

Title 35 Mississippi State Tax Commission

Part IV Sales & Use

Subpart 05 Services

Chapter 08 Grading, Ditching, Dredging or Landscaping

100 Levy

101 Pursuant to Miss. Code Ann. Section 27-65-23, persons engaged in the business of performing services of grading, excavating, ditching, dredging, or landscaping are liable for sales tax at the regular rate of tax on gross income except as otherwise provided.

102 The total compensation received from grading, excavating, ditching, dredging, or landscaping activities performed as a prime contractor, for commercial purposes and exceeding \$10,000.00 is subject to the contractor's tax provided for in Miss. Code Ann. Section 27-65-21.

103 (Reserved)

200 Definitions

201 Grading means any activity where an improvement is made to a road, land surface, or other job site such as, but not limited to, the grading of streets, highways, foundation pads, commercial projects, and building lots. Grading also includes the terracing of land, land leveling and land forming for farm, commercial, industrial, or residential purposes. Grading does not include land clearing and grubbing services when these services are not performed in conjunction with any other taxable services such as those activities listed above.

202 Excavating means any activity where something is created through excavation such as, but not limited to, a swimming pool, basement for a building, pond, underground storage silo, or other similar or related facility.

203 Ditching embraces any activity where a trench, furrow, canal, dredge ditch, or irrigation canal is made or constructed for irrigation, drainage or a boundary line, but is not limited to these activities.

204 Dredging means any activity of constructing, repairing, improving, or removing sediment from any ditch, irrigation canal, navigation channel, trench, drainage ditch, or any other body of water.

205 Landscaping means any activity that modifies the grounds of any house, building or area of land by contouring, forming or functional alteration of the land and includes the planting of flowers, shrubs or trees and the establishment of lawns and gardens. Landscaping also includes the building of landforms, retaining walls, flower beds, water features and other similar structures. Landscaping does not include tree trimming, grass

cutting, hedge trimming, or similar maintenance activities; nor does it include the planting or spreading of materials provided by the owner when the charges for the non-taxable activities are listed separately on the invoice given to the customer.

- 206 Agricultural or soil erosion activities include items such as terracing, land leveling for purposes of growing crops, preparation of pasture land, creation or deepening of farm ponds, irrigation or drainage ditches, and other similar activities where the purpose of such activity is to improve land where crops are grown or where livestock is allowed to roam or graze. Agricultural or soil erosion activities do not include activities which are part of a commercial construction activity such as the building or improving of poultry houses, barns, sheds, roads, foundation pads or other similar structures.
- 207 (Reserved)
- 300 Taxability
- 301 Sales tax is not due on contracts entered into with farmers for the clearing of trees and underbrush when the principle activity contracted for is for land clearing. Contracts that principally involve grading, excavating, ditching, dredging, or landscaping are subject to tax unless such activity is exempted under Miss. Code Ann. Section 27-65-103 (d).
- 302 Miss. Code Ann. Section 27-65-103 (d) exempts gross income from grading, excavating, ditching, dredging or landscaping activities performed for a farmer on a farm for agricultural or soil erosion purposes when such income does not exceed \$10,000.00. Contracts in excess of \$10,000.00 for grading, excavating, ditching, dredging or landscaping services are taxable even when the payment for such activities is paid for in full or in part by the United States, State of Mississippi, or other governmental entity, or when the landowner is reimbursed in full or in part by a governmental entity.
- 303 No sales tax is due on a contract to fill in a hole, trench, ditch or other cavity in the earth where the principle activity performed is the transportation of fill dirt to the job site, the service of compacting and leveling being an inconsequential element of the transaction, even though the total compensation received is in excess of \$10,000.00. If, on the other hand, the principal activity performed is the grading or land forming of the job site with the service of removing excess dirt or placement of fill dirt being an inconsequential element of the transaction, sales tax or contractor's tax is due on the total compensation received.
- 304 Compensation received from the drilling and installation of the well for an irrigation system is taxable for contractor's tax when the income exceeds \$10,000.00.
- 305 The activities of a person engaged in the stripping of top soil or the mining, loading, and hauling of a natural resource product are not grading or excavating within the scope of Miss. Code Ann. Section 27-65-23 and as such is not subject to sales or contractor's tax.
- 306 Contracts for remediation or excavation and removal of contaminated soil for environmental purposes are subject to sales or contractor's tax.

307 (Reserved)

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1010 Pursuant to Miss. Code Ann. Section 27-65-23, Ppersons engaged in the business of performing services of grading, excavating, ditching, dredging, or landscaping are liable for sales tax at the regular rate of tax on gross income except as otherwise provided.

102 The total compensation received from grading, excavating, ditching, dredging, or landscaping activities performed as a prime contractor, for commercial purposes and exceeding \$10,000.00 is subject to the contractor's tax provided for in Miss. Code Ann. Section 27-65-21.

103 (Reserved)

200 Definitions

2401 The term "gGrading" means any eommercial-activity wherein through the use of equipment or otherwise an improvement is made to a road, land surface, or other job site such as, but not limited to, the grading of streets, highways, foundation pads, commercial projects, and building lots, and Grading shall also includes the terracing of land, land leveling and land forming for, either farm, farm, commercial, industrial, or residential purposes. Grading does not include land clearing and grubbing services when these services are not performed in conjunction with any other taxable services such as those activities listed above.

