

Chapter 01 Construction Contractors

- 100 Definitions.
- 101 The terms “contractor” and “prime contractor” mean a person entering into an agreement, either verbal or written, with the owner of a project to perform such work as is described in the following paragraphs. A person may not contract with himself.
- 102 A “subcontractor” is a person entering into an agreement with a prime contractor or other subcontractor to perform work required under the prime contract.
- 103 A person entering into an agreement, or “management contract”, on a fee basis is not considered a prime contractor when such person acts as a liaison between the owner of the project and the various contractors who are hired and paid directly by the owner.
- 104 (Reserved)
- 200 Qualification and Payment of Tax.
- 201 A contractor, other than an oil or a gas well driller, taxable under Miss. Code Ann. Section 27-65-21 shall apply to the Commissioner for a Material Purchase Certificate (MPC) identifying the specific contract before work is begun. Contracts for residential construction are not taxable under Miss. Code Ann. Section 27-65-21 and do not qualify for an MPC.
- 202 The contractor's tax, together with any use tax due, must be paid before work is begun on any contract exceeding \$75,000, unless a bond is filed with the Department of Revenue. Bond forms are made available on request.
- 203 On taxable contracts between \$10,000 and \$75,000, or when a bond is required to be filed, the tax must be paid on a monthly basis as compensation is received, regardless of a contractor's sales tax filing status. Any use tax due on equipment shall be paid on or before the 20th day of the month following the month in which the property is brought into Mississippi.
- 204 Persons or firms without a permanent place of business within Mississippi, are required to qualify and pay the 3½% contractor's tax and any use tax due on the total contract amount before work is begun, unless a bond is filed as provided by Miss. Code Ann. Section 27-65-27 in an amount sufficient to cover these taxes.
- 205 The tax is levied upon the prime contractor. Subcontractors who perform work on a qualified prime contract owe no tax on the subcontract price or gross income unless the prime contractor fails to pay the tax due. A subcontractor may want to request a copy of the MPC from the prime contractor. Should the prime contractor

fail to qualify the contract and pay the amount of tax due, the subcontractor is liable for the contractor's tax on that portion of the work sublet to him.

206 The 2% taxpayer discount is not allowed on sales tax imposed and levied by Miss. Code Ann. Section 27-65-21 (contractor's tax).

207 Failure to comply with the requirements to obtain an MPC before work begins, prepay contractor's and use taxes or obtain a bond shall result in the contractor being prohibited from performing the contract.

208 A ten percent (10%) penalty is due on all deficiencies. Deficiencies include failure to post a bond or prepay the tax in full on all contracts requiring the posting of a bond or prepayment of tax before work has begun. This penalty is based on the total amount of tax due on the total contract price. A ten percent (10%) penalty is also due on the tax applicable to monthly compensation not reported timely on subsequent returns.

209 There will not be a 10% penalty on the same deficiency more than once. Any portion of tax related to compensation that was penalized as a failure to post a bond or prepay the tax in full on contracts before the work was begun will not also be subject to a 10% penalty on the late remittance of monthly returns. Any portion of tax related to the late remittance of monthly returns that was penalized will not also be subject to a 10% penalty for failure to post a bond or prepay the tax of a contract.

210 (Reserved)

300 Activities Taxed and Application of Rates.

301 A tax of 3½% is levied on the total contract amount or compensation received from all contracts, except contracts for residential construction, that exceed \$10,000 when the work to be performed is constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any of the following:

1. Air conditioning system
2. Bridge
3. Building
4. Culvert
5. Dam
6. Dock
7. Drainage or dredging system
8. Electrical system
9. Heating system
10. Highway
11. Irrigation or water system
12. Levee or levee system
13. Oil or gas well

- 14. Pipeline
- 15. Power plant
- 16. Railway
- 17. Reservoir
- 18. Sewer
- 19. Sidewalk
- 20. Storage tank
- 21. Street
- 22. Tower
- 23. Transmission line
- 24. Water well
- 25. Wharf
- 26. Wiring for communication or information systems
- 27. Any other improvement or structure or any part thereof (fences, etc.)

302 The tax is levied on contracts with the United States Government, the State of Mississippi and its political subdivisions and any other exempt agency, without any deduction for amounts paid to subcontractors, architects, engineers, landscapers or for any other costs or expenses (including the 3½% contractor's tax) incurred by the contractor. Liquidated damages that are withheld by the owner are not to be included in taxable contract receipts.

303 The portion of the total contract price attributable to design or engineering services is excluded from the contractor's tax if the total contract price for the project exceeds \$100,000,000; or if the engineering services are performed by a professional engineer, as defined in the Miss. Code Ann. Section 73-13-3, who is the general or prime contractor.

