

## **Important Changes**

- Menominee County tax begins April 1, 2020
- Baseball stadium district tax ends March 31, 2020
- Outagamie County tax begins January 1, 2020
- Calumet County tax begins April 1, 2018
- Brown County tax begins January 1, 2018

# **Electrical Contractors**

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

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### IMPORTANT CHANGES

- **Exemption Relating to Lump Sum Contracts.** Effective for contracts entered into on and after October 1, 2013, 2013 Wis. Act 20 created an exemption for a contractor's sale of taxable products sold in a lump sum contract for real property construction if the selling price of the taxable products is less than 10% of the total contract price. The contractor is deemed the consumer of the taxable products sold, unless sold to an exempt entity. See Part II.D.3., beginning on page 14.
- **Exemption for Materials, Supplies, Equipment and Landscaping Services Used to Build Sports and Entertainment Arena Facilities.** Effective August 14, 2015, 2015 Wis. Act 60 created a sales and use tax exemption for building materials, supplies, equipment, and landscaping services purchased by owners, lessees, contractors, sub-contractors, 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. The exemption will no longer apply one year after the Secretary of Administration issues the certification under sec. 229.42(4e)(d), Wis. Stats. See Part IV.E., on page 22 for additional information.
- **Exemption for Building Materials Sold to Contractors For Use in Constructing Certain Facilities for Certain Exempt Entities.** An exemption was created in 2015 Wis. Act 126 for building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the materials to an entity described in sec. 77.54(9a)(b), (c), (d), (em), or (f), Wis. Stats., if the materials becomes a component of a facility in this state that is owned by the entity. This exemption applies to contracts entered into on or after January 1, 2016. See Part IV.F., on page 23 for additional information.
- **Sheboygan and Kewaunee Counties Adopt County Tax.** The 0.5% county tax was adopted by Sheboygan and Kewaunee Counties, became effective January 1, 2017 and April 1, 2017, respectively. See Part V.C. on page 26 and Appendix A on page 37.
- **Purchases of Construction Information Transferred Electronically.** Information has been added regarding the tax treatment of purchases by contractors of construction project information such as new construction projects available for the contractor to bid on and projects plans and specifications, where the contractor accesses or obtains this information electronically. See Part VI.D., on page 31, for additional information.
- **Security and Burglar and Fire Alarm Systems.** A chart has been added which summarizes the Wisconsin sales and use tax treatment for the sales, installation, and maintenance and repair of security and burglar and fire alarm systems. See Appendix B on page 38.

## 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 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. Parts V.C. and D. and Appendix A 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 VIII. for information on how to contact the department.)

**CAUTION**

- The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and effect as of May 1, 2017. Laws enacted after this date, new administrative rules, and court decisions may change the interpretations in this publication.
- The examples and lists of taxable and nontaxable sales and purchases are not all-inclusive. They merely set forth common examples.

**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 furnish taxable services at retail in Wisconsin. Generally, 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.

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 II. of this publication.

**Use Tax:** The Wisconsin use tax is a 5% tax generally 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 seller, no Wisconsin tax is charged by the seller, 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 seller, no Wisconsin tax is charged by the seller, 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 Tax?**

Sales, licenses, leases, and rentals of the following property, items, and goods 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](#) – *Digital Goods*, 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 X.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% is the same for both the Wisconsin state sales 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 property, item, good, or service purchased. In counties which have adopted the county tax (see Appendix A 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 and baseball stadium tax apply).

#### **E. Registration**

- **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 sales of taxable product or services without a seller's permit. See Part III. of [Publication 201](#) for additional information relating to seller's permit requirements for disregarded entities.

- **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 certificate.

- **Application**

A person may apply for a seller's permit or one of the use tax certificates described above 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.

- **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, except certain retailers who voluntarily registered through the [Streamlined Sales Tax Governing Board's website](#). 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. eFile 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. eFile 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 at [revenue.wi.gov/pages/onlineservices/eftgen.aspx](http://revenue.wi.gov/pages/onlineservices/eftgen.aspx).

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 the Department of Revenue at [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov).

## II. ELECTRICAL 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.

The contractor's sales and purchases are taxed differently in each of these two situations.

### 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\(2\)\(a\)10, Wis. Stats.](#)).
- d. Performing other taxable services such as landscaping services.
- e. Installing property under Part I.C.3.
- f. Selling or servicing items, property, or goods described in Part I.C.2. to 4.



If a contractor is a retailer, it must obtain a seller's permit, file tax returns ([Form ST-12](#)), and pay the sales tax on its **sales price** from the retail sale of tangible personal property, property, items or goods, or taxable services unless an exemption applies.

