

Tax Guideline - 6.16.G (12/20/02)

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Last Update: (12/20/02) ABachicha:kma - 6.16.G.0

This guideline is being revised clarify NMGRT requirements and to add guidance on the application of use tax for Washington, DC, and surrounding areas.

Definition

In determining the tax treatment for a purchasing requirement, the SCR should consider the following definitions taken from the NMGRT Regulations.

Service - all activities, which primarily involve the performance of a service as distinguished from the selling of property.

R&D Services - any activity engaged in for other persons for consideration, for one or more of the following purposes:

- advancing basic knowledge in a recognized field of natural science,
- advancing technology in a field of technical endeavor,

- development of a new or improved product, process or system with a new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease, or other transfer,
- development of new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system,
- analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer, or
- design and development of prototypes or the integration of systems incorporating advances, developments, or improvements.

Software - Sandia may issue a Type 15 NTTC for the purchase of software based on tax regulation 3NMAC 2.47.19.32, which states “ If the buyer is a qualified contractor of the federal government and uses pre-packaged software to fulfill an appropriate research and development contract with a signatory federal agency, the buyer may execute, and the seller may accept in good faith, a Type 15 NTTC with respect to the packaged software.”

- Sole or tangible property exists when a software program/update is prepackaged, and no extraordinary services are performed in order to furnish the program.

Construction - all activities involving buildings; altering, repairing or demolishing any structure, road, etc.; painting of structures, leveling or clearing land, installing sprinkler systems, the sale of prefabricated buildings (not mobile homes or trailers) and the sale and installation of fixtures essential to the intended use of a construction project firmly attached to the realty.

Some procurements that include the purchase and installation of material, i.e., carpet, draperies, partitions, office systems furniture, etc., may or may not be treated by SNL as construction.

- If the Davis-Bacon Act applies, the commodity code is 120 and the entire procurement shall be considered construction for the purpose of applicable tax treatment.
- If the primary intent of the procurement is to acquire property, the commodity code is 320 and the material portion of the purchase is not taxed. Installation is deemed incidental to the purchase and shall be considered service for the purpose of tax treatment.

Construction does not include services that are only incidentally related to a construction project, such as: leasing construction equipment, hauling, maintenance work, landscape upkeep, the repair of equipment, and laboratory work.

Property - real property, tangible personal property, licenses, franchises, patents, trademarks, and copyrights.

When procurement’s primary purpose is to acquire property but installation is quoted as a separate line item not inclusive in the price of the product/property, the installation portion of the

purchase is treated as a service and taxed accordingly.

Taxes and Contract Documents - 6.16.G.1

Any taxes applicable to a SNL requirement should be quoted separately by the Contractor. Upon receipt of any offer that contains a separate item for tax, the SCR will determine if the tax is applicable. If applicable, the SCR will:

- determine/verify the appropriate tax rate,
- consider the tax as a part of the total price/cost for evaluation and order/contract award purposes,
- state the tax as a separate item (including the percentage rate) in Section I of the order/contract, and
- ensure that PR funding is sufficient for the order/contract total commitment including any applicable taxes.

In the case of quoted/invoiced taxes, which are not covered by these guidelines or where you are otherwise in doubt as to the applicability of any quoted taxes, consult with the Corporate Tax Program Manager for advice. Contract tax questions which are legal in nature and must be resolved by reference to the applicable contract terms and to the pertinent tax laws and regulations shall be addressed via dialog between the Corp. Tax Program Manager and Sandia Legal. The Corp. Tax Program Manager will consult with Legal before contacting any taxing authority for the purpose of determining whether or not a tax is valid or applicable.

New Mexico Gross Receipts Tax (NMGRT) - 6.16.G.2

The gross receipts tax is a tax on the privilege of doing business in New Mexico and is levied on the seller. It is not a sales tax and, therefore, is not levied on the buyer. The tax is broadly based. All receipts from engaging in business in New Mexico are subject to tax, except those receipts which are specifically exempt, deductible or not included as gross receipts.

Purchases not Applicable to NMGRT - 6.16.G.2.a

These types of purchases do not require NMGRT:

- any type of purchase from any agency or instrumentality of the U.S., or the state of New Mexico or any political subdivision (i.e. county, city...), and
- **Note:** This includes all ICOs and FAOs,
- services from organizations granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, such as not-for-profit educational institutions (this generally does not apply to the sale of goods).

