



# TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

MARCH 1972

## CONSTRUCTION CONTRACTORS

This department continues to receive inquiries from construction contractors, their suppliers and their customers, concerning the proper application of the 4% sales or use tax to real property construction activities. This report is being devoted almost exclusively to this subject in an attempt to provide additional information on construction activities.

### WHO ARE REAL PROPERTY CONSTRUCTION CONTRACTORS?

Generally, such contractors and subcontractors are persons engaged in performing real property construction activities and include but are not limited to persons engaged in building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry, cement work, plastering, tile and terrazo work.

### WHAT ARE CONSTRUCTION ACTIVITIES?

Construction activities include the furnishing of necessary materials, supplies, equipment or fixtures, and the use, installation and/or incorporation of them in constructing, reconstructing, erecting, altering, improving or repairing a road, bridge, building, or other real estate structure. Contractors and subcontractors may perform these construction activities under lump sum, cost plus, time and material or other types of construction contracts.

### BUILDING MATERIALS USED IN CONSTRUCTION ACTIVITIES

This would include such items as the lumber, nails, cement, flooring, fixtures, shingles, etc. incorporated into and becoming a part of the real estate in the fulfillment of a construction contract. As to these and all similar items the construction contractor is the consumer. His supplier is the retailer and is the party obligated to pay the sales tax on the sales of such items to the construction contractor. For purposes of illustration, additional items in this category include the following: lighting and plumbing fixtures, boilers and furnaces for space heating, carpeting and floor tile, central air conditioning, awnings, elevators, and septic tanks.

## WHY ARE CONTRACTORS TREATED AS CONSUMERS?

Pursuant to the Wisconsin sales and use tax law, persons who function as contractors or subcontractors engaged in constructing, altering, repairing or improving real property are the consumers of material used by them in such activities. (In this respect, the Wisconsin law is similar to that of most other states imposing a sales and use tax.) As consumers, sales to contractors of building materials which are incorporated into realty in performing construction contracts are subject to the 4% tax. The type of contract (e.g. time and material or cost plus) does not alter the fact that the contractor is the consumer under the law, and sales to him for use in a construction activity are retail sales subject to the tax. Similarly, even though such building materials may be purchased by a contractor for use in construction activities performed for a school, governmental unit, church or other exempt entity, the contractor is deemed the consumer of such articles and the sales to him are taxable. A contractor who performs a real property construction activity is not permitted to collect the tax, as such, from his customer, because the tax is imposed on the sale of materials to the contractor. This tax, in reality, increases the cost of the contractor's building materials, and, presumably, in negotiating the contract consideration will have been given to the tax on the contractor's purchases.

## PURCHASES BY CONTRACTORS AND SALES ACTIVITIES BY CONTRACTORS

A real property construction contractor may be a consumer as to some purchases and a retailer as to other purchases. When he is a consumer, his supplier is the retailer and is required to pay sales tax on his sales to the construction contractor. (However, if contractors purchase items without tax out-of-state, which are used in real property construction activities in Wisconsin, the contractor is required to remit the 4% use tax directly to this department.) When construction contractors, in addition to their contracting businesses, operate retail shops, such contractor-retailers are required to hold a Seller's Permit and report and remit sales tax on such "over-the-counter" retail sales.

## ITEMS PURCHASED WHEN DESTINATION OR USE IS UNKNOWN AT TIME OF PURCHASE

Contractors who also have retail sales may not know when they purchase some items whether the items will be consumed in construction activities or resold to others. In this situation, the contractor-retailer must follow a consistent procedure which properly reflects his current tax. For example:

- (a) If the majority of a contractor-retailer's business is in the performance of construction contracts, he may elect to pay tax on all his purchases, keep a record of all his retail sales, and then regularly take credit against his sales tax due on goods sold at retail for the tax he previously paid to his supplier when he acquired the goods resold.
- (b) If the bulk or majority of the contractor-retailer's receipts consist of retail sales with some construction work, he may elect to make all his inventory purchases without paying tