

CONSTRUCTION CONTRACTORS,
OWNER BUILDERS
AND
SPECULATIVE BUILDERS



This publication is for general information about the Transaction Privilege (Sales) Tax on contracting activities. It contains excerpts from the Scottsdale Revised Code, Appendix C and related regulations. In case of inconsistency or omission in this publication, the language of the Tax Code will prevail.



June 2013

YOU MAY OWE CONSTRUCTION CONTRACTING TAX IF:

You are in the construction business in the City of Scottsdale. A contractor is considered to be in business in Scottsdale when the construction job is in Scottsdale. Contractors report the income from each job to the Arizona city **in which the job is located**, not to the city where the contractor is based. (See Sec. 415)

TAX RATE ON CONSTRUCTION CONTRACTING

The Scottsdale tax rate is 1.65% of the taxable income.

WHAT IS CONSTRUCTION CONTRACTING?

Construction contracting includes construction, remodeling, repairs, demolition, etc., to real property. There does not have to be a contract for the work. A construction contractor who provides only labor is subject to the same provisions as one who provides both materials and labor. (See Sec. 100)

Examples of taxable contracting activity include:

- Construction or demolition of a building
- Road construction
- Land excavation and landscaping
- Installation of permanently attached equipment or fixtures to real property
- Sales and installation of floor covering
- Home remodeling
- Repairs to a building
- Construction for a government agency (including work for the City of Scottsdale)
- Construction for a church or nonprofit organization

Examples of items that are not considered construction contracting:

- Landscape maintenance, lawn mowing (exempt service)
- Installation of drapes and miniblinds (retail)
- Plug-in kitchen equipment (retail)
- Tangible personal property included in a construction contract that would otherwise be exempt if purchased by the specified entity (e.g., non-profit qualified healthcare providers).

ARE SUBCONTRACTORS TAXED?

Income from acting as a subcontractor may be exempt from the tax. To qualify for this exemption, the subcontractor must obtain a Declaration, including the City Privilege License number of the owner-builder/speculative builder or construction contractor, stating that they are liable for the tax. The City has an exemption certificate available that you may use to document this exemption. (See Owner-Builder Written Declaration on Page 9 and Subcontractor Written Declaration on Page 10)

Contractors who work for a property owner, not another contractor or speculative builder, will be considered to be a contractor for the job and responsible for the related tax.

ARE OWNER-BUILDERS TAXED?

An Owner-Builder means an owner or lessor of real property who, by himself or by or through others, constructs or has constructed or reconstructs or has reconstructed any improvement to real property.

Owners who are improving real property for themselves may or may not be the party liable for paying the tax on the construction.

A homeowner who is building his own principal residence would not normally be the liable party. Each of the contractors or suppliers who provide materials and/or services would be liable based on their income from the job. However, the owner may be liable for some additional tax if the property is offered for sale or sold prior to occupying the home for at least six (6) months. (See Reg. 416.1)

An Owner-Builder can become a Speculative Builder and subject to tax based on the sales price of the real property (See Sec. 416). A Speculative Builder is defined as (See Sec. 100):

An "Owner-Builder" who sells or contracts to sell, at any time, improved real property consisting of:

- A) custom, model, or inventory homes regardless of the stage of completion of such homes; or
- B) improved residential or commercial lots without a structure, or

An Owner-Builder who sells or contracts to sell improved real property, other than real property specified in (A) and (B) above:

- A) prior to completion or
- B) before the expiration of twenty-four (24) months after the improvements of the real property sold are substantially complete.

