

**TAX TIPS FOR
CONTRACTORS AND REAL ESTATE DEVELOPERS
CONDUCTING BUSINESS IN DELAWARE**

Things You Should Know

Definitions 30 Del. C., Ch. 25

"Contractor" includes every person engaged in the business of:

Furnishing labor or both labor and materials in connection with all or any part of construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property; a person is a contractor regardless of whether the person is a general contractor or a subcontractor, or whether the person is a resident or a nonresident; in addition "contractor" shall include "construction transportation contractors" which shall include persons engaged in the business of contracting for transporting tangible property of other persons in connection with all or any part of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains and every other type of structure as an improvement, alteration or development of real property but shall not include draypersons as defined in § 2301(a) of this title; or Real estate development.

The following is a partial list of examples of activities which are considered contracting. If you have accessed this site from the Delaware Business Information Cooperative site, the activity that you selected is considered contracting for purposes of Delaware's gross receipts taxes.

Who are considered contractors?

- Asbestos Removers
- Bridge Builders
- Carpenters
- Carpet Layers
- Electricians
- Excavators
- Home Builders
- Insulators
- Landscape Architects
- Painters
- Plumbers
- Road Builders
- Well Diggers

Gross Receipts

Gross receipts include all sums received for any work done or materials supplied (including land) in connection with any real property located in the State. Consideration for services rendered includes cash, checks, credit cards, gift certificates, travelers checks, money orders, barter, trade-ins, manufacturer's coupons and rebates, and any other consideration of any kind.

Gross Receipts Do Not Include Amounts Paid to Subcontractors

Section 2501(5) of Title 30 of the Delaware Code provides that a contractor or subcontractor may exclude from their gross receipts those amounts paid to other subcontractors who have provided construction labor or provided materials AND construction labor associated with such materials. Enter the total amounts paid to your subcontractors for the reporting period in the block provided on the gross receipt coupon AND attach Form 1280, "Amounts Paid to Subcontractors", listing the name, address, taxpayer identification number, license number, business code and the amount paid to each subcontractor. Form 1280 is also available by contacting any Division of Revenue office. Only amounts paid to persons subject to taxation as a contractor, regardless of the contractual relationship under which you are required to make payment, may be deducted. The person must be engaged in the business as a contractor as defined in Section 2501(1) in order to be deducted as a subcontractor.

Gross Receipts May Not Be Reduced by:

- Accounting Expenses
- Advertising
- Architects
- Attorneys
- Cleaning
- Delivery or transportation charges
- Employment agencies or temporary employees
- Engineers
- Environmental Studies
- Equipment Rental
- Exterminators
- Hauling
- Horticulture
- Inspections
- Interior Designers/Decorators
- Material supplied without labor
- Operating Expenses
- Realtors Fees/Commissions
- Sanitation
- Security
- Surveyors
- Taxes or other fees paid to any state, county, city or municipality
- Trailer Rentals
- Trash Removal
- Utility Expenses

License and Gross Receipts Requirements

A contractor is required to obtain a business license (\$75) which must be renewed annually on or before December 31st of each year. Additionally, every contractor must pay a gross receipts tax at the rate of .6537% (.006537) times the taxable gross receipts received from construction services.

The first \$100,000 (\$300,000 quarterly) of construction gross receipts received per month are exempt from the gross receipts tax. Gross Receipt taxes should be filed on-line or with a paper form. Both can be accessed from our website at www.revenue.delaware.gov To register with the Division of Revenue and obtain a business license, complete a Combined Registration Application, available on the Internet and mail to the Division of Revenue with the appropriate fee or you can file on-line at our OneStop site using the link above.

A business license application must be initiated prior to or in conjunction with the submission of a bid on competitively bid contracts exceeding \$50,000; or in the case of a subcontractor, prior to the submission of a bid by the general contractor. The license application procedure may be initiated by visiting or calling the Division of Revenue. Additionally, contractors submitting bids to agencies of this State other than the counties of this State or any public school district must supply with their bid their taxpayer identification number or the Delaware Division of Revenue business license number.

Tax Rates and Exclusions

	Tax Rate	Monthly Exclusion
Contractor	.006537	\$100,000
Sample Calculation		
	Total Gross Receipts	\$180,000
	Less Subcontractors	<u>15,000</u>
	Net Gross Receipts	\$165,000
	Less Exclusion	<u>100,000</u>
	Taxable Gross Receipts	\$65,000
	Tax Rate	X. <u>006537</u>
	Tax Due	\$ 425

(Note: Delaware requires that tax due be rounded-off to the nearest dollar amount.)

Due Dates of Returns

New licensees will file on a quarterly basis through their first calendar year. The Division of Revenue will then perform a "lookback" procedure and determine if the filing frequency should be changed.

Monthly Filers 20th day of the following month
Quarterly Filers last day of the first month after the end of the calendar quarter.

