



### **Important Rate Changes!**

#### **BEGINNING JANUARY 1, 2024:**

- Milwaukee County sales and use tax rate increases from 0.5% to 0.9%
- City of Milwaukee imposes a new 2% sales and use tax
- See [Fact Sheet 2414 Milwaukee Sales and Use Taxes](#)

See the [Sales Tax Rate Chart](#) for a complete list of county sales and use tax rates and their effective dates

# Sales and Use Tax Information for Contractors

# TABLE OF CONTENTS

	Page
<b>1. INTRODUCTION</b> .....	<b>4</b>
A. General .....	4
B. Difference Between the Wisconsin Sales and Use Tax .....	4
C. Which Sales Are Subject to Sales and Use Taxes?.....	5
D. Tax Rate .....	5
E. Registration .....	5
F. Filing Tax Returns and Payment of Tax .....	6
<b>2. CONTRACTORS MUST DISTINGUISH BETWEEN REAL PROPERTY AND PERSONAL PROPERTY ACTIVITIES</b> .....	<b>7</b>
A. Why?.....	7
B. Contractor As a Retailer .....	7
C. Contractor As a Consumer .....	11
D. Contractor May Act As Both Retailer and Consumer on Same Job.....	14
<b>3. EXCEPTIONS TO PART 2</b> .....	<b>22</b>
A. Property Deemed Personal Property for Repair and Maintenance Purposes .....	23
B. Landscaping and Lawn Maintenance Services .....	25
C. Waste Treatment Facilities.....	26
D. Professional Sports and Entertainment Home Stadiums .....	28
E. Manufactured and Modular Homes Used in Real Property Construction Activities Outside Wisconsin.....	28
F. Renewable Energy Products.....	29
G. Sports and Entertainment Arena Facilities.....	29
H. Building Materials for Certain Facilities Owned By Certain Exempt Entities .....	30
I. Electronics and Information Technology Manufacturing Zone Facilities .....	35
J. Fertilizer Blending, Feed Milling, and Grain Drying Operations.....	37
<b>4. SPECIAL SITUATIONS</b> .....	<b>38</b>
A. Real Property Construction Contracts With Exempt Entities.....	38
B. General Contractors and Subcontractors.....	39
C. County Use Tax on Construction Materials.....	39
D. Stadium Use Tax on Construction Materials .....	41
E. Quarries/Gravel, Etc.....	42
F. Construction Contracts on Native American Reservations .....	43
<b>5. OTHER ITEMS RELATED TO BUSINESS OPERATIONS OF CONTRACTORS</b> .....	<b>45</b>
A. Purchases of Materials – Personal Property .....	45
B. Purchases of Materials – Real Property .....	45
C. When a Contractor Is Both a Consumer and a Retailer .....	45
D. Purchases of Construction Information Transferred Electronically .....	46
E. Purchases or Rentals of Machinery and Equipment .....	47
F. Service vs. Rental.....	47
G. Motor Vehicle Fuel or Alternate Fuel Excise Tax Refunds.....	48
H. Sales of Used Equipment.....	48
I. Credit for Tax Paid to Another State .....	48
J. Contractor Erroneously Charged Tax on Real Property Construction Activity.....	49
<b>6. RECORD KEEPING</b> .....	<b>49</b>
A. General .....	49
B. Records to Keep – Exempt Sales .....	49
C. Contractor’s Invoices to Its Customers .....	50
<b>7. OTHER TAXES AND FEES TO BE AWARE OF</b> .....	<b>51</b>
<b>8. DO YOU HAVE QUESTIONS OR NEED ASSISTANCE?</b> .....	<b>53</b>
<b>APPENDIX A</b> .....	<b>54</b>
<b>APPENDIX B</b> .....	<b>60</b>
<b>APPENDIX C</b> .....	<b>61</b>

**IMPORTANT CHANGES**

**Water Slides Flumes – Change in Tax Treatment.** Waterslides in a water park, including the waterslide flumes and the steel support beams that hold up the flumes, are real property improvements. See Parts 2.B.(3) and 2.C.(3).

**Exemption for Sales of Products Sold by Contractors and Subcontractors as Part of a Real Property Construction Contract.** The lump sum contract exemption for contractors was expanded to include sales and purchases by subcontractors and time and materials contracts. This exemption first applies to contracts entered into or extended, modified, or renewed on December 1, 2017. See Part 2.D.

**Clarification of Exemption for Manufactured and Modular Homes used in Real Property Construction Activities Outside of Wisconsin.** Information is added to clarify that the exemption does not apply to a manufacturer's purchases of tangible personal property used in the manufacture of a mobile or manufactured home that is subsequently used by the manufacturer in a real property construction activity outside of Wisconsin. See Part 3.F.

**Exemption for Materials, Supplies, Equipment and Landscaping Services Used to Build Sports and Entertainment Arena Facilities.** New exemption for building materials, supplies, equipment, and landscaping services used solely in, the construction or development of sports and entertainment arena. See Part 3.G.

**Exemption for Building Materials Sold to Contractors For Use in Constructing Certain Facilities for Certain Exempt Entities.** New exemption for building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to certain exempt entities, if the building materials become part of a "facility" in Wisconsin, owned by the exempt entity. This exemption is effective for contracts entered into January 1, 2016, and later. See Part 3.H.

**Exemption for Electronics and Information Technology Manufacturing Zone.** New exemption for building materials, supplies, equipment, and landscaping services acquired solely for, or used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone if the facility may be claimed as a certain income tax credit, as certified by the Wisconsin Economic Development Corporation. Effective September 20, 2017. See Part 3.I.

**Exemption for Fertilizer Blending, Feed Milling, and Grain Drying Operations.** Information is added for exemptions for certain property used in a fertilizer blending, feed milling, or grain drying operation. These exemptions became effective April 19, 2014. See Part 3.J.

**Several Counties Adopt the County Tax.** The 0.5% tax in Sheboygan County became effective on January 1, 2017, Kewaunee County tax became effective April 1, 2017, Brown County tax became effective on January 1, 2018, and Calumet County tax became effective on April 1, 2018.

**CAUTION**

The information in this publication reflects the positions of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and in effect as of January 1, 2019. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this publication. Guidance issued prior to January 1, 2019, is superseded by this publication, pursuant to sec. 73.16(2)(a), Wis. Stats.

The examples and lists of taxable and nontaxable sales and purchases are not all-inclusive. They merely set forth common examples.

## 1. INTRODUCTION

### A. General

This publication provides general information about the Wisconsin state, county, and stadium sales and use taxes as they affect contractors. It explains how the sales tax applies to the contractor's receipts when the contractor acts as a retailer. It also explains how the sales or use tax applies to a contractor's purchases when the contractor acts as a consumer. Examples are included in Part 5 to clarify when a contractor's sales and purchases are subject to the tax. Parts 4.C. and D. and Appendix C contain information about the county and stadium taxes. Additional information about the county and stadium taxes can also be found in [Publication 201](#), which is available from any Department of Revenue office, or from the department's website.

If, after reading this publication you have questions about sales and use taxes, you may contact any Department of Revenue office for free assistance. (See Part 8 for information on how to contact the department.)

### B. Difference Between the Wisconsin Sales and Use Tax

**Sales Tax:** The Wisconsin sales tax is a 5% tax imposed on the sales price of persons who sell, license, lease, or rent taxable products or services at retail in Wisconsin. A sale of taxable products and services is at retail unless the buyer purchases the product or service for the purpose of reselling it.

When sales tax is imposed on taxable services, both material and labor charges are subject to the tax. For example, the charges for both labor and parts for repairing a window air conditioner are taxable.

A contractor's charges for improvements to real estate are not subject to sales tax on either materials or labor. However, in most instances, the contractor must pay sales or use tax on the cost of materials consumed in making the real property improvements.

The contractor must determine whether its charges are for real estate improvements (nontaxable) for taxable products or for taxable services. This is explained in greater detail in Part 2 of this publication.

**Use Tax:** The Wisconsin use tax is a 5% tax imposed on the purchase price of taxable products and services that are stored, used, or otherwise consumed in Wisconsin, and upon which a Wisconsin sales or use tax has not previously been paid.

**Example 1** – The use tax is imposed upon a purchaser when property is purchased without tax for resale, but then is used by the purchaser instead of, or in addition to, being resold.

**Example 2** – The use tax is imposed upon a purchaser when property is purchased from an in-state or out-of-state retailer, no Wisconsin tax is charged by the retailer, and the property is consumed by the purchaser in a real property construction activity in Wisconsin.

**Example 3** – The use tax is imposed upon a purchaser when property is purchased from an in-state or out-of-state retailer, no Wisconsin tax is charged by the retailer, and the property is stored in Wisconsin, even though it is subsequently consumed by the purchaser in a real property construction activity outside Wisconsin.

**Exception:** An exemption applies for the sales of and the storage, use, or other consumption of modular homes and manufactured homes that are used in real property construction activities outside Wisconsin.

**Note:** If an activity performed outside Wisconsin is not considered a real property construction activity under Wisconsin law, the purchaser will not owe Wisconsin use tax on the materials used in this activity. However, the purchaser may owe sales or use tax to the state in which the activity is performed.



### C. Which Sales Are Subject to Sales and Use Taxes?

Sales, licenses, leases, and rentals of the following products are subject to the 5% Wisconsin state sales tax:

- (1) Tangible personal property;
- (2) Coins or stamps of the United States that are sold, licensed, leased, rented, or traded as collector's items above their face value;
- (3) Leased property that is affixed to real property, if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed;
- (4) Specified digital goods, additional digital goods, and digital codes. These digital goods are characterized by the fact that they are transferred electronically to the purchaser (i.e., accessed or obtained by the purchaser by means other than tangible storage media). "Specified digital goods" means "digital audio works," "digital audiovisual works," and "digital books." "Additional digital goods" means greeting cards, finished artwork, periodicals, video or electronic games, and newspapers or other news or information products.

See [Publication 240](#) for a description of the products that are included.

In addition, certain services are subject to Wisconsin sales and use taxes. For a list of taxable services, see Part 10.B. of [Publication 201](#).

As used throughout this publication, items, property, and goods described in 1 through 4, above, are referred to as "taxable products."

As used throughout this publication, the term "digital goods" refers collectively to products listed in 4 above.

### D. Tax Rate

The tax rate of 5% applies for both the Wisconsin state sales tax and use tax. The sales tax is based upon the sales price from retail sales. The use tax is based upon the purchase price of the product or service purchased. In counties which have adopted the county tax (see Appendix C for a list of these counties), the tax rate is 5.5% (5% state tax and 0.5% county tax). In counties where the baseball stadium tax applies, the tax rate is 5.1% (or 5.6% if both county tax and the baseball stadium tax apply).

### E. Registration

#### (1) Seller's Permit

Every individual, partnership, corporation, or other organization making taxable sales in Wisconsin, regardless of whether its sales are mercantile in nature, is required to have a seller's permit. The seller's permit shows that a retailer is properly registered with the Department of Revenue, as required by law. It is a misdemeanor to make taxable sales of products or services without a seller's permit. See Part 3 of [Publication 201](#) for additional information relating to seller's permit requirements for disregarded entities.

#### (2) Use Tax Registration

- If a contractor is not required to hold a seller's permit, but regularly has a use tax obligation because purchases are made without tax, the contractor should apply for a consumer's use tax certificate.
- Contractors from other states whose only activity in Wisconsin is real property construction also must obtain a consumer's use tax certificate.

- Contractors from other states engaged in both real property construction activities and the sale, installation, repair, or other service of taxable products and services in Wisconsin must obtain a use tax registration certificate.

### (3) Application

A person may apply for a seller's permit, consumer's use tax certificate, or use tax registration certificate using one of the following methods:

- Use the Department of Revenue's online [Business Tax Registration Process](#) to submit the application electronically.
- Register through the [Streamlined Sales Tax Governing Board's](#) website.
- Complete [Form BTR-101](#), *Application for Business Tax Registration*, and mail it to the Department of Revenue. Keep a copy of the completed application for your records.

You should apply for a seller's permit at least three weeks before your business operations begin.

### (4) Business Tax Registration Fees

Persons applying for a seller's permit or use tax certificate may be required to pay a Business Tax Registration (BTR) fee of \$20. The \$20 BTR fee is not required for a consumer's use tax certificate. The initial BTR fee covers a period of two years. At the end of that period, a \$10 BTR renewal fee applies. The Department of Revenue will send a renewal notice.

**Note:** The renewal fee applies to all persons holding permits or certificates subject to BTR provisions, except certain retailers who voluntarily registered through the [Streamlined Sales Tax Governing Board's website](#).

## F. Filing Tax Returns and Payment of Tax

Every holder of a Seller's Permit, Use Tax Certificate, or Consumer's Use Tax Certificate must file a return for each reporting period, even if no tax is due for that period. A reporting period may be monthly, quarterly, or annually, depending on the person's annual tax liability. The Department of Revenue will notify each person of their reporting period and the due date for filing returns.

The law requires that sales and use tax returns be filed electronically. Wisconsin sales and use tax returns should be filed using one of the following electronic filing methods:

### (1) My Tax Account

[My Tax Account](#) is a free, secure online application that allows you to file and pay your sales and use taxes electronically. It performs the necessary computations of tax based on information that you enter and allows you to make your tax payment via electronic funds transfer, credit card or paper check. [My Tax Account](#) also allows you to:

- View business tax filing and payment history and identify any tax periods that need attention.
- Change your address, obtain an extension to file a return or inactivate your account.
- File a buyer's claim for refund of sales tax paid to a seller in error.
- Appeal adjustment notices.



To use [My Tax Account](#), you must obtain a username and password from the Department of Revenue. Go to the [My Tax Account Common Questions](#) on the Department of Revenue's website for more information, including how to obtain your username and password.

## (2) Sales TeleFile

You can file your Wisconsin sales and use tax return with any touch-tone telephone using [TeleFile](#). This program accepts four payment types: Direct withdrawal from your checking or savings account (only available during the call in which you file your return); credit card, check, or money order. To use [TeleFile](#), obtain a Sales TeleFile [Worksheet and Payment Voucher](#) from the Department of Revenue's website. When you have completed the worksheet, call (608) 261-5340 (Madison number) or (414) 227-3895 (Milwaukee number) to actually file your return.

## (3) E-File Transmission

This program is a service for taxpayers using approved private vendors' software or who have the technical expertise to create a file in XML format. E-file transmission places return data into a file format that can be directly processed into the Department of Revenue system. Using secure transmission over the Internet you can submit a payment at the same time that you file your return using ACH debit or ACH credit. You will receive an email acknowledgement to confirm receipt of a successful file transmission. Information about file transmission can be found on the [Department of Revenue's website](#).

If you have questions about electronic filing or payments, contact the department by writing to Wisconsin Department of Revenue, Electronic Funds Transfer Assistance, Mail Stop 3-80, PO Box 8946, Madison, WI 53708-8946; calling (608) 266-2776; or emailing [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov).

## 2. CONTRACTORS MUST DISTINGUISH BETWEEN REAL PROPERTY AND PERSONAL PROPERTY ACTIVITIES

### A. Why?

In order to comply with Wisconsin's sales and use tax laws, a contractor must first determine whether it is:

- (1) Selling or servicing taxable products, or
- (2) Engaging in real property construction activities.

A contractor is a retailer when selling or servicing taxable products, and a contractor is a consumer when engaging in real property construction activities. The contractor's sales and purchases are taxed differently under each of these two situations, as described in B and C.

### B. Contractor As a Retailer

#### (1) When Is a Contractor a Retailer?

A contractor is a *retailer* when:

- (a) Selling or servicing tangible personal property.
- (b) Installing tangible personal property which remains tangible personal property after installation.
- (c) Performing services to items that are ordinarily considered real property, but are deemed to have retained their character as tangible personal property for repair and maintenance purposes ([sec. 77.52\(2\)\(ag\)](#), Wis. Stats.).

- (d) Performing other taxable services such as landscaping services.
- (e) Installing property under Part 1.C.(3).
- (f) Selling or servicing items, property, or goods described in Part 1.C.(2) to (4).

If a contractor is a retailer, it must obtain a seller's permit, file sales and use tax returns, and pay the sales tax on its **sales price** from the retail sale of taxable products or services unless an exemption applies.

**Example** – A contractor repairs a furnace in a customer's residence for \$100. The \$100 is made up of \$25 for parts, \$50 to install the parts and \$25 for travelling to the customer's location. The entire \$100 is subject to sales tax as the contractor's sales price from this transaction.

**Note:** The term "sales price" also includes other charges made by a contractor which the contractor separately states on their invoices to their customer, such as fuel surcharges, service call charges, truck charges, emergency service charges, mileage charges, etc.

## (2) Purchases by a Contractor Who Is a Retailer.

A contractor may **purchase** products without sales or use tax that are either sold or physically transferred to the customer in the installation, repair, or servicing of taxable products. This is done by providing a fully completed *Wisconsin Sales and Use Tax Exemption Certificate* ([Form S-211](#) or [S-211E](#)) or *Streamlined Sales and Use Tax Exemption Certificate* – Wisconsin version ([Form S-211-SST](#)), claiming resale to the supplier of such product. When the contractor resells it or transfers it in such repair or service, the contractor must report the sale on its return and is liable for sales tax based on the sales price charged to the customer, unless an exemption applies.

**Example** – A contractor purchases furnace parts which will be used in repairing furnaces in residences. The parts will be physically transferred to the customer. These parts may be purchased from the supplier without tax by giving the supplier a fully completed exemption certificate claiming resale.

**Note:** The contractor must pay tax on its purchases of any product used in completing this service if that product is not sold and physically transferred to the customer. This includes items such as cleaning solutions and rags the contractor uses while performing the repair service.

## (3) Examples – Contractor As a Retailer.

Listed below are examples of when a contractor is a retailer and should charge tax, unless an exemption applies.

- (a) Selling lumber, roofing materials or other tangible personal property, without installation.
- (b) Repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspecting, and maintaining tangible personal property.
- (c) Repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspecting and maintaining property that is considered to retain its character as tangible personal property after installation, regardless of the extent to which any such item is fastened to, connected with, or built into real property, and regardless of whether such property is considered to be real property for other purposes (secs. [77.52\(2\)\(a\)10.](#) and [\(ag\)](#), Wis. Stats.). See Part 3.A. for a description of such property.
- (d) Performing landscaping and lawn maintenance services, including landscape planning and counseling, and lawn and garden services such as planting, mowing, spraying, fertilizing, and shrub and tree services. See Part 3.B. and [Publication 210](#) for additional information regarding landscaping and lawn maintenance services.



(e) Selling or installing property which remains personal property after installation. This includes:

- Acoustical panels used as office partitions, which are not attached to the walls, floor, or ceiling of the building (i.e., they are free-standing).
- Above ground fuel storage tanks fabricated in a factory and transported to a job site as an assembled tank.
- Air handling equipment, including blowers, dust collectors, exhaust equipment, and air washers, used directly with a single machine or a specific process such as paint spraying or welding.
- Amusement rides and recreational equipment, including giant amusement slides, ski lift equipment, water rides, and space towers.

