



# Guideline

## Sales Tax Contractors

*Cory Fong*  
*Tax Commissioner*

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### Contractors are Final Users

A contractor or subcontractor entering into any contract including a service contract, is regarded as the ultimate user or consumer of all materials or supplies incorporated as improvements to real property by erection of buildings or by any other alteration, improvement or repair to real property. Sales to contractors are to a final user and are subject to sales tax.

### Contracts to Install Material Owned by Someone Else

Contractors who install personal property into real estate *always* are subject to sales or use tax on the cost of such property, regardless who owns it. It is the responsibility of the contractor to pay tax on all materials installed into real estate unless the person who owns the materials has already paid a sales or use tax on them.

On contracts with government agencies, hospitals, schools or other tax-exempt institutions, the contractor must pay sales or use tax on the purchase price of all materials installed, even if the exempt institution purchases the materials.

### Contractor's Certificate

A contractor is subject to sales or use tax on the supplies, materials and equipment purchased to complete construction contracts. However, a contractor is allowed to make purchases of supplies and materials without payment of sales tax to the seller as long as the contractor executes a *Contractor's Certificate*. The *Contractor's Certificate* certifies that the contractor will be directly responsible for the sales tax on the materials being purchased by reporting the purchase as *items subject to use tax* on the sales and use tax return. A contractor must have a North Dakota sales and use tax permit to execute a *Contractor's Certificate*.

### Contractors Engaged in Retail Trade

If a contractor or subcontractor also is engaged in retail trade and part or all of the machinery, equipment, material or supplies used in carrying out contracts is taken from stock which was purchased for resale, the contractor or subcontractor must pay use tax on the purchase price of the machinery, equipment, materials or supplies used. If a contractor or subcontractor assembles, fabricates or manufactures part of the articles used or consumed in carrying out a contract, sales tax is due on the cost of any materials, items or supplies incorporated into the articles or used in the assembling, fabricating or manufacturing of such articles. This retail sales activity requires the purchase of materials and supplies on the theory of resale. In other words, the contractors should provide their suppliers with a signed *Certificate of Resale* for their purchases thereby exempting their purchases from sales tax. A *Certificate of Resale* accepted by a supplier relieves the supplier of the responsibility of collecting sales tax from the buyer.

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## Contracts with Government

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, Counties, Cities, Villages, School Districts, Park Boards or any other municipal corporations in North Dakota is **not exempt** from payment of sales or use tax on material and supplies used or consumed in carrying out such contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties.

## Sales or Use Tax Paid to Another State

When an article of tangible personal property, except a motor vehicle, has been subjected to sales or use tax by another state or political subdivision (in an amount equal to or greater than the amount imposed by North Dakota use tax law), no further tax is due to the state of North Dakota provided the other state or political subdivision allows a similar tax credit with respect to the retail sales and use tax imposed by this state. This includes contractors' machinery and equipment purchased and used outside this state and later brought into North Dakota for use in this state.

If the amount of tax paid to another state or political subdivision is less than the amount of tax imposed by North Dakota use tax law, the tax due to North Dakota is the difference between the tax paid to the other state or political subdivision and the tax due under North Dakota law. Persons claiming exemption from the payment of North Dakota use tax on the grounds that they have paid tax to another state or political subdivision must prove to the satisfaction of the Commissioner that such tax has been paid.

## Purchases Made in Other States

When contractors purchase tools, machinery, equipment, or materials and supplies outside of North Dakota for use in North Dakota, and not for resale or processing, they are required to file a sales and use tax return and pay use tax on such purchases. If the supplier of the goods holds a North Dakota sales and use tax permit, use tax should be paid to the supplier.

## Material Purchased in North Dakota for Installation Out of State

Contractors making purchases of material in North Dakota for installation into real estate located outside of North Dakota are required to pay sales tax to North Dakota. Tax should be paid directly to the seller, however, if the contractor signs a *Contractor's Certificate* for the seller and pays no tax at the time of the sale, the contractor is responsible for payment of tax directly to the Office of State Tax Commissioner.

An exception is made when a contractor buys material in North Dakota for installation into real property in Montana. The contractor is not responsible for payment of North Dakota sales or use tax on materials purchased here for installation in Montana.

## Contractor's Procedures in Billing Customers

As the ultimate user or consumer of all materials, supplies and equipment incorporated as improvements to real property, a contractor or subcontractor is regarded as the final user and responsible for the payment of sales or use tax on all purchases of materials, supplies and equipment. The sales or use tax paid by the contractor or subcontractor on such materials can be passed on to your customer as part of the materials cost, but **cannot** be itemized as a *sales tax* charge on the customer's invoice.

## **Installation Contracts on an Indian Reservation**

Generally, the purchase of materials by a contractor for use in the completion of an installation contract on a reservation is subject to North Dakota sales and use tax. The payment of any reservation taxes does not exempt the materials from the state sales or use taxes. In these cases, both taxes are due. An exception involves construction projects which are authorized and funded under Federal Public Law and completed for an Indian tribe. For these projects the Office of State Tax Commissioner will issue a letter to the tribal government or the contractor to document the exempt job.