The City has an Owner-Builder Declaration to be completed at the time a building permit is issued. This declaration clarifies the owner's intent with respect to Privilege Tax. (See Owner-Builder Declaration on Page 11)

The property owner submits a list of all contractors performing work on the project, prior to final inspection. (See Form C-2 on Page 12)

An owner-builder who sells or contracts to sell a commercial structure before the expiration of twenty-four (24) months, after the improvements are substantially complete, would be liable for tax based on the property's sale price. If the property is not sold within 24 months of the date it was completed, the tax would be due on the 25th month following completion and would be based on the gross income realized by those contractors to whom the owner-builder provided a written declaration that they were not responsible for the tax. (See Sec. 417)

A speculative builder may exclude the sale of partially improved residential real property to another speculative builder by completing a Speculative Builder Resale Certificate. For the Declaration to be valid, both entities must be properly licensed with the City as speculative builders. (See Speculative Builder Resale Certificate on Page 13)

GROSS INCOME

Contractors and Speculative Builders are taxable based on their gross income from the contracting business. Normally this will be either the total amount of the contract or the sales price of the property when it is sold. The income is taxable regardless of whether it includes both labor and materials or just labor.

Sales of improved real property, such as subdivision lots, are taxable as Speculative Builder Sales.

Contractors may report on a progressive billing basis or on a cash receipt basis. Speculative builders report the total selling price at the time of close of escrow or transfer of title, whichever occurs first.

The City does not acknowledge artificially contrived transactions or sales that do not reflect the fair market value of the property transferred. Sales to a "Marketing Arm" would be taxed at the final sales price to the actual consumer or the fair market value of the property transferred; whichever is higher. (See Sec. 210 & 220)

EXEMPTIONS AVAILABLE FOR ITEMS YOU PURCHASE

There is an exemption from the tax on retail sales for materials which a contractor or speculative builder purchases for incorporation into a building or improvement. This exemption does not apply to:

- Furniture, construction equipment or tools sold or leased to a contractor or speculative builder.
- Any other tangible personal property that is not incorporated into the actual improvements.
- Materials purchased directly by an owner-builder, who is not a speculative builder.

DEDUCTIONS, EXCLUSIONS & EXEMPTIONS

The following are examples of deductions, exclusions and exemptions that are subtracted from gross income to arrive at the taxable income:

- Actual direct costs of architectural & engineering fees
- Development fees included in a construction or development contract
- Qualified solar energy device
- Privilege Tax collected
- 35 percent standard deduction
- Exempt subcontracting
- Out-of-City contracting
- Installation, assembly, repair or maintenance of income-producing capital equipment
- Installation, assembly, repair or maintenance of clean rooms

If you have charged your customer Privilege Tax separately, and it is included in gross income, you may deduct it. If charging tax separately, the combined State, County and City tax rate of 7.95% can be computed on the taxable amount.

If you have not separately charged your customer Privilege Tax, you may “factor” your Privilege Tax. This means that the total contract price includes Privilege Tax and you can compute the amount of tax and deduct it. Formulas for factoring tax are included in the back of this pamphlet. These factors change based on any changes to the combined state, county and city tax rate. Make sure you use the factor that corresponds to the tax rate in effect for your transaction. Computer spreadsheet templates are also available on our website.

A standard 35% deduction is allowed for all income taxable as contracting. The 35% standard deduction should be computed after all other deductions, exclusions and exemptions are taken.

The City of Scottsdale does not allow a land deduction.

TAX CREDIT

The following tax credits are available to owner-builders or speculative builders, not to exceed the tax liability against which such credits apply, provided such credits are documented to the satisfaction of the Tax Collector:

(A) A tax credit equal to the amount of City Privilege or Use Tax, or the equivalent excise tax, paid directly to a taxing jurisdiction or as a separately itemized charge paid directly to the vendor with respect to the tangible personal property incorporated into the said structure or improvement to real property undertaken by the owner-builder or speculative builder.

(B) A tax credit equal to the amount of Privilege Taxes paid to this City, or charged separately to the speculative builder, by a construction contractor, on the gross income derived by said person from the construction of any improvement to the real property.

(C) No credits provided herein may be claimed until such time that the gross income against which said credits apply is reported.

Tax credit will not be allowed unless detailed on Schedule B on Page 2 of the Transaction Privilege & Use Tax Return **and** supporting documentation attached.

Tax credit cannot be taken by a construction contractor as an offset to the tax due on construction contracting receipts or draws. It is the responsibility of the construction contractor to acquire materials incorporated into the project tax exempt and to properly exempt subcontractors.

