real estate is taxable.
- Since service to existing income-producing, industrial and commercial real estate is taxable, this can be the subject of a RESALE certificate between a general contractor and subcontractor [see discussion below].
- Generally sales to non-profit exempt organizations of services is nontaxable. In addition, the materials which become physically incorporated in and become a permanent part of the project can be purchased tax-free.
- Nonresident contractors and persons who deal with them have special bond or withholding requirements under Connecticut law. These rules are in essence a transferee liability provision. If the nonresident contractor does not comply with the law, then the “person who deals with them” (including a general contractor) can be held responsible for the tax on the materials portion of the job and potentially any other Connecticut tax.

CT Sales Tax – Contractors

Contractor Tax Regulations

- **Reg 18** combines certain portions of the resale and the consumption rules discussed above.
 - A contractor does not have to charge tax to its customers on the materials portion of the charge. The contractor is deemed to be the consumer of the materials and must pay sales tax on these purchases. Contractor generally cannot use a resale certificate.
 - **Exception #1:** Contractor can use a resale certificate if the contractor is a “two-hatter” – i.e., the contractor is also a retailer of goods. DRS interprets this to mean that the contractor/retailer must have a counter where persons can go to buy materials.
 - **Exception #2:** Contractor agrees to sell materials or supplies at an agreed price and to render service for either an additional fixed price or on the basis of time. DRS may ignore this portion of the regulation.

CT Sales Tax – Contractors

Contractor Service Charge to Customer

- Contractor must charge sales tax on the service portion of the job, if the service is taxable.
 - The contractor has already paid sales tax on the cost of the materials.
- There are essentially 3 billing options:
 - **Method #1:** 100% Service. The entire charge is considered to be for the contractor's service.
 - If the construction work is taxable, then 100% of the bill is subject to tax. This produces double taxation on the materials.
 - If the construction work is nontaxable, then no sales tax is charged on the bill.

CT Sales Tax – Contractors

Contractor Service Charge to Customer

- **Method #2:** Separately State the Previously Taxed Materials at Cost.
 - If the materials portion of the charge is separately stated on the invoice (at cost), then sales tax has to be charged on only the balance of the bill (where the job is taxable).
 - Under this method, the materials portion must be determined at cost (with no mark-up). For many this is not a preferred billing method since it discloses too much information to the customer.

- **Method #3:** “Tax Inclusive” Approach. Where the contractor maintains a record of the job in which the materials (at cost) and the labor portion of the job (all other costs) are separate, a single bill with sales tax included can be provided with sales tax charged only on the amount over the material cost. The invoice must read “tax included.”

CT Sales Tax – Contractors

Subcontractor Service Charge

- The same billing approaches apply to the charges between a contractor & subcontractor.
 - Since the subcontractors are the consumers of materials used on their portions of the job, the general contractor will generally want some method so that the ultimate customer is not subject to a double tax.
 - The approach varies depending upon whether the general contractor provides a resale certificate.

CT Sales Tax – Contractors

Subcontractor Service Charge

- GC Issues a Resale Certificate to Subcontractor
- GC cannot use this option (issue a Resale Certificate) in all circumstances.
- Two conditions must be met:
 - Subcontractor service is an integral, inseparable component of the service to be sold to the end user – i.e., essential to complete the performance of the final service being sold; AND
 - Both the subcontracting service and final service of contractor are enumerated services. Resale certificate cannot be used for
 - Services rendered in new construction;
 - Services to owner-occupied residential real property;
 - Other taxable services not enumerated in sec 12-407(a)(37) (e.g., telecommunication services);
 - Nontaxable services (e.g., engineering, architecture, design services)

CT Sales Tax – Contractors

Subcontractor Service Charge

- GC issues Resale Certificate to Subcontractor
- Subcontractor is responsible for paying tax on materials used in performing subcontract.
- Sub's bill to GC should be broken out into two parts;
 - Materials consumed and sales tax thereon;
 - Service Charges – including markup on materials, overhead expenses, reimbursed expenses, labor charges, profit.
- **NOTE:** If the service is taxable, GC should only charge end customer on service portion of the bill (materials have already been taxed).

CT Sales Tax – Contractors

Subcontractor Service Charge

- GC Does Not Issue a Resale Certificate to Subcontractor
 - Where a subcontractor provides a general contractor with a “tax included” invoice (where tax was charged only on the service portion), the general contractor should determine the materials portion of the job and include potential tax on its bill on the service portion (not previously taxed).
 - If the materials are not separately stated on the invoice, or if the separation is not kept in the job records, then the entire charge is deemed to be for the service. If the service is taxable, then the entire charge will be subject to tax.
 - Under the scenario discussed above, if the service is nontaxable, then this make no practical difference. Since the contractor will normally pay tax on the materials (or the materials are exempted under the exempt contract rule [since the materials become part of the job]), whether the entire contract price or a separated portion is deemed for service is immaterial – no tax must be charged on the service portion.