2402 The term "eExcavating" means any eommercial-activity wherein through the use of equipment or otherwise something is created through excavation such as, but not limited to, a swimming pool, basement for a building, pond, underground storage silo, or other similar or related facility.

2403 The term "dDitching" embraces any eommercial-activity wherein a trench, furrow, canal, dredge ditch, or irrigation canal system is made or constructed for irrigation, drainage or a boundary line, but is not limited to these activities.

2404 The term "dDredging" means any eommercial-activity of constructing, repairing, or improving, or removing sediment from -any ditch, irrigation system, canal, navigation channel, or other trench, or drainage ditch, or any other body of water.

2405 The term "lLandscaping" means any eommercial-activity that modifies wherein the grounds of any house, building or area of land site are improved by contouring, forming or functional alteration of the land and includes the planting of flowers, shrubs or trees

and the establishment of lawns and gardens. Landscaping also includes the building of landforms, retaining walls, flower beds, water features and other similar structures. Landscaping does not include tree trimming, grass cutting, hedge trimming, or similar maintenance activities; nor does it include the planting or spreading of materials provided by the owner when the charges for the non-taxable activities are listed separately on the invoice given to the customer.

206 Agricultural or soil erosion activities include items such as terracing, land leveling for purposes of growing crops, preparation of pasture land, creation or deepening of farm ponds, irrigation or drainage ditches, and other similar activities where the purpose of such activity is to improve land where crops are grown or where livestock is allowed to roam or graze. Agricultural or soil erosion activities do not include activities which are part of a commercial construction activity such as the building or improving of poultry houses, barns, sheds, roads, foundation pads or other similar structures.

207 (Reserved)

~~106 A person who performs such activities as a prime contractor on projects other than residential for compensation in excess of \$10,000.00 shall qualify and pay the 3½% contractor's tax in lieu of the regular retail rate of tax.~~

300 Taxability

~~34017 Sales tax is not due on Ccontracts entered into with farmers for the clearing of trees and underbrush is not taxable when the principle activity contracted for is for land clearing. - Contracts that principally involve If there is any grading, excavating, ditching, dredging, or landscaping involved, the total contract would then be are subject to tax unless such activity is exempted under Miss. Code Ann. Section 27-65-103 (d).~~

302 Miss. Code Ann. Section 27-65-103 (d) exempts gross income from grading, excavating, ditching, dredging or landscaping activities performed for a farmer on a farm for agricultural or soil erosion purposes when such income does not exceed \$10,000.00. Contracts in excess of \$10,000.00 for grading, excavating, ditching, dredging or landscaping services are taxable even when the payment for such activities is paid for in full or in part by the United States, State of Mississippi, or other governmental entity, or when the landowner is reimbursed in full or in part by a governmental entity.

~~108 The activity of a person engaged in the stripping of top soil or the mining, loading, and hauling of a natural resource predict taxable under Section 27-65-15 (see Title 35, Mississippi Administrative Code, Part IV, Subpart 7, Chapter 1.) is not "grading or excavating" within the scope of Section 27-65-23 and as such is not subject to sales or contractor's tax.~~

~~109 Contracts for excavation and removal of contaminated soil for environmental purposes are subject to sales or contractor's tax.~~

~~110 Grading, excavating, ditching, dredging or landscaping services performed for agricultural or soil erosion purposes are taxable, even when such work is paid for in full or in part by a United States or State of Mississippi Governmental entity, or when a~~

~~farmer or another person may be reimbursed in full or in part by a Governmental entity. Effective June 1, 1992, and after, income from grading, excavating, ditching, dredging or landscaping activities performed for a farmer on a farm for agricultural or soil erosion purposes is exempt from retail sales tax when such income does not exceed \$10,000.00. "Agricultural or soil erosion purposes" shall include activities such as terracing, land leveling for purposes of growing crops, preparation of pasture land, creation or deepening of farm ponds, irrigation or drainage ditches, and other similar activities where the purpose of such activity is to improve land where crops are grown or where livestock is allowed to roam or graze. "Agricultural or soil erosion purposes" shall not include activities which are part of a commercial construction activity such as the building or improving of poultry houses, barns, sheds, roads or other similar structures. Income not exceeding \$10,000.00 received from such activities is exempt from tax when sold to and billed directly to and payment therefore is made directly by a United States or State of Mississippi Governmental entity. Contracts in excess of \$ 10,000.00 including those with governmental entities are subject to the contractor's tax levied by Section 27-65-21 since there are no statutory exemptions from the contractors' tax levy.~~

~~303~~ 304 No sales tax is due on a contract to fill in a hole, trench, ditch or other cavity in the earth where the principle activity performed is the transportation of fill dirt to the job site, the service of compacting and leveling being an inconsequential element of the transaction, even though the total compensation received is in excess of \$10,000.00. If, on the other hand, the principal activity performed is the grading or land forming of the job site, with the service of removing excess dirt or placement of fill dirt being an inconsequential element of the transaction, sales tax or contractor's tax is due on the total compensation received.

304 Compensation received from the drilling and installation of the well for an irrigation system is taxable for contractor's tax when the income exceeds \$10,000.00.

305 The activities of a person engaged in the stripping of top soil or the mining, loading, and hauling of a natural resource product are not grading or excavating within the scope of Miss. Code Ann. Section 27-65-23 and as such is not subject to sales or contractor's tax.

306 Contracts for remediation or excavation and removal of contaminated soil for environmental purposes are subject to sales or contractor's tax.

412307 (Reserved)