

Notice to Construction Industry: Waiver of Requirement to Separately Itemize Sales Tax for Taxable Capital Improvements in Multi-Trade Construction Contracts

As of October 1, 2006, landscaping services (as defined in the law, see: <http://www.state.nj.us/treasury/taxation/landscape.shtml>), the installation of carpeting and other flooring, and the installation of security, burglar & fire alarm systems became taxable capital improvement services. Prior to October 1, 2006, these services were **exempt** capital improvements, so sales tax collection was not an issue.

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. The requirement that sales tax be separately stated to property owners for the taxable capital improvement services has proven particularly difficult for the industry to comply with. In these contracts, the property owners do not receive traditional bills or invoices, but rather, the lump-sum contract bid price is allocated among the various trades involved, most of which continue to be exempt services. Also, the amount allocated to each trade may not bear a consistent relationship to the actual cost of the work performed or to the amount that was included for such trade in the bid.

With regard to the requirement that sales tax be separately stated and charged by sellers, the New Jersey Sales & Use Tax Act contains the following provision:

No person required to collect any tax imposed by this act shall advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax is not considered as an element in the price, amusement charge or rent payable by the customer, or except as provided by subsection (f) of this section that the person required to collect the tax will pay the tax, that the tax will not be separately charged and stated to the customer or that the tax will be refunded to the customer. **Upon written application duly made and proof duly presented to the satisfaction of the director showing that in the particular business of the person required to collect the tax it would be impractical for the seller to separately charge the tax to the customer, the director may waive the application of the requirement herein as to such seller.** N.J.S.A. 54:32B-14(d)

Based on the information provided by the industry, the Division is satisfied that under the circumstances at issue, it **is** impractical for a prime contractor to separately state the 7% sales tax to the property owner for the following services, when provided as part of a multi-trade construction contract:

- landscaping services (N.J.S.A. 54:32B-2(ww)); 54:32B-3(b)(4));
- installing carpeting or other flooring (N.J.S.A. 54:32B-3(b)(4));
- installing security systems, including security, burglar and fire alarm. (N.J.S.A. 54:32B-2(xx)); 54:32B-3(b)(11).)

Therefore, pursuant to the Director's authority in N.J.S.A. 54:32B-14(d), the Division will allow a prime contractor in a multi-trade construction contract to include the 7%

New Jersey sales tax in the amount billed to the property owner, and waive the requirement that the tax be separately stated on any bills or invoices to the property owner. Although the tax is included, the prime contractor must report and remit the tax to the Division.

The prime contractor can only utilize the “tax included” treatment when billing a property owner for a taxable capital improvement service performed by a subcontractor **as part of a multi-trade construction contract**. Any contractor performing a taxable capital improvement service directly for a property owner must separately state and charge the sales tax on any bill, invoice, etc. issued to the property owner, just as with any other taxable service. In such situation, there is no argument to be made that the tax cannot be separately stated & charged.

Taxable Receipt

In addition, because of the nature of billings under multi-trade construction contracts, it will be presumed that the tax base for these newly taxable capital improvement installations is equal to the amount that the subcontractor charged the prime contractor, excluding a separately stated charge on the prime contractor’s bill for the subcontractor’s actual cost of materials. If the subcontractor does not separately itemize the actual cost of the materials to the prime contractor, then the entire amount is subject to tax when passed through to the property owner.

For example, if the flooring subcontractor charges the prime contractor \$100,000 for the job and the actual cost of materials is itemized by the subcontractor as \$40,000, the sales tax that must be included in the bill between the prime contractor and the property owner for this service is 7% of \$60,000, or \$4,200. If there is no itemization of the actual cost of materials provided by the subcontractor on the bill to the prime contractor, the sales tax that must be included in the bill between the prime contractor and the property owner for this service is 7% of the entire \$100,000, or \$7,000. The prime contractor must report and remit this tax to the Division.

New Jersey Administrative Code-Rule Revision

The current regulation states that taxable services performed by a subcontractor for a prime contractor are not subject to the collection of tax by the subcontractor, since the responsibility for tax collection is that of the prime contractor.

The Division is in the process of amending the regulatory provisions for the building and construction trades so as to require any contractor or subcontractor performing a taxable capital improvement 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.

Notice of this change in a subcontractor’s tax collection obligation will be provided, along with an effective date, once the administrative regulation is approved for adoption.

Questions concerning the information in this Notice can be directed to:
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