**Note:** The concrete foundations for these items are real property improvements and the contractor installing the foundation is the consumer of the materials used in installing and constructing the foundation. In addition, steel support beams that hold up water slide flumes and the flumes themselves are also real property improvements.

- Catwalks and platforms providing access to a machine or equipment.
- Communication equipment in offices, business facilities, schools, and hospitals (but not in residential facilities including personal residences, apartments, long-term care facilities, as defined under sec. 16.009(1)(em), Wis. Stats., state institutions, as defined under sec. 101.123(1)(i), Wis. Stats., Type 1 secured correctional facilities, as defined in sec. 938.02(19), Wis. Stats., or similar facilities), including:
  - intercoms and sound paging systems
  - pneumatic tube systems
  - telephone and other communication equipment
  - music and sound equipment
  - public address systems
  - nurse call systems
  - cable television (CATV) dishes and accessories.

**Note:** Compact satellite dishes are tangible personal property when installed in a residence, apartment, long-term care facility, etc.

- roof mounted antennas
- computer, communication and data cabling
- Concrete provided to contractors at the job site which merely requires delivery, whether to separate receptacles or forms.
- Equipment for the wind generation of electricity by a business, except for the concrete foundations.
- Fabrication of precast steel piling by a fabricator, who delivers it to the job site, where it is placed by another contractor.
- Farm irrigation systems, including pumps, power units to drive the pumps, transmission units, sprinkler devices, and sectional piping. (This does not apply to underground installations at a golf course or other nonfarm locations.)
- Furniture, radios, television sets, portable antennas, compact satellite dishes, washers, dryers, portable lamps, home freezers, portable appliances, and window air conditioning units.

- Materials handling equipment, including storage rack systems installed for business use, except foundation and supports to the building.
- Office, bank, and savings and loan furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, camera security equipment monitoring business activity within a building, and vault doors.
- Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, factories, laboratories, schools, hospitals, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels and motels, barber and beauty shops, figure salons, theaters, and gasoline service stations but not in residential facilities including personal residences, apartments, long-term care facilities, as defined under sec. 16.009(1)(em), Wis. Stats., prisons, mental health institutes as defined in sec. 51.01(3), Wis. Stats., Type 1 juvenile correctional facilities, as defined in sec. 938.02(19), Wis. Stats., or similar facilities). This includes:
  - cabinets not affixed to real estate and cabinets affixed to real estate in a doctor's office, motel room, office building, or other business operation which are used to carry on the trade or business. However, affixed cabinets in public restrooms, janitor closets and employee break rooms are not considered tangible personal property when installed because they are not used to carry on a trade or business.
  - counters, refrigerated display cases, and condensing units, shelving, and registers in a retail store
  - theater's stage lights, projection equipment, and seating
  - hoists, gasoline dispensers, car wash equipment, air compressors, and above ground product tanks at a service station (underground product tanks are realty improvements, but the fill pipe, submersible pump, spill container and piping carrying the gas from the tank to the dispenser are personal property)
  - radio, television, telecommunications and CATV broadcasting or receiving towers constructed of steel and anchored to a concrete base on leased land
- School equipment, including:
  - factory prefab chalk or tack boards
  - folding bleachers in a gymnasium, even if affixed to the wall
  - portable bleachers
  - library tables, desks, shelving, and counters
  - classroom tables, desks, and chairs
  - fixed seats, or seats and tables for auditoriums and lecture rooms
  - cabinets for art, home economic, and music rooms
  - trophy and display cases
  - movable wardrobes and lockers
  - portable coat racks
  - gym equipment, including basketball backboards
  - food service equipment
  - stage equipment
  - drapery and drapery tracks

- Seasonal boat docks (i.e. docks that are installed and removed each season)
- Traffic and railroad signals
- Trees, plants, and shrubs in containers in a commercial building
- Venetian blinds, draperies, and drapery rods, including custom made and motorized window treatments

**Note:** Persons installing property in jails and prisons should contact the department for more information on what remains tangible personal property when installed.

(f) Installing, altering, repairing, or servicing fixtures that serve a business function in commercial establishments (stores, factories, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels, motels, barber and beauty shops, figure salons, theaters, motor vehicle service stations, etc.). This includes:

- Examining a faulty portable conveyor in a retail establishment and replacing a motor.
- Examining, tightening, and demosturizing all contacts on hoist controls in a service station.
- Locating a short and replacing wiring between the starter and motor on a conveyor.
- Replacing a defective ballast in a lamp in an office.

**Caution:** Installing, altering, repairing, or servicing fixtures and equipment in residences and other residential structures may be considered to be realty improvements and not taxable.

**Note:** Appendix A provides more details on the tax treatment of repairing or installing items in commercial establishments as compared to doing similar work in residential buildings.

## C. Contractor As a Consumer

### (1) When Is a Contractor a Consumer?

A contractor is a consumer of taxable products described in Part 1.C.(2) and (4) that it uses when performing real property construction activities, such as improving, altering, installing, repairing, or otherwise servicing real property. See Part 3 for exceptions.

A contractor is also the consumer of taxable products described in Part 1.C.(2) and (4), such as tools, equipment and miscellaneous supplies, used in selling or servicing tangible personal property and not physically transferred to the customers or in performing real property construction activities.

"Real property construction activities" means activities that occur at a site where taxable products described in Part 1.C.(2) and (4) are applied or adapted to the use or purpose to which real property is devoted are affixed to that real property, if the intent of the person who affixes the product is to make a permanent accession to real property. "Real property construction activities" do not include affixing to real property tangible personal property that remains tangible personal property after it is affixed.

### (2) Paying Tax on Purchases.

In most instances, the contractor will pay a sales or use tax on its **purchases** of taxable products consumed in real property construction activities. When a contractor is a consumer, its **sales price** from labor and material related to real property construction activities is **not** subject to sales tax.

**Note:** A contractor who performs a real property construction activity is not permitted to collect sales tax from its customers on its sales price from sales of real property construction activities. The tax is imposed

on the contractor's purchases of the materials used in the real property construction activity and increases the cost of the contractor's building materials. Presumably, the tax on the contractor's purchases will be taken into consideration as a cost of doing business when the contractor negotiates the contract price.

**Example** – A contractor is installing a furnace in a customer's residence. The contractor is the consumer of the furnace and must pay sales or use tax on its purchase of the furnace. The contractor's charge to the customer for the labor and materials used in installing the furnace is not taxable.

If the contractor does not pay sales tax on its purchases of taxable products described in Part 1.C.(2) and (4) which the contractor uses or consumes in a real property construction activity, the contractor must pay use tax directly to Wisconsin on these purchases. For example, a contractor's charges for labor and materials for installing a furnace in a house are not subject to sales tax. However, the contractor should either: (a) pay sales tax to its supplier when purchasing the sheet metal, furnace, and other materials used in installing the new furnace in the house, or (b) pay use tax directly to the Wisconsin Department of Revenue on these materials.

If, at the time the contractor purchases materials, the contractor knows which materials are to be used in real property construction activities, the contractor cannot furnish the supplier with an exemption certificate claiming such purchases or materials are for resale.

If the contractor is both a retailer of building materials because it makes retail sales of building materials and a consumer of the same type of building materials because they are used by the contractor in improving realty, and the contractor does not know at the time of purchase if the materials will be sold as tangible personal property or used by the contractor in a real property construction activity, special rules apply. See Part 5.C. for those rules.

### (3) Examples – Contractor As a Consumer.

The following examples illustrate when a contractor is acting as a consumer in a real property construction activity. The contractor's receipts from real property construction activities are not subject to the sales tax. However, the contractor must pay a sales or use tax on its purchase of materials consumed in such activity unless an exemption applies.

(a) Constructing buildings and structural components and other improvements to buildings. This includes the roof, walls, floors, ceiling, and partitions which are attached to the realty, as well as the permanent covers for walls, such as paint, paneling, wallpaper or tile. Other building components are:

- central air conditioning and space heating systems, including furnaces, boilers, motors, compressors, pipes, ducts, and solar collectors

**Note:** The replacement of a compressor or motor may constitute a taxable repair to an air conditioner, furnace, or other item deemed to be tangible personal property for repair and maintenance purposes. See Part 3.A.

- general electrical wiring
- general overhead lighting
- data and communication cabling in a residence
- plumbing and plumbing fixtures, such as septic tanks, restroom sinks and cabinets, lavatories, toilets and bathtubs
- shutters, windows, doors, door controls, and air curtains
- inlaid carpeting
- stairs, stair lifts, escalators, elevators, and related equipment essential to their operation

- residential heating, cooling and ventilation additions such as a flue damper, humidifier, air exchanger or stack pack
- loading platforms
- awnings, canopies, and patio covers primarily providing shelter, even though they may also contain the name of a business on them
- built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, and incinerators
- catwalks that provide access to various sections and levels of the building, serving the function of stairways and hallways
- energy management systems used to control the lighting, heating, or cooling of the building
- flooring, including computer room floors
- insulation or weather stripping in a building
- paint spray booth or walk-in cold storage units if one or more walls of the booth or unit are also walls of the building
- works of art which become a component part of a building, such as a mosaic tile mural affixed to a wall
- an intercommunication system in a residence
- blowers, exhaust equipment, air exchangers, and air-washers used to remove smoke, dust, and fumes from the air in a building or room of a building
- Note: The replacement of a blower, compressor, or motor may constitute a taxable repair to an air conditioner, furnace, or other item deemed to be tangible personal property for repair and maintenance purposes. See Part 3.A.
- concrete foundations and building supports, including foundations for manufacturing or processing machinery and equipment
- silos, grain elevators, and buildings used to store grain (see exemption in Part 3.J.)
- Example - A one story structure specifically designed for the storage of grain, which is constructed of corrugated steel panel sides, has a pitched metal roof, and is built on a concrete foundation is a real property improvement.
- underground gasoline storage tanks used by a retail service station
- radio, television, telecommunications and CATV broadcasting or receiving towers constructed of steel and anchored to a concrete base on the owner's land
- steel support beams that hold up water slide flumes and the flumes themselves

**Caution:** An exception may apply if the item is not being installed as part of the original installation. See Part 3.A. for a listing of items deemed personal property for repair purposes.

**Example** – The replacement of a motor on a furnace is deemed to be a taxable repair to tangible personal property.

(b) Constructing land improvements such as walls, roads, walks, bridges, fences, retaining walls, railway tracks, ponds, dams, ditches, wells, nonfarm underground irrigation systems, drainage, storm, and sanitary sewers, and water supply lines for drinking water, sanitary purposes, and fire protection. Other land improvements or items considered real property construction activities are as follows:

- large fuel storage tanks constructed on the site
- fixed (year-round) wharves and docks
- swimming pools either partially or wholly underground
- cemetery monuments
- street and parking lot lighting
- truck platform scale foundations
- paved parking areas and yard bumpers (affixed)
- logging truck roads (except temporary roads)
- building demolition work

#### **D. Contractor May Act As Both Retailer and Consumer on Same Job**

A contractor may be both a retailer and consumer when engaged in personal property and real property activities on the same job. Examples are:

- A contractor wires a new warehouse and also installs conveyors within the warehouse. The contractor's charge for installing the conveyor is a taxable retail sale because this is a personal property activity. The charge for wiring from the power source to the conveyor is not taxable because this is a real property activity.
- A contractor installs a new kitchen in a restaurant and also installs the kitchen appliances (e.g., built-in dishwasher, grill, vent hood). The new walls and flooring are real property improvements; thus, the contractor's charges for labor and material in installing these items are not taxable. The charge for installing the built-in dishwasher, grill, and vent hood is a taxable retail sale.
- A contractor is hired to perform a combination of nontaxable excavating services and taxable landscaping services. The contractor's charges for the excavating services are not taxable, but the contractor's charges for the landscaping services are taxable.

#### **(1) General Tax Treatment**

The general tax treatment for a contract in which both personal property and real property construction activities are provided is as follows, unless an exemption applies:

- The contractor's sale of or service to tangible personal property is taxable, unless an exemption applies (e.g., the purchaser is an exempt entity). The contractor may purchase without tax, for resale, the tangible personal property that is physically transferred to the customer.
- The contractor's sale of or service to real property is not taxable. The contractor is the consumer of materials used in making a real property improvement and must pay sales or use tax on its purchase of these materials.
- A reasonable allocation must be made between the taxable and nontaxable portions of the contract for items such as general overhead, labor, and other fees.

**Example 1 – Taxable Items Separately Stated** – Contractor enters into a contract to construct a house for Individual for \$250,000. Contractor separately lists the charges for the taxable products (\$17,500) and taxable

services (\$12,500) included in the \$250,000 contract price. Contractor purchases the taxable products for \$12,000 and the taxable services, performed by subcontractors hired by Contractor, for \$10,000. Contractor must charge and collect Wisconsin sales tax on the \$30,000 of taxable sales to Individual. Contractor may purchase the taxable products and services it sells to Individual without tax for resale.

**Example 2 – Taxable Items Not Separately Stated** – Contractor enters into a contract to construct a building for Business for \$500,000. Included in the \$500,000 contract price are taxable products and services. Contractor does not separately state any charges for the taxable items included in the contract or in any documents that are provided to Business. If Contractor would have separately stated the charges for the taxable items included in the contract, Contractor would have charged Business \$75,000 for those items. Contractors must charge and collect Wisconsin sales tax on the \$75,000 of taxable sales to Business. Contractor may purchase without tax, for resale, the taxable products and services that are physically transferred to Business as part of the retail sale.

**Note:** Refer to Part 5.C. for tax treatment of purchases of materials.

## **(2) Lump Sum Contract Exemption (Certain contracts entered into on or after October 1, 2013, but before December 1, 2017)**

An exemption applies for certain contracts entered into October 1, 2013, through November 30, 2017, in which the contractor sells both real property improvements (nontaxable) and tangible personal property (taxable) for one price ("lump sum contract"). The lump sum contract exemption applies if the taxable sales price is less than 10% of the total contract price. The lump sum exemption does not apply to time and materials contracts.

**"Lump sum contract"** means a means a contract to perform real property construction activities and to provide taxable products or services and for which the contractor quotes the charge for labor, services of subcontractors, taxable products and services as **one price**, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, taxable products and services as part of a schedule of values or similar document.

If the taxable sales price is less than 10% of the total contract price, the contractor is deemed the consumer of the tangible personal property, items, property, and goods described in Part 1.C.(2) and (3) sold, and must pay Wisconsin sales or use taxes on its purchases of such property, unless the property is sold to an exempt entity. [Section 77.54\(60\)\(c\)](#), Wis., Stats., provides that tangible personal property, items, property, and goods described in Part 1.C.(2) and (3) that are sold to an exempt entity under a lump sum contract that are not consumed in real property construction activities may be purchased by the contractor without tax for resale.

If the taxable sales price is 10% or more of the total contract price, a reasonable allocation must be made between the taxable and nontaxable portions of the contract. The contractor's sale of the taxable products and services is taxable, and the contractor's purchase of such taxable products that are physically transferred to the customer may be purchased without tax for resale.

### **Examples: Sales Price of Taxable Products Provided in a Lump Sum Contract is Less Than 10% of the Total Contract Price**

*The following information applies only when a contractor has a "lump sum contract," the contract is not with an exempt entity, the selling price of the taxable products is less than 10% of the total contract price, and the contract is entered into on or after October 1, 2013, but before December 1, 2017.*

**Example 1 – Taxable Items Separately Stated and Are Less Than 10% of Lump Sum Contract.** Contractor enters into a contract to construct a house for Individual for \$250,000. Contractor separately lists the charges for the taxable products (\$7,500) and taxable services (\$10,000) included in the \$250,000 contract price. Contractor purchases the taxable products for \$6,000 and the taxable services are performed by employees of Contractor. Since the sales price of the taxable products and services is less than 10% of the total contract price (it is only 7%), (a) Contractor's sales of the taxable products and services to Individual are exempt from Wisconsin sales and use taxes, and (b) Contractor is deemed the consumer of the taxable products and services sold to Individual. Contractor owes Wisconsin sales or use taxes on its purchase price (\$6,000) of the taxable products. Contractor does not owe Wisconsin sales or use tax on its payments for services provided to Contractor by its employees.

**Example 2 – Taxable Items Not Separately Stated – Taxable Sales Price Less than 10% of Lump Sum Contract.** Contractor enters into a lump sum contract to construct a building for Business for \$500,000. Business is not an exempt entity. Included in the \$500,000 lump sum contract price are taxable products. Contractor does not separately state any charges for the taxable products in any documents that are provided to Business. If Contractor would have separately stated the charges for the taxable products included in the contract, Contractor would have charged Business \$40,000 for those items. Contractor's purchase price of these items, excluding the cost of services provided by Contractor's employees, is \$30,000. Since the sales price of the taxable products included in the lump sum contract (\$40,000) is less than 10% of the total lump sum contract price (it is 8%), (a) Contractor's \$40,000 sale of the taxable products to Business is exempt from Wisconsin sales and use taxes, and (b) Contractor is deemed the consumer of the taxable products sold to Business. Contractor owes Wisconsin sales or use taxes on its \$30,000 purchase price of the taxable products.

#### **Exception for a Contract With an Exempt Entity**

Taxable products and services sold by a contractor as a part of a lump sum contract with an exempt entity, that are not consumed in a real property construction activity, may be purchased by the contractor or subcontractor without tax, for resale. However, materials and supplies that are consumed in a real property construction activity under a lump sum contract with any customer, including an exempt entity, may not be purchased by the contractor without tax unless an exemption applies.

An "exempt entity" is an entity that is exempt from tax under [sec. 77.54\(9a\)](#), Wis. Stats.

*The following information applies only when a contractor has a "lump sum contract" with an exempt entity, the sales price of the taxable products is less than 10% of the total contract price, and the contract is entered into on or after October 1, 2013, but before December 1, 2017.*

**Example 3 – Taxable Items Separately Stated, Less than 10% of Lump Sum Contract.** Contractor enters into a contract to construct a building for Exempt Entity for \$250,000. Contractor separately lists the charges for the taxable products (\$7,500) and taxable services (\$10,000) included in the \$250,000 contract price. Contractor purchases the taxable products for \$6,000 and the taxable services are performed by employees of Contractor. Since the sales price of the taxable products and services is less than 10% of the total contract price (it is only 7%), and the sale is to an exempt entity, (a) Contractor's sales of the taxable products and services to Exempt Entity are exempt from Wisconsin sales and use taxes, and (b) Contractor may purchase the taxable products sold to Exempt Entity without tax for resale. Contractor's payments to its employees for services rendered are not taxable.

**Example 4 – Taxable Items Not Separately Stated – Taxable Sales Price Less than 10% of Lump Sum Contract.** Contractor enters into a lump sum contract to construct a building for Exempt Entity for \$500,000. Included in the \$500,000 lump sum contract price are taxable products. Contractor does not separately state any charges for the taxable products included in the contract in any documents that are provided to Exempt Entity. The sales price of the taxable products included in the contract is \$40,000. Contractor's purchase



price of these items, excluding the cost of services provided by Contractor's employees, is \$30,000. Since the sales price of the taxable products included in the lump sum contract (\$40,000) is less than 10% of the total contract price (it is 8%), and the sale is to an exempt entity, (a) Contractor's sale of the taxable products to Exempt Entity is exempt from Wisconsin sales and use taxes, and (b) Contractor may purchase the tangible personal property sold to Exempt Entity without tax for resale. Contractor's payments to its employees for services performed are not taxable.

