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# Ohio Sales Tax for Construction Contractors

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# Agenda

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Basic Sales and Use Tax Rules

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Construction Sales and Use Tax Rules

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Classification of Property

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Legal Update

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Mixed Contracts

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Best Practices

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“Walk-Through”



# Facts: The Basics

Nearly *130*  
U.S. Locations

*1,200+*  
Principals and  
signing directors

*14*  
Industries

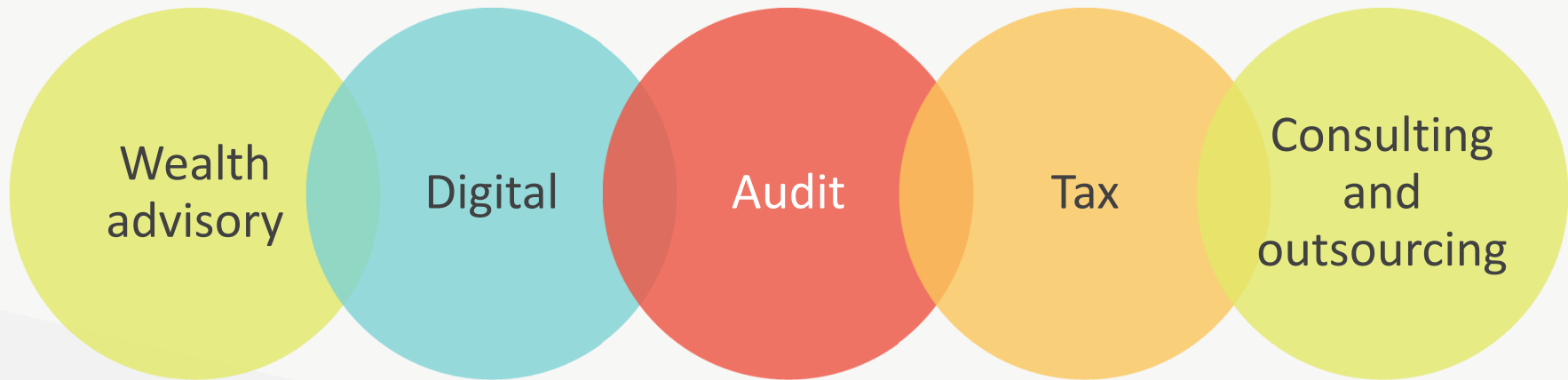
More than  
*8,500* people

*\$2B*

Seamless  
experience



# Helping You is Our Passion.



## Sales Tax

- Tax on the sale of taxable personal property or services
- Separately stated item on the invoice
- Exemptions available to cover tangible personal property. (manufacturing, agriculture, packaging, resale, etc.) These exemptions do not cover the real property portion of the contract.



## Use Tax

- Incurred by the consumer of the taxable tangible personal property or services where the vendor did not charge Ohio sales tax
- Tax accrued and paid by the consumer
- Two separate registrations and returns – sales tax return and use tax return
- The use tax rate is equal to the sales tax rate in each county
- In general, it is advised that construction contractors should have a use tax account



# Basics of Sales and Use Tax

Tangible personal property (TPP) – Taxable unless an exemption certificate has been provided

- In the construction world, TPP is called “business fixtures” and retains the taxable designation

Services – Generally Exempt

- However, there are enumerated services that are taxable





## Taxable services (not all-inclusive)

- Landscaping or lawn care services
- Provision of private investigation or security service
- Production of tangible personal property from material supplied by the customer
- Building maintenance and janitorial service
- Installation/repair of tangible personal property
- Automatic data processing, computer services, or electronic information services provided for use in a business



# Real Property Construction Contract Ohio Rule 5703-9-14

- Contractor is considered the consumer. A “construction contractor” is any person who performs such an agreement, whether as prime contractor or subcontractor
- Repairs, constructions or additions to real property
- Contractor liable for the Ohio sales or use tax on cost of materials incorporated into real property
- Examples



## Contracts to Install Tangible Personal Property and “Business Fixtures”

- Installation of tangible personal property and “business fixtures.” Contractor should charge Ohio sales tax on the invoice on the materials, labor and installation, profit and mark-up and overhead
- Contractor will not pay Ohio sales tax or use tax when purchasing materials and will use the resale exemption when making purchases
  - Resale Exemption
- Examples



# Basics of Sales and Use Tax – Construction

## Real Property Jobs



Contractor is the consumer of materials incorporated into the job (installed)



Direct payment permit does not flow to the contractor therefore there are no exemptions like manufacturing, packaging, R&D, etc.