**Example:** A contractor repairs the internal wiring in a stove 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**, without sales or use tax, taxable products that are either sold or physically or electronically 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 Streamlined Sales and Use Tax - Wisconsin Certificate of Exemption ([Form S-211-SST](#)), claiming resale to the supplier of such property, item, or good. 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 stove parts which will be used in repairing stoves 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 property, item, or good used in completing this service if that property, item, or good is not sold and physically transferred to the customer. This includes items such as cleaning solutions and small tools 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. Sales of Materials and Equipment Without Installation*

- i. The retail sale of items such as light fixtures, switches, light bulbs, electrical tape, fuses, and wiring.
- ii. 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.

### *b. 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 III.B.4., is a retail activity. Examples are:

- i. The sale and installation of a window air conditioner.
- ii. Repair of the internal wiring within a residential stove or range and the replacement of the burners in a stove or range.
- iii. Repair of the internal wiring and replacement of a defective part within a residential heating furnace.
- iv. Examination of a residential hot water heater and replacement of a defective element.
- v. Examination of a faulty residential sump pump and recommendation for replacement.
- vi. Replacement of a defective cord on a residential washing machine.

- vii. Removal and reinstallation of controls on a residential range.
- c. *Commercial Establishments (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 III.A.2) is a retail activity subject to the sales tax. Examples are:

- i. Examine faulty portable conveyor in a retail establishment and replace motor.
  - ii. Examine, tighten, and demosturize all contacts on hoist controls in a motor vehicle service station.
  - iii. Replace defective ballast in a lamp in an office.
  - iv. Locate short and replace wiring between starter and motor on grain bin conveyor.
  - v. Examine controls on a conveyor system, install temporary controls, and order replacement parts.
  - vi. Replace defective fixture end and tube in a supermarket's frozen food case.
  - vii. Examine and replace switch on supermarket checkout counter conveyor belt.
  - viii. Set electrical gauges on storage tanks that are personal property.
  - ix. Add microphone and amplifier near supermarket front door and extend the speaker wire.
  - x. Examine meters for service station's gasoline dispensing equipment.
  - xi. Install reflectors in light fixtures in an office.
- d. *Other Illustrations of Personal Property Activities*
    - i. 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 an exemption certificate from the purchaser.
    - ii. 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.
    - iii. The installation of communication equipment and communication cabling in offices, business facilities, schools, and hospitals.
    - iv. The installation, alteration, or repair of wiring in a motor vehicle service station, from the submersible pump to the fuel dispensing equipment.

## **C. Contractor as a Consumer**

### **1. When Is a Contractor a Consumer?**

A contractor is a consumer of taxable products that it uses when performing real property construction activities, such as improving, altering, installing, repairing, or otherwise servicing real property. See Part IV. for exceptions.

A contractor is also the consumer of taxable products, 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 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 property and goods 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 are **not** subject to sales tax.

**Note:** A contractor who performs a real property construction activity is not permitted to collect the sales tax from its customers on its sales price from sales of real property construction activities. Instead, the tax is imposed on the sale of the materials to the contractor. The tax imposed on the contractor’s purchases of the materials used in the real property construction activity increases the cost of the contractor’s building materials and, presumably, in negotiating the contract, the tax on the contractor’s purchases will be taken into consideration as a cost of doing business.

**Example:** A contractor is installing electrical wiring during the new construction of a customer’s residence. The contractor is the consumer of the wiring and must pay sales or use tax on its purchase of the wiring. The contractor’s charge to the customer for the labor and materials used in installing the wiring is not subject to tax.

If the contractor does not pay sales tax on its purchases of taxable products that 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 invoice for both labor and materials for installing electrical wiring in a house is not subject to sales tax. However, the contractor should either: (1) pay sales tax to its supplier when purchasing the wiring, breakers, buss ducts, and other associated equipment used in installing the new electrical wiring in the house, or (2) pay use tax directly to the Wisconsin Department of Revenue on the wiring, breakers, buss ducts, and other associated equipment.

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 has taxable receipts from the sale of building materials and a consumer of the same type of building materials because they are used 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 VI.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 this type of activity 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.

### *a. Nontaxable Residential Activity*

- i. The installation of wiring in a residential home or apartment during construction or remodeling. This includes all wiring for property that becomes a part of realty after installation and all wiring to the outlet sockets that serve portable personal property such as radio and television sets, clothes dryers and washers, stoves, refrigerators, freezers, and window air conditioners.