**ACQUISITIONS OF REAL PROPERTY, INCLUDING
FORECLOSURES, ON WHICH TAX HAS NOT BEEN PAID**

Code Section 595(c) provides that:

Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner builder, as provided in Sections 416 and 417.

- (1) Any person who is a creditor or an affiliate of creditor, who acquires improved real property directly or indirectly from the creditor's debtor by any means set forth in this subsection, shall pay the tax based on the amount received by the creditor or its affiliate in a subsequent sale of such improved real property to a party unrelated to the creditor, regardless of when such subsequent sale takes place. Such tax shall be due in the month following the month in which the sale of the improved real property by the creditor or its affiliate occurs. Notwithstanding the foregoing, if the real property meets the definition of partially improved residential real property in Section 416(a)(4) and all of the requirements of Section 416(b)(4) are met by the parties to the subsequent sale transaction, then the tax shall not apply to the subsequent sale.

- (2) In the event a creditor or its affiliate uses the acquired improved real property for any business purpose, other than operating the property in the manner in which it was operated, or was intended to be operated, before the acquisition or in any other manner unrelated to selling the property, the tax shall be due. The gross income upon which the tax shall be determined pursuant to Sections 416 and 417 shall be the fair market value of the improved real property as of the date of acquisition. The tax shall be due in the month following the month in

which such first business use occurs. When applicable, the credit bid shall be deemed to be the fair market value of the property as of the date of acquisition.

- (3) Once the subsequent sale by the creditor or its affiliate has occurred and the creditor or its affiliate has paid the tax due from it pursuant to this subsection, neither the creditor nor its affiliate, nor any future owner, shall be liable for any outstanding tax, penalties or interest that may continue to be due from the debtor based on the transfer from the debtor to the creditor or its affiliate.
- (4) If the tax liability imposed by either Section 416 or Section 417 on the transfer of the improved real property to the creditor or its affiliate, or any part thereof, is paid to the Tax Collector by the debtor subsequent to the payment of the tax by the creditor or its affiliate, the amount so paid may constitute a credit, as equitably determined by the Tax Collector in good faith, against the tax imposed on the creditor or its affiliate by either paragraph 1 or paragraph 2 of this subsection.
- (5) Notwithstanding anything in this Chapter to the contrary, if a creditor or its affiliate is subject to tax as described in paragraph 1 or paragraph 2 of this subsection and such creditor or affiliate has not previously been required to be licensed, such creditor or affiliate shall become licensed no later than the date on which the tax is due.

Section(s) 416 and 417 relate to the tax imposed on the owner-builder of improved real property. Examples would be speculative homes, model homes, commercial buildings and improved lots, where the owner-builder was responsible for the tax imposed under these sections, but did not pay the tax. The party acquiring the property could be responsible for the unpaid tax.



Owner-Builder Written Declaration

I am an owner-builder who declares the following to subcontractors working on the project described below: I am improving the property named below for sale; and I will be liable for the city or town privilege tax for such contracting activity; and I have a valid city or town privilege license number as shown below. This declaration is made in accordance with Model City Tax Code section 415(c)(2).

A separate "Owner-Builder Written Declaration" is needed for each project.

OWNER-BUILDER INFORMATION

- A. Owner Name: _____
- B. Owner Address: _____
(Full address of owner)
- C. Owner Phone: (____) _____
- D. City or Town of _____ Privilege License # _____
(Required)

PROJECT INFORMATION

- E. Job Address: _____
(Full address of job)
- F. Subdivision Name: _____
- G. Lot Number: _____ Book/Map/Parcel: _____ - _____ - _____
- H. Check the Project Type: _____ Residential structure: _____ Lot without structure
_____ Other – describe: _____

SUBCONTRACTOR INFORMATION

- I. Issued to: _____
(Name of subcontractor)
- _____
- (Full address of subcontractor, including phone no.)

