

## Supervisor's Handbook Section - District Operations: Billing Collection Policy

### The following topics are listed in this sub-section:

- Suggested Guidelines for SCD Billing and Collection Policy
- Small Claims Court
- Liens
- Taxation
- Bids/Contracts/Equipment
- District Reports and Due Dates

### Suggested Guidelines for SCD Billing and Collection Policy

SERVICES RENDERED - June 1

FIRST BILLING/STATEMENT - June 5

SECOND STATEMENT - July 25

THIRD STATEMENT - August 25-- (Interest will be charges effective June 5)

FOURTH STATEMENT - September 25-- (Interest will be charged effective June 5)--(transition letter will be sent on this date - See attached letter)

FIFTH STATEMENT -October 25-- (Interest will be charged effective June 5)--(An invitation to the next SCD Board Meeting will be sent)

- \* Does not come to Board Meeting
- \* Comes to Board Meeting and pays all or partial
- \* Paid

SIXTH STATEMENT - SCD Board Meeting Date

\*Paid

\*Small Claims Court Action

ND State Century Codes website: <http://www.legis.nd.gov/information/statutes/cent-code.html>

### SMALL CLAIMS COURT

#### **27-08.1-01. Small claims court - Jurisdictional limits - Venue.**

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed **five thousand dollars**.

2. The proceedings in this court must be commenced: a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred. b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business. c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended: (1) In the county of the defendant's residence or place of business; or (2) If the amount of the claim is less than one thousand dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business. d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence. e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real

property is located. f. If the plaintiff is a political subdivision and the claim is for a public utility debt, in the county in which the political subdivision is located.

3. Except for an action under subdivisions c, e, or f of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. A claim may not be filed by an assignee of that claim. A garnishment or attachment may not be issued from this court until after judgment is entered.

Soil conservation districts have been successful in utilizing small claims court in collecting outstanding debts. Small claims affidavit packets can be obtained at your local courthouse in the office of county court.

It would be advisable to follow appropriate billing procedures and utilize appropriate statement forms in your billing process.

**ND CENTURY CODES:** <http://www.legis.nd.gov/information/statutes/cent-code.html>

## **LIENS**

Liens would only be a consideration when a district is extending credit and wishes a security interest. It is generally in the best interest of the district to not act as a creditor and avoid the use of liens if possible. However, the powers and duties of soil conservation districts are outlined in [N.D.C.C. § 04-22-26](#), and include the following:

6. To make available, on such terms as it shall prescribe, to land occupiers, government units or qualified electors within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers, government units or qualified electors to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion.

## **Agricultural Supplier's Lien**

**N.D.C.C. CH. 35-31** - **Agricultural supplier's lien authorized.** Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. An agricultural supplier's lien filed in accordance with section [35-31-02](#) is effective from the date the supplies are furnished or the services performed. An agricultural supplier's lien filed as a security interest created by contract to secure money advanced or loaned for any purposes is not effective to secure a priority over liens filed under section [35-05-01](#) (crop mortgages). In order for a district to utilize an agricultural supplier's lien to obtain a security interest for supplies and services furnished in delivering or applying the supplies, the following criteria needs to be met.

Supplies that were "used in the production of crops, agricultural products, or livestock" need to be provided by the district.

Districts could also utilize the agricultural supplier's lien for any services provided that were associated with those supplies. *Example:* An agricultural supplier's lien could be utilized when a district sells the grass seed to a cooperator, has an outstanding balance remaining on the seed bill, and include the outstanding balance associated with grass drill rental, if the seeding were utilized for grazing or hay for livestock.

*Example:* An agricultural supplier's lien could not be utilized for herbicide sales and associated application for tree maintenance.

An agricultural supplier's lien can be obtained by filing a verified statement in the office of register of deeds of any county in this state or in the office of the secretary of state within 120 days after the supplies are furnished

or services performed. Filing a lien for petroleum products is to be completed within 180 days of delivery. See form SFN 17899 for the information required to file an agricultural supplier's lien.

### **Mechanic's Lien**

**N.D.C.C. § 35-27-02. Persons entitled to a mechanic's lien.** Any person who improves real estate by the contribution of labor, skill, or materials, whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which it is situated or to which it may be removed for the price or value of such contribution. Provided, however, that the amount of therein is only for the difference between the price paid by the owner or agent and the price or value of the contribution. If the owner or agent has paid the full price or value of the contribution, no lien is allowed. Provided further that if the owner or an agent of the owner has received a waiver of lien signed by the person who improves the real estate by the contribution of labor, skill, or materials, no lien is allowed.

