

Electrical Contractors

**How Do Wisconsin Sales and
Use Taxes Affect Your
Business?**

Table of Contents

	Page		Page
I. INTRODUCTION.....	1	V. ILLUSTRATIONS	8
A. General.....	1	A. Contractor Acts As a Consumer	8
B. Nature of the Sales and Use Tax	1	1. Nontaxable Residential Activity	8
C. Tax Rate.....	2	2. Nontaxable Activity in Commercial	
D. Seller’s Permit.....	2	Establishments	9
E. Use Tax Registration.....	2	3. Other	9
F. Business Tax Registration.....	2	B. Contractor Acts As a Retailer.....	9
G. Filing Tax Returns and Payment of Tax.....	2	1. Sales Without Installation of	
II. IS AN ELECTRICAL CONTRACTOR A		Materials and Equipment	9
CONSUMER OR A RETAILER?	2	2. Residential Structures	9
A. When Is an Electrical Contractor a		3. Commercial Establishment	10
Consumer?	2	4. Other Illustrations of Personal	
B. When Is an Electrical Contractor a Retailer?		Property Activities	10
III. AN ELECTRICAL CONTRACTOR MUST		C. Contractor May Act As Both Retailer and	
DISTINGUISH BETWEEN REAL		Consumer on Same Job.....	10
PROPERTY AND PERSONAL PROPERTY		VI. COUNTY AND STADIUM USE TAX ON	
ACTIVITIES.....	3	CONSTRUCTION MATERIALS	10
A. Why?.....	3	A. General.....	10
B. Contractor Is a Retailer	3	B. County Tax	11
C. Contractor Is a Consumer	3	C. Stadium Tax	11
D. When Contractors Are Both Consumers and		VII. RECORDKEEPING	12
Retailers	4	A. General.....	12
E. Exceptions to Items B and C.....	4	B. Records to Keep-Exempt Sales.....	12
IV. REAL AND PERSONAL PROPERTY		C. Contractor’s Billings to its Customers	12
DISTINGUISHED	6	VIII. QUESTIONS OR ADDITIONAL	
A. Wiring and Associated Equipment.....	6	INFORMATION	13
B. Fixtures, Appliances, Machinery, and		A. Department of Revenue Assistance.....	13
Equipment.....	6	B. Other Information	13
1. Property That Becomes a Part of		1. Sales and Use Tax Report	13
Real Property After Installation	6	2. Publications.....	13
2. Property That Remains Personal		3. Wisconsin Tax Bulletin.....	13
Property After Installation	6	4. Rules-Wisconsin Administrative	
3. Property Having a Variety of		Code.....	14
Functions	7	5. Topical and Court Case Index.....	14
4. Property That by Law Retains its		Appendix A — Section Tax 11.68, Wis. Adm. Code,	
Character as Personal Property for		Construction contractors	15
Repair and Maintenance Purposes			
Regardless of Attachment to Real			
Property	7		

IMPORTANT CHANGES

Application for Business Tax Registration. The Application for Permit/Certificate (Form A-101) is replaced by the Application for Business Tax Registration (Form BTR-101). Page 2.

Waste Treatment Facilities. The law change eliminating the property tax requirement for pre-approval of industrial waste treatment facilities (except utility facilities) is addressed. Page 4.

Professional Football Stadium. Information is added regarding the exemption for items used in the construction, renovation, or development of a professional football stadium. Page 5.

Business and Residential Facilities. Language addressing the characterization of property in business and residential facilities is updated to reflect terminology used in the statutes. Various pages.

County Tax. The list of counties with a county tax has been updated. Page 11.

Football Stadium Tax. Information is added regarding the 0.5% football stadium tax in Brown County. Various pages.

Office Closures. The list of Department of Revenue offices has been updated to reflect office closures and additional contact information is provided. Page 13.

I. INTRODUCTION

A. General

This publication provides general information about the Wisconsin state, county, and stadium sales and use taxes as they affect electrical contractors. It explains how the sales tax applies to the contractor's gross 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 V to clarify when an electrical contractor's sales and purchases are subject to the tax.

If, after reading this publication, a contractor has questions about sales and use taxes, any Department of Revenue office may be contacted for free assis-

tance. (See Part VIII for a listing of department offices.)

CAUTION

The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of November 1, 2002. Laws enacted after this date, new administrative rules, and court decisions may change the interpretations in this publication.

B. Nature of the Sales and Use Tax

1. The sales tax is imposed upon the gross receipts of retailers who sell, lease, or rent tangible personal property or taxable services at retail in Wisconsin. Generally, a sale of personal property is at retail unless the buyer purchases the property for the purpose of reselling it. An electrical contractor's services are taxable if the services are applied to tangible personal property which remains personal property after the service, or to certain items which when originally installed constituted realty improvements but, for repair and service purposes, are designated by law to be personal property.
2. The use tax complements the sales tax and is imposed upon the storage, use, or other consumption in Wisconsin of tangible personal property or taxable services on which the Wisconsin sales tax was not paid when originally purchased. For example, a use tax is imposed upon a purchaser when property is purchased for resale, but instead is used by the purchaser and not resold. Another example is when property is purchased without tax, stored in Wisconsin, and subsequently used outside Wisconsin in real property construction.

If a transaction is exempt from the sales tax it is also exempt from the use tax.

3. If a contractor performs taxable services, such as repair and maintenance of tangible personal property, for an exempt entity, and the contractor accepts an exemption certificate in good faith, the gross receipts from the services, and materials transferred in connection with such services, are not taxable. However, exemption certificates do not apply if a contractor is engaged in improving

realty for an exempt entity. As explained later in this publication, the contractor pays a sales or use tax on the contractor's cost of materials consumed in constructing, altering, or repairing realty. For additional information on construction for exempt entities, obtain from any Department of Revenue office Publication 207, *Sales and Use Tax Information for Contractors*.

C. Tax Rate

The tax rate of 5% is the same for both the Wisconsin state sales and use tax. The sales tax is based upon gross receipts from retail sales. The use tax is based upon the sales price of the property or service purchased. In counties which have adopted the county tax, the tax rate is 5.5% (5% state tax and 0.5% county tax). In counties where the stadium tax applies, the tax rate is 5.1%, 5.5%, or 5.6% (5% state tax, 0.1% baseball or 0.5% football stadium tax, and 0.5% county tax, if applicable).

D. Seller's Permit

The seller's permit shows that a retailer is properly registered with the Department of Revenue, as required by law. Every person desiring to engage in the business of selling taxable property or services in Wisconsin must file an Application for Business Tax Registration with the department. Application forms (Form BTR-101) may be obtained from any Department of Revenue office or on-line. This completed form should be mailed to the department at least three weeks before business operations begin. It is a misdemeanor to sell taxable property or services without a permit.