I certify that the above information is correct and that I understand that making a false or fraudulent claim to aid or abet another to obtain a city or town privilege tax exemption is a Class One Misdemeanor [pursuant to Model City Tax Code section 580].

Owner-Builder Signature: _____ Print Name: _____
Title: _____
Date: _____



**City of Scottsdale
Subcontractor Written Declaration
Construction Contractor**

To comply with Section 415(c) of the Scottsdale Revised Code this declaration is used to substantiate any agreement between contractors and other contractors as it relates to Privilege Tax. **The intent of this form is to relieve the subcontractor of tax liability if another contractor is claiming responsibility for tax.**

I am a Construction Contractor who is liable for all tax on the project described below. I have included my City of Scottsdale Privilege Tax number in the space provided below. The subcontractor listed below should not be held liable for tax on this project related to work performed under my direction.

Property Address: _____
Subdivision: _____
Lot Number(s): _____
Legal Description: _____ - _____ - _____

Subcontractor Name: _____
Scottsdale Privilege License Number: _____
Contractor: _____
Scottsdale Privilege License Number: _____

I certify that the above information is correct and that I understand that making a false or fraudulent claim to obtain a sales tax deduction is a Class One Misdemeanor under Scottsdale Revised Code Section 580.

Signature of Contractor: _____
Title: _____ Date: _____

THIS FORM IS TO BE KEPT BY SUB-CONTRACTORS IF WORKING FOR GENERAL CONTRACTORS

CITY OF SCOTTSDALE
Permit Services/One Stop Shop
7447 East Indian School Road, Suite #100
Scottsdale, Arizona 85251
(480) 312-2500

Building Permit # _____ Date _____

Owner-Builder Declaration

Owner's Name _____
Owner' Address _____
Owner's Phone _____
Job Address _____
Subdivision _____
Book/Map/Parcel _____ -- _____ -- _____
Lot Number _____
Commercial _____ or Residential _____
Scottsdale Privilege (Sales) Tax Number _____

The following is provided so that I, acting in the capacity of an Owner-Builder may attest my having made an application to improve real property at the above named address. I also make the following declaration at this time regarding my intention as an Owner-Builder as it relates to the City of Scottsdale privilege (sales) tax.

I am an Owner-Builder who declares the following: I am improving the above named property for sale; and I will assume liability for tax on such construction activity; and I have a valid Scottsdale privilege (sales) tax license number. I will provide each contractor with a copy of this declaration.

I am an Owner-Builder who declares the following: At this time, I do not intend on selling the improved real property described above. I understand that each construction contractor who works on the improvements related to the property above will be liable for privilege (sales) tax. I will provide a list (Form C-2) to the City showing all construction contractors, the amounts paid to each contractor, the address of each contractor and the City of Scottsdale privilege (sales) tax number for each contractor. I understand that Form C-2 is to be submitted prior to the completion of the project. I understand that the sale of the improved property may result in additional tax, which will become my responsibility. Any taxes assessed against me may be offset with a credit for any tax amounts previously reported to the City by the listed construction contractors.

Applicant Signature: _____ Date: _____
Print Name: _____

THIS FORM TO BE COMPLETED WHEN APPLYING FOR A PERMIT
Attention One Stop Shop employees:
Original to be forwarded to (Interoffice mail code) OCC 206
Copy to Owner or Owner Agent

FORM C-2 (List of Contractors Working for Owners)

MAIL or FAX COMPLETED FORM TO:

City of Scottsdale, Tax Audit Section
 7447 E. Indian School Road Suite 230
 Scottsdale, AZ 85251
 (480) 312-4017 or FAX (480)-312-4802

Building Permit #	
Owner's Name	
Owner's Address	
Phone	
Job Address	
Book/Map/Parcel	
Lot Number	
Legal Description	

