

SALES TAX TRAP  
FOR BUILDERS

SAN ANTONIO CITY COUNCIL  
RACES ARE SHAPING UP

CHOOSE A PATH OF  
PARTICIPATION

# Building Savvy

San Antonio | April 2017



**JIM BOLES**

*Setting New Standards  
of Excellence*

A Homebuilding Industry Publication



PHOTO BY JASON ROBERTS

[savvy finance]



# SALES TAX TRAP FOR BUILDERS

**Figuring out which goods and services are taxable can be an uphill battle for a building contractor. Even the experts have a hard time getting it right.**



By Steven Bankler, CPA

As you start a project, you're faced with a critical tax question: Will I need to pay sales and use taxes on this work? The taxability for a building contractor on each project is based on three main factors:

1. Is it a residential or commercial property?
2. Is it new construction or a repair/remodel?
3. Will you use separated billing or lump sum billing?

One area that is particularly tricky to master is when it comes to a residential repair or remodel. The

Texas Comptroller of Public Accounts considers the labor for these projects non-taxable, but not the materials used for the project. Furthermore, the Texas definition of what is considered residential includes only houses, apartments, condominiums, nursing homes, and retirement homes. Hotels, motels, hospitals, rehabilitation centers, prisons, and RV parks do not qualify.

Then comes new construction versus repair/remodel. Some "real property" services are not taxed in Texas if they fall under a contract to build a new residential structure or to improve residential property next to a new residential

structure. Examples include new rooms, sidewalks, swimming pools, gazebos, garages, fences, sprinkler systems, decks, retaining walls, driveways, fish ponds, and patios. Services that can be included in this "tax-free zone" are certain types of landscaping, lawn and yard maintenance, garbage removal, cleaning services, structural pest control, and even land surveying.

Now it's time to consider billing. Under a lump-sum contract, the tax burden falls on the homeowner. The contractor pays taxes on all supplies, materials, equipment and taxable services when they are

purchased. That's because the Texas Comptroller considers a building contractor the ultimate consumer under a lump-sum contract whereas, in a separated contract, the building contractor is a reseller.

Homebuilders and contractors can issue a separated contract (one in which materials and labor are charged separately) when some or all of the taxes can be passed on to the homeowner. To do this, resale certificates can be given to suppliers which will not charge the contractor for sales taxes. The contractor will be responsible for invoicing and collecting these taxes by separately billing the homeowner for materials and services. Restrictions exist, however, for exceptions like model homes being used as sales offices and common areas like communal pools, so be sure to

**Now it's time to consider billing. Under a lump-sum contract, the tax burden falls on the contractor, not the homeowner, and networks. The contractor pays taxes on all supplies, materials, equipment and taxable services when they are purchased.**

consider all areas in your projects that might need special tax treatment.

It's certainly not an easy minefield to navigate. Each homeowner may require different tax considerations and those considerations may vary from state to state (those outlined above are exclusively for building contractors in Texas). Furthermore, some contractors are left holding the tax bill only because they didn't ask the right questions or didn't request proper documentation. Misunderstanding the rules could even affect your project bids. There's no time like the present to get it right, before you pay more than your fair share or worse: the Texas Comptroller sends an auditor to your door. ▼

*Steven Bankler has more than 40 years of experience in the accounting industry. Steven's expertise lies in consulting, planning, tax, and asset protection as well as exit strategy services for closely held businesses. He also provides litigation support (both as a testifying expert witness and a consulting expert), business negotiations and estate planning. For past Building Savvy tax tips and to learn more about Steven Bankler, CPA, Ltd., visit [www.bankler.com](http://www.bankler.com).*

## Radiant Barrier...it's not just for attics anymore!

First Ever Moisture & Radiant Barrier in **ONE WRAP!**



**40% DOWN  
60% FINANCED  
OVER 12 MONTHS AT 0%  
INTEREST WITH NO CREDIT  
CHECK!!**

**IT'S A COMPLETELY  
GAME CHANGING PROMOTION**

**Texas Radiant barrier in  
TWO ALL NEW APPLICATIONS!**

**Tell your builder *NO* to anything else!**



**Call Today For An Appointment!**

**Builders, using TRB as your house wrap over other standard barriers will actually put more money in your pocket**

*Save Energy and Improve  
Your Indoor Comfort*

**210-844-9599 | 833-DIE-HEAT (833-343-4328)**