Sub Part 10 Construction and Oil Field

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 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 to the Commissioner for a Material Purchase Certificate (MPC) to identify 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 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 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 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 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 (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 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 any political subdivision or 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. Liquidating 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 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 A person taxable under Miss. Code Ann. Section 27-65-23 who performs any of the above activities 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 so taxed under Miss Code Ann. Section 27-65-23 are:

1. Air conditioning installation or repairs;
2. Electrical work, wiring, 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.

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

305 Continuous contracts on a project embracing activities taxable under Miss. Code Ann. Section 27-65-21 for a definite period of time and a definite amount will be qualified and taxed at 3½%. Otherwise, the determination of a taxable contract will be 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 one project. Generally a project is in the same, adjacent or adjoining area. Transmission lines (gas, water, sewage, power, telephone, etc.) are considered a project. Amounts included which embrace 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 1½% in lieu of the 3½% rate specified above.

306 Individual contracts for construction of several buildings, streets, etc., or parts thereof may be qualifiable as a prime contract despite the fact that the compensation for 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 activities involved.

307 Contracts for the performance of work upon personal property, such as shipbuilding or ship repairing, or activities which 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 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.

308 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.

309 (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 structure or the performance of any construction activity upon any floating structure (not limited to casinos). These floating structures 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 distinctive number similar to an MPC Number.

402 The owner will provide this number to the prime contractors and sub-contractors. This will allow the purchase of component materials and parts for use in the construction activities exempt from further sales tax.

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

404 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.

405 (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. 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 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 ceiling 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 not 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 Free-standing personal property sold under a contract with either the United States Government, the State of Mississippi or any political subdivision or any other exempt agency, that has been qualified, can be purchased tax free. The contractor must apply to the Tax Commission for a letter granting the authority to purchase free-standing personal property tax free.

506 When records and invoices are not kept in compliance with this regulation, sales made to the contractor or subcontractor will be considered retail sales, taxable at the regular retail rate.

507 A valid MPC number or direct pay permit is required to purchase concrete or asphalt exempt for use in any commercial construction job which 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 who 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.

508 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 concrete or asphalt 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 a 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. Any person who manufactures or produces 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 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.

511 (Reserved)

600 Bond Requirement.

601 A surety bond must be filed on taxable contracts exceeding $75,000.00 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 performance of a specified job or activity regardless of date of completion; or (b)blanket bonds which guarantee the payment of taxes resulting from performance of all jobs or activities taxable under Miss. Code Ann. Section 27-65-21 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 the case of prepayment of sales tax where a use, income, withholding or motor fuel tax bond is required, the contractor will be notified after an application for a Material Purchase Certificate has been received.

604 When a contractor defaults in 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.

605 (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 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. Sales of materials and services for use in such construction activities are taxed at the regular retail rate of tax provided by Miss. Code Ann. Sections 27-65-17, 27-65-23 and 27-65-5. 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 with kitchen facilities all with common ownership on continuous land, rented to tenants rather than transients. Groups of single family homes do not constitute apartments. A nursing home is any complex that provides any type of assisted living. The caregiver can be either medical or non-medical personnel. It is in the discretion of the Tax Commission to separate out residential housing from a construction contract for nonresidential construction.

802 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 who 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.

803 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 concrete or asphalt 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 a 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. Any person who manufactures or produces 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 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.

805 (Reserved)

900 Equipment and Supplies.

901 Purchases by contractors and subcontractors of work equipment, tools, building forms, repair parts for work equipment and similar tangible personal property that do not become a component part 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 use of tangible property in this State are liable for use tax on such property.

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

904 (Reserved)

1000 Persons or Firms Domiciled Outside the State

1001 Persons or firms domiciled outside the State 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)

Sub Part 10 Construction and Oil Field

Chapter 01 Construction Contractors

100 Definitions.

101~~0~~ ~~"Prime Contractor" -- For purposes of this regulation t~~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~~ or a partnership in which he is a partner~~.