304 A person taxable under Miss. Code Ann. Section 27-65-23 who performs any of the activities listed in section 301 as a prime contractor for compensation in excess of \$10,000 shall qualify and pay tax as a contractor in lieu of the tax levied by Miss. Code Ann. Section 27-65-23. Activities so taxed under Miss Code Ann. Section 27-65-23 are:

- 1. Air conditioning installation or repairs;
- 2. Electrical work, wiring, and all repairs or installations of electrical equipment;
- 3. Elevator or escalator installation or repairs;
- 4. Grading, excavating, ditching, dredging or landscaping;
- 5. Insulating services or repairs;
- 6. Plumbing or pipe fitting;
- 7. Tin and sheet metal work;
- 8. Welding, etc.

305 Persons performing any services taxed under Miss. Code Ann. Section 27-65-23 for contracts of \$10,000 or less owe the regular retail rate of sales tax on gross income. Persons performing contracts of \$10,000 or less that do not include services taxed under Miss. Code Ann. Section 27-65-23 owe no tax on gross income

but are required to pay the regular retail rate of sales or use tax on all taxable purchases.

306 Continuous contracts on projects embracing activities taxable under Miss. Code Ann. Section 27-65-21, which are to be carried on for a definite period of time and a definite amount, will be qualified and taxed at 3½%. Otherwise, the determination of whether a contract is subject to tax under Miss. Code Ann. Section 27-65-21 will be made from purchase orders, work orders or invoices. Purchase orders, work orders or invoices that are a continuation of prior purchase orders, work orders or invoices will be considered part of one project. Generally, work on a project takes place in the same, adjacent or adjoining area. Transmission lines (gas, water, sewage, power, telephone, etc.) are considered a project. Amounts included in the contract for non-taxable activities (grass cutting, tree trimming, etc.) may be excluded from the taxable amount of the contract.

307 Individual contracts for the construction of several buildings, streets, etc., or parts thereof, may together be qualifiable as a prime contract despite the fact that the compensation for each separate part of the project is less than \$10,000. In order to determine whether such contracts are qualifiable, consideration must be given to the types of activities involved.

308 Contracts for the performance of work upon personal property, such as shipbuilding or ship repairing, or activities that consist of demolishing or razing old property or clearing land, are not subject to the provisions of Miss. Code Ann. Section 27-65-21. However, where land clearing or building razing activities are incidental to the primary purpose of the contract, such as highway or building construction, the total contract is taxable. No separation of incidental activity will be allowed even though it may be subcontracted.

309 Contractor's tax does not apply to the contract price or compensation received to restore, repair, or replace a utility distribution or transmission system (electric, gas, water, sewage, telephone, etc.) damaged by an ice storm, hurricane, flood, tornado, wind, earthquake or other natural disaster if the entity performing the restoration, repair or replacement is reimbursed for its cost only.

310 The portion of the contract price or compensation received from the sale and installation of manufacturing or processing machinery that loses its identity as tangible personal property to a manufacturer or a customer processor is to be taxed at the special sales tax rate of 1 ½%.

311 (Reserved)

400 Floating Structures.

401 A 3½% tax is levied on the gross proceeds or gross receipts from the sale of any tangible personal property that becomes a component part of any floating structure,

or on the performance of any construction activity upon any floating structure (not limited to casinos). These floating structures are located within the waters of the State of Mississippi and are normally moored and not normally engaged in the business of transporting people or property. This tax does not apply to tangible personal property that does not become a component part of the structure. If one contractor is doing both land-based and floating structure construction, this tax may be paid by the contractor; otherwise, the owner of floating structure is responsible for the tax. The owner of a floating structure subject to the 3½% tax will be issued a Casino Construction Project Certificate. The owner will provide the CCPC number to the prime contractors and sub-contractors performing work on the structure. This will allow the component materials and parts used in the construction activities to be purchased exempt from sales tax.

- 402 The owner of a floating structure will also be issued a direct pay number. With the use of the CCPC number and this direct pay number, tax is accrued on the owner's use tax return and not paid to vendors.
- 403 The contractor will be allowed to qualify those contracts involving both land-based and water-based structures that cannot be easily separated, as long as the land-based portion of the contract is in excess of \$10,000.
- 404 (Reserved)

500 Material Purchase Certificates and Component Materials.

- 501 A contractor's Material Purchase Certificate (MPC) number will be issued to a qualified contractor for each contract. The MPC number allows the contractor and his subcontractors to make tax-free purchases of materials and services that become a component part of the structure covered by the qualified contract. The MPC number expires upon completion of the contract.
- 502 The contractor and his subcontractors shall provide their suppliers with the MPC number when purchasing component materials. The supplier shall list the MPC number on each sales invoice as a prerequisite to claiming the exemption.
- 503 Component materials are all materials that become an integral part of the structure being erected. For personal property to be considered a part of real property, it must be permanently attached to real property. To be considered permanently attached, the property must lose its identity as personal property and one or more of the following criteria must be met:
 1. The property or equipment must be attached to building walls, floors, and/or ceilings in such way as to require design or structural alterations to the real property to which it is being attached; or
 2. The property cannot be removed intact or its removal would result in the alteration or destruction of the structure or property; or
 3. The property must become an independent structure, itself (real property).