**Note:** Refer to Part 5.C. for tax treatment of purchases of materials.

For information about the lump sum contract exemption, see the article titled, [Septic System Installers - Taxable Items Less Than 10% of Total Contract Price](#). Although the article is geared towards septic system installers, the tax treatment applies to other contractors.

### **(3) Construction Contract Exemption (Certain contracts entered into or extended, modified, or renewed on December 1, 2017, and thereafter)**

The lump sum contract exemption was expanded to include time and materials contracts and subcontractors (now called the "construction contract exemption"). The construction contract exemption applies to contracts entered into or extended, modified, or renewed on December 1, 2017, and thereafter. Sales of "products" sold by "prime contractors" and "subcontractors" as part of a "construction contract," are exempt from tax if the products are less than 10% of the total contract price. The prime contractor or subcontractor is the consumer of the materials and must pay sales or use tax on its purchase of materials used.

"Construction contract" means a contract to perform real property construction activities and to provide products. Construction contracts include both lump sum and time and materials contracts.

"Prime contractor" means a contractor who enters into a construction contract with an owner or lessee of real property, except for leased property described in Part 1.C.(3) to perform real property construction activities on the real property.

"Product" includes tangible personal property, and items, property, and goods described in Part 1.C.(1) through (4) and services.

"Subcontractor" means a contractor who enters into a construction contract with a prime contractor or another subcontractor.

#### **(a) "Construction Contract"**

The following two examples illustrate when a contract is a "construction contract" for purposes of the exemption:

**Example 1** – Contractor's contract with customer to construct building and provide landscaping services is entered into November 1, 2018. The contract is to provide products and real property construction activities.

**Example 2** – Contractor entered into a time and materials contract October 30, 2017, to construct roads, sidewalks, and parking lots for customer in addition to providing trees, shrubs, mulch, and landscaping services. Contract is completed in June of 2018. The contract is to provide products and real property construction activities. The contract was extended after December 1, 2017, (i.e., a contract extension agreement was signed by both parties after December 1, 2017).

(b) Calculating the Threshold for the Construction Contract Exemption

The construction contract exemption applies if the total sales price of all "products" is less than 10 percent of the total amount of the construction contract (including change orders or additional work billed). This calculation is made without regard for any exemptions that may be provided by the customer (e.g., exempt entity, manufacturing, farming, etc.). "Products" includes tangible personal property, and items, property, and goods described in Part 1.C.(1) through (4) and both taxable and nontaxable services. The calculation does not include real property construction activities.

In other words, the construction contract exemption applies if more than 90 percent of the total contract price relates to real property construction activities (including services to real property). Taxable services such as landscaping are not considered real property construction activities for purposes of calculating the threshold.

**Example 3** – Contractor's contract with customer to construct building and provide landscaping services is entered into August 1, 2018. The contract is to provide products and real property construction activities; it is a construction contract. A change order to the contract occurs October 15, 2018. The total contract price includes the original contract and the change order.

**Example 4** – Contractor entered into a time and materials contract October 30, 2017, to construct roads, sidewalks, and parking lots for customer in addition to providing trees, shrubs, mulch, and landscaping services. Contract is completed in June of 2018. The contract is to provide products and real property construction activities. The contract was extended after December 1, 2017. The contract is a construction contract. The total contract price includes all invoices related to the time and materials contract from October 30, 2017 to June of 2018.

**Example 5** – Construction contract is entered into after December 1, 2017 with Customer to build a manufacturing facility. Contractor is performing real property construction activities when constructing the building. Contractor is providing products and services to tangible personal property when installing data/communication cabling, conveyors, manufacturing machines, and finished product storage systems. To determine whether the construction contract exemption applies, Contractor determines the sales price of all activities related to real property construction activities (e.g., walls, roof, foundation, floors, doors, windows, sidewalks, parking lot). This includes allocation of the charge for general overhead, labor, or any other fees related to the real property activities. This calculation includes subsequent change orders. If more than 90 percent of the total contract price relates to real property construction activities, the construction contract exemption applies. The sale to Customer is not taxable. The construction contract exemption deems Contractor to be the consumer of the materials used in providing products (taxable products and services). Contractor must pay sales or use tax on its purchases of materials provided to Customer as taxable products and services. Contractor may not purchase these materials without tax, for resale. Contractor must remit sales or use tax on materials consumed in real property improvements.

**Note:** Customer may present contractor with an exemption certificate for manufacturing machines; however, Customer's exemption does not change the calculation. If it is determined that the construction contract exemption applies to Contractor's sale, then the exemption certificate provided by Customer does not apply (i.e., the entire sale is exempt as a result of the construction contract exemption). The construction contract exemption deems Contractor to be the consumer of materials used in providing taxable products and services. Contractor cannot purchase the conveyors and manufacturing equipment without tax, for resale if they are provided under a construction contract that is exempt under sec. 77.54(60), Wis. Stats.

## (c) For the "Prime Contractor"

If the total sales price of the real property construction activities of the prime contractor's construction contract is more than 90 percent of the total contract price:

- The prime contractor's sale to its customer is not taxable.
- The prime contractor must pay sales or use tax on its purchases of property and items from material suppliers (not including subcontractors) that are used in providing products. The prime contractor cannot purchase these items without tax, for resale. (See *Exception for contracts entered into with exempt entities*, below.) The prime contractor may purchase taxable products and services from its subcontractors without tax by providing the subcontractor a fully completed exemption certificate. (See *Exception for purchases from subcontractors* below.)
- The prime contractor must pay sales or use tax on its purchase of materials and supplies consumed in making real property improvements.

*Exception for purchases from subcontractors:* A prime contractor may purchase products without tax from its subcontractor if the prime contractor's contract meets the criteria for the construction contract exemption. The prime contractor must provide an exemption certificate ([Form S-211](#) or [S-211E](#)) to the subcontractor claiming the construction contract exemption under sec. 77.54(60), Wis. Stats. If no exemption certificate is provided by the prime contractor to the subcontractor, the subcontractor's sales of taxable products and services sold to the prime contractor are taxable.

**Example 6** – Same scenario as *Example 5*, however Prime Contractor hires Subcontractor to provide installed equipment for the manufacturing area. Subcontractor's sale to Prime Contractor of the installed manufacturing equipment is taxable. Prime Contractor's contract with Customer meets the criteria for the construction contract exemption. Prime Contractor provides Subcontractor with a fully completed exemption certificate claiming the construction contract exemption in sec. 77.54(60), Wis. Stats. Subcontractor does not charge Prime Contractor sales tax. Subcontractor is deemed the consumer of materials consumed in providing taxable products and services. Subcontractor must pay sales or use tax on its purchase of conveyors and manufacturing equipment. Subcontractor may not purchase these items without tax, for resale.

## (d) For the "Subcontractor"

The construction contract exemption applies if either of the following applies:

- The prime contractor provides the subcontractor with an exemption certificate claiming the construction contract exemption in sec. 77.54(60), Wis. Stats., OR
- The subcontractor's contract with the prime contractor meets the criteria for the construction contract exemption (i.e., the total sales price of the real property construction activities is more than 90 percent of the subcontractor's total contract price).

If the construction contract exemption applies to the subcontractor's contract:

- The subcontractor's sale to the prime contractor is not taxable.
- The subcontractor must pay sales or use tax on its purchase of property and items that are used in providing products. The subcontractor cannot purchase these items without tax, for resale. (See *Exception for contracts entered into with exempt entities*, below.)
- The subcontractor must pay sales or use tax on its purchase of materials and supplies consumed in making real property improvements.

**Example 7** – Subcontractor enters into a construction contract with Prime Contractor to install a parking lot and provide landscaping. Prime Contractor's contract with Customer does not meet the construction contract exemption criteria. Subcontractor's sales price of the real property construction activities (e.g., gravel base, laying blacktop, pouring sidewalks) of the construction contract with Prime Contractor is more than 90 percent of Subcontractor's total contract price. The construction contract exemption applies to Subcontractor's contract with Prime Contractor. Subcontractor does not charge Prime Contractor sales tax. Subcontractor pays sales or use tax on its purchases of (a) materials (e.g., plants, trees, grass seed, soil) consumed in providing taxable products and services, and (b) materials (e.g., gravel, black top, cement) consumed in real property construction activities. Subcontractor may not purchase the materials used in providing taxable products and services without tax, for resale.

(e) Liability for Tax Between Prime Contractor and Subcontractor

The prime contractor must make a determination at the start of a contract whether it will be claiming the construction contract exemption or resale (or neither) on its purchase of taxable products and services from its subcontractor, but the prime contractor cannot claim both. The liability for tax depends, in part, on which exemption is claimed by the prime contractor.

**Prime Contractor Gives Subcontractor Exemption Certificate Claiming Resale**

- If the **prime contractor** gives an exemption certificate claiming resale, and the prime contractor's contract qualifies for the construction contract exemption under sec. 77.54(60), Wis. Stats., the prime contractor is liable for tax on its purchase price of taxable products and services purchased from the subcontractor.
- If the **subcontractor** receives an exemption certificate from the prime contractor claiming resale, and the prime contractor's contract qualifies for the construction contract exemption under sec. 77.54(60), Wis. Stats., the subcontractor is not liable for tax on the purchase price of the materials sold as products and services to the prime contractor as a part of the construction contract, unless the subcontractor's contract with the prime contractor qualifies for the construction contract exemption. The subcontractor is still liable for tax on its purchase of materials used in real property construction activities.

**Example 8** – Prime Contractor entered into a construction contract with Customer. Prime Contractor hires Subcontractor to perform landscaping services and provided Subcontractor with an exemption certificate claiming resale. Upon completion, the Prime Contractor's contract with the Customer qualifies for the construction contract exemption. Prime Contractor's sale to Customer is exempt from tax. Subcontractor did not charge Prime Contractor sales tax, since Subcontractor received an exemption certificate claiming resale from Prime Contractor. Subcontractor purchased without tax, for resale, the materials used in providing the landscaping services. Prime Contractor is liable for use tax on its purchase price (materials and labor) of the landscaping services purchased from Subcontractor.

**Prime Contractor Gives Subcontractor Exemption Certificate Claiming Construction Contract Exemption**

- If the **prime contractor** gives an exemption certificate claiming the construction contract exemption under sec. 77.54(60), Wis. Stats., and the prime contractor's contract does not qualify for the exemption, the prime contractor must collect/remit tax on the sales price of the taxable products and services sold to the customer, unless an exemption applies. Prime contractor is not liable for sales or use tax on its purchase of taxable products and services that are resold. Prime contractor is liable for sales or use tax on its purchase of materials used in real property improvements, unless an exemption applies.

- If the **subcontractor** receives an exemption certificate from the prime contractor claiming the construction contract exemption under sec. 77.54(60), Wis. Stats., and the prime contractor's contract does not qualify for the exemption, the subcontractor may claim a refund on any tax paid on the purchase of materials sold as products and services to the prime contractor as a part of the construction contract. The claim for refund must substantiate that the prime contractor's contract did not qualify for the construction contract exemption, and that the prime contractor's purchases qualified for the resale exemption.

**Note:** The subcontractor may not claim a refund on its purchase of materials used in real property construction activities.

**Example 9** – Prime Contractor has construction contract with Customer to install a septic system and provide landscaping services. Prime Contractor hires Subcontractor for the landscaping services.

- Prime Contractor provides Subcontractor with an exemption certificate claiming the construction contract exemption ([sec. 77.54\(60\)](#), Wis. Stats.).
- Prime Contractor does not charge Customer sales tax.
- Subcontractor does not charge Prime Contractor sales tax on its charges for landscaping services.
- Subcontractor pays sales or use tax for purchases of products used in providing the landscaping services (e.g., soil, grass seed).

During the project, a major flood occurs requiring additional landscaping services. Prime Contractor creates a change order to its original construction contract with the customer to complete the additional landscaping services. Prime Contractor's construction contract no longer meets the construction contract exemption because the landscaping services are 10% or more of the total contract price.

- Prime Contractor is liable for sales tax on its sale of landscaping services to Customer.
- Prime Contractor may purchase products and landscaping services from Subcontractor without tax, for resale.
- Prime Contractor may choose to provide Subcontractor with contract information and an exemption certificate claiming resale to show Prime Contractor's contract does not meet the construction contract exemption and that Prime Contractor is collecting and remitting tax on its sales price of the landscaping services to Customer, unless an exemption applies.
- Subcontractor may submit a claim for refund for the sales or use tax paid on the purchases of products used in providing the landscaping services to the Prime Contractor. Subcontractor must maintain documentation to substantiate that the items purchased qualify for resale.
- Subcontractor may not claim a refund for tax paid on purchases of items consumed in a real property improvement.

(f) Exception for contracts entered into with exempt entities

Taxable products and services sold by a contractor as a part of a construction contract with an exempt entity may be purchased by the contractor or subcontractor without tax, for resale. However, materials and supplies that are consumed in a real property construction activity under a construction contract with any customer, including an exempt entity, may not be purchased by the contractor or subcontractor without tax unless an exemption applies (e.g., building materials exemption for contracts with exempt entities).

An "exempt entity" is an entity that is exempt from tax under [sec. 77.54\(9a\)](#), Wis. Stats.

**Example 10** – Contractor entered into a construction contract with Municipality (exempt entity) to build a dam and to provide landscaping services along the shore. Contractor is performing real property construction activities when building the dam. Contractor is providing products and services when providing plants, shrubs, and other landscaping services. More than 90 percent of the total contract price relates to real property construction activities; therefore, the construction contract exemption applies. Municipality provides Contractor with a purchase order listing Municipality as the purchaser, and all payments to Contractor are made by Municipality. Contractor's total contract price of the construction contract is not taxable. The construction contract exemption deems that Contractor is the consumer of the materials used in providing products (taxable products and services). However, there is an exception for contracts entered into with exempt entities. The exception allows Contractor to purchase without tax, for resale, the materials used in providing taxable products and services. Contractor must pay sales or use tax on the materials used in making the real property improvements.

**Note:** The customer's exempt entity status is not a factor in determining whether the construction contract exemption applies.

**Example 11** – Prime Contractor entered into a construction contract with Church (exempt entity) to build a rectory and provide landscaping services. Contractor is performing real property construction activities when building the rectory. Contractor is providing products and services when providing plant materials and landscaping services. More than 90 percent of the total contract price relates to real property construction activities; therefore, the construction contract exemption applies. Church provides Contractor with a fully completed exemption certificate and its certificate of exempt status number. Contractor's total contract price is not taxable. The construction contract exemption deems that Contractor is the consumer of the materials used in providing products (taxable products and services). However, there is an exception for contracts entered into with exempt entities. The exception allows Contractor to purchase without tax, for resale, the materials used in providing taxable products and services. Contractor must pay sales or use tax on the materials consumed in real property improvements, unless an exemption applies. Contractor's purchase of materials consumed in real property improvements are taxable, unless the exemption described in Part 3.G. applies.

### 3. EXCEPTIONS TO PART 2

There are several exceptions to the general sales and use tax treatment of items described in Part 2. These exceptions are:

- A. Property deemed personal property for repair and maintenance purposes. These items are treated as personal property for purposes of imposing sales tax on repair and maintenance services even though they may be real property when originally installed or replaced.
- B. Landscaping and lawn maintenance services. These services are subject to sales tax even though they may involve real property improvements.
- C. Waste treatment facilities. Tangible personal property and property described in Part 1.C.(2) and (3) may be purchased without tax by a contractor even though it is used in a real property construction activity to construct a waste treatment facility.
- D. Professional sports and entertainment home stadiums. Property may be purchased without tax by a contractor even though it is used in a real property construction activity to build, renovate, or develop certain professional sports and entertainment home stadiums.

- E. Modular and manufactured homes used in real property construction activities outside Wisconsin. The sales price from the sale of and the storage, use, or other consumption of modular and manufactured homes that are used in real property construction activities outside Wisconsin is exempt from Wisconsin sales and use tax.
- F. Products whose power source is wind energy, direct radiant energy received from the sun, or gas generated from the anaerobic digestion of animal manure and other agricultural waste. These products are exempt from Wisconsin sales and use taxes provided the product produces at least 200 watts of alternating current or at least 600 British thermal units per day.
- G. Sports and entertainment arena facilities. Effective August 13, 2015, sales of building materials, supplies, equipment, and landscaping services are exempt when sold to owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for, or used solely in, the construction or development of "sports and entertainment arena facilities," as defined in [sec. 229.41\(11g\)](#), Wis. Stats.
- H. Building materials exemption for contracts with certain exempt entities. Effective for contracts entered into January 1, 2016, and later, the sale of building materials is exempt when sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to certain exempt entities, if the building materials become part of a "facility" in Wisconsin, owned by the exempt entity.
- I. Electronics and information technology manufacturing zone facilities. Effective September 20, 2017, an exemption applies to sales of building materials, supplies, equipment, and landscaping services to; and the storage, use, or other consumption of the same property and services by; owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for, or used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone if the facility may be claimed as a certain income tax credit, as certified by the Wisconsin Economic Development Corporation.
- J. Fertilizer blending, feed milling, and grain drying operations. Effective April 19, 2014, an exemption applies to building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer or for storage of grain, if such structures are used in a fertilizer blending, feed milling, or grain drying operation.

Explanations of these exceptions follow.

#### **A. Property Deemed Personal Property for Repair and Maintenance Purposes**

A contractor's sales price, which includes, both the labor and materials, for repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspecting, and maintaining the items listed below are taxable, regardless of whether the service may be considered an addition to or a capital improvement of real property and even though the original installation may have been a real property improvement. Such items are:

- air conditioners
- awnings
- bar equipment
- bathroom fixtures
- blinds
- boilers
- burglar alarm and fire alarm fixtures
- carpeting and rugs
- clothes dryers

- clothes washers
- coolers
- dehumidifiers
- dishwashers
- electric clocks
- electronic dust collectors
- electric signs
- equipment in offices, business facilities, schools, and hospitals, but not in residential facilities including personal residences, apartments, long-term care facilities as defined under [sec. 16.009\(1\)\(em\)](#), Wis. Stats., prisons, mental health institutes, as defined in [sec. 51.01\(12\)](#), Wis. Stats., centers for the developmentally disabled, as defined in [sec. 51.01\(3\)](#), Wis. Stats., Type 1 juvenile correctional facilities as defined in [sec. 938.02\(19\)](#), Wis. Stats., or similar facilities including, by way of illustration but not of limitation, all of the following:
  - beverage making equipment
  - canvas awnings
  - chandeliers
  - compressors
  - condensing units
  - evaporative condensers
  - fans
  - ice and milk dispensers
  - lamps
  - office and business machines
  - pneumatic conveying systems
  - soda fountains
  - steam warmers and tables
  - vending machines
  - venetian blinds
- freezers
- furnaces
- furniture and furnishings
- garbage disposal units
- gas and electric logs
- grills and rotisseries
- heat lamps
- heaters
- humidifiers



- incinerators
- intercoms
- jukeboxes
- laundry, dry cleaning, and pressing machines
- ovens (including associated hoods and exhaust systems)
- power tools
- radios and radio antennas
- record players
- recreational, sporting, gymnasium, and athletic goods and equipment including by way of illustration but not of limitation:
  - bowling alleys
  - golf practice equipment
  - pool tables
  - punching bags
  - ski tows
  - swimming pools
- refrigerators
- sinks
- stoves
- tape players
- television receivers and antennas
- vacuum cleaners
- water conditioners and softeners
- water heaters
- water pumps

**Note:** Some items above are also tangible personal property when installed.

#### **B. Landscaping and Lawn Maintenance Services**

The following services are taxable regardless of whether performed on lawn or garden areas, including residential, business, commercial, and industrial areas, cemeteries, golf courses, athletic fields, and stadiums, as well as when performed in parking lot areas, near or adjacent to a building, and along highways, streets, and walkways:

- Landscaping services, including landscape planning and landscape counseling.
- Lawn maintenance services and other lawn services, including planting, sodding, mowing, raking, weeding, thatching, spraying, watering, rolling, aerating, and fertilizing lawns.

