Subpart 29.3 - State and Local Taxes

Parent topic: Part 29 - Taxes

29.300 Scope of subpart.

This subpart prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 [Reserved]

29.302 Application of State and local taxes to the Government.

(a) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, how-ever, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, *executive agencies shall* take maximum advantage of all exemptions from State and local taxation that *may* be available. If appropriate, the *contracting officer shall* provide a Standard Form 1094, U.S. Tax Exemption Form (see part 53), or other evidence listed in 29.305(a) to establish that the purchase is being made by the Government.

29.303 Application of State and local taxes to Government contractors and subcontractors.

(a) Prime contractors and subcontractors *shall* not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter *shall* be referred to the *agency head* for review. The referral *shall* include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax *may* not rest on the Government's immunity from direct taxation by States and localities. It *may* rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction *may* not in fact be expressly exempt from the tax. The Government's interest *shall* be protected by using the procedures in 29.101.

(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations *may* arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or

subcontractor's possession of, interest in, or use of that property. In such cases, the *contracting officer shall* seek review and advice from the agency-designated counsel on the appropriate course of action.

29.304 Matters requiring special consideration.

The imposition of *State and local taxes may* result in special contract considerations including the following:

(a) With coordination of the agency-designated counsel, a contract *may* (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment *may* be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of *State and local taxes* to purchases by the Federal Government *may* depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery *should* be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental *may* require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the *contract clause* to be included in contracts when delivery points are not known at time of *contracting*.

(d) The North Carolina State and local sales and use tax.

(1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, *supplies*, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In *United States* v. *Clayton*, 250 F. Supp. 827 (1965), it was held that the *United States* is entitled to the benefit of the refund, but *must* follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants *must* file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue *may* require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner *may* require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund *claim* for sales or use taxes paid on purchases of building materials, *supplies*, fixtures, or equipment by a contractor, the Government *must* secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement *must* indicate the *invoice* numbers, the inclusive dates of the *invoices*, the total amount of the *invoices*, and the sales and use taxes paid. The statement *must* also include the cost of any tangible *personal property* withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors *must* be

obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement *must* be shown separately from the State sales or use taxes.

(3) The clause prescribed at 29.401-2 requires contractors to submit to *contracting officers* by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The *contracting officer shall* ensure that contractors comply with this requirement and *shall* obtain the annual refund to which the Government *may* be entitled. The application for refund *must* be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form *may* be obtained from the-

State of North Carolina,

Department of Revenue,

PO Box 25000 Raleigh,

North Carolina 27640.

29.305 State and local tax exemptions.

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence *may* include the following:

(1) A copy of the contract or relevant portion.

(2) Copies of *purchase orders*, shipping documents, credit-card-imprinted sales slips, paid or acknowledged *invoices*, or similar documents that identify an agency or instrumentality of the *United States* as the buyer.

(3) A U.S. Tax Exemption Form (SF 1094).

(4) A State or local form indicating that the *supplies* or services are for the exclusive use of the *United States*.

(5) Any other State or locally required document for establishing general or specific exemption.

(6) Shipping documents indicating that *shipments* are in interstate or foreign commerce.

(b) *Furnishing proof of exemption*. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the *contracting officer* or at the discretion of the *contracting officer*.

(3) Under a contract or *purchase order* that contains no tax provision, if-

(i) Requested by the contractor and approved by the *contracting officer* or at the discretion of the *contracting officer*; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.