- ii. 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 for the purpose of repair or service. See Part IV.A.)
  - iii. 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 into 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 (i.e., the wiring and the socket), rather than the range itself.
  - iv. 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.
- b. *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.)*
- i. 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.
  - ii. The repair, service, or replacement of all wiring and associated equipment which is considered to be real property.
  - iii. The installation in an office of an outlet for a copy machine.
  - iv. The installation or repair of wiring in a supermarket from the power source to the outlet or point where the wiring is connected to the cash registers and related computers, but not the interconnecting wiring within the system.
  - v. The installation or repair of wiring in a bowling center from the power source to the outlet or point where the wiring is connected to the pin setting and score keeping equipment, but not interconnecting wiring within the system.
  - vi. The installation, alteration, or repair of wiring in a motor vehicle service station from the outside power source directly to fuel dispensing equipment.
- c. *Other*
- i. 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.
  - ii. The installation, alteration, repair, or service of a hospital's wiring serving its operating room equipment from the power source to the point where the wiring connects to the operating room equipment.

#### **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 retail sale subject to sales tax 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 frozen food counter in a supermarket and also installs 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 charge for installing the counter and the outlet which is attached to the counter is a retail sale subject to sales tax.

When a contractor is hired to provide both taxable and nontaxable items, the correct tax treatment varies depending on whether the taxable selling price is 10% or more of the total selling price. If the taxable selling price is less than 10% of the total selling price, the tax treatment may also be different if the contract was entered into prior to October 1, 2013.

### **1. Taxable Selling Price is 10% or More of the Total Selling Price**

When a contractor is hired to provide both taxable products and real property improvements in a single contract and the total sales price of the taxable products and services that are sold as a part of the contract is 10% or more of the total amount of the contract, the contractor is required to charge the applicable sales tax on the taxable items, unless an exemption applies (e.g., the purchaser is an exempt entity). The contractor may purchase without tax, for resale, the taxable products that are physically transferred to the customer that do not become a part of real property.

**Example:** Contractor enters into a contract with Retailer to construct a building for \$500,000. The sales price of the taxable products and services that are sold as a part of the contract are \$75,000. Since \$75,000 is more than 10% of the total amount of the contract, Contractor is liable for sales or use tax on the total sales price of the taxable products and services (\$75,000) sold as a part of the contract. Contractor may purchase the taxable products and services without tax, for resale.

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

### **2. Taxable Selling Price is Less Than 10% of the Total Selling Price - Contract Entered Into Prior to October 1, 2013**

If a contract for a real property improvement was entered into prior to October 1, 2013, and the contract also includes the sale of taxable products and services, a contractor may use its cost of the taxable products and services as the amount subject to sales tax if both of the following apply:

- The sales price of taxable products and services; is less than 10% of the total contract amount), **and**
- No separate charge is made in any documents provided to the customer (e.g., contract, contract addendum, appendix, payment request, etc.) for the taxable products and services.

If a separate charge is made for any of the taxable products and services, the separate charge is subject to the tax, unless an exemption applies.

**Note:** The contractor's cost is determined by looking at the amounts the contractor paid to third parties, such as suppliers and subcontractors for these items, but not including amounts the contractor pays to its own employees.

**Example 1 – Taxable Items Separately Stated – Taxable Sales Price is Less Than 10% of Total Contract Price.** Contractor enters into a contract prior to October 1, 2013 to construct a house for Individual for \$250,000. In Contractor's quote to Individual, Contractor separately states the charges for the tangible personal property (\$7,500) and taxable services (\$10,000) included in the \$250,000 contract price. Since Contractor separately stated the charges for the tangible personal property and/or taxable services, Contractor is required to charge sales tax on the \$17,500 (\$7,500 plus \$10,000).

**Example 2 – Taxable Items Not Separately Stated – Taxable Sales Price is Less Than 10% of Total Contract Price.** Contractor enters into a contract prior to October 1, 2013 to construct a building for Retailer for \$500,000. Included in the \$500,000 contract price are a few items of tangible personal property and/or taxable services. Con-

tractor does not separately state any charges for the taxable products and/or services included in the contract in any documents that are provided to Retailer. If Contractor would have separately stated the charges for the taxable products and services included in the contract, Contractor would have charged Retailer \$40,000 for such items. Contractor's purchase price of these items is \$30,000. Since (1) the sales price of the taxable products and services included in the contract (\$40,000) is less than 10% of the total contract amount (i.e., it is 8%), (2) Contractor has not separately stated the charge for the taxable products and services, and (3) the contract was entered into prior to October 1, 2013, Contractor can use its cost (\$30,000) of these items as the measure subject to sales tax.