Owner/Builder's List of Contractors					
Contractor	Name	Address	Total Paid	Scottsdale Privilege Tax Number	State Contractor License No.
General Contractor					
Structural (B-2)					
Electrical (C-11)					
Plumbing (C-37)					
Mechanical (C-39)					
Grading/Excavation					
Cement/Concrete					
Sewer Drains					
Framing					
Roofing					
Sheet Metal					
Fireplace					
Insulation					
Lathing					
Plastering					
Glass					
Painting					
Cabinets					
Linoleum					
Flooring Wood					
Carpeting/Tile					
Doors/Garage					
Masonry Blk Walls					
Interior Decor					
Sprinklers					
Landscaping					
Paving					

**OWNER TO COMPLETE AND SUBMIT THIS FORM TO TAX AUDIT SECTION
 5 DAYS PRIOR TO FINAL INSPECTION**

**City of Scottsdale
Speculative Builder Resale Certificate**

In order to comply with the requirements of Section 416(b)(4) of the Scottsdale Revised Code which provides an exclusion for the sale of partially improved residential* real property from one speculative builder to another speculative builder; the seller should have the purchaser complete the following information:

Property Address: _____
Subdivision: _____
Lot Number(s): _____
Legal Description: _____ - _____ - _____

I am a speculative builder who is purchasing the partially improved real property described above and hereby assume liability for and will pay all taxes that would otherwise be due the City at the time of this sale. I further declare that I am licensed with the City of Scottsdale to conduct business as a speculative builder and have included my account number below.

Purchaser's Business Name: _____
Purchaser's Address: _____
Purchaser's City of Scottsdale Privilege Tax Number: _____

Seller's Business Name: _____
Seller's City of Scottsdale Privilege Tax Number: _____

I certify that the above information is correct and that I understand that making a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under Scottsdale Revised Code Section 580.

Purchaser _____

Title _____ Date _____

**THE SELLER SHOULD RETAIN THIS COPY AND SUBMIT A COPY OF
THIS DECLARATION WITH THE TAX RETURN WHERE THIS
DEDUCTION IS CLAIMED**

* The speculative builder resale provisions apply only to residential real property.
If the transaction involves commercial property this provision does not apply.

Factoring Privilege Tax for Contracting Activity

Contracting computations differ based on taxable scenarios as shown in Examples 1, 2 and 3 on the following pages. The examples are for illustrative purposes and are not exhaustive.

The following narrative explains Example 1. Factors are derived from the combined state, county and city tax rate of 7.95%. Two factors are required, one for state and county which allow a land deduction; and the other for Scottsdale which does not allow a land deduction.

To determine the combined tax due for all Scottsdale & Arizona Department of Revenue:

- 1) Multiply the gross receipts by the rate .04913590
- 2) Multiply the land value by the rate .03893788
- 3) Subtract the result of step 2 from step 1.

The result obtained from step 3 represents the combined tax due for the city, county and state, and provides the deduction for factored Privilege Tax (Deduction Code E). The following steps are needed to properly complete the tax return.

- 4) Subtract the amount derived from step 3 from the gross receipts.
- 5) Multiply the result in step 4 by .35. The result is the 35% standard deduction for the City. (Deduction Code N)
- 6) To compute taxable income, subtract the amounts derived from step 3 and step 5 from the gross receipts.
- 7) Multiply the result of step 6 by .0165 to determine the amount of Scottsdale City tax due.

Note: For improved lot sales replace steps 1 through 3 with "Multiply the gross receipts by the rate .01061119." This will provide the amount of City tax due. Since improved lot sales are only taxed by the City, the state and county taxes do not factor into the calculations.

An Excel spreadsheet is available on our website that performs the factoring calculations for Examples 2 and 3.

