

## 31.205-41 Taxes.

(a) The following types of *costs* are allowable:

(1) Federal, State, and local taxes (see [part 29](#)), except as otherwise provided in paragraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and *penalties* are not considered taxes.

(2) Taxes otherwise allowable under paragraph (a)(1) of this section, but upon which a *claim* of illegality or erroneous assessment exists; provided the contractor, before paying such taxes-

(i) Promptly requests instructions from the *contracting officer* concerning such taxes; and

(ii) Takes all action directed by the *contracting officer* arising out of paragraph (2)(i) of this section or an independent decision of the Government as to the existence of a *claim* of illegality or erroneous assessment, to-

(A) Determine the legality of the assessment or

(B) Secure a refund of such taxes.

(3) Pursuant to paragraph (a)(2) of this section, the reasonable *costs* of any action taken by the contractor at the direction or with the concurrence of the *contracting officer*. Interest or *penalties* incurred by the contractor for non-payment of any tax at the direction of the *contracting officer* or by reason of the failure of the *contracting officer* to ensure timely direction after a prompt request.

(4) The Environmental Tax found at section 59 A of the Internal Revenue Code, also called the "Superfund Tax."

(b) The following types of *costs* are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see [31.205-20](#) and [31.205-27](#)).

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the *contracting officer* determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or *personal property*, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section).

(6) Any excise tax in subtitle D, Chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with *qualified pension plans*, welfare plans, *deferred compensation* plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(8) Any tax imposed under 26 U.S.C. 5000 C.

(c) Taxes on property (see paragraph (b)(5) of this section) used solely in connection with either non-Government or Government work *should* be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work *should* be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work *should* be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work *shall* be apportioned to all such work based upon the use of such property on the respective *final cost objectives*.

(d) Any taxes, interest, or *penalties* that were allowed as contract *costs* and are refunded to the contractor *shall* be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract *costs*, and if those *costs* were reimbursed by a foreign government, the amount of the reduction *shall* be paid to the Treasurer of the *United States* at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or *penalty shall* be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or *penalties*.

**Parent topic:** 31.205 Selected costs.