# Basics of Sales and Use Tax – Construction

## Real Property Jobs

A contractor may claim exemption upon the purchase of materials to be incorporated into

Real property under a construction contract with the U.S. Government or its agencies, the State of Ohio, or an Ohio political subdivision;

Real property which is owned or will be accepted for ownership at the time of completion by the U.S. Government or its agencies, the State of Ohio or its political subdivisions;

A house of public worship or religious education, or a building used exclusively for charitable purposes by a nonprofit organization operated exclusively for charitable purposes;

The original construction of a sports facility under §307.70 of the Ohio Revised Code; or

A hospital facility entitled to exemption under §140.08 of the Ohio Revised Code



# Basics of Sales and Use Tax – Construction

## Real Property Jobs



Construction Contract Exemption Certificate Form STEC CC



A contractor is then protected from liability if it is later determined that the contract did not qualify for exemption; the contractee assumes liability for any unpaid taxes



The original of this certificate must be signed by the owner/contractee and/or government official and must be retained by the prime contractor. Copies must be maintained by the owner/contractee and all subcontractors. When copies are issued to suppliers when purchasing materials, each copy must be signed by the contractor or subcontractor making the purchase.

**Prime Contractor**

Name \_\_\_\_\_  
Signed by \_\_\_\_\_  
Title \_\_\_\_\_  
Street address \_\_\_\_\_  
City, state, ZIP code \_\_\_\_\_  
Date \_\_\_\_\_

**Owner/Contractee**

Name \_\_\_\_\_  
Signed by \_\_\_\_\_  
Title \_\_\_\_\_  
Street address \_\_\_\_\_  
City, state, ZIP code \_\_\_\_\_  
Date \_\_\_\_\_

**Subcontractor**

Name \_\_\_\_\_  
Signed by \_\_\_\_\_  
Title \_\_\_\_\_  
Street address \_\_\_\_\_  
City, state, ZIP code \_\_\_\_\_  
Date \_\_\_\_\_

**Political Subdivision**

Name \_\_\_\_\_  
Signed by \_\_\_\_\_  
Title \_\_\_\_\_  
Street address \_\_\_\_\_  
City, state, ZIP code \_\_\_\_\_  
Date \_\_\_\_\_



# Basics of Sales and Use Tax – Construction

## Real Property Jobs



Contractor's Exemption Certificate Form STEC CO



The contractor or subcontractor may use a Contractor's Exemption Certificate when purchasing materials to be used for an exempt contract however, this certificate only protects the vendor and seller of the materials





This certificate may be used by a contractee or subcontractor when buying materials for a construction contract where the owner/contractee has claimed one of the above exemptions. This certificate covers all sales of materials by the above-named vendor to the contractor or subcontractor for this particular construction contract only.

Contractor/subcontractor

[Redacted]	
Name	
[Redacted]	[Redacted]
Signed by	Title
[Redacted]	
Street address	
[Redacted]	
City, state, ZIP code	
[Redacted]	
Date	



# Basics of Sales and Use Tax

## Real Property Jobs

- Ohio Revised Code 5701.02
- Building, fixture, improvement or structure (and of course, land)
- Does not include term - “business fixtures”
- Residential jobs



# Basics of Sales and Use Tax – Construction

## Personal Property and “Business Fixture” Jobs

- Contractor purchases materials for resale
- The customer’s direct pay permit can be accepted
  - If so, no sales tax to be charged
- Since this is personal property, an exemption certificate can be accepted
  - If so, no Ohio sales tax is charged to the customer



