

**Michigan Department of Treasury
Tax Compliance Bureau
Audit Division**



**Contractor
Manual**

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Disclosure

This manual is not intended as a statement of law, Department policy, or of the Treasurer's official position. The information contained in this manual has been prepared as instructional text. The purpose of this manual is to explain key provisions of the General Sales Tax Act and Use Tax Act.

Any references in this manual to Rules, Revenue Administrative Bulletins (RABs), Internal Policy Directives (IPDs) and Letter Rulings are based on the most recent versions available as of the date of this edition. The materials will be reviewed regularly and revised as needed. Where changes in the law supersede and conflict with anything in this document then the new law shall control.

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Chapter 1 – Types of Contractors

Contractors are persons directly engaged in the business of constructing, altering, repairing, or improving real estate for others. Contractors include prime contractors, general contractors, subcontractors, construction contractors and contractors who manufacture, fabricate or assemble property prior to affixing it to realty. Categorization as a contractor is not dependent on governmental licensing requirements.

A contractor incurs sales tax liability when it sells tangible personal property at retail (even if the property was originally purchased with a claim of exemption) and incurs use tax liability on the storage, use, or consumption of property a contractor purchases or acquires for the constructing, altering, repairing, or improving of real estate of others as a “consumer” of that property unless a specific exemption applies.

Consumer means a person who, for consideration, has acquired tangible personal property for storage, use, or other consumption in this state, whether acquired in person, through the mail or catalog, over the Internet, or by other means.

Consumer includes, but is not limited to, one or more of the following:

- A person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others
- A person who has converted tangible personal property or services that were exempt from sales or use tax to a use that is not exempt from tax

Acquisition of tangible personal property does not automatically subject a contractor to Use Tax liability. **Acquisition** is not equivalent to ownership. The word **acquire** is defined in Black’s Law Dictionary (8th ed) to mean “to gain possession or control of; to get or obtain.” Furthermore, a contractor making retail sales or engaging in manufacturing may also be subject to use tax when it removes goods from inventory for personal use or consumption, or for use or consumption in the conduct of its business. However, a use tax exemption exists for property **purchased or manufactured** by a person constructing, altering, repairing, or improving real estate for others if it is affixed to and made a structural part of real estate located in **another state**.

Retroactive to periods within the statute of limitations, if the contractor acquires tangible personal property from another person (e.g., client/customer) that will be stored, used, or consumed by the contractor, the contractor will not be liable for use tax on that property if all the following conditions are met:

- property was purchased by that other person

- that other person is not exempt from sales or use tax (i.e., not an exempt entity)
- property was acquired by the contractor for the **sole** purpose of affixing that property to real estate on behalf of that other person

Example: Nonprofit School purchases building materials in a tax-exempt retail transaction and provides the materials to Contractor for use or consumption in performing a contract upon the school's real property. Contractor is liable for use tax on the purchase price of tangible personal property used or consumed in performing the contract, including the tangible personal property provided by the school.

Example: Retailer (a home improvement store) purchases tangible personal property (e.g., shelves) and hires a contractor to affix that tangible personal property to the real estate in Michigan upon which the store is located. Contractor acquires the tangible personal property from Retailer for the sole purpose of affixing that property to this real estate. Contractor is not liable for use tax, but Retailer is liable for use tax on the purchase price of the tangible personal property used and consumed by the contractor unless Michigan sales tax was paid on that tangible personal property.

There are three categories of contractors:

1. Real Property Contractors

Real property contractors are persons engaged in the business of constructing, altering, repairing or improving real estate for others to the extent that tangible personal property is affixed to and/or made a structural part of the real estate.

As a consumer, a real property contractor incurs sales and use tax responsibilities. Its sales and use tax obligation is generally 6% of the cost of materials used in the job.

In most cases, the tax liability is satisfied by:

- the contractor paying sales tax to its vendor, OR
- the contractor paying use tax on the property consumed

Examples:

- A retailer sells a product and installation to its customer and hires a subcontractor to handle the installation of the product (e.g., countertop). Retailer is responsible for collecting and remitting sales tax regardless whether the installation of the property is subcontracted to a contractor.

The contractor will be relieved of paying use tax for that property if the retailer collects sales tax from its customer. The contractor must be able to demonstrate that the sales tax was collected by the retailer. A sales invoice from the retailer to the customer that separately states the sales tax is sufficient evidence to establish that sales tax was collected on the retail sale and will satisfy the contractor's burden of proving its entitlement to the exemption provided for in the statute.

- A contractor obtains materials for installation contracts it has with the retailer from a source that is not the retailer (e.g., a third-party vendor). If the contractor paid sales tax to that vendor, that property would then be exempt from use tax upon installation.

Where a contractor is **exclusively** engaged in the contracting business and makes no direct sales to other contractors or consumers, the contractor does not need a sales tax license. Unless a contractor always pays tax at the point of purchase, the contractor is required to maintain a use tax registration and pay use tax on untaxed purchases.

2. Real Property Contractors Acting as Retailers

Real property contractors acting as retailers are real property contractors that consistently hold themselves out to the public as retailers, and who consistently collect and remit sales tax in a manner consistent with the General Sales Tax Act. The contractor may elect to collect sales tax on the retail **sales price** of the property as long as the total sales tax remitted is not less than the sales/use tax that would have been paid on the cost of the materials. If the contractor engages in more than one distinct business activity, (e.g., repair of property and installation of property), each distinct activity may be treated differently as long as the treatment is consistently applied.

Example:

- Subsurface drainage systems, land tile, and portable grain bins that are purchased and installed by a contractor for an agricultural producer are considered to be tangible personal property.

A contractor that does not usually make retail sales may be treated as a retailer in certain transactions with an agricultural producer. A resale sales/use tax exemption applies to the contractor's purchase. An agricultural exemption may be claimed upon installation or transfer to

the agricultural producer because the contractor is not the end user of tangible personal property.

Where a contractor is **not exclusively** engaged in the contracting business but makes sales of tangible personal property at retail to other contractors and consumers, the contractor must secure a sales tax license and file returns to report sales on such transactions. Use tax due on untaxed purchases consumed in this state in contractor operations is reported on the combined sales and use tax returns.

3. Manufacturer/Contractors

A manufacturer/contractor is a person who both:

- Manufactures, fabricates, and/or assembles tangible personal property
- Affixes that property to real estate for others (i.e., is a real property contractor)

Retail sales by manufacturer/contractors are subject to sales tax on the full sales price. The use tax obligation of a manufacturer/contractor depends on whether it maintains an inventory of its products for sale to others or makes its product available for sale to others through a publication or price list. These requirements are described later in this manual.

Note: If a company bills “time and material” but has a subcontractor do the actual affixation to realty, the company still qualifies as a manufacturer/contractor. The subcontractor is never billed for the material; therefore, the manufacturer/contractor remains liable for any use tax due. However, if materials are billed to the subcontractor, the manufacturer is making a retail sale and does not qualify as a manufacturer/contractor. The manufacturer of those materials may still be eligible for the industrial processing exemption.

References pertaining to this information can be found in the index under [Chapter 1](#)

Chapter 2 - Real vs. Personal Property

Real property is defined in Black's Law Dictionary (8th ed) as "land, and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land." Realty and real estate have the same meaning as real property.

Fixture implies something having a possible existence apart from the realty which by annexation may be assimilated into realty.

Tangible Personal Property or Fixture to Real Estate

Property can lose its character as tangible personal property by transformation into a fixture when **affixed** to real estate. The relevant facts should be viewed on a case-by-case basis to determine whether personal property has become sufficiently affixed to real property that it should be treated as part of the real property.