- Garden services, including plowing, rototilling, planting, spraying, watering, fertilizing, and weeding.
- Shrub and tree services, including planting, bracing, fertilizing, spraying, pruning, trimming, surgery, and removal of shrubs, stumps, and trees.

These services are taxable, regardless of whether performed by landscapers, architects, construction contractors, or other persons. Although some of the above services also involve realty improvements, the services are still taxable. For example, the sale and laying of sod for \$1,000 may ordinarily be considered a realty improvement. However, the total charge of \$1,000 constitutes the sales price from the sale of a taxable service and tangible personal property, and is subject to the sales tax.

For additional information regarding the sales and use tax treatment of landscaping and lawn maintenance services, see [Publication 210](#), *Sales and Use Tax Treatment of Landscaping Services*.

### C. Waste Treatment Facilities

#### (1) Exemption

[Section 77.54\(26\)](#), Wis. Stats., provides an exemption from Wisconsin sales and use taxes for the sales price from the sales of and the storage, use, or other consumption of tangible personal property and items and property described in Part 1.C.(2) and (3), which becomes a component part of an industrial, utility, or governmental waste treatment facility, and includes tangible personal property and items and property described in Part 1.C.(2) and (3), purchased by contractors who transfer the property and items to their customers in fulfillment of a real property construction activity.

#### (2) Industrial Facilities

An industrial waste treatment facility is a facility that is purchased or constructed as a waste treatment facility and that is used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state, if that property is not used to grow agricultural products for sale.

It is not necessary for an industrial facility or contractors engaged in constructing a waste treatment facility for an industrial customer to obtain Department of Revenue approval that the facility qualifies for the property tax exemption prior to claiming the sales or use tax exemption. However, contractors or subcontractors may be liable for sales and use tax on purchases of tangible personal property and items and property described in Part 1.C.(2) and (3) that become a component part of a facility that is determined to not qualify for a waste treatment facility property tax exemption under [sec. 70.11\(21\)](#), Wis. Stats. Additional information regarding the definition of an "industrial waste treatment facility" can be found on page 33 of [Wisconsin Tax Bulletin 154](#).

For more information regarding the property tax exemption for industrial waste treatment facilities of manufacturers, write or call the district office of the Wisconsin Department of Revenue, Manufacturing and Utility Bureau. To locate the district office, write or call Wisconsin Department of Revenue, Manufacturing and Utility Bureau, Mail Stop 6-97, P.O. Box 8971, Madison, WI 53708-8971; telephone (608) 266-3845 or visit our [website](#). To ascertain whether a nonmanufacturing property would be exempt under [sec. 70.11\(21\)](#), Wis. Stats., owners may refer to the [Wisconsin Property Assessment Manual](#) or contact the [local property tax assessor](#).

#### (3) Utility Facilities

If a utility waste treatment facility qualifies for the property tax exemption under [sec. 76.025\(1\)](#), Wis. Stats., as approved by the Department of Revenue, the facility also qualifies for the sales and use tax exemption.

Contractors shall determine whether a utility waste treatment facility they are constructing has been approved by the Department of Revenue for a property tax exemption.

To determine if a utility waste treatment facility, including railroads, airlines, and pipelines has been approved for a property tax exemption by the Department of Revenue, write or call the Department of Revenue, Manufacturing and Utility Bureau, Mail Stop 6-97, P.O. Box 8971, Madison, WI 53708-8971; telephone (608) 266-3845.

**Caution:** The contractor or subcontractor may be liable for the sales or use tax on its purchases if there has been no approval.

#### (4) Municipal (Government) Facilities

Construction materials which become a component part of a Wisconsin governmental waste treatment facility may be purchased without tax by contractors pursuant to the standards set forth in [sec. Tax 11.11](#), Wis. Adm. Code. Governmental waste treatment facilities include:

- (a) Wastewater treatment facilities. In general terms, this is everything within the fence, except storm sewers, water supply systems, private domestic wastewater treatment facilities, and collection and discharge systems.
- (b) Sanitary landfills. This includes collection and burner systems, laboratory equipment, maintenance buildings, garages, office buildings, fences, and gates.
- (c) Ground water facilities. These are municipal facilities constructed to treat hazardous or contaminated ground water and include oil and water separators, air strippers, aerators, blowers, filters, carbon units, controls, thermal oxidizers, and pumps. Not included within the exemption are the collection and discharge systems.

It is not necessary for a governmental unit or contractors engaged in constructing a waste treatment facility for a Wisconsin governmental unit to obtain Department of Revenue approval of the governmental unit's waste treatment facility to qualify for the waste treatment facility exemption.

#### (5) Purchases by Contractors and Subcontractors

The sales tax exemption for waste treatment facilities includes the purchases of tangible personal property and items and property described in Part 1.C.(2) and (3), by a contractor who incorporates these purchases into a waste treatment facility, even though this may be a real property construction activity.

The contractor should certify on a *Wisconsin Sales and Use Tax Exemption Certificate* ([Form S-211](#) or [S-211E](#)) or *Streamlined Sales and Use Tax Exemption Certificate* – Wisconsin version ([Form S-211-SST](#)) the intended exempt use of the item and give the exemption form to its supplier. Suppliers of construction or repair materials for waste treatment facilities should not charge sales tax on such sales if they receive a fully completed exemption certificate from the purchaser no later than 90 days after the date of sale.

Purchases of items which do not become a part of the waste treatment facility are subject to the tax. This includes items such as industrial gases, form lumber, tunnel shields, and supplies used by the contractor during construction. Payments by a contractor for equipment purchased (or leased) to perform a construction job are also taxable.

#### (6) Repair Services, Chemicals, and Supplies

The repair, service, alteration, fitting cleaning, painting, coating, inspection, and maintenance of exempt waste treatment facilities, including the repair and replacement parts, are not taxable. The exemption also applies to chemicals and supplies, including fuel and electricity, used in operating the exempt facilities.

#### D. Professional Sports and Entertainment Home Stadiums

Building materials, supplies, and equipment used solely for or solely in the construction, renovation, or development of property that would be exempt under [sec. 70.11\(36\)](#), Wis. Stats., are exempt from Wisconsin sales and use tax if sold to or stored, used, or consumed by a contractor, subcontractor, owner, or builder.

Property exempt under sec. 70.11(36), Wis. Stats., is:

- Property consisting of or contained in a sports and entertainment home stadium, except a football stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, entertainment facilities, transportation facilities, and other functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.
- Property consisting of or contained in a football stadium, as defined in [sec. 229.821\(6\)](#), Wis. Stats., and related facilities and structures, including those facilities and structures while they are being built or constructed, primarily used by a professional football team described in [sec. 229.823](#), Wis. Stats., and the land, including parking lots, on which that stadium and those facilities and structures are located. Related facilities and structures are limited to improvements that share common structural supports with the stadium or are physically attached to the stadium.

#### E. Manufactured and Modular Homes Used in Real Property Construction Activities Outside Wisconsin

A manufactured or modular home dealer who purchases a manufactured or modular home in Wisconsin and who subsequently uses that manufactured or modular home in a real property construction activity outside Wisconsin may purchase that manufactured or modular home without Wisconsin sales or use tax.

**Example 1** – Dealer purchases a modular home from Manufacturer. Dealer takes possession of the modular home in Wisconsin. Dealer sells the modular home to Customer, who is located in Minnesota. Dealer installs the modular home in Minnesota in a real property construction activity. Dealer does not owe Wisconsin sales or use tax on its purchase of the modular home from Manufacturer since Dealer used the modular home in a real property construction activity outside Wisconsin.

**Note:** The exemption does not apply to purchases of tangible personal property by a manufactured or modular home manufacturer who uses the property as an ingredient or component part of a mobile or manufactured home, and then uses the manufactured or modular home in a real property construction activity outside of Wisconsin. The manufacturer is not purchasing a manufactured or modular home. Rather, the manufacturer is purchasing building materials and then using those building materials in making a real property improvement.

**Example 2** – Manufacturer purchases lumber, drywall, electrical cable, and siding that Manufacturer uses in its manufacture of modular homes in Wisconsin. Manufacturer obtains an order from Dealer that requires Manufacturer to deliver one of its modular homes to a location in Iowa, assemble it, and affix it to a foundation. Manufacturer's charges to Dealer for labor, materials, and delivery for the modular home, as well as its assembly, and affixation to the foundation, are not taxable. Manufacturer must pay Wisconsin sales or use tax on its purchases of building materials stored, used, or consumed in Wisconsin in its manufacture of the modular home and later installed in Iowa.

For additional information see the article on the Department's website titled "[Manufactured and Modular Home Exemption](#)."

## F. Renewable Energy Products

A product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from the anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or at least 600 British thermal units per day, is exempt from Wisconsin sales and use taxes. Contractors purchasing a product to be used by the contractor in making a real property improvement may claim this exemption.

"Product" means tangible personal property that converts wind energy, direct radiant energy received from the sun, or gas generated from the anaerobic digestion of animal manure into alternating current or heat, and includes:

- Wind turbine generators, including blade assembly and tower
- Gas powered electric generators, furnaces, space heaters, and water heaters
- Photovoltaic cells, modules, and arrays, including tracking equipment that maintains optimal orientation to the sun
- Solar thermal collectors
- Inverters used to transform direct current produced from a wind, gas, or solar powered generator into alternating current and property to connect the inverter to the generator
- Hardware required for installation of a wind, gas, or solar powered product.
- "Product" does not include:
  - Tangible personal property that consumes electricity or heat produced by a wind, gas, or solar powered product
  - Foundations
  - Property necessary to convey, transfer, or alter the alternating current or heat produced by a product
  - Tangible personal property used to store electricity or heat produced by a product

**Example 1** – A solar tracking device is installed on a concrete foundation. The concrete foundation is not a product whose power source is direct radiant energy received from the sun.

**Example 2** – A tank that stores hot water heated by a solar collector is not itself a product whose power source is direct radiant energy received from the sun.

**Example 3** – Batteries used to store electricity produced by photovoltaic cells are not themselves a product whose power source is direct radiant energy received from the sun.

Refer to [sec. Tax 11.10](#), Wis. Adm. Code, for additional information.

## G. Sports and Entertainment Arena Facilities

Effective August 13, 2015, a sales and use tax exemption applies to purchases of building materials, supplies, equipment, and landscaping services purchased by owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for, or used solely in, the construction or development of "sports and entertainment arena facilities" as defined in [sec. 229.41\(11g\)](#), Wis. Stats.

"Sports and entertainment arena facilities" include land not to exceed 9 contiguous acres in area, and the following, if located on this land:

- The sports and entertainment arena and structures, including all fixtures, equipment, and tangible personal property that are used primarily to support the operation of the sports and entertainment arena or are functionally related to the sports and entertainment arena
- Offices of the professional basketball team or its affiliate
- Parking spaces and garages
- Storage or loading facilities
- Access ways, sidewalks, a skywalk, and plazas
- Transportation facilities
- Sports team stores
- A parking structure to be constructed by a professional basketball team or its affiliate in conjunction with the construction of the sports and entertainment arena and to be owned by the sponsoring municipality.

The exemption will no longer apply one year after the Secretary of Administration issues the certification under [sec. 229.42\(4e\)\(d\)](#), Wis. Stats. The certification cannot be later than the first game played in the sports and entertainment arena by the professional basketball team that uses the arena as the home arena.

#### H. Building Materials for Certain Facilities Owned By Certain Exempt Entities

Effective for contracts first entered into on and after January 1, 2016, a sales and use tax exemption applies to the sale of building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to exempt entities described below, if the building materials become part of a facility in Wisconsin, owned by the exempt entity.

**Note:** Although this exemption only applies to building materials that become a part of real property, the tax treatment for sales of tangible personal property to exempt entities did not change. Contractors may purchase these items without tax, for resale, and the sale to the exempt entity is exempt.

In order for the exemption to apply to a contractor's purchase of building materials, the following criteria must be met:

- The construction must be for a **qualifying exempt entity**;
- The property must become **part of a facility** in Wisconsin that is owned by the exempt entity; and
- The property must be **transferred to** the qualifying exempt entity.

The three exemption criteria are described in detail, below.

- (1) Qualifying exempt entities, for the purposes of this exemption, are listed below. The exemption has been expanded to include additional exempt entities; however, the effective date or "contract entered into" date for these additional entities differs from the original exemption effective date of January 1, 2016. See b. and c., below for dates and entities.

The date the contract was entered into between the contractor and the qualifying exempt entity is used in determining whether the exemption applies. The contract with the exempt entity may be held by another entity such as a general contractor, developer, or a governmental agency who is hiring the contractor or subcontractor to do the real property construction activities. The contract date used to determine if the contract qualifies is the date of the contract entered into directly with the exempt entity.

A change order to a contract amends the original contract, but does not nullify the original contract or change the date that the contract was entered into. Therefore, if a contract between the contractor and the exempt entity was irrevocably entered into prior to January 1, 2016, the exemption does not apply to property purchased to fulfill the contract. If the original contract was revocable, the contract is cancelled, and a new contract is entered into on January 1, 2016, or thereafter, the property used to fulfill the new contract may qualify for exemption.

(a) Effective for contracts entered into on January 1, 2016, and thereafter, a qualifying exempt entity is:

- Any county, city, village, town or school district in this state
- Any public school district within Wisconsin
- A county-city hospital established under [sec. 66.0927](#), Wis. Stats.
- A sewerage commission organized under [sec. 281.43\(4\)](#), Wis. Stats.
- A metropolitan sewerage district organized under [secs. 200.01](#) to [200.15](#) or [200.21](#) to [200.65](#), Wis. Stats.
- Any joint local water authority created under [sec. 66.0823](#), Wis. Stats.
- Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number
- A non-Wisconsin nonprofit organization that is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under [sec. 613.80\(2\)](#), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

**Note:** A qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity.

Not all nonprofit organizations that are exempt from federal income taxes are qualifying exempt entities for the purposes of this exemption. Many fraternal, social, and civic organizations are not qualifying entities (e.g., chambers of commerce, professional organizations, labor organizations). A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying entity.

This exemption also does not apply to facilities constructed for the following entities, even if the entity holds a Wisconsin CES number:

- A non-Wisconsin county, city, village or town
- A non-Wisconsin public school district
- A public college, university or technical college (regardless of whether Wisconsin or non-Wisconsin for contracts entered into prior to July 1, 2018)
- A state governmental unit (regardless of whether Wisconsin or non-Wisconsin)
- A federal governmental unit
- A Wisconsin nonprofit organization that does not hold a Wisconsin CES number
- Individual Native American Tribe members

**Caution:** A Wisconsin state governmental unit that holds a CES number is not a qualifying exempt entity for purposes of this exemption.

- (b) For contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity includes holding companies which are all of the following:
- Described under sec. 501(c)(2), IRC;
  - Exempt from federal income tax under sec. 501(a), IRC; and
  - Organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

**Caution:** Nonprofit organizations that the IRS exempts under another section of its code (e.g., 501(c)(6), 501(c)(7)) are not qualifying exempt entities for purposes of this exemption.

- (c) For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity includes:
- Technical colleges, any institution as defined in sec. 36.05(9), Wis. Stats., a college campus in the University of Wisconsin System, as defined in sec. 36.05(6m), Wis. Stats., and the University of Wisconsin-Extension
  - A state veterans organization. "State veterans organization" means the Wisconsin state organization or department of a national veterans organization incorporated by an act of congress. **Note:** State veterans organizations will not be issued a Wisconsin Certificate of Exempt Status number. The contractor must document that its contract is with a qualifying state veterans organization.

For qualifying exempt entities that are not required to hold a CES number (e.g., a Wisconsin municipality, the University of Wisconsin System), the contractor may retain the contract and invoice that indicate the work was performed for the qualifying exempt entity.

- (2) The exemption applies to property that becomes part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity.

"Facility" for the purposes of this exemption is strictly construed. "Facility" means the following:

- Buildings
- Shelters
- Parking lots
- Parking garages
- Athletic fields
- Athletic parks
- Storm sewers
- Water supply systems
- Sewerage facilities
- Waste water treatment facilities



"Facility" does not include:

- Highway
- Street
- Road
- Anything not specifically identified as a "facility"

**Example 1** – A parking lot is a "facility." The exemption applies to materials that become part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity. The material used in an asphalt parking lot qualify for the exemption as long as all exemption criteria are met. Sealing a parking lot, painting lines on the parking lot, and patching a parking lot are real property construction activities. Purchases of materials such as black top sealant, paint, and tar may qualify for the exemption.

**Example 2** – Fences are not a "facility"; however, materials for fences may qualify for exemption if they are a part of a facility, such as an athletic field.

**Example 3** – Curbs are part of the street, sidewalk, or parking lot to which they are attached. If a curb is attached to a street or sidewalk, the materials used for the curb do not qualify for the exemption. If the curb is only a part of a parking lot, the materials that become a component part of the curb qualify for the exemption if all of the other criteria of the exemption are met.

**Example 4** – A contractor's purchases of materials to construct sidewalks or paths do not qualify for the building materials exemption. Sidewalks, paths, trails, and bike paths are not included in the definition of "facility"; therefore, materials for these items are excluded from the exemption.

**Example 5** – Storm sewers and water supply systems are "facilities." Materials that become a component part of these facilities qualify for the exemption (assuming all other criteria for the exemption are met). **Note:** Material purchases might be associated with a project for these facilities but may not qualify for the exemption if they are for road base, road, curb, sidewalk, or other item that is not listed as a "facility."

**Example 6** – A contractor's purchase of sewer pipes and water supply pipes qualify for the exemption assuming all other exemption criteria are met. The materials used in the "facility" (including the amount of backfill needed to install the pipes, including the subgrade materials needed to protect the sewer piping) may qualify for the exemption. If a road or other item must be removed to access the sewer or water pipe, the materials used in the deconstruction, repair, and/or rebuilding of a road, sidewalk, path, or driveway (from the rock base and other road base materials to and including the road materials) do not qualify for the exemption.