CT Sales Tax – Contractors

Exempt Organization Contracts

- Generally a sale of services and property to nonprofit organizations are nontaxable. Since the contractor is the deemed user of the property to provide the service, the materials would normally be taxable on the contractor purchase (even if the service is done for an exempt organization).
- **Special Rule:** Materials and supplies which are purchased by the contractor can be purchased tax-free if they become physically incorporated into and become a permanent part of the project.
 - However, other materials remain taxable.
- **Exempt Organizations:** There are organizations which are exempt for federal tax purposes.

CT Sales Tax – Contractors

Government Agencies

- Qualifying Government Agencies can issue Cert 134 to the contractor.
- Qualifying Agencies include:
 - US Govt and its agencies;
 - State of CT and its agencies;
 - Political Subdivisions of CT (cities and towns and agencies);
 - State of CT contracts to purchase a particular property from a developer after it is built or renovated through a long-term financing contract;
 - Adriaen's Landing and Rentschler Field; and
 - Tax Districts

CT Sales Tax – Contractors

Government Agencies

- Turn-Key Contracts with government or other exempt entities do not qualify for exemption from tax.
 - **Turnkey contract:** the exempt entity contracts for a construction project to be completed by the contractor on land not owned by the exempt entity during the construction period. Title is turned over on completion of project.
 - These contracts do not qualify as long-term financing contracts.

CT Sales Tax – Contractors

Government Agencies

- Government Agent: Govt agency can appoint a business to act as its agent to purchase goods/services.
- Principal-Agent relationship exists between a business and government agency when all of the following conditions are satisfied:
 - Business is expressly acting as agent for the government agency. Contract must state that the business is so acting.
 - All purchases made by business for the government agency are used exclusively for the governmental agency's benefit.
 - Government Agency issues Cert 134 to the business.
- Government Agency signs Cert 134 or business signs and designates self as agent of the government agency. Business attaches to Cert 134 documentation from agency expressly designating the business as agent.

CT Sales Tax – Contractors

CDA Approved Projects

- Connecticut Development Authority (CDA) issues a Limited Agency Certificate to purchaser when a project has been approved for sales/use tax exemption under sec 32-23h.
 - CDA appoints purchaser as its agent for limited purposes of purchasing construction materials, other tangible personal property, services and equipment tax exempt (designated on certificate). Project may be all or partially exempted by CDA.
 - Items covered by exemption are described in attachment.
 - Agent/Contractor/Subcontractor procedures:
 - CDA signs Cert 134 or, alternately, agent signs and designates self as agent. Agent provides copy of Cert 134 to GC and vendors for purchasing the exempt items. Agent attaches a copy of the Limited Agency Certificate.
 - Agent must check “CDA” and “Agent of Qualifying Govt Agency Listed Above” on back of Cert 134. Agent must enter its name next to Name of Agent and write CDA in Name of Qualifying Agency.
 - GC issues Contractor Exempt Purchase Certificate to subcontractors and vendors to exempt items and attach a copy of Limited Agency Certificate.
 - Subcontractor follows same rules as GC.

CT Sales Tax – Contractors

Taxable Services

- Services to **existing** industrial, commercial or income-producing real property is subject to tax.
- Real estate – generally follows the definition of real property under Connecticut property law. Generally land, improvements and fixtures.
- Repairs to certain items which might otherwise be considered real estate (i.e., fixtures) will not be considered to be real estate for this rule.

NOTE: This special rule applies only to Repair and Maintenance work – it apparently does not apply to installation or construction. While not considered real estate, such work will be taxable under CT sales tax law as repairs to personal property.

- Repairs and Maintenance to furnaces (boilers or burners), central air conditioning units, central vacuuming units, refrigeration units, manufacturing production machinery, modular lighting, pumps, tanks, alarm systems.
- While such Repairs and Maintenance are not considered to real estate, ducting, piping or wiring for such items will be considered as service to real estate. Consequently, repair and maintenance work to such ducting, piping or wiring will be considered services to real estate.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Taxable: Services to **existing** industrial, commercial and income-producing property.
- This exempts service work for:
 - New construction (since it is not existing) for any type of property [residential, income-producing, commercial, industrial, exempt].
 - Residential Property.
 - Exempt organization property.
 - Voluntary containing/removal of hazardous waste (to any type of property).