E. Use Tax Registration

If a contractor is not required to hold a seller's permit and regularly has a use tax obligation because purchases are made without tax, the contractor should apply for a *Consumer's Use Tax Certificate*. (**Note:** Persons having a seller's permit as described in Part D above report both their sales and use tax liabilities on their sales tax return, Form ST-12.) Contractors from other states engaged solely in real property construction activities in Wisconsin also must obtain this certificate.

Contractors from other states engaged in both real property construction and the sale, installation, repair, or other service of personal property in Wisconsin

should obtain a *Use Tax Certificate*. Out-of-state contractors who only have use tax liability in Wisconsin are not required to hold a seller's permit.

To obtain either of the use tax certificates, an Application for Business Tax Registration (Form BTR-101) must be filed by the contractor with the Department of Revenue, as described in Part D above, to become registered.

F. Business Tax Registration

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.

G. 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. A reporting period may be either monthly, quarterly, or annually depending on the person's tax liability. The Department of Revenue will notify each person of their reporting period and the due date for filing returns.

II. IS AN ELECTRICAL CONTRACTOR A CONSUMER OR A RETAILER?

Contractors usually are engaged in improving real estate. Thus, they are consumers and normally pay tax on their purchases.

A. When Is an Electrical Contractor a Consumer?

An electrical contractor is a consumer of tangible personal property when engaged in real property construction activities such as improving, altering, installing, repairing, or otherwise servicing real property. For example, a contractor is the consumer of wire used in wiring a new house being constructed.

"Real property construction activities" means activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who af-

fixed the property 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.

B. When Is an Electrical Contractor a Retailer?

Under the Wisconsin law, an electrical contractor may be a retailer with respect to some activities and a consumer with respect to others. An electrical contractor is a retailer when selling or servicing tangible personal property or installing property which remains personal property after installation. The contractor also is a retailer when repairing or maintaining types of property which are ordinarily considered real property, but are deemed to have retained their character as personal property for repair and maintenance purposes under sec. 77.52(2)(a)10, Wis. Stats. For example, a contractor is a retailer when the contractor:

1. Sells, but does not install, tangible personal property such as light bulbs, electrical supplies, light fixtures, or other personal property.
2. Sells and/or installs tangible personal property which remains personal property after installation (for example, a window air conditioner or free-standing stove or refrigerator).
3. Repairs, alters, fits, cleans, paints, coats, inspects, maintains, or provides other service to tangible personal property which remains personal property after installation. (See Part IV.B.2. for a description of such property.)
4. Repairs, alters, fits, cleans, paints, coats, inspects, maintains, or provides other service to certain property which is considered under the law (sec. 77.52(2)(a)10, Wis. Stats.) to retain its character as 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. (See Part IV.B.4. for a description of such property.)

III. AN ELECTRICAL CONTRACTOR MUST DISTINGUISH BETWEEN REAL PROPERTY AND PERSONAL PROPERTY ACTIVITIES

A. Why?

An electrical contractor must distinguish between its real and personal property activities to determine when the contractor is acting as a retailer or as a consumer, since the contractor's sales and purchases are taxed differently under each situation, as previously discussed.

B. Contractor Is a Retailer

When an electrical contractor is a retailer, it must obtain a seller's permit (or use tax certificate if an out-of-state contractor), file returns (Form ST-12), and pay the sales tax on its gross receipts from the retail sale of tangible personal property or taxable services. The contractor may purchase without sales or use tax the property sold and transferred to the customer in the installation, repair, or servicing of personal property. This is done by issuing an exemption certificate claiming resale to its supplier of such property.

C. Contractor Is a Consumer

When an electrical contractor is a consumer, its gross receipts from labor and material related to real property activity are not subject to the sales tax. The contractor will, in most instances, pay a sales or use tax on its purchases of property consumed in improving realty. If the contractor does not pay tax on purchases of property, he or she will be required to pay use tax directly to the state on property used in improving realty. For example, the contractor's billing for both labor and materials for wiring a new house is not subject to sales tax. However, the contractor should have paid sales tax to its supplier when purchasing the wire and other materials used in wiring the house, or pay use tax directly to the state.

If the contractor knows which materials are to be used in real property activity, the contractor should pay the sales or use tax on such purchases. However, if the contractor is both a retailer because it has taxable repairs, and consumer of items used in improving realty, and does not know at the time of purchase whether the materials purchased will be used in real or personal property activity, special consideration must be given

as to how to handle this tax situation as described in Part D below.

D. When Contractors Are Both Consumers and Retailers

A contractor who is 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 thereby 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 return and is liable for the tax based on the sales price to the customer. However, if the materials are used in a real property activity, the contractor must pay a use tax on its purchase price of the materials.

Example: A contractor purchases 1,000 feet of wire for \$100 (10¢ a foot). The 600 feet of wire sold “over-the-counter” (retail sale) for \$120 is taxable ($\$120 \times 5\% = \6 sales tax). The \$6 tax must be remitted to the Department of Revenue. If the remaining 400 feet of wire is used to wire a home (a real property activity), the contractor must also remit to the department a 5% use tax for the cost of the 400 feet of wire ($\$40 \text{ cost} \times 5\% = \2 use tax).

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, the contractor must report sales tax for the sales on its sales 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 taxable retail sale of the materials is made by the contractor.

Example: 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 on the wire purchased by the contractor may be taken on line 5 of Form ST-12 for the period in which the \$150 taxable sale of wire is reported by the contractor.

E. Exceptions to Items B and C

There are two exceptions to the general sales and use tax treatment as described in items B and C. These exceptions are:

1. Waste Treatment Facilities

a. Industrial Facilities

If an industrial or utility waste treatment facility qualifies for the property tax exemption under sec. 70.11(21)(a), Wis. Stats., the construction materials which become a component part of the facility also qualify 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. No prior approval is needed for manufacturing or other commercial waste treatment facilities.

To determine if a utility waste treatment facility has been approved for a property tax exemption by the Department of Revenue, contact the department as follows:

Department of Revenue
Bureau of Utility and Special Taxes
Mail Stop 6-97
PO Box 8971
Madison, WI 53708-8971
Telephone (608) 266-8162.

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

Section Tax 11.11, Wis. Adm. Code, entitled “Waste treatment facilities (industrial and

governmental),” provides more information on this subject.

b. Municipal (Government) Facilities

Construction materials which become a component part of a 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:

- i. Wastewater treatment facilities. In general terms, this is everything within the fence, except storm sewers, water supply systems, private domestic wastewater facilities, and collection and discharge systems.
- ii. Sanitary landfills. This includes collection and burner systems, laboratory equipment, maintenance buildings, garages, office buildings, fences, and gates.
- iii. 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 claim the waste treatment facility exemption.

c. Purchases by Contractors and Subcontractors

The sales tax exemption for waste treatment facilities includes the purchases of tangible personal property by a contractor-installer who incorporates these purchases into a waste treatment facility.