504 Component materials may include built-in furniture, fixtures, appliances and similar personal property. Free-standing furniture, fixtures, appliances and similar personal property are not considered component materials. The purchase or sales price of such non-component materials is taxed at the regular retail rate and may be excluded from the measure of the contractor's tax.

505 Items that are considered to be non-component materials include, but are not limited to, the following:

1. Awnings
2. Building signage (channel letters, etch)
3. Cellular telephone tower addition (antennas, radio equipment, platforms, etc.)
4. Conveyor system, non-integrated
5. Digital billboard screens
6. Fuel dispensers
7. Generators
8. Gutters
9. Irrigation systems, above the ground
10. Motors
11. Movable bleachers or stadium seating
12. Playground equipment
13. Removable/replaceable pumps
14. Solar panels
15. Walk-in cooler/freezer
16. Water treatment clarifiers, descales and water conditioning/filtration equipment, etc.

506 Free-standing personal property sold under a contract with the United States Government, the State of Mississippi and its political subdivisions or any other exempt agency can be purchased tax free. The contractor must apply to the Department for a letter granting the authority to purchase free-standing personal property exempt from tax.

507 When records and invoices are not kept to substantiate exempt sales, sales made to the contractor or subcontractor will be considered retail sales, taxable at the regular retail rate. Contractors with contracts taxable under Miss. Code Ann. Section 27-65-21 who have paid retail sales tax on purchases of materials and services in the state that become a component part of a structure being erected or repaired may take a credit against their sales tax liabilities for the sales tax paid on these purchases after obtaining the MPC for the related project.

508 A valid MPC number or direct pay permit is required to make an exempt purchase of concrete or asphalt for use in any commercial construction job that is required to be qualified under Miss. Code Ann. Section 27-65-21. All purchases of asphalt or

concrete for commercial construction jobs less than \$10,000 are taxable at the regular retail rate of tax at the time of purchase, unless the purchaser is an exempt entity or provides the seller with a direct pay permit. An exempt entity is one that is exempt from sales tax as provided in Miss. Code Ann. Sections 27-65-101 through 27-65-111. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93.

509 A person with a valid sales tax number who is purchasing concrete to use in the performance of a taxable service is considered the consumer of the concrete and must pay tax to the vendor at the time of purchase. Contractors who mix -concrete or asphalt for use in the performance of a job owe sales tax on the value of the concrete or asphalt. Any person purchasing concrete or asphalt from an out-of-state vendor for delivery and use in this state will be liable for remitting use tax on the purchase price of the concrete or asphalt. Any person who mixes concrete or asphalt out of state for delivery and use in this state will be liable for remitting use tax on the value of the concrete or asphalt. The term "vendor", as used in this section, means the person who is manufacturing or producing the concrete or asphalt from raw materials either at a fixed plant site location, a portable plant or through ready-mix trucks. Materials used to form concrete are not considered component materials and may not be covered by the use of an MPC number.

510 (Reserved)

600 Bond Requirement.

601 A bond must be filed on taxable contracts exceeding \$75,000 that are performed in this State, unless the tax is prepaid. Persons or firms without a permanent place of business within Mississippi must file a bond on any taxable contract in excess of \$10,000, unless the tax is prepaid.

602 Such bonds shall be either (a) job bonds which guarantee the payment of taxes resulting from the performance of a specified job or activity regardless of date of completion; or (b) blanket bonds which guarantee the payment of taxes resulting from the performance of all jobs or activities taxable under Miss. Code Ann. Section 27-65-21 that are begun during a specified period, regardless of the date of completion. The bond must be sufficient to cover the liability for sales, use, income, withholding and motor fuel taxes and must be approved by the Commissioner.

603 In lieu of a job or blanket bond, a tax rider, with a copy of a performance and/or payment bond, may be accepted. In order for the tax rider to be accepted, a copy of the performance and/or payment bond for which the tax rider is executed must be on file with the Department.

604 It is in the discretion of the Department to require that a job bond be filed when making application to the Commissioner for an MPC for continuous and/or

maintenance projects. This request must be updated annually along with the submission of proof of continued bonding coverage.

605 Where a contractor prepaid the sales tax, but a use, income, withholding or motor fuel tax bond is still required, the contractor will be notified of the bond requirement after an application for a Material Purchase Certificate has been received.

606 When a contractor defaults ~~on~~ the execution of his contract and the bonding company acting as surety for the performance of the contract assumes completion of the contract, the bonding company becomes liable for the payment of the sales, use, income, withholding and motor fuel tax accruing as a result of its activities. The contractor's MPC number becomes void at the time of default. The surety company shall make application to the Commissioner for an MPC covering the remaining/unfinished portion of the contract. The application must include proper bonding and/or prepayment of tax.

607 (Reserved)

700 Owner Construction.

701 A person constructing buildings on property he owns is not a contractor and is liable for the retail sales or use tax on all materials or services purchased, even though the person may enter into a contract to sell the building and lot (real property) before construction is completed.