Examples:

- Agricultural exemption generally excludes tangible personal property permanently affixed and becoming a structural part of real estate
- Industrial processing exemption does not apply to tangible personal property affixed and becoming a structural part of real estate in Michigan
- A taxpayer selling tangible personal property is required to pay sales tax on retail sales
- A contractor with tangible personal property that is permanently affixed to and considered to be part of realty has a use tax liability as a consumer of the property

To determine whether property remains tangible personal property or becomes a part of realty (i.e., becomes a "fixture"), we look to three general factors:

1. Annexation to realty, either actual or constructive

This factor has to do with the manner in which an item is attached to the real property. There are innumerable ways that a person can affix personal property to real estate; some items may be physically attached to the real estate (e.g., bolted to the floor or wall) whereas other items may be put in place with the intent that the property will become part of the real estate through size and character. Therefore, even if an object is not physically affixed to the realty, it may acquire the status of a fixture by constructive annexation.

Constructive annexation has frequently been applied in the case of property which is not itself actually or directly annexed to the realty, but is part of, or

accessory to, property which is annexed. The property, if removed, would leave the property to which it is annexed unfit for use and the part or accessory is not capable of general use elsewhere.

There is no universal test whereby the character of what is claimed to be a fixture can be determined in the abstract and neither the mode of annexation nor the manner of use is conclusive in all cases. Normally whatever is affixed to a building by an owner to complement, to facilitate its use and occupation in general, becomes a part of the realty, though capable of removal without injury to the building.

Certain equipment remains personal property even though it may appear to be part of real property. Since some items can have the appearance of being real property, it is important to ascertain all the facts before making a final decision.

If the object is not attached to the land or to some structure or appliance which is attached to the land, it will retain its character as personal property even though intended for permanent use on the premises.

Generally, if property depends on the building utilities for operation and use and is connected to the building utilities (e.g. gas, electric, plumbing.), it is deemed to be affixed to realty.

2. Adaptation or application to the use or purpose of the real estate

This factor suggests that if an item functions as part of the particular building or if it carries out part of the function of the real property, that item is probably real property. An object introduced onto the realty may become a fixture if it is a necessary or at least a useful adjunct to the realty, considering the purpose to which the latter is devoted.

Examples:

- Screens which are built to fit the windows of a particular building
- Theater seats bolted to the theater floor and an essential part of the function of the building

Another indicator of real property exists when the object cannot be used unless affixed to the building or land

- Night depository equipment
- Drive-up window equipment
- Vault doors
- Remote transaction units

In simple terms, if the tangible personal property serves a function of realty or the building and if it is attached to realty and permanently affixed to realty, it would usually be considered real property.

3. Intention to make the property a permanent accession to the real estate

Whether attached property becomes a fixture depends largely upon the intention of the parties. Objective visible facts of the party making the annexation determines the intent.

The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished, or until the item is superseded by another item more suitable for the purpose. Permanency of the attachment, and its character in law, do not depend so much on the degree of physical force with which the thing is attached, or the manner and means of attachment, as upon the motives and intention of the party in attaching it. If the intention is that the articles attached will not by annexation become a fixture, as a general rule they will not.

Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation. Whatever is affixed to a building by an owner to complement, to facilitate its use and occupation in general, becomes a part of realty, though capable of removal without injury to the building.

Real vs Personal Property Chart

No.	Description	Most likely categorization (dependent on facts and circumstances)
1	Acoustical ceilings: <ul style="list-style-type: none"> • Building ceiling construction • Portable 	Real Personal
2	Air compressors: <ul style="list-style-type: none"> • Portable • Part of central system 	Personal Real
3	Air conditioning systems for general building	Real
4	Air conditioning units: <ul style="list-style-type: none"> • Window type units • Floor or cabinet type - no ductwork • Process – central system • Evaporators 	Personal Personal Real Real
5	Air makeup unit: <ul style="list-style-type: none"> • For general building • For specific IP function 	Real Personal
6	Alarm/security systems: <ul style="list-style-type: none"> • Built-in components • Freestanding or wall-mounted components 	Real Personal
7	Appliances: <ul style="list-style-type: none"> • Built-in • Freestanding 	Real Personal
8	Awnings – canopies/marquees	Real
9	Berms	Real
10	Bins: <ul style="list-style-type: none"> • Portable • Built-in 	Personal Real
11	Boilers: <ul style="list-style-type: none"> • One boiler • Replacement boiler • Multiple boilers 	Real Real R or P depending on use
12	Booths: <ul style="list-style-type: none"> • Equipment type • Building type -- room like 	Personal Real

No.	Description	Most likely categorization (dependent on facts and circumstances)
13	Bridges: <ul style="list-style-type: none"> • Specific to equipment • Specific to building 	Personal Real
14	Building/Home Cabinet	Real
15	Bunkers and silos	Real
16	Bus ducts: <ul style="list-style-type: none"> • For general electrical distribution • For specific equipment 	Real Personal
17	Cabinets	Real
18	Carpeting	Real
19	Catwalks: <ul style="list-style-type: none"> • Attached to equipment • Attached to building 	Personal Real
20	Central control systems: <ul style="list-style-type: none"> • Direct control specific for equipment • General control power wiring • Control building 	Personal Real Real
21	Clocks: payroll and watchman clocks	Personal
22	Combustion turbines for producing electricity at a power plant for retail sale	Personal
23	Communications systems -- permanent: <ul style="list-style-type: none"> • Phone • Pneumatic tubes 	Personal Personal
24	Compressor for general building air conditioners	Real
25	Conveyors or carrier enclosures	Personal
26	Cooling towers	Real
27	Counters and countertops	Real
28	Crane tracking or rails (crane ways)	Personal
29	Cranes	Personal
30	Dehumidifiers: <ul style="list-style-type: none"> • Portable • Part of heating air conditioning 	Personal Real
31	Dikes or levees: <ul style="list-style-type: none"> • Surrounding storage tanks • River or lake control 	Real Real
32	Dock bumpers and seals	Real
33	Dock levelers	Real
34	Docks, ramps (built-in)	Real

No.	Description	Most likely categorization (dependent on facts and circumstances)
35	Door operators	Real
36	Doors (garage and pass doors)	Real
37	Dryers, processing	Personal
38	Ductwork: <ul style="list-style-type: none"> • Building • For equipment 	Real Personal
39	Dumbwaiters	Real
40	Dust or spray collection equipment for specific machines	Personal
41	Dynamometer testing cells	Real
42	Electrical distribution materials & equipment: <ul style="list-style-type: none"> • Up to last transformer and up to the secondary substation • Installed after usable power is provided to be used for machinery and equipment 	Real Personal
43	Electrical substation enclosures	Real
44	Elevators	Real
45	Emergency lights	Real
46	Enclosures: <ul style="list-style-type: none"> • Building • Freestanding 	Real Personal
47	Energy monitors: <ul style="list-style-type: none"> • General building • For specific equipment 	Real Personal
48	Escalators – building	Real
49	Exhaust systems/air makeup units: <ul style="list-style-type: none"> • Ducted from equipment • Building ventilation 	Personal Real
50	Fans: <ul style="list-style-type: none"> • Building ventilation, built-in • Portable 	Real Personal
51	Fencing	Real
52	Fireplace inserts	Personal

