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Nebraska Sales & Use Tax

(Effective July 1, 2006)

I. History.

Sales and use tax began in Nebraska in 1967, with a state rate of 2.5%. The current state rate is 5.5% with optional county and city rates of an additional .5, 1.0 or 1.5%.

In the early to mid-1980's the legislature eliminated sales tax on food for home consumption and broadened the sales tax to include more services such as building cleaning and maintenance, pest control services, motor vehicle washing, waxing and towing, most repair services except for repairs of motor vehicles, and some construction labor.

In 2005, the Nebraska Legislature exempted manufacturing machinery and equipment, which became effective January 1, 2006. The most recent and significant change to the sales and use tax laws came with the passage of LB 968, which is the contract labor bill, which is discussed in more detail later.

II. Sales and Use Tax.

Sales tax is a tax on the transaction called the sale, rather than a tax on the items sold. A sale is defined as the transfer of title or possession of an item or taxable service for consideration. Lease or rentals are treated as sales for sales tax purposes.

The point of delivery is where the tax is determined. In Omaha, there are areas that are within the city limits and are taxed at the 7% (city) tax rate and other areas that are SID's that are not included within the city limits that are taxed at the 5.5% (state) tax rate. To find out where you, or your customer are located, click on the following link <http://salestaxrates.ne.gov/nedor/InquiryPage.aspx>, enter the address, the city and the zip code + 4. You can also enter the amount of the transaction and the tax will be calculated for you. Correct calculation of tax is very important as the seller is liable to the State of Nebraska for collecting and remitting the correct amount of tax.

Sales tax is collected by the seller, who is acting as an agent for the State of Nebraska. The seller does receive a very small collection fee for collecting and remitting the tax to the State of Nebraska. The maximum credit is \$75.00.

Sellers should presume that all transactions are taxable. It is the seller's burden to collect and remit the correct sales tax amount to the State of Nebraska and it is also their burden to explain why they did not collect sales tax. Sales tax is calculated on gross receipts; therefore, it is important to keep accurate records and documentation when you don't collect tax. The only documentation that is acceptable as to why you didn't collect sales tax is a Form 13, which is completed by the buyer and is presented to the seller. The Form 13 will be discussed in more detail later.

Use tax is a consumer tax and is paid on the cost of items or taxable services for use in this state when sales tax has not been collected.

Typically you will see use tax paid on items bought out of state or from catalogs or the internet. If you go to South Dakota to purchase an item for your personal or business use that cost \$10,000, plus tax, you will pay the state sales tax rate of 4% in South Dakota. When you bring the item back to the City of Omaha (7% tax rate) you will owe the Nebraska Department of Revenue the difference between the sales tax you would have paid in Nebraska and what you paid in South Dakota. In this example you would owe the State of Nebraska an additional 3%, or \$300.00.

Another time you may owe use tax is when you remove items from your tax-free inventory for personal use, business promotions or charitable donations. If you own a business that changes oil and you decide to have a promotion where you give away free oil changes to the first 10 customers on a particular day, you will owe use tax on the oil used for those 10 oil changes. The reason is that the business purchased the oil tax-free intending for you to collect sales tax on it when you used it in the normal course of your business. Since you did not use it in a transaction for consideration, you must pay use tax on your cost when the item is taken from inventory.

When determining use tax, the following apply:

1. Use tax is calculated at the same rate as sales tax;
2. Use tax is imposed on the same transactions as sales tax (purchase of goods & services); and
3. Use tax has the same exemptions as sales tax.

III. Taxable Services.

If you, or your business provide the following services, your business is subject to sales tax and you will need to file a Form 20, Nebraska Tax Application, with the State of Nebraska, Department of Revenue to obtain a Sales Tax ID Number.

1. Computer Software Training
2. Pest Control Services
3. Security Services
4. Motor Vehicle Towing
5. Motor Vehicle Washing & Waxing
6. Motor Vehicle Painting
7. Building Cleaning and Maintenance
8. Installing and Applying Tangible Personal Property
9. Magazines and Journals Sold by Subscription
10. Recreational Vehicle Park Services
11. Animal Specialty Services
12. Detective Services
13. Repair Labor and maintenance services performed on tangible personal property-with exceptions. Those exceptions are noted below.

IV. Tax-Free Sales.

Some sales are tax-free or exempt. This can be due to the seller or purchaser having an entity-based exemption, the buyer having a use-based exemption or the item having a product-based

exemption. An entity-based exemption is based on who purchases the product or who sells the product. The use-based exemption is based on a specified use of the product by the purchaser and the product-based exemption is based on the item itself. Examples of each are as follows:

1. Seller (entity-based exemption): Meals served to students by schools, concession sales of food by elementary and secondary schools, admissions charged at school events, etc.
2. Buyer (entity-based exemption): United States government, organizations created exclusively for religious purposes, State Fair Board, etc.
3. Buyer (use-based exemption): Property delivered outside the State of Nebraska, Property purchased to be resold prior to the use of such property, property which will be incorporated as an ingredient or component part of an item to be sold, etc.
4. Item Sold (product-based exemption): Aircraft fuels, prescription medicines, Nebraska Lottery tickets, Newspapers that are issued at least 52 times per year, etc.