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

### **3. Taxable Selling Price is Less Than 10% of Total Selling Price – Contract Entered Into On or After October 1, 2013**

For "lump sum contracts" entered into on or after October 1, 2013, an exemption exists for the sale of, and the storage, use, or consumption of the otherwise taxable products and services sold by the contractor under the contract if the total sales price of all such taxable products and services is less than 10 percent of the total amount of the lump sum contract. The contractor is deemed the consumer of the taxable products and services sold, and must pay Wisconsin sales or use taxes on its purchase of such products and services unless the products and services are sold to an exempt entity. The law provides that taxable products and services sold to an exempt entity under a "lump sum contract" may be purchased by the contractor without tax for resale.

A "lump sum contract" 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, and taxable products and services as one price, including a contract for which the contractor itemizes such charges as a part of a schedule of values or similar document.

#### **Examples - Contract Not With an Exempt Entity\***

The following information applies only to those situations in which a contractor has a "lump sum contract," the contract is not with an exempt entity, the sales price of the taxable products and services is less than 10% of the total sales price of the contract, and the contract is entered into on or after October 1, 2013.

\*"Exempt entity" means an entity that is exempt from tax under sec. 77.54(9a), Wis. Stats.

**Example 1 – Taxable Products and Services Separately Stated.** Contractor enters into a contract on or after October 1, 2013, to construct a house for Individual for \$250,000. Contractor separately lists the charges for the tangible personal property (\$7,500) and taxable services (\$10,000) included in the \$250,000 contract price. Contractor purchases the tangible personal property for \$6,000 and the taxable services are performed by employees of Contractor. Since the sales price of the tangible personal property and taxable services is less than 10% of the total contract amount (it is only 7%), and Individual is not an exempt entity, (1) Contractor's sales of the tangible personal property and taxable services to Individual are exempt from Wisconsin sales and use taxes, and (2) Contractor is the consumer of the tangible personal property and taxable services sold to Individual. Contractor owes Wisconsin sales or use taxes on its purchase price (\$6,000) of the tangible personal property. Contractor does not owe any Wisconsin sales or use tax on the taxable services, since services provided to Contractor by its employees are not taxable to Contractor.

**Example 2 – Taxable Products and Services Not Separately Stated.** 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 and services. Contractor does not separately state any charges for the taxable products and services in any documents that are provided to Business. If Contractor would have separately stated the charges for the taxable products and services included in the contract, Contractor would have charged Business \$40,000 for those items. Contractor's purchase price of those same items, excluding the cost of services provided by Contractor's employees, is \$30,000. Since the sales price of the taxable products and services included

in the lump sum contract (\$40,000) is less than 10% of the total lump sum contract amount (it is 8%), and Business is not an exempt entity, (1) Contractor's sale of the taxable products and services to Business is exempt from Wisconsin sales and use taxes and (2) Contractor is the consumer of the taxable products and services sold to Business. Contractor owes Wisconsin sales or use taxes on \$30,000, which is Contractor's purchase price of the taxable products and services it purchased and sold to Business under the lump sum contract.

**Examples - Contract With an Exempt Entity\***

The following information applies only to those situations in which a contractor has a "lump sum contract" with an exempt entity, the sales price of the taxable products and services is less than 10% of the total sales price of the contract, and the contract is entered into on or after October 1, 2013.

\*"Exempt entity" means an entity that is exempt from tax under sec. 77.54(9a), Wis. Stats.

**Example 3 – Taxable Products and Services Separately Stated.** Contractor enters into a contract to construct a building for Exempt Entity for \$250,000. Contractor separately lists the charges for the tangible personal property (\$7,500) and taxable services (\$10,000) included in the \$250,000 contract price. Contractor purchases the tangible personal property for \$6,000 and the taxable services are performed by employees of Contractor. Since the sales price of the tangible personal property and taxable services is less than 10% of the total contract amount (it is only 7%), and the sale is to an exempt entity, (1) Contractor's sales of the tangible personal property and taxable services to Exempt Entity are exempt from Wisconsin sales and use taxes, and (2) Contractor may purchase the tangible personal property sold to Exempt Entity without tax for resale. Contractor's payments to its employees for services rendered are not taxable.

**Example 4 – Taxable Products and Not Separately Stated.** 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 and services. Contractor does not separately state any charges for the taxable products and services included in the contract in any documents that are provided to Exempt Entity. If Contractor would have separately stated the charges for the taxable products and services included in the contract, Contractor would have charged Exempt Entity \$40,000 for those items. Contractor's purchase price of those same items, excluding the cost of services provided by Contractor's employees, is \$30,000. Since the sales price of the taxable products and services included in the lump sum contract (\$40,000) is less than 10% of the total lump sum contract amount (it is 8%), and the sale is to an exempt entity, (1) Contractor's sale of the taxable products and services to Exempt Entity is exempt from Wisconsin sales and use taxes, and (2) Contractor may purchase the tangible personal property sold to Exempt Entity without tax for resale. Contractor's payments to its employees for services rendered are not taxable.

