

STATE OF DELAWARE

Department of Finance

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM
(1-78-2501)

May 26, 1978

SUBJECT: Contractors Licenses - Chapter 25, Title 30, Delaware Code
1. Deduction for Payments to Subcontractors
2. Duties of General Contractors, etc., as to Non-Resident Contractors or Subcontractors

This memorandum is issued in response to a number of inquiries received from resident and non-resident contractors seeking clarification of certain contractors licensing requirements.

A. Gross Receipts Tax - Deduction for Payments to Subcontractors

In addition to the basic annual license fees imposed under Section 2502, 30 Del. C., every resident and non-resident contractor is required to pay a tax of .0065 on the aggregate gross receipts paid to such contractor. Returns must be filed and the tax paid monthly to the Division of Revenue on or before the 20th day of each month with respect to the aggregate gross receipts for the preceding month.

For this purpose, aggregate gross receipts includes all sums received by a resident or non-resident contractor for any work done or material supplied in connection with any real property located within Delaware. However, in computing the tax due, under the law (Section 2501, 30 Del. C.), the contractor may deduct from the aggregate gross receipts all amounts paid by him to subcontractors for work performed in Delaware, provided such subcontractor is required to be licensed as a contractor and is subject to tax on such amounts under Chapter 25. In order to substantiate deductions claimed for payments to subcontractors, the contractor (resident or non-resident) must furnish the name and business address, and the amount paid to each subcontractor by completing Form 1280 and attaching it to each monthly return. Failure to substantiate the deductions will be ground for disallowance. Form 1280 (copy attached) may be obtained from the Division of Revenue upon request or may be reproduced.

May 26, 1978

B. Duties of General Contractors, Architects and Mechanical Engineers as to Non-Resident Contractors or Subcontractors

1. Pursuant to Section 2503, every general contractor, architect or mechanical engineer engaged in business in this State who enters into a contract with a non-resident contractor or subcontractor, is required to furnish the Division of Revenue within 10 days of entering into such contract, a statement setting forth the names and business addresses of the contracting parties and the total amount of the contract or contracts. This information may be furnished by submitting Form 5060. Failure to furnish the required statement will subject the general contractor, architect or mechanical engineer to a penalty of \$25.00 for each such failure.

2. Prior to payment of amounts due any such non-resident contractor or subcontractor, it is the duty of every general contractor (resident or non-resident) or architect or mechanical engineer to ascertain (a) whether the non-resident contractor or subcontractor has obtained the basic license or licenses for the calendar year required by Section 2502, 30 Del. C., and (b) whether the non-resident contractor or subcontractor has paid the gross receipts taxes due. Information with respect to the basic licenses should be obtained from the non-resident contractor. Information with respect to payment of gross receipts taxes may be obtained from the contractor or the Division of Revenue.

3. If the non-resident contractor or subcontractor has not obtained the required licenses or paid the required license fees and taxes, it is the duty of the general contractor (resident or non-resident) or architect or mechanical engineer to withhold from the amounts payable to the non-resident contractor or subcontractor an amount equal to such license fees and estimated taxes owed by the non-resident contractor. Such withheld amounts must be paid to the Division of Revenue within 10 days after final payment and settlement with the non-resident contractor or subcontractor. Failure to ascertain and withhold and pay over to the Division of Revenue the license fees and taxes of the non-resident contractor or subcontractor when required to do so, will render such general contractor or architect or mechanical engineer personally liable for the amounts owed by such non-resident contractor or subcontractor, unless reasonable cause for such failure can be established.

RRS/mrs

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STATE OF DELAWARE
 DIVISION OF REVENUE
 Wilmington State Office Building
 820 N. French Street
 Wilmington, Delaware 19899

NOTICE: TO BE ATTACHED TO CONTRACTORS MONTHLY GROSS RECEIPTS TAX FORM
 TO SUBSTANTIATE PAYMENTS TO SUB-CONTRACTORS FOR THE MONTH OF _____, 19 ____

GENERAL CONTRACTORS TOTAL MONTHLY GROSS RECEIPTS. \$
 LESS PAYMENTS TO LICENSED SUB-CONTRACTORS:

Name & Address

License Number

Amount

<u>Name & Address</u>	<u>License Number</u>	<u>Amount</u>

 Taxpayer's Name

Less Total Payments to Sub-Contractors \$ _____

Total Gross Receipts For Month \$ _____

E. I. No. _____

 Signature

 Date