ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-6-1
GROSS PROCEEDS OF SALES; GROSS RECEIPTS; WHOLESALE SALES; SALES AT WHOLESALE; RETAIL SALES, SALES AT RETAIL; AUTOMOTIVE VEHICLES

810-6-1-.27 Building Materials.

(1) Building Materials.

(a) The term "building materials," as used in the Alabama Sales and Use Tax laws, means all tangible personal property, including any device or appliance used by builders, contractors, or landowners in making improvements, additions, alterations or repairs to real property in a way that the tangible personal property becomes identified with a part of realty.

(b) Includes any tangible personal property used in making repairs, alterations, or additions to real property such 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, sheet metal, 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 that becomes a part of real property.

(2) Builders, Contractors, and Landowners. “Builders”, “contractors”, and “landowners” mean and include any person, firm, association, or corporation making repairs, alterations, or additions to real property.

(3) Taxable Transactions. Sales of building materials to contractors and builders that do not sell the building materials they use are taxable under Sales and Use Tax laws. Building materials purchased by builders, contractors, or landowners for use in adding to, repairing, or altering real property are subject to either Sales or Use Tax at the time of purchase. 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.)

(4) A device or appliance becomes a fixture and a part of the real property to which it is connected when it is built into or attached to a structure in a way that its removal would substantially damage or deface the structure.

Where the removal of the device or appliance would not substantially damage or deface the structure to which it is connected the following factors must be considered:

(a) Actual Connection with or Attachment to Real Property. To become a part of real property, the device or appliance must have some physical connections such as: bolts, screws, nails, cement piping, cable; or by contact.

1. Contact can be by reason of great weight or bulk, no additional attachment is required.

2. Where the device or appliance is necessary to make complete or useable something which is real property.

3. By attachment to another device or appliance which has become a part of the real property.

(b) Appropriateness to the Use or Purpose of the Real Property to Which Connected. The use or purpose of the device or appliance must become an element of the use or purpose of the real property to which it is connected.

(5) Exceptions. This rule is not intended to apply to cook stoves, refrigerators, washing machines, and portable heaters, acquired for the personal use of householders or tenants which may be

removed without material damage to the buildings in which they are used. §40-23-1, Code of Ala.1975.

(6) Application of Machine Rate. Tangible personal property designated as "building materials" are not classified as machines or parts or attachments for machines unless items 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.

(a) Bulk items such as lumber, random or stock length structural steel, brick, paint, and common nails do not come within the classification.

(b) 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 to make a boiler or tank, tax must be paid either directly to the seller or the department. (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.) §40-23-1, Code of Ala. 1975.

Author: Lee Ann Rouse
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-23-1, 40-23-31, 40-23-83.
History: Repealed and New Rule: Published November 30, 2021; effective January 14, 2022.