



Contractor

Date Issued: March 2003
Last Revised: August 2026

This publication is intended for those in the construction industry. Construction exists in many different sectors of the economy – conventional residential, commercial, and industrial applications as well as in the oil and gas industry, the mining industry, and agricultural sectors. This publication will address construction in general terms. If your operations are in one of the above sectors, we encourage you to review our other publications available on our website.

Let's begin with some of Wyoming's definitions related to construction. For the purpose of this publication, the terms "general" and "prime" contractor have the same meaning:

Contractor

As defined, a general or prime contractor means:

- Any person who agrees with the owner or lessee of real property in this state to perform services or furnish materials and services for the construction, alteration, improvement or repair of real property in this state; or
- Any person who acts in behalf of the owner or lessee of real property in this state to arrange for the furnishing of services or the furnishing of materials and services for the construction, alteration, improvement or repair of real property in this state; or

- Any person who owns or leases real property in this state for the purpose of developing that property and in the development thereof alters or makes improvements to the property or contracts for the alteration or improvement of the property."

Subcontractor

As defined, a subcontractor means "any person who agrees with another contractor to perform any part of that contractor's obligation for furnishing services or furnishing materials and services for the construction, alteration, improvement or repair of real property in this state."

Resident

Corporations – Those businesses organized as a corporation, limited liability partnership, and a limited liability corporation will be considered a resident contractor if the following criteria are met;

1. The business has continuously maintained an office or place of business within the state for a period of one (1) year prior to bidding a project, and;
2. The business has continuously employed employees within the state for a period of one (1) year prior to bidding a project.

Partnerships – Those businesses structured so that each controlling member has been a

bona fide resident of Wyoming for a period of one (1) year or more.

Individuals – Persons who have been bona fide residents of Wyoming for a period of one (1) year or more.

Non-Resident

Any contractor who has not been a bona fide resident of the state of Wyoming for at least one (1) year prior to bidding on a contract.

Real Property

Land and appurtenances, including structures affixed thereto. An item shall be considered real property if:

- It is buried or embedded; or
- It is physically or constructively annexed to the real property; and
- It is adapted to the use of the real property; and
- Considering the purpose for which the annexation was made, one can reasonably infer that it was the intent of the annexing party to make the article a permanent part of the real property.

Construction Project Definitions

The set of all agreements to perform repairs, improvements, alterations, or constructions which is to be done contemporaneously on real property. When repair, alteration, improvement, or new construction agreements are contingent upon one another or are dependent upon the happening of one another, such agreements shall be considered part of the same construction project. A construction project may consist of a single agreement to repair, alter, improve or construct a single item of real property.

Contract Award Date – The date the contract is awarded between the project owner and general contractor, the general contractor and the subcontractor, or the subcontractor and their lower-tier subcontractor.

Lower-Tier Subcontractor – any contractor hired by a subcontractor of a general or prime contractor to perform work on a construction project

Start of Project – Date indicated in contract for work to be eligible to begin.

Completion Date – The date the work is completed at the construction site. (Note: This is not the date the project is accepted by the owner or lessee; and not the date final payment is received by the contractor.)

Tax Information

Materials

Wyoming law regards contractors to be the end users of all materials and supplies that they use in the development of real property. Contractors must pay sales tax on their materials at point of purchase or when removed from an untaxed Wyoming inventory.

For materials and supplies purchased outside the State of Wyoming and brought into the state for storage, use or consumption, there is a similar use tax statute under W.S. 39-15-303(b):

1. Any contractor who furnishes tangible personal property in the construction, alteration, improvement or repair of real property is the consumer or user of tangible personal property within the meaning of the sales and use tax laws of Wyoming.

2. Contractors are liable for the sales/use tax on their cost of materials, fixtures, supplies and any other taxable services or transactions incidental to their performance of construction, alteration, improvement or repair services on real property.
3. Contractors are liable for the sales/use tax on their rental of equipment.
4. Sales of tangible personal property to be used in the repair, alteration, improvement or construction of real property are taxable sales, whether sold to the owner of real property or to a contractor.
5. See Reporting Requirements

Labor

Charges for labor to alter, improve or construct real property are not subject to sales/use tax, unless performed within an oil or gas wellsite.