102~~1~~ ~~Subcontractor --~~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~~2~~ Management Contracts - A person entering into an agreement 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~~3~~ (Reserved)

200 Qualification and Payment of Tax.

201~~0~~ ~~Qualification and Payment of Tax. --~~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 to the Commissioner for a Material Purchase Certificate (MPC) to identify the specific contract before work is begun. ~~(See "Material Purchase Certificates and Component Materials".) --~~Contracts for residential construction are not taxable under Miss. Code Ann. Section 27-65-21 and do not qualify for an MPC. ~~(See "Residential Construction".)~~

202~~1~~ 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 for these taxes. Bond forms are made available on request. ~~(See "Bond Requirements".)~~

203~~2~~ On taxable contracts ~~of~~between $10,000 and $75,000~~ or less~~, 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 on or before the 20th day of the month following the month in which the property is brought into Mississippi.

204~~3~~ 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 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~~4~~ 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. ~~However, the subcontractor is liable for the contractor's tax on that portion of the work sublet to him s~~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~~5~~ 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~~6~~ (Reserved)

300 Activities Taxed and Application of Rates.

301~~0~~ ~~Activities Taxed and Application of Rates.~~ A tax of 3½% is levied on the total contract amount or compensation received from all contracts, except 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~~1~~ The tax is levied upon the prime contractor and includes contracts with the United States Government, the State of Mississippi or any political subdivision or 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. Liquidating 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 design or engineering services may be excluded from the contractor's tax~~ for contracts entered into on or after July 1, 1987,~~ where the total contract price for the project exceeds $100,000,000.

303~~2~~ A person taxable under Miss. Code Ann. Section 27-65-23 who performs any of the above activities 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 so taxed under Miss Code Ann. Section 27-65-23 are:

1. Air conditioning installation or repairs;
2. Electrical work, wiring, 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.

304~~3~~ Persons performing any of the above services for contracts of $10,000 or less owe the regular retail sales tax on gross income. Persons performing contracts of $10,000 or less which do not include Miss. Code Ann. Section 27-65-23 services owe no tax on gross income but are required to pay the regular retail sales or use tax on all taxable purchases.

305~~4~~ Continuous contracts on a project embracing activities taxable under Miss. Code Ann. Section 27-65-21 for a definite period of time and a definite amount will be qualified and taxed at 3½%. Otherwise, the determination of a taxable contract will be 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 one project. Generally a project is in the same, adjacent or adjoining area. Transmission lines (gas, water, sewage, power, telephone, etc.) are considered a project. Amounts included which embrace 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 1½% in lieu of the 3½% rate specified above.

306~~5~~ Individual contracts for construction of several buildings, streets, etc., or parts thereof may be qualifiable as a prime contract despite the fact that the compensation for 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 activities involved.

307~~6~~ Contracts for the performance of work upon personal property, such as shipbuilding or ship repairing, or activities which 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 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.

308~~7~~ ~~As of March 27, 1997, e~~Contractor's tax ~~will~~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.

309~~8~~ (Reserved)

400 Floating Structures.

401~~0~~ ~~Floating Structures. Effective July 1, 1996, a~~ A 3½% tax ~~will be~~is levied on the gross proceeds or gross receipts from the sale of any tangible personal property that becomes a component part of the structure or the performance of any construction activity upon any floating structure (not limited to casinos). These floating structures 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 distinctive number similar to an MPC Number.

402~~1~~ The owner will provide this number to the prime contractors and sub-contractors. This will allow the purchase of component materials and parts for use in the construction activities exempt from further sales tax.

403~~2~~ The owner of a floating structure will also be issued a direct pay number. With the use of the MPC number and this direct pay number, tax is accrued on the owner's use tax return and not paid to vendors.

404~~3~~ 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.

405~~4~~ (Reserved)

~~Material Purchase Certificates and Component Materials~~

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. The MPC number expires upon completion of the contract.