No.	Description	Most likely categorization (dependent on facts and circumstances)
53	Fire protection systems: <ul style="list-style-type: none"> • Building sprinklers • Building CO₂, halon, hi-ex foam systems, • CO₂, halon, hi-ex foam system for equipment only • Supplemental water system to assist bldg. • Supplemental water system for equipment only • Fire extinguisher cabinets, reels, valves • Fire extinguishers (canister or tanks) • Fire escapes 	Real Real Personal Real Personal Real Personal Real
54	Flag poles, in ground or on building	Real
55	Floor finishes: <ul style="list-style-type: none"> • Special coverings (wood block, steel tile) • Standard coverings (carpet, linoleum, tile) 	Real Real
56	Floor grates: <ul style="list-style-type: none"> • Not adjacent to machinery • Adjacent to machinery 	Real Real
57	Flooring, raised or computer room	Personal
58	Foundations for specific IP equipment	Personal
59	Freezers: <ul style="list-style-type: none"> • Building type construction, walk-in • Portable – freestanding 	Real Personal
60	Furnaces: <ul style="list-style-type: none"> • One – new • One – replacement • For IP use – replacement • Multiple 	Real Real Personal R or P depending on use
61	Garage door openers	Real
62	Gas distributions systems: <ul style="list-style-type: none"> • Gas lines to process system • Gas lines to building systems 	Personal Real
63	Gate operators: <ul style="list-style-type: none"> • Part of fence -- land improvements 	Real

No.	Description	Most likely categorization (dependent on facts and circumstances)
64	Generator: <ul style="list-style-type: none"> • One which services the facility • Used for specific machine 	Real Personal
65	Grain Storage Bins	Real
66	Greenhouses	Real
67	Guard rails and posts: <ul style="list-style-type: none"> • Protect equipment – attached to building • Protect equipment – attached to equipment • Protect inventory • Roads, parking, building 	Real Personal Real Real
68	Heaters: unit heaters, hanging	Real
69	Heating & venting systems (general building type)	Real
70	Hoists: built-in	Real
71	Hot water heaters	Real
72	Humidifiers: built-in	Real
73	Incinerators	Real
74	Insulation & piping in wall for refrigerated rooms	Real
75	Kilns, ceramic and lumber built-in	Real
76	Landfill cells-layers of waste separated from land by an impermeable barrier: <ul style="list-style-type: none"> • Piping/horizontal wells (in landfill cells) • Tire chips (over piping in landfill cells) 	Personal Personal
77	Landscaping materials-installed	Real
78	Lighting, electrical: <ul style="list-style-type: none"> • General building • Land improvements • Supplemental – building system (fixtures extended down from general building) • Supplemental – equipment (fixtures hard-wired and extended down to a specific machine) 	Real Real Real Personal
79	Lighting Arresters	Real
80	Loading dock	Real

No.	Description	Most likely categorization (dependent on facts and circumstances)
81	Locker room facilities: <ul style="list-style-type: none"> • Plumbing fixtures, showers • Permanent partitions • Toilet partitions • Lockers, freestanding • Lockers, recessed into wall 	Real Real Real Personal Real
82	Methane Producing Landfill Cells	Personal
83	Modular Housing Units: <ul style="list-style-type: none"> • Sold to Michigan builders 	Personal
84	Office – portable	Personal
85	Operators, doors & windows	Real
86	Parking control systems	Real
87	Partitions: <ul style="list-style-type: none"> • Portable-cubicles/workstations • Permanently attached 	Personal Real
88	Pipe rack supports	Real
89	Piping: <ul style="list-style-type: none"> • From wall to specific machinery • Utility piping, gas, water, etc. 	Personal Real
90	Plastic door strips (air guard strips) to separate areas	Real
91	Plumbing: <ul style="list-style-type: none"> • General building • Plumbing, to specific equipment 	Real Personal
92	Pools: <ul style="list-style-type: none"> • In ground • Above ground 	Real Personal
93	Press pit	Personal
94	Pump houses	Real
95	Ramps: <ul style="list-style-type: none"> • Portable • Built-in 	Personal Real
96	Rooms within a plant, not a structural part of realty	Personal
97	Scale houses	Real
98	Scales: built-in	Real
99	Shed <ul style="list-style-type: none"> • Bolted to concrete slab • Portable for storage 	Real Personal

No.	Description	Most likely categorization (dependent on facts and circumstances)
100	Siding	Real
101	Signs: <ul style="list-style-type: none"> • Affixed to building • Integral part of equipment 	Real Personal
102	Silo – raw material storage	Real
103	Spray booths, permanently attached	Real
104	Stainless steel wall panels for food industry	Real
105	Tanks – built-in (attached to a building or foundation)	Real
106	Telephone wiring in wall	Real
107	Theatre seats bolted to the floor	Real
108	Toilet facilities: <ul style="list-style-type: none"> • Plumbing fixtures, showers • Partitions 	Real Real
109	Underground cables	Real
110	Vats for mixing (manufacturing process)	Personal
111	Water meters (owned by city/county)	Personal
112	Water softeners	Real
113	Wash fountains	Real
114	Welding booth, portable	Personal
115	Window shutters – decorative	Real
116	Window treatments	Personal
117	Wood blocking for floor	Real
118	Wood burning stoves, built-in and/or vented	Real
119	Wooden Pole-Mounted Outdoor Warning Sirens	Real

References pertaining to this information can be found in the index under [Chapter 2](#)

Chapter 3 - Statutory Exemptions

Tangible personal property purchased or acquired for affixation to, and/or made a structural part of, certain types of real property may be exempt. Contractors claiming an exemption when purchasing materials used in an exempt construction contract should obtain a written statement from the entity and any applicable supporting documentation. These exemptions apply to all types of contractors that affix tangible

personal property to realty. There is no exemption for supplies, electricity, natural gas and other items consumed by the contractor and not affixed to realty.

A contractor in the business of constructing, altering, repairing, or improving real estate for others is afforded an exemption for property affixed to and/or made a structural part of real estate that qualifies under one of the following:

Nonprofit Hospitals

The General Sales Tax Act and Use Tax Act states that tangible personal property sold to a person directly engaged in the business of constructing, altering, repairing or improving real estate for others is exempt to the extent that the property is “affixed to and made a structural part of” a nonprofit hospital. The statute requires that a hospital comply with the following two tests to be met in order for this exemption to apply:

- Meet the statutory definition of a “nonprofit hospital,” and
- Pass the inurement test

Nonprofit hospital means one of the following:

1. That portion of a building to which one of the following applies:
 - Is owned or operated by an entity exempt under Internal Revenue Code (IRC) § 501(c)(3), that is licensed as a hospital
 - Is owned or operated by a governmental unit in which medical attention is provided
 - Is owned or operated by an exempt entity or entities exempt under IRC § 501(c)(2) or (3)
2. That portion of real property necessary and related to a building described in 1 above, in which medical attention is provided. “Medical attention” means “that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions, that require the observation, diagnosis, and daily treatment by a physician.”
3. A county long-term medical care facility (CLTMCF), including any “addition” to an existing county long-term medical care facility, if the addition is owned and operated by the CLTMCF and offers health services provided by the CLTMCF.

A CLTMCF is “a nursing care facility, other than a hospital long-term care unit, that provides organized nursing care and medical treatment to 7 or more unrelated individuals who are suffering or recovering from illness, injury, or infirmity and that is owned by a county or counties.” Operations not requiring licensure, such as “assisted living facilities,” do not qualify as a hospital for the construction exemption.

In the case of a CLTMCF, “affixed to and made a structural part of” means any physical connection to an existing CLTMCF. Therefore, the exemption for a CLTMCF is limited to tangible personal property that ultimately has any physical connection to any addition to or renovation of an *existing* building of a CLTMCF. The exemption is only available for newly constructed buildings if the building has a physical connection to an *existing* CLTMCF building (e.g., by breezeway). If no such physical connection exists, the exemption may not be claimed.