Effective January 1, 2006, the sale, lease, rental, storage use or other consumption of manufacturing machinery and equipment is exempt from Nebraska sales and use tax. Installation, repair and maintenance services performed on or with respect to manufacturing machinery and equipment are also exempted.

V. Exempt Organizations.

The fact that your organization qualifies as a 501(c) (3) nonprofit organization, does not automatically make it exempt from Nebraska Sales and Use Tax. In fact, most nonprofit organizations are still responsible for collecting and remitting sales and use tax. Religious organizations created exclusively for religious purposes and most educational organizations are exempt from sales and use tax after they apply for and receive an Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue.

Effective July 1, 2006, local or regional housing agencies are exempt and nonprofit organizations certified to provide community-based services to persons with developmental disabilities are exempt from sales and use tax. A nonprofit that provides services exclusively to the blind and the State Fair Board are also exempt.

All other nonprofit organizations are subject to sales and use tax unless they have applied for and received an Exemption Organization Certificate of Exemption. Do not assume that your organization is exempt. You must first file a Form 4 with the Nebraska Department of Revenue and be approved before you are an exempt organization.

VI. Delivery Charges.

No matter what you call the charges; “shipping and handling”, “delivery charges”, “freight fees”, or “window time”, the method of delivery doesn’t matter when determining whether or not delivery charges are taxable. You must answer the following two questions to determine if delivery charges are taxable:

1. Did the buyer pay the seller for the delivery charge?
AND
2. Was the buyer’s transaction taxable, or does the buyer owe Use Tax on the purchase?

If you answered yes to both questions, then the delivery charge is taxable. If you answered no to one or both questions, then the delivery charge is not taxable.

VII. Labor Charges.

Labor charges associated with tangible personal property are taxable with the following exceptions:

1. Labor to repair a licensable motor vehicle. If you have new brakes installed on your car, the labor to install the brakes is not taxable. However, if the receipt for the work done is not separated, e.g. brakes \$300, labor \$200, then the total is taxable.
2. Labor to repair agricultural machinery and equipment used in commercial agriculture.
3. Labor to repair qualifying prosthetic devices, durable medical equipment and mobility enhancing equipment;
4. Labor to repair items covered under a warranty or maintenance agreement. The sale of the warranty is taxable, not the labor provided under the warranty;
5. Labor to repair qualified manufacturing machinery and equipment;
6. Labor to install an exempt item is exempt from taxes;
7. Labor to install an item for an exempt buyer is exempt, (e.g. church or school).

Contract Labor is discussed below.

VIII. Occasional Sales.

Transactions that qualify as Occasional Sales and are exempt from taxation. Occasional sales mean a sale, but not a lease or rental of property. The following examples are Occasional Sales:

1. Garage sales;
2. Sales by religious organizations;
3. Sale of used business or farm machinery or equipment when all of the following criteria are met:
 1. Item was productively used by the seller as a depreciable capital asset
 2. Item was owned and used by the seller for more than one year **AND**
 3. The sales tax, if any was due, was paid by the seller at the time of purchase.
4. Sale of either new or used business assets when a person liquidates his or her business in a single transaction to a single buyer.

The purchaser must keep a copy of the Form 13 when buying items that qualify for the occasional sale exemption.

IX. Manufacturing.

Effective January 1, 2006, manufacturing machinery and equipment is exempt from sales and use tax when:

1. It is purchased, leased or rented by a person engaged in the business of manufacturing;
AND
2. It is used MORE than 50% of the time in a manufacturing process.

This exemption applies only to qualified manufacturing machinery and equipment and to the replacement parts and repair labor charges for qualified equipment. In order to be “qualified” it must be used to:

1. Produce, fabricate, assemble, finish, refine or package tangible personal property;
2. Transport, convey, handle or store the manufactured goods or raw materials (distributing companies do not qualify under this exemption);
3. Mold or shape the finished products or their packaging materials;
4. Maintain the integrity of the products or unique environmental conditions for the products or the machinery and equipment itself; or
5. Test or measure the product, the manufacturing process, or the quality of the finished product.

Peripheral Machinery and Equipment, such as computers, software used to guide, control, operate or measure the manufacturing process or exempt. Cooling towers that keep this equipment cooled are also exempt, however, cooling towers or equipment used to cool employees are not exempt.