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

### **III. 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, such as 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. **Exception:** Underground wiring is real property, except that underground wiring that connects the display unit in a motor vehicle service station with the electronic monitor in an underground tank 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*

The sale and 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 of the unit are also 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*

The sale and installation of certain other kinds of personal property do not constitute the improvement of real estate, but instead constitute a taxable sale and installation of the property 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 residences, 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" 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 services, certain items 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. See Part IV.A. for a list of the items that retain their character as personal property for repair and maintenance purposes.

NOTE: [Publication 207](#) for contractors contains a chart that is useful in distinguishing between real property and personal property activities. The chart can be found at the back of that publication as Attachment 1.

## **IV. EXCEPTIONS TO PART II.**

There are several exceptions to the general sales and use tax treatment of the activities described in Part II. of this publication. These exceptions relate to:

- 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.* Taxable products 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. *Sports and entertainment arena facilities, as defined in [sec. 229.41\(11g\)](#), Wis. Stats.* Property may be purchased without tax by contractors, even though it is used in a real property construction activity to construct or develop certain sports and entertainment arena facilities. This exemption became effective on August 14, 2015.
- F. *Facilities for certain exempt entities.* Building materials may be purchased without tax by contractors if used in a real property construction activity to construct or develop certain facilities for certain exempt entities. This applies to contracts entered into on or after January 1, 2016.
- G. *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.

Explanations of these exceptions follow.

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

A contractor's receipts, including 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:
- 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

**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 taxable products, which become a component part of an industrial, utility, or governmental waste treatment facility, and includes taxable products purchased by contractors who transfer the products 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 I.C.2. and 3. that become a component part of a facility that is determined to not qualify for the waste treatment facility property tax exemption under sec. 70.11(21), Wis. Stats. Additional information regarding the law change relating to the definition of an “industrial waste treatment facility” can also be found on page 33 of [Wisconsin Tax Bulletin 154](#).

For information related to the property tax exemption for industrial waste treatment facilities. 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 Section. To locate the district office, write or call Wisconsin Department of Revenue, Manufacturing and Utility Section, Mail Stop 6-97,

P.O. Box 8971, Madison, WI 53708-8971; telephone (608) 266-3845. The website is [revenue.wi.gov/Pages/Contact/slfbmta.aspx](http://revenue.wi.gov/Pages/Contact/slfbmta.aspx). 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. Contact information is available at [revenue.wi.gov/DOR Publications/assrlist.pdf](http://revenue.wi.gov/DOR%20Publications/assrlist.pdf).

### **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\(3\), Wis. Adm. Code \(November 2010 Register\)](#). 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 purchases of taxable products 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 an exemption certificate, [Form S-211](#) or Streamlined Sales and Use Tax – Wisconsin Certificate of Exemption, [Form S-211-SST](#), the intended exempt use of the item and give the [Form S-211](#) or [Form S-211-SST](#) 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 ([Form S-211](#) or [Form S-211-SST](#)), 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 exempt. 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. Sports and Entertainment Arena Facilities

Effective August 14, 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.](#), which 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.

#### **F. Building Materials for Facilities Owned By Certain Exempt Entities**

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

In order for the exemption to apply, the following criteria must be met:

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

For purposes of this exemption, a qualifying exempt entity is:

- Any county, city, village, town or school district in this state
- A county-city hospital established under [sec. 66.0927](#), Wis. Stats.
- A sewerage commission organized under [sec. 281.43 \(4\)](#), Wis. Stats., or 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 if it 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), and no part of its net income 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.*

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)
- 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

The exemption applies to property that becomes part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity. "Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road.

For additional information about this exemption, see the article titled "New Sales and Use Tax Exemption Effective January 1, 2016 - Building Materials That Become Part of a Local Government or Qualifying Nonprofit Facility," in [Wisconsin Tax Bulletin 192](#) (January 2016).



## G. 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.

## V. 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., the sales of building materials to the contractor used in real property construction activities are taxable. (**Note:** See Part V.E. for additional information relating to real property construction activities for a federally recognized American Indian Tribe or band on the Tribe's or band's reservation.)