702 (Reserved)

800 Residential Construction.

801 The contract price or compensation received for constructing, building, erecting, repairing, or adding to any building, electrical system, heating system or any other improvement or structure that is used for or primarily in connection with a residence or dwelling place for human beings is excluded from the 3½% contractor's tax provided by Miss. Code Ann. Section 27-65-21.

802 Sales of materials and services for use in residential construction activities are taxed at the regular retail rate of tax provided by Miss. Code Ann. Sections 27-65-17, 27-65-23 and 27-67-5. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include hotels, motels, hospitals, apartments, condominiums, nursing or retirement homes, tourist cottages, military barracks, school dormitories, sorority and fraternity houses, churches or other commercial establishments. An "apartment" is a collection of four or more dwellings on continuous land with kitchen facilities and common ownership that are rented to tenants rather than transient guests. Groups of single family homes do not constitute apartments. A "nursing home", as

the term is used in this section, is any complex that provides any type of assisted living. The caregivers can be either medical or non-medical personnel.

803 It is in the discretion of the Department to separate out residential housing from a construction contract for nonresidential construction.

804 All purchases of concrete and asphalt for residential use are taxable at the regular retail rate of sales tax at the time such materials are purchased from the vendor, unless the purchaser is an exempt entity or provides the seller with a direct pay permit. An exempt entity is one that is exempt from sales tax as provided in Miss. Code Ann. Sections 27-65-101 through 27-65-111. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93. A direct pay permit relieves the seller of the responsibility for collecting tax and requires the holder to remit any taxes due on the purchase directly to the state.

805 A person with a valid sales tax number who is purchasing concrete to use in the performance of a taxable service is considered the consumer of the concrete and must pay tax to the vendor at the time of purchase. Contractors who mix concrete or asphalt for use in the performance of a job owe sales tax on the value of the concrete or asphalt. Any person purchasing concrete or asphalt from an out-of-state vendor for delivery and use in this state will be liable for remitting use tax on the purchase price of the concrete or asphalt. Any person who mixes concrete or asphalt out of state for delivery and use in this state will be liable for remitting use tax on the value of the concrete or asphalt. The term "vendor", as used in this section, means a person who is mixing concrete or asphalt from raw materials either at a fixed plant site location, a portable plant or through ready-mix trucks.

806 (Reserved)

900 Equipment and Supplies.

901 Purchases by contractors and subcontractors of work equipment, tools, building forms, repair parts for work equipment and similar items of tangible personal property that do not become component parts of the structure being erected are taxed at the regular retail rate of sales or use tax. When property of this type has been previously used in another state and is imported into this State for use, the use tax is due on the fair market value of the property at the time of importation. At no time shall the value be less than 20% of original cost. Credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State. The credit must be computed by applying the rate of sales or use tax paid to another state to the value of the property at the time it enters Mississippi.

902 Owners or other persons receiving benefit from the use of tangible property in this State are liable for use tax on such property.

903 The rental or lease of equipment and other tangible personal property is taxed at the same rates as a sale of the same property.

904 (Reserved)

1000 Persons or Firms Domiciled Outside the State

1001 Persons or firms domiciled outside Mississippi who perform contracts in Mississippi are construed to be doing business within the State and are subject to the various provisions of the Sales and Use Tax Laws, the Income and Withholding Tax Laws, the Franchise Tax Laws and the Motor Fuel Tax Laws in the same manner as are resident taxpayers.

1002 (Reserved)

35.IV.10.01 revised effective June 1, 2007

35.IV.10.01 revised effective February 1, 2010

35.IV.10.01 revised effective May 9, 2016

Chapter 01 Construction Contractors

- 100 Definitions.
- 101 The terms "contractor" and "prime contractor" ~~are construed to~~ mean a person entering into an agreement, either verbal or written, with the owner of a project to perform such work as is described in the following paragraphs. A person may not contract with himself.
- 102 A "subcontractor" is ~~construed to mean~~ a person entering into an agreement with a prime contractor or other subcontractor to perform work required under the prime contract.
- 103 **Management Contracts** A person entering into an agreement, or "management contract", on a fee basis is not considered a prime contractor when such person acts as a liaison between the owner of the project and the various contractors who are hired and paid directly by the owner.
- 104 (Reserved)
- 200 Qualification and Payment of Tax.
- 201 A contractor, other than an oil or a gas well driller, taxable under Miss. Code Ann. Section 27-65-21 ~~on a specified contract exceeding \$10,000,~~ shall ~~make application~~ apply to the Commissioner for a Material Purchase Certificate (MPC) ~~to identify~~ ing the specific contract before work is begun. Contracts for residential construction are not taxable under Miss. Code Ann. Section 27-65-21 and do not qualify for an MPC.
- 202 The contractor's tax, together with any use tax due, must be paid before work is begun on any contract exceeding \$75,000, unless a ~~surety~~ bond is filed with the ~~State Tax Commission~~Department of Revenue ~~for these taxes~~. Bond forms are made available on request.
- 203 On taxable contracts between \$10,000 and \$75,000, or when a bond is required to be filed, the tax must be paid on a monthly basis as compensation is received, regardless of a contractor's sales tax filing status. Any use tax due on equipment shall be payable ~~id~~ on or before the 20th day of the month following the month in which the property is brought into Mississippi.
- 204 Persons or firms without a permanent place of business within Mississippi, are required to qualify and pay ~~any use tax and~~ the 3½% contractor's tax ~~and any use tax~~ due on the total contract amount before work is begun, unless a ~~surety~~ bond is filed as provided by Miss. Code Ann. Section 27-65-27 in an amount sufficient to cover these taxes.