The contractor should certify on an exemption certificate, Form S-211, the intended

exempt use of the item and give the Form S-211 to its supplier. Suppliers of construction or repair materials for waste treatment facilities should not charge sales tax on such sales if they accept from the purchaser in good faith an exemption certificate (Form S-211).

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.

d. Repair Services, Chemicals, and Supplies

The repair, service, alteration, cleaning, painting, and maintenance of exempt waste treatment facilities, including repair and replacement parts are exempt. The exemption also applies to chemicals and supplies, including fuel and electricity, used to carry out the treatment process.

2. *Professional Sports and Entertainment and Football 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 or 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 and football home stadiums; 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.

IV. REAL AND PERSONAL PROPERTY DISTINGUISHED

In determining whether a contractor's activity involves real or personal property, the following guidelines apply:

A. Wiring and Associated Equipment

1. Wiring and associated equipment such as transformers, breakers, fuse boxes, buss ducts, relays, piping, and outlet sockets serving real property, such as a home or other building, are considered real property, regardless of whether they: (a) provide electrical power to real property components such as light fixtures, heating, cooling, and ventilating systems, elevators, and escalators, or (b) provide electrical power to personal property within the structure such as to stoves, refrigerators, and portable lamps.
2. Wiring and associated equipment which provide electrical power to operate personal property within real property (e.g., a home or other building), are real property from the source of electricity entering the building to the outlet point within the building where the personal property is connected by plug or other means to the electrical power supply. If no outlet point within the building exists (for example, the power supply consists of continuous wire and circuit breakers from the power source to the item of personal property served) the wiring is considered real property to the point it connects directly with the item of personal property.
3. Wiring between and within personal property is personal property.

B. Fixtures, Appliances, Machinery, and Equipment

Tangible personal property, such as fixtures, appliances, machinery, and equipment, which are installed by electrical contractors may remain personal property after installation or become a part of real property. The status of certain types of personal property depends upon the function of the property after installation, the type of building in which it is installed, or whether the law specifically dictates its character as personal property. Accordingly, fixtures, appliances, machinery, and equipment installed by contractors may be categorized as follows:

1. Property That Becomes a Part of Real Property After Installation

Installation of personal property that becomes a part of real property does not constitute a taxable sale. The contractor is the consumer of such materials. Examples of such items are:

- a. Built-in household items such as dishwashers, garbage disposals, and incinerators.
- b. Improvements to buildings, including central air conditioning, elevators, heating, cooling, and ventilating systems, and lighting facilities.
- c. Residential water heaters, water softeners, and garage door openers (except portable equipment).
- d. Street and parking lot lighting.
- e. Walk-in cold storage units where one or more walls are walls of a building.
- f. Built-in communications equipment, such as communication cabling, intercoms, and music and sound equipment in residential buildings, but not in offices, business facilities, schools, and hospitals.
- g. Counters and cabinets attached to the structure in residential buildings, but not in offices, business facilities, schools, and hospitals, when used to carry on the trade or business.

2. Property That Remains Personal Property After Installation

Installation of other kinds of personal property do not constitute the improvement of real estate, but instead constitute a taxable service by the contractor. Examples of such items are:

- a. Radio and television sets, clothes washers and dryers, portable lamps, home freezers, portable appliances, and window air conditioners.
- b. Communications equipment, such as communications cabling, intercoms, and music and sound equipment, in offices, business facilities, schools, and hospitals, but not in residential facilities, including personal resi-

dences, apartments, long-term care facilities, certain state institutions and correctional facilities.

- c. Counters and cabinets used to carry on a trade or business attached to the structure in offices, business facilities, schools, and hospitals, but not in residential facilities, including personal residences, apartments, long-term care facilities, certain state institutions and correctional facilities. Cabinets in public restrooms are not considered tangible personal property when installed because they are not used to carry on a trade or business.
- d. Machinery, equipment, and appliances used in a processing or manufacturing function, including wiring within or interconnecting such equipment.
- e. Office, bank, and savings and loan association equipment including office machines, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, camera security equipment, and vault doors.
- f. Personal property used to carry on a trade or business, installed in taverns, night clubs, restaurants, ice arenas, bowling centers, hotels and motels, barber and beauty shops, figure salons, theaters, motor vehicle service stations, office buildings, etc.
- g. Radio, television, and cable television station equipment.
- h. Advertising signs, except their concrete foundations.
- i. Theater stage lights and projection equipment.
- j. Overhead utility transmission and distribution lines installed on land owned by others.
- k. Personal property such as electrical lines, transformers, and switches installed temporarily to provide electrical service during construction.
- l. Traffic and railroad signals.

3. *Property Having a Variety of Functions*

Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others. Examples are boilers, furnaces, pumps, stand-by generators, substations, and transformers. When such property is installed primarily to provide service to a building or structure and is essential to the building or structure, the installation is a real estate improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, the installation is a service to personal property. See sub. (5) of sec. Tax 11.68, Wis. Adm. Code, "Construction contractors" in Appendix A for the three criteria the Wisconsin Supreme Court uses to determine whether personal property becomes part of real property when installed.

4. *Property That by Law Retains its Character as Personal Property for Repair and Maintenance Purposes Regardless of Attachment to Real Property*

The Wisconsin law (sec. 77.52(2)(a)10, Wis. Stats.) provides that for purposes of repair and other servicing of property, the items listed below retain their character as personal property, regardless of the extent of their attachment to real property. The charges for labor and material involved in the repair or service of such property are taxable, although the original installation or complete replacement may not have been taxable. 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 by way of illustration, but not of limitation:

- 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
- juke boxes
- 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

V. ILLUSTRATIONS

A. Contractor Acts As a Consumer

The following examples illustrate when a contractor is acting as a consumer in real property activity. The contractor's gross receipts from this type of activity are not subject to the sales tax; however, the contractor pays a sales or use tax on the contractor's purchase of materials consumed in such activity.

1. Nontaxable Residential Activity

- a. The installation of wiring in a residential home or apartment during construction or remodeling, including all wiring for property that becomes a part of realty after installation and all wiring to the outlet sockets servicing portable personal property such as radio and television sets, clothes dryers and washers, stoves, refrigerators, freezers, and window air conditioners.
- b. The installation or complete replacement of built-in household items such as dishwashers, garbage disposals, incinerators, furnaces, and water heaters and their associated wiring. (Note: The repair or servicing of these built-in items may be taxable if they are deemed by law to be personal property solely for the purpose of repair or service. See Part IV.B.4.)
- c. The repair, service, or replacement of all wiring considered to be real property. For example, an electrician is called to examine a cooking range which is not working. The problem is caused by faulty wiring between the breaker and the outlet socket to which the range is plugged. The wiring and socket are replaced. No part of the charge is subject to tax since real property was repaired, not the range.
- d. The replacement of a defective wall switch for a built-in garbage disposal. However, if the switch was located directly on the disposal unit and was an integral part of such unit, the repair or replacement of the switch would be taxable since the unit itself is

deemed by law to retain its character as personal property for repair purposes.

