

Sales Taxes and Federal Government Contracts

July 29, 2021

Presented By
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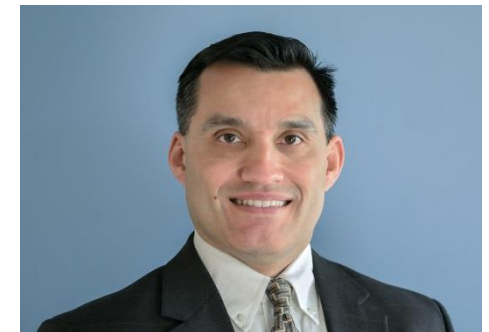


Sales Taxes and Federal Government Contracts

INTRODUCTIONS

Mark A. Amadeo

- Over 20 years experience as government counsel & law firm counsel
- LL.M. Georgetown University Law Center; J.D. University of Wisconsin Law School; B.A. Boston College
- Founder & Managing Partner of Amadeo Law Firm, PLLC
- Focus on Government Contracting & Technology
 - Review/negotiation: FAR/DFARS Compliance
 - Pre & Post Award Teaming, JV's & Subcontracts
 - Technology: IP Preservation & Commercialization



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Sales Taxes and Federal Government Contracts

Introduction

- **Frequently overlooked**
- ***Wayfair* decision**



Sales Taxes and Federal Government Contracts

Federal Government Immunity

- **McCulloch v Maryland**
- **FAR 29.302**
 - **Federal government leases and purchases are generally immune**



Sales Taxes and Federal Government Contracts

Federal Government Immunity

Federal Government Contractors

- **Osborne v. Bank of the U.S.**
- **James v. Davo Contracting**
- **U.S. v. New Mexico**
- **FAR 29.303**



Sales Taxes and Federal Government Contracts

State and Local Sales Taxes

Contractors - look to state and local laws for sales tax exceptions/exemptions (FAR 29.303(b))

Contractors should keep in mind:

- **Nearly all states apply sales taxes**
- **Sales taxes apply to sales within borders**
- **Who or what the tax is imposed on**



Sales Taxes and Federal Government Contracts

FAR

Fixed Price Contracts (FAR 29.401)

- **52.229-3 – price includes all applicable state/local taxes – no adjustments**
- **52.229-4 – price includes all applicable state/local taxes – SHALL be adjusted for after-imposed taxes**

Cost Reimbursement (FAR 31.204-41)

- **Allowable unless contractor is eligible for an exemption**



Sales Taxes and Federal Government Contracts

State and Local Sales Taxes

Step 1 – Do sales taxes even apply?

Generally:

- Sales or retail sales
- Tangible personal (biz & indiv) property
- Very few taxable services

Step 2 – If so, any applicable exemptions?

- Government contractor exemptions
 - Title passing language – FAR Clauses
- Generally applicable exemptions

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PROFESSIONAL LIMITED LIABILITY COMPANY

Sales Taxes and Federal Government Contracts

Maryland

Step 1 – Do sales taxes even apply?

- **Rebuttable presumption - applies to all sales**
- **Retail sales**
 - **Tangible personal property**
 - **Taxable services – narrow & targeted**
 - **Excludes Resales, Production Activity**

Step 2 – Are there any exemptions?

- **DoD Contractors - testing equipment**
- **Research materials, manufacturing machinery**



Sales Taxes and Federal Government Contracts

Virginia

Step 1 – Do sales taxes even apply?

- **Retail sales – tangible personal property**
 - **Excludes resales**

Step 2 – Are there any exemptions?

- **Commercial and Manufacturing**
- **Tangible PP for use or consumption by the U.S.**
 - **Government contractors regulation**
 - **Purchases for resale**
 - **Mixed contracts - true object test – by order**



Sales Taxes and Federal Government Contracts

Best Practices

- **Address sales tax issues up front**
- **Include protections in purchase orders in states that permit them**
- **Have exemption certificates ready**



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Questions?

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