Nonprofit hospital **does not include** the following:

- A freestanding building (unless a qualifying addition to a county long-term medical care facility) or other real property of a nursing home or skilled nursing facility
- A licensed hospice
- A licensed home for the aged

Inurement of Benefit Test

Any portion of property that otherwise qualifies as a nonprofit hospital must also pass the inurement of benefit test. That is, no income or benefit may inure directly or indirectly to an individual, private stockholder or other private person from the independent or nonessential operation of that portion of the property. This exemption may be calculated on a pro rata basis.

A nonprofit hospital passing the inurement of benefit test would qualify for exemption. However, where a single building is being constructed that will have multiple uses, some of which will not pass the inurement of benefit test, that portion not meeting the test will be taxable. For example, in the nonprofit hospital context, portions of the hospital building not meeting the test include, but are not limited to, those which would be rented or provided to persons to conduct commercial activities such as:

- Physicians (for private practice)
- Pharmacy
- Gift shop

- Coffee shop
- News stand
- Medical apparatus outlet
- Cafeteria

Example: Medical Center is a nonprofit hospital. A portion of Medical Center is constructed to house a retail gift shop that will be operated by ABC Inc. Profits made by ABC inure to its private owner. The portion of Medical Center that is constructed to house the retail gift shop is not eligible for the exemption.

Example: ABC, a county long-term medical care facility, hires a contractor to construct a freestanding building on ABC's existing campus. The new building will be used as an office and not operated under ABC's license or otherwise offer the same medical services as ABC. The exemption does not apply to this transaction because the freestanding building will not be operated under the same license held by ABC or continue to offer the same medical services as ABC.

Example: XYZ, a county long-term medical care facility, hires a contractor to construct a freestanding building on its existing campus that will be operated under XYZ's license and will offer the same health services as XYZ. This project is eligible for the exemption provided the qualifying transactions occurred on or after January 1, 2013.

Example: Contractor is hired by developer to construct a new campus of freestanding buildings with each building licensed and operated as a county long-term medical care facility. No existing county long-term medical care facility operates on the proposed campus. This project is not eligible for the exemption because the exemption only applies to an existing county long-term medical care facility.

Generally, the exemption only includes property that is affixed to and made a structural part of the nonprofit hospital. The exemption does not include tools and equipment, or supplies used and consumed in the construction which do not become a structural part of the hospital, e.g., sandpaper, hammers, saws.

Qualified Nonprofit Housing

The General Sales Tax Act and Use Tax Acts state that property used in certain improvements to real estate is exempt, including property purchased by a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of the real estate of a nonprofit housing entity qualified as exempt pursuant to Section 15a of the, Act No. 346 of Public Acts of 1966 (State Housing Development Authority Act, or SHDAA). Qualified nonprofit housing includes only that portion of the property of the homes or dwelling places constructed by a qualified nonprofit housing entity, the

income or property of which does not directly or indirectly inure to the benefit of an individual, private stockholder or other private person.

A nonprofit housing entity must be qualified as exempt pursuant to the SHDAA. Government housing projects are generally not in compliance with SHDAA, thus tangible personal property affixed to them is taxable. If a benefit from any portion of the real estate inures directly or indirectly to an individual, private stockholder or other private person, that portion of the property would be taxed. Additionally, no direct or indirect benefit can inure to any person other than the intended qualified tenants.

Only private qualified nonprofit housing that has received an exemption certificate from the Michigan Housing Development Authority (MSHDA) qualifies for this exemption. Public nonprofit housing is not covered by MSHDA and therefore does not qualify for exemption.

The exemption only includes property that is affixed to and made a structural part of the nonprofit housing. The exemption does not include tools and equipment, or supplies used and consumed in the construction which do not become a structural part of the non-profit housing, e.g., sandpaper, hammers, saws.

Church Sanctuaries

The General Sales Tax Act and Use Tax Act state that tangible personal property purchased or acquired by a contractor to be affixed to or made a structural part of a **sanctuary** of a regularly organized church or house of religious worship is exempt from sales and use tax. Therefore, the exemption does not include tools and equipment, or supplies used and consumed in the construction which do not become a structural part of the sanctuary, e.g., sandpaper, hammers, saws. The sanctuary must be owned, occupied and used by a religious organization qualified under IRC § 501(c)(3). Sanctuary includes a sanctuary to be constructed that will be owned, occupied, and used by a religious organization qualified under IRC § 501(c)(3). The exemption is limited to building portions predominately and regularly used for public worship service.

Predominant use means that public worship occurs more than 50% of the time that the building portion is in use (includes storage). **Regular use** means normal or usual periodic use or uniform use of that portion of the building.

As used in this section, a sanctuary is limited to:

1. Portions of a building where the acts of worship take place, including areas where the public participates in worship, areas dedicated to individual worship (such as chapels), and those portions of the building whose sole use and function is directly related to the act of public worship.

These areas may also include:

- Sacristy or similar area adjacent to room where public worship services are conducted
- Areas where consumables are prepared for use in worship service
- Vestry or similar area adjacent to room where public worship is conducted or where clergy or other religious leaders prepare for public worship service

Does not include areas for:

- Social functions
- Schooling
- Day care
- Religious Education
- Or any other activity that does not constitute public worship

2. Portions of a building structurally necessary (directly connected) to the portion of the building where worship takes place.

These areas may include:

- Foundations, including basement walls which support the interior worship area
- Exterior walls and finishing materials directly adjacent to worship area
- Interior walls, floors and ceilings facing the interior ceiling area
- Roofs directly over the interior worship area

These areas would **not** include:

- That portion of exterior walls, foundations and roofs that extend beyond the interior worship area

These areas may be apportioned:

- Roofs not directly over interior worship area (i.e., roof over second story office above interior worship area)

- Structural necessities supplying heat, ventilation and air conditioning to qualified sanctuary and non-exempt areas
- Material purchases for multiple use areas in lieu of accounting for actual cubic yards of concrete or squares of roof shingles directly under or over the sanctuary

In general, building areas not provided exemption include gymnasiums, offices, vestibules, hallways, restrooms, basements and classrooms. Outdoor areas such as parking lots, sidewalks and steps leading into a building are not exempt. Also, not exempt are finishing materials affixed to basement foundation walls or attached to walls common to the sanctuary but constituting the interior walls of space dedicated to any activity other than public worship. Basement floors and second story flooring are not exempt.

Qualified Water or Air Pollution Control Facilities

The General Sales and Use Tax Acts allow an exemption for the sale or purchase of tangible personal property to be installed as a component part of a water or air pollution control facility.

“Facility” means any disposal system, including disposal wells or any treatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating water pollution caused by industrial waste. The following are types of facilities that would normally qualify for real and personal property, sales and use tax exemption status under PA 451 of 1994, Part 37, as amended providing they are found to be functioning adequately:

- a. Industrial wastewater treatment or pretreatment installations and ancillary equipment such as wastewater storage and chemical treatment storage tanks, pumps, piping, electrical, instrumentation and sludge dewatering equipment
- b. Waste disposal wells and monitoring wells
- c. Purge wells and treatment systems for industrially contaminated groundwater
- d. Incinerators or other technologies that effectively destroy hazardous industrial wastes that are potential water contaminants
- e. Landfill components that serve primarily for the purpose of reducing water pollution such as Leachate Collection Systems
- f. Containment dikes, impervious flooring or other containment structures to retain spillage or leakage from chemical storage tanks or hazardous waste containers

- g. Industrial cooling water regeneration systems and wastewater recycle systems. Pumps and piping to the system would qualify, but not return pumps and piping back to the process
- h. Laboratories and lab equipment used in connection with industrial wastewater pollution control
- i. Agricultural facilities that have a primary purpose of water pollution control, such as animal waste storage facilities, pesticide and fertilizer storage facilities and certain land use changes such as green belts and filter strips that are installed and maintained to prevent water pollution
- j. Well casings and other measures that prevent losses to drinking water aquifers from production wells

The exemption is dependent **on a tax exemption certificate issued by the State Tax Commission (STC)**. Issuance of a certificate is contingent upon satisfying the conditions found in the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994.