- (3) Upon completion of the contract, the facility must be transferred to the qualifying exempt entity.

A subcontractor's purchase of property qualifies for exemption if the property becomes part of a facility located in Wisconsin owned by a qualifying exempt entity. Although the subcontractor is providing a real property construction activity under contract with the general contractor, the property is ultimately transferred to a qualifying exempt entity upon completion of the contract between the general contractor and the qualifying exempt entity.

**Example 7** – A Wisconsin municipality enters into a contract with the Department of Transportation to replace water infrastructure as roads are repaired/replaced. The Department of Transportation (DOT) hires a contractor to complete the water infrastructure work. While the DOT is not a qualifying entity, the Wisconsin municipality is. The "contract entered into date" that determines if the contract qualifies is the date of the contract between the municipality and DOT. The municipality must own the property located in

Wisconsin that the "facility" (e.g., water infrastructure) is installed on. The water infrastructure must be transferred to the municipality upon completion of the contract. If these criteria are met, the contractor and subcontractors doing the water infrastructure work may use the building materials exemption on purchases of qualifying materials.

**Example 8** – A county hospital hires a contractor to build a new wing on its hospital that is located in Wisconsin. The county hospital leases the building. Upon completion of the contract, the "facility" (e.g., new wing) is transferred to the county hospital; however, the county hospital does not own the facility (i.e., it leases the building from another party). The contractor's purchase of materials do not qualify for the building materials exemption.

**Example 9** – A municipality enters into a contract with a developer to build a parking garage. The contract stipulates that the developer will operate the parking garage for two years before it is transferred to the municipality. The developer hires a contractor to build the parking garage. The contractor's purchase of materials for the parking garage do not qualify for the building materials exemption. Upon completion of the contract, the parking garage does not transfer to the municipality (i.e., it is operated for a period of time by the developer before it is transferred to the municipality).

### How to Claim the Exemption

A contractor claiming the building materials exemption should provide a fully completed exemption certificate to the retailer of qualifying materials.

- When completing the *Wisconsin Sales and Use Tax Exemption Certificate*, [Form S-211](#), the owner, lessee, contractor, subcontractor, or builder should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(9m), Wis. Stats."
- When using the [electronic exemption certificate, S-211E](#), the owner, lessee, contractor, subcontractor, or builder should select "Construction – Building Materials for Contracts with Exempt Entities" from the list of exemptions displayed on tab 4, "Exemptions."

**Note:** A contractor who provides the retailer with an exemption certificate claiming an item will be used in an exempt manner, and then uses the items in a taxable manner, is liable for use tax on its purchase price of the item.

### Documentation to Maintain

*Retailers* - The retailer is not liable for Wisconsin sales tax on its sales of taxable products if, within 90 days of the sale, it receives a fully completed exemption certificate from the contractor indicating the contractor is using the items in an exempt manner. Retailers are required to maintain adequate records, including exemption certificates obtained from contractors, to document that the sale is exempt.

*Contractors* - The exemption for building materials only applies to materials that are used in real property construction activities. Sales of real property improvement are not taxable; therefore, an exemption certificate is not needed for sales of real property improvements. However, the contractor or subcontractor will need to obtain information to maintain in their records to show that its purchases of building materials qualified for the exemption provided in sec. 77.54(9m), Wis. Stats.

[Form S-227](#), *Contractor Statement of Building Materials Purchased*, is available to assist in documenting the necessary information, but contractors are not required to use this form.

The contractor is required to maintain records to verify that the exemption applies when the real property construction activity is performed on a facility owned by the qualifying exempt entity. This may be done by obtaining a nonprofit organization's CES number and maintaining contracts and invoices showing the work was for this qualifying exempt entity. Information the contractor must maintain includes:

- Contractor (or other entity) who holds contract with qualifying exempt entity
- Date of contract with qualifying exempt entity
- Qualifying exempt entity
- CES number or other documentation of qualifying entity (e.g., federal determination letter for non-Wisconsin exempt entity, information regarding veterans organization, purchase order from municipality)
- Physical location of "facility"
- Type of "facility"
- "Facility" is owned by, and transferred to, qualifying exempt entity
- Information regarding materials purchased using exemption

A contractor should pass on the necessary information for the subcontractor to be able to document the contract and the exempt entity information. A contractor may choose to use [Form S-227](#) to document the project information. [Form S-227](#) is not required, and the contractor may choose to provide the information in another form (e.g., bid document, contract, email) to the subcontractor.

**Note:** The contractor may pass on a copy of the exempt entity customer's CES number to the subcontractor; however, the contractor cannot complete an exemption certificate listing itself as the purchaser and claim exempt status using its customer's CES number.

Subcontractors - The same treatment applies to subcontractors as it does to contractors in the paragraphs above (i.e., subcontractor provides exemption certificate to vendor, maintain documentation). However, a subcontractor must be able to identify the Wisconsin location, on a bill of sale or invoice to the general contractor, where it performed the real property construction activity, and verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

The video titled, "[Construction Contracts with Exempt Entities](#)," explains this exemption and provides examples for contractors.

## I. Electronics and Information Technology Manufacturing Zone Facilities

Section [77.54\(65\)](#), Wis. Stats., effective September 20, 2017, provides a sales and use tax exemption for the sale of and the storage, use, or other consumption of building materials, supplies, equipment, and landscaping services used to construct or develop a facility in an electronics and information technology manufacturing zone. In order for the exemption to apply, the following criteria must be met:

- (1) The purchases are building materials, supplies, equipment, or landscaping services.
- (2) The items are sold to or stored, used, or consumed by owners, lessees, contractors, subcontractors, or builders.
- (3) The items are acquired solely for, or used solely in, the construction or development of a facility designated as an "electronics and information technology manufacturing zone" under sec. [238.396\(1m\)](#), Wis. Stats. The

capital expenditures for the construction or development of the facility must be eligible to be claimed as an income tax credit under sec. [71.07\(3wm\)\(bm\)](#) or sec. [71.28\(3wm\)\(bm\)](#), Wis. Stats., as certified by Wisconsin Economic Development Corporation (WEDC).

If property is purchased without tax under this exemption and is subsequently used in a taxable manner (e.g., moved to a different job site, used other than for the construction or development of a qualifying facility), use tax is due on the original purchase price of the property.

**Example 1** – Contractor purchases a crane for use on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. The contractor provides its vendor with a fully completed exemption certificate (described below). Upon completion of the project, Contractor uses the crane at a different project site. Contractor owes use tax on the original purchase price of the crane at the time the crane is used in a taxable manner (i.e., used outside the electronics and information technology manufacturing zone).

**Example 2** – Contractor rents a crane for use on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. Contractor makes no use of the crane other than at the project. Contractor may provide its vendor with a fully completed exemption certificate (described below), since the crane was rented solely for, and used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone.

**Example 3** – Contractor rents a portable toilet for use at its construction site for a qualifying facility located in an electronics and information technology manufacturing zone. Contractor may provide its vendor with a fully completed exemption certificate (described below), since the portable toilet was rented solely for, and used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone.

**Example 4** – Subcontractor purchases tools, pencils, clipboards, and other supplies for use only on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. At the completion of the project, the tools and supplies are completely consumed or used up. Subcontractor may purchase the tools, pencils, clipboards, and other supplies without tax by providing its vendor with a fully completed exemption certificate (described below).

#### *Exemption Certificates – Claiming the Exemption*

An owner, lessee, contractor, subcontractor, or builder who makes purchases that qualify for this exemption, must provide a fully completed exemption certificate to the retailer.

- When completing the *Wisconsin Sales and Use Tax Exemption Certificate*, [Form S-211](#), the owner, lessee, contractor, subcontractor, or builder should check "other purchases exempted by law" on the certificate and enter "exempt under sec. [77.54\(65\)](#), Wis. Stats."
- When using the [electronic exemption certificate, S-211E](#), the owner, lessee, contractor, subcontractor, or builder should select "Construction – Electronic and Information Technology Manufacturing Zone" from the list of exemptions displayed on tab 4, "Exemptions."

**Note:** A purchaser who provides the retailer an exemption certificate claiming an item will be used in an exempt manner, then uses the item in a taxable manner, is liable for use tax on its purchase price of the item.

#### *Sales of Tangible Personal Property and Landscaping Services*

A contractor or subcontractor must charge sales tax on its sales of tangible personal property sold to the owner or contractor, unless it receives a fully completed exemption certificate (described above). The contractor may

purchase without tax, for resale, the items physically transferred to the owner or prime contractor as tangible personal property or landscaping services.

### *Real Property Construction Activities*

Real property improvements are not taxable, and the owner or prime contractor is not required to give the contractor or subcontractor an exemption certificate. However, the contractor or subcontractor performing the real property construction activities may purchase building materials without tax that are used in a qualifying electronics and information technology manufacturing zone if the criteria, above, are met. The contractor should provide its supplier with a fully completed exemption certificate (described above).

The contractor is required to maintain records that substantiate its purchases qualify for the exemption. The contractor should keep records to show:

- What items were purchased exempt;
- Items were purchased solely for or used solely in the construction or development of a qualifying facility;
- Location of the facility that is in an electronics and information technology manufacturing zone;
- Capital expenditures for the construction or development of such facilities are eligible to be claimed as a credit under the required statutes, as certified by WEDC.

The contractor may request that the qualifying facility help to substantiate that the property or service the contractor is purchasing qualifies for exemption under sec. [77.54\(65\)](#), Wis. Stats. Contractors working on qualifying projects should provide subcontractors with necessary information so that the subcontractor can substantiate its use of this exemption.

## **J. Fertilizer Blending, Feed Milling, and Grain Drying Operations**

Effective April 19, 2014, an exemption applies to the sales of:

- Machines and specific processing equipment used exclusively and directly in a fertilizer blending, feed milling, or grain drying operation, including holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer, wet corn holding bins, grain dryers, mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless of whether such items become an addition to, a component of, or a capital improvement of real property. The exemption includes repair parts, replacements, and safety attachments for such machines and equipment.
- Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer or for storage of grain, if such structures are used in a fertilizer blending, feed milling, or grain drying operation.

**Caution:** These exemptions apply only to:

- Items located on the same parcel of property where the fertilizer blending, feed milling, or grain drying operation activities are conducted, or on an adjoining parcel, including parcels that are separated only by a public road, and
- Persons who are primarily engaged in fertilizer blending, feed milling, or grain handling operations which include grain drying operations, or primarily engaged in any combination of fertilizer blending, feed milling, or grain handling operations which include grain drying operations, and to contractors providing real property construction activities to such persons.

## 4. SPECIAL SITUATIONS

### A. Real Property Construction Contracts With Exempt Entities

*Constructing Buildings for Governmental Units, Schools, Federally Recognized American Indian Tribes or Bands, Churches, Hospitals, or Other Exempt Entities:* Even though a contractor is constructing a building for governmental units, schools, federally recognized American Indian tribes or bands in Wisconsin, churches, hospitals, or other exempt entities described in [sec. 77.54\(9a\)](#), Wis. Stats., sales of building materials to the contractor used in real property construction activities are generally taxable.

The reason for this treatment is the contractor is the consumer of the building materials used in the real property construction activity. Therefore, the sale of the building materials to the contractor is a retail sale and taxable (see [sec. Tax 11.04](#), Wis. Adm. Code, "Constructing buildings for exempt entities" for additional information).

#### Exceptions where a contractor may buy building materials exempt from tax:

- The building materials are used in real property construction activities for an American Indian tribe or band on the tribe's or band's reservation as described in Part 4.F. of this publication.
- The building materials are purchased and used to make real property improvements as described in Part 3.C., D., E., F., G., H., I., or J. of this publication.

*Exempt Entities Buying Materials and Taxable Services Tax Free:* Under Wisconsin sales and use tax law, purchases of taxable products and services made by Wisconsin exempt entities described under [sec. 77.54\(9a\)](#), Wis. Stats., may be made without payment of Wisconsin sales or use tax. This includes materials and equipment purchased by the exempt entity that will be used by construction contractors in performing real property construction activities for the exempt entity. The exempt entity must be invoiced for the materials and equipment, pay the supplier for the materials and equipment, and provide the supplier with one of the following:

- (1) A Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#) or [S-211E](#)) or Streamlined Sales and Use Tax Exemption Certificate – Wisconsin version ([Form S-211-SST](#)).
- (2) The federal or Wisconsin governmental unit's, tribe's, band's or other exempt entity's Certificate of Exempt Status (CES) number which the supplier should record on the invoice it keeps.
- (3) If a Wisconsin or federal governmental unit or federally recognized American Indian tribe or band, a purchase order or similar written document identifying the governmental unit, tribe, or band as the purchaser.

An exempt entity's transfer to its construction contractor of materials the exempt entity purchases directly from suppliers is not considered a taxable transaction, regardless of whether:

- (1) The contract specifies that the contractor is to provide all materials and the exempt entity subsequently obtains a reduction in the contract price for the direct purchased materials (e.g., change order), or
- (2) The contract excludes those materials the exempt entity will purchase directly from suppliers, resulting in no need for a reduction in the contract price (e.g., change order).

**Caution:** A contractor is subject to Wisconsin sales or use tax on materials it purchases and uses in real property construction for an exempt entity even if it bills the exempt entity or another party separately for the materials. See the Wisconsin Court of Appeals October 10, 1983 decision in the case of *Rice Insulation, Inc. v. Wisconsin Department of Revenue* (CCH 202-285), the Wisconsin Tax Appeals Commission January 7, 1998 decision in the case of *Precision Metals, Inc. v. Wisconsin Department of Revenue* (CCH 400-337), and the Wisconsin Court of

Appeals January 30, 2014 decision in the case of *Sullivan Brothers, Inc. v. Wisconsin Department of Revenue*, (CCH 401-803) for additional information. Exceptions are explained in Part 3.

If any person has questions regarding this subject, refer to the tax release titled "Purchases of Building Materials by Exempt Entities for Use by Contractors in Real Property Construction," published in [Wisconsin Tax Bulletin 115](#) (October 1999) for more information. Other questions relating to purchases of building materials by exempt entities may be addressed to Wisconsin Department of Revenue, Mail Stop 6-40, P.O. Box 8933, Madison, WI 53708-8933; calling (608) 266-2776; or emailing at [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov).

## B. General Contractors and Subcontractors

The sales and use tax treatment differs for real property and personal property activities with regard to contractors and subcontractors as follows:

### (1) Real Property

A subcontractor is the consumer of all materials used in completing a real property construction activity for a general contractor, and must pay sales or use tax on all the materials they consume or use. The subcontractor's invoice to the general contractor should not include a specific charge for sales or use tax.

**Example 1** – A subcontractor installs the heating and cooling systems in a building being constructed by the general contractor. The subcontractor must pay sales or use tax on the heating and cooling materials installed. The subcontractor does not charge sales tax to the contractor for the sale and installation.

### (2) Taxable Products and Services (including items in Part 3 which are treated as personal property and landscaping)

The subcontractor is selling the taxable products and services to the general contractor who will ultimately resell them to the customer. In this situation, the subcontractor may purchase the taxable products and services that it will resell to the general contractor without tax for resale. The subcontractor should give its supplier of these items a fully completed exemption certificate claiming resale. The subcontractor's charge to the general contractor is taxable, unless the general contractor gives an exemption certificate claiming resale to the subcontractor, indicating that it will resell the products or services to its customer. If the general contractor does not give an exemption certificate to the subcontractor, the subcontractor could be liable for the sales tax.

**Example 2** – A subcontractor installs cabinets in examining rooms of a medical clinic being constructed by a general contractor. When the subcontractor purchases the cabinets from its supplier, the subcontractor should provide the supplier with a fully completed exemption certificate, claiming resale. The subcontractor should then charge the general contractor sales tax on its receipts from the sale and installation of the cabinets unless the general contractor gives the subcontractor a fully completed exemption certificate claiming resale. The charge by the general contractor to the customer for the cabinets is subject to Wisconsin sales or use tax.

## C. County Use Tax on Construction Materials

If a contractor is engaged in real property construction activities in a county which has adopted the county tax (see Appendix B for a list of these counties), the 0.5% county use tax is imposed upon the purchase price of taxable products, used in constructing, altering, repairing, or improving real property and that become a component part of real property in that county.

**Note:** If the contractor was required to pay a county sales or use tax in a county in Wisconsin and the contractor then moves the materials to a different county that has also adopted the county sales and use tax, no additional county sales or use tax is due.

**Example 1** – A contractor located in County A (a county that has adopted the county sales and use tax), purchases lumber from a Wisconsin retailer who has charged the 5% sales tax but did not charge the county tax (delivery was in a county that has **not** adopted the county sales and use tax). The lumber was used in building a house in County A. The contractor must pay County A's 0.5% county use tax on the cost of the lumber.

**Example 2** – A contractor located in County B (a county that has not adopted the county sales and use tax) purchases lumber from a Wisconsin retailer who charged the 5% sales tax but did not charge any county tax. The lumber is later used in building a house in County C (a county that has adopted the county sales and use tax). The contractor must pay County C's 0.5% county use tax on the cost of the lumber.

**Example 3** – A contractor located in County X (a county that has adopted the county sales and use tax) purchases wiring from a Wisconsin retailer who charged the 5% sales tax along with County X's 0.5% county tax. The wiring is later used in the general wiring of a new house in County Y (another county that has adopted the county sales and use tax). Since the contractor already paid County X's 0.5% county sales tax on the cost of the wiring, no additional county sales or use tax is due in County Y.

A contractor is also subject to the 0.5% county use tax on taxable products that are purchased in a county that has adopted the 0.5% county sales and use tax when: (1) the contractor does not pay any county sales or use tax to the vendor and (2) the product is used to construct, alter, repair, or improve real property in or outside that county.

**Example 1** – A contractor located in County D (a county that has adopted the county sales and use tax) purchases lumber from two sources: 1) a Wisconsin retailer located in County E (a county that has not adopted the county sales and use tax); and 2) an out-of-state retailer. The contractor took possession of the lumber in County D (the lumber was delivered by common carrier to the contractor's location in County D). The retailers charged the 5% sales tax but did not charge County D's county tax. The contractor stores the lumber in County D until it is used to build a house in County F (a county that has not adopted the county sales and use tax). The contractor must pay County D's 0.5% county use tax on the cost of the lumber since that is where the lumber was first stored, used or consumed.

**Example 2** – Contractor is located in County G (a county that has adopted the county sales and use tax). Contractor purchases building materials from various sources located in and outside Wisconsin. All of the building materials are delivered to Contractor's location in County G. At the time Contractor purchases the materials, Contractor does not know if the materials will be resold as tangible personal property or consumed by Contractor in a real property construction activity. Therefore, Contractor does not pay any sales or use tax on these materials at the time they are purchased. Contractor then enters into various contracts to perform real property construction activities. These real property construction activities take place at locations in and outside Wisconsin. Within Wisconsin, some of the real property construction activities take place in County G, some take place in County H (a county that has also adopted the county sales and use tax), and some take place in County J (a county that has not adopted the county sales and use tax). In all of the situations described above, regardless of the location of the construction activities, Contractor owes County G's county sales and use tax on the building materials since that is where Contractor first stored, used, or consumed the materials. Contractor owes the tax at the time the materials are first identified for use in a real property construction activity.

