

# Mississippi Department of Revenue

Sales Tax Applicable to Residential Construction

**Sales Tax  
Technical Bulletin  
TB 72-501-17-2**

## PURPOSE & SCOPE:

Many questions have arisen over the years concerning the taxability of residential construction work for sales tax purposes. Mississippi taxes residential and non-residential construction differently. The purpose of this Technical Bulletin is to provide information on the taxability of residential construction work.

## REFERENCES:

Miss. Code Ann. Sections 27-65-3 and 27-65-23. The Department of Revenue has published a rule that deals with construction and residential construction issues and can be found on our website under Mississippi Administrative Code Title 35, Part IV, Subpart 10, Chapter 02.

## Discussion of Taxability

Activities involved in residential construction are either taxed as a taxable service listed in Miss. Code Ann. Section 27-65-23 or taxed as the sale and installation of tangible personal property as described in Miss. Code Ann. Section 27-65-3. In general, residential construction is taxed at the rate of 7% on materials and taxable services. However, the tax on materials may include labor charges if the seller is also performing the labor to install the tangible personal property. Also, the taxability of residential construction activities is the same regardless of whether the activities are for new home construction or for the remodel, renovation or repair of an existing home or other type of residential structure, such as a deck or storage building.

Taxable services include: HVAC installation and repairs; electricians and all repairs and installation of electrical equipment; grading, excavating, ditching, dredging and landscaping; insulating services or repairs; and plumbing. All persons performing these services should charge the 7% regular retail rate of sales tax on the gross income received. This would include charges for labor and materials. Persons who are engaged in these taxable services should be registered with a sales tax number and should be providing their sales tax number to their suppliers to purchase their component materials exempt from sales tax. This does not include tools, equipment or supplies used by the taxpayer to perform their services. Sales tax must be paid when these items are purchased.

Persons who are engaged in the sale and installation of tangible personal property owe the 7% regular retail rate of tax on the total amount charged for both the sale and installation of the property. Installation charges are the charges to install tangible personal property to real or personal property. It does not matter that the tangible personal property becomes a part of the realty after it is installed. Installation does not include general construction work and carpentry, such as those activities provided by a trim carpenter that are provided on site.

## Residential Construction

The sale and installation of tangible personal property includes items such as: roofing; tile; glass; carpets; drapes; fences; flooring; aluminum, plastic or vinyl siding; windows and doors; and other similar personal property. All persons selling and installing tangible personal property should charge the 7% regular retail rate of sales tax on the total sale. This would include charges for labor and materials. Person who are engaged in selling and installing tangible personal property should be registered for a sales tax number and should provide their sales tax number to their suppliers to purchase their component materials exempt from sales tax. This does not include tools, equipment or supplies used by the taxpayer to perform their services on which sales tax must be paid at the time of purchase.

### **New Home Construction**

New homes are usually built by a building contractor. Most residential builders do not build the entire home themselves. Instead, they build the home through the use of their own crew and through the use of sub-contract labor. Any part of a new home construction that is performed directly by the builder and his/her crew is taxed only on component materials (such as framing lumber, nails, sheetrock, etc.) that are to become part of the structure of the home.

Sub-contract labor is taxed as provided above. Any sub-contractors that are providing taxable services, such as plumbers and electricians, will charge the builder tax on the total amount billed. Any sub-contractors that are selling and installing tangible personal property, such as shingles and flooring, must charge the builder tax on the total charge. However, if the sub-contractor is only providing the labor and the builder is buying the materials separately, then tax is not due on the labor charge. Tax will be due to the materials supplier.

There is no tax due on the sale of a home from a builder to the homeowner. This is considered a sale of real property and is not subject to sales tax.

In those instances where a homeowner is acting as the general contractor, tax will be due on all material purchases, on the purchase of taxable services and on the purchase of property that meets the requirements for a sale and installation.

### **Home Remodel, Renovation or Repair**

Remodeling, renovation or repair are the processes of improving a broken, damaged, or outdated structure. These activities can encompass projects that alter the structure of an existing home – such as adding on a new room; projects that improve the home – such as upgrading an existing bathroom; or they can encompass repair to a home – such as replacing a roof after a hail storm.

