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## Landscapers

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### Introduction

Landscapers are considered contractors for sales tax purposes. Whether or not a landscaper collects sales tax from a customer depends on whether the work being performed is a capital improvement to real property, or is repair, maintenance, or installation work. This bulletin explains:

- what type of landscaping work is a capital improvement to real property;
- what type of landscaping work is a taxable repair, maintenance, or installation service;
- the taxability of a landscaper's purchases;
- how to bill customers; and
- special rules for greenhouses and nurseries.

See also [Publication 862](#), *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, which lists many different types of projects and explains whether the work performed is a tax-exempt capital improvement or a taxable repair, maintenance, or installation service.

### Capital improvements

When landscaping work qualifies as a capital improvement, the customer should not be charged sales tax. See Tax Bulletin [Capital Improvements \(TB-ST-104\)](#).

A *capital improvement* is any addition or alteration to real property that meets **all three** of the following conditions:

- It substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property.
- It becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself.
- It is intended to become a permanent installation.

Examples of capital improvement projects include:

- planting or installing a new lawn
- installing retaining walls
- planting shrubs and trees
- installing permanent ponds and water features
- planting perennials

The removal of shrubs and trees qualifies as a capital improvement only when done in conjunction with another capital improvement project.

**Example:** *A homeowner hires a contractor to build an addition to her home. Before construction can begin, a tree adjacent to the current structure must be removed. The contractor does not need to charge sales tax on this service because the work is done in conjunction with a capital improvement project.*

**Example:** A property owner hires a landscaper to remove a tree from his yard. The landscaper cuts the tree, grinds the stump, and plants a lilac bush in its place. This project qualifies as a capital improvement because the end result is the planting of a new shrub.

The removal of shrubs and trees to improve the landscape without replacement or not otherwise part of a capital improvement project is considered maintenance of real property and is a taxable service.

**Purchases**

Materials and other tangible personal property purchased for use in landscaping are taxable, whether purchased by a landscaper, subcontractor, or the customer. The sales tax paid by landscapers becomes an expense that can be passed through to the customer as part of the overall charge for the capital improvement.

Landscapers do not normally sell materials to customers without installation and, therefore, cannot use [Form ST-120, Resale Certificate](#), to make purchases exempt from tax.

However, in certain circumstances, landscapers can use [Form ST-120.1, Contractor Exempt Purchase Certificate](#), to make purchases exempt from sales tax. See *Tax-exempt customers*, below.

Materials purchased in one taxing jurisdiction in New York may be subject to a different tax rate (higher or lower) if the materials are later used in a capital improvement project in a different jurisdiction in New York. See Tax Bulletin [Contractors - Sales Tax Credits \(TB-ST-130\)](#).

**Billing**

When performing capital improvement work, a landscaper should get a properly completed [Form ST-124, Certificate of Capital Improvement](#), from the customer (including a customer that is an exempt organization) and should not collect sales tax from the customer for the project. Receiving [Form ST-124](#) relieves the landscaper from liability for any tax due on the work. This exemption certificate should be kept in the landscaper’s records to show why no sales tax was collected on the work. However, if no capital improvement certificate is received, the contract or other records of the project can still be used to establish that the work done constituted a capital improvement.

When calculating how much to charge a customer, a landscaper may include the sales tax paid on building materials just like any other project expense.

**Example:** A customer hires a landscaper to build a retaining wall along the edge of his driveway. The landscaper purchases stone and mortar at a cost of \$700 and pays 8% sales tax. When the landscaper issues a bill to the customer, it may look something like this:

Materials:	\$830.00
Labor:	<u>700.00</u>
Total:	\$1,530.00

**Subcontractors**

If a landscaper hires a subcontractor on a capital improvement project, the general contractor should give the subcontractor a copy of the capital improvement certificate issued by the customer so that the subcontractor’s charges will be exempt from sales tax.

## Repair, maintenance, or installation services

*Maintaining, servicing, and repairing* real property are services that are subject to sales tax. These services cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness, or safety, or restoring it to such condition. See Tax Bulletin [Contractors - Repair, Maintenance, and Installation Services to Real Property \(TB-ST-129\)](#).

Examples of repair and maintenance services include:

- mowing lawns
- painting or repairing an existing fence
- snow removal
- reseeding bare spots on a lawn
- repairing or opening/closing sprinkler systems
- trimming hedges
- trimming trees

The service of *installing* tangible personal property that does **not** qualify as a capital improvement, as described above, is also taxable. Examples include:

- installing freestanding water fountains
- planting annuals
- replacing flagstones or bricks
- replacing small sections of sod

All repair, maintenance, and installation services are taxable unless the customer gives the landscaper a properly completed exemption document. See *Tax-exempt customers* below.