**Note:** For those construction activities that take place in County H (another county that has adopted the county sales and use tax), Contractor does not owe any additional county use tax since Contractor was already required to pay the county use tax on those materials when they were first stored, used, or consumed in County G.



If a contractor properly pays a county or stadium tax on the purchase of materials that are used in a real property construction activity, the tax paid may be used as a credit against any additional Wisconsin county or stadium use tax owed on the purchase (e.g., county tax may be credited against baseball stadium tax).

**Example 3** – Contractor is located in Waukesha County and purchases materials that will be used in a real property construction activity. The materials are delivered to Contractor A’s location in Waukesha County where they are stored until needed. Contractor pays the Wisconsin state and baseball stadium sales or use tax at the time the materials are purchased, but does not pay any county sales or use tax since Waukesha County has not adopted the county sales and use tax. Contractor then transports the materials to a jobsite in Walworth County (a county that has adopted the county sales and use tax) where Contractor will use the materials in a real property construction activity. Since the materials are used in a real property construction activity in a county that has adopted the county sales and use tax and no county sales or use tax has already been paid on the materials, Contractor owes Walworth County’s county use tax on these materials but is allowed a credit for the 0.1% baseball stadium tax previously paid. An additional 0.4% Walworth County use tax is due on the materials. The baseball stadium tax that Contractor was required to pay because the materials were first stored in a county that has adopted the baseball stadium tax is allowed as a credit to reduce the amount of Walworth County tax that is due.

**Exception:** Sales of building materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others are not subject to the county tax if (a) the materials are affixed and made a structural part of real estate, and (b) the amount payable to the contractor is fixed without regard to the costs included in performing a written contract that was **irrevocably entered into prior to the effective date of the county tax**, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before the effective date of the county tax. [Wisconsin Form S-207CT-1](#) may be used by contractors to purchase materials without county tax under this exception.

See Appendix B for a list of the 66 counties that have adopted the 0.5% county tax as of January 1, 2019, and the effective date for each county’s tax.

As of January 1, 2019, there is **no** county sales and use tax in the following 6 Wisconsin counties.

#### Counties Without County Tax

Manitowoc	Outagamie	Waukesha
Menominee	Racine	Winnebago

#### D. Stadium Use Tax on Construction Materials

If a contractor is engaged in real property construction activities in any of the following counties, the stadium use tax, as noted below, is imposed on the purchase of tangible personal property; and items and goods described in Part 1.C.(2) and (3) used in constructing, altering, repairing, or improving real property and that become a component part of real property in that county, if a stadium sales tax has not been charged:

##### **Baseball Stadium Tax (0.1%)**

Milwaukee County	Racine County	Washington County
Ozaukee County	Waukesha County	

A contractor is also subject to the stadium use tax on the purchase of taxable products stored in any of the above counties that will be used to construct, alter, repair, or improve real property, if a stadium sales tax has not been charged.

If a contractor properly paid a county or stadium tax on the purchase of materials that are used in a real property construction activity, the tax that was paid may be used as a credit against any additional Wisconsin county or stadium use tax owed on the purchase (e.g., county tax may be credited against baseball stadium tax).

**Example** – Contractor is located in Dane County and purchases materials that will be used in a real property construction activity. The materials are delivered to Contractor's location in Dane County where they are stored until needed. Contractor pays the Wisconsin state and Dane County sales or use tax at the time the materials are purchased, but does not pay any baseball stadium district sales or use tax since Dane County has not adopted the baseball stadium district sales and use tax. Contractor then transports the materials to a jobsite in Waukesha County (a county that has adopted the baseball stadium district sales and use tax) where Contractor will use the materials in a real property construction activity. Since the materials are used in a real property construction activity in a county that has adopted the baseball stadium district sales and use tax and no baseball stadium district sales or use tax has been paid on the materials, Contractor owes the baseball stadium district use tax on these materials but is allowed a credit for the 0.5% Dane County previously paid. Therefore, since the 0.5% Dane County tax previously paid exceeds the 0.1% baseball stadium district use tax, no additional baseball stadium district use tax is due.

## E. Quarries/Gravel, Etc.

### (1) Real Property

The purchase of gravel or other materials consumed in a real property construction contract is subject to sales or use tax. The real property construction contract price is not subject to sales tax. For example, the dumping and spreading of gravel in its final resting place is considered real property construction and not taxable.

**Example 1** – Contractor purchases gravel from Supplier. Contractor spreads the gravel on Individual's driveway and grades and compacts the gravel so that it is in its final resting place. Contractor is the consumer of the gravel it spreads, grades, and compacts into its final resting place and must pay sales or use tax on its purchase of the gravel from Supplier. Contractor's charges to Individual are not subject to Wisconsin sales or use tax since Contractor is performing a real property construction activity by placing the gravel in its final resting place.

### (2) Personal Property

If the contractor dumps the gravel or other materials and someone other than the contractor moves, spreads, grades, rakes, or otherwise places the materials in their final resting place, the contractor is selling taxable products as opposed to making a real property improvement. The sale of the gravel or other materials is subject to sales tax. The contractor may purchase these materials without tax by giving the supplier a fully completed exemption certificate claiming resale.

**Example 2** – A contractor sells a truckload of stone to a homeowner who uses it in landscaping at his or her residence. The sale of the stone is subject to sales tax.

**Example 3** – Contractor purchases gravel from Supplier. Contractor will dump spread or gate spread the gravel on Customer's driveway. Customer, or someone other than Contractor, will then grade, rake, and compact the materials into their final resting place. Since Contractor is not placing the gravel in its final resting place, Contractor may purchase the gravel from Supplier without tax by providing Supplier a fully completed exemption certificate claiming resale. Contractor's sale of the gravel to Customer is subject to sales tax since dump spreading or gate spreading gravel that will be graded, raked, or compacted into its final resting place by someone else is a sale of a taxable product.

### (3) Leased Land

The contractor may lease land or a gravel pit from a landowner and pay a royalty or lease based on the materials removed. If the arrangement with the landowner is the lease of real property or the sale of intangible mineral rights (even if measured by weight or volume of material removed) and the contractor severs the materials from the real property, the landowner's receipts are not subject to sales tax.

If these materials are then consumed by the contractor in a real property construction activity, the contractor does not owe sales or use tax on such materials.

## F. Construction Contracts on Native American Reservations

### (1) Definitions

"Construction materials," as used below, includes supplies that are consumed at the construction site.

"Native Americans" means all persons of Native American descent who are enrolled members of any federally recognized Tribe.

"Reservation" means all land within the boundaries of the Bad River, Forest County Potawatomi, Lac Courte Oreilles, Lac du Flambeau, Menominee, Mole Lake, Oneida, Red Cliff, St. Croix, and Stockbridge-Munsee reservations.

"Sales" means sales of taxable products or services.

"Tribe" means a federally recognized Tribe or Band of Native Americans and includes tribal entities and tribal authorities.

"Tribal land" means land in Wisconsin designated reservation land or trust land held by the U.S. government for the benefit of a specific tribe or member of that tribe. A Native American's tribal land is the reservation or trust land of the tribe of which he or she is an enrolled member.

"Trust land" means land the title to which is held in trust by the United States for an individual Native American or a tribe.

### (2) General Tax Treatment

The sale of construction materials to a Native American contractor is exempt from Wisconsin sales and use tax if both of the following apply:

- Delivery of the materials to the Native American contractor occurs on the Native American contractor's tribal land, and
- The construction materials will be used on the Native American contractor's tribal land.

However, if the materials are later used by the Native American contractor off of the contractor's tribal land, the contractor will be subject to Wisconsin use tax.

Construction materials are taxable if sold to a non-Native American contractor who incorporates the materials into realty on a reservation, regardless of whether the materials were delivered to the contractor off the reservation in Wisconsin or another state, or on the reservation (unless exempt from tax under the conditions in 3.b. (federal preemption)).

A Native American, who takes delivery of construction materials off the reservation, is subject to the Wisconsin sales or use tax.

**Example** – Native American purchases construction materials from Retailer at Retailer's location. Retailer's location is not on the tribal reservation. Native American will take the construction materials back to his tribal reservation and use them to fix his house. Native American is subject to Wisconsin sales or use tax on his purchase of the construction materials from Retailer.

Sales of taxable products and services to a Native American tribe located in Wisconsin are exempt from Wisconsin sales and use tax regardless of whether the sales take place on or off the tribal reservation.

**Example** – Contractor sells lumber to a Native American tribe located in Wisconsin. The sale takes place at Contractor's location which is not on the tribal reservation. The sale of the lumber to the Native American tribe is exempt from Wisconsin sales and use tax.

(3) The following sales on a tribal reservation are exempt:

(a) The sale of construction materials to a Native American contractor if:

- Delivery of the materials to the Native American contractor occurs on the Native American contractor's tribal reservation, and
- The construction materials will be used on the Native American contractor's tribal reservation. However, if the materials are later used off the Native American contractor's tribal reservation, the contractor will be subject to Wisconsin use tax on its purchase of the materials.

(b) The sale and delivery of construction materials to a non-Native American contractor on or off the reservation which the contractor uses in a construction project on the reservation for the Tribe if federal preemption applies.

"Federal preemption" means that Indian Treaties and federal statutes have been held in court decisions to prohibit in certain circumstances state taxation of Tribes and Native Americans. The federal preemption applies if all three of the following criteria apply:

- Construction activity is performed for the Tribe,
- Construction occurs on the tribal reservation, and
- Construction project will benefit the tribe.

Examples of construction projects that benefit a tribe include schools, administration buildings, casinos, hotels, wastewater treatment plants, convenience stores, and other construction projects that increase tribal revenue or allow the tribe to perform functions it would otherwise hire others to perform.

**Example 1** – A non-Native American contractor acquires building materials without the payment of Wisconsin sales or use tax. The contractor uses the materials to build a casino for a Native American Tribe on the Tribe's reservation. Since the building of a casino for a Native American Tribe on the Tribe's reservation will help improve the self-sufficiency of the Tribe, federal preemption applies. The contractor may purchase the materials without tax that it uses in building the casino for the Tribe on the Tribe's reservation.

**Example 2** – A non-Native American contractor acquires building materials from an out-of-state seller without payment of Wisconsin sales tax. The contractor uses the material to repair an individual tribal member's home roof on a Native American reservation. The contractor is the consumer of materials used in real property construction activities and is, therefore, required to pay use tax on such materials consumed.

**Note:** Federal preemption does not apply to the contractor's purchases of the building materials because the real property construction activity is being performed for an individual tribal member instead of for the Tribe itself.

(4) Tribal use tax does not offset Wisconsin sales and use tax:

Some Native American tribes impose a tribal use tax on construction materials used by persons doing business on tribal land. This tribal use tax is in addition to, rather than in place of, Wisconsin sales and use tax. Also, Wisconsin law does not authorize a credit for tribal tax against Wisconsin sales and use tax. It is possible to have both the tribal use tax and Wisconsin sales or use tax (and the 0.5% county and 0.1% baseball stadium sales or use tax, if applicable) imposed on the use of construction materials on tribal land.

**Exception:** If the purchase, rental, license, or lease of a taxable product or service was sourced to (i.e., took place on) tribal lands and was subject to the sales or use tax imposed by a federally recognized American Indian tribe or band in Wisconsin prior to the product or service being subject to the Wisconsin state, county, and/or stadium tax, the amount of sales tax paid to the tribe or band may be applied as a credit against the Wisconsin state, county, and/or stadium use tax imposed on that same product or service, as determined by an agreement between the department and the tribal council. As of the date of this publication, no such agreement is in place.

## 5. OTHER ITEMS RELATED TO BUSINESS OPERATIONS OF CONTRACTORS

### A. Purchases of Materials – Personal Property

A contractor may purchase without sales or use tax the materials sold or transferred to a customer in the installation, repair, or servicing of taxable products. This is done by issuing a fully completed exemption certificate claiming resale to its supplier of such materials. Personal property activities and when a contractor is a retailer is discussed in Part 2.B.

### B. Purchases of Materials – Real Property

If the contractor knows which materials are to be used in a real property activity, the contractor must pay the sales tax on such purchases to its supplier. In addition, a contractor must also pay Wisconsin sales or use tax on its purchases of materials that are stored, used, or consumed in Wisconsin, even if the materials are subsequently used in real property construction activities outside Wisconsin.

When a contractor is a consumer, its sales price from the sale of labor and material related to a real property construction activity is not subject to the sales tax. Real property activities and when a contractor is a consumer is discussed in Part 2.C. The contractor will, in most instances, pay a sales or use tax on its purchases of materials consumed in improving realty.

### C. When a Contractor Is Both a Consumer and a Retailer

A contractor who acts as both a consumer and retailer may not know when it purchases materials whether they will be consumed in real property construction activities, resold to others, or used in the repair or servicing of personal property. In such instances, a contractor may do one of the following at the time of making purchases:

- (1) Give an exemption certificate claiming resale to suppliers and purchase the materials without tax. If the contractor later resells the materials or uses them in the repair or servicing of personal property, the contractor must report the sale on its sales and use tax return and is liable for the sales tax based on the sales price to the customer, unless an exemption applies. However, if the materials are used in a real property activity, the contractor must report a use tax based on the purchase price of the materials on its sales tax return.

**Example 1** – A contractor purchases 1,000 feet of wire without tax for \$100 (10¢ per foot) by giving the supplier an exemption certificate claiming resale. The contractor sells 600 feet of the wire over-the-counter for \$120 and uses the remaining 400 feet of wire to wire a home. The contractor must report \$6 of sales tax on its sale of the wire ( $\$120 \times 5\%$ ) and \$2 of use tax for use of 400 feet of wire in a real property improvement ( $\$40 \times 5\%$ ) on its sales and use tax return.

- (2) *Pay sales tax to supplier on all materials purchased.* If the materials are later consumed in a real property activity, the tax obligation is satisfied because it was paid to suppliers when purchasing the materials.

If the materials are resold at retail in a sale subject to sales or use tax, the contractor must report sales tax for the sales on its sales and use tax return. It may also take a deduction on line 5 of its sales and use tax return (titled "Other") for the amount paid to suppliers when the materials were purchased. The deduction is taken on the sales and use tax return for the period in which the retail sale of the materials is made by the contractor.

**Example 2** – A contractor purchased 1,000 feet of wire for \$100 and paid \$5 tax. The 1,000 feet of wire was later resold over-the-counter for \$150. Sales tax of \$7.50 ( $\$150 \times 5\%$ ) was charged on the retail sale and reported by the contractor on its sales and use tax return. A \$100 deduction for the amount paid to the supplier for the wire purchased by the contractor may be taken on line 5 of the sales and use tax return for the period in which the \$150 sale of wire is reported by the contractor.

**Caution:** The deduction on Line 5 of the Sales and Use Tax Return is only allowable if the purchases were resold as TAXABLE sales.

**Example 3** – Contractor pays tax on purchases of materials and later installs/repairs tangible personal property for a church. Contractor must file a Buyer's Claim for Refund on the tax paid since the sale to the church is not taxable (assuming an exemption certificate was received).

See [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*, for additional information about how to file a claim for refund.

#### D. Purchases of Construction Information Transferred Electronically

Charges to access or obtain construction plans and construction project information electronically, as described in the following paragraphs, are taxable. "Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media.

**Example** – Vendor sells reports featuring up-to-date construction project information. The reports are transferred electronically and are available for purchase by ordering single reports as needed, or on a subscription basis entitling the purchaser to obtain an unlimited number of reports within the subscription period. In addition, the purchaser is furnished the opportunity to receive, as part of the subscription, email alerts to track a project or projects within a particular area. The charges for the reports and email updates are subject to Wisconsin sales and use taxes as receipts from the sale of an additional digital good that is a news or other information product.

In addition, Vendor sells copies of construction plans and specifications. The plans and specifications are transferred electronically. The plans and specifications are sold on a project-by-project basis. The sales price of the construction plans and specifications is taxable as an additional digital good that is a news or other information product.

Additional information on the tax treatment of various products that are transferred electronically to the purchaser is available in [Publication 240](#): *Digital Goods – How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?*

## E. Purchases or Rentals of Machinery and Equipment

A contractor's purchase or rental of the following machinery and equipment used by the contractor are taxable:

- (1) Machinery and equipment, such as road building equipment, tunnel shields, construction machines, forklifts, air compressors, and excavating equipment.
- (2) Tools, such as power saws and hand tools.
- (3) Supplies, such as machine lubricating and fuel oils, form lumber, and industrial gases.
- (4) Trucks and other motor vehicles used to carry the materials, equipment, and employees to the jobsite.
- (5) Safety equipment worn by the employees such as ear plugs, safety glasses, hard hats, and boots.

The contractor is the consumer of such personal property and must pay tax on its purchase or rental of such property, unless an exemption applies. See Part 3.D., G., and I. for more information regarding possible exemptions.

## F. Service vs. Rental

When equipment is provided with an operator, the tax treatment of the transaction depends on whether the operator does more than maintain, inspect, or set up the equipment and if the operator is necessary for the equipment to perform in the manner for which is designed.

### Service

If equipment is provided along with an operator who is necessary for the equipment to perform in the manner for which it was designed, and the operator does more than maintain, inspect, or set up the equipment, the person providing the equipment is considered to be providing a service, rather than leasing or renting the equipment. The service provided may or may not be a taxable service. A service provider is liable for sales or use tax on its purchases of equipment that it uses to provide services. A service provider is also liable for sales or use tax on its purchases of repair parts and repair services for such equipment.

**Example 1** – Contractor is hired by Customer to dig a basement that meets certain specifications. Contractor operates the excavating equipment while they are in use (i.e., Contractor does more than maintain, inspect, or set up the equipment and is necessary for the equipment to perform in the manner for which it was designed). On the invoice to Customer, Contractor charges Customer \$100/hour for the "rental" of the excavating equipment and \$50/hour for the operator. Although Contractor's invoice indicates the \$100/hour is a "rental" of the excavating equipment, since Contractor does more than maintain, inspect, or set up the equipment, Contractor is considered to be providing a service, rather than renting the equipment to Customer. The charge by Contractor to Customer is not subject to Wisconsin sales or use tax since the digging of a basement is a real property construction activity.

**Note:** Contractor is required to pay Wisconsin sales or use tax on his purchase of the excavating equipment used to complete this job.

### Rental

Leases or rentals of equipment with an operator that only maintains, inspects, and/or sets up the equipment are subject to sales or use tax. A lessor may purchase equipment without tax for resale if the lessor uses the equipment solely for leasing or renting. A lessor may also purchase lubricants, repair parts, and repair services for equipment used solely for leasing or renting, without tax for resale.