The reason for this treatment is that the contractor is the consumer of the building materials used in the real property construction activity. Therefore, the sale to the contractor is a retail sale and subject to tax. (See [sec. Tax 11.04, Wis.](#)



[Adm. Code](#), "Constructing buildings for exempt entities.") Exceptions to this rule apply when the building materials are:

- Purchased to alter, repair, or improve a waste treatment facility as described in Part IV.C.
- Purchased to construct, renovate, or develop certain professional sports and entertainment home stadiums as described in Part IV.D.
- Purchased in the construction or development of a sports and entertainment arena facility, as defined in [sec. 229.41\(11g\)](#), Wis. Stats. See Part IV.E.
- Sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to certain exempt entities if the materials become part of a facility in Wisconsin, owned by the exempt entity. See Part IV.F.
- 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 wastes, as described in Part IV.G.

*Exempt Entities Buying Materials and Taxable Services Tax Free:* Under Wisconsin sales and use tax law, purchases of taxable products and services 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 that the exempt entity purchases and then will be used by construction contractors in performing real property construction activities for exempt entities. 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:

- a. A Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Certificate of Exemption ([Form S-211-SST](#)).
- b. The exempt entity's Certificate of Exempt Status (CES) number which the supplier should record on the invoice it keeps.
- c. 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 Court of Appeals' determination in *Sullivan Brothers, Inc. vs. Wisconsin Department of Revenue* (January 20, 2014) (CCH 401-803), for additional information.

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.

## 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:** A subcontractor installs the general electrical wiring in a building being constructed by the general contractor. The subcontractor must pay sales or use tax on the 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 IV., which are treated as personal property and landscaping)

A 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 the materials a Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Wisconsin Certificate of Exemption ([Form S-211-SST](#)) claiming resale. The subcontractor's charge to the general contractor is subject to tax, unless the general contractor gives a Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Certificate of Exemption ([Form S-211-SST](#)) claiming resale to the subcontractor, indicating that it will resell the property, items, goods, or services to its customer. If the general contractor does not give an exemption certificate to the subcontractor, the subcontractor may be liable for the sales tax.

**Example:** A subcontractor installs communication cabling in an office building being constructed by a general contractor. When the subcontractor purchases the materials from its supplier, the subcontractor should provide the supplier with a properly completed exemption certificate ([Form S-211](#)), claiming resale. The subcontractor should then charge the general contractor sales tax on its sales price from the sale and installation of the communication cabling unless the general contractor gives the subcontractor an exemption certificate claiming resale. The charge by the general contractor to the customer for the communication cabling 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 A 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 wiring 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 wiring was used in the general wiring of a new house in County A. The contractor must pay County A's 0.5% county use tax on the cost of the wiring.

**Example 2:** A contractor located in County B (a county that has not adopted the county sales and use tax) purchases wiring from a Wisconsin retailer who charged the 5% sales tax but did not charge any county tax. The wiring is later used in the general wiring of a new 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 wiring.

**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 stored in a county that has adopted the 0.5% county sales and use tax if that product will be subsequently 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 wiring 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 wiring in County D (the wiring 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 wiring in County D until it is used in the general wiring of a new 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 wiring since that is where the wiring was first stored, used, or consumed.

**Example 2:** Contractor X is located in County G (a county that has adopted the county sales and use tax). Contractor X purchases wiring and associated materials from various sources located in and outside Wisconsin. All of the materials are delivered to Contractor X's location in County G. At the time Contractor X purchases the materials, Contractor X does not know if the materials will be resold as tangible personal property or consumed by Contractor X in a real property construction activity. Therefore, Contractor X does not pay any sales or use tax on these materials at the time they are purchased. Contractor X 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 X owes County G's county sales and use tax on the wiring and associated materials since that is where Contractor X first stored, used, or consumed them. Contractor X 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 X does not owe any additional county use tax since Contractor X 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 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 A 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 A 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 A then transports the materials to a jobsite in Walworth County (a county that has adopted the county sales and use tax) where Contractor A 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 A 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 A 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 wiring and associated 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 A](#) for a list of the 64 counties that have adopted the 0.5% county tax as of May 1, 2017, and the effective date for each county's tax.

As of May 1, 2017, there is **no** county sales and use tax in the following 8 Wisconsin counties.

**Counties Without County Tax**

Brown	Manitowoc	Outagamie	Waukesha
Calumet	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 I.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 tangible personal property and items and goods described in Part I.C.2. and 3. 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 A pays the Wisconsin state and Dane County sales or use tax at the time the materials are purchased. Contractor then transports the materials to a jobsite in Waukesha County (a county that is within the baseball stadium district) 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 is within the baseball stadium district 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 tax previously paid. Since the 0.5% Dane County tax previously paid exceeds the 0.1% baseball stadium district use tax, no baseball stadium district use tax is due.

**Exception:** Sales of materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others are not subject to the stadium 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 stadium tax or that resulted from the ac-

ceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before the effective date of the stadium tax. [Wisconsin Form S-207CT-1](#) may be used by contractors to purchase materials without stadium tax under this exception.