# Basics of Sales and Use Tax – Construction

## “Business Fixture” Discussion (Ohio Rule 5703- 9-14)

- Tangible personal property that is permanently affixed to real property, but that primarily benefits the business conducted on the premises by the occupant, is a “business fixture”
  - An agreement to transfer and install a business fixture is a sale and not a construction contract
- Ohio Revised Code 5701.03(B)



# Basics of Sales and Use Tax – Construction

## “Business Fixture” Discussion

- "Business fixture"- machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground
- "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment



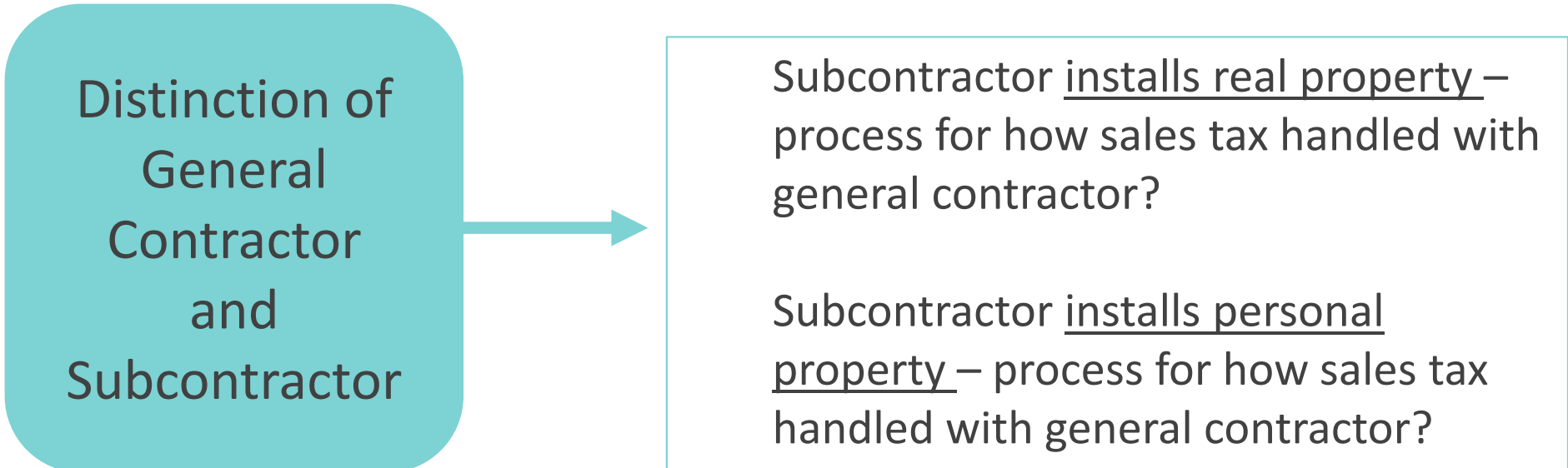
## Importance of real vs. “business fixture” decision

- There is no offset of tax **erroneously** paid on contractor’s purchase of materials vs. Sales tax to be collected
- There is no offset of sales tax **charged** vs. Sales and use tax due by the contractor’s purchase of materials
- Need to have this scoped properly **upfront** in the bidding process



# Basics of Sales and Use Tax – Construction

Distinction of  
General  
Contractor  
and  
Subcontractor



Subcontractor installs real property –  
process for how sales tax handled with  
general contractor?

Subcontractor installs personal  
property – process for how sales tax  
handled with general contractor?