If you have questions in this sector, please review our publication available on our website: <https://revenue.wyo.gov>. On the “Home” page click on “Excise Tax Division”; select “Educational Materials”; then “Sales & Use Tax Bulletins” and select “Oil, Conventional Natural Gas and Coal Bed Methane Tax Publication”.

Exempt Entities

Contractors performing real property services for exempt entities (such as the State of Wyoming, its political subdivisions or a religious or charitable organization) are still responsible for sales and use tax on all equipment, materials, fixtures, and supplies purchased by the contractor to perform under the contract.

- Contractors performing work for exempt entities still have a tax liability. The equipment, materials,

fixtures, and supplies purchased by the contractor to perform under the contract are taxable items to the contractor. The exempt entity cannot pass its exemption forward to a contractor performing work for the entity.

- Sales/Use tax can only be avoided on the materials if the exempt entity itself purchases the tangible property to improve or construct the real property from a third-party supplier and then engages a contractor to perform a labor only contract. The supplier and the contractor cannot be the same company.

Registration Requirements

1. Register all construction projects which have been awarded to:

- a non-resident general contractor, or
- one which a resident general contractor has awarded a contract to a non-resident subcontractor, or
- one which a resident or nonresident subcontractor has awarded a contract to a non-resident lower-tier subcontractor.

Registration must be completed on a Construction Project and General Contractor Registration Form (ETS Form #121) and submitted to the Department of Revenue within fifteen (15) days of the project start date. Failure to register projects with the Department within this time period shall result in a penalty assessment of one percent (1%) of the total payments due under the contract.

2. Register all non-resident subcontractors (including labor only subcontractors) on Non-Resident Subcontractor Information

Report (ETS Form #120) and submit to the Department of Revenue within fifteen (15) days of the contract award date.

Contractors are only required to register resident contractors who have awarded a contract to a non-resident lower-tier subcontractor on ETS Form #120 and submit to the Department of Revenue within fifteen (15) days of the contract award date.

Register all non-resident lower-tier subcontractors on ETS Form #120 and submit to the Department of Revenue within fifteen (15) days of the contract award date.

Bond/Retainage Requirements

1. Non-Resident General Contractors are required to post a surety bond (ETS form 124a or ETS form 124b) or other legal security within fifteen (15) days of project start date. This is for any potential sales/use tax which may be due over the course of the project. Should a non-resident general contractor fail to provide a bond/security within the required timeframe, the Department may through the Attorney General's office file for an injunction against commencing or continuing any work until it has been filed.

2. All general contractors are required to retain four percent (4%) from the payments due their non-resident subcontractors until written authorization is received from the Department to release the retainage. This requirement is similar to the bonding requirements of a non-resident general contractor but an actual bond/security is not required – the retainage is held in lieu of a bond/security.

All subcontractors are required to retain four percent (4%) from the payments due their non-resident lower-tier subcontractors until written authorization is received from the department to release the retainage. This requirement is again similar to the bonding requirements of a non-resident general contractor but an actual bond/security is not required – the retainage is held in lieu of a bond/security.

- a. Non-resident subcontractor/nonresident lower-tier subcontractor can avoid the retainage requirement by voluntarily posting a bond with the Department. The Department will notify the hiring contractor in writing when such bond is furnished.
- b. The Department will demand the retainage if the contractor fails to comply with their sales/use tax requirements.
- c. If the contractor required to withhold retainage either fails or refuses to remit the retainage upon demand, he is then liable for any taxes due the state by the subcontractor/lower-tier contractor.

Please note: the requirement to hold retainage shall not apply to any subcontractor hired to provide only provide labor to alter, construct, improve or repair real property.

Tax Payment and Reporting Requirements

All contractors are required to submit use tax to the Department of Revenue on all purchases of materials, fixtures, or other supplies purchased in **other states**, if those purchases were made tax free or at a lesser tax rate than the applicable Wyoming tax rate for the location where the materials are received. This tax must be submitted on Form 45,

Contractor Use Tax Return, on or before the last day of the month following the month when the material was brought into the state to avoid the imposition of penalty and interest.

All non-resident contractors providing materials and labor in their contract must complete and submit the Affidavit of Completion (ETS Form #123) and remit it to the department within fifteen (15) days following the completion date of the contract. Once received and verified that tax has been paid, the Department will issue a letter to the contractor and their next higher tier contractor to release the retainage discussed under Bond/Retainage Requirements above.

