

Surety Deposits for Non-Minnesota Construction Contractors

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Withholding Fact Sheet 12

Fact Sheet

Surety Deposit Law

If you hire or contract with a non-Minnesota contractor to perform construction work in Minnesota, you must withhold 8 percent (.08) of their compensation as a Minnesota surety deposit. Payments are subject to 8 percent withholding only if the work was performed in Minnesota and the value of the contract exceeds \$50,000.

The cash surety is deposited with the department and is used as a surety to guarantee that the contractor has fulfilled the requirements for withholding, sales and use, franchise, and income taxes.

Exemption

A non-Minnesota construction contractor may qualify for an exemption from the surety deposit if one of the following requirements are met:

- The contractor gives the department a bond that is secured by an insurance company licensed in Minnesota and is equal to 8 percent of the contract. The bond remains in effect until the contractor satisfies all tax liabilities. You may choose to complete Form SDB, *Non-Minnesota Contractor's Bond*, to submit to the department.
- The contractor gives the department a cash surety. A cash surety is evidence of a savings account, deposit or certificate of deposit in, or issued by, a state bank, national bank, or savings and loan association doing business in Minnesota. Interest and dividends earned on the principal amount may be retained by the contractor.
- The contractor is performing work for a government agency and has a payment and performance bond.
- The contractor has done construction work in Minnesota during the past three calendar years and has fully complied with Minnesota laws regarding withholding, sales and use, corporate franchise, and income taxes.

How a Contractor Applies for Exemption

To apply for an exemption from the surety deposit, the non-Minnesota construction contractor must complete and file Form SDE, *Exemption from Surety Deposits for Non-Minnesota Contractors*, with the department.

If approved, a department representative will sign the form and return it to the contractor. The contractor must then make a copy and give the original Form SDE to the person or business for whom they are doing the work to show they are exempt from the 8 percent surety deposit.

How to Pay the Surety Deposit

If you are required to withhold 8 percent from a non-Minnesota construction contractor's pay, complete and file Form SDD, *Surety Deposits for Non-Minnesota Contractors*, with the department. The department will hold the surety deposits until the contractor's state tax obligations are considered fulfilled.

After the project has been completed, the construction contractor can apply for a refund using Form SDR, *Refund of Surety Deposits for Non-Minnesota Contractors*. The department will refund any amounts held as surety, including interest.

Additional Requirements

Non-Minnesota construction contractors doing work for Minnesota subdivisions (counties, cities, school districts, etc.) must file a contractor affidavit, in addition to complying with the surety provision. For details, see Withholding Fact Sheet 13, *Construction Contracts with State or Local Government Agencies*.

Information and Assistance

Additional forms and information, including fact sheets and frequently asked questions, are available on our website.

Website: www.revenue.state.mn.us

Email: withholding.tax@state.mn.us

Phone: 651-282-9999 or 1-800-657-3594

This information is available in alternate formats.