## **Manufacturing and Agricultural Product Processing Equipment**

The North Dakota sales tax law provides for a sales tax exemption on machinery and equipment purchased by new or expanding manufacturers. In addition, agricultural commodity processors also may qualify for a sales tax exemption on building materials used to construct an agricultural commodity processing facility.

Exempt purchases may be made only by manufacturers and agricultural commodity processors. Contractors purchasing and installing manufacturing or agricultural processing machinery and equipment must pay North Dakota sales or use tax on the goods. The manufacturer or agricultural commodity processor may then apply for a refund of the tax paid by the contractor. The contractor may not apply for this refund.

## **Sand, Rock, Dirt or Scoria**

The sale of sand, rock, dirt or scoria is regarded as an installation into real property if the sales contract requires the contractor to move or place the product after it has been dumped. Charges, in this situation, are not taxable to the customer but the contractor or subcontractor has the responsibility to pay sales or use tax on the cost of these materials.

If the sand, rock, dirt or scoria is simply dumped in a pile, or if the contractor or subcontractor is not required to level the materials after they have been dumped, the sale is regarded as a retail sale subject to sales tax. The total charge to the customer for the materials, including delivery charges, is subject to sales tax.

Sales to truckers, haulers or other businesses who resell the materials are not taxable provided the seller obtains a completed certificate of resale form.

## **Local Sales and Use Tax**

Contractors and subcontractors that use tangible personal property in the performance of contracts also are subject to city sales and use taxes. Most of the cities that impose sales taxes also impose use taxes; however, the following two cities impose only a sales tax (no use tax): Cando and Scranton.

Most local jurisdiction sales, use, and gross receipts tax ordinances have a provision relating to the maximum local tax that applies to each transaction. It is important to note that the maximum tax (refund cap) is calculated on each material purchase a contractor makes to fulfill a construction contract, not on purchase orders or the entire construction contract itself. Accordingly, most construction activity which is subject to local sales or use tax will include more than the specified refund cap in total local tax costs. While retailers are required to collect the full amount of sales tax for retail sales (customer may apply for a refund of local tax collected in excess of the refund cap), when use tax is accrued, it should be accrued up to the cap amount only.

***Cities With Sales Tax Only***

Contractors that purchase materials from vendors located within the city limits of Cando or Scranton are subject to city sales tax when the contractor takes possession of the goods within the city limits. If a contractor purchases materials from a vendor located outside of these two cities but takes delivery of the materials within the city, no city tax applies. This is because a corresponding use tax ordinance was not passed in conjunction with the city sales tax. Therefore, material purchased outside the city and brought into the city for use is not subject to city sales tax because no sales actually takes place within the corporate city limits. Goods purchased from retailers within Cando or Scranton but delivered outside the city limits by the seller or the seller's agent also are exempt from city tax.

***Cities With Sales and Use Tax***

City use tax may be paid directly to the seller of the material or may be accrued by the contractor for payment to the Office of State Tax Commissioner. As is the case under state law, a contractor or subcontractor is subject to use tax regardless who owns the goods unless city sales or use tax has already been paid on the goods.

Materials purchased inside the city limits for use inside the city are subject to city tax. Materials purchased from a retailer located in the city but delivered outside the city limits for use outside the city are not subject to city tax.

Materials purchased outside the city but used inside the city limits are subject to city use tax. City contractors and subcontractors are not subject to city tax when the goods are purchased outside the city limits and installed outside the city limits.

***Limited Exemption***

Normally, materials purchased and delivered within a jurisdiction are subject to that jurisdiction's local sales tax regardless of where the contractor installs the materials. However, some jurisdictions provide for a limited exemption for materials that are purchased within the jurisdiction but later installed outside the jurisdiction where the sale took place. Please see the *Local Option Taxes By Location* guideline for a listing of the local jurisdictions that provide for the limited exemption for contractors.

To qualify for the limited exemption, a contractor must provide the supplier with a Contractor's Certificate at the time of purchase and ask to be exempt from both state and local sales taxes. When the goods are used, the contractor must pay state use tax on the cost of the goods. The local use tax is due to the city or county where the goods are installed only if the goods are installed within a city or county that imposes a local use tax.

A Contractor's Certificate may also be used in all other taxing jurisdictions that impose local sales, use and gross receipts taxes but that do not allow for the limited exemption. When the materials are used, use tax is due to the local jurisdiction where the materials were purchased regardless of where the materials were installed. If the Contractor's Certificate is not provided, city, county and state sales tax are due at the time of purchase.

Construction materials are not subject to local tax if the goods were purchased from a retailer located in a taxing jurisdiction, but delivered by the retailer outside the taxing jurisdiction for use outside of that taxing jurisdiction.

**Contractor's Income Tax and Sales Tax Clearance**

A contractor must have a Statement of Income Tax and Sales Tax Clearance to be eligible to enter into a public contract with any state governmental institution or political subdivision of the state.

To receive a statement of tax clearance, contact the Sales Tax Compliance Section for an application. The application also is available on our web site. To access the application from our home page, click on *Misc. Forms/Pubs*, then on *Contractor's Request For Clearance*. Upon receipt of this completed application, a search of the records in the Office of State Tax Commissioner is made to insure that the contractor has paid all income, sales and use taxes. Provided no delinquent taxes exist, a Statement of Income Tax and Sales Tax Clearance will be issued to the contractor.