Procurement Purpose or Intent - 6.16.G.2.b

The applicability of NMGRT is determined by the intent or purpose of the SNL order/contract. When a requirement calls for both services and products or materials, the SCR shall determine the primary intent of the action and proceed in that direction.

Tax Treatment of Services - 6.16.G.2.c

SNL has the authority to issue Type 5 Nontaxable Transaction Certificates (NTTCs) for all services; therefore, tax should not be quoted in a Contractor's bid. The following table provides guidelines for the applicability of NMGRT for procurement of services. Sandia remits gross receipts taxes at a corporate level; the only services not eligible for execution of a type five "sale for resale" certificates are: (1) rentals of personal property and short-term licenses for use of real property (e.g., rental of a hotel banquet facility); and (2) purchases of services "consumed" by Sandia (e.g., taxes on seminars attended by Sandia employees).

If a service is performed...	By a Contractor whose business is...	Then NMGRT...
in New Mexico	located in New Mexico,	applies at the rate effective for the Contractor's business location.
outside New Mexico	located in New Mexico,	is not applicable.
both in and outside New Mexico	located in New Mexico,	applies only to the portion performed in New Mexico at the rate effective for the Contractor's business location.
in New Mexico	located outside New Mexico,	applies at the rate effective for: - the location of performance if the Contractor is at that location ten days or more

during a given calendar year, or

- is exempt from NM taxes if services are , performed in NM less than 10 days in a given calendar year, and the contractor recognizes the income in their state of domicile .

outside New Mexico located outside New Mexico, is not applicable.

Tax Treatment of Construction - 6.16.G.2.d

Construction Services performed in New Mexico shall not be assessed NMGR. SNL has the authority to issue Type 6 and Type 7 Nontaxable Transaction Certificates (NTTCs); therefore, tax should not be quoted in a Contractor's bid. Certificates are issued as follows:

- Type 6 NTTC is issued when a Contractor provides tangible personal property to be incorporated as an ingredient or component part of a construction project.
- Type 7 NTTC is issued to the Contractor performing the construction service.

Tax Treatment of Tangible Personal Property - 6.16.G.2.e

All tangible personal property purchased in New Mexico shall not be assessed NMGR. SNL has the authority to issue Type 5 Nontaxable Transaction Certificates (NTTCs) for all services; therefore, tax should not be quoted in a Contractor's bid.

Administration of Nontaxable Transaction Certificates (NTTCs) - 6.16.G.2.f

The Supplier Data Management Team is responsible for issuing Types 6, 7, and 15 NTTCs. When a new supplier is added to the Supplier Database, they automatically issue the appropriate certificate to the Contractor, dependent upon the order/contract commodity code. If a Contractor loses a certificate, a copy of the original issue can be provided by the Team. One certificate (per applicable type NTTC) per Contractor covers all POs/contracts with SNL and that Contractor.

Multiple Tier Subcontractors - 6.16.G.2.g

When an SNL procurement incorporates several layers or multiple tiers of subcontractors, NMGR may not be applicable to work performed by a Contractor's subs if Sandia has executed

either a type 6 NTTC (for purchases of construction materials) or a type 7 NTTC (for purchases of construction services). For construction contracts, NMGRT is generally assessed only on the "sale" of the completed project (i.e., taxes are filed and paid at Sandia's level). For type 5 NTTCs (sales of service for resale), generally only one tier of tax can be skipped at a time; therefore, the Contractor would not be able to provide their direct subcontractor with an NTTC. However per NMTRD Ruling 452-96-2, where a limited agency agreement exists between a Contractor and their subcontractors (e.g., staff augmentation arrangements), Sandia is allowed to execute a type 5 NTTC directly to the subcontractors of Sandia's prime contractor. The limited agency agreement exists when the following elements are present when the prime:

- has been appointed by the subcontractors as a limited agent to deal on their behalf through a limited agency agreement,
- negotiates the contract on behalf of itself and the subcontractors,
- will act as a billing and collection agent, and
- will guarantee the performance of services by the subcontractors.