The pollution control exemptions in the Sales and Use Tax Acts are interpreted in 1979 AC, R 205.137, *Air and Water Pollution* as follows:

1. Tangible personal property purchased for installation as a component part of an air or water pollution control facility for which the STC issues a tax exemption certificate is exempt from tax.

The certificate describes the property that qualifies for tax exemption. It includes items that become part of real property. **The flow-through exemption applies when the contractor purchases exempt personal property for these pollution control projects.**

2. When tax has been paid on tangible personal property which later qualifies for exemption as a result of obtaining a certificate of exemption from the STC, a refund may be requested by the purchaser upon submission of both of the following documents to the Department:

- A copy of the exemption certificate issued, indicating the approved cost of the tangible personal property installed and entitled to exemption
- A copy of the seller's invoice showing the name and address of the seller, identification of the purchaser, identification of the items purchased, date of purchase and amount of tax paid to the seller

To facilitate the refund process, the owner of the pollution control facility can provide the Department's Tax Processing Division with a copy of the Pollution Control Exemption Certificate, together with a list of vendor invoices qualifying for the sales tax credit. That division will respond with approval or disapproval to facilitate the refund process.

Pollution Control Exemption Certificates and Limitations

An entity must apply for and be granted a pollution control exemption certificate by the STC in order for any of its purchases to qualify for this exemption. The effective date of the certificate is the date of issue and the certificate continues in force until it is revoked, or the facility is no longer used for its primary purpose. The certificate will state the total cost of the property entitled to exemption. If the final cost of material in the pollution control facility exceeds this amount, amounts exceeding the limitation are subject to tax. Furthermore, replacement equipment and repair parts acquired in subsequent years may be taxable items if the additional costs would cause the project to exceed the stated exempt value in the original exemption certificate.

After review by the Property Services Division, a recommendation is made to the STC regarding the qualifications of the application. The STC is responsible for final approval and issuance of certificates. Exemptions are not effective until approved by the STC. However, even if a certificate is granted for the pollution control facility, the pollution control facility exemption is **limited** in scope to property purchased/sold and installed **as a component part** of such a facility. Thus, not all property which may be associated with the construction, installation, etc. of a pollution control facility qualifies for the exemption. Equipment benefiting the business or personnel will be taxable. Examples include, but are not limited to, heat recovery equipment, air make-up units, equipment used to prepare and return contaminants to the process, etc. The utility costs associated with the operation of these facilities also do not qualify for the exemption.

A list of Pollution Control Exemption Certificate:

- [Form 3828 – Application for Air Pollution Control Tax Exemption Certificate](#)
- [Form 891 - Application for Water Pollution Control Tax Exemption Certificate](#)
- Copies of previously issued Pollution Control Tax Exemption Certificates acted upon by the STC after January 1, 2013 are available on the Department's website at: www.michigan.gov/propertytaxexemptions. Chose the exemption program under which the certificate was issued. Within the "Certificate Activity" link, the certificates are listed according to the date they were acted on.

Qualified Convention Facilities

Before January 1, 2016, the sale of tangible personal property for use in construction or renovation of a qualified convention facility under the Regional Convention Facility Authority Act is exempt from sales tax. Likewise, tangible personal property acquired before January 1, 2016 by a contractor if affixed to and made a structural part of a qualified convention facility under the Regional Convention Facility Authority Act.

"Convention facility" means all or any part of, or any combination of, a convention hall, auditorium, arena, meeting rooms, exhibition area, and related adjacent public areas that are generally available to the public for lease on a short-term basis for holding conventions, meetings, exhibits, and similar events, together with real or personal property, and easements above, on, or under the surface of real or personal property, used or intended to be used for holding conventions, meetings, exhibits, and similar events, together with appurtenant property, including covered walkways, parking lots, or structures, necessary and convenient for use in connection with the convention facility. Convention facility includes an attached arena with a seating capacity not exceeding 13,000. Convention facility does not include any arena with a seating capacity exceeding 13,000.

A "qualified convention facility" is a publicly owned convention facility with not less than 600,000 square feet of usable exhibition area and that is located in a qualified city.

A "qualified city" means a city with a population of more than 700,000 according to the most recent decennial census that contains a qualified convention facility.

Transformational Brownfields

The sale of tangible personal property for use in (or acquired by a contractor for) eligible activities described in section 2 of the Brownfield Redevelopment Financing Act on **eligible property** that is included in a **transformational brownfield plan**, to the extent that the tangible personal property will be affixed to and/or made a structural part of the real property or **infrastructure improvements** included within the transformational brownfield plan. "Eligible property", "infrastructure improvements", and "transformational brownfield plan" mean those terms as defined in section 2 of the Brownfield Redevelopment Financing Act.

Note: 2017 PA 48 requires the tangible personal property to be affixed to "and" made a structural part of the "real property or infrastructure improvements" included within the transformational brownfield plan the real estate. 2017 PA 49 requires the tangible personal property to be affixed to "or" made a structural part of the "improvements to real property" included within a transformational brownfield plan"

Qualified Data Centers

Beginning January 1, 2016, through December 31, 2035, data center equipment that is affixed to or made a structural part of a qualified data center is exempt from the sales and use tax.

For purposes of this exemption, "data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterruptible power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a co-located business. Data center equipment also includes any construction materials used or assembled under the qualified data center's proprietary method for the construction or modification of a qualified data center, including, but not limited to building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center's primary power.

"Qualified data center" means:

- a. a facility composed of 1 or more buildings located in this state
- b. which is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more co-located businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a co-located business
- c. the entity that owns or operates the facility receives 75% or more of its revenue from co-located businesses that are not an affiliate of the owner or operator of the qualified data center

State/Tribal Tax Agreements

Certain tax exemptions may apply to contractors that enter into contracts involving federally recognized Indian Tribes (and their qualifying members) that have an effective tax agreement with the State of Michigan.

Materials that are purchased, used or acquired in the performance of a contract entered into by a Resident Tribal Member, Tribe, or Tribal Entity for construction, renovation or improvement of real property owned by the Tribe or the federal

government in trust for the Tribe are exempt from both sales and use taxes if the real property is located within the Tribal and Trust Lands and there is no contractual entitlement for a non-Resident Tribal Member or non-Tribal Entity to remove the improvement.

Materials that are purchased, used or acquired in the performance of a contract for construction, renovation or improvement to the principal residence of a Resident Tribal Member are exempt from both the sales tax and use tax.

Where the Tribe requesting exemption has opted for the certificate method, the contractor must secure a Tribal Certificate of Exemption (TCE), and a copy of the Letter of Authorization issued by the Department to the Tribe. The contractor presents this information to the vendor to purchase materials tax-free. Where the contractor is a subcontractor not identified on the TCE, a Michigan Sales and Use Tax Exemption Certificate (Form 3372) must be completed by the sub-contractor and provided to the vendor in addition to the TCE and Letter of Authorization.

Tribes with State/Tribal Tax Agreements are listed on the Michigan Treasury Website. These agreements dictate the terms of the exemptions for the Tribes and their qualifying members for those taxes covered under the Tax Agreement(s). State law applies to those taxes where not otherwise altered by the Tax Agreement(s).