Ex. 1 - Speculative Sale Subject to Both City & State Tax

Gross Selling Price (Gross Receipts)		100,000
Land Value		30,000
Step 1	100,000 x .04913590 =	4,913.59
Step 2	30,000 x .03893788 =	1,168.14
Step 3	4,913.59 - 1,168.14 = (Deduction Code E)	3,745.45
Step 4	100,000 - 3,745.45 =	96,254.55
Step 5	96,254.55 x .35 = (Deduction Code N) 35%	33,689.09
Step 6	100,000 - 3,745.45 - 33,689.09 =	62,565.46
Step 7	62,565.46 x .0165 =	1,032.33

On your Tax Returns:

	<u>City</u>	<u>State</u>
Gross Receipts	100,000.00	100,000.00
Deductions:		
Land	N/A	30,000.00
City/State Tax (E)	3,745.45	3,745.45
35% Standard (N)	<u>33,689.09</u>	<u>23,189.09*</u>
Total Deductions	37,434.54	56,934.54
Net Taxable (Gross - Deductions)	62,565.46	43,065.46
Tax Rate	<u>.0165</u>	<u>.063</u>
Tax (Net Taxable x Tax Rate)	1,032.33	+ 2,713.12 = 3,745.45
		Total Tax

* When calculating the State tax, the 35% standard deduction is computed after subtracting the land value and the factored tax
 $100,000 - 30,000 - 3,745.45 = 66,254.55 \times .35 = 23,189.09$

Ex. 2 - Speculative Sale Subject to City Tax only, with Deduction for State Tax on Construction Costs

Gross Selling Price	1,000,000.00
State Tax Paid on Construction	20,000.00

Step 1		
(Gross Selling Price - State Tax Paid)	$1,000,000.00 - 20,000.00 =$	980,000.00
Step 2		
(Step 1 * 65%)	$980,000.00 * 0.65 =$	637,000.00
Step 3		
(Step 2 * .0165)	$637,000.00 * 0.0165 =$	10,510.50
Step 4		
(Step 3 / 1.010725) = City Factored Tax	$10,510.50 / 1.010725 =$	10,398.97

On Your Tax Return:

Gross Receipts		1,000,000.00
Deductions:		
City/State Tax (E)		
(State Tax Paid + City Factored Tax)	$20,000.00 + 10,398.97 =$	30,398.97
35% Standard (N)		
[(Gross Receipts - City/State Tax) * 35%]	$(1,000,000 - 30,398.97) * 0.35 =$	339,360.36
Total Deductions		369,759.33
Net Taxable		
(Gross Receipts - Total Deductions)	$1,000,000.00 - 369,759.33 =$	630,240.67
Tax Rate		0.0165
Tax		
(Net Taxable * Tax Rate)	$630,240.67 * 0.0165 =$	10,398.97
		Total City Tax

Ex. 3 - Construction Contracting Subject to Both City and State Tax

Scottsdale Gross Receipts (Gross)	\$100,000.00				
Multiply by Factor (Factor)	<u>0.04913590</u>	<table border="1"> <tr> <td>0.03461145 - State</td> </tr> <tr> <td>0.00432643 - County</td> </tr> <tr> <td>0.01019802 - City</td> </tr> </table>	0.03461145 - State	0.00432643 - County	0.01019802 - City
0.03461145 - State					
0.00432643 - County					
0.01019802 - City					
Total Tax (Gross x Factor)	4,913.59				
Net Receipts (Gross - Total Tax)	95,086.41				

Proof:

Net Receipts (Net)	95,086.41	
	<u>x 0.35</u>	
35% Deduction (Net x 35 %)	33,280.24	Total Deductions \$38,193.83
Taxable Income (Net - 35 %)	61,806.17	
City Tax @ 1.65%		1,019.80
State Tax @ 6.30%		<u>3,893.79</u>
Total Tax @ 7.95%		4,913.59

CITY OF SCOTTSDALE

CUSTOMER SERVICE DIVISION
Office Location and Mailing Address

7447 E. Indian School Road, Suite 110
Scottsdale, Arizona 85251

CUSTOMER SERVICE INFORMATION

Tax & License
General Information
(480) 312-2400

CITY OF SCOTTSDALE ONE-STOP-SHOP

(480) 312-2500

CITY OF SCOTTSDALE INSPECTION SERVICES DIVISION

(480) 312-5750

DELINQUENCY INFORMATION

(480) 312-2705

A copy of the complete Transaction Privilege Tax ordinance is available
on-line at www.ScottsdaleAZ.gov/taxes.asp