Short Term Projects

As some construction projects are very quick turn-around, lasting only a day or two on the jobsite, we will allow general contractors who are required to register projects to do so via a spreadsheet. This spreadsheet must contain all the information normally required on ETS Forms #120, #121 and #123.

This spreadsheet is submitted monthly on completed projects only. Should a single project begin at the end of the month but be finished at the beginning of the following month, the project would be reported when completed and not while in process. An example of such instance would be a window installation which begins on September 30th and is completed on or about October 2nd. Once completed, this project would be included on the October spreadsheet.

This refers to short-lived real property projects, not large projects involving multiple subcontractors. For example, replacing a

broken toilet or the installation of a new door would be appropriate; a countertop installation as part of a new home build would not.

Bond Requirements

Non-Resident general or prime contractors shall post a bond pursuant to W.S. 39-15-306(b)(i);

Any non-resident general or prime contractor awarded a construction project in Wyoming must post a bond or other acceptable security with the Department within fifteen (15) days following the start of the project. The bond or acceptable security must be four percent (4%) of the total contract amount for the project. Any contractor who is required to post a bond or other acceptable security may satisfy their requirement using one of the following methods:

- (A) Surety bond through their insurance company, which names the Department of Revenue as the obligee;
- (B) Cashier's Check made payable to the Wyoming Department of Revenue;
- (C) Certificate of Deposit; or
- (D) Letter of Credit

For contractors choosing to report by a spreadsheet method and also required to bond, the bond should be continuous and should be based on four percent (4%) of the total contract amounts of the contractor's real property contracts for the prior year. For example, if the contractor performed \$250,000 worth of work last year, the bond requirement is \$10,000 ($\$250,000 \times .04 = \$10,000$). Should it be determined at a later point this amount is not sufficient, the bond

will need to be increased. The bond must be filed with the first month's spreadsheet.

Note: A Non-Resident General Contractor may also satisfy the bonding requirements by providing the Department with a copy of a properly executed payment/performance bond. The Department will then notify the surety of the additional four percent (4%) obligation. This obligation shall cease six (6) months after the completion of the contract and acceptance of the work and services performed unless written notice of unpaid tax is given to the surety company by the Department. This six-month period will not begin until the Department receives notice from the bonded contractor or the surety that the project owner has accepted the work and services performed by the contractor.

Reporting Requirements

1. Contractors are liable for use tax on all purchases of materials, fixtures or other supplies purchased in other states, if those purchases were made tax free or at a tax rate lesser than the applicable Wyoming tax rate.
2. Use tax reports (ETS Form 45) and tax remittances are due the last day of the month following the month of purchase.
3. Form 45 need only be filed when there is tax to report in a given month. A Form 45 return that spans more than 1 month will be rejected.
4. An offsetting credit will be allowed for legally imposed sales or use tax paid to another state on goods which Wyoming tax would ordinarily be assessed. Supporting invoices and other documentation must be retained by the contractor and presented to the Department upon demand.
5. An offsetting credit will be allowed for sales and use tax paid to another state, up to the applicable Wyoming tax rate.

6. The department will return overpayment of sales/use tax resulting from the submission of retainage to the subcontractor/lower tier subject to the withholding.

Other Entities

In addition to the Department of Revenue, you may need to contact the agencies listed below before beginning construction projects in the State of Wyoming. This list is not intended to be all inclusive and is subject to change.

Internal Revenue Service Wyoming
5353 Yellowstone Rd
Cheyenne, WY 82009
(844) 545-5640

Wyoming Secretary of State
122 W 25th St Ste 100
Cheyenne, WY 82002
(307) 777-7311

Worker's Compensation Unemployment Insurance
Employer's Information Employer Accounts
5221 Yellowstone Rd
Cheyenne, WY 82001
(307) 777-8650

Wyoming Business Council
Business Permits Coordinator
214 West 15th Street
Cheyenne, WY 82002
(307) 777-2800

Note: Projects over \$130,000,000.00 could be subject to the Industrial Siting Act. For more information, contact the State of Wyoming, Department of Environmental Quality, Industrial Siting Division at (307) 777-7501.