2. *Nontaxable Activity in Commercial Establishments (stores, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels, motels, barber and beauty shops, figure salons, theaters, motor vehicle service stations, office buildings, etc.)*

- a. The installation of electrical wiring during construction or remodeling. The wiring is considered to be real property up to an outlet socket to which personal property is connected. If there is no socket or other connecting point between the breaker and the item of equipment serviced by the line, the wiring is real property to the point it connects directly with the personal property.
- b. The repair, service, or replacement of all wiring and associated equipment which is considered to be real property.
- c. The installation in an office of a 120 volt outlet for a copy machine.
- d. The installation or repair of wiring in a supermarket from the power source to the connecting point of wiring serving cash registers and related computers, but not the interconnecting wiring within the system.
- e. The installation or repair of wiring in a bowling center from the power source to the connecting point of wiring serving pin setting and score keeping equipment, but not interconnecting wiring within the system.
- f. The installation, alteration, or repair of wiring in a motor vehicle service station from the outside power source directly to fuel dispensing equipment.

3. *Other*

- a. The installation, alteration, repair, or service of wiring serving machinery and equipment from the real property power source to the connecting point with machinery and equipment.
- b. The installation, alteration, repair, or service of a hospital's wiring serving its operating

equipment from the power source to the connecting point with operating room equipment.

B. Contractor Acts As a Retailer

The following examples illustrate when a contractor is acting as a retailer. In these situations, the contractor is liable for sales tax on its gross receipts from such activities. The contractor may add the sales tax to the sales price. It may purchase without tax any tangible personal property sold at retail and transferred to the customer in the repair of personal property.

1. *Sales Without Installation of Materials and Equipment*

- a. The retail sale of items such as light fixtures, switches, light bulbs, electrical tape, fuses, and wiring.
- b. The sale of wiring, switches, relays, light fixtures, bulbs, tape, fuses, and other equipment or supplies to another electrical contractor who does not give an exemption certificate to the seller because the material will be used in real property construction.

2. *Residential Structures*

The sale, installation, repair, or servicing of personal property, and the repair or servicing of items deemed by law to be personal property, as explained in Part IV.B.4., is a retail activity. Examples are:

- a. The sale and installation of a window air conditioner.
- b. Repair of the internal wiring within a residential stove or range and the replacement of the burners in a stove or range.
- c. Repair of the internal wiring and replacement of a defective part within a residential heating furnace.
- d. Examination of a residential hot water heater and replacement of a defective element.
- e. Examination of a faulty residential sump pump and recommendation for replacement.
- f. Replacement of a defective cord on a residential washing machine.

- g. Removal and reinstallation of controls on a residential range.

3. *Commercial Establishment (stores, manufacturing facilities, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels, motels, barber and beauty shops, figure salons, theaters, motor vehicle service stations, office buildings, etc.)*

Many types of fixtures and equipment, which in residences and other structures are considered to be part of realty, are personal property in commercial establishments. The installation, alteration, repair, or servicing of such items and related wiring to its connecting point with realty (as explained in Part IV.A.2) is a retail activity subject to the sales tax. Examples are:

- a. Examine faulty portable conveyor in a retail establishment and replace motor.
- b. Examine, tighten, and demosturize all contacts on hoist controls in a service station.
- c. Replace defective ballast in a lamp in an office.
- d. Locate short and replace wiring between starter and motor on grain bin conveyor.
- e. Examine controls on a conveyor system, install temporary controls, and order replacement parts.
- f. Replace defective fixture end and tube in a supermarket's frozen food case.
- g. Examine and replace switch on supermarket checkout counter conveyor belt.
- h. Set electrical gauges on storage tanks that are personalty.
- i. Add microphone and amplifier near supermarket front door and extend the speaker wire.
- j. Examine meters for service station's gasoline dispensing equipment.
- k. Install reflectors in light fixtures in an office.

4. *Other Illustrations of Personal Property Activities*

- a. The installation, alteration, repair, or service of a printing press and the wiring within or interconnecting printing presses. The tax applies unless the contractor receives and accepts in good faith an exemption certificate.
- b. The installation of operating room equipment in a hospital and the wiring between such equipment. The tax applies unless the hospital is able to give the contractor an exemption certificate or a Certificate of Exempt Status (CES) number.
- c. The installation of communication equipment and communication cabling in offices, business facilities, schools, and hospitals.
- d. The installation, alteration, or repair of wiring in a motor vehicle station, from the submersible pump to the fuel dispensing equipment.

C. Contractor May Act As Both Retailer and Consumer on Same Job

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

- 1. A contractor wires a new warehouse and also installs conveyors within the warehouse. The contractor charges a sales tax for installing the conveyor but does not charge a sales tax on the wiring from the conveyor to the power source.
- 2. A contractor installs a new frozen food counter in a supermarket and must install wiring from the power source to an outlet. The new line from the power source to the outlet is a real property improvement; thus, the contractor's charges for labor and material in installing the wiring are not taxable. The charges for installing the counter and the wiring from the counter to the outlet are taxable.

VI. COUNTY AND STADIUM USE TAX ON CONSTRUCTION MATERIALS

A. General

A county or stadium use tax is imposed upon a contractor engaged in construction activities within a

county which has adopted the county tax or a county where the stadium tax applies on the sales price of tangible personal property that is used in constructing, altering, repairing, or improving real property and that becomes a component part of real property in that county. A county tax is not imposed if the contractor has paid the county tax or a similar local sales tax in another state equal to the Wisconsin county tax on that property. A stadium tax is not imposed if the contractor paid another stadium district tax, or similar local sales tax in another state, equal to the stadium tax on that property. Building materials which become a component part of real property are used and consumed at the job site.

The county or stadium sales or use tax on the sale of building materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others is not imposed if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county or stadium 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 that date.

B. County Tax

Following are the 57 counties that have adopted the 0.5% county tax as of January 1, 2003, and the effective date for each county's tax:

Counties With County Tax

County	Effective Date	County	Effective Date
Adams	1/1/94	Eau Claire	1/1/99
Ashland	4/1/88	Forest	4/1/95
Barron	4/1/86	Grant	4/1/02
Bayfield	4/1/91	Green	1/1/03
Buffalo	4/1/87	Green Lake	7/1/99
Burnett	4/1/89	Iowa	4/1/87
Chippewa	4/1/91	Iron	4/1/91
Columbia	4/1/89	Jackson	4/1/87
Crawford	4/1/91	Jefferson	4/1/91
Dane	4/1/91	Juneau	4/1/92
Dodge	4/1/94	Kenosha	4/1/91
Door	4/1/88	La Crosse	4/1/90
Douglas	4/1/91	Lafayette	4/1/02
Dunn	4/1/86	Langlade	4/1/88

Counties With County Tax

County	Effective Date	County	Effective Date
Lincoln	4/1/87	Rusk	4/1/87
Marathon	4/1/87	St. Croix	4/1/87
Marinette	10/1/01	Sauk	4/1/92
Marquette	4/1/89	Sawyer	4/1/87
Milwaukee	4/1/91	Shawano	4/1/90
Monroe	4/1/90	Taylor	7/1/99
Oconto	7/1/94	Trempealeau	10/1/95
Oneida	4/1/87	Vernon	1/1/97
Ozaukee	4/1/91	Vilas	4/1/88
Pepin	4/1/91	Walworth	4/1/87
Pierce	4/1/88	Washburn	4/1/91
Polk	4/1/88	Washington	1/1/99
Portage	4/1/89	Waupaca	4/1/89
Price	1/1/93	Waushara	4/1/90
Richland	4/1/89		

As of January 1, 2003, there is **no** county sales and use tax in the following 15 Wisconsin counties.

