



NON-RESIDENT CONTRACTORS SALES AND USE TAX REQUIREMENTS

Non-resident contractors are required to register with the State of West Virginia and post bond to meet their use tax liabilities. This Publication is separated into four parts. The first part defines who is considered to be a non-resident contractor. The second explains the use tax liabilities of a non-resident contractor. The third explains the registration and bond filing requirements of a non-resident contractor, and the fourth and last part consists of the forms needed to meet these requirements.

PART 1: WHO IS A NON-RESIDENT CONTRACTOR?

Contracting includes only those alterations, repairs, improvements, and decorations to real property and structures that constitute capital improvements. For further information on what constitutes a capital improvement, consult Publication TSD-310, "The Capital Improvement Rule".

A non-resident contractor is a person engaged in contracting who does not have a bona fide place of business within West Virginia or who is not engaged in business within West Virginia. A contractor who has a bona fide place of business in West Virginia or who is engaged in business in West Virginia is considered to be a resident contractor. The state of incorporation is irrelevant in making the determination of whether a contractor is a resident or non-resident of West Virginia.

EXAMPLE 1: Company X is incorporated in Delaware. It has places of business in Wheeling, West Virginia and in Greensburg, Pennsylvania. Company X is considered to be a resident contractor because of its place of business in Wheeling, West Virginia regardless of the fact that it is incorporated in Delaware and has another place of business in Pennsylvania.

EXAMPLE 2: Company A is incorporated in Ohio and has a place of business in St. Clairsville, Ohio. It does not have a place of business in West Virginia, nor does it engage in business in West Virginia. It has recently been awarded a contract to build a manufacturing facility in Parkersburg, West Virginia. Company A is considered to be a non-resident contractor and must register and post bond with the West Virginia State Tax Department.

EXAMPLE 3: Company Z is incorporated in Ohio. Its only place of business is located in Columbus. It has recently been awarded a contract to build an office building in Charleston, West Virginia. It also is currently engaged in building an office building in Huntington, West Virginia. Company Z is considered to be a resident contractor and should already be registered in West Virginia for tax purposes due to its on-going business activity in Huntington.

Basically, a contractor is a non-resident contractor if:

1. It does **not** have a place of business in West Virginia.
2. It does **not** engage in business in West Virginia.
3. It is **not** currently registered with West Virginia due to a lack of a business location or previous or on-going business activity in West Virginia.

PART 2: WHAT ARE THE USE TAX LIABILITIES OF A NON-RESIDENT CONTRACTOR?

CALCULATION OF USE TAX

A non-resident contractor who brings into West Virginia materials and equipment to use in contracting activity is responsible for use tax on these items. The use tax on tangible personal property brought into West Virginia for use in contracting is computed by multiplying the following amount by the use tax rate (6%):

$$\text{original purchase price of the tangible personal property (i.e. equipment materials)} \quad \times \quad \frac{\text{duration of time property is in W. Va.}}{\text{total use life of property}}$$

This rule is intended to compute the tax based on the time the property is in West Virginia, not the time of actual use by the contractor. Thus, the period of time the property is stored or located in West Virginia on a project is included in the amount of time spent in West Virginia.

EXAMPLE: Contractor X is a non-resident contractor who has been recently awarded a contract in Parkersburg, West Virginia. In order to complete the job, Contractor X must bring a bulldozer from Tennessee into West Virginia. The job in Parkersburg is estimated to take six months. The remaining useful life of the bulldozer when purchased was ten years. Its original purchase price to Contractor X was \$15,000. The use tax liability of Contractor X on the bulldozer is computed as follows:

$$\begin{aligned} &6\% \times (\$15,000 \times .5 \text{ year}) \\ &6\% \times (\$15,000 \times .05) \\ &6\% \times (\$750) \\ &\$45 \end{aligned}$$

To compute the use tax due in the case of leased property, the amount of lease payments attributable to the duration of time the leased property was used in West Virginia is multiplied by the use tax rate (6%).