The Excise Tax Division publishes a quarterly newsletter titled "Taxing Issues." This publication is mailed to all licensed vendors and contains items of general interest such as common taxability issues, forthcoming tax rate changes, and legislative changes. Current and past issues of this publication are available on our website, <https://revenue.wyo.gov>.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:
DOR_taxability@wyo.gov

Supporting Authority -

W.S. 39-15-301(a)(i) states:

"Contractor" means any general or prime contractor or subcontractor;

W.S. 39-15-301(a)(ii) states:

"General or prime contractor" means:

- (A) Any person who agrees with the owner or lessee of real property in this state to perform services or furnish materials and services for the construction, alteration, improvement or repair of real property in this state; or
- (B) Any person who acts in behalf of the owner or lessee of real property in this state to arrange for the furnishing of services or the furnishing of materials and services for the construction, alteration, improvement or repair of real property in this state; or
- (C) Any person who owns or leases real property in this state for the purpose of developing that property and

in the development thereof alters or makes improvements to the property or contracts for the alteration or improvement of the property.

W.S. 39-15-301(a)(iii) states:

"Nonresident general or prime contractor" means any general or prime contractor who has not been a bona fide resident of the state of Wyoming for at least one (1) year prior to bidding upon a contract;

W.S. 39-15-301(a)(iv) states:

"Nonresident subcontractor" means any subcontractor who has not been a bona fide resident of the state of Wyoming for at least one (1) year prior to bidding upon a contract;

W.S. 39-15-301(a)(vi) states:

"Subcontractor" means any person who agrees with another contractor to perform any part of that contractor's obligation for furnishing services or furnishing materials and services for the construction, alteration, improvement or repair of real property in this state;

W.S. 39-15-301(a)(vii) states:

"Surety bond" means a bond or undertaking executed by a surety company authorized to do business in the state;

W.S. 39-15-303(b)(i) states:

Taxpayer. The following shall apply:

- (i) Any contractor who furnishes tangible personal property under contract or in the development of real property is the consumer or user of the tangible personal property within the meaning of the sales tax laws of Wyoming;

W.S. 39-15-303(b)(ii) states:

Taxpayer. The following shall apply:

(ii) Any subcontractor who contracts with a general or prime contractor is liable for sales taxes as a general or prime contractor. The general or prime contractor shall withhold three percent (3%), plus the increased rate under W.S. 39-15-104(b) if the tax under that section is in effect, of the payments due a nonresident subcontractor arising out of the contract entered into between both contractors. The contractor shall withhold the payments until the subcontractor furnishes him with a certificate issued by the department showing all sales taxes accruing by reason of the contract between them have been paid. The department may demand the withholdings at any time to satisfy the sales tax liability of the subcontractor and any balance shall be released by the department to him. If a contractor fails to withhold payments or refuses to remit them upon demand by the department he is liable for any sales taxes due the state by the nonresident subcontractor. This paragraph shall not apply to any subcontractor hired to provide labor only to alter, construct, improve or repair real property;

W.S. 39-15-303(b)(iii) states:

Taxpayer. The following shall apply:

(iii) To secure payment of sales taxes by nonresident prime contractors, each nonresident contractor shall file with the department of revenue a surety bond or legal security equal to three percent (3%), plus the increased rate under W.S. 39-15-104(b) if the tax under that section is in effect, of the payments due under the contract

or an amount determined by the department. The bond shall be conditioned upon the payment of all sales taxes which become due and payable to this state under the contract or in the real property development. This bond requirement does not apply for a nonresident contractor who has furnished a surety bond as provided by W.S. 39-15-306(b)(v);

W.S. 39-15-303(b)(iv) states:

Taxpayer. The following shall apply: (iv)

Any nonresident prime contractor and any resident prime contractor who hires a nonresident subcontractor shall register any project with the department of revenue not less than fifteen (15) days following the start of a project pursuant to a contract. The nonresident prime contractor shall provide a properly executed bond as required by paragraph (iii) of this subsection, or a cash deposit of not less than four percent (4%) of the total payments due under the contract. The cash deposit shall be refunded to the contractor upon the department's receipt of a properly executed surety bond or upon satisfactory completion of the project. Failure to register with the department within the time period required by this paragraph shall result in a penalty assessment of one percent (1%) of the total payments due under the contract.