The taxation of home remodeling, renovation or repair mirrors the taxation of new construction. Any persons performing taxable services, such as plumbers, electricians, or HVAC repairers, are taxed at the regular retail rate of 7% on their gross income. This is the total received from the job including the amounts received for materials and labor charges. Any persons who are selling and installing tangible personal property are taxed on the total sales price, which includes the charges for installation. Any part of a new home construction that is performed directly by the builder/remodeler and his/her crew is taxed only on

## Residential Construction

component materials (such as framing lumber, nails, sheetrock, etc.) that are to become part of the structure of the home.

As with new home construction, a distinction must be made between the activities of selling and installing tangible personal property and the activities of construction or carpentry. A good example would be cabinetry. Cabinets that are built in a shop off-site and brought to the construction site and installed would be taxed as the sale and installation of tangible personal property, and tax would be due on the total sales price. Cabinet construction on site is considered carpentry work and the only tax due would be on the purchase of materials that become a component of the cabinets being constructed.

One area that causes confusion is when a person performs a multitude of different types of work such as a general home remodeler. A remodeler may perform roofing, replace flooring, repair sheetrock, or remodel a bathroom, etc. In the course of remodeling the bathroom, there may be some work performed that qualifies as a taxable service such as plumbing or electrical work. The general home remodeler should only pay tax on his materials unless the primary purpose for the job is the performance of a taxable service or the sale and installation of tangible personal property. In general, the Department will only consider jobs as a taxable service or the sale and installation of personal property where 50% or more of the job relates to the performance of a taxable service or the sale and installation of tangible personal property. For example, a home remodeler has been hired to remodel a bathroom. The job entails replacing the toilet, painting the walls and building a new cabinet above the toilet. While a portion of this job does constitute plumbing activities, the plumbing jobs constitute less than 50% of the total job. The tax due on this job would be at the rate of 7% on the purchase of the materials used to perform the job and that become a component of the job. However, if a contractor was hired to sell and install a new granite countertop, and during this job the contractor discovers that some existing cabinets are not level or need some reinforcement, the entire job is subject to tax at the rate of 7% because the majority of the job is for the sale and installation of countertops and the carpentry work on the cabinets is a part of the job. This use of a percentage calculation to determine taxability of the job will only be used in absence of separately stated charges. However, the department may resort to the percentage calculation method in instances where the separately stated charged do not appear to accurately represent the cost of the work being performed.

### **Roofers**

The sale and installation of roofing is taxable at the rate of 7% on the entire sale amount including the charges for installation. This type of job is taxable whether the roof is for new construction, a replacement for an old roof or the replacement of a roof damaged by an act of nature. Additionally, it makes no difference whether payment comes from a home builder, home owner or an insurance company. Roofing is considered installed property and as long as the person installing the roof is also the same person who is selling the shingles and other roofing materials, the entire charge is subject to tax at the rate of 7%.

However, the tax due from the sale of a roof can be minimized when the builder or homeowner purchases the shingles or other roofing material separately from a roofing supply dealer and then contracts separately with the roofing contractor to install the roof. The roofing contractor may tell the customer where to buy the material and how much material is

## Residential Construction

needed; however, the customer must be invoiced by the roofing supply dealer and must make payment directly to the roofing supply dealer in order for the transactions to be considered two separate transactions. Example: John Doe has his roof damaged by a hail storm. He contacts Bill at Roofs R Us and has Bill give him an estimate to replace the roof. The estimate includes the cost for materials and labor. John hires Bill to replace the roof. Bill gives John the list of materials needed and tells Bill to go to We Sell Roofs to pick out his shingles and to buy his materials. John goes and picks out his shingles. We Sell Roofs invoices John for the shingles, roofing paper, nails, etc. John gives We Sell Roofs a check for the materials. Materials are delivered at the job site in care of Bill the roofer. Bill replaces the roof and bills John for his labor. Tax is due only on the materials purchased from We Sell Roofs and not on Bill's labor charges because there are two separate transactions.

This process of separating out transactions for the purchase of tangible personal property and for the installation of the property will work for all the other situations described above where the sale and installation of tangible personal property are taxable. As long as the customer separately buys the property and separately contracts for the installation of such property, tax will only be due on the purchase of the property. However, the service provider must take care so as to make sure the purchase of materials is completely separate from the service to provide labor for the installation. The service provider should never be involved in taking the customer's payment for materials, should never have the materials purchased under their own account with the materials supplier and should not act as an agent on behalf of any materials manufacturer or supplier.