Note: Contractors engaged in the construction of Tribally-owned facilities may qualify for an exemption if all of the following criteria are met:

- The facility is constructed either on Tribal and Trust Lands with regard to commercial properties (e.g., casino) or within the “government specified areas” for Tribal governmental functions as described in § III(A)(1)(b) of the Tax Agreement(s)
- The Tribe has an effective tax agreement with the State
- The construction contract does not entitle anyone other than the owner (e.g., Tribe, Resident Tribal Member or Tribal Entity) to remove the facility or improvement
- The documentation identified above is completed and used appropriately

For a list of Tribes with Tax Agreements with State of Michigan [click here](#)

Qualified Business Activities (enterprise zones)

The General Sales and Use Tax Acts state that a sale of tangible personal property to be used in a qualified business activity of the purchaser is exempt from sales tax.

Tangible real or personal property is also exempt from use tax to the extent that the property is used in a qualified business activity of the purchaser. As used in this section, qualified business activity means business activity in an enterprise zone established before 1994 of a qualified existing business attributable to a new facility or the business activity in an enterprise zone established before 1994. A contractor claiming this exemption must be qualified to operate within the Enterprise Zone and directly engaged in the business of affixing to realty. In addition, the affixation to realty must occur within the Enterprise Zone. Currently there are no active state enterprise zones in Michigan, and new zones are not being designated.

The City of Benton Harbor is a Federal Enterprise Zone, but this classification does not provide any exemption from sales or use tax. Future developments related to state enterprise zones should be confirmed with the Michigan Economic Development Corporation (MEDC).

Foundations for Certain Machinery or Equipment Used in Industrial Processing

The Acts exempt “foundations for machinery or equipment...used in an industrial processing activity...” “Industrial processing” is “the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state.”

Example: Contractor constructs a foundation for a machine press for use in industrial processing by Manufacturer. The foundation is exempt from sales and use tax.

Property to be Affixed to and Becoming a Structural Part of Real Estate Located Outside Michigan (Use Tax Only)

Effective January 1, 2005, property that is purchased by a contractor for the purpose of constructing, altering, repairing, or improving real estate for others and that is affixed to and made a structural part of real estate located in another state is exempt from use tax. However, there is no corresponding sales tax exemption. Therefore, when a contractor purchases property for affixation in another state from a Michigan retailer, absent another reason to claim exemption, the contractor has no basis to claim a sales tax exemption. Even if the purchaser makes an invalid claim of exemption, the retailer is not liable unless it is involved in fraud.

References pertaining to this information can be found in the index under [Chapter 3](#)

Chapter 4 - Manufacturer/Contractors

Manufacturer/Contractor is a person who manufactures, fabricates or assembles tangible personal property and subsequently affixes its product to the real estate of others.

Use Tax Treatment

If a manufacturer/contractor

- maintains an **inventory** of its product(s) available for sale to others, OR
- makes its product available for sale to others by **publication** or **price list**,

the use tax base for products withdrawn from inventory and affixed to realty in Michigan is **finished goods inventory value** as outlined in 26 CFR 1.471-11. The manufacturer/contractor's equipment and supplies will qualify for the industrial processing exemption if they are used in the industrial process. Tools used at the construction site do **not** qualify for exemption unless used to mix, blend, etc.

If a manufacturer/contractor

- does **not** maintain an **inventory** of its product available for sale to others, AND
- does **not** make its product available for sale to others by **publication** or **price list**,

the use tax base for products withdrawn from inventory and affixed to realty in Michigan is the sum of the cost of **direct materials** and **direct labor** to manufacture, fabricate, or assemble the property. The components of direct materials and direct labor are discussed in 26 CFR 1.471-11 and the related statutes. The manufacturer/contractor's equipment and supplies do **not** qualify for the industrial processing exemption.

The words **fabricate**, **manufacture**, and **manufacturer** are defined by statute at MCL 205.93a(5). The Department defines **assemble** as to gather into a group, or collect or fit or put together parts.

Direct Labor

Direct labor pertains to staff directly engaged in production, including manufacturing or fabricating (including mixing, combining, or blending) at the job site prior to affixation, operating fabricating machines, and in-process material handling. Costs of direct labor include but are not limited to:

- Wages (basic, overtime, and shift differential)
- Fringe benefits (includes voluntary employee benefits association (VEBA) payments, union dues, clothing & laundry reimbursements, meals and meal allowances, and payments directly incurred for production employees, sick leave pay, vacation and holiday pay)
- Accident, health, long-term disability, and life insurance plans
- Bonuses, commissions, stock bonuses, profit sharing
- Workers' compensation (severance pay, supplemental unemployment benefit plan payments)
- Pension and retirement
- Payroll taxes
- Any other payment incurred on behalf of employees directly engaged in production

Direct labor **does not include** staff performing shipping and receiving, shop supervision, or maintenance and repair functions. In addition, direct labor to cut, bend, assemble or attach at the job site in Michigan is specifically exempted from the use tax base by statute. However, these costs would be part of the cost of labor to manufacture if performed at the taxpayer's location or other non-job site location. In general, the cost of labor to "cut, bend, or assemble ... property at the site for affixation" relates to the cost of labor at the job site to make minor adjustments, alignments, alterations and other changes which are necessary in order to affix the property to real estate in Michigan.

Examples:

- Incidental mixing such as the mixing of mortar and tinting of paint at the job site is not be included in the use tax base

- Costs of labor incurred at the job site in Michigan (other than to cut, bend, assemble or attach) which fall within the definition(s) of **manufacture** and/or **fabricate** under MCL 205.93a(5) are included in the use tax base such as costs of labor at the job site for mixing, combining or blending prior to affixation of property will be included in the use tax base

Direct Materials

Direct materials include raw materials, supplies entering into or consumed in connection with the product, and costs incurred to move the material to the point of manufacturing.

The cost of a sub-processing activity by an outside party is also included in the cost of material for determining the use tax base. It does not matter if the sub-processing occurs before or after the transfer of ownership to or possession by the manufacturer/contractor.

Finished Goods Inventory Value

Finished goods inventory value is calculated according to the full absorption method of inventory valuation for manufacturers as described in 26 CFR 1.471-11. In general, this valuation method includes all direct production costs, defined as components of either direct material or direct labor. Indirect production costs are included **only to the extent** that such costs are incident to and necessary for production or manufacturing operations or processes.

These indirect production costs include but are not limited to:

- repairs and maintenance
- utilities
- rent
- indirect materials and supplies
- tools and equipment that are not capitalized
- costs of quality control and inspection
- indirect labor and production supervisory wages
- other employee benefits

Finished goods inventory value generally does not include:

- marketing
- research and development
- sales
- general and administrative expenses

- officer salaries that are incident to and necessary for the taxpayer's activities taken as a whole rather than incident to and necessary for production or manufacturing operations or processes
- costs of labor to cut, bend, assemble or attach tangible personal property at the job site are also excluded from finished goods inventory value

Inventory

The following criteria are used to determine if a taxpayer maintains an inventory of its product(s) available for sale to others:

1. The inventory must be similar to the product that it affixes to realty. For example, a countertop manufacturer/contractor might have a retail inventory of shelving that it sells to walk-in customers, though it custom makes countertops to order. This fact would not require the contractor to pay use tax on the finished goods inventory value of the installed countertops.
2. The inventory does not have to be a completely finished product to meet the definition of a product that is available for sale to others. For example, a contractor that fabricates and erects structural steel could have bar steel inventory in stock that it will bore out for retail sale at a customer's request. The product sold is similar to the product erected, even though not in a finished state.
3. The retail sale of related products should be more than de-minimus.
4. A book or tax accounting inventory is not a requirement, only the existence of an actual physical inventory.