EXAMPLE: Contractor Y from Ohio leases a bulldozer at the cost of \$850/month. The bulldozer is brought into West Virginia for use on a contracting job in Wheeling. The job is estimated to last five months. The use tax liability of Contractor Y on the bulldozer is calculated as follows:

$$\begin{aligned} &\text{AMOUNT OF LEASE PAYMENTS} \times 6\% \text{ FOR PERIOD PROPERTY IS IN WEST VIRGINIA} \\ &(\$850 \times 5 \text{ MONTHS}) \times 6\% \\ &\$4,250 \times 6\% \\ &\$255 \end{aligned}$$

A credit is allowed against the use tax due on property brought into West Virginia for use in contracting activities for any sales tax paid on the property in another state.

USE TAX CREDIT:

Property placed into "substantial use in another state" before being brought into West Virginia for use in contracting activity is excluded from use tax. "Substantial use in another state" means the property was used by the taxpayer outside West Virginia for a period of time equal to or greater than seventy-five percent (75%) of the useful economic life of the property determined at the time the property was first purchased or leased by the taxpayer.

PART 3: WHAT ARE THE REGISTRATION AND BONDING REQUIREMENTS OF A NON-RESIDENT CONTRACTOR?

Every non-resident or resident contractor who engages in contracting activity in West Virginia is required to obtain a business registration certificate from the Tax Commissioner before starting work in this State. The contractor is to have a copy of the certificate available at every construction site in this State until the work at that location is completed. The business registration certificate is valid for two years beginning July 1st of one year and ending June 30th of the second year. The certificate must be renewed at the end of the registration period by paying a \$30.00 fee and completing a WV/BRT-801A, **West Virginia Renewal Application for Registration Certificate**. Severe civil and criminal penalties may be imposed for failure to comply with these registration requirements.

CONSUMERS SALES AND USE TAX REGISTRATION AND BOND REQUIREMENTS

Every non-resident contractor prior to performance of any contracting activity in West Virginia must not only register with the Tax Commissioner as previously described, but must also post either a cash bond, a corporate surety bond, or an umbrella corporate surety bond and must file an itemized listing of equipment and materials brought into West Virginia for use in contracting activity.

The three types of bonds which may be posted by non-resident contractors to guarantee payment of sales and use tax are described as follows:

1. **Cash Bond:** In order to post a cash bond, the non-resident contractor must deposit with the Tax Commissioner six percent (6%) of the gross value of the contract before commencing work in West Virginia.

The Tax Commissioner will deposit this money into the Contractors Use Tax Fund. Once the contract is completed and the actual amount of sales and use tax due on the contract is determined, and the contractor submits sufficient proof that the sales and use tax due with respect to the contract has been paid, the cash bond posted by the contractor will be refunded.

2. **Corporate Surety Bond:** A non-resident contractor may also post a corporate surety bond which guarantees payment of the sales and use tax on the contract in order to meet the registration requirements. The corporate surety bond must be with a corporate surety qualified to do business in West Virginia and must be approved by the Tax Commissioner as to form, sufficiency, value, and amount. The amount of the corporate surety bond required will depend on the gross value of the contract, the amount of the taxable component of the contract, and the taxpayer's past record of compliance and timeliness in making tax payments.
3. **Umbrella Corporate Surety Bond:** In situations where a non-resident contractor enters West Virginia on an intermittent basis, the contractor can elect to post an umbrella corporate surety bond. The umbrella corporate surety bond can be posted to guarantee the payment of sales and use tax with respect to either several contracts or all contracts executed within a certain period. In order to post an umbrella corporate surety bond, the taxpayer must have a prior tax payment history with the West Virginia State Tax Department. The umbrella corporation surety bond must be with a corporate surety qualified to do business in West Virginia and must be approved by the Tax Commissioner as to form, sufficiency, value and amount.

In addition to posting a bond to guarantee payment of any sales and use tax due, the non-resident contractor must file within thirty (30) days of registration an itemized statement of machinery, materials, supplies and equipment that he has or will use or have in hand in this State in order to perform the contract. The statement should list the type and amount of equipment and materials and the location from which the property was or will be brought, shipped or transported. Only equipment, materials and supplies on which the West Virginia sales and use tax has not been paid should be included in the list. Any sales or use tax due on the equipment, materials or supplies should be paid at the time the itemized statement is filed.