205 The tax is levied upon the prime contractor. Subcontractors who perform work on a qualified prime contract owe no tax on the subcontract price or gross income unless the prime contractor fails to pay the tax due. A subcontractor may want to request a copy of the MPC from the prime contractor. However, should the prime contractor fail to qualify the contract and pay the amount of tax due, the subcontractor is liable for the contractor's tax on that portion of the work sublet to him.

206 The 2% taxpayer discount is not allowed on sales tax imposed and levied by Miss. Code Ann. Section 27-65-21 (contractor's tax).

207 Failure to comply with the requirements to obtain an MPC before work begins, prepay contractor's and use taxes or obtain a bond shall result in the contractor being prohibited from performing the contract.

208 A ten percent (10%) penalty is due on all deficiencies. Deficiencies include failure to post a bond or prepay the tax in full on all contracts requiring the posting of a bond or prepayment of tax before work has begun. This penalty is based on the total amount of tax due on the total contract price. A ten percent (10%) penalty is also due on the tax applicable to monthly compensation not reported timely on subsequent returns.

20978 There will not be a 10% penalty on the same deficiency more than once. Any portion of tax related to compensation that was penalized as a failure to post a bond or prepay the tax in full on contracts before the work was begun will not also be subject to a 10% penalty on the late remittance of monthly returns. Any portion of tax related to the late remittance of monthly returns that was penalized will not also be subject to a 10% penalty for failure to post a bond or prepay the tax of a contract.

210 (Reserved)

300 Activities Taxed and Application of Rates.

301 A tax of 3½% is levied on the total contract amount or compensation received from all contracts, except contracts for residential construction, that exceed \$10,000 when the work to be performed is constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any of the following:

1. Air conditioning system
2. Bridge
3. Building
4. Culvert
5. Dam
6. Dock
7. Drainage or dredging system
8. Electrical system

9. Heating system
10. Highway
11. Irrigation or water system
12. Levee or levee system
13. Oil or gas well
14. Pipeline
15. Power plant
16. Railway
17. Reservoir
18. Sewer
19. Sidewalk
20. Storage tank
21. Street
22. Tower
23. Transmission line
24. Water well
25. Wharf
26. Wiring for communication or information systems
27. Any other improvement or structure or any part thereof (fences, etc.)

302 The tax is levied ~~upon the prime contractor and includes~~ contracts with the United States Government, the State of Mississippi ~~or and its any~~ political subdivisions ~~or and~~ any other exempt agency, without any deduction ~~whatever~~ for amounts paid to subcontractors, architects, engineers, landscapers or for any other costs or expenses (including the 3½% contractor's tax) incurred by the contractor. Liquidated~~ing~~ damages that are withheld by the owner are not to be included in taxable contract receipts. ~~The portion of the total contract price attributable to the design or engineering services may be excluded from the contractor's tax where the total contract price for the project exceeds \$100,000,000.~~

303 ~~The portion of the total contract price attributable to design or engineering services is excluded from the contractor's tax if the total contract price for the project exceeds \$100,000,000; or if the engineering services are performed by a professional engineer, as defined in the Miss. Code Ann. Section 73-13-3, who is the general or prime contractor.~~

30~~34~~ A person taxable under Miss. Code Ann. Section 27-65-23 who performs any of the ~~above~~ activities, listed in section 301 as a prime contractor for compensation in excess of \$10,000 shall qualify and pay tax as a contractor in lieu of the tax levied by Miss. Code Ann. Section 27-65-23. ~~Persons or businesses Activities~~ so taxed under Miss Code Ann. Section 27-65-23 are:

1. Air conditioning installation or repairs;
2. Electrical work, wiring, and all repairs or installations of electrical equipment;
3. Elevator or escalator installation or repairs;
4. Grading, excavating, ditching, dredging or landscaping;
5. Insulating services or repairs;

6. Plumbing or pipe fitting;
7. Tin and sheet metal work;
8. Welding, etc.

3045 Persons performing any ~~of the above~~ services taxed under Miss. Code Ann. Section 27-65-23 for contracts of \$10,000 or less owe the regular retail rate of sales tax on gross income. Persons performing contracts of \$10,000 or less ~~which~~that do not include ~~Miss. Code Ann. Section 27-65-23~~ services taxed under Miss. Code Ann. Section 27-65-23 owe no tax on gross income but are required to pay the regular retail rate of sales or use tax on all taxable purchases.