The following items are non-qualified machinery and equipment:

1. Tools powered by hand (calipers do not qualify);
2. Security equipment;
3. Motor vehicles and trailers that are required to have Nebraska license plates;
4. Safety apparel;
5. Repair shop equipment to fix qualified equipment
6. Cleaning equipment
7. Machinery used for research and development
8. Self-constructed machinery and equipment or repair parts; and
9. Office equipment, including computers and software (not always out, subject to 50% criteria).

Items that become a component part of the product being manufactured may be purchased tax-free. Items that are consumed in the manufacturing process but are not part an ingredient or component part may not be purchased tax-free.

Containers are either returnable or non-returnable.

1. Returnable Containers are taxed when sold to the person who will place contents into them.
2. Non-Returnable Containers are not taxable when sold to the person who will fill them and sell the contents with the container.

If the containers are used internally, you owe use tax on them.

X. Energy Source Utility Exemption.

The sale, purchase, use, or other consumption of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, gasoline, coke, nuclear fuel, butane, and compressed fuel that includes compressed natural gas and propane, if more than 50% of the amount purchase is used or directly consumed by the following, is exempt:

1. Processing or manufacturing;
2. Irrigation or farming;
3. Refining;
4. Generation of electricity;
5. Use by any hospital.

There is an exemption from sales tax when more than 90% of the water billed through a single meter is used for a qualified exempt purpose. Packing houses generally don't meet this requirement. Qualified exempt purposes include:

1. Irrigation of Agricultural lands;
2. Manufacturing; and
3. Care of animals the products of which we eat or wear.

XI. Underpayment/Overpayment of Sales and/or Use Tax.

If at any time you determine that you have under or overpaid your sales or use tax, it is imperative that you file a Form 7, as soon as possible. Any dispute regarding taxes owed for a claim for a refund must be filed within three years of the filing of the return or within 60 days of the a final determination of liability by the Department of Revenue.

XII. Streamlined Sales & Use Tax Agreement.

In 2001, the Nebraska legislature and Governor began negotiating with a multi-state organization called StreamlinedSalesTax.org. This group's main goal is to make it easier to collect sales & use tax across state lines when goods are sold through the internet. In 2003, the Nebraska legislature enacted LB 282, which ratified the Streamlined Sales and Use Tax Agreement. Nebraska was now authorized to participate in the collection and enforcement system that would "level the playing field" between in state and out of state retailers. The agreement requires Nebraska to accept retailers licensed by another state as qualified to collect Nebraska sales tax. This Agreement also requires Nebraska's retailers to collect sales tax for other states.

Nebraska Sales & Use Tax
CONTRACTOR LABOR
(Effective July 1, 2006)

July 1, 2006 is the effective date for the most recent change and probably the most significant change to the Nebraska Sales & Use Tax since its inception.

I. Definitions.

This section clarifies terminology several of these are new in 2006 and are marked with an *.

Construction Services – annexing building materials to real estate, repair of a structure or of building materials that are or will be annexed to real estate. This also includes installing telephone, telegraph and community antenna television service.

Contractor/Repairperson – any person who performs any repair services upon property annexed to, or who annexes building materials to, or who annexes building materials to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, either annexes building materials to the real estate being so repaired or annexed or who arranges for such annexation.

Building materials – any property that will be annexed to real estate or to an improvement on real estate. This does not include tools, supplies, or other items that will NOT be annexed to real estate.

Fixtures – equipment that must be annexed to a building or structure in order to properly function, yet remain identifiable as separate items.

*Residential Dwelling – a residential building designed for occupancy by one family, or a duplex designed for occupancy by two families. This includes porches, decks and attached or detached garages. It does NOT include sidewalks, fences, landscaping, retaining walls, storage buildings or sheds, or other structures that are not designed for human habitation. This does not include apartments, condominiums and town homes for three or more families.

*Current Value – the current assessed value of a building or structure as determined by the county assessor. If there is no assessed value in the records of the county assessor, the current value is the market value determined by a licensed appraiser who has performed an appraisal within six months PRIOR to the start of the construction project.

II. Contractor Options.

Contractors must choose a contractor option by filing Form 16 with the Nebraska Department of Revenue. This should be selected before beginning work as a contractor. The options do not apply to tools, equipment, or services that do not become part of the real estate.

Option 1 –

Buy all building materials tax-free. If the project is taxable, collect the sales tax from the project owner on the TOTAL gross receipts from labor projects. If the project is an exempt labor project, collect sales tax from the project owner ONLY on the charges for the building materials, provided the materials are separately stated on the invoice.

When working for other contractors, collect sales tax from those contractors on the separately stated materials portion of the invoice. The charge for construction services is not taxable provided it is separately stated, and a properly completed Form 13, Section C, Block 2 is received from them.

Option 2 –

Pay sales tax on building materials at the time of purchase. You will collect NO sales tax from the project owner on any portion of the invoice for exempt labor projects. For taxable labor projects, collect sales tax from the project owner on a percentage of the gross receipts. The percentage will be discussed later.