## **E. Construction Contracts on Native American Reservations**

### **1. Definitions**

“Native American” 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 are 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 off the Native American 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 tribal land, regardless of whether the materials are delivered to the contractor off the tribal land in Wisconsin or another state, or on the tribal land (unless exempt from tax under the conditions in 3.b. (federal preemption)).

**Example 1:** A non-Native American contractor acquires 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 electrical wiring between the breaker and the outlet on Native American tribal land. 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.

**Example 2:** A non-Native American contractor acquires 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 its tribal land. Since the building of a casino for a Native American Tribe on its tribal land will improve the self-sufficiency of the tribe, federal preemption applies. The contractor may purchase the materials it uses in building the casino for the tribe on its tribal land without paying any Wisconsin sales or use tax.

A Native American, who takes delivery of construction materials off tribal land, 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 tribal land. Native American will take the construction materials back to his tribal land 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 tribal land.

**Example:** Retailer sells a computer to a Native American Tribe located in Wisconsin. The sale takes place at Retailer's location which is not on tribal land. The sale of the computer to the Native American Tribe is exempt from Wisconsin sales and use tax.

### **3. The following sales on tribal land are exempt:**

- a. The sale of construction materials to a Native American contractor if (1) delivery of the materials to the Native American contractor occurs on the Native American contractor's tribal land and (2) the construction materials will be used on the Native American contractor's tribal land. However, if the materials are later used off the Native American contractor's tribal land, 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 tribal land which the contractor uses in a construction project on the tribal land 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. Generally, federal preemption will apply if (1) the construction activity is performed for the tribe, (2) the construction occurs on tribal land, and (3) the 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.

### **4. Tribal Use Taxes**

Some Native American Tribes impose a tribal use tax on construction materials used by persons doing business on the reservation. This Tribal use tax is in addition to, rather than in place of, the Wisconsin sales and use tax.

## **VI. 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 Wisconsin Sales and Use Tax Exemption Certificate

([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Wisconsin Certificate of Exemption ([Form S-211-SST](#)) claiming resale to its supplier of such materials. This is discussed in Parts II.B. and VII.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. This is discussed in Part II.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 taxable products, 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 use tax based on the purchase price of the materials on its sales tax return.

**Example:** 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:** 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.

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

Beginning July 1, 2012, charges to access or obtain construction plans and construction project information electronically, as described in the following paragraphs, are subject to Wisconsin sales and use taxes. “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 charges for the construction plans and specifications 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.

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 is 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.

#### **F. 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. The contractor must collect and remit Wisconsin state sales and use taxes and the applicable county and/or stadium sales and use taxes on its sales of equipment, including motor vehicles, boats, snowmobiles, recreational vehicles as defined in sec. 340.01(48r). Wis. Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-road 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 the tax release published in [Wisconsin Tax Bulletin 122](#) (October 2000) for additional information regarding the occasional sale exemption.

#### **G. 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 product or service (e.g., the contractor took possession of the product 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 wiring and associated materials in Minnesota, for \$10,000. The supplier charged the 6.875% Minnesota sales tax of \$687.50 on the sale of the materials. Contractor uses the 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 \$687.50.

**Example 2: Tangible Personal Property Construction Job:** Contractor purchases materials in Minnesota for \$10,000. Contractor properly paid 6.875% Minnesota sales tax of \$687.50 on the **purchase** of materials. Contractor uses the materials for the sale and installation of tangible personal property (not real property construction) in a job for \$25,000 for Customer, at a location in St. Croix County, Wisconsin. Contractor must charge Wisconsin **sales** tax on the entire \$25,000. Contractor may claim a deduction of \$12,500 (\$687.50 tax paid to Minnesota divided by 5.5% Wisconsin state and county tax rate = \$12,500) in computing its taxable receipts subject to Wisconsin sales tax and also for computing its taxable receipts subject to St. Croix County sales tax.

For more information about the credit for taxes paid to another state, see [Wisconsin Tax Bulletin 157](#), pages 28 – 49 and the article titled, "[Credit for Taxes Paid: Construction Contractor's - Real Property in Another State But Tangible Personal Property in Wisconsin](#)". For information on how to claim the credit on your sales and use tax return, refer to the [instructions for Form ST-12](#).

#### **H. 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 they refund to their customer by the amount of sales or use tax (and related interest, if applicable), the contractor should have paid on their purchase of the materials used in completing that real property construction activity.