PART 4: FORMS FOR REGISTRATION, POSTING OF BONDS AND ITEMIZED LISTING

REGISTRATION FORMS: In order to register with the West Virginia State Tax Department, Form WV/BUS-APP, ***Application for Business Startup*** must be completed and submitted to the Department together with a \$30.00 fee. Renewal forms will be sent at the end of your two-year registration period. Taxpayers are responsible for renewing their registration biennially by July 1st, regardless of whether they receive a form from the Department.

BOND FORMS: Forms are attached to this publication for use in posting a cash bond, a corporate surety bond, or an umbrella corporate surety bond. These forms must be submitted to and approved by the West Virginia State Tax Department before commencing any contracting activity in West Virginia. Bond forms must be mailed to: West Virginia State Tax Department, P. O. Box 1826, Charleston, West Virginia 24327-1826.

ITEMIZED LISTING: Forms are attached to this publication for use by non-resident contractors in filing an itemized listing of equipment, materials, and supplies which are being brought into West Virginia for use in contracting activity on which no West Virginia sales and use tax has been paid. This list must be filed by the non-resident contractor within thirty 30 days of registration.

If you have questions concerning this publication, please contact:

West Virginia State Tax Department
Taxpayer Services Division
P.O. Box 3784
Charleston, WV 25337-3784

Telephone: (304) 558-3333 or toll-free: 1-800-WVA-TAXS (1-800-982-8297)

TDD Service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)

To order forms or publications call:

(304) 344-2068 or toll-free within West Virginia: 1-800-422-2075

Internet Address: <http://www.state.wv.us/taxdiv>

WEST VIRGINIA STATE TAXDEPARTMENT
NONRESIDENT CONTRACTORS



CHECK IF UMBRELLA CORPORATE SURETY BOND BOND NUMBER _____

KNOW ALL MEN BY THESE PRESENTS:

- (1) That we, _____
- (2) _____
- (3) As principal, and _____
- (4) _____

a firm and/or a corporation authorized to do business in the State of West Virginia, as Surety, are held and firmly bound unto the State of West Virginia in the just and full

- (5) sum of _____ dollars (\$ _____) to the payment whereof well and truly to make, we bind ourselves, our heirs, executors administrators, successors, and assigns, jointly and severally, firmly by these presents.

- (6) **WHEREAS**, the above bound Principal is a nonresident contractor within the meaning of Chapter 11, Article 15, of the Official Code of West Virginia of 1931, as amended, and whereas the Tax Commissioner of the State of West Virginia has required the said Principal to deposit a bond, in accordance with the provisions of Chapter 11, Article 15 Section 8b of the said Code of West Virginia;

NOW THEREFORE, if the said Principal shall in all respects fully comply with the provisions of Chapter 11, Articles 15 and 15A of the said Code of West Virginia and the rules and regulations adopted and promulgated thereunder, and shall account for and pay over all Consumers Sales and Use Taxes and penalties for which the said Principal shall be liable, and shall protect and save harmless the State of West Virginia from any loss arising from the failure of the Principal to pay such Consumers Sales and Use Taxes and penalties, for any cause whatsoever, then this obligation to be void; otherwise, to remain in full force and effect.

The Principal hereby waives the secrecy provisions of West Virginia Code 11-10-5(d) and authorizes the West Virginia State Tax Department to release to the surety company information necessary to file a proof of claim concerning any tax liability covered by this bond and accruing during the effective dates of this bond.

- (7) This bond shall be effective from the _____ day of _____, _____.

IN WITNESS WHEREOF the said principal has hereunder set his or its hand affixed his or its seal, and the said surety has caused its corporate name to be signed hereto and its corporate seal to be hereunto affixed by its duly authorized officer

- (8) or agent and executed this instrument this _____ day of _____, _____.

(11) Principal _____ (9) _____ (Seal)
Corporate Seal (Principal)

(10) By: _____ (Seal)
Title (Must be President or Vice-President)

(14) Surety _____ (12) _____ (Surety)
Corporate Seal

(13) By: _____

(Acknowledgement by Principal if Individual or Partnership)

(15) STATE OF _____
(16) County of _____, to-wit:
(17) I, _____ a Notary Public in and for the
(18) county and state aforesaid, do hereby certify that _____
(19) whose name is signed to the foregoing writing, bearing date the _____ day of
(20) _____, _____, has this day acknowledged the same before me in my said county.
(21) Given under my hand this the _____ day of _____, _____.
(22) Notary Seal (23) _____
Notary Public
(24) My commission expires on the _____ day of _____, _____.