Counties Without County Tax

Brown	Kewaunee	Rock
Calumet	Manitowoc	Sheboygan
Clark	Menominee	Waukesha
Florence	Outagamie	Winnebago
Fond du Lac	Racine	Wood

If any other counties adopt (or repeal) the county tax, persons with a seller's permit or use tax certificate will be notified by the Department of Revenue.

C. Stadium Tax

The baseball stadium tax is effective in the following counties:

Milwaukee	Racine	Waukesha
Ozaukee	Washington	

The football stadium tax of 0.5% became effective November 1, 2000, in Brown County

Refer to Publication 201, *Wisconsin Sales and Use Tax Information*, for more detailed information about the county and stadium tax.

VII. RECORD KEEPING

A. General

Every person required to have a seller's permit, consumer's use tax certificate, or use tax certificate must keep adequate records of business transactions to enable the person, as well as the Department of Revenue, to determine the correct amount of tax for which the person is liable. Such person is required to 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. Any person who fails or refuses to keep adequate records may be subject to penalties.

Any person engaged in the business of making sales at retail, who is at the same time engaged in some other nontaxable business, occupation, or profession, must keep books to show separately the transactions used in determining the tax due. In the event of failure to keep such separate books, the tax may be imposed upon the total receipts from all the person's operations.

B. Records to Keep - Exempt Sales

If an electrical contractor claims that part or all of its retail sales of tangible personal property or taxable services are exempt from sales and use tax, the contractor is required to 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 that the sale was exempt from tax.

The reason for keeping such records is that the sales and use tax law provides that all gross receipts are taxable until the contrary is established. The seller has the burden of proving that a sale of tangible personal property or taxable services is exempt, unless the seller takes a certificate (or other information as described in number 3 below) in an approved form in good faith from the purchaser which indicates that the property or service being purchased is for resale or is otherwise exempt.

Three common reasons that sales of tangible personal property or taxable services may be exempt are as follows:

1. The use to be made of the item purchased is exempt or 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 seller should obtain a completed exemption certificate (Form S-211) from the purchaser.

2. The purchasing organization is exempt (e.g., Wisconsin public schools and municipalities, federal government).

Sales to the federal government and Wisconsin governments, municipalities, and public schools should be supported by one of the following:

- a. A purchase order or similar written document identifying the governmental unit as the purchaser.
- b. An exemption certificate (Form S-211).
- c. Recording the federal or Wisconsin governmental unit's Certificate of Exempt Status (CES) number on the invoice.

Exempt sales to nonprofit organizations holding a Certificate of Exempt Status (e.g., church) can be supported by an exemption certificate (Form S-211) or by recording the 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 Certificate of Exempt Status) to the Department of Revenue for a Certificate of Exempt Status and, if approved, will be issued a CES number by the department.

3. The purchaser furnishes the seller (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.

Note: If exemptions are claimed for any of the above three reasons, the seller must keep as part of his or her records the completed certificates, purchase orders, or invoices to prove that the sales were exempt.

C. Contractor's Billings to its Customers

To determine its sales and use tax liability, an electrical contractor must segregate its billing charges (gross receipts) according to whether the contractor is acting

as a retailer (selling or providing labor or services to personal property) or as a consumer (improving, altering, or repairing real property). The billing for each transaction, job, or contract must be set forth so that charges for labor performed and materials used that are subject to the sales tax are identified and segregated from nontaxable charges for real property activity. 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.

VIII. QUESTIONS OR ADDITIONAL INFORMATION

A. Department of Revenue Assistance

If you have a question about sales and use taxes, write to the department in Madison or call or visit any department office.

Write . . . Wisconsin Department of Revenue
Mail Stop 5-77
PO Box 8902
Madison, WI 53708-8902

Telephone . . . (608) 266-2776

Fax . . . (608) 267-1030

E-Mail . . . sales10@dor.state.wi.us

Visit our web site . . . www.dor.state.wi.us

Department of Revenue offices are located in: Appleton, Baraboo, Beaver Dam, Eau Claire, Elkhorn, Fond du Lac, Grafton, Green Bay, Hayward, Hudson, Janesville, Kenosha, La Crosse, Lancaster, Madison, Marinette, Milwaukee, Oshkosh, Racine, Rhinelander, Rice Lake, Sheboygan, Superior, Tomah, Waukesha, Wausau, and Wisconsin Rapids.

B. Other Information

1. Sales and Use Tax Report

The Sales and Use Tax Report is published one or more times each year by the Department of Revenue, and is mailed without charge to all persons holding a seller's permit or use tax certificate. It includes general information about sales and use tax, including new tax laws enacted by the legislature.

2. Publications

You may obtain the following sales and use tax publications from any Department of Revenue office.

Number	Name
201	Wisconsin Sales and Use Tax Information
202	Sales and Use Tax Information: Motor Vehicle Sales, Leases, and Repairs
203	Sales and Use Tax Information for Manufacturers
205	Do You Owe Use Tax? (Individuals)
206	Sales Tax Exemption for Nonprofit Organization
207	Sales and Use Tax Information for Contractors
210	Sales and Use Tax Treatment of Landscaping Services
211	Sales and Use Tax Information for Cemetery Monument Dealers
213	Businesses: Do You Owe Use Tax on Imported Goods?
214	Do You Owe Use Tax? (Businesses)
216	Filing Claims for Refund of Sales or Use Tax
217	Auctioneers
219	Hotels, Motels, and Other Lodging Providers
220	Grocers
221	Farm Suppliers and Farmers
222	Motor Vehicle Users - Do You Owe Use Tax?
223	Bakeries
224	Veterinarians
225	Barber and Beauty Shops
226	Golf Courses
227	E-File Sales Tax Returns
229	Brackets for Collecting Wisconsin Sales or Use Tax Paid on Retail Sales
403	Premier Resort Area Taxes
410	Local Exposition Taxes

3. Wisconsin Tax Bulletin

The **Wisconsin Tax Bulletin** is a quarterly publication of the Department of Revenue which is distributed to those persons who have purchased a subscription. The Bulletin includes information on

most taxes administered by the Department of Revenue, including sales and use, income, franchise, and excise taxes. It includes up-to-date information on new tax laws, interpretations of existing laws, and information on filing returns. It gives brief excerpts of major Wisconsin tax cases decided by the Wisconsin Tax Appeals Commission and the courts.