W.S. 39-15-306(b)(i) states:

Bonding. The following shall apply: (i) To secure payment of sales taxes by nonresident prime contractors, each nonresident contractor shall file with the department of revenue a surety bond or legal security equal to three percent (3%), plus the increased rate

under W.S. 39-15-104(b) if the tax under that section is in effect, of the payments due under the contract or an amount determined by the department. The bond shall be conditioned upon the payment of all sales taxes which become due and payable to this state under the contract or in the real property development. This bond requirement does not apply for a nonresident contractor who has furnished a surety bond as provided by paragraph (v) of this subsection;

W.S. 39-15-306(b)(ii) states:

Taxpayer. The following shall apply: (ii) Any person a party to or performing work on a contract under this section may be enjoined from commencing or continuing any work until an approved bond has been filed with the department. Such an action shall be brought in the name of the state by the attorney general or by a district attorney. The state is not required to post security in seeking a restraining order or preliminary injunction under this section;

W.S. 39-15-306(b)(iii) states:

Taxpayer. The following shall apply:

(iii) In lieu of filing the bond or security required under paragraph (i) of this subsection, a nonresident contractor may file and maintain with the department a surety bond or legal security in the amount of one million dollars (\$1,000,000.00). The bond shall be conditioned upon the payment of all sales taxes which become due and payable to this state under any of the contractor's contracts or in any of the contractor's real property developments in this state. A

nonresident contractor electing to file a bond or security under this subsection shall maintain it until he is no longer required to file any bond or security under this article or until a bond or security is filed under paragraph (i) of this subsection;

W.S. 39-15-306(b)(iv) state:

Taxpayer. The following shall apply:

(iv) If a nonresident subcontractor contracts with a general or prime contractor and posts with the department a surety bond deemed sufficient by the department conditioned upon payment when due of all sales taxes in the performance of the contract, the withholding provisions of W.S. 39-15-303(b)(ii) do not apply;

W.S. 39-15-306(b)(v) states:

Taxpayer. The following shall apply: (v)

Whenever a nonresident general or prime contractor or nonresident subcontractor furnishes a surety bond for the faithful performance of his contract or subcontract there is imposed an additional obligation upon the surety company to the state of Wyoming and the department as its agent that the nonresident contractor shall pay all sales taxes which become due in the performance of the contract. In the case of a nonresident general or prime contractor this additional obligation includes liability to pay the department all sales taxes which have not been paid to a licensed vendor or the department by the nonresident contractor. The nonresident general or prime contractor or his surety company is authorized to recover from the nonresident subcontractor the amount

of sales taxes accruing with respect to purchases made by the nonresident subcontractor which were paid to the department by the nonresident contractor or the surety company, or an amount equal to the sales taxes so paid by the nonresident contractor may be withheld from payments made under the contract. The liability of the surety company under this section is limited to three percent (3%), plus the increased rate under W.S. 39-15-104(b) if the tax under that section is in effect, of the contract price;

W.S. 39-15-306(b)(vi) states:

Taxpayer. The following shall apply: (vi) Six (6) months after the completion of the contract and the acceptance of the work and services performed, the additional obligation upon the surety company ceases unless written notice of unpaid sales taxes is given the surety company by the department.

W.S. 39-15-109(d)(v) states:

Credits. The following shall apply:

(v) The department shall allow a credit for sales tax legally imposed and paid to another state on a purchase equal to but not exceeding the liability for use tax under this article on that purchase. The department may require that any claim for a credit be substantiated in writing showing the sales tax paid.

WY Dept. of Rev Rules, Chap 2, Sec 2(k) states:

“Consumer” means any person exercising any right of ownership over tangible personal property or taxable services or admissions unless the property, admissions, or services are purchased for resale in the normal course of business.

WY Dept. of Rev Rules, Chap 2, Sec 7(c)(ivv) states:

(iv) Purchases made by religious or charitable organizations in or for their regular religious or charitable functions and activities shall be exempt from the sales and use tax. Purchases made by members or employees of religious or charitable organizations shall be subject to the sales or use tax if not paid directly by the organization.

