

Notice to Construction Industry: Obligation of Subcontractor to Collect Sales Tax for Taxable Capital Improvements in the Performance of Multi-Trade Construction Contracts

N.J.A.C. 18:24-5.6(b)(2)
Effective December 1, 2008

As of October 1, 2006, certain landscaping services, the installation of carpeting and other flooring, and the installation of security, burglar and fire alarm systems became taxable capital improvement services. See <http://www.state.nj.us/treasury/taxation/salestaxbase.shtml> for more information. Prior to October 1, 2006, these services were exempt capital improvements, so sales tax collection was not an issue.

Although the Sales and Use Tax Act requires that sales tax be separately stated on bills and invoices (N.J.S.A. 54:32B-14(d)), the Division met with representatives of the construction industry who provided information concerning the difficulty of applying the October 1, 2006 law change in the context of multi-trade construction contracts entered into between prime contractors and property owners. A multi-trade contract is one where a general contractor engages multiple subcontractors to perform various trades in relation to a construction project. The requirement that sales tax be separately stated to property owners for the taxable capital improvement services was difficult for the industry to comply with in the context of an overall construction contract.

Pursuant to the Director's authority in N.J.S.A. 54:32B-14(d), the Division permitted a prime contractor in a multi-trade construction contract to include the 7% New Jersey sales tax imposed on taxable capital improvements in the amount billed to the property owner, and waived the requirement that the tax be separately stated on any bills or invoices to the property owner. This was an interim policy developed by the Director to ease the burden on the construction industry in complying with the October 1, 2006 law change until a regulatory change could be developed.

For more information on the interim policy see:

http://www.state.nj.us/treasury/taxation/pdf/regs/notice_construction.pdf.

Obligation to Collect Sales Tax

On and after December 1, 2008, the New Jersey Administrative Code states:

“Charges for landscaping, floor covering installation, and alarm system installation charges that result in capital improvements are taxable to the party who contracts with the contractor performing the service, which may be the property owner or the prime contractor.” N.J.A.C. 18:24-5.6(b)(2).

Thus, any contractor or subcontractor performing a taxable capital improvement is required to separately state and collect the sales tax from the person that they are performing the service for, regardless of whether such person is another contractor as in a multi-trade contract as described above, or the property owner. Note that on and after

December 1, 2008, if the subcontractor does not collect tax from the prime contractor for the otherwise taxable service, the prime contractor is responsible for paying use tax directly to the State of New Jersey.

Example:

XYZ Real Estate Developer is constructing a home to sell to the public. XYZ Real Estate Developer hires PC Prime Contractor. PC Prime Contractor hires ABC Landscaper as a subcontractor to perform taxable landscaping services. In the transaction between ABC Landscaper and PC Prime Contractor, ABC Landscaper must collect sales tax from PC Prime Contractor and remit it to the State. The amount charged by PC Prime Contractor to XYZ Real Estate Developer is not taxable.

Example:

XYZ Real Estate Developer is constructing a home to sell to the public. XYZ Real Estate Developer hires PC Prime Contractor. PC Prime Contractor hires Subcontractor 1 as a subcontractor. Subcontractor 1 hires Subcontractor 2 to perform taxable floor covering services. In the transaction between Subcontractor 1 and Subcontractor 2, Subcontractor 2 must collect sales tax from Subcontractor 1 and remit it to the State. The amount charged by Subcontractor 1 to Prime Contractor is not taxable. The amount charged by Prime Contractor to XYZ Real Estate Developer is not taxable.

Since the subcontractor is the party responsible for collecting the sales tax in multi-trade construction contracts, the subcontractor must be registered to collect and remit New Jersey sales tax. If a subcontractor is not currently registered for New Jersey sales and use tax, the subcontractor may register on-line at the Division of Revenue's website found at: <http://www.state.nj.us/treasury/revenue/index.html>. For more information on registering or to request a paper application, you may contact the Division of Revenue at (609) 292-9292.

NOTE: Any contractor or subcontractor performing work in New Jersey is also required to be registered for any other applicable business taxes.

Purchase of Construction Materials

Subcontractors which provide landscaping services, flooring installation services, and alarm or security system installation services are still considered contractors under the law. Thus, the subcontractor is responsible for paying sales or use tax on the materials that are installed onto real property. The law has not changed in this regard.

As of December 1, 2008 the New Jersey administrative code states:

“Landscaping services, flooring installation services, and alarm or security system installation services performed by a subcontractor are subject to sales tax upon purchase by a prime contractor. A separately stated charge for the actual cost of materials upon which the subcontractor has paid New Jersey sales or use tax may be excluded from the taxable receipt, provided, however, that any person acting as subcontractor who is also acting as a fabricator/contractor or as a floor covering dealer/installer must impose and

collect sales tax on the charge for materials stated to the prime contractor as required under N.J.A.C. 18:24-5.10 and 22.2.” N.J.A.C. 18:24-5.12(b).

When billing the prime contractor in a multi-trade construction contract, the bill or invoice from the subcontractor to the prime contractor should separately state the amounts for the taxable installation charge and the actual cost of the materials. Tax is to be collected by the subcontractor on the taxable installation charge and tax is not due on the actual cost of the materials (the subcontractor already paid tax on the materials). If the subcontractor chooses to lump sum the amount for the taxable installation service and the non-taxable materials as one amount, tax will be due from the prime contractor on the entire amount.

Example:

XYZ Real Estate Developer is constructing a home to sell to the public. XYZ Real Estate Developer hires PC Prime Contractor. PC Prime Contractor hires ABC Landscaper as a subcontractor to perform taxable landscaping services. ABC Landscaper pays \$1,000 for new shrubs, plus \$70 in sales tax. The bill to PC Prime Contractor from ABC Landscaper is as follows:

Materials \$1,070
Labor \$2,000
Sales Tax \$140
Total \$3,210

ABC Landscaper collects and remits sales tax in the amount of \$140 on the taxable labor charge from PC Prime Contractor; the actual cost of the materials (\$1,070) is not taxable to PC Prime Contractor. The amount charged by PC Prime Contractor to XYZ Developer is not taxable.

If the subcontractor is a *floor covering dealer* (maintains a retail store with inventory that was purchased for resale), in addition to collecting tax on the taxable flooring installation charge, the subcontractor is required to collect tax from the prime contractor on the charges for the floor covering materials. N.J.A.C. 18:24-22.2.

Transition from Interim Policy to Regulatory Requirement

The regulatory requirement applies to all taxable capital improvements performed on and after December 1, 2008. However, if a formal written bid which did not include the 7% tax on the labor was submitted by a subcontractor to a prime contractor for the performance of a taxable capital improvement and the bid cannot be altered or withdrawn OR if an unalterable contract which did not include the 7% tax on the labor was entered into prior to December 1, 2008, the subcontractor is not responsible for collecting the 7% sales tax from the prime contractor. In these situations, the prime contractor is responsible to collect and remit the tax from the property owner, based on the amount charged by the subcontractor, which may be included in the amount billed to the property owner (see interim policy).

Questions concerning the information in this Notice can be directed to:
nj.streamlined@treas.state.nj.us.