Any person who extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, shall, upon demand, have the right to request and secure evidence of the legal description of the real estate upon which the improvement is located, including the name of the title owner of the real estate.

**35-27-11. Itemized account and demand conditions precedent to obtaining lien for materials.** No person is entitled to a lien under this chapter unless he:

- \* Keeps an itemized account thereof separate and apart from all other items of account against purchaser;
- \* Serves a written notice by registered or certified mail upon the owner, subject to section [35-27-02](#), demanding payment of such account and notifying such owner if payment is not made within fifteen days of the date of mailing such notice a lien will be perfected according to law; and
- \* Records with the register of deeds of the county in which the land, building, or improvement is situated a verified notice in writing signed by the person entitled to the mechanic's lien or by his authorized agent stating all of the following: (a. The name of the person in possession of the land. (b. The description of the property to be charged with the lien. (c. The date of the contract. (d. That a mechanic's lien against the building, improvement, or premises will be perfected according to law unless the account shall have been paid.

**35-27-13. How lien perfected — Mechanic's lien recorded.** Every person desiring to perfect his lien shall record with the register of deeds of the county in which the property to be charged with the lien is situated, within ninety days after all his contribution is done, and having complied with the provisions of this chapter, a mechanic's lien describing the property and stating the amount due.

**35-27-24. Action to enforce mechanic's lien - Notice of - Deficiency judgment.** Any person having a lien by virtue of this chapter may bring an action to enforce the lien in the district court of the county in which the property is situated. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced the court may consolidate them. Before a lien holder may enforce a lien, he shall give written notice of his intention so to do, which notice must be given by personal service upon the record owner of the property affected at least ten days before an action to enforce the lien is commenced, or by registered mail directed to the owner's last known address at least twenty days before the action is commenced. The judgment may direct that in the event that a deficiency remains after the sale of the real or personal property subject to the lien an execution may issue for such deficiency.

**35-27-25. Requiring suit to be commenced - Demand - Limitations of action.** Upon written demand of the owner, that person's agent, or contractor, served on the person holding the lien, suit must be commenced and filed with the clerk of court within thirty days thereafter or the lien is forfeited. The demand must contain a provision informing the person holding the lien that if suit is not commenced within thirty days,

the person holding the lien forfeits the lien. No lien is valid or effective as such, nor may be enforced in any case, unless the holder thereof asserts the same by complaint filed with the clerk of court within three years after the date of recording of the verified notice of intention to claim a mechanic's lien. If a summons and complaint asserting the validity of the lien is not filed in the office of the clerk of court of the county in which the lien is recorded within the limitations provided by this section, the lien is deemed satisfied and the clerk of court shall, upon request of any interested person, certify to the register of deeds that no summons and complaint has been filed and the lien is deemed satisfied under this section, who then shall record the verified certificate.

A 1966 Attorney General's opinion specifically states that districts may obtain mechanic's liens for tree planting performed for a farmer. The State Soil Conservation Committee's (SSCC) current (1995) legal counsel also feels a strong argument could be made for obtaining a mechanic's lien for many of the other district supplies and services provided.

### **Other Liens**

Crop, livestock and other liens can be secured by districts for the services or supplies they render. However, it would require the development of specific agreements between the district and the cooperator. Please contact the SSCC if such a need may arise and the SSCC will work with their legal counsel to develop a suitable agreement.

### **TAXATION**

State:

Soil conservation districts are legal subdivisions of the State of North Dakota and as such **are exempt** from the payment income tax, motor vehicle excise tax, real estate tax, sales tax, and use taxes.

**Exemptions:** ND Century Codes website: <http://www.legis.nd.gov/information/statutes/cent-code.html>

Income Tax:	<a href="#">N.D.C.C. 57-38-09</a>
Motor Vehicle Excise Tax:	<a href="#">N.D.C.C. 57-40.3-04(2)</a>
Real Estate Tax:	<a href="#">N.D.C.C. 57-02-08(3)</a>
Sales Tax:	<a href="#">N.D.C.C. 57-39.2-04(6)</a>
Use Tax:	<a href="#">N.D.C.C. 57-40.2-04</a>

### **Sales Tax Exemption Certificate**

Soil conservation districts, as political subdivisions of the State, must apply to the North Dakota State Tax Department for a Sales Tax Exemption Certificate.

Upon issuance of a certificate of exemption, the certificate must be retained by the district and the district must present its certificate (exemption number) to all suppliers or retailers whenever a tax exemption is claimed.

