

**Title 61**  
**REVENUE AND TAXATION**  
**Part I. Taxes Collected and Administered**  
**by the Secretary of Revenue**

**Chapter 43. Sales and Use Tax**

**§4373. Nonresident Contractors**

A. General. This Section provides the procedures that must be followed by nonresident contractors who do business in this state as required by R.S. 47:9 and R.S. 47:306(D). This Section also provides the procedures that must be followed by state and local agencies charged with the responsibility for granting permits and/or licenses for the lawful commencement of construction contracts in this state as required by R.S. 47:337.18(C). This Section also provides the necessary definitions.

B. Definitions. For the purposes of this Section, the following terms are defined.

*Contractor*—any dealer, as defined in this Chapter, who enters into contracts for the construction, renovation, or repair of immovable properties, such as buildings, houses, roads, levees, pipelines, and industrial facilities. It also includes subcontractors who enter into similar agreements with a general or prime contractor. The term contractor shall not include businesses that fabricate or construct property that is sold to another person as tangible personal property, even though the property may be subsequently incorporated into the construction of an immovable. The term contractor shall include any project owner who obtains any permit, license, or certificate necessary for the lawful commencement of any construction contract.

*Nonresident Contractor*—any contractor who does not meet any of the following criteria for resident status.

a. For an individual proprietorship, resident status requires having maintained permanent domicile in Louisiana for at least one year prior to bidding on work.

b. For a corporation, resident status requires having operated a permanent business facility in Louisiana for at least one year prior to bidding on work; or having at least 50 percent of its outstanding and issued common stock owned by individuals who have maintained their domicile in Louisiana for at least one year prior to bidding on work.

c. For partnerships and other legal entities, resident status requires at least 50 percent ownership by individuals or corporations who themselves qualify as residents.

*Resident Contractor*—all contractors that are not nonresident contractors.

C. Contracts to be Registered with Secretary and Central Collector

1. Prior to obtaining a building permit necessary for the lawful commencement of any contract in Louisiana, a nonresident contractor shall register each contract that exceeds \$3,000 in total price or compensation with the secretary of the Department of Revenue and Taxation and with the central sales and use tax collector for the parish in which the project is located. The secretary shall provide the necessary forms for the contractors to register each contract. The forms will require the nonresident contractor to give a complete description of each project, pertinent tax registration data, and a list of anticipated subcontractors. A fee of \$10 per contract shall be paid to the secretary at the time of registration. As required by the secretary, the contractor shall furnish a surety bond for each contract or a blanket surety bond for all contracts. The bond shall be:

a. two and one-half percent of the gross contract amount or \$1,000, whichever is greater, if income tax withholdings remitted to the department include such payments deducted from non-employee compensation (e.g. independent contractors); or

b. five percent of the gross contract amount or \$1,000, whichever is greater, if income tax is not withheld from non-employee compensation paid by the non-resident contractor.

2. Upon satisfactory completion of the registration and surety bond requirements, the secretary shall issue the contractor a certificate of compliance with which to obtain any building permits necessary for lawful commencement.

3. Nonresident subcontractors will be held to the same requirements of registration, payment of a \$10 fee, and furnishing a surety bond, even though they may not need to secure any permits.

D. Payments to be Withheld from Subcontractors. R.S. 47:9(B)(3) makes each contractor subject to this provision responsible for all of its subcontractors' compliance with all state and

local tax laws. A contractor shall inform each of its subcontractors of their tax registration, contract registration, and surety bond requirements, and shall withhold a sufficient amount from payments made under their contracts to ensure compliance. Upon discovering any unpaid tax liability by a subcontractor, the secretary will first attempt to collect the unpaid taxes from the subcontractor or his surety. However, if the secretary's efforts are unsuccessful, the contractor and his surety have ultimate responsibility for the payment of any subcontractor's unpaid tax liabilities.

E. **Contract Completion; Cancellation of Surety Bond.** Within 30 days after completion of each contract, the contractor shall submit to the secretary a completion report summarizing the costs incurred; the taxes paid to other states, to the state of Louisiana, and to local taxing authorities; and other such information that may be required by the secretary. After reviewing the report and verifying the tax payment amounts reported, the secretary shall refer the summary to the central sales and use tax collector for the parish in which the project is located to determine whether there are any unpaid local tax liabilities. If no unpaid state or local tax liabilities are discovered, the contractor's surety bond may be canceled for that contract. The surety bond will be held by the Department of Revenue and Taxation and used, if necessary, in the future if sales taxes are later found to be due on that contract.

F. **Compliance by Permitting Agencies; Withheld Funds Authorized**

1. R.S. 47:9(B)(4) and R.S. 47:306(D)(2)(a) place specific responsibilities with state or local agencies that issue permits, licenses, or certificates necessary for the lawful commencement of any construction contract. State agencies, including but not limited to the office of the state fire marshal, and agencies of local governing authorities, including but not limited to parish and municipal building inspectors, shall not issue any building permit, license, or certificate until the applicant has submitted documentation verifying that the contract has been properly registered and the required surety bond has been posted. Proper documentation to be obtained from the Secretary of the Department of Revenue and Taxation is as follows.

- a. Resident contractors must obtain a certificate of resident status.
- b. Nonresident contractors must obtain a certificate of compliance.
- c. Individuals seeking a permit for work to be performed on their residence must submit an affidavit as documentation of residency.

2. The secretary is authorized by R.S. 47:337.19(B) to evaluate and monitor parish and municipal permitting agencies to ensure compliance with these provisions.

a. When the secretary discovers that a parish or municipal permitting office has issued a permit to a nonresident contractor without verifying compliance with the provisions of this regulation, he shall notify that permitting office, the parish collector, and the governing authority of the parish of the violation by registered mail.

b. The affected parties will be allowed 60 days to respond to the department's notification. If the affected parties contact the department after receiving notification, the department will work with them to reconcile the situation. If the situation is resolved, no further action will be taken.

c. If an agreement cannot be reached or if the department does not receive a response after 60 days, the secretary will notify the state treasurer of the violation by registered mail. A copy of this notification will be sent to the permitting office, the parish collector, and the governing authority of the parish.

d. The state treasurer, within 90 days of notification, shall request a hearing on the suspected violation with the House Committee on Ways and Means. The date, time, and location of this meeting will be furnished by the state treasurer to the permitting office, the parish collector, the governing authority of the parish, and the secretary of the Department of Revenue by registered mail. Following the hearing, the state treasurer shall take action as directed by the committee, including the withholding of state funds as authorized by R.S. 47:337.19(C).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:9, R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, R.S. 47:337.19, and R.S. 47:1511.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 21:185 (February 1995), amended by the Department of Revenue, Policy Services Division, LR:31:95 (January 2005).

*Emergency Rule Issued 10/10/2005, effective for 120 days.*