Price List

A numerical and/or alphabetical enumeration of goods, wares, merchandise items or services, quoting wholesale and/or retail prices and presented, maintained or otherwise displayed in any written or electronic form and which represents the final cost (price) of the finished product. A price list includes, but is not limited to, printed cards or sheets, or pricing available within a database or through an Internet website.

Note: A price list does not include a preliminary price quote or general advertisement that is (or presents) merely an estimate of the approximate purchase

price or cost of the product or which is not made available to the public or potential customers.

For example, an advertisement, brochure or pamphlet that contains general (base) floor plan layouts that a purchaser can choose from which a customized product can be built does not constitute a “price list”.

Publication

Includes, but is not limited to, a **catalog, sales pamphlet** and **sales handbill** or pricing on an Internet website.

Catalog: A bound, stitched, sewed or stapled book or pamphlet, or document maintained in electronic format (e.g., hard drive or Internet), containing a list and description of goods, wares, merchandise or services with specific information, with or without a price.

Sales Pamphlet: A printed work concerning goods, wares, merchandise or services, consisting of two or more sheets, stapled, sewed or stitched, with or without a price.

Sales Handbill: A printed single sheet (sometimes called a circular or dodger) intended to be circulated and concerning goods, wares, merchandise or services.

Note: A publication or price list must reflect the amount charged for tangible personal property and not an installed total. It also must reflect a finished goods price (not cost of raw material).

Note: Although a price list is an indicator of the existence of a finished goods inventory, the Department will not treat the existence of a price list as the *sole* determinative factor as to the existence of a finished goods inventory. The Department will take into consideration, for purposes of determining whether a document, display, or other media conveying pricing information is a “price list” for purposes of MCL 205.93a(1)(f), whether the prices reflect current or otherwise up-to-date sales prices or (through the passage of time) have become stale and do not adequately reflect finished goods inventory value.

Example 1:

A manufacturer/contractor enters into a contract to build a house. In its workshop, the manufacturer/contractor cuts and assembles roof trusses. The trusses are later

transported to the job site and used to construct the house. The use tax base of the trusses is the cost of materials plus the cost of labor to cut and assemble them in the workshop (to the extent that the cutting falls within the definition of **manufacture** and/or **fabricate** and/or the assembly of the trusses falls within the definition of **assemble**.) However, the cost of labor incurred at the job site to cut, bend, assemble, or attach the trusses to the real estate are not included in the use tax base.

Example 2:

A custom cabinetmaker enters into a contract to build and install cabinets in an office building. The cabinet doors are constructed at the cabinetmaker's off-site workshop. The completed cabinet doors and other materials are brought by the cabinetmaker to the job site where the cabinetmaker completes the construction and assembly of the cabinets. The use tax base of the cabinets is equal to (i) the cost of the materials; (ii) all off-site direct costs of labor to construct the cabinet doors; and (iii) all on-site direct costs of labor to construct and complete the cabinets (to the extent that construction and completion of the cabinets at the job site falls with the definition(s) of **manufacture** and/or **fabricate** under MCL 205.93a(5)). Any direct costs of labor incurred at the job site to cut, bend, assemble, or attach the cabinets to the real estate are not included in the use tax base.

Example 3:

A manufacturer/contractor fabricates and installs steel beams. Engineering/detailing costs that are related to manufacturing should be included in direct material costs under both tax-treatment options. This would include the cost of blue prints, certification tests, and architectural design costs, whether done in-house or by an outside company.

These costs would be part of the direct material costs because they are necessary to determine what material to purchase for the job (what strength or grade of steel).

Example 4:

An asphalt company manufactures asphalt that is sold at retail and consumed in contracts. When the company consumes this asphalt, use tax is due on the inventory value. No distinction is made between **special blends** not sold at retail and regular blends. Use tax is due on the inventory value of both.

Example 5:

An asphalt manufacturer/contractor uses the asphalt removed from the current road bed in the production of the new asphalt. The cost of transporting this recycled

asphalt product to the asphalt plant should be included in direct material costs as freight-in.

This computation would also include depreciation, oil, gas and maintenance of the roto mill, as well as the labor costs of the roto mill operator. These costs would be included under both tax-treatment options. The labor cost of the truck driver transporting the product to the plant would be a part of finished goods inventory value but would not be a direct labor cost.

Other Activities of Manufacturer/Contractors

A manufacturer/contractor can be engaged in more than one distinct business activity. In these situations, the use tax base would depend on the circumstances for that particular part of the business. The availability of the industrial processing exemption for equipment and utilities would vary as well.

Example 1:

ABC Company purchases kitchen cabinets for retail sale and acts as the contractor when installing the cabinets. ABC's use tax base when acting as the contractor is the material cost. In this situation ABC Company is acting as a retailer and is not entitled to the industrial processing exemption.

Example 2:

ABC Company also manufactures a custom cabinet for the bathroom and maintains an inventory of its manufactured cabinets. If it needs additional cabinets, it purchases a standard cabinet for installation from an outside source. Its cost, when acting as a contractor, is the **finished goods inventory value** on the cabinets that it manufactured and material cost (at the purchased price which includes freight) on the cabinets that it purchased. ABC Company is entitled to the industrial processing exemption on the cabinets manufactured for retail sale or used in contracts.

Example 3:

By word of mouth, some customers have discovered that ABC Company has the equipment to manufacture hardwood flooring. This specialty flooring is not available for sale through a publication or price list. Each floor is custom made to the customer's specifications. The use tax base when ABC Company affixes the flooring to realty in Michigan is the direct cost of material and the direct cost of labor to manufacture. The inventory of the wood products, including the standard cabinets that it either manufactured or purchased, does not constitute inventory for the flooring when determining the use tax base for the company when it affixes the flooring to realty in Michigan. Furthermore, ABC Company is not entitled to the industrial

processing exemption if it affixes all the custom hardwood flooring that it manufactures to real estate in Michigan. However, if it makes retail sales of the custom flooring, it is entitled to the exemption based on a percentage determined by comparing the retail sales to the contract sales. It would also be entitled to the industrial processing exemption for the hardwood flooring if installed to real estate located in another state.

Example 4:

The use tax base for a contractor who withdraws gravel from its own pit for use in a paving contract and not for resale would be zero. The labor to extract would not be included. This taxpayer would be considered a contractor, not an extractor, since the gravel extracted is not for resale.

Example 5:

If gravel is withdrawn from the pit of another for use in a contract, the cost for use tax purposes would be the amount paid to the pit owner for the material. The labor to extract would not be included. In this case, the taxpayer would be considered a contractor, not an extractor.

Example 6:

If a taxpayer bought a sand hill and used the sand to make glass to install in a building, the use tax base would be the cost of the material. This taxpayer is a manufacturer/contractor, not an extractor. If the taxpayer also sold sand at retail, it would also be an extractor.

Example 7:

If an extractor/manufacturer/contractor maintained a standard inventory of aggregate for sale to others, the use tax base when using aggregate in performance of a contract would be the finished goods inventory value – whether extracted from the extractor/manufacturer/contractor’s own pit or the pit of another.

For a Manufacturer/Contractor who affixes its product to real estate of others located in Michigan, and:

- does not maintain an inventory of its product available for sale to others or
- does not make its products available for sale to other by publication or price list,

the use tax base will be determined in accordance with MCL 205.93a(1)(g), not the finished goods inventory value.

The price is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in Michigan, but not the cost of labor to cut, bend, assemble or attach the property at the site for affixation to real estate in Michigan (explicitly excluded by statute).

Material cost is the invoice price of raw materials and supplies entering into or consumed in connection with the contract and other necessary charges incurred in acquiring possession of the goods. Material costs includes the cost of direct material.

