

## Form IC 134 Submission Requirements – ITO's and MTO's

### Definitions

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#### **Independent Truck Operator (ITO):**

An individual, partnership, or principal stakeholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner's services to an entity which provides construction services on a public works project.<sup>1</sup>

#### **Trucking Firm/Multiple Truck Owner (MTO):**

For purposes of compliance, reporting and enforcement, MnDOT characterizes a "Trucking Firm" as a "Multiple Truck Owner" (MTO). MTO is defined as any legal entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public work projects.<sup>2</sup>

#### **Form IC-134:**

A form prescribed by the Minnesota Department of Revenue, also known as the "Contractor Affidavit". The Department of Revenue requires this form to be completed by the prime contractor and "any subcontractor" that performs "work on a project for the State of Minnesota or any of its political subdivisions." Contractors and subcontractors use this form to certify that they have withheld taxes on employee wages as required by Minnesota tax laws.

#### **Prevailing Wage Laws:**

State and federal laws requiring contractors and subcontractors on public projects to pay a certain wage to each person employed to work on a public project. The federal law is known as the "Davis Bacon Act". Minnesota law is found in Minnesota Statutes chapter 177 and Minnesota Rules Part 5200.

### IC-134 and Prevailing Wage Laws May Use Different Definitions of Similar Terms

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Because the Prevailing Wage Laws and tax laws serve fundamentally different purposes, they may use different definitions of similar words. For prevailing wage purposes, "Work under the contract" is defined by Minnesota Rules Part 5200.1106 (subpart 2). The instructions to Minnesota Dept of Revenue Form IC-134 use the term

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<sup>1</sup> Minnesota Rule 5200.1106, Subpart 7(A)

<sup>2</sup> Minnesota Rule 5200.1106, Subpart 7(B)

“work on a project”, but neither the form nor the tax laws define that term. Therefore, MnDOT relies on interpretive guidance from the Department of Revenue.

## **IC-134 is Not Required for Truckers Unless Performing Other Labor**

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The Department of Revenue has provided interpretive guidance seeking to clarify whether truckers must submit form IC-134. The Department of Revenue looks at “work on a project” as involving “supplying labor.” The Department noted:

*“The trucking company would be supplying labor only if they move materials around at the work site or perform additional work beyond dropping off materials. If they simply are dropping off supplies and do not perform any additional work, they would be considered a supplier.”<sup>3</sup>*

The finding that a trucker is a supplier is significant because as a supplier they are not required to submit form IC-134.

## **Prevailing Wage and Certified Payrolls are Still Required for Truckers Who Are Not Required to Submit IC-134**

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Even if an MTO is not required to submit Form IC-134, they are still generally required to pay prevailing wage and submit certified payrolls.

## **Vendor Registration is Required**

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As the “supplier” designation applies only for IC-134 purposes, and not for Prevailing Wage Law purposes, it does not alter the requirement to register as a vendor for AASHTOWARE purposes.

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<sup>3</sup> Email from Kendra Crum (Dept. of Revenue) to Jessica Mennenga (MnDOT OCIC) dated Oct. 8, 2020