**Example 2** – Contractor is hired by Customer to provide an end loader in order for dirt to be moved from one location to another. Contractor only sets up and inspects the end loader. Contractor does not provide an operator with the end loader. Contractor charges Customer \$75/hour for the use of the end loader. The charge for the use of the end loader is subject to sales or use tax as a charge for the lease or rental of the end loader.

**Exception:** Charges for the use of motor trucks are taxable rental charges, except if drivers are provided by the truck's owner to operate the truck, the transaction is a service and not a lease or rental.

#### G. Motor Vehicle Fuel or Alternate Fuel Excise Tax Refunds

Motor vehicle fuel or alternate fuel may be purchased exempt from sales tax because it is subject to the motor vehicle fuel or alternate fuel tax under Chapter 78, Wis. Stats. However, if the motor vehicle fuel or alternate fuel taxes are later refunded under [sec. 78.75](#), Wis. Stats., because the buyer does not use the fuel in operating a motor vehicle upon public highways, the purchase price of the fuel less the excise taxes refunded, will be subject to sales or use tax, unless another exemption applies, such as use in farming.

Also, a contractor may hold an alternate fuel license which allows it to purchase fuels for off-highway usage and not be subject to excise tax. The contractor is subject to Wisconsin sales or use tax on fuel used in construction equipment and non-highway vehicles.

#### H. Sales of Used Equipment

If a contractor holds or is required to hold a seller's permit, its sales of used machinery, equipment, vehicles and similar equipment to other contractors or purchasers are subject to sales or use tax.

Any person that is registered to collect and remit or required to be registered to collect and remit Wisconsin sales and use taxes must also collect and remit the applicable state, county, and/or stadium sales and use taxes on its sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in [sec. 340.01\(48r\)](#), Wis. Stats., trailers, semitrailers, all-terrain vehicles, utility-terrain vehicles, off-highway motorcycles, and aircraft, even if they are not "dealers" or "registered dealers" of the item sold.

Purchases of used equipment, machinery, vehicles, and similar equipment from persons who don't hold and are not required to hold a seller's permit may qualify as exempt occasional sales. See [Publication 201](#), *Wisconsin Sales and Use Tax Information*, for additional information regarding the occasional sale exemption.

#### I. Credit for Tax Paid to Another State

A contractor is subject to Wisconsin use tax on taxable products and services purchased outside Wisconsin that are stored, used, or consumed in Wisconsin. However, if another state's tax was properly paid on the purchase of the products (e.g., the contractor took possession of the product or service in that state), the amount of Wisconsin state, county, and/or stadium use tax due may be offset by the tax paid to the other state. Any tax paid to another state in excess of the amount of Wisconsin state, county, and/or stadium use tax due may not be claimed as an additional credit and used to offset other Wisconsin state, county, and/or stadium use tax due.

**Example 1 – Real Property Construction Job:** Contractor purchased building materials in Minnesota, for \$10,000. The supplier charged the 6.5% Minnesota sales tax of \$650 on the sale of the building materials. Contractor uses the building materials in a real property construction activity in Hudson, Wisconsin (St. Croix County). Because the materials are stored, used, or consumed in Hudson, Wisconsin, the purchase of the materials is subject to Wisconsin and St. Croix County use tax. However, no tax must be reported on the Wisconsin sales and use tax return because the Wisconsin state and county use tax due of \$550 (5.5% X \$10,000) is completely offset by the Minnesota sales tax paid of \$650.



**Example 2 – Tangible Personal Property Construction Job:** Contractor purchases materials in Minnesota for \$10,000. Contractor properly paid 6.5% Minnesota sales tax of \$650 on the **purchase** of materials. Contractor uses the materials for the sale and installation of tangible personal property (not a real property construction job) in a job for \$25,000 for Customer. Contractor must charge **sales** tax on the entire \$25,000. Contractor may claim a deduction of \$13,000 (\$650 tax paid to Minnesota divided by 5% Wisconsin tax rate = \$13,000) on its Wisconsin sales and use tax return for the tax Contractor paid to Minnesota on its purchase of the materials.

For more information about the credit for taxes paid to another state, see [Wisconsin Tax Bulletin 157](#), pages 28 – 49 and the article on the department's website titled, "[Credit for Taxes Paid to Other States - Real Property Versus Personal Property](#)". For information on how to claim the credit on your sales and use tax return, refer to the "[Instructions for Wisconsin Sales and Use Tax Return](#)" on the Wisconsin Department of Revenue's website.

#### J. Contractor Erroneously Charged Tax on Real Property Construction Activity

If a contractor erroneously charges a customer sales tax on a real property construction activity, the contractor must refund that tax (and related interest, if applicable) to the customer. However, the contractor is allowed to reduce the amount of sales tax refunded to its customer by the amount of sales or use tax (and related interest, if applicable) the contractor should have paid on its purchase of the materials used in completing that real property construction activity.

**Example** – Contractor installs carpeting for Customer and charges Customer \$5,000 for materials and labor. Contractor's purchase price of the carpet from its supplier is \$3,000. Contractor did not pay sales or use tax at the time it purchased the carpeting from its supplier. Contractor erroneously charges Customer sales tax of \$250 on this real property construction activity. Contractor is required to refund the \$250 to Customer. However, Contractor may reduce the \$250 refund by the \$150 (\$3,000 x 5%) of Wisconsin sales or use tax Contractor owes on its purchase of the carpet from its supplier. Therefore, Contractor is only required to refund the \$100 difference to Customer. If Contractor does not refund the \$100 to Customer, the \$100 must be remitted to the Department of Revenue.

See [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*, Part 7.D., for additional information.

## 6. RECORD KEEPING

### A. General

Every contractor required to have a retailer's permit, consumer's use tax certificate, or use tax certificate must keep adequate records so that the contractor, as well as the Department of Revenue, can determine the correct amount of tax for which the contractor is liable.

The contractor must keep a complete and accurate record of beginning and ending inventories, purchases, sales, canceled checks, receipts, invoices, bills of lading, and all other pertinent documents and books of accounting pertaining to the business. See [sec. Tax 11.92](#), Wis. Adm. Code, "Records and record keeping," for more information.

### B. Records to Keep – Exempt Sales

If a contractor claims that part or all of its retail sales of taxable products and services are exempt from sales and use tax, the contractor generally must obtain a fully completed exemption certificate from the purchaser and keep a record of the name and address of the person to whom the exempt sale was made, the date of sale, the article sold, the amount of exemption, and the reason the sale was exempt from tax.

The reason for keeping such records is that the sales and use tax law provides that all receipts are taxable until the contrary is established. The retailer (contractor) has the burden of proving that a sale of taxable products or services is exempt, unless the retailer takes an exemption certificate (or other information as described in 2 and 3 below) no later than 90 days after the date of the sale in an approved form from the purchaser which indicates that the product or service being purchased is for resale or is otherwise exempt.

Three common reasons that sales of taxable products or services may be exempt are:

- (1) The use to be made of the product or service purchased is exempt or the product or service is to be resold. For example, the item is going to be used exclusively and directly in manufacturing or in farming and is, therefore, exempt.

The retailer should obtain a fully completed exemption certificate from the purchaser.

- (2) The purchasing organization is exempt (e.g., Wisconsin public schools and municipalities, federal government, federally recognized American Indian Tribes or bands).

Sales to the federal government and Wisconsin governments, municipalities, public schools, and federally recognized American Indian Tribes or bands should be supported by one of the following:

- (a) A purchase order or similar written document identifying the governmental unit, Tribe, or band as the purchaser.
- (b) A fully completed exemption certificate.
- (c) Recording the federal government or Wisconsin governmental unit's, Tribe's or band's Certificate of Exempt Status (CES) number on the invoice.

Exempt sales to nonprofit organizations holding a CES (e.g., church) can be supported by a fully completed exemption certificate or by recording the exempt entity's CES number on the invoice.

Nonprofit organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, may apply on [Form S-103](#) (Application for Wisconsin Sales and Use Tax Certificate of Exempt Status) to the Department of Revenue for a Certificate of Exempt Status (CES). If the application is approved, the nonprofit organization will be issued a CES number by the department.

- (3) The purchaser furnishes the retailer (a) a copy of its Wisconsin direct pay permit or (b) a statement that the purchaser holds a Wisconsin direct pay permit, the permit number, and the date the permit was issued. The purchaser is subject to Wisconsin use tax on the purchase price if the product or service purchased is used in a taxable manner.

**Note:** If exemptions are claimed for any of the above three reasons, the retailer must keep the completed certificates, purchase orders, and invoices to prove that the sales were exempt.

### C. Contractor's Invoices to Its Customers

To determine its sales and use tax liability, a contractor should segregate its invoice charges (sales price) according to whether the contractor is acting as (1) a retailer (selling taxable products or providing taxable labor or services) or (2) a consumer (improving, altering, or repairing real property).

The invoice for each transaction, job, or contract should be set forth so that charges for labor performed and materials used that are subject to sales tax are segregated from nontaxable charges for real property activities. The materials used in a real property activity must be identified to enable the contractor to determine the amount of its material purchases that are subject to sales or use tax.

See Part 2.D., for information on the sales and use tax treatments when a contractor is acting as both a retailer and a consumer on the same job.

Contractors also have certain overhead costs and expenses that they incur in completing a construction project that they may choose to separately state from the materials and labor in the contract documents. The contractor is the consumer of such items and is subject to Wisconsin sales or use tax on those that are taxable products or services, even if these costs are passed on to the customer.

The charge to the customer for the overhead costs and expenses are part of the sales price from the sale of real property improvements, taxable products and services. Therefore, these charges should be allocated to the material and labor charges to which they relate and tax imposed on those charges relating to taxable sales. Charges relating to nontaxable sales would not be taxed.

**Example** – A contractor constructs a building for a customer that includes both real property construction, the sale and installation of taxable products, and taxable services, such as landscaping. The customer is charged as follows:

Real property improvements (labor and materials)	\$2,500,000
Taxable products (labor and materials)	500,000
Landscaping (labor and materials)	100,000
Subtotal	\$3,100,000
General Conditions* and Project Management	300,000
Total Contract Price	<u>\$3,400,000</u>

\*Includes items such as portable toilet rentals, temporary fencing, meeting expenses, plan documents, etc., that are not physically transferred to the customer and apply to all aspects of the construction project.

The \$300,000 separately stated charge for items that apply to both the real property and taxable products can be allocated based on the selling price of each item compared to the total selling price of those items. Therefore, of the \$300,000 charge, \$57,000 can be allocated to the taxable products and services ( $\$600,000 \div \$3,100,000 = 19\%$  and  $19\% \times \$300,000 = \$57,000$ ) and \$243,000 allocated to the real property ( $\$2,500,000 \div \$3,100,000 = 81\%$  and  $81\% \times \$300,000 = \$243,000$ ).

The contract amount subject to sales tax is \$657,000 (\$500,000 taxable products + \$100,000 landscaping service + \$57,000 overhead expenses).

## 7. OTHER TAXES AND FEES TO BE AWARE OF

If you have business activities or earn income in Wisconsin, you may also be subject to Wisconsin taxes other than sales and use taxes. Although the information below is not all-inclusive, it may help you in obtaining information about other Wisconsin taxes you should be aware of.

**Individual Income Tax:** Every person who is a resident of Wisconsin and who has gross income more than a certain amount is subject to Wisconsin income taxes, regardless of where the income is earned.

A person who is a nonresident of Wisconsin is subject to Wisconsin income taxes if he or she has gross income of \$2,000 or more from personal services performed in Wisconsin or from business or property in Wisconsin. For more information, write to: Wisconsin Department of Revenue, Mail Stop 3-107, P.O. Box 8949, Madison, WI 53708-8949.

**Corporation Franchise or Income Tax:** Every corporation organized under the laws of Wisconsin or licensed to do business in Wisconsin (except certain organizations exempt under [sec. 71.26\(1\)](#), Wis. Stats.) is required to file a Wisconsin corporate franchise or income tax return, regardless of whether or not business was transacted. Unlicensed corporations are also required to file returns for each year they have certain business activities in

Wisconsin. For more information, write to: Wisconsin Department of Revenue, Mail Stop 3-107, P.O. Box 8906, Madison, WI 53708-8906.

**Bond Requirement:** Out-of-state construction contractors and subcontractors are required to file a surety bond with the Wisconsin Department of Revenue at Mail Stop 5-77, P.O. Box 8902, Madison, WI 53708-8902, to guarantee the payment of franchise or income taxes, unemployment compensation contributions, income taxes withheld from employees' wages, and sales and use taxes. When total construction contracts, which begin in the same calendar year, equal or exceed \$50,000, a surety bond is required. The surety bond is 3% of the aggregate amount of contracts. It must be posted within sixty (60) days after construction has begun.

**Example** – A construction contractor entered into three contracts during the calendar year.

- Contract A for \$10,000 begins April 15; no surety bond is required because an aggregate of \$50,000 has not been reached.
- Contract B for \$50,000 begins May 15; a 3% surety bond is required on the aggregate \$60,000 of contracts and is due by July 15.
- Contract C for \$40,000 begins August 1; surety bonds are required on the aggregate \$100,000 of contracts but a 3% surety bond must now be posted on only the \$40,000 of additional contracts and is due by October 1.

**Withholding:** If an employer has employees in Wisconsin, the employer may be required to withhold Wisconsin income taxes from the employees' wages. An employer required to withhold must apply for a withholding registration certificate from the department. For more information, write to: Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8902, Madison, WI 53708-8902.

**Unemployment And Worker's Compensation:** For more information on these taxes write to: Wisconsin Department of Workforce Development, P.O. Box 7901, Madison, WI 53707-7901.

**Motor Vehicle Alternate Fuel Tax:** An alternate fuel tax is imposed on all compressed natural gas (CNG) or liquid propane (LPG) placed into the supply tank of a motor vehicle. If you purchase CNG or LPG for heating and use this fuel in your truck or automobile, you must obtain an Alternate Fuel Users License and pay the tax directly to the Department of Revenue.

If you sell or purchase alternate fuel and have questions about the alternate fuel tax, write to:

Excise Tax Section 3-107  
Wisconsin Department of Revenue  
PO Box 8900  
Madison, WI 53708-8900

Email questions to: [DORExciseTaxpayerAssistance@wisconsin.gov](mailto:DORExciseTaxpayerAssistance@wisconsin.gov)

## 8. DO YOU HAVE QUESTIONS OR NEED ASSISTANCE?

If you are unable to find an answer to your questions about sales and use taxes, visit the department's website, email, write, or call:

**Visit our website . . .** [revenue.wi.gov](http://revenue.wi.gov)

**Email . . .** [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov)

**Write . . .** Mail Stop 5-77  
Wisconsin Department of Revenue  
P.O. Box 8949  
Madison, WI 53708-8949

**Telephone . . .** (608) 266-2776

**Fax . . .** (608) 267-1030

The Department of Revenue uses a free Telecommunications Relay Service for those individuals who are deaf, hard-of-hearing, deaf-blind and speech disabled. To use the relay service to reach us, please dial "711" or visit Wisconsin Relay at [www.wisconsinrelay.com](http://www.wisconsinrelay.com) for more information.

## APPENDIX A

**CHART TO AID IN DISTINGUISHING  
REAL VS. PERSONAL PROPERTY ACTIVITIES****1. EXPLANATIONS**

**Items** — For purposes of this chart it is assumed that the items listed are all sold attached, affixed, installed, or fastened to real property by the contractor. If listed items are not sold attached to real property, etc., by the contractor, the answer given on the chart may not apply. It is also assumed that the repair of such items either occurs while the item is still attached to the real estate or the contractor removes the item, repairs it, and reinstalls it. Under other circumstances the answer given in the chart may not apply. You should also note that the information in the chart does not apply to leased property that is affixed to real property and subject to tax under sec. 77.52(1)(c), Wis. Stats.

**Residential** (columns 1 and 2)—Includes all structures or parts of structures that provide permanent living space for people (e.g., homes, apartment buildings, convalescent homes).

**Commercial** (columns 3 through 6)—All structures/property not classified as residential.

**Real Estate Function** (columns 3 and 4)—If the item serves a real estate or building function, look in columns 3 and 4 (e.g., a furnace boiler used to heat a building).

**Process Function** (columns 5 and 6)—If the item serves a process (e.g., manufacturing, farming, fabricating, retailing, etc.) function, look in columns 5 and 6 for a determination (e.g., a furnace boiler used to heat glass at a bottle manufacturing plant).

**Install** (columns 1, 3 and 5)—Includes first-time installation or replacing an existing item.

**Repair** (columns 2, 4 and 6)—Means repairing an existing item, including the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of a listed item.

**P**—Means that the item is considered personal property when used in the manner indicated in the column heading.

**RE**—Means that the item is considered real property when used in the manner indicated in the column heading.

**N/A**—Means that the item is typically not used in the manner indicated in the column heading. Look to another column.

**2. TAX EFFECT**

**Real Property**—The contractor is considered to be the consumer of materials used in performing real property construction contracts. The contractor pays sales or use tax on the cost of the materials used.

**Personal Property**—The contractor is the retailer of materials and services provided with respect to items classified as personal property. The contractor charges sales tax on the entire amount billed to the customer, including labor and materials.

**CAUTIONS**

- The information in the following chart is a generalization for instructional purposes only. The facts and circumstances in any particular situation will determine the actual tax treatment for that situation and may differ from the treatment presented here.
- The information in the following chart does not apply to leased property that is affixed to real property that is subject to sales tax under sec. 77.52(1)(c), Wis. Stats. The items also do not include affixing to real property tangible personal property that remains tangible personal property after it is affixed.

Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function Install (3)	Real Estate Function Repair (4)	Process Function Install (5)	Process Function Repair (6)
Advertising Signs (except concrete foundation)	N/A	N/A	N/A	N/A	P	P
Air Conditioners-Central	RE	P	RE	P	P	P
Air Conditioners-Window	P	P	P	P	P	P
Air Curtains	RE	RE	RE	RE	N/A	N/A
Air Ducts (general ventilation)	RE	RE	RE	RE	N/A	N/A
Antennas (portable)	P	P	N/A	N/A	P	P
Antennas (roof mounted – not satellite dish)	RE	P	N/A	N/A	P	P
Athletic and Gym Equipment	RE	P	N/A	N/A	P	P
Awnings	RE	P	RE	P	P	P
Bar Equipment	RE	P	N/A	N/A	P	P
Bathroom Fixtures (includes bathtub, sink, toilet, faucets, cabinets, mirror, exhaust fan, towel bars, toilet paper holder)	RE	P	RE	P	N/A	N/A
Boilers	RE	P	RE	P	P	P
Bridges	RE	RE	RE	RE	N/A	N/A
Broadcasting Towers (on leased land)	N/A	N/A	P	P	P	P
Broadcasting Towers (on own land)	N/A	N/A	RE	RE	RE	RE
Buildings	RE	RE	RE	RE	N/A	N/A
Buildings Sold for Removal	P	N/A	P	N/A	N/A	N/A
Burglar Alarm Fixtures (prevent unauthorized access to building or room)	RE	P	RE	P	N/A	N/A
Burglar Alarm Fixture (prevent theft of inventory or provide other business function)	N/A	N/A	N/A	N/A	P	P
Cabinets (except in bathrooms) - see p. 7	RE	RE	RE	RE	P	P
Cabinets (in bathrooms) - see p. 7	RE	P	RE	P	N/A	N/A
Cable TV Station Equipment	N/A	N/A	N/A	N/A	P	P
Camera Security Equipment (see Security Cameras)						
Canopies (not awnings)	RE	RE	RE	RE	N/A	N/A
Card Access Readers (see Door Controls)						
Carpeting	RE	P	RE	P	N/A	N/A
Carpeting (not attached to building)	P	P	N/A	N/A	P	P
Casework (see Cabinets)						
Cemetery Monuments	RE	RE	RE	RE	N/A	N/A
Central Vacuum Cleaners	RE	P	RE	P	P	P
Ceramic Tile	RE	RE	RE	RE	N/A	N/A
Chimney	RE	RE	RE	RE	RE	RE
Communication/Data Cabling (underground)	RE	RE	RE	RE	RE	RE

Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function		Process Function	
			Install (3)	Repair (4)	Install (5)	Repair (6)
Communication/Data Cabling (up to outlet point (i.e., plate on wall containing jack))	RE	RE	N/A	N/A	P	P
Communication/Data Cabling (outlet point to equipment such as computer)	P	P	N/A	N/A	P	P
Computer Room Floors	RE	RE	RE	RE	N/A	N/A
Concrete Foundations	RE	RE	RE	RE	N/A	N/A
Coolers (internal, walk-in, is one or more walls of building)	RE	P	RE	P	RE	P
Coolers (internal, walk-in, no walls are walls of building)	RE	P	N/A	N/A	P	P
Coolers (free-standing)	P	P	N/A	N/A	P	P
Counters (except in bathrooms) – see p. 7	RE	RE	RE	RE	P	P
Counters (in bathrooms) – see p. 7	RE	P	RE	P	N/A	N/A
Curtains	P	P	P	P	P	P
Dams	RE	RE	RE	RE	N/A	N/A
Dehumidifiers	RE	P	RE	P	P	P
Dishwashers	RE	P	R/E	P	P	P
Ditches	RE	RE	RE	RE	N/A	N/A
Doors	RE	RE	RE	RE	N/A	N/A
Door Controls	RE	RE	RE	RE	N/A	N/A
Drains	RE	RE	RE	RE	RE	RE
Drapes	P	P	P	P	P	P
Driveup/Walkup Windows	N/A	N/A	N/A	N/A	P	P
Dryers (clothes)	P	P	N/A	N/A	P	P
Electric Clocks	P	P	P	P	P	P
Electric Dust Collectors	RE	P	RE	P	P	P
Electric Signs - serve building function (e.g., exit sign, building name/address number if not name of specific business)	RE	P	RE	P	N/A	N/A
Electric Signs – serve business function (e.g., advertising sign)	N/A	N/A	N/A	N/A	P	P
Elevators, Building	RE	RE	RE	RE	N/A	N/A
Fans (e.g. ceiling)	RE	RE	RE	P	P	P
Faucets (not in bathroom)	RE	RE	RE	RE	P	P
Faucets (in bathroom)	RE	P	RE	P	N/A	N/A
Fencing	RE	RE	RE	RE	N/A	N/A
Fire Alarm Fixtures	RE	P	RE	P	P	P
Fireplaces permanently affixed to realty (See Chimney)	RE	P	RE	P	P	P
Fire Suppression System (to protect building or structure)	RE	RE	RE	RE	N/A	N/A
Fire Suppression System (to protect specific piece of equipment or machine (i.e., grill in a restaurant))	N/A	N/A	N/A	N/A	P	P
Fixed (year-around) Wharves and Docks	RE	RE	RE	RE	RE	RE
Flag Poles (except concrete foundation)	RE	RE	N/A	N/A	P	P
Floors	RE	RE	RE	RE	N/A	N/A
Foundations and Building Supports (including for machinery)	RE	RE	RE	RE	RE	RE
Freezers (see Coolers))						
Furnaces	RE	P	RE	P	P	P
Furniture	P	P	N/A	N/A	P	P
Garage Door Openers	RE	RE	RE	RE	N/A	N/A



Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function Install (3)	Repair (4)	Process Function Install (5)	Repair (6)
Garbage Disposals	RE	P	RE	P	P	P
Gas and Electric Logs	P	P	P	P	P	P
Gasoline Pumps	RE	RE	N/A	N/A	P	P
General Lighting *in offices, business facilities, schools, and hospitals	RE	RE	RE	P*	N/A	N/A
General Electrical Wiring	RE	RE	RE	RE	P	P
Generators (See Stand-by Generators)						
Grain Bins	N/A	N/A	RE	RE	N/A	N/A
Grain Elevators (building portion)	N/A	N/A	RE	RE	N/A	N/A
Grain Handling Equipment Within the Build- ing and Grain Elevator Legs	N/A	N/A	N/A	N/A	P	P
Grills and Rotisseries	RE	P	N/A	N/A	P	P
Heating, Cooling, and Vent. System Units	RE	P	RE	P	P	P
Hoists	RE	RE	N/A	N/A	P	P
Home Theater Systems						
Cabinets (in-wall)	RE	P	N/A	N/A	P	P
Receivers, DVD players, VHS players	P	P	N/A	N/A	P	P
Screens (non-motorized, wall-mounted)	P	P	N/A	N/A	P	P
Screens (motorized, in ceiling)	RE	R/E	N/A	N/A	P	P
Speakers (in-wall)	RE	RE	N/A	N/A	P	P
Speakers (free-standing)	P	P	N/A	N/A	P	P
Television sets	P	P	N/A	N/A	P	P
Wiring (speakers, in-wall)	RE	RE	N/A	N/A	P	P
Wiring (speakers, not in wall)	P	P	N/A	N/A	P	P
Humidifiers (addition to furnace)	RE	P	RE	P	P	P
Improvements to Land (except landscaping)	RE	RE	RE	RE	N/A	N/A
Incinerators	RE	P	RE	P	P	P
Intercoms	RE	P	N/A	N/A	P	P
Jukeboxes	P	P	N/A	N/A	P	P
Kitchen Cabinets (see Cabinets)						
Laundry, Dry Cleaning Machines	P	P	N/A	N/A	P	P
Light Fixtures (see General Lighting)						
Linoleum Covering Floor	RE	RE	RE	RE	N/A	N/A
Loading Platforms	RE	RE	RE	RE	N/A	N/A
Lockers	RE	RE	N/A	N/A	P	P
Lockers (attached to the structure in bathrooms of schools, laboratories, and hospitals)	N/A	N/A	RE	P	N/A	N/A
Manufactured Homes on Leased Land (regardless of whether or not "on a foundation")	P	P	P	P	P	P
Manufactured Homes on Owned Land ("on a foundation")	RE	RE	RE	RE	RE	RE
Manufactured Homes on Owned Land (not "on a foundation")	P	P	P	P	P	P
Music and Sound Equipment	RE	P	N/A	N/A	P	P
Night Depository Equipment	N/A	N/A	N/A	N/A	P	P
Office, Bank, and Savings & Loan Office Machines	N/A	N/A	N/A	N/A	P	P
Ovens (including hoods and exhaust system)	RE	P	N/A	N/A	P	P
Parking Lot Lights	RE	RE	RE	P	N/A	N/A

Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function		Process Function	
			Install (3)	Repair (4)	Install (5)	Repair (6)
Partitions and Movable Walls (affixed to walls, floor or ceiling of building)	RE	RE	RE	RE	N/A	N/A
Partitions and Moveable Walls (not affixed)	P	P	N/A	N/A	P	P
Piers (seasonal)	P	P	P	P	P	P
Pneumatic Tube System	N/A	N/A	N/A	N/A	P	P
Ponds	RE	RE	RE	RE	RE	RE
Portable Appliances	P	P	P	P	P	P
Portable Lamps	P	P	P	P	P	P
Pumps	RE	P	RE	P	P	P
Radio and TV Sets	P	P	N/A	N/A	P	P
Radio Station Equipment	N/A	N/A	N/A	N/A	P	P
Railroad Signs and Signals	P	P	P	P	P	P
Railway Switch Tracks	RE	RE	RE	RE	RE	RE
Recreational and Sporting Equipment (except water park slides)	RE	P	N/A	N/A	P	P
Remote TV Auto Teller System	N/A	N/A	N/A	N/A	P	P
Restaurant and Tavern Equipment	N/A	N/A	N/A	N/A	P	P
Roads	RE	RE	RE	RE	N/A	N/A
Roofs	RE	RE	RE	RE	N/A	N/A
Safe Deposit Boxes	N/A	N/A	N/A	N/A	P	P
Sanitation and Plumbing System	RE	RE	RE	RE	N/A	N/A
Satellite Dish (compact roof mounted)	P	P	N/A	N/A	P	P
Satellite Dish (large with concrete foundation)	RE	P	N/A	N/A	P	P
Seating in Auditoriums and Theaters	N/A	N/A	N/A	N/A	P	P
Seating in Restaurants and Taverns	N/A	N/A	N/A	N/A	P	P
Security Cameras (prevent unauthorized access to building or room in building)	RE	RE	RE	RE	N/A	N/A
Security Cameras (protect inventory or provide other business function)	N/A	N/A	N/A	N/A	P	P
Sewers, Drain, Storm, Sanitation	RE	RE	RE	RE	N/A	N/A
Shades	P	P	P	P	P	P
Sidewalks	RE	RE	RE	RE	N/A	N/A
Signs (see specific type)						
Silos	N/A	N/A	RE	RE	N/A	N/A
Sinks (other than bathroom fixtures)	RE	P	RE	P	P	P
Sprinkler Systems (fire safety)	RE	RE	RE	RE	P	P
Stair Lifts	RE	RE	RE	RE	P	P
Stairways	RE	RE	RE	RE	P	P
Stand-by Generators	RE	RE	RE	RE	P	P
Standing Timber Sold for Removal	P	N/A	P	N/A	N/A	N/A
Stop and Go Lights	P	P	P	P	P	P
Storage Tanks Assembled or Constructed on Site	RE	RE	RE	RE	RE	RE
Storm Doors and Windows	RE	RE	RE	RE	N/A	N/A
Street Lights	RE	RE	RE	RE	N/A	N/A
Street Identification Signs	P	P	P	P	P	P
Structural and Other Improvements to Buildings	RE	RE	RE	RE	RE	RE
Sump Pumps	RE	P	RE	P	P	P
Swimming Pools (wholly or part in ground)	RE	P	RE	P	RE	P
Tables	RE	P	N/A	N/A	P	P
Telephone Wiring (underground)	RE	RE	RE	RE	N/A	N/A

Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function		Process Function	
			Install (3)	Repair (4)	Install (5)	Repair (6)
Telephone Wiring and Jacks (up to outlet point (i.e., plate on wall containing jack))	RE	RE	N/A	N/A	P	P
Temporary Electrical Service	P	P	P	P	P	P
Theater Stage Lights and Projection Equipment	N/A	N/A	N/A	N/A	P	P
Thermostats (wall mounted)	RE	RE	RE	RE	P	P
Traffic Signs and Signals (e.g., stop, yield)	P	P	P	P	P	P
Transformers (on easement/leased property)	P	P	P	P	P	P
Transformers (on owner's property)	RE	RE	RE	RE	P	P
Truck Platform Scale Foundations	N/A	N/A	RE	RE	RE	RE
Truck Platform Scales	N/A	N/A	N/A	N/A	P	P
TV Station Equipment	N/A	N/A	N/A	N/A	P	P
Underground Concrete Foundations	RE	RE	RE	RE	N/A	N/A
Underground Irrigation System (farm)	N/A	N/A	P	P	P	P
Underground Irrigation System (nonfarm)	RE	RE	RE	RE	RE	RE
Underground Tanks	RE	RE	RE	RE	RE	RE
Underground Utility Lines	RE	RE	RE	RE	N/A	N/A
Utility Transmission/Distribution Lines Above Ground on Right-of-Way	P	P	P	P	P	P
Vault Doors	RE	RE	N/A	N/A	P	P
Venetian Blinds	P	P	P	P	N/A	N/A
Washers (clothes)	P	P	N/A	N/A	P	P
Water Heaters	RE	P	RE	P	P	P
Water Lines - Drinking, Sanitation, Fire	RE	RE	RE	RE	RE	RE
Water park Slides (steel support beams and waterslide flumes)	N/A	N/A	N/A	N/A	RE	P
Water Softeners	RE	P	RE	P	P	P
Wells	RE	RE	RE	RE	N/A	N/A
Windows (except driveup/walkup)	RE	RE	RE	RE	N/A	N/A

APPENDIX B

Wisconsin Sales and Use Tax Treatment of Security and Related Systems

ASSUMPTION: All items are affixed to realty.

Where Installed?	Door Access		Burglar Alarm System		Fire Alarm System		Fire Suppression System		Security Camera		Communications Equipment and Communications Cabling		Ink Tag Security System		Baby Band System		CCTV Cameras	
	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility
Serves What Purpose (Why Installed)?	Used to prevent unauthorized access to building or room	Used to prevent theft of inventory, property or other business function	Any	To protect building or structure	Any	To protect building or structure	To protect specific machine/equipment	To protect inventory, other property or other business function	To prevent unauthorized access to building or room	Used to protect inventory, other property or other business function	Any	Any	Any	Any	Any	Any	Used to prevent unauthorized access to building or room	Used to prevent theft of inventory, property or other business function
Character of Property for:																		
New Installation or Complete Replacement of	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	TPP <sup>2&amp;4</sup>	TPP <sup>2</sup>	RP <sup>1</sup>	TPP <sup>2</sup>	RP <sup>1</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	RP <sup>1</sup>	TPP <sup>2</sup>
Repair or Other Service to	RP <sup>1</sup>	TPP <sup>3</sup>	TPP <sup>3</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	TPP <sup>2&amp;4</sup>	TPP <sup>2&amp;3</sup>	RP <sup>1</sup>	TPP <sup>2</sup>	TPP <sup>3</sup>	TPP <sup>2&amp;3</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	TPP <sup>2</sup>	RP <sup>1</sup>	RP <sup>1</sup>	TPP <sup>2</sup>
Some Common Examples (not all-inclusive)	Card access reader (NOTE: cards are TPP)			General building sprinkler systems			Sprinkler systems designated to protect a specific machine	Camera monitoring a patient's activities within a hospital room	Camera monitoring doorway	Music and sound systems	Intercoms Sound paging systems Pneumatic tube systems Telephones Public address systems Music and sound systems	Alarm is activated when customer removes tag from above that still has an ink tag on	Alert hospital personnel when baby is removed from floor	CCTV camera that monitors areas of a nursing home	CCTV camera monitoring doorway	CCTV camera monitoring a patient's activities within a hospital room		

RP= real property; TPP = tangible personal property

<sup>1</sup>Contractor's sale of or service to RP not taxable. Contractor pays sales or use tax on purchases.

<sup>2</sup>Contractor's sale of or service to TPP taxable, unless an exemption applies. Contractor may purchase without tax for resale parts and materials that it physically transfers to customer.

<sup>3</sup>The law deems that certain items retain their character as TPP for purposes of repair or other service to (but not new installation or complete replacement). Contractor may purchase without tax for resale parts and materials that it physically transfers to customer with repair or other service.

<sup>4</sup>Exemption applies if fire suppression system is a safety attachment to machinery and equipment used exclusively and directly in the manufacture of TPP.

**EXCEPTION FOR LEASED OR RENTED PROPERTY:** When a contractor is the lessor of affixed property, the contractor is deemed to be leasing TPP, regardless of the function of the property (i.e., whether or not the property serves a building function) and the extent to which the property is affixed to real estate, unless the contractor is also the lessor of the real estate (i.e., building) to which the property is affixed.

CAUTIONS:

- When installing real property for exempt entities (e.g., churches, schools, federal governmental units), the exempt entity's tax exempt status *does not* flow through to the contractor. The contractor is the consumer of the materials that it uses in making a real property improvement and owes sales or use tax on its purchases of such materials.
- A contractor *may not* issue an exemption certificate (for resale) when the contractor knows at the time of purchase the contractor will be installing the property in a real property improvement.
- Contractors installing property in jails and long-term detention facilities should contact the Department of Revenue for more information about what remains tangible personal property when installed.

**NOTES:** a) If item has more than one use, the determination of whether the item is real property or tangible personal property is based on primary (more than 50%) use.  
b) Exemption may apply for certain professional sports stadiums, waste treatment facilities, or Native American construction projects.

## APPENDIX C

**COUNTIES THAT HAVE ADOPTED THE 0.5% COUNTY SALES AND USE TAX AND EFFECTIVE DATES**

Listed below are the 66 counties that have adopted the 0.5% county tax as of January 1, 2019, and the effective date for each county's tax.

County Name	Effective Date	County Name	Effective Date
Adams (01)	1/1/94	Langlade (34)	4/1/88
Ashland (02)	4/1/88	Lincoln (35)	4/1/87
Barron (03)	4/1/86	Marathon (37)	4/1/87
Bayfield (04)	4/1/91	Marinette (38)	10/1/01
Brown (05)	1/1/18	Marquette (39)	4/1/89
Buffalo (06)	4/1/87	Milwaukee (40)	4/1/91
Burnett (07)	4/1/89	Monroe (41)	4/1/90
Calumet (08)	4/1/18	Oconto (42)	7/1/94
Chippewa (09)	4/1/91	Oneida (43)	4/1/87
Clark (10)	1/1/09	Ozaukee (45)	4/1/91
Columbia (11)	4/1/89	Pepin (46)	4/1/91
Crawford (12)	4/1/91	Pierce (47)	4/1/88
Dane (13)	4/1/91	Polk (48)	4/1/88
Dodge (14)	4/1/94	Portage (49)	4/1/89
Door (15)	4/1/88	Price (50)	1/1/93
Douglas (16)	4/1/91	Richland (52)	4/1/89
Dunn (17)	4/1/86	Rock (53)	4/1/07
Eau Claire (18)	1/1/99	Rusk (54)	4/1/87
Florence (19)	7/1/06	St. Croix (55)	4/1/87
Fond du Lac (20)	4/1/10	Sauk (56)	4/1/92
Forest (21)	4/1/95	Sawyer (57)	4/1/87
Grant (22)	4/1/02	Shawano (58)	4/1/90
Green (23)	1/1/03	Sheboygan (59)	1/1/17
Green Lake (24)	7/1/99	Taylor (60)	7/1/99
Iowa (25)	4/1/87	Trempealeau (61)	10/1/95
Iron (26)	4/1/91	Vernon (62)	1/1/97
Jackson (27)	4/1/87	Vilas (63)	4/1/88
Jefferson (28)	4/1/91	Walworth (64)	4/1/87
Juneau (29)	4/1/92	Washburn (65)	4/1/91
Kenosha (30)	4/1/91	Washington (66)	1/1/99
Kewaunee (31)	4/1/17	Waupaca (68)	4/1/89
La Crosse (32)	4/1/90	Waushara (69)	4/1/90
Lafayette (33)	4/1/01	Wood (71)	1/1/04