Note: SCR Quotation Instruction 980-A27 NMGRT LIMITED AGENCY AGREEMENTS must be included in solicitations to determine if a limited agency agreements exists between the prime contractor and it's subs.

Nevada Sales and Use Tax - 6.16.G.3

The Nevada Department of Taxation levies a state sales and use tax. Purchases made in the state of Nevada are assessed a sales tax, while goods purchased outside Nevada, but shipped to Nevada for use in Nevada are assessed a use tax. In addition, the percentage of sales or use tax may vary from county to county as these governmental bodies may impose an additional sales tax.

Tax Applicable to Tangible Personal Property - 6.16.G.3.a

SNL is subject to Nevada Use Tax for all tangible personal property purchased in and/or used in the state of Nevada. SNL files a monthly use tax return at a corporate level; since Sandia's prime contract states that title to all goods passes directly to the US government, all Nevada taxes should be remitted at the corporate level; none should be remitted at a vendor level.

Tax Treatment of Services - 6.16.G.3.b

Services performed in the state of Nevada are not subject to Nevada Sales and Use Tax.

California Sales and Use Tax - 6.16.G.4

The state of California imposes a sales and use tax which is applicable to sales of tangible personal property for delivery and use in California, the leasing or rental of tangible personal property for use in California and the storage, use or other consumption of tangible personal property in California.

California Seller's Permits are issued to entities involved in the subsequent resale of property. Because SNL purchases items whose titles pass immediately to the U.S. government, SNL qualifies for such a permit. Our California Seller's Permit Number is SR- OH-98033576

Tax Treatment of Tangible personal property - 6.16.G.4.a

Because SNL holds a California Seller's Permit, the Laboratories are not liable for California Sales and Use Tax on purchases of tangible personal property:

- purchased and used in California,
- purchased in California and delivered and used outside California, and
- purchased outside California but delivered and used in California.

Tax Applicable to Rentals - 6.16.G.4.b

Any procurement involving the rental of tangible personal property:

- rented and used in California,
- rented in California and delivered for use outside California, or
- rented outside California but delivered for use in California

is subject to the California Sales and Use Tax except a lease to own in which the title passes following the last payment.

Tax Treatment of Services - 6.16.G.4.c

Services performed in the state of California are not subject to California Sales and Use Tax.

Tax Treatment of Construction - 6.16.G.4.d

Tangible personal property purchased directly by SNL (regardless of the state in which such property was purchased) becomes subject to the California Use Tax whenever such property is

subsequently used or consumed in the construction of improvements on or to real property located in California. In such cases, the Use Tax is payable by SNL directly to the state of California. The reporting and payment of such taxes are handled by the Comptroller's Organization. No action is required by the SCR.

Section II Terms and Conditions - 6.16.G.4.e

Section II Standard Ts&Cs delineate SNL's exemption to California Sales and Use Tax. If the supplier requests a California Resale Certificate, the SCR shall refer/transmit that request to the appropriate Contract Administrator at SNL/CA.

Hawaii General Excise Tax - 6.16.G.5

The state of Hawaii levies a general excise tax on proceeds derived by a Contractor and a use tax on the purchase of tangible personal property for resell, use or consumption.

However, under Section 237-26(a) of the Hawaii statutes, SNL is exempt from state taxes on all purchases made within the state and purchases made outside the state but used in Hawaii. Per the statute, this exemption applies to Contractors or subcontractors performing scientific research and development work under contract with the U.S. or any agency or instrumentality thereof.

Washington DC Area Sales and Use Tax -6.16.G.6

Washington DC and the surrounding areas levy use tax. Purchases made in the Washington DC Area assessed a use tax.

Tax Applicable to Tangible Personal Property - 6.16.G.6.a

SNL is subject to a use tax for all tangible personal property purchased in and/or used in the Washington DC Area (includes Virginia and Maryland). SNL files a monthly use tax return for tangible goods (and specific services) for use in the DC area.

SNL files a monthly use tax return at a corporate level; since Sandia's prime contract states that title to all goods passes directly to the US government, all DC area taxes should be remitted at the corporate level; none should be remitted at a vendor level.

Tax Treatment of Services - 6.16.G.6.b

Certain services performed in the DC area are subject to DC use tax. The determination of taxability is made when Sandia files its monthly DC use tax return. No tax should be remitted at the vendor level.

Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.



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