A political subdivision of another state is exempt under this subsection only if a sale to a ND political subdivision is treated as an exempt sale in that state.

Application for this certificate can be made through the **North Dakota State Tax Department, 600 East Boulevard Avenue, Bismarck, ND 58505-0599, (701-328-3474)**. Applications are available from the State Tax Department (Form 21919).

### **Non-Exemptions**

Soil Conservation districts **are not exempt** from the payment of **state** gasoline tax. A district is, however, eligible and may apply to the North Dakota State Tax Department for a gas tax refund.

Political subdivisions (soil conservation districts) **are not exempt** from payment of special assessments. [N.D.C.C. 40-23-07.](#)

**Contracts to Install Material** -Contractors who install personal property into real estate will always be subject to sales and use tax on the cost of such property regardless of who owns it. This provision of the law makes it the responsibility of the contractor to pay tax on all materials installed into real estate unless the person who owns the materials has already paid sales or use tax on them.

On contracts with government agencies, hospitals, schools or other tax-exempt institutions (e.g. soil conservation districts), the construction contractor must pay sales or use tax on the purchase price of all materials installed even if the exempt institution has already purchased the materials.

#### Federal

Employment Taxes - State and local government employers should file Form 941E to report income tax withheld from employees and should send Social Security payments and reports to the appropriate State officials. A Form 941E must be filed for each quarter of the calendar year. Soil Conservation district may be required to file Form 501 for deposit of withheld income taxes.

State and local government employers are not liable for filing Federal Unemployment Tax Returns.

**Employer Identification Number (EIN)** Districts that employ individuals should have an EIN. An EIN may be obtained by filing form SS-4 with the Internal Revenue Service, Entity Control, Mail Stop 627-T, PO Box 9950, Ogden UT 84409, or by calling (801) 620-7645 and providing the information on the form.

#### **Gasoline Taxes**

Section 4221 of the Internal Revenue Code **exempts** State and local governments from the **Federal** excise tax on gasoline. They may purchase the gasoline tax free by registering with the District Director of the Internal Revenue Service. Registration is accomplished by filing Form 637, Registration for Tax Free Transactions, with the **District Director, PO Box 8, Fargo, ND 58107**. Questions for Federal excise taxes can be answered by calling: (612) 290-3704.

#### **Income Taxes**

State or local governments **are exempt** from filing Federal income tax returns (IRS Code section 115(2), paragraph 7140). They **are also exempt** from filing information returns, such as Form 990, which are required of other non-profit organizations.

The Internal Revenue Service code under "Charitable Contributions, section 170, paragraph 11,675, page 26, 573, .0171 - Organizations that qualify as charitable contribution donees," indicates that political subdivisions can receive tax deductible contributions.

The foregoing information on return requirements is not necessarily all inclusive. There are a great number of Federal returns and forms for which an organization might become liable in different situations. However, this information should cover those returns for which organizations such as soil conservation districts would generally be concerned with.

If you have any questions regarding any Internal Revenue requirements for soil conservation districts, you may call this toll free number for assistance: **1-800-829-1040**

#### **IRS Form 1099 - Misc.**

A district must report on Form 1099-Misc. all payments of \$600 or more of fees, commission, cost-share, or other forms of compensation that you make during a calendar year to anyone who is not an employee of yours,

other than a corporation or tax-exempt organization.

If the following four conditions are met, a payment is generally reportable as nonemployee compensation:

1. You made the payment to someone who is not your employee.
2. You made the payment for services rendered in the course of your trade or business (including government agencies and nonprofit organizations).
3. You made the payment to someone other than a corporation, e.g. an individual or a partnership.
4. You made payments to the payee of at least \$600 during the year. **Exceptions** - Some payments are not required to be reported on Form 1099-Misc., although they may be taxable to the recipient. Payments for which a Form 1099-Misc. is not required include:
  1. Payment to a corporation.
  2. Payments for merchandise.
  3. Payments of rent to real estate agents.
  4. Wages and Travel allowances paid to employees (report on Form W-2).

**IRS Telephone Assistance:**

1. Forms and Publications orders **1-800-829-3676**.
2. Tax information and notice inquiries **1-800-829-1040**.

**Form 1099-MISC. due dates:**

1. To IRS **February 28**.
2. To Recipient **January 31**.

**BIDS/CONTRACTS/EQUIPMENT**

**State and Federal Surplus Property**

Soil conservation districts are eligible to receive state and federal surplus property. Your district may apply directly to the: **State Director of Surplus Property, Igoe Industrial Park, P O Box 7293, Bismarck, ND 58507-7293, (701-328-9665)**, to receive information relative to surplus equipment and instructions for obtaining same.