3056 Continuous contracts on ~~a~~ projects embracing activities taxable under Miss. Code Ann. Section 27-65-21, which are to be carried on for a definite period of time and a definite amount, will be qualified and taxed at $3\frac{1}{2}\%$. Otherwise, the determination of whether a ~~taxable~~ contract is subject to tax under Miss. Code Ann. Section 27-65-21 will be made from purchase orders, work orders or invoices. Purchase orders, work orders or invoices that are a continuation of prior purchase orders, work orders or invoices will be considered part of one project. Generally, work on a project ~~stakes place~~ in the same, adjacent or adjoining area. Transmission lines (gas, water, sewage, power, telephone, etc.) are considered a project. Amounts included ~~which embrace in the contract for~~ non-taxable activities (grass cutting, tree trimming, etc.) may be excluded from the taxable amount of the contract. ~~Miss. Code Ann. Section 27-65-21 provides for that portion of the contract price or compensation received representing the sale and installation of manufacturing or processing machinery for a manufacturer or a custom processor to be taxed at the special sales tax rate of $1\frac{1}{2}\%$ in lieu of the $3\frac{1}{2}\%$ rate specified above.~~

3067 Individual contracts for the construction of several buildings, streets, etc., or parts thereof, may together be qualifiable as a prime contract despite the fact that the compensation for each separate parts of the project is less than \$10,000. In order to determine whether such contracts are qualifiable, consideration must be given to the types of activities involved.

3078 Contracts for the performance of work upon personal property, such as shipbuilding or ship repairing, or activities ~~which~~that consist of demolishing or razing old property or clearing land, are not subject to the provisions of Miss. Code Ann. Section 27-65-21. However, where land clearing or building razing activities are incidental ~~activities~~ to the primary purpose of the contract, such as highway or building construction, the total contract is taxable. No separation of incidental activity will be allowed even though it may be subcontracted.

3089 Contractor's tax does not apply to the contract price or compensation received to restore, repair, or replace a utility distribution or transmission system (electric, gas, water, sewage, telephone, etc.) damaged by an ice storm, hurricane, flood, tornado,

wind, earthquake or other natural disaster if the entity performing the restoration, repair or replacement is reimbursed for its cost only.

310 ~~The portion of the contract price or compensation received from the sale and installation of manufacturing or processing machinery that loses its identity as tangible personal property to a manufacturer or a customer processor is to be taxed at the special sales tax rate of 1 1/2%.~~

3109 (Reserved)

400 Floating Structures.

401 A 3½% tax is levied on the gross proceeds or gross receipts from the sale of any tangible personal property that becomes a component part of ~~the any floating structure, or on~~ the performance of any construction activity upon any floating structure (not limited to casinos). These floating structures are ~~located within the waters of the State of Mississippi and are~~ normally moored and not normally engaged in the business of transporting people or property. ~~These structures are located within the waters of the State of Mississippi.~~ This tax does not apply to tangible personal property that does not become a component part of the structure. If one contractor is doing both ~~the land-based~~ and floating structure construction, this tax may be paid by the contractor; otherwise, the owner of floating structure is responsible for the tax. The owner of a floating structure, subject to the 3½% tax, will be issued a ~~Casino Construction Project Certificate~~~~distinctive number similar to an MPC Number.~~ 402 The owner will provide ~~this~~ CCPCMPC number to the prime contractors and sub-contractors ~~performing work on the structure~~. This will allow the ~~purchase of~~ component materials and parts ~~for used~~ in the construction activities ~~to be purchased~~ exempt from ~~further~~ sales tax.

4032 The owner of a floating structure will also be issued a direct pay number. With the use of the ~~MPC~~~~CCPC~~ number and this direct pay number, tax is accrued on the owner's use tax return and not paid to vendors.

4043 The contractor will be allowed to qualify those contracts involving both ~~land-based~~ and ~~water-based~~ structures that cannot be easily separated, as long as the ~~land-based~~ portion of the contract is in excess of \$10,000.

4054 (Reserved)

500 Material Purchase Certificates and Component Materials.

501 A contractor's Material Purchase Certificate (MPC) number will be issued to a qualified contractor for each contract. The MPC number allows the contractor and his subcontractors to make tax-free purchases of materials and services that become

a component part of the structure covered by the MPC number~~qualified contract~~. The MPC number expires upon completion of the contract.

502 The contractor and his subcontractors shall provide their suppliers with the MPC number when purchasing component materials. The supplier shall list the MPC number on each sales invoice as a prerequisite to claiming the exemption.

503 Component materials are ~~considered~~ all materials that become an integral part of the structure being erected. For personal property to be considered a part of real property, it must be permanently attached to real property. To be considered permanently attached, the property must lose its identity as personal property and one or more of the following criteria must be met:

1. The property or equipment must be attached to building walls, floors, and/or ceilings in such way as to require design or structural alterations to the real property to which it is being attached; or
2. The property ~~could~~cannot be removed intact or its removal would result in the alteration or destruction of the structure or property; or
3. The property must become an independent structure, itself (real property).