Landscapers must be registered for New York State sales tax purposes and have a valid *Certificate of Authority* to perform any services that are considered repair, maintenance, or installation services. See Tax Bulletin [How to Register for New York State Sales Tax \(TB-ST-360\)](#).

## Purchases

All materials and other tangible personal property purchased for use in landscaping are taxable, whether purchased by a landscaper, subcontractor, or the customer, unless the customer is entitled to an exemption. See *Tax-exempt customers*, below.

## Billing

For repair, maintenance, or installation work, a landscaper must charge tax to the customer on **both** materials and labor for the job, including any expenses or other markups. The landscaper is eligible to take a credit for the sales tax originally paid on any materials transferred to the customer.

**Example:** *A landscaper is hired to replace broken flagstones in a sidewalk. The landscaper purchases flagstones and gravel for \$125.00 and pays 8% sales tax. When the landscaper bills the customer, the entire charge is subject to sales tax and the bill may look like this:*

<i>Materials:</i>	<i>\$155.00</i>
<i>Labor:</i>	<i><u>150.00</u></i>
<i>Subtotal:</i>	<i>\$305.00</i>
<i>Sales tax @ 8%:</i>	<i><u>24.40</u></i>
<i>Total:</i>	<i>\$329.40</i>

*When the landscaper files his next sales tax return and sends in the \$24.40 in sales tax collected from the customer, the landscaper is eligible to take a credit for the \$10 in sales tax paid on the original purchase of the materials that are transferred to the customer as part of the project.*

For more information, see Tax Bulletin [Contractors - Sales Tax Credits \(TB-ST-130\)](#).

### Subcontractors

If a landscaper hires a subcontractor to perform taxable work as part of a project, the landscaper can use [Form ST-120.1](#) to purchase the subcontractor's services for resale. The landscaper will collect sales tax on its total charge to the customer. Purchases of services for resale can occur between landscapers and subcontractors or between two subcontractors.

### Tax-exempt customers

If your customer is eligible for an exemption from sales tax, you do not need to charge them sales tax as long as you receive a properly completed exemption certificate or other appropriate documentation. Examples of exempt organizations include:

- churches
- private schools
- charitable organizations
- governmental entities

In certain cases, you may be able to purchase materials or other tangible personal property exempt from sales tax using [Form ST-120.1](#). You must be registered for New York State sales tax purposes and have a valid *Certificate of Authority* to use Form ST-120.1. See Tax Bulletins [How to Register for New York State Sales Tax \(TB-ST-360\)](#) and [Exemption Certificates for Sales Tax \(TB-ST-240\)](#).

**Note:** For capital improvement projects, tax-exempt customers should still provide you with [Form ST-124](#), *Certificate of Capital Improvement*, in addition to the exemption certificate for their organization. Copies of both exemption certificates should be given to any subcontractors working on the project.

### Greenhouses and nurseries

Greenhouse and nursery operators that grow the plants they sell are considered farmers for sales tax purposes. For additional information on farming, see Tax Bulletin [Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#).

When greenhouse and nursery operators install their products, they are considered landscapers. As landscapers, any charges for installation work will be either tax-exempt capital improvements or taxable repair, maintenance, or installation services, and the other information contained in this bulletin applies to their work.

For capital improvement projects, the landscaper must:

- pay use tax to the Tax Department on any product removed from inventory for installation as part of the capital improvement.

The amount of tax owed is based on the normal retail price charged for the product by the landscaper, at the rate in effect where the product is installed. See Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

For repair, maintenance, and installation projects, the landscaper:

- must charge sales tax to the customer on both materials and labor, including any expenses or other markups: and
- is eligible to take a credit for sales tax originally paid on materials transferred to the customer.

**Note:** A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Tax Law:** Sections 1101(b)(4) and (9); 1105(c)(3); 1105(c)(5)

**Regulations:** Sections 541.1, 541.5, and 541.12

**Publications:** [Publication 862](#), *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*

**Bulletins:**

[Capital Improvements \(TB-ST-104\)](#)

[Contractors - Repair, Maintenance, and Installation Services to Real Property \(TB-ST-129\)](#)

[Contractors - Sales Tax Credits \(TB-ST-130\)](#)

[Exemptions for Farmers and Commercial Horse Boarding Operators \(TB-ST-244\)](#)

[Use Tax for Businesses \(TB-ST-910\)](#)