The Bulletins can also be found on-line at (<http://www.dor.state.wi.us/ise/wtb/index.html>).

4. *Rules-Wisconsin Administrative Code*

The **Wisconsin Administrative Code** includes administrative rules that interpret the Wisconsin Statutes. Rules have the force and effect of law. The Department of Revenue has adopted a number of rules pertaining to sales and use tax.

A subscription and up-date service, which provides all new Department of Revenue rules and changes to existing rules, is available from Document Sales. Sales and use tax rules, can also be found online at (www.legis.state.wi.us/rsb/code/tax/tax011.pdf).

5. *Topical and Court Case Index*

The Topical and Court Case Index is a two-part index. The first part (a Topical Index) will help you find the particular Wisconsin statute, administrative rule, Wisconsin Tax Bulletin tax release, publication, private letter ruling, or Attorney General opinion that deals with your particular tax question. The second part of the index (a Court Case Index) lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions relating to your question.

The Topical and Court Case Index, costs \$18 (plus sales tax). The index is published each December with an addendum to the index provided each May.

Note: The Wisconsin Tax Bulletin, Administrative Code, and Topical and Court Case Index may be ordered from Document Sales using Form A-110.

APPENDIX A

WISCONSIN ADMINISTRATIVE SECTION TAX 11.68

Tax 11.68 Construction contractors. (1) **DEFINITION.** In this section, “real property construction activities” means activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the 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.

Note: The definition of real property construction activities was revised effective for sales of property pursuant to contracts entered into on or after December 1, 1997, to:

(a) Reverse the effect of the Wisconsin Supreme Court decision in the case of *Wisconsin Department of Revenue vs. Sterling Custom Homes* (283 N.W. 2d 573 (1979)) prospectively from the effective date of this revision, and

(b) Provide by statute those criteria that were used by the Supreme Court in the case of *Dept. of Revenue vs. A.O. Smith Harvestore Products, Inc.* (72 Wis. 2d 60, (1976)), for purposes of determining whether tangible personal property becomes real property. The meaning of each of the criteria is explained in the Supreme Court’s decision.

(2) **GENERAL.** (a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller’s permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15day time period within which the department is required to act on permit applications.

(b) Contractors are retailers of:

1. Property it installs which retains its character as personal property after sale and installation.

Note: Refer to subs. (5) and (7) for the classification of property.

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation.

Note: Refer to subs. (5) and (7) for the classification of property.

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of items of real property which retain their character as tangible personal property for repair purposes.

Note: Refer to sub. (11) for a description of real property which retains its character as tangible personal property for repair purposes.

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(3) **REAL PROPERTY CONSTRUCTION CONTRACTORS.** (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in activities such as building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering and tile and terrazzo work.

(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property which becomes a part of real property after installation.

Example: A hot water heater or water softener sold and installed in a purchaser’s residence by a retailer becomes real property after installation. The retailer is considered to be a real property contractor.

(4) **PURCHASES BY CONTRACTORS.** (a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the consumers of building materials

which they use in altering, repairing or improving real property. Therefore, suppliers' sales of building materials to contractors who incorporate the materials into real property in performing construction activities are subject to the tax. This includes raw materials purchased outside Wisconsin that are used by a contractor in manufacturing tangible personal property outside Wisconsin, or that are fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and are subsequently stored, used or consumed in Wisconsin by that contractor.

Note: Prior to August 12, 1993, raw materials purchased outside Wisconsin that were used by a contractor in manufacturing tangible personal property outside Wisconsin or that were fabricated or altered outside Wisconsin by a contractor so as to become different or distinct items of tangible personal property from the constituent raw materials, and were subsequently stored, used or consumed in Wisconsin by that contractor were not subject to tax pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(b) 1. Property which a construction contractor will resell as personal property may be purchased without tax for resale. This property includes personal property furnished as part of a real property construction activity when the personal property retains its character as personal property after installation. This property also includes personal property furnished as part of a real property construction activity when provided as part of a taxable landscaping service.

Note: Refer to subs. (5) and (7) for the classification of property.

2. Taxable services which a construction contractor will resell may be purchased without tax for resale.

(c) Machinery and equipment, including road building equipment, tunnel shields, construction machines, and cement mixers, tools, including power saws and hand tools, and supplies, including machine lubricating and fuel oils, form lumber and industrial gases, purchased by a construction contractor for the contractor's use are generally either consumed in the process of construction or are removed when the project is completed. The contractor is the consumer of the personal property and shall pay the tax on its purchases of the property. However, an exemption is provided in s. 77.54 (5) (d), Stats., for mobile cement mixers used for mixing and processing and the motor vehicle or trailer on which a mobile mixing unit is mounted, including accessories, attachments, parts, supplies and materials for the vehicles, trailers and units.

(d) Under s. 77.54 (26), Stats., contractors may purchase without sales or use tax tangible personal property which becomes a component part of an industrial waste treatment facility that would be exempt under s. 70.11 (21) (a), Stats., if the property were taxable under ch. 70, Stats., or a municipal waste treatment facility, even though they are the consumers of the property.

Note: Refer to s. Tax 11.11 regarding industrial and municipal waste treatment facilities.

(e) Under s. 77.54 (26m), Stats., contractors may purchase without sales or use tax waste reduction and recycling machinery and equipment, including parts, which are exclusively and directly used for waste reduction and recycling activities which reduce the amount of solid waste generated, reuse, recycle or compost solid waste or recover energy from solid waste, even though they are the consumers of the property.

Examples: 1) Equipment used in a foundry to clean sand so that the sand can be reused qualifies for exemption.

2) Equipment used to remove impurities from lubricating oil used in manufacturing machines so that the oil can continue to be used by the manufacturer qualifies for exemption.

3) Equipment used to produce fuel cubes qualifies for exemption. This equipment shreds waste paper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary and then compresses the materials into fuel cubes which are burned by homeowners or others to replace wood.

4) A roto-mill machine that mines old pavement and grinds up the mined materials to be reused in construction activities qualifies for exemption.

5) Large steel waste collection containers, including dumpsters, which may be picked up and dumped into waste collection trucks or hauled away on flatbed trucks, or which may mechanically compact the waste in the container do not qualify for exemption.

(f) Under s. 77.54(41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11(36), Stats. Section 70.11(36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and 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.