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

### **VII. RECORD KEEPING**

#### **A. General**

Every contractor required to have a seller'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 or services are exempt from sales and use tax, the contractor generally must obtain a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Wisconsin Certificate of Exemption ([Form S-211-SST](#)) 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 Wisconsin's sales and use tax law provides all receipts are taxable until the contrary is established. The seller (contractor) has the burden of proving a sale of taxable products or services is exempt, unless the seller takes an exemption certificate (or other information as described in Part VII.B.2. or 3.) no later than 90 days after the date of the sale in an approved form from the purchaser which indicates that the property, item, good, or service being purchased is for resale or is otherwise exempt.

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

1. The property is purchased for resale. The seller should obtain a fully completed exemption certificate from the purchaser.
2. The item will be used in a manner that is exempt. The seller should obtain a fully completed exemption certificate from the purchaser. **Example:** Purchases of tangible personal property that will become a component part of an industrial waste treatment facility are exempt.
3. 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 Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Wisconsin Certificate of Exemption ([Form S-211-SST](#)).
- c. Recording the Certificate of Exempt Status (CES) number of the federal government, Wisconsin governmental unit, or American Indian Tribe or band, on the invoice or other billing document.

Exempt sales to nonprofit organizations holding a CES (e.g., church) can be supported by a Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)) or Streamlined Sales and Use Tax Agreement – Wisconsin Certificate of Exemption ([Form S-211-SST](#)) 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.

4. The purchaser holds a direct pay permit and 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. The purchaser is subject to Wisconsin use tax on the purchase price if the property, item, good, or service purchased is used in a taxable manner.

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

**Note:** If exemptions are claimed for any of the above three reasons, the seller 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:

- a retailer (selling taxable products or providing taxable labor or other services) or
- 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.

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 and taxable products or 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. Overhead charges relating to nontaxable sales are not taxed.

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

Real property improvements (labor and materials)	\$2,500,000
Tangible personal property (labor and materials)	500,000
Landscaping (labor and materials)	<u>100,000</u>
Subtotal	\$3,100,000
General Conditions* and Project Management	<u>300,000</u>
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 separately stated charge of \$300,000 for items that apply to both the real property and tangible personal property may 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 is allocated to the tangible personal property and taxable services ( $\$600,000 \div \$3,100,000 = 19\%$  and  $19\% \times \$300,000 = \$57,000$ ) and \$243,000 is 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 tangible personal property + \$100,000 landscaping service + \$57,000 overhead expenses).

See Part II.D. for exceptions.

## VIII. IF YOU HAVE QUESTIONS OR NEED ASSISTANCE

If you are unable to find an answer to your question about sales and use taxes, email, write, or call the department.

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

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

**Write** . . . . . Wisconsin Department of Revenue  
PO Box 8946, Mail Stop 5-77  
Madison, WI 53708-8946

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

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

You may also contact any of the Department of Revenue offices. See the department's website for a [listing of offices](#) and their current hours.

**APPENDIX A**

**Counties That Have Adopted The 0.5% County Sales and Use Tax and the Effective Dates**

Listed below are the 64 counties that have adopted the 0.5% county tax as of May 1, 2017, and the effective date for each county's tax.

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

Wisconsin Sales and Use Tax Treatment of Security and Related Systems

ASSUMPTION: All items are affixed to realty.

	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			
Where Installed?	Both Residential and Non-Residential Facilities	Residential Facility	Non-Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Non-Residential Facility	Non-Residential Facility	Residential Facility	Non-Residential Facility	Non-Residential Facility	
Serves What Purpose (Why Installed)?	To allow access to or from building or room	Any	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 processing machine/equipment	Any	To prevent unauthorized access to building or room	Used to protect inventory, other property or other business function	Any	Any	Any	Any	Any	Used to prevent unauthorized access to building or room	Used to prevent theft of inventory, other 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>	TPP <sup>2</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	RP <sup>1</sup>	TPP <sup>2&amp;4</sup>	RP <sup>1</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>	RP <sup>1</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>	TPP <sup>2&amp;3</sup>	TPP <sup>3</sup>	TPP <sup>3</sup>	RP <sup>1</sup>	RP <sup>1</sup>	TPP <sup>2&amp;4</sup>	RP <sup>1</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>	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 doorway	Camera monitoring a patient's activities within a hospital room	Music and sound systems	Intercoms *** Sound paging systems *** Pneumatic tube systems *** Telephones *** Public address systems *** Music and sound systems	Alarm is sounded when customer removes merchandise from store 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.

<p><b>CAUTIONS:</b></p> <ol style="list-style-type: none"> <li>When installing real property for exempt entities (e.g., churches, schools, federal governmental units), the exempt entity's tax exempt status <b>does not</b> 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.</li> <li>A contractor <b>may not</b> 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.</li> <li>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.</li> </ol>
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**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.