

**701—219.4(423) Contractors, subcontractors, or builders who are retailers.** In some instances, contractors, subcontractors, and builders are in a dual business that includes reselling to the general public on a recurring over-the-counter basis the same type of building materials and supplies that are used by the contractors, subcontractors, and builders in their own construction work. A person operating in such a manner is referred to in this chapter as a contractor-retailer.

**219.4(1) *Determination of contractor-retailer or contractor.*** Any person who is engaged in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer. Subrule 219.4(5) provides examples of entities that qualify as contractor-retailers or contractors and their tax obligations.

**219.4(2) *Taxability of sales by contractor-retailers.*** A sale by a contractor-retailer of building materials, supplies, or equipment to owners is a retail sale and subject to sales tax. Purchases by contractors, subcontractors, or builders of building materials, supplies, or equipment to be used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling are also retail sales and subject to sales tax. Contractors, subcontractors, or builders who purchase building materials, supplies, or equipment to be used in the performance of a job, which does not rise to the level of a new construction, reconstruction, alteration, expansion, or remodeling, are acting as retailers and not as contractors and must charge and collect from their customers sales tax on the sales price charged for materials, supplies, or equipment used in completing the job and on the sales price charged for any taxable service labor used in completing the job or on the entire charge, if materials and labor are not separately invoiced.

**219.4(3) *Withdrawals from inventory.*** When a contractor-retailer withdraws from inventory building materials, supplies, or equipment to be used in a construction contract performed by the contractor-retailer or in a contract for reconstruction, alteration, expansion, or remodeling performed by the contractor-retailer, the contractor-retailer must pay use tax on the cost of the materials, supplies, or equipment withdrawn from inventory. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair, which is a taxable service, or on the entire charge if materials and labor are not separately invoiced.

**219.4(4) *Characteristics of contractor-retailer.*** The following is a list of the characteristics of the usual contractor-retailer:

*a.* A contractor-retailer is a business that makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling of structures. In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

*b.* A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

*c.* A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule.

*d.* A contractor-retailer purchasing construction material that will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

*e.* A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

f. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa.

g. The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

**219.4(5) Examples.** The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1: Company A operates a retail outlet that sells lumber and other building materials and supplies. Company A is also a contractor that builds residential and commercial structures. Company A would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2: Company B is a mechanical contractor and has no retail outlets. Company B rarely sells any of its inventory to other persons or to other contractors. Company B would not be considered a contractor-retailer under this rule. However, Company B would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, Company B should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3: Company C is owned and operated by two individuals in a rural Iowa farming community. The owners and operators do not have a retail outlet, but they frequently make sales of building materials that are in their inventory to local residents. Company C would be a contractor-retailer and could purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4: Company D is operated by two individuals in a rural Iowa farming community. The operators do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Company D would not be considered a contractor-retailer under this rule. Rather, Company D would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Company D should have a sales tax permit. However, Company D can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5: Company E places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Company E also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Company E is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner.

EXAMPLE 6: Company F has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

This rule is intended to implement Iowa Code section 423.2(1) "b."

[ARC 8161C, IAB 7/24/24, effective 8/28/24]