CT Sales Tax – Contractors

Exempt v Taxable Services

- Exception: (The 7 mini-deadlies) These are taxable services even if provided to **existing** owner-occupied residential property:

	All of these are phased out	
Paving		
Painting	07/01/1999 to pre 07/01/2000	4%
Staining	07/01/2000 to pre 07/01/2001	2%
Wallpapering	07/01/2001 and later	0%
Roofing		
Siding		
Exterior sheet metal work		

- With respect to the 7 mini-deadlies, new construction (for income-producing, industrial, commercial or residential) was exempt.

CT Sales Tax – Contractors

Exempt v Taxable Services

- The Seven Real Deadlies (taxable to all existing or new residential, industrial, commercial or income-producing property).
 - Janitorial Service: means the cleaning of the interior or exterior of building structures or dwellings either on a scheduled, periodic basis or only on a single occasion (such as site completion of construction/renovation).
 - Maintenance Service: means attending to the upkeep of, caring of or cleaning the exterior or interior of buildings. They are necessary to support safe, efficient and continuous use of the property or to keep it in working order by preventing its decline.
 - This includes chimney sweeping, cleaning gutters, driveway sealing, house washing (power washing), pond dredging, snow removal, resurfacing clay tennis courts. However if rendered to the residence of a person receiving total disability payments under Social Security, the service is not taxable.

CT Sales Tax – Contractors

Exempt v Taxable Services

- The Seven Real Deadlies (taxable to all existing or new residential, industrial, commercial or income-producing property).
 - Window cleaning;
 - Swimming Pool Cleaning and Maintenance;
 - Locksmith Services (Including repairing, servicing or installing locks and devices, whether incorporated into the building or into tangible personal property [e.g., a lock on an automobile]. Also includes unlocking locks when customer cannot.) The service is separate from the sale of tangible personal property.
 - Extermination

CT Sales Tax – Contractors

Exempt v Taxable Services

- The Seven Real Deadlies (taxable to all existing or new residential, industrial, commercial or income-producing property) (cont)
 - Landscaping and Horticultural services. These services include (but not limited to) the planting of and caring for flowers, shrubs, fruits, trees and vegetables.
 - Includes fertilizing, raking, mowing, seeding, mulching and weeding.
 - Includes maintenance of exterior plans such as pruning, tree trimming, lawn/garden services, spraying, tree removal.
 - Construction of irrigation/sprinkler systems, patios (other than concrete or asphalt), walkways (other than concrete or asphalt).
 - Construction of fences, ponds, walls, gates – unless contractor can establish otherwise.

NOTE: *This is a significant provision for contractors since even in connection with new construction “rough grading work” might be classified as landscaping and that part of contract taxable.*

NOTE: *Site work and excavating rendered for foundations, parking lots and driveways (service to real estate) is different from those rendered for landscaping services.*

CT Sales Tax – Contractors

Exempt v Taxable Services

- Residential Property is specifically defined in the regs.
 - Real estate used exclusively for residential purposes which consists of 3 or fewer dwelling units, in one of which the owner resides. [This can exempt property which is partially business use.]
 - The reg also exempts work done for a residential tenant (non-owner) who directly contracts with the service provider and has no right of reimbursement from the landlord. [This service would be if a landlord contracted directly for the service (unless the property falls under the 3 or fewer unit rule).]
- Residential condominiums are subject to special rules:
 - Where the owner of a residential condo contracts directly for the work, it is exempt if the owner resides in the condo (following the general residential property rule).
 - Where the owner of a residential condo contracts directly for the work, it is taxable if the owner does not reside in the condo (since it is rental property [income-producing]).
 - Where services are rendered to a residential condo association, then the work is exempt if the property is entirely owner-occupied. If not, the a portion of the work is taxable based upon the number of non-owner occupied condo units to the total of all condo units. DRS has a certificate for this purpose which can be issued to the provider, which can be accepted under a “good faith” standard.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Exempt Organizations. In addition to the exemption for materials which become physically incorporated into and a part of a project, an exemption exists for services provided to an exempt organization.
 - For this exemption for services, it does not matter whether it is new construction or not.
 - The United States or the state of Connecticut or any political subdivision thereof or its/their agencies.
 - NOTE:** The exemption does not apply for work to a state other than Connecticut.
 - Nonprofit charitable hospitals;
 - Charitable and religious organizations which either holds an IRS determination letter that org is a 501(c)(3) or (13); or a valid Ct exemption certificate issued before 7/1/95. These orgs issue Cert-119 for purchases of tangible personal property or services.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Renovation versus New Construction

- Since services to **existing** industrial, commercial or income-producing property is taxable, this exempts the service charge for new construction (since such property is not existing).