(Acknowledgement by Principal if Corporation)

(25) STATE OF _____
(26) County of _____, to-wit:
(27) I, _____ a Notary Public in and for the
(28) county and state aforesaid, do hereby certify that _____
(29) who, as _____, signed the foregoing writing for _____
(30) _____, a corporation, bearing date the _____ day of
(31) _____, _____, has this day, in my said county, before, me, acknowledged the
said writing to be the act and deed of the said corporation.
(32) Given under my hand this _____ day of _____, _____.
(33) Notary Seal (34) _____
Notary Public
(35) My commission expires on the _____ day of _____, _____.

(Acknowledgement by Surety)

(36) STATE OF _____
(37) County of _____, to-wit:
(38) I, _____ a Notary Public in and for the
(39) county and state aforesaid, do hereby certify that _____
(40) who, as _____, signed the foregoing writing for _____
(41) _____, a corporation, bearing date the _____ day of
(42) _____, _____, has this day, in my said county, before, me, acknowledged the
said writing to be the act and deed of the said corporation.
(43) Given under my hand this _____ day of _____, _____.
(44) Notary Seal (45) _____
Notary Public
(46) My commission expires on the _____ day of _____, _____.

BOND PREPARATION INSTRUCTIONS

IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP:

- Complete the bond, lines (1) through (11);
- Have Notary complete the applicable section of acknowledgement titled, Acknowledgement by Principal if Individual or Partnership, on the back of bond.

IF PRINCIPAL IS A CORPORATION:

- Complete the bond, line (1) through (11);
- Have Notary complete the applicable section of acknowledgement titled, Acknowledgement by Principal if Individual or Partnership, on the back of bond;
- Affix corporate seal as requested on face of bond.

SURETY:

- Complete applicable portion of bond;
- Have Notary complete applicable section of acknowledgement titled, Acknowledgement by Surety, on the back of the bond;
- Attach Power of Attorney to bond if surety signatory is an attorney in fact;
- Affix raised Surety Seal to bond and to Power of Attorney.

LINE NUMBER INSTRUCTIONS

FACE OF BOND CANNOT CONTAIN WHITE-OUTS OR ALTERATIONS. REVERSE OF BOND MAY CONTAIN WHITE-OUTS OR ALTERATIONS PROVIDING CHANGES ARE INITIALED BY NOTARY.

- (1-2) Enter name and address of Principal (Specify individual, partnership, or corporation) to be covered by bond.
- (3-4) Enter name and address of Surety Company issuing bond.
- (5) Enter amount of bond.
- (6) Enter type of business (e.g. Distributor, Importer, User, etc.)
- (7) Enter effective date of the bond. (West Virginia Code requires continuation certificate annually on anniversary date).
- (8) Enter execution date of bond (also known as the bearing date of the bond).
- (9) Enter name of the Principal (individual, partnership, or corporation covered by bond).
- (10) If principle is an individual, affix signature. If principal is a corporation, President or Vice-President must sign bond and underline the appropriate title. If bond is to be signed by one other than the President or Vice-President, affix copy of corporate resolutions showing authorization of individual to bind corporation.
- (11) If Principal is a corporation, be sure to affix corporate seal, if not available draw facsimile.
- (12) Enter name of Surety.
- (13) Affix signature and title of person having Power of Attorney to bind Surety.
- (14) Affix corporate seal of Surety.

ACKNOWLEDGEMENT PREPARATION INSTRUCTIONS

IF PRINCIPAL IS AN INDIVIDUAL OR PARTNERSHIP, HAVE NOTARY COMPLETE LINES (16) through (25).

IF PRINCIPAL IS A CORPORATION HAVE NOTARY COMPLETE LINES (26) through (36).

SURETY MUST HAVE NOTARY COMPLETE LINES (37) through (47).