Cost of labor is the cost of direct labor and does not include payments made for shipping, assembly, loading and unloading or otherwise transporting the product to the job site. The cost of direct labor to **manufacture** or **fabricate** tangible personal property affixed to real estate located in Michigan is included in the use tax base regardless of whether the activity occurs off-site or at the job site. However, the cost of direct labor to **assemble** the product is only included in the use tax base if the costs are incurred off-site.

References pertaining to this information can be found in the index under [Chapter 4](#)

Transformational Brownfields

The manufacture of a product identified in section 3a(1)(f) or (g) of the Use Tax Act is exempt from use tax if used for eligible activities described in section 2 of the Brownfield Redevelopment Financing Act on **eligible property** that is included in a **transformational brownfield plan**, to the extent that the product will be affixed to and/or made a structural part of the real property or **infrastructure improvements** included within the transformational brownfield plan. “Eligible property”, “infrastructure improvements”, and “transformational brownfield plan” mean those terms as defined in section 2 of the Brownfield Redevelopment Financing Act.

Note: 2017 PA 48 requires the tangible personal property to be affixed to “and” made a structural part of the “real property or infrastructure improvements” included within the transformational brownfield plan the real estate. 2017 PA 49 requires the tangible personal property to be affixed to “or” made a structural part of the “improvements to real property” included within a transformational brownfield plan”

Chapter 5 - Industrial Processing by Manufacturer/Contractors

Tangible personal property that becomes:

1. an ingredient part or component part of the finished product to be ultimately sold at retail

OR

2. an ingredient part or component part of tangible personal property that is permanently affixed to and made a structural part of real estate located in another state,

is eligible for an industrial processing exemption. If the product is available for ultimate sale at retail to others, the industrial processing exemption applies even if the manufacturer/contractor removes the product from inventory and affixes it to (and makes it a structural part of) the real estate of another so long as the real estate is located **outside** of Michigan. The industrial processing exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department. The formula or method used does not have to be pre-approved by the Department, but it must reasonably reflect the percentage of exempt use to total use. For example, the manufacturer/contractor may prorate exempt use based on industrial processing relating to tangible personal property affixed to (and becoming a structural part of) real estate located in another state versus real estate located in Michigan.

Tangible personal property permanently affixed and becoming a structural part of real estate **in this state** is not eligible for the industrial processing exemption. If the manufacturer/contractor sells its products in retail transactions, sales tax on the sales prices of the products must be collected and remitted to the state unless the purchaser has a valid exemption.

Reference pertaining to this information can be found in the index under [Chapter 5](#)

Index of References

Chapter 1 – Types of Contractors:

- 1979 AC, R 205.71, *Contractors*
- MCL 205.92(g)
- 2013 AACS, R 205.8(1)-(2), *Consumer; use; conversion*
- MCL 205.94(1)(z)
- MCL 205.94(1)(a). See LR 2014-1.
- MCL 205.93(1)
- MCL 205.93a(1)(f)(g)
- MCL 205.54a(1)(e)
- MCL 205.94(1)(f)
- MCL 205.94ee
- RAB 2016-24, *Use Tax Base of Tangible Personal Property Affixed to Real Estate By a Manufacturer/Contractor or Other Contractor.*
- RAB 2016-18, *Sales and Use Taxation of the Construction Industry (Excluding Manufacturer/Contractors)*
- RAB 2016-4, *Determination of Property as Tangible Personal Property or Real Property for Purposes of Sales and Use Tax*
- *Brunt Assoc, Inc v Dep't of Treasury (on Reconsideration)*, 318 Mich App 449 (2017)

Chapter 2 – Real vs. Personal Property:

- MCL 205.92(k)
- MCL 205.51a(r)
- MCL 205.54t(5)(a)
- MCL 205.94o(5)(a)
- RAB 2016-4, *Determination of Property as Tangible Personal Property or Real Property for Purposes of Sales and Use Tax*
- RAB 2016-18, *Sales and Use Taxation of the Construction Industry (Excluding Manufacturer/Contractors)*
- *Sequist v Fabiano*, 274 Mich 643 (1936)
- *Granger Land Dev Co v Dep't of Treasury*, 286 Mich App 601 (2009)
- *Brunt Assoc, supra*

Chapter 3 – Statutory Exemptions:

- RAB 2016-18, *Sales and Use Taxation of the Construction Industry (Excluding Manufacturer/Contractor)*
- MCL125.2103(11)

- MCL 205.54w
- MCL 205.94(1)(z)
- MCL 205.98(1)
- MCL 205.94s
- MCL 333.21501-333.21571
- IRC § 501(c)(2) or (3)
- MCL 205.54w(3)(c)
- Part 217 of the Public Health Code
- Part 214 of the Public Health Code
- Part 213 of the Public Health Code
- MCL 205.54w(1) and (2)
- MCL 205.94s(1) and (2)
- Section 15a of Act No. 346 of Public Acts of 1966 (SHDAA)
- MCL 205.54p
- MCL 205.94m
- IRC § 501(c)(3)
- MCL 205.54j
- MCL 205.94h
- Enterprise Zone (EZ) Act
- RAB 1993-10, *Enterprise Zone Act Sales and Use Tax Exemptions and Single Business Tax Credit*
- MCL 205.54a(1)(l)
- MCL 205.94(1)(s)
- Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994
- 1979 AC, R 205.137, *Air and Water Pollution*
- Michigan State Tax Commission Air Pollution Control and Water Pollution Control Reports
- RAB 1990-2, *Sales and Use Taxes-Storage Facilities*
- MCL 205.30c(12)
- State/Tribal Tax Agreements and Amendments
- MCL 205.54d(m)
- MCL 205.94z
- MCL 205.54d(n)
- MCL 205.94dd
- Regional Convention Facility Authority Act, 2008 PA 554
- MCL 141.1355
- MCL 205.54ee
- MCL 205.94cc
- MCL 205.54t(4)(b); MCL 205.94o(4)(b).
- MCL 205.94(1)(a).
- MCL 205.53

Chapter 4 – Manufacturer/Contractors:

- 26 CFR 1.471-11
- MCL 205.93(f), (g)
- MCL 205.93a(5)
- MCL 205.54d(n)
- RAB 2016-24, Use Tax Base of Tangible Personal Property Affixed to Real Estate by a Manufacturer/Contractor or Other Contractor
- *Brunt Assoc, supra*

Chapter 5 – Industrial Processing by Manufacturer/Contractors:

- MCL 205.94o(4)(a) and (7)(a)
- MCL 205.94o(2)
- MCL 205.94o(5)(a)
- RAB 2016-24, Use Tax Base of Tangible Personal Property Affixed to Real Estate by a Manufacturer/Contractor or Other Contractor
- *Brunt Assoc, supra*

Other Related Citations:

- 1979 AC, R 205.71, *Contractors*
- 1979 AC, R 205.80, *Florists & Nurserymen*
- RAB 1988-35, *Carpeting*
- IPD 2004-7, *What is a “County Long-Term Medical Care Facility”*
- IPD 2005-3, *Real Property Contractors Acting as Retailers*
- LR 70-5, *Contractors/Furniture and Equipment*
- LR 74-5, *Contractors/Railroads*
- LR 80-3, *Medical Equipment and Appliances*
- LR 88-13, *Contractor - Subcontractor Relationships*
- LR 88-53, *Security Monitoring System*
- LR 89-63, *Contractor as Retailer*
- LR 89-71, *Construction Contractor*
- LR 90-24, *State Government Contracts*
- LR 2014-1, *Sales and Use Tax Treatment of Subcontractors for Retailers*
- LR 2017-3, *Use Tax and Fabrication of Countertops*