NOTE: On new construction, materials are still subject to sales tax on purchase by the contractor.

- The construction of an entirely new building is exempt.
- The construction of a new addition to an existing building which expands the cubic footage is new construction. This rule deals with “cubic footage” and not usable space. Work done to make the existing cubic footage more usable does not constitute new construction (e.g., creation of a mezzanine in the existing space).
- Renovation work to existing property is normally taxable. [Prior law contained an exception where it was capitalized. This does not apply.]

NOTE: New construction normally ends on issuance of C.O.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Renovation versus New Construction
 - Certain Extreme Renovations can constitute New Construction. Under the regs where only the roof and the external walls are retained but new floors, new internal walls, new support columns and new electrical and mechanical systems are constructed, the constitutes new construction.
 - Certified Historic Credit Renovations: Where the property is subject to a certified historic credit (where the property cannot be totally gutted), then new floors, new internal walls and new support columns will not be required to be constructed to the extent needed to meet the credit qualifications. The work will be considered new construction.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Renovation versus New Construction
 - Site Improvements are analyzed by putting the work into certain categories:
 - New Use Rule for Site Improvements whether/not in connection with a new building or new addition. Improvements which put the affected property to a **new use** is considered new construction.
 - Examples: construction of roadways, walkways (concrete or asphalt), parking lots, patios (concrete or asphalt), swimming pools, decks, tennis courts.
 - Enhancement of Existing Use of Property. These site improvements are required to be in connection with a new building or new addition. These relate to services which merely enhance the current use of the affected property.
 - Example: installation of wells, septic systems, utility lines, storm water drainage system.
 - Renovations of Existing Site Improvements: Is not new construction.
 - Example: Resurfacing an existing parking lot.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Renovations v New Construction
 - Sales Price Allocation: If as job involves both new construction and renovation, the new construction charge must be separately stated on the invoice. If not, the charge is deemed to be entirely for renovation and subject to sales tax LSN-91. [Burden of proof is on the service provider to support the allocation.]
 - Example: Rul 89-148. Where existing roof and joints are removed, a new roof and skylights are built nine feet higher than before, and a new floor is created, the removal of the existing roof and joints and installation of the new partial floor in the old space is taxable as renovation. The balance is new construction.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Tenant Fit-Up Work: A series of rulings (89-116, 89-190, 89-263) establish that new construction continues through initial fit-out work for the first tenant of the property. [This recognizes the fact that it is not always easy to rent property immediately and work for the tenant continues the new construction.]
 - However, it must be in connection with the **first use** of the unit. Utilization of the unit for storage is enough to make this the first use [though Rul 89-263 appears to permit use of the subject space for the storage of building materials].
 - A business condo unit previously used which is gutted and rebuilt to suit a new occupant's needs is taxable since this is not the first use of the unit. The same result applies even where the property is acquired by a new owner. While this may be the first use for the new owner, it is not the first use of the property.
- Demolition Work is generally taxable where done in connection with industrial, commercial or income-producing property.
 - EXCEPTION: If the demolition is in connection with new construction, it is not taxable as long as the demolition work is part of the contract for new construction.

CT Sales Tax – Contractors

Exempt v Taxable Services

- Excavation Work. Rul 89-148 contains several scenarios:
 - Excavation of the ground level of an existing building, the lowering of the foundation and construction of a new concrete footing for the addition of a new floor of retail space is considered new construction (since it adds cubic footage).
 - The lowering of a parking lot in areas adjacent to a building so as to have access to the new ground level (described above) is considered to be renovation to existing business property (follows as an improvement to an existing site).

CT Sales Tax – Contractors

Exempt v Taxable Services

- **Construction Management Services.** In general, CM's are like contractors who provide a service to real property. DRS says that these are not business management services (since they do not involve core services of the service recipient).
 - If rendered to new construction or residential property (new/existing), they are exempt.
 - If rendered to existing business property, they are taxable.
- Some authority provides that it must be determined whether the CM is benefiting the property or some other interest.
 - Where CM is hired by a bank to check out the progress of construction relating to mortgages lent by the bank, the service is nontaxable. The CM is hired by the bank and represents the lender's interests. This is not a service to the real estate.