(5) CLASSIFICATION OF PROPERTY AFTER INSTALLATION. (a) Contractors shall determine whether a particular contract or transaction results in an improvement to real property or in the sale and installation of personal property. In determining whether personal property becomes a part of real property, the following criteria shall be considered:

1. Actual physical annexation to the real property.

2. Application or adaptation to the use or purpose to which the real property is devoted.

3. An intention on the part of the person making the annexation to make a permanent accession to the real property.

Note: See *Dept. of Revenue vs. A. O. Smith Harvestore Products, Inc.* (1976), 72 Wis. 2d 60, regarding determining whether personal property becomes a part of real property.

(b) Certain types of property that have a variety of functions may be personal property in some instances and additions to real property in others, including boilers, furnaces, standby generators, pumps, substations and transformers. When this property is installed primarily to provide service to a building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed in a manufacturing plant to perform a processing function, it may, as machinery, retain its status as personal property.

(6) PERSONAL PROPERTY WHICH BECOMES A PART OF REALTY. A construction contractor is the consumer of personal property, such as building materials, which is incorporated into or becomes a part of real property, and sales of this personal property to a contractor are subject to the tax. Personal property which becomes a part of real property includes the following:

(a) Boilers and furnaces for space heating.

(b) Built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems and incinerators.

(c) Cemetery monuments.

(d) Buildings, and structural and other improvements to buildings, including awnings, canopies, carpeting, foundations for machinery, floors, including computer

room floors, partitions and movable walls attached in any way to realty, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air conditioning units, building elevators, sanitation and plumbing systems, and heating, cooling and ventilation systems.

(e) Fixed or year-around wharves and docks.

(f) Improvements to land, including retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems except systems sold to and for use by farmers, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes and fire protection.

(g) Planted nursery stock. However the sale of nursery stock to a landscape contractor, who uses the nursery stock in providing taxable landscaping services, is not subject to the tax.

(h) Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment, except portable equipment.

(i) Silos and grain elevators.

(j) Swimming pools, wholly or partially underground.

(k) Storage tanks constructed on the site.

(L) Street and parking lot lighting.

(m) Truck platform scale foundations.

(n) Walk-in cold storage units becoming a component part of a building.

(7) PROPERTY PROVIDED UNDER A CONSTRUCTION CONTRACT WHICH REMAINS PERSONAL PROPERTY. (a) Contractors shall obtain a seller's permit and report for taxation gross receipts from the sale and installation of personal property, furnished under a construction contract, which retains its character as personal property after installation, such as:

1. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.

2. Communication equipment, including intercoms, pneumatic tube systems, satellite dishes, roof mounted

antennas, CATV wiring and music and sound equipment in business, industrial or commercial buildings, schools and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

3. Casework, tables, counters, cabinets, lockers, sinks, athletic and gymnasium equipment, and related easily movable property attached to the structure in schools, laboratories and hospitals, but not in apartment buildings, convalescent homes or other residential buildings.

4. Machinery, including safety attachments, equipment, tools, appliances, process piping and wiring used exclusively by manufacturers, industrial processors and others performing a processing function with the items.

5. Office, bank and savings and loan association 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 and vault doors.

6. Personal property used to carry on a trade or business, including fixtures and equipment installed in stores, taverns, night clubs, restaurants, ice arenas, bowling centers, hotels and motels, barber and beauty shops, figure salons, theaters and gasoline service stations. Underground storage tanks at gasoline service stations are real property.

7. Shades, curtains, drapes, venetian blinds and associated hardware.

8. Radio, television and cable television station equipment, but not broadcasting towers installed on their owner's land.

9. Except as provided in ss. 77.51 (4) (b) 6 and (15) (b) 5 and 77.54 (31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51 (4) (b) 6 and (15) (b) 5 and 77.54 (31), Stats., for 35% of the total amount for which a new mobile home is sold; provided it is a primary housing unit, or that is transported in 2 unattached sections and the total size of the combined sections, not including additions or attachments, is at least 984 square feet measured when the sections are ready for transportation; and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

10. Advertising signs, except their underground concrete foundations. A foundation is underground even

though a portion of the foundation extends above the grade.

11. Buildings and standing timber sold for removal.

12. Utility transmission and distribution lines installed above ground on land owned by others as provided in s. Tax 11.86 (1), and oil and gas pipeline pumping station equipment.

13. Commercial and industrial incinerators which do not become an integral part of the building.

14. Seating in auditoriums and theaters, and theater stage lights and projection equipment.

15. Stop and go lights, railroad signs and signals and street identification signs.

(b) If a few items of tangible personal property or taxable services, minor in cost in relation to the total amount of a contract, are sold as part of a contract which includes construction of a building or other structure and no separate charge is made for the personal property or taxable services, the cost of the property or taxable services to the construction contractor shall be used as the measure of gross receipts subject to sales tax. If a separate charge is made for any of the items, they are subject to the tax.

Examples: 1) A refrigerator and drapes are included in the contract to construct a new house. The cost of the refrigerator and drapes to the construction contractor is included in the construction contractor's measure of gross receipts subject to sales tax.

2) Landscaping services, minor in amount, are included in the contract to construct a new house. An amount equal to the charge by the landscaping subcontractor to the general contractor for landscaping services is included in the general contractor's measure of gross receipts subject to sales tax.

(8) PROPERTY PURCHASED BY A PERSON WHO PERFORMS BOTH CONSTRUCTION CONTRACTING AND RETAIL SELLING, WHEN DESTINATION OF PROPERTY PURCHASED IS UNKNOWN AT TIME OF PURCHASE. Section 77.51 (2), Stats., provides in part that "A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which he has sound reason to believe he will sell to customers for whom he will not perform real property construction activities involving the use of such property." However, some construction contractors who also sell construction supplies at retail do not know when they purchase these supplies whether they will be consumed in construction contracts or resold to others. In

these instances, a construction contractor may do one of the following at the time of making purchases:

(a) Give a resale certificate to suppliers and purchase the property without tax. If the contractor later resells the property, the contractor shall report the sales and collect and remit the tax on the sales price to customers. If the property is used in fulfillment of a construction contract, the contractor shall pay a use tax on its purchase price.

(b) Pay sales tax to suppliers on all property purchased. If the property is later consumed in fulfilling a construction contract, the tax obligation is taken care of. If the property is resold at retail, the contractor shall collect and remit sales tax on these retail sales, but may take as a credit against the sales tax any tax paid to suppliers at purchase.

(9) PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY. (a) The sales tax exemption provided to governmental units and other exempt entities, such as churches and nonprofit hospitals, does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of these building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation.

Examples: 1) A contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or governmental building, since the property becomes a part of realty after installation.

2) A contractor shall pay tax on its purchases of equipment for use at a municipal well or pumping station, that becomes a part of realty after installation.

(b) A contractor may purchase without tax as property for resale tangible personal property which retains its character as personal property after installation as described in sub. (7) and taxable services, even though the resale of the property or taxable services by the contractor is exempt when sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. This property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. Taxable services include landscaping services. This exemption does not apply to property or taxable services which becomes a part of real property as described in sub. (6) and par. (a).

(10) USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN. (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside Wisconsin for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made.

