

## TAX REGULATIONS

### D.C. MUNICIPAL REGULATIONS

#### TITLE 9. TAXATION

#### CHAPTER 4. SALES AND USE TAXES

#### 9-438 (2005). CONSTRUCTION, REPAIR, OR ALTERATION OF REAL PROPERTY

438.1 Effective July 1, 1989, pursuant to the D.C. Revenue Amendment Act of 1989, landscaping services and landscaping construction shall be considered sales at retail as defined in D.C. Code § 47-2001 (n)(1). Therefore, the provisions of this section do not apply to landscaping services construction. (For regulations regarding these services, see § 473.)

438.2 As used in this section, the word "contractor" includes the term "subcontractor."

438.3 Under contracts in which the contractor agrees to sell materials used at an agreed price for those materials, or at the regular retail price, and to perform the work either for an additional price or on the basis of time consumed, the contractor is deemed to be a vendor making a taxable sale at retail within the meaning of the Act and is required to file returns, pay the tax, and collect reimbursement for the tax from the purchaser in the same manner as any other vendor.

438.4 In all cases covered by the provisions of § 438.3, the contractor is required to furnish a resale certificate to the registered vendor from which the contractor buys the material used, since that transaction constitutes a nontaxable sale for resale.

438.5 Under all contracts other than those subject to the provisions of § 438.3, and except as otherwise provided in this section, the contractor furnishing material and performing the work of affixing that material to real property so that the material becomes real property shall be deemed the purchaser (consumer) of the materials used and shall either reimburse the registered vendor (wholesaler or retailer) for the tax paid by that vendor, or file returns for the use or consumption of the materials and pay the tax as purchaser (consumer).

438.6 Examples of contracts subject to the provisions of § 438.5 are those in which the contractor agrees to furnish the following:

- (a) Materials and services for a lump sum;
- (b) Materials and services on a cost-plus basis; and
- (c) Materials and services with an upset or guaranteed price which may not be exceeded.

438.7 A contractor may, in certain instances, fabricate part or all the articles which the contractor uses in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, ventilation ducts, or other such items from sheet metal which that contractor purchases, and use these articles, pursuant to a contract for the construction or improvement of real property. In such instances, the contractor is either a vendor within the meaning of § 438.3 or a consumer within the meaning of § 438.5.

438.8 If a contractor enters into a construction contract with a semipublic institution holding a valid exemption certificate, or with the United States or District government or instrumentalities of those governments, that contractor may purchase materials and supplies which are to be

physically incorporated in and become real property without payment of the tax and shall not charge sales or use tax to the semipublic institution, government, or governmental instrumentality.

438.9 In the case of purchases exempt under § 438.8, the contractor shall furnish suppliers with a purchaser's certificate in the following prescribed form (Contractors may adapt this form for their use):

#### CONTRACTOR'S EXEMPT PURCHASE CERTIFICATE

(1) I hereby certify that I am engaged in the performance of a construction contract on a project for the following named exempt agency or organization; or agency or instrumentality of the United States or District government; or the semipublic institution (state which) \_\_\_\_

(2) \_\_\_\_ (Name and address of organization, government entity, or institution)

(3A) The organization holds Exemption Certificate No. \_\_\_\_, which was issued by the Deputy Chief Financial Officer, or

(3B) The agency is, to the best of my knowledge and belief, exempt from the Sales and Use Tax because it is an agency or instrumentality of the United States or District Government or instrumentalities thereof, or semipublic institutions in accordance with § 438.8 (state which): \_\_\_\_

(4) This certificate is issued to cover all purchases of materials and supplies to be physically incorporated in and become a permanent part of the project referred to above.

Registration No. \_\_\_\_ (Print No. or "None")

Date: \_\_\_\_

Place: \_\_\_\_

Signed: \_\_\_\_ (Written Signature of Contractor)

\_\_\_\_ (Name of Firm)

\_\_\_\_ (Address of Firm)

NOTE: THE SELLER MUST PRESERVE THIS CERTIFICATE

438.10 If a contractor is unable to designate the exact amount of materials and supplies to be covered by the exempt purchase certificate, that contractor may estimate the amount of such purchases.