When working for other contractors, collect no sales tax from those contractors, provided a properly completed Form 13, Section C, Block 2, is received from them.

Option 3 –

Buy building materials tax-free. You must give Nebraska suppliers a properly completed Form 13, Section C, Block 1. You must remit use tax on cost of building materials at rate in effect at place of withdrawal from inventory.

You will collect NO sales tax from the project owner on any portion of the invoice for exempt labor projects. For taxable labor projects, collect sales tax from the project owner on a percentage of the gross receipts. The percentage will be discussed later.

When working for other contractors, collect no sales tax from those contractors, provided a properly completed Form 13, Section C, Block 2, is received from them.

Option 2 is the most common option selected. The main difference between Option 2 and Option 3 is when you pay tax on the material. Option 2 you pay sales tax at time of purchase, Option 3 you pay use tax when you remove the inventory.

When bidding on a construction project you must first determine the following:

1. Is your customer another contractor or the project owner?
2. If your customer is the project owner, is the project owner a taxable entity or an exempt entity?
3. If the project owner is a taxable entity, is the project a taxable or exempt labor project?

III. Exempt Labor Projects.

The following labor projects are exempt from sales tax:

1. First or original construction of any new building, structure or unit.
2. Any construction performed on a Residential Dwelling – no exceptions.
3. Major addition, remodeling, restoration, repair or renovation of any existing structure, building, or unit performed in a single construction project when the cost to the project owner is at least 50% or more of the current value of the existing building, structure, or unit. If a unit in a building is being renovated and only the current value of the entire building is known, the current value for the building shall be apportioned for the unit based on square footage.
4. Construction, repair, annexation of a structure used to generate, transmit or distribute electricity.

Option 1 – Collect sales tax only on the separately stated charge for materials. If the labor charges are not separately stated, the entire amount is taxable.

Option 2 – Do not collect sales tax on any portion of the invoice. You should be recovering tax in the markup in your bid to the customer.

Option 3 – Do not collect sales tax on any portion of the invoice and remit use tax on cost of materials at the rate in effect at the location of the job site.

There is one caveat to this labor exemption. If you have an owner-occupant of a townhouse or a condominium that houses more than two families, the owner-occupant may apply to the Nebraska Department of Revenue for a refund of the tax paid to the contractor for the contractor labor.

IV. Taxable Labor Projects.

Option 1 – Collect sales tax on the entire amount, regardless of how the charges are stated.

Option 2 and 3 – Collect sales tax on a percentage of the gross receipts using the contractor labor percentage.

<u>Sales Tax Rate based on JOB location:</u>	<u>Contractor Labor Percentage</u>
5.5%	.572
6.0%	.576
6.5%	.574
7.0%	.572

Option 2 and 3 contractors billing project owners on taxable labor projects will collect tax on 60% of their gross receipts. By law, the building materials allowance is always 40% of the gross receipts, regardless of the actual percentage of materials used in the project.

Formula is... Gross X Contractor Labor % X Rate = Sales tax to collect from project owner.

Example:

Option 2 contractor is putting a new roof on an existing bank in Gretna.

Gross	\$10,000
Factor:	<u>x .578</u>
	\$ 5,780
Rate	<u>x .055</u>
Sales Tax	<u>\$ 317.90</u>
Total Due	<u>\$10,317.90</u>

Option 3 contractor would pay the use tax in that amount.

V. Billing the Customer.

Is your customer the project owner or another contractor? If your customer is a contractor see VI below.

If your customer is the project owner, is the project owner a taxable entity or an exempt entity? If the project owner is an exempt entity, they will owe no taxes on the project.

If the project owner is a taxable entity, is the project a taxable labor project or an exempt labor project?

If the project is an exempt labor project there will be no sales or use tax due on the project. If the project is a taxable labor project, then go to paragraph IV above to determine how to compute the tax.

VI. Billing Another Contractor.

Option 1 – If you separately state materials from labor, you are required to collect tax only on the materials portion of the invoice. You are not required to collect sales tax on the labor portion of your invoice, provided you receive a properly completed Form 13. If you do not itemize your invoices to other contractors, you must collect sales tax on the total amount and you do not need to collect a Form 13.

Option 2 or 3 – You are not required to collect sales tax on any portion of your invoice provided you receive a properly completed Form 13.

Pest control service or building cleaning service or other types of services provided at a construction site are not considered to be construction labor or services and therefore may not be purchased tax-free.

VII. Billing the Project Owner.

Two factors affect how contractors calculate the sales tax they collect on a project owner's invoice:

1. The type of project – taxable labor or exempt labor

- AND
2. The option chosen by the contractor

VIII. Taxable vs. Exempt Labor Project Flowchart.