CT Sales Tax – Contractors

Nonresident Contractors (new rule)

- 2011 legislation changed procedures relating to nonresident contractors
 - Effective for contracts commencing on or after October 1, 2011.
- Two classes of nonresident contractors: Verified and Unverified
 - Verified: nonresident contractor/subcontractor
 - Is registered for all applicable taxes with DRS;
 - Has filed all required tax returns with DRS;
 - Has no outstanding liabilities to DRS; and
 - Has submitted Form AU-960 (Request for Verified Status) and been verified by DRS as meeting these conditions; AND
 - Has been registered for all taxes with DRS for at least 3 years preceding the contract; or
 - Posts bond with DRS, Form AU-961.

CT Sales Tax – Contractors

Nonresident Contractors (new rule)

- Two class of Nonresident Contractor: Verified and Unverified
 - Unverified Contractor: A contractor who is not verified.
- Unverified Prime or General Contractor:
 - Must post a single surety bond of 5% of the entire project price (Form AU-964) and file it with DRS where the contract price for the entire project is \$250,000 or more.
 - Person doing business with an Unverified Prime or General Contractor must get proof that there is a surety bond.
 - Such Person is no longer required to hold back 5% due to the contractor under the contract.
 - Failure to get proof can result in Transferee liability, up to 5% of contr

CT Sales Tax – Contractors

Nonresident Contractors (new rule)

- Unverified Subcontractor:
 - Prime or general contractor must hold back 5% of the amount due an unverified subcontractor until the subcontractor furnishes Form AU-968, Certificate of Compliance, from DRS.
 - Form AU-968 authorizes the prime/general contractor to release all or a portion of the amounts held back from payment to the unverified subcontractor.

CT Sales Tax – Contractors

Nonresident Contractors (new rule)

- Verified Contractor Rule:
 - Verified Nonresident Prime Contractor: Obligation to post a surety bond with DRS is eliminated.
 - Verified Nonresident Subcontractor: Requirement for prime or general contractor to hold back a portion of amount due under contract is eliminated.
- Compliance with the new set of rules relieves the person doing business with a nonresident contractor from liability for withholding tax liability or sales tax on materials or consumables.

CT Sales Tax – Contractors

Nonresident Contractors (new rule)

- “Nonresident Contractor” is a contractor/subcontractor not maintaining a “regular place of business” in CT.
 - A bona fide office, factory, warehouse, other space in CT at which contractor is doing business in own name in regular and systematic manner; AND
 - A place continuously maintained, occupied and used by contractor in carrying on its business through its employee regularly in attendance.
 - Excludes: Office of statutory agent or temporary office (whether or not located at job site); affiliate’s office; used only for job; or short term office, warehouse, facilities only for duration of job without full time staff.

CT Sales Tax – Contractors

Nonresident Contractors (Old Rule)

- Special rules apply in connection with dealings with nonresident contractors.
 - These rules have undergone some changes for post 7/1/03 contracts.
- These requirements apply regardless of the nature of the real property affected (residential, income-producing, industrial or commercial property) or the tax-exempt nature of the property owner.
- The rules create potential transferee liability to the Connecticut contractor dealing with the out-of-state contractor.
 - Originally this was intended to assure that sales tax is collected on the materials portion of the job.
 - The DRS notices on this section potentially expands the transferee liability to any Connecticut tax (including withholding tax) of the nonresident contractor related to the job.

CT Sales Tax – Contractors

Nonresident Contractors (Old Rule)

- Two alternative are provided under the new rules:
 - The person entering the contract with the nonresident contractor must withhold 5% of the total contract price and remit it to DRS: (1) within 30 days after completion of the job; or if earlier (2) by 2 years from the later of the date the contract is signed or work commenced. A separate deposit must be made for each contract with the nonresident contractor. (AU-766) For administrative purposes, DRS may require a list of nonresident contractors.
 - Within 120 days from the commencement of the contract, the nonresident contractor petitions DRS to issue a guarantee bond for 5% of the contract. (AU-764) DRS issues a Certificate of Compliance.
- After contract is completed, the nonresident contractor submits a request to DRS to audit its records for the project. If no tax is due, DRS will return the withheld amount or bond to the nonresident contractor.

CT Sales Tax – Contractors

Nonresident Contractors (Old Rule)

- Any amount withheld from the nonresident contractor by the resident contractor is considered to be held as a trust fund for Connecticut.
- If the parties execute a change order after the final periodic billing for the contract, the resident contractor must submit another 5% of the change order amount to DRS within 30 days after the change order is complete. Once again the amount must be paid no later than 2 years from the later of the date the change order was signed or the work was commenced.