438.11 The contractor shall be held strictly accountable for any use tax due to the District on the amount of purchases if there is any use of the materials other than incorporation of the materials into the real property of the exempt semi-public institution or government agency.

438.12 The contractor shall maintain adequate records to support the use of materials and supplies purchased with exempt purchase certificates and to show the disposition of all materials and supplies purchased by the contractor with exempt purchase certificates.

438.13 If a contractor uses materials or supplies in the construction, repair, or alteration of real property for an exempt semipublic institution or government agency, and that contractor has already paid the sales or use tax on those materials or supplies at the time of purchase, the contractor may deduct the purchase price of the same on the next monthly return as an adjustment.

438.14 This section does not apply to contracts in which the contractor acts as a vendor of tangible personal property in the same manner as other vendors and is required to install that tangible personal property. In such instances, the contract will not be regarded as one for improving, altering, or repairing real property, even though the tangible personal property is installed in real property. A person performing this type of contract is primarily a retailer of tangible personal property and should segregate the full retail selling price of that property from the charge for installation, as the tax applies only to the retail price of the property. If the retail selling price is not segregated, the tax applies to the entire contract price, including the installation charge which should be reported in the contractor's gross receipts. Reimbursement for those charges should be collected by the contractor from the purchaser.

438.15 Under a time and materials contract, where the contractor sells labor or service for one price and charges a separate and additional price for the materials, the contractor is deemed to be a vendor making a taxable sale at retail within the meaning of the Act and is required to collect tax reimbursement from the customer, file returns, and pay the tax, the same as any other vendor.

438.16 A time and materials contract is the only type of contract that permits a contractor to furnish a Certificate of Resale to a supplier. A Certificate of Resale cannot be used to purchase materials and supplies under any other type of construction contract.

438.17 If a time and materials contract is performed in the District for a private business or individual, the District sales tax must be added to the contract sales price of the material. If the contract is with an exempt organization, the contract price of the material is not taxable and no tax reimbursement can be charged.

438.18 In lump-sum, cost-plus, and guaranteed-price contracts, the contractor is the user or consumer of the materials purchased. When the contract is with a private business or individual, all of the materials and supplies purchased are subject to tax. The contractor must either pay the sales tax reimbursement to his supplier or he must pay the use tax directly to the District.

438.19 Contracts with the United States government, the District government, or with a semipublic institution holding a Certificate of Exemption issued by the Department, permit the contractor to buy tax-free only those materials which are to be physically incorporated in and made a part of real property.

438.20 To buy tax-free materials for the types of contracts listed in § 438.19, the contractor should not use the Certificate of Resale, but should use the Contractor's Exempt Purchase Certificate prescribed in this chapter.

438.21 Any materials and supplies which do not actually become a physical part of (and remain in) the finished job are subject to tax. This is true even if the materials which do not become a physical part of (and remain in) the finished job are completely consumed.

438.22 The following list does not include every item subject to tax under § 438.21, but is intended to indicate the nature of items subject to tax: concrete curing paper, nails, form ties, acetylene, oxygen, knee boots, concrete chutes, hose couplings, electricity, rope, crayons, fuel oil, form lumber, metal forms, small tools, repair parts for equipment, office equipment and supplies, fencing materials (wire, wood), or rentals of any type of tangible personal property.

438.23 Materials used in contracts with foreign governments and public utilities are not exempt and are subject to the tax even if they are incorporated in the real property.

438.24 Suppliers shall collect tax reimbursement on all sales to contractors which are not covered by either a Certificate of Resale or a Contractor's Exempt Purchase Certificate.

438.25 When the contractor furnishes the supplier with a Contractor's Exempt Purchase Certificate, the certificate does not relieve either the contractor or the supplier from tax liability on materials and supplies sold to the contractor which are not physically incorporated in the job covered by the certificate. Materials or supplies which, by their nature cannot be physically incorporated in the job are taxable, and the supplier is responsible for collection of the tax.

438.26 Whenever a contractor purchases any materials, supplies or equipment, (either in or outside the District of Columbia) which are subject to the District Sales or Use Tax, and on which the tax reimbursement has not been paid to the supplier, the contractor must file a Use Tax Return with the District as required by the Act.

CDCR 9-438