# Classification of Property

Always  
treat as  
“business  
fixtures”

- Gas station canopies
- Security cameras to monitor inventory or interior rooms
- HVAC and special purpose flooring for computer rooms
- Lighting for parking lots at car dealerships
- Certain computer cabling
- Specialty indoor and outdoor lighting
- Special security door locking mechanisms for interior doors
- Window treatments





# Classification of Property

Always  
treat as  
“business  
fixtures”

- Specialty cabinetry
- Sale and installation of carpeting
- Sale and installation of agricultural land tiles
- Sale and installation of portable grain bins
- Sale of landscaping services – including tree plantings and shrubs
- Signage
- Golf course irrigation systems
- Foundations and pits for machinery
- Amusement park rides
- Indoor pool

ODT Information Release PP and RP 2007-01 lists additional items



# Classification of Property

Real  
Property

- Amphitheaters
- General parking lot lighting
- Tile, wood, and laminate flooring
- Refinished flooring
- Outdoor pool
- Dock doors/levelers
- Permanent fencing
- Alarm systems to prevent entry from exterior
- Card reader on exterior door
- Security cameras on exterior
- Elevators

ODT Information Release PP and RP 2007-01 lists additional items



## *Temporary* items used in construction job

Temporary electricity or water service hook-ups, fencing, construction elevators, shoring lumber, and concrete forms, are not incorporated into real property for sales and use tax purposes (Rule 5703-9-14)

*Taxable* to the contractor even on exempt jobs



# Construction Sales and Use Tax – Examples

Electricity/lighting  
(e.g., temporary  
tradeshow  
electric)

Water service

Protective fencing

Construction  
elevators

Shoring lumber

Concrete forms

Scaffolding

Stop lights/signage  
not incorporated  
into real property



# Construction Sales and Use Tax

## Carpet

The sale and installation of carpeting is a retail sale and taxable on material and labor

- Labor charges to install carpeting supplied by others are taxable

## Other Floor Coverings

The sale and installation of all other types of floor coverings (wood, vinyl, tile, etc.) is considered a construction contract; the contractor is required to pay tax on all material and equipment used or consumed in the installation



# Discussion

AIA contracts and how does State of Ohio want to see Ohio sales tax charged?  
Breakout?



# Discussion

Ohio Legal Update



# Construction Sales and Use Tax



Computer Cabling Rule ST 1999-01



*Nationwide Mutual Insurance  
Company*  
V.  
*McClain* (October 22, 2019) BTA



The Board concluded that computer cabling does not constitute a “business fixture” within the meaning of section 5701.03(B) of the Revised Code and is to be treated as real property





# Construction Sales and Use Tax



Computer Cabling Rule ST 1999-01



It is now clear that computer cabling for VoIP and internet communications are industry standards and incorporated into real property



Standard CAT-5 or CAT-6 VoIP and Internet cabling



# Construction Sales and Use Tax



Ohio Revised Code 5739.02(B)(1)



*Karvo Paving v. Testa* (September 30, 2019) 9<sup>th</sup> District of Appeals



The Court ruled that the contractor, Karvo Paving Co., rents its traffic maintenance equipment to the Ohio Department of Transportation to allow ODOT to maintain traffic during Karvo's highway construction work





# Continuation – Mixed Contracts, Best Practices and Examples

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# Mixed Contracts



Contractor should request certification from contractee

The determination will indicate if contractor is a consumer of materials (real property) or a vendor of personal property



ORC 5739.03(C) allows for this certification process. There is no prescribed form issued by the Ohio Department of Taxation.



# Mixed Contracts



Protects the contractor from sales or use tax liability if incorrect classification of real or personal property occurs



The contractee certification process makes a distinction between the portion of the contract that is real property vs. Business fixture and personal property



Contractor may rely on contractee's  
certificate – if taken in *good-faith*



B) Itemization of <b>REAL</b> property portions:		C) Itemization of <b>PERSONAL</b> property portions:	
Work Descriptions	Estimated Cost	Work Descriptions	Estimated Cost
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



# Associated General Contractors of Ohio Form 24



Mixed Contracts

## CONTRACTEE'S CERTIFICATION

Identifying Real and Personal property for the purpose of compliance with Ohio sales and use tax laws as provided in section 5739.03(C) of the Ohio Revised Code.