(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or property was used prior to being stored in Wisconsin.

(c) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

Note: The use tax as provided for in sub. (10) does not apply prior to August 12, 1993, to raw materials purchased outside Wisconsin that are, prior to being stored, used or consumed in Wisconsin, manufactured into tangible personal property by that contractor outside Wisconsin, or that are fabricated or altered outside Wisconsin by that contractor so as to become different or distinct items of tangible personal property from the constituent materials pursuant to the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (2/10/92).

(11) CONSTRUCTION AND REPAIR SERVICES. (a) A contractor who performs real property construction activities may not add tax to any charge for labor or material, since gross receipts from these activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of the materials and becomes a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on this service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of these services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that “. . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, 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 and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.”

(d) Charges for tangible personal property, such as a repair part, incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property incorporated into it is deemed purchased by the contractor for resale and, therefore, may be purchased without tax.

Example: If a contractor is engaged to repair a refrigerator, whether freestanding personal property or built-in so as to be a part of real property, in a home, the repair service and any charge for parts are taxable.

(12) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.51 (4) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52 (2) (a) 10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless

of the extent to which fastened to, connected with or built into real property. Among these items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for repair of tangible personal property covered by both statutes, such as a furnace boiler, are taxable, but charges for services in totally replacing the property are not taxable. In the nontaxable situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not taxable.

(13) COUNTY AND STADIUM TAXES ON BUILDING MATERIALS. (a) Section 77.71 (3), Stats., imposes excise taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing or improving real property within a county or special district which has adopted the county or stadium tax. The taxes are measured by the sales price of the tangible personal property used in constructing, altering, repairing or improving real property which becomes a component part of real property in that county or special district, unless the contractor has paid the county or stadium tax of a county or special district in this state or a similar local sales tax in another state on the purchase of that property.

(b) Building materials which become a component part of real property are used and consumed at the job site.

(c) In providing repair services to real property subject to taxation under s. 77.52 (2) (a) 10, Stats., a contractor may purchase without county or stadium tax for resale the building materials used in providing the taxable services, and the county and stadium taxes imposed under s. 77.71 (3), Stats., do not apply to those purchases.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others are not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance or special district resolution, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The county and stadium taxes under s. 77.71 (3), Stats., on building materials used in real property construction activities is not imposed if the contractor purchased the building materials before the effective date

of the county or stadium tax of that county or special district or has paid the sales tax of another county or special district in this state in purchasing the building materials.

Note: Section Tax 11.68 interprets ss. 77.51 (2), (4) (b) 6 and (c) 4, (14) (intro.), (g) and (i) and (15) (b) 5 and (c) 2, 77.52 (2) (a) 10, 11 and 20, 77.53(1), 77.54 (5) (d), (6) (a), (26), (26m), (31) and (41), 77.71 (3) and 77.77 (3), Stats.)

Note: The interpretations in s. Tax 11.68 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Vault doors were not considered personal property until August 1, 1975; (b) Service station equipment such as underground tanks, gasoline pumps and hoists installed in or securely attached to their owner's land was real property, but the property was personal property if the personal property and land were owned by different persons prior to August 1, 1975; (c) Advertising signs were real property if erected on and securely attached to the owner's land prior to August 1, 1975; (d) Landscaping services became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981; (e) The exemption for waste reduction and recycling machinery and equipment became effective July 1, 1984, pursuant to 1983 Wis. Act 426; (f) The exemption for mobile units used for mixing and processing became effective July 20, 1985, pursuant to 1985 Wis. Act 29; (g) The credit for local sales taxes paid to other states became effective April 1, 1986, pursuant to 1987 Wis. Act 27; (h) The exemption for safety attachments for manufacturing machines became effective June 1, 1986, pursuant to 1985 Wis. Act 149; (i) The exemption of 35% of the selling price of new mobile homes and 100% of the selling price of used mobile homes became effective January 1, 1987, pursuant to 1985 Wis. Act 29; (j) The exemption for property used in constructing professional sports and home entertainment stadiums became effective October 1, 1991, pursuant to 1991 Wis. Act 37; (k) The 35% reduction in gross receipts for new mobile homes transported in 2 unattached sections became effective October 1, 1991, pursuant to 1991 Wis. Act 39; (L) Tangible personal property purchased outside Wisconsin, stored in Wisconsin and subsequently used outside Wisconsin became taxable October 1, 1991, pursuant to 1991 Wis. Act 39; (m) Raw materials purchased outside Wisconsin, manufactured, fabricated or otherwise altered by the contractor outside Wisconsin and used in real property construction by the contractor in Wisconsin became subject to use tax effective August 12, 1993, pursuant to 1993 Wis. Act 16; (n) In *Tom Kuehne Landscape Contractor, Inc. vs. Wisconsin Department of Revenue*, Wisconsin Court of Appeals, District IV, No. 861813, October 29, 1987 (CCH 202919), highway signs, sign bridges, delineator posts and guardrails were found to remain tangible personal property after installation; (o) The stadium tax on building materials became effective January 1, 1996, pursuant to 1995 Wis. Act 56; and (p) The change to the definition of "real property construction activities" to include only those activities that take place at a site where tangible personal property is affixed to real property became effective for sales of property pursuant to contracts entered into on or after December 1, 1997, pursuant to 1997 Wis. Act 27.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a) 2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337; emerg. cr. (12), eff. 3-24-86; cr. (12), Register, October, 1986, No. 370, eff. 11-1-86; am. (9) (a), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (g) and (12) (a), Register,

April, 1990, No. 412, eff. 5-1-90; am. (1) (b) 1., 2. and 3., (2) (a) and (b), (3) (b) and (c), (4) (a) (intro.) and (b), (5) (intro.), (b), (e), (f), (h) and (j), (6) (a) 2., 4., 5., 6., 9. and 10. and (b), (7), (8), (9) (a), (10) (a), (b) and (d) and (11), cr. (3) (d) and (e), Register, June, 1991, No. 426, eff. 7-1-91; renum. (9) (b) to be (c); cr. (2) (c), (3) (f) and (9) (b), am. (6) (a) (intro.), 9., 10., (10) (a), (c), and (12) (c), Register, December, 1992, No. 444, eff. 1-1-93; am. (3) (a), Register, April 1994, No. 460, eff. 5-1-94; am. (4)(a)2., (5)(L) and (10)(c), cr. (6)(a)15., Register, October 1997, No. 502, eff. 11-1-97; renum. (1), (2) (a) and (b) and (3) (a), (b), (c) to (f) and (4) to (12) to be (2), (3) (a) and (b), and (4) (a), (b) 1., (c) to (f) and (5) to (13) and am. (2) (b) 1., (4) (f), (7) (a) 6., 9., (b), (9) (b), (11) (c), (13) (a) and (c) to (e), cr. (1) and (4) (b) 2., r. (2) (c), Register, June, 1999, No. 522, eff. 7-1-99.