ACKNOWLEDGEMENT BY PRINCIPAL IF INDIVIDUAL OR PARTNERSHIP

- (15) Enter name of State.
- (16) Enter name of County.
- (17) Enter name of Notary Public witnessing transactions.
- (18) Enter name of principal covered by bond if individual or partnership.
- (19-20) Enter bearing date of bond (also known as execution date). Must be same date entered on line 8 of the bond.

- (21) Notary enters date bond was witnessed. May be same as bearing date or any date thereafter.
- (22) Affix Notary Seal. If notary is located outside the State of West Virginia, seal must be affixed.
- (23) Notary affixes his signature here.
- (24) Notary enters commission expiration date.

ACKNOWLEDGEMENT BY PRINCIPAL IF CORPORATION

- (25) Enter name of State.
- (26) Enter name of County.
- (27) Enter name of Notary Public witnessing transactions.
- (28) Enter name of Corporate Officer signing bond. (Should be President or Vice-President).
- (29) Enter designate Title of Corporate officer signing bond.
- (30) Enter name of Company or Corporation.
- (30-31) Enter bearing date of bond (also known as execution date). Must be same date entered on line 8 of the bond.
- (32) Notary enters date bond was witnessed. May be same as bearing date or any date thereafter.
- (33) Affix Notary Seal. If notary is located outside the State of West Virginia, seal must be affixed.
- (34) Notary affixes his signature here.
- (35) Notary enters commission expiration date.

ACKNOWLEDGEMENT BY SURETY

- (36) Enter name of State.
- (37) Enter name of County.
- (38) Enter name of Notary Public witnessing transactions.
- (39) Enter name of person having power of attorney to bind Surety Company.
- (40) Designate title of person binding Surety Company.
- (41) Enter name of Insurance Company (Surety)
- (41-42) Enter bearing date of bond (also known as execution date). Must be same date entered on line 8 of the bond.
- (43) Notary enters date bond was witnessed. May be same as bearing date or any date thereafter.
- (44) Affix Notary Seal. If Notary is located outside the State of West Virginia, seal must be affixed.
- (45) Notary affixes his signature here.
- (46) Notary enters commission expiration date.

POWER OF ATTORNEY INSTRUCTIONS

Power of Attorney for Surety must be attached and it must show that it was in full force and effect on bearing date (execution) indicated on the face of the bond, also the raised corporate seal must be affixed to the Power of Attorney.

- Name of attorney in fact must be listed (if attorney is a non-resident, bond must be countersigned by West Virginia resident agent).
- Power of Attorney may not exceed imposed limitations.
- Certificate date must be the execution date (bearing date) of the bond.
- Signature of authorizing official must be affixed. (Signature may be facsimile).
- Raised seal must be affixed.

MAILING INSTRUCTIONS

All bond forms must be submitted to and approved by the Department of Tax and Revenue before commencing any contracting activity in West Virginia. Bond forms must be mailed to: West Virginia State Tax Department, P. O. Box 1826, Charleston, West Virginia 25327-1826.



NONRESIDENT CONTRACTOR
CONSUMERS SALES AND SERVICE TAX AND USE TAX
CASH BOND

BOND NUMBER _____

NAME: _____

FEIN: _____

ADDRESS: _____

Pursuant to W. Va. Code § 11-15-8b the above named non-resident contractor is electing to post a cash bond to guarantee payment of the West Virginia Sales and Use Tax due with respect to the contract described below:

CONTRACT NUMBER: _____

CONTRACT PARTICIPANTS: _____

CONTRACT DESCRIPTION: _____

GROSS VALUE OF CONTRACT: \$ _____

The amount of the cash bond must be equal to six percent (6%) of the gross value of the contract for which the bond is being posted. The above named non-resident contractor hereby posts the amount of \$ _____ as cash bond with respect to the above described contract and certifies that this amount represents six percent (6%) of the gross value of the contract and will be sufficient to cover the consumers sales and use taxes due with respect to the above-referenced contract.

This bond shall be effective from the _____ day of _____, _____.

In witness whereof the above named non-resident contractor hereby executes this instrument this _____ day of _____, _____.

(Authorized Officer or Agent Non-Resident Contractor)

Acknowledged before me this _____ day of _____, _____. My commission expires the _____ day of _____, _____.

Notary Seal

Notary Signature

DO NOT USE THIS SPACE