At the written request of the Contractor/Vendor, the undersigned contractee/consumer, in accordance with the provisions of section 5739.03(C) of the Revised Code, hereby certifies that the project identified below consists of real and/or personal property as set forth here alone, or with the attached pages of additional support.

A) Project Name \_\_\_\_\_  
 Location (Address/City) \_\_\_\_\_  
 Contract Number \_\_\_\_\_ Contract Price \_\_\_\_\_  
 Brief Description \_\_\_\_\_  
 \_\_\_\_\_

B) Itemization of REAL property portions:		C) Itemization of PERSONAL property portions:	
Work Descriptions	Estimated Cost	Work Descriptions	Estimated Cost
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

### D) CONTRACTEE to check the appropriate item:

- The property to be constructed or reconstructed will be taxable real property. Contractor to pay Ohio Sales or Use Taxes on the material.
- The property to be constructed or reconstructed will be exempt real property. AGC of Ohio Form 22 (Part I) is attached here and made a part of this form.
- The property to be constructed or reconstructed will be taxable tangible personal property. Contractor to charge Ohio Sales and Use Taxes on separately stated charges for labor and materials, plus any related overhead charges.
- The property to be constructed or reconstructed will remain tangible personal property that is not taxable under Ohio Sales and Use Tax Law. AGC of Ohio Form 22 (Part 11) is attached here and made a part of this form.
- The construction or reconstruction will be a combination of statements D1, D2, D3, and/or D4. AGC of Ohio Form 22 (Part I and II) is attached here and made a part of this form.

Page 1 of 2: Required certification and signature on page 2



# Best Practices

Fully understand nature of job/contract from beginning to end – before bidding

Certain projects may carry additional exemptions:

- Manufacturing
- Port Authority contracts
- Government contracts



## Best Practices

Understand sales tax and use tax paid to vendors and reimbursed by contractee vs. Sales tax “collected” from contractee and remitted by contractor

Does the job include any temporary components, business fixtures, or tangible personal property?



## Best Practices

Identify sales tax collection requirements, temporary components, business fixtures, or tangible personal property and include applicable sales tax in bid

Create job aid for bidders and estimators to ensure tax is included correctly in bid

- Certification



## Best Practices

Separately state sales tax charge on the invoice

Use supporting information – previous AIA contract discussion



## Best Practices

Purchase orders issued should indicate taxable or non-taxable

Separate the taxable and non-taxable accounts with vendors

Know when to issue exemption certificate to vendor



## Best Practices

It is presumed that all sales of tangible personal property and any use, storage, or other consumption of tangible personal property occurring in Ohio are subject to tax until the contrary is established. O.R.C. 5739.02(C) and O.R.C. 5741.02(G)

However, the Revised Code provides multiple exemptions to the sales tax. O.R.C. 5739.02(B)