**Office of Management and Budget Purchasing Services**

The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter [54-40.3](#) to cooperatively purchase certain specific items designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement (701-328-2680).

**Equipment Bids**

According to the Attorney General, there is no specific requirement of dollar amount established that requires letting bids on machinery or equipment.

**Buildings**

**(Public Improvement Projects)**

**[N.D.C.C. § 43-19.1-28](#). Public Works.** Except as otherwise provided by law, the state and its political subdivisions, may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of one hundred thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the construction administration and construction observation services are executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section is void.

**[N.D.C.C. § 48-01.1-04](#). Plans and specifications for public improvement contracts.** If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand

dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public building in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the board of higher education, may be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station.

Soil Conservation districts planning building or remodeling projects in excess of \$100,000 need comply with the above sections of State Law. There are also additional requirements in [Chapter 48](#) of the N.D.C.C. relating to bidding advertising and construction.

**N.D.C.C. § 48-02-06.2. Bonds from contractors for public improvement.** A governing body, as defined in section [48-01.101](#), authorized to enter into a contract for construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section [13-01-14](#) be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor, any subcontractor, as provided in this chapter, may sue on the bond. It is recommended that all contractors utilized by districts for construction projects be bonded even when projects are less than \$100,000.

### **Buildings/Contracts**

**The 55th Legislative Assembly enacted the following:**

**Discrimination in governmental contracts and programs prohibited.** A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

The North Dakota Attorney General's Office has developed a "Contract Drafting and Review Manual" to assist you in preparing contracts. The manual may be obtained by contacting the Attorney General's Office at (701) 328-2210.

### **DISTRICT REPORTS AND DUE DATES**

#### **District Minutes**

1. Make a complete record of all meetings and submit one copy of the approved minutes to the following:

- Copy for the district office;
- Each district supervisor ;
- Executive Secretary, State Soil Conservation Committee, 600 E. Boulevard Avenue, 18th Floor, Bismarck, ND 58505-0790;
- Executive Vice President, ND Association of Soil Conservation Districts, PO Box 1601, Bismarck, ND 58502-1601;
- State Conservationist, USDA Natural Resources Conservation Service, PO Box 1458, Bismarck, ND 58502-1458;
- Area Conservationist (of your Area), USDA Natural Resources Conservation Service;
- Committee Member from your Area;
- Association Board Members from your Area;
- Consideration may also be given to your County Agent and your County Executive Director (CED) of FSA and
- County Commissioner.

#### **B. District Monthly Financial Report (Treasurer's Report)**

1.A copy of a monthly district financial report should be provided to each District Supervisor at the monthly meeting (refer to form SFN 3819).

### **C. District Annual Financial Statement**

1. Districts must prepare an Annual Financial Statement at the close of the business year and forward a copy to the State Soil Conservation Committee (SSCC) (refer to form SFN 3820).

### **D. Reporting Requirements/Due Dates:**

#### **January**

- a. Reorganize SCD Board: select district officers (i.e., chair, vice chair, treasurer); --appoint/re-appoint appointed supervisors
- b. File Appointed Supervisor Oaths of Office with SSCC
- c. Complete SCD Reorganization Form (SFN 17143) and submit to SSCC
- d. Establish Meeting Dates for Calendar Year
- e. File Meeting Schedule with County Auditor
- f. Arrange for an Annual Audit of the Account of Receipts and Disbursements of your District
- g. Complete Soil Conservation District Technician Program Quarterly Report Form (SFN 3817) and submit to SSCC by **January 10** (this requirement applies to those SCDs participating in the program)

#### **April**

- a. Complete Soil Conservation District Technician Program Quarterly Report Form (SFN 3817) and submit to SSCC by **April 10** (this requirement applies to those SCDs participating in the program)

#### **May**

- a. Complete Annual Financial Statement (SFN 3820) and submit to SSCC by **May 31**

#### **June**

- a. Review bond coverage

#### **July**

- a. No later than **July 1**, one Certified Copy of the Tax Levy Forms (SFN 3850 and SFN 50443) are to be Filed with the County Auditor of each County in your District
- b. Complete Soil Conservation District Technician Program Quarterly Report Form (SFN 3817) and submit to SSCC by **July 10** (this requirement applies to those SCDs participating in the program)

#### **October**

- a. Complete Soil Conservation District Technician Program Quarterly Report Form (SFN 3817) and submit to SSCC by **October 10** (this requirement applies to those SCDs participating in the program)