

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
ADMINISTRATIVE RULES COMMITTEE
MARCH 14, 2012**

Chairman Koppelman, members of the Administrative Rules Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today to provide background information on the Tax Commissioner's administrative rule regarding contractors, N.D.A.C. 81-04.1-04-20.

RULE LANGUAGE

81-04.1-04-20. Contractors. A contractor or subcontractor installing materials into real property located in North Dakota must pay sales or use tax on those materials regardless of who owns them. If the materials are sold for installation into real property located outside of this state, sales or use tax must be paid if such sales would be subject to tax in the state of attachment. For example, delivery of tangible personal property within this state to a South Dakota contractor for installation in South Dakota is subject to tax because the delivery of tangible personal property to a North Dakota contractor in South Dakota would be subject to tax there. This also applies to a contractor or subcontractor engaged in retail sales who removes all or part of the machinery, equipment, material, or supplies used in carrying out a contract from stock purchased for resale.

A contractor or subcontractor is subject to sales tax on the cost of any items incorporated into or used in assembling articles used or consumed in carrying out a construction contract.

A business which holds a contractor's license issued by the North Dakota secretary of state may not contract with itself to install material into real property. A contractor or subcontractor who purchases or takes possession of construction material in North Dakota for its own use in another state must pay North Dakota sales or use tax on the goods.

For purposes of this rule, the terms "contractor" and "subcontractor" have the meaning ascribed to the term "contractor" in subsection 3 of North Dakota Century Code section 43-07-01. This rule applies to any person thus defined as a "contractor", regardless of whether the person is licensed under North Dakota Century Code chapter 43-07.

History: Effective June 1, 1984; amended effective March 1, 1990; September 1, 1997.

General Authority: NDCC 57-39.2-19

Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-03.3.

EXPLANATION OF THE RULE

- Under North Dakota sales and use tax law, contractors are final users of tangible personal property used in performance of construction contracts. As final users, contractors are liable for sales or use tax on materials used in North Dakota. Use includes storage, use, or consumption of the property.
 - Contractors are liable for tax on materials owned by others but used under contract if the materials have not already been taxed.
 - Materials owned in North Dakota prior to moving them to another state are subject to North Dakota tax unless the materials are exempt in the state of installation.
- A contractor may not enter into a contract with itself. Materials are not used under contract unless the contractor enters into a contract with a separate entity.
 - Important consideration for Montana, which does not impose a sales tax.
- For purposes of sales and use taxes, contractor means as defined in North Dakota Century Code Chapter 43-07, which defines contractor and regulates contractor licensing by the North Dakota Secretary of State.
 - "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.
- North Dakota sales and use tax law regarding contractors are consistent with most other states including the surrounding states in this area.
 - Wyoming, South Dakota, Minnesota, Wisconsin, Iowa
 - Unlike North Dakota, some states do not tax materials when the project owner is tax exempt (example: governments, hospitals)
 - Montana has no sales or use tax