

701—19.2(422,423) Contractors are consumers of building materials, supplies, and equipment by statute. Iowa Code subsection 422.42(15) provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 19.3(1), 19.3(2) and 19.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 19.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies and equipment without paying sales tax to the vendor. See rule 19.3(422,423) and rule 19.4(422,423).

A contractor (general, special or subcontractor) when bidding on a contract should anticipate that sales or use taxes will increase the cost of materials by the tax. This is true even if the contract is with an entity (e.g., federal, state, or county government, or a private, nonprofit educational institution) whose purchases are exempt from sales tax. See rule 19.12(422,423). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

Effective July 1, 1992, the sales and use tax rate increased from 4 percent to 5 percent. The right of construction contractors previously to make application to the department for a refund of the additional 1 percent sales or use tax paid on goods, wares or merchandise incorporated into an improvement to real estate in the fulfillment of a written contract fully executed prior to July 1, 1992, has been rescinded effective July 1, 2001.

This rule is intended to implement Iowa Code sections 421.14, 422.43, 422.47 as amended by 2001 Iowa Acts, House File 715, and 423.2.