504 Component materials may include built-in furniture, fixtures, appliances and similar personal property. Free-standing furniture, fixtures, appliances and similar personal property are not considered component materials. The purchase or sales price of such non-component materials is taxed at the regular retail rate and may be excluded from the measure of the contractor's tax.

505 Items that are considered to be non-component materials include, but are not limited to, the following:

1. Awnings
2. Building signage (channel letters, etch)
3. Cellular telephone tower addition (antennas, radio equipment, platforms, etc.)
4. Conveyor system, non-integrated
5. Digital billboard screens
6. Fuel dispensers
7. Generators
8. Gutters
9. Irrigation systems, above the ground
10. Motors
11. Movable bleachers or stadium seating
12. Playground equipment
13. Removable/replaceable pumps
14. Solar panels
15. Walk-in cooler/freezer
16. Water treatment clarifiers, descales and water conditioning/filtration equipment, etc.

5056 Free-standing personal property sold under a contract with either the United States Government, the State of Mississippi ~~or and any its~~ political subdivisions or any other exempt agency, ~~that has been qualified~~, can be purchased tax free. The contractor must apply to the ~~Tax Commission Department~~ for a letter granting the authority to purchase free-standing personal property ~~tax free exempt from tax~~.

5067 When records and invoices are not kept ~~to substantiate exempt sales in compliance with this regulation~~, sales made to the contractor or subcontractor will be considered retail sales, taxable at the regular retail rate. ~~Contractors with contracts taxable under Miss. Code Ann. Section 27-65-21 who have paid retail sales tax on purchases of materials and services in the state that become a component part of a structure being erected or repaired may take a credit against their sales tax liabilities for the sales tax paid on these purchase after obtaining the MPC for the related project.~~

5078 A valid MPC number or direct pay permit is required to ~~make an exempt~~ purchase ~~of~~ concrete or asphalt ~~exempt~~ for use in any commercial construction job ~~which that~~ is required to be qualified under Miss. Code Ann. Section 27-65-21. All purchases of asphalt or concrete for commercial construction jobs less than \$10,000 are taxable at the regular retail rate of tax at the time of purchase ~~from the vendor~~, unless the purchaser is an exempt entity or provides the seller with a direct pay permit. An exempt entity is one ~~which that~~ is exempt from sales tax as provided ~~for~~ in Miss. Code Ann. Sections 27-65-101 through 27-65-111. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93. ~~A direct pay permit relieves the seller of the responsibility for collecting tax and requires the holder to remit any taxes due on the purchase directly to the state.~~

5089 A person with a valid sales tax number who is purchasing concrete to use in the performance of a taxable service is considered the consumer of the concrete and must pay tax to the vendor at the time of purchase. Contractors who ~~mix use~~ concrete or asphalt ~~for use~~ in the performance of a job ~~and who manufacture or produce the materials~~ owe sales tax on the value of the concrete or asphalt. Any person purchasing concrete or asphalt from an ~~out-of-state~~ vendor ~~out of state~~ for delivery and use in this state will be liable for remitting use tax on the purchase price of the ~~products~~ ~~concrete or asphalt~~. Any person who ~~manufactures or produces mixes~~ concrete or asphalt out of state for delivery and use in this state will be liable for remitting use tax on the value of the concrete or asphalt.

509 The term “vendor”, as used in this section, means the person who is manufacturing or producing the concrete or asphalt from raw materials either at a fixed plant site location, a portable plant or through ready-mix trucks.

510 Materials used to form concrete are not considered component materials and may not be covered by the use of an MPC number.

5140 (Reserved)

600 Bond Requirement.

601 A ~~surety~~-bond must be filed on taxable contracts exceeding \$75,000.~~00~~ that are performed in this State, unless the tax is prepaid. Persons or firms without a permanent place of business within Mississippi must file a ~~surety~~-bond on any taxable contract in excess of \$10,000, unless the tax is prepaid.

602 Such bonds shall be either (a) job bonds which guarantee the payment of taxes resulting from the performance of a specified job or activity regardless of date of completion; or (b) blanket bonds which guarantee the payment of taxes resulting from the performance of all jobs or activities taxable under Miss. Code Ann. Section 27-65-21 that are begun during a specified period, regardless of the date of completion. The bond must be sufficient to cover the liability for sales, use, income, withholding and motor fuel taxes and must be approved by the Commissioner.

603 In lieu of a job or blanket bond, a tax rider, with a copy of a performance and/or payment bond, may be accepted. In order for the tax rider to be accepted, a copy of the performance and/or payment bond for which the tax rider is executed must be on file with the Department.

604 It is in the discretion of the Department to require that a job bond be filed when making application to the Commissioner for an MPC for continuous and/or maintenance projects. This request must be updated annually along with the submission of proof of continued bonding coverage.