Annual Filing Permitted

If your taxable gross receipts (total gross receipts less the exclusion) for all months or calendar quarters of the tax year are zero, you may file the monthly or quarterly returns for the entire year at the end of the calendar year. Please complete all monthly or quarterly returns and mail them by January 20th of the following year. If your taxable gross receipts are greater than zero during any month or calendar quarter, you are required to file that return by the due date on the return.

Special Note for Construction Related Activities

If a drayperson / mover is hired by a general contractor to move dirt, debris, equipment, etc *within* a construction site, a subcontractor's business license is required and the appropriate gross receipts tax will apply. If the material is carried onto or off the construction site, the drayperson license is appropriate. For example, ABC Company, a drayperson, is hired by XYZ Company, a construction company building a new road, to bring in and unload stone. ABC Company is still considered a drayperson. JKL Company, also a drayperson, is also hired by XYZ Company to move the stone from one part of the new road to another. JKL Company would need a contractor's license.

Contracts Awarded to Non-Resident Contractors

Every architectural or professional engineering firm, contractor or construction company engaging in the practice of such profession shall furnish the Department of Finance within 10 days after entering into any contract with a contractor or subcontractor not a resident of this State, a statement of the total value of such contract or contracts together with the names and addresses of the contracting parties by filing Form 5060, "Statement of Contracts Awarded by General Contractors and Subcontractors". Form 5060 is also available by contacting any Division of Revenue office.

Failure to comply with the notification of awards or bonding provisions of Section 375 of Title 30 of the Delaware Code is subject to a civil penalty up to \$10,000 for each occurrence.

Bonding Requirements for Non-Resident Contractors

All non-resident contractors are reminded that they must supply a surety or cash bond to the Division of Revenue equal to six percent (6%) of the total of all contracts exceeding \$20,000 for construction within this state. For Division of Revenue purposes, cash bonds and bank letters of credit issued by financial institutions will be accepted on all contracts.

Real Estate Developer

House Bill No. 453 defined a Real Estate Developer as well as defining their taxable gross receipts. This Act is effective for gross receipts received after June 30, 1993. A real estate developer is one who acquires land, improves the land and/or its structures, and sells the land with the structure to customers. Their gross receipts includes all sums received from the sale of real property with structures (commercial and/or residential) built thereon, reduced by certain costs as defined. Developers may ELECT, at their option, in lieu of deducting the actual cost of land and improvements for a particular tax year, to reduce sums received from the sale of real property by the assumed cost of land, improvements to the land, and miscellaneous expenses equal to 30% of the gross proceeds from the sale. The election is in such form as the Director of Revenue shall prescribe. The election is irrevocable unless waived by the Director. Please see Technical Information Memorandum 93-5 for additional information concerning Real Estate Developers.

Common Ownership/Direction

Businesses which operate their separate branches by the use of separate operating corporations are only entitled to one monthly or quarterly exclusion for the enterprise to the extent that the corporations have common ownership or common direction and control.

Emergency Planning & Community Right-to-Know Act (EPCRA)

If your business uses, stores or transports chemical substances, you may be covered under Federal and State EPCRA requirements. From motor oils and heating fuels to cleaning solvents and specialty chemicals, many different substances are covered. The requirements range from the submission of annual reports identifying the amounts and locations of these substances at your site(s) to the reporting of releases and spills.

The information submitted serves several important purposes. During emergencies, the 911 Fire Dispatch Centers can access and provide the chemical information to local fire fighters and other emergency personnel responding to the site. Local Emergency Planning Committees use the information to develop plans to prepare for and respond to emergencies in their districts. The information is also available to the public to promote community involvement in preparing for emergencies and managing chemical risks.

For additional information and a free business compliance guide, contact the Delaware EPCRA Reporting Program at (302) 739-4791.

Regulatory and Local Requirements

The Business License Issued by the Division of Revenue is not a regulatory license and the issuance of such license does not attest to the qualifications of the applicant to perform the activity described on such license. Many local jurisdictions have requirements for a business license and may have restrictions concerning the locations of conducting the referenced business activity. Please check with the local government office in the town, city or county in which you will conduct your business.

The State of Delaware also has a Division of Professional Regulations. Many occupations and some types of equipment have regulatory requirements. Please contact the Division of Professional Regulation for more information.

General

If you have any questions, please contact one of the following offices

<i>Wilmington</i>	<i>Dover</i>	<i>Georgetown</i>
Division of Revenue Carvel State Office Building 820 North French Street Wilmington DE 19801 (302) 577-8205	Division of Revenue Thomas Collins Building 540 South DuPont Hwy Ste 2 Dover DE 19901 (302) 744-1085	Division of Revenue 20653 Dupont Blvd Suite 2 Georgetown DE 19947 (302) 856-5358

or by e-mail at: richard.jczyk@state.de.us or (302) 577-8265

File Gross Receipts On-line:

www.grossreceiptsfiling.delaware.gov

or

Print an Interactive Gross Receipts Coupon:

http://www.revenue.delaware.gov/services/Business_Tax/Forms_New.shtml#gr