Review exemption certificate for completeness

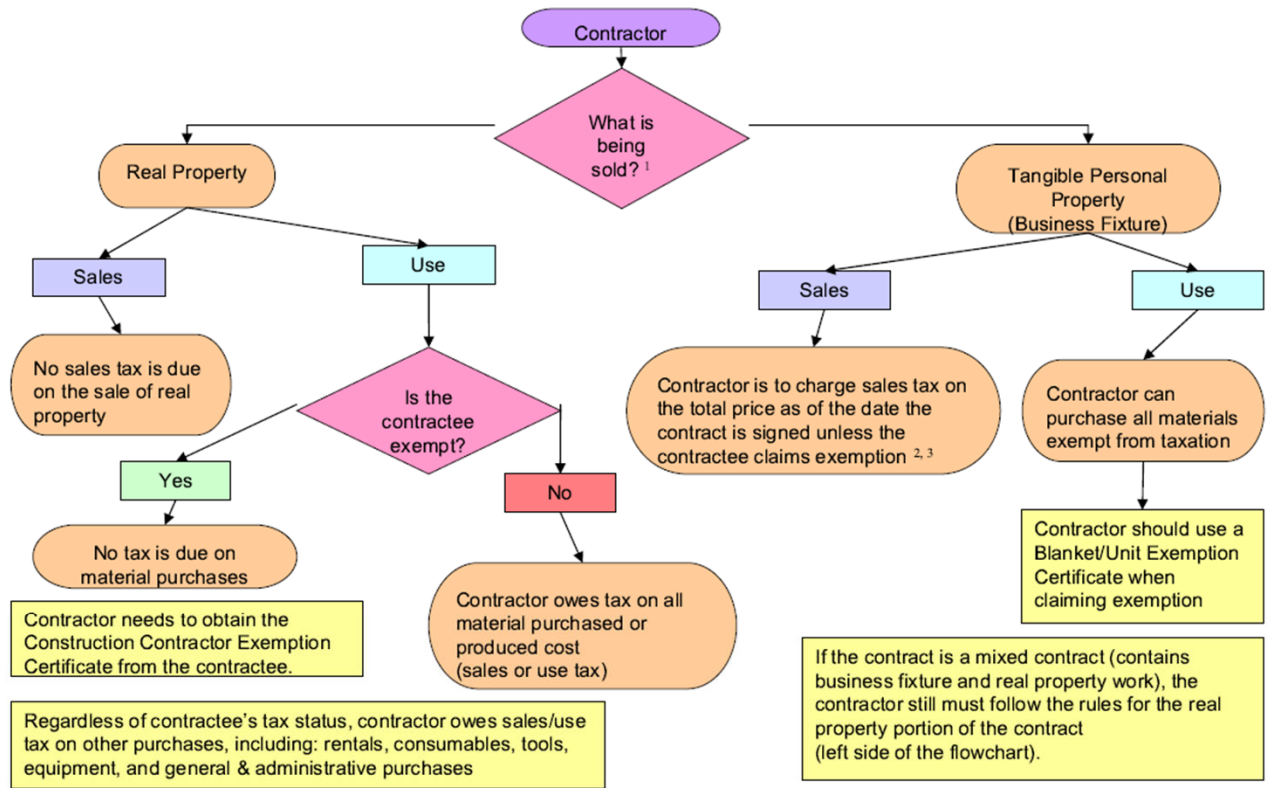


# Best Practices

## Document, Document, Document

Internal training with estimators, project managers or flow charts and matrices to create repeatable process





<sup>1</sup> – Contractor may request the contractee to complete the Contractee Certification Form if tangible personal property is being sold.

<sup>2</sup> – Contractor is to remit this sales tax on a regular county vendor's license.

<sup>3</sup> – No matter if the contractor is an in-state or out-of-state contractor, sales tax is to be charged when the contract is signed; not when draws are made.







