

# **Idaho Sales and Use Tax**

**Presented to:  
Idaho Association of Highway Districts  
2018 Annual Convention**

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# Sales and Use Taxes: How They Affect Your Highway District

- Background
- Application
- Contract Desk
- Questions



# Background



## Sales tax

- Suppliers collect sales tax from contractors at time of sale
- Contractors pay sales tax to the supplier, who forwards it to the state

## Use tax

- Contractors owe use tax when no one has paid sales tax on the materials bought or provided
- Contractors pay use tax directly to the state
- Contractors owe use tax when materials arrive at the job site

# Background

HB 222 – 1965 Legislative Session excerpts



- *Section 9 (a) ...there will be a tax imposed on the sale of building materials and other items that will be used to erect buildings or otherwise improve real property.*
- *...construction is regarded as a service, and sale of materials to the contractor is taxed without regard to resale intentions.*
- *Since the sale of the building or other real property will not be taxed, sales of the materials which are used to erect or improve it must be taxed if a tax is to be imposed on the consumption of this property.*

# Code and Rules

On July 1, 1965, this law went into effect:



- *63-3609(a): All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the materials used by them; all sales to or use by such person of tangible personal property are taxable...*
  - To date, Idaho hasn't made any major changes to the interpretation or wording of this law
  - Code and rules make multiple references to the taxability of materials a contractor uses to perform a contract

# Application

- Contractors
- Improvements to real property
- Materials



# Contractors

They're any prime contractor, subcontractor or contract manager doing contract work on real property

Examples of work:

- Road/Bridge
- Paving
- Chip/Seal coat
- Electrical
- Signage/Guardrail
- Hydroseed/Landscape
- Fencing
- Painting
- Plumbing
- Weed spraying
- Well drilling

# Contractors

Contractors making improvements to real property are the consumers of the equipment, materials and supplies they use. (See Sales and Use Tax Rules 012 & 013.)

- Contractors must pay sales tax when they buy all materials, unless a valid exemption exists.
- If no one paid sales tax on the materials, the installing contractor owes use tax on their value.



# Contractor-Purchased Materials

- Contractors should pay sales tax when they buy materials used on a contract to improve real property.
- If contractors can't pay sales tax to the supplier at the time of purchase, they must remit the use tax owed directly to Idaho.

## Examples of materials:

- Bridge components
- Concrete
- Culvert
- Fabric
- Off-site rock

## Examples of other materials:

- Fertilizer or weed-killing chemicals
- Dust control products



# Agency-Supplied Materials

- Contractors owe use tax on any materials an agency provided but **didn't pay tax on**. The use tax is based on the value of the materials.

## Examples of materials:

- Crushed rock
  - Signage/Markers
  - Traffic control equipment
- List these materials on the Notice of Award or Tax Release Request.



# On-Site Materials

- Contractors don't owe tax on natural materials available at a job site and used on the same job site.

## Examples:

- Rock
  - Fill dirt
  - Topsoil
- Natural materials moved to another job site and used there are taxable on the fair market value.
  - *Call us about the taxability of these materials.* These situations are case-by-case.

# Improvements to Real Property

## Agency performs improvements itself

Materials an agency purchases and agency personnel install into real property are exempt from tax.

- Example: An agency purchases crushed rock its employees use to chip seal a roadway. The rock is not taxable.



# Improvements to Real Property

## Agency hires a private contractor

When an agency hires a contractor to install agency-provided materials into real property, the contractor must pay use tax on those materials.

- Example: An agency provides crushed rock a contractor uses to chip seal a roadway. The contractor owes use tax on the value of the rock.
- Agencies must disclose in a bid proposal that the contractor will owe use tax on agency-supplied materials.

# Contract Desk

- The Contract Desk at the Idaho State Tax Commission reviews Idaho construction projects for compliance on sales, use and withholding taxes.
- It's part of the Sales and Fuels Tax Audit bureau.
- An audit manager and three full-time employees staff it.
- It reviews Idaho Public Works, federal, and commercial/private projects.



# Idaho Public Works Projects

They're any construction project that uses Idaho state or other Idaho public money.

Examples:

- State, city, county or other public-entity projects
- Public schools
- Public roads, bridges or other transportation projects
- Public buildings



# Idaho Public Works Projects: Owner Responsibilities

- Idaho law **requires** all Idaho public entities to notify us within 30 days of Notice of Award of a public works project.
  - “Idaho public entities” include all state agencies, cities, counties, road districts, taxing districts and school districts.
- We recommend reporting projects over \$10,000, but there’s no minimum amount for projects you report.



# Idaho Public Works Projects: Owner Responsibilities

- Idaho law requires up to 5% retainage on all public works projects. (Bonding may be substituted.)
  - An Idaho public entity can be held responsible for taxes the contractor owes but doesn't pay.



# Contract Desk Forms

Notice of Award

WH-5 Public Works Contract Report

Tax Release Request Form

Tax Release Form

# Notice of Award

- The awarding agency submits a Notice of Award informing us of a public works project.
- The agency doesn't have to use the Tax Commission form.
- Instead, the agency can provide a copy of the award notification letter it sends the contractor.
  - The letter must include all agency, contractor and project information that's requested on the form.



# WH-5 – Public Works Contract Form

- We send a WH-5 to the general contractor.
- The contractor must complete the form and return it.
- The form requests information about:
  - The contract
  - The project
  - Subcontractors
  - Suppliers



# Tax Release Request Form

- When a public works project is complete, the awarding agency or general contractor must submit a Tax Release Request form to us.
- This form starts our process to ensure the contractor has no outstanding tax liability for the project.
- It must list materials the owner or agency supplied and their cost or fair market value.
  - Contractors must pay use tax on these materials.

# Tax Release Form

- When the Contract Desk ensures the contractor has paid all taxes due, it issues a Tax Release form to the awarding agency.
- This form lets the agency release the retainage.
- If the agency releases retainage before it gets the Tax Release form, it can be liable for tax the contractor owes.



# Processing Idaho Public Works Projects

1. The awarding agency submits a Notice of Award to the Contract Desk within 30 days of award.
2. The Contract Desk sends the contractor a WH-5.
3. The Contract Desk reviews the completed WH-5.
4. If there is a tax liability (such as use tax on owner supplied materials), the Contract Desk issues the contractor a billing letter for sales or use tax owed.
5. The awarding agency or general contractor requests a Tax Release by submitting a Tax Release Request form.

# Processing Idaho Public Works Projects

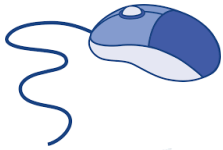
6. The Contract Desk issues the awarding agency the Tax Release.
  - The Contract Desk might issue a Denial of Tax Release if it requests more information but the contractor doesn't provide it.
7. The agency is responsible for any tax the contractor owes if the agency releases retainage without receiving the Tax Release.



# Contact Us



- Call us:
  - Toll-free: (800) 972-7660
  - Boise area: (208) 334-7660



- Visit us on the web at: [tax.idaho.gov/contractors](http://tax.idaho.gov/contractors)



- Email us at: [contractdesk@tax.idaho.gov](mailto:contractdesk@tax.idaho.gov)



- Fax us at: (208) 332-6619

# Recap

- Background
- Application
- Contract Desk



# Questions?



# Thank You!