6035 Where a contractor ~~In the case of~~ prepayment of the sales tax, ~~but where~~ a use, income, withholding or motor fuel tax bond is still required, the contractor will be notified of the bond requirement after an application for a Material Purchase Certificate has been received.

6046 When a contractor defaults ~~on~~ the execution of his contract and the bonding company acting as surety for the performance of the contract assumes completion of the contract, the bonding company becomes liable for the payment of the sales, use, income, withholding and motor fuel tax accruing as a result of its activities. The contractor's MPC number becomes void at the time of default. The surety company shall make application to the Commissioner for an MPC covering the remaining/unfinished portion of the contract. The application must include proper bonding and/or prepayment of tax.

6057 (Reserved)

700 Owner Construction.

701 A person constructing buildings on property ~~which~~ he owns is not a contractor and is liable for the retail sales or use tax on all materials or services purchased, even though the person may enter into a contract to sell the building and lot (real property) before construction is completed.

702 (Reserved)

800 Residential Construction.

801 The contract price or compensation received for constructing, building, erecting, repairing, or adding to any building, electrical system, heating system or any other improvement or structure ~~which that~~ is used for or primarily in connection with a residence or dwelling place for human beings is excluded from the 3½% contractor's tax provided by Miss. Code Ann. Section 27-65-21.

802 Sales of materials and services for use in ~~such residential~~ construction activities are taxed at the regular retail rate of tax provided by Miss. Code Ann. Sections 27-65-17, 27-65-23 and 27-~~65~~⁶⁷-5. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include hotels, motels, hospitals, apartments, condominiums, nursing or retirement homes, tourist cottages, military barracks, school dormitories, sorority and fraternity houses, churches or other commercial establishments. An "apartment" is a collection of four or more dwellings on continuous land with kitchen facilities and all with common ownership ~~on continuous land, that are~~ rented to tenants rather than transients guests. Groups of single family homes do not constitute apartments. A "nursing home", as the term is used in this section, is any complex that provides any type of assisted living. The caregivers s can be either medical or non-medical personnel.

803 It is in the discretion of the ~~Tax Commission Department~~ to separate out residential housing from a construction contract for nonresidential construction.

80~~24~~³⁵ All purchases of concrete and asphalt for residential use are taxable at the regular retail rate of sales tax at the time such materials are purchased from the vendor, unless the purchaser is an exempt entity or provides the seller with a direct pay permit. An exempt entity is one ~~which that~~ is exempt from sales tax as provided ~~for~~ in Miss. Code Ann. Sections 27-65-101 through 27-65-111. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93. A direct pay permit relieves the seller of the responsibility for collecting tax and requires the holder to remit any taxes due on the purchase directly to the state.

80~~35~~³⁵ A person with a valid sales tax number who is purchasing concrete to use in the performance of a taxable service is considered the consumer of the concrete and must pay tax to the vendor at the time of purchase. Contractors who ~~use mix~~ concrete or asphalt for use in the performance of a job ~~and who manufacture or produce the materials~~ owe sales tax on the value of the concrete or asphalt. Any

person purchasing concrete or asphalt from an out-of-state vendor ~~out of state~~ for delivery and use in this state will be liable for remitting use tax on the purchase price of the concrete or asphalt. Any person who manufactures or producesmixes concrete or asphalt out of state for delivery and use in this state will be liable for remitting use tax on the value of the concrete or asphalt.

~~804~~—The term “vendor”, as used in this section, means a person who is mixing concrete or asphalt from raw materials either at a fixed plant site location, a portable plant or through ready-mix trucks.

~~8056~~ (Reserved)

900 Equipment and Supplies.

901 Purchases by contractors and subcontractors of work equipment, tools, building forms, repair parts for work equipment and similar items of tangible personal property that do not become ~~a~~ component partss of the structure being erected are taxed at the regular retail rate of sales or use tax. When property of this type has been previously used in another state and is imported into this State for use, the use tax is due on the fair market value of the property at the time of importation. At no time shall the value be less than 20% of original cost. Credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State. The credit must be computed by applying the rate of sales or use tax paid to another state to the value of the property at the time it enters Mississippi.

902 Owners or other persons receiving benefit from the use of tangible property in this State are liable for use tax on such property.

903 The Rental or lease of equipment and other tangible personal property is taxed at the same rates as a sales of the same property.

904 (Reserved)

1000 Persons or Firms Domiciled Outside the State

1001 Persons or firms domiciled outside the State Mississippi who perform contracts in Mississippi are construed to be doing business within the State and are subject to the various provisions of the Sales and Use Tax Laws, the Income and Withholding Tax Laws, the Franchise Tax Laws and the Motor Fuel Tax Laws in the same manner as are resident taxpayers.

1002 (Reserved)

35.IV.10.01 revised effective June 1, 2007

35.IV.10.01 revised effective February 1, 2010

35.IV.10.01 revised effective May 9, 2016