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## **Texas Sales Tax for the Construction Industry**

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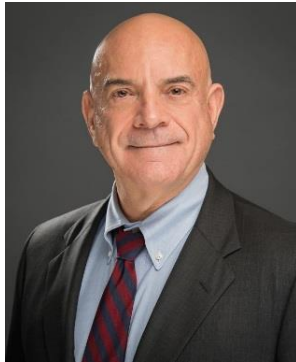
# Texas Sales Tax for the Construction Industry

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2021

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## Instructor



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# Table of Contents

<b>Chapter I. Overview .....</b>	<b>1</b>
Texas Sales & Use Tax.....	1
Texas Emissions Reduction Program (TERP) Surcharge .....	5
Rentals & Leases .....	8
Texas Motor Fuels Tax.....	8
Texas Motor Vehicles Tax .....	12
<b>Chapter II. The Texas Sales &amp; Use Tax Rules .....</b>	<b>18</b>
Introduction .....	18
Essence of the Transaction Doctrine .....	21
Entity Concept .....	22
Credit for Tax Paid to Other States .....	22
Nexus .....	23
Registration, Permit and Reporting Requirements .....	24
Local Sales & Use Taxes .....	26
Record Retention Guidelines.....	29
Direct Pay Permits.....	29
Materials, Supplies & Equipment.....	32
Taxable Services - Generally .....	43
Taxable Services Affecting the Construction Industry .....	50
<b>Chapter III. Sales &amp; Use Tax Exemptions.....</b>	<b>69</b>
Accepting an Exemption Certificate .....	69
Good Faith Acceptance .....	69
Content of an Exemption Certificate .....	70
Resale Exemption.....	71
<b>Chapter IV. Construction Industry Principles .....</b>	<b>74</b>
Personal v. Real Property .....	74
Residential v. Commercial Property.....	75
New Construction.....	76
Contract Pricing.....	81

Reimbursements.....	93
Maintenance.....	103
<b>Chapter V. Site Development.....</b>	<b>105</b>
Acquiring Land.....	105
Permit Fees.....	105
Engineers and Draftsman Services.....	105
Blueprints.....	106
Land Clearing.....	106
Surveying.....	107
Sand, Dirt and Gravel.....	108
Erosion Control.....	110
Roads & Utilities.....	117
“Dedicated and Accepted” Improvements.....	117
Residential and New Commercial Construction.....	118
Real Property Services Exception.....	120
Other Considerations Contractors Using Both Contract Types.....	123
Common Areas.....	127
Problem Areas for Contractors.....	128
<b>Chapter VI. Commercial Property Repairs and Remodeling.....</b>	<b>132</b>
Tax Consequences.....	132
Materials and Supplies.....	133
Repairs v. Maintenance.....	134
Painting.....	135
Mixed Services.....	136
<b>Chapter VII. Tax-Exempt Jobs.....</b>	<b>139</b>
Exempt Purpose of the Entity.....	139
Exempt Entity Proof.....	139
Tax Consequences.....	140
Exempt Entity Examples.....	142

Quasi-Exempt Entities .....144

Water-Related Exemptions .....147

**Chapter VIII – Performing Work in Declared Disaster Areas ..... 151**

    Cleaning, Restoring, and Repairing Tangible Personal Property.....151

    Landscaping.....152

    Demolition .....153

    Removing and Discarding Waste .....153

    Rebuilding Nonresidential Structures.....154

    Rebuilding Residential Structures.....155

    Out-of-State Businesses .....155

## Chapter I. Overview

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### Texas Tax for the Construction Industry

Different types of Texas state taxes apply to the parties and transactions associated with real estate construction. These Texas taxes include the:

- sales & use tax on materials, supplies, equipment, and services.
- TERP surcharge tax on off-road diesel construction equipment;
- motor vehicle tax,
- motor fuels tax, and
- cement production tax.

This course focuses its discussion on the Texas sales & use tax, and briefly discusses the TERP surcharge tax, the motor vehicle and motor fuels taxes as applied to the construction industry.

### Texas Sales & Use Tax

Although many types of taxes apply to the construction industry, the most significant tax is the sales & use tax. The Texas Limited Sales, Excise and Use Tax Act imposes a tax on the sale, lease or rental of tangible personal (touchable, movable) property and on certain specified services.<sup>1</sup> Sales & use taxes are complementary. Together, they are intended to uniformly tax transactions only once, whether in or out of Texas. Sales & use taxes account for 26% of all state revenues, roughly five times the contribution of any other tax.

### Sales Tax

Texas imposes sales tax on retail sales of taxable items in Texas. The state rate is 6.25%, although various local jurisdictions may impose sales and use taxes. The maximum combined tax rate for local taxes may not exceed 2% at any location. Therefore, the maximum possible sales tax rate is 8.25%.

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<sup>1</sup> Chapter 151 of the Texas Tax Code.



*Example*

Alpha Construction is located in San Antonio. It purchases a diesel-powered backhoe from a supplier located in Houston. Alpha must pay sales tax on this purchase. The law treats Alpha Construction as the consumer of the backhoe because its workers will use it to perform services at construction sites.

☞ **Note:** It doesn't matter whether Alpha Construction uses the backhoe to provide taxable or non-taxable services. This transaction is subject to both the sales tax and the TERP surcharge.

**Use Tax**

This tax presumptively applies when items are acquired out-of-state and brought into Texas within one year of purchase for storage, use, or consumption in Texas. Since the sale is made by a non-Texas seller, the seller would not collect Texas sales tax at the time of sale. Moreover, the seller would likely not collect the origin state's sales tax because the item is destined for Texas. This transaction is subject to the Texas *use* tax.

Without the use tax, persons could purchase items from an out-of-state retailer, use the items in Texas, and escape paying any tax. The use tax prevents this abuse and places out-of-state vendors on an even playing field with Texas vendors. The use tax applies to "any taxpayer who purchases tangible personal property from any retailer for storage, use or other consumption in Texas."<sup>2</sup>

*Example*

Alpha Construction purchases the backhoe from a supplier located in Tulsa and has the backhoe delivered to its yard in San Antonio. Alpha Construction owes Texas use tax and the TERP surcharge. If sales tax was legally-owed and paid in Oklahoma, Alpha Construction would be entitled to a tax credit against the Texas use tax for the Oklahoma sales tax paid. If the Oklahoma retailer lacked nexus with Texas or did not otherwise collect Texas sales tax, Alpha Construction must accrue and remit Texas use tax.

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<sup>2</sup> Texas Tax Code § 151.101.

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## Title search: Part 1: Overview; Texas Sales and Use Tax Rules

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