(v) For the purpose of this chapter, construction contractors shall be considered self-employed and not employees of religious or charitable organizations. Contractors shall be subject to the sales and use tax on all equipment, materials, fixtures, and supplies purchased by the contractor to perform under the contract.

WY Dept. of Rev Rules, Chap 2, Sec 10 states:

(a) Notification Requirements for Non Resident General Contractors, Nonresident Prime Contractors, and Resident General or Prime Contractors Who Hire Non-Resident Subcontractors. In addition to all other requirements under Wyoming law, upon being awarded a construction project, a nonresident general or prime contractor shall:

(i) Report all labor and material subcontractors hired within fifteen (15) calendar days of subcontract award notification;

(ii) Post a bond with the Department pursuant to W.S. 39-16306(b)(i). In lieu of a bond, the Department may accept:

(A) A cashier check;

(B) A certificate of deposit, provided that the certificate of deposit:

(I) Shall be issued by an FDIC-insured bank with its main office or any branch

located in Wyoming. (II) Shall be payable in current funds or such other manner as the Department may determine at a bank located in the State of Wyoming.

(III) Shall be issued for an initial term of not less than one (1) year and automatically renewable from year to year.

(IV) The contractor must execute a valid, binding, first priority pledge agreement as to the certificate of deposit, which shall be on the form approved by the Department.

(V) The originals of both the certificate of deposit and fully-

(C) A letter of credit, executed pledge provided the letter of credit:

(I) Shall have a delivered to the face amount equal to Department at the or greater than four same time. percent (4%) of the (1.) If a total contract amount certificate of for the project; deposit is

(II) Shall be issued accepted and by an FDIC-insured retained by the bank with its main Department office or any branch under this located in Wyoming;

(III) Shall be the contractor payable in current has not funds or other manner deposited an as the Department acceptable may determine on replacement sight at the counters of bond or other an FDIC insured bank acceptable located within the security within State of

Wyoming; thirty (30) (IV) Shall be on a days before the form of approved by certificate of the Department; deposit's

(V) Shall be issued maturity date, with an initial then the expiration date of not contractor less than one (1) year shall be from the date of its deemed to issuance and have automatically authorized and extended from year to directed the year; Department to

(VI) The issue date demand shall be ten (10) days immediate before the date on payment on which the deposit is the certificate received by the of deposit and Department; and upon receipt of

(VII) The original the proceeds, letter of credit shall be retain the same delivered to the as a deposit of Department. the proceeds of certified funds.

(1.) If a letter of credit is accepted and retained by the Department and the contractor has not deposited an acceptable replacement surety bond or other acceptable security within thirty (30) days before the letter of credit's expiration date or maturity date, the contractor shall be deemed to have authorized and directed the Department to draw the entire face amount of letter of credit and, upon receipt of the proceeds, retain the same as a deposit of

proceeds of a collected cashier's check.

(2.) The contractor may deliver at any time to the Department an acceptable surety bond or other acceptable security to replace a letter of credit retained by the Department. Upon receipt and acceptance of a replacement, the Department shall deliver to the contractor the original letter of credit.

(3.) If the Department determines that the contractor that has deposited a letter of credit under this section in lieu of a surety bond and has complied with W.S. 39-15-301 through W.S.39-15-311 and W.S. 39-16-301 through W.S. 39-16-311, then the Department shall deliver to the contractor the original letter of credit.

Non-Resident Subcontractor Requirements. In addition to all other requirements under Wyoming law, upon being awarded a construction project or any part thereof, any non- resident subcontractor shall: Report all lower tier subcontractors hired within fifteen (15) calendar days of subcontract award notification, and; Remit a completed affidavit of completion form within fifteen (15) days following completion date of the subcontract. Charges for the labor to alter, improve, or construct real property are not

subject to sales/use tax except where imposed by statute under W.S. 39-15-103(a)(i)(K).

(d) Work Performed for Exempt Entities. Contractors performing for exempt entities shall be subject to the sales and use tax on all equipment, materials, fixtures, and supplies purchased by the contractor to perform under the contract. Contractors shall remit use tax and any sales tax not paid to a vendor to the Department by the last day of the month following the month in which a purchase is made. The Department shall refund any excess retainage withheld from a nonresident subcontractor to the subcontractor if the retainage has been remitted to the Department and exceeds sales or use tax owed by that subcontractor.