# Examples

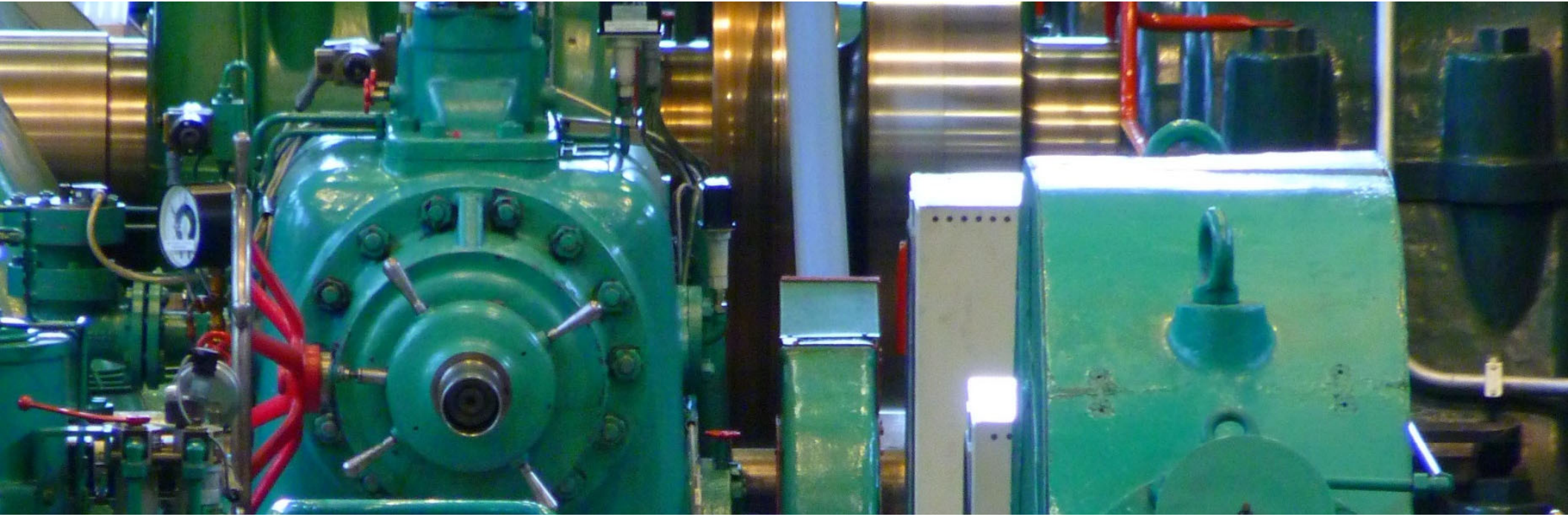


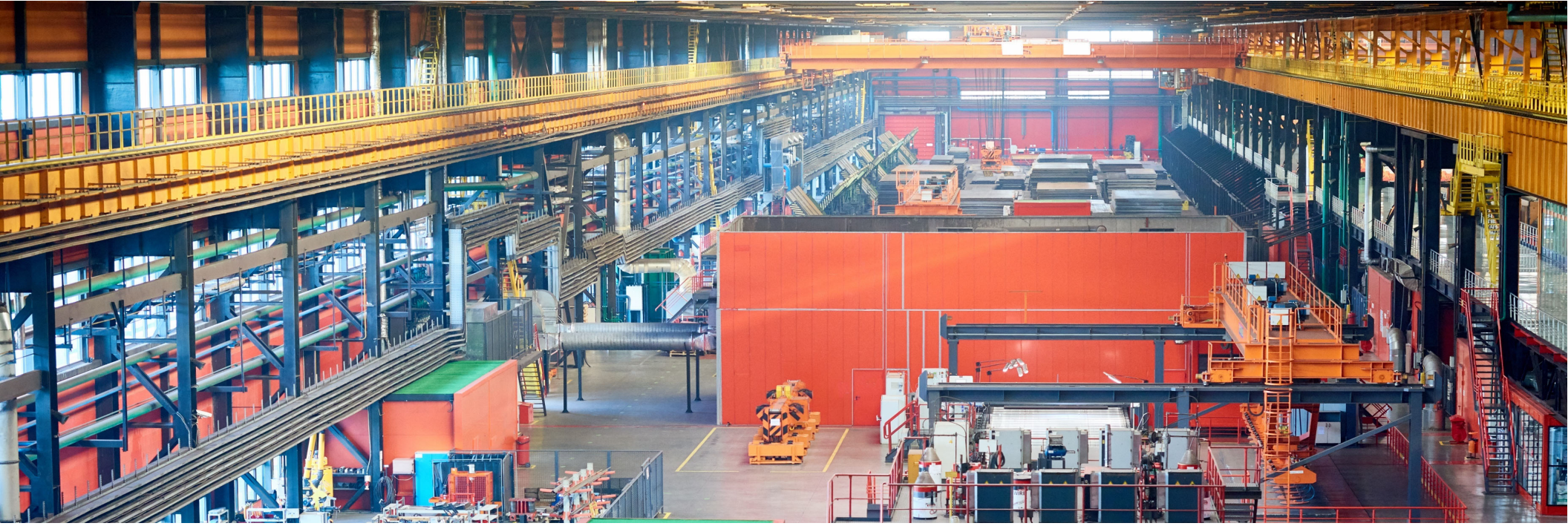
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