502~~1~~ 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~~2~~ Component materials are considered all materials that become an integral part of the structure being erected. For personal property to be considered 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 ceiling 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 not 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).

~~4.And the property must lose its identity as personal property.~~

504~~3~~ 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~~4~~ Free-standing personal property sold under a contract with either the United States Government, the State of Mississippi or any political subdivision or any other

exempt agency, that has been qualified, can be purchased tax free. The contractor must apply to the Tax Commission for a letter granting the authority to purchase free-standing personal property tax free.

50~~5~~6 When records and invoices are not kept in compliance with this regulation, sales made to the contractor or subcontractor will be considered retail sales, taxable at the regular retail rate. ~~(Also see "Equipment and Supplies").~~

50~~6~~7 A valid MPC number or direct pay permit is required to purchase concrete or asphalt exempt for use in any commercial construction job which is required to be qualified under Miss. Code Ann. Section 27-65-21~~ Mississippi Code of 1972~~. 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 who is exempt from sales tax as provided for in Miss. Code Ann. Sections 27-65-101 through 27-65-111~~, Mississippi Code of 1972~~. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93~~, Mississippi Code of 1972~~. 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.

50~~7~~8 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 concrete or asphalt 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 a 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. Any person who manufactures or produces 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.

50~~8~~9 The term ~~"~~vendor~~"~~ 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.

51~~0~~0 Materials used to form concrete are not considered component materials and may not be covered by the use of an MPC number.

51~~0~~1 (Reserved)

~~Bond Requirement~~

600 Bond Requirement.

601 A surety bond must be filed on taxable contracts exceeding $75,000.00 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~~1~~ Such bonds shall be either (a) "job bonds" which guarantee the payment of taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee the payment of taxes resulting from performance of all jobs or activities taxable under Miss. Code Ann. Section 27-65-21 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~~2~~ In the case of prepayment of sales tax where a use, income, withholding or motor fuel tax bond is required, the contractor will be notified after an application for a Material Purchase Certificate has been received.

604~~3~~ When a contractor defaults in 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.

605~~4~~ (Reserved)

~~Owner Construction~~

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~~1~~ (Reserved)

~~Residential Construction~~

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 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. Sales of materials and services for use in such construction activities are taxed at the regular retail rate of tax provided by Miss. Code Ann. Sections 27-65-17, 27-65-23 and 27-65-5.

Such residences shall include homes, ~~apartment buildings, condominiums,~~ 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 with kitchen facilities all with common ownership on continuous land, rented to tenants rather than transients. Groups of single family homes do not constitute apartments. A nursing home is any complex that provides any type of assisted living. The caregiver can be either medical or non-medical personnel. It is in the discretion of the Tax Commission to separate out residential housing from a construction contract for nonresidential construction.

80~~1~~2 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 who is exempt from sales tax as provided for in Miss. Code Ann. Sections 27-65-101 through 27-65-111~~, Mississippi Code of 1972~~. Direct pay permits are issued to taxpayers under the provisions of Miss. Code Ann. Section 27-65-93~~, Mississippi Code of 1972~~. 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~~2~~3 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 concrete or asphalt 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 a 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. Any person who manufactures or produces 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.

80~~3~~4 The term "vendor" 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.

80~~4~~5 (Reserved)

~~Equipment and Supplies~~

900 Equipment and Supplies.

901 Purchases by contractors and subcontractors of work equipment, tools, building forms, repair parts for work equipment and similar tangible personal property that do not become a component part 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~~1~~ Owners or other persons receiving benefit from use of tangible property in this State are liable for use tax on such property.

903~~2~~ Rental or lease of equipment and other tangible personal property is taxed at the same rates as sales of the same property.

904~~3~~ (Reserved)

1000 Persons or Firms Domiciled Outside the State

1001~~0~~ Persons or firms domiciled outside the State 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~~1~~ (Reserved)