

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-1-.27 Building Materials.

(1) The courts of this state and other states have generally held that contractors and builders do not sell the building materials they use and that sales to them are taxable under sales and use tax laws. The courts have stated:

(a) "It would seem that the business done by building contractors generally has been considered to be rendering service rather than selling materials at retail to the owner of the building or land. As to what amounts to a sale at retail within sales tax acts the statutes and the courts seem to endeavor to lay the tax on the last sale before the use or consumption of the goods or articles sold". (State Board of Equalization v. Stanolind Oil and Gas Company, Wyoming).

(b) "A contractor who buys building material is not one who buys and sells - a trader. He is not a dealer, or one who habitually and constantly, as a business, deals in and sells any given commodity. He does not sell lime and cement and nails and lumber. Sales to contractors are sales to consumers." (State v. J. Watts Kearny & Sons, Louisiana).

(c) "Under the contracts before us in the case, plaintiffs agreed to build sewers and buildings requiring the use of sand, gravel, cement and steel. They were the persons using these materials, even though after their metamorphosis they became part of a structure whose title vested in the Sanitary District of Chicago. Under these circumstances it would be unreasonable to characterize the transfer of the materials incorporated in the completed structures as a sale." (Herlihy Mid-Continent Company v. Nudelman, Illinois)

(2) Building materials when purchased by builders, contractors or landowners for use in adding to, repairing, or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. Building materials as used in the sales or use tax laws includes any material used in making repairs, alterations, or additions to real property. "Builders", "contractors", and "landowners", mean and include any person, firm, association, or corporation making repairs, alterations or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, electrical fixtures, built-in cabinets, sheetmetal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in fans, heating systems, flooring, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, windows, window frames, water meters, gas meters, well pumps and any and all other tangible personal property which becomes a part of real property.

(3) None of the kinds of property designated as "building material" is to be classified as machines or parts or attachments for machines except such items as can be identified at the time of purchase as a part or an attachment for a machine used in manufacturing, designed and manufactured for such use, customarily so used, and necessary to the operation of the completed machine. Such bulk items as lumber, random

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810-6-1-.27. (Continued)

or stock length structural steel, brick, paint, and common nails do not come within the classification. Such items as prefabricated processing tanks, steam boilers, and steel when purchased prefabricated to special design for a machine part do come within the machine rate. When the landowner or contractor purchases the materials from which he may make a boiler or tank, he must pay tax to the seller or direct to the state, as the case may be. (Lone Star Cement Corporation v. State, 175 So. 399; Layne Central Company v. Curry, 8 So.2d 829; State v. Wilputte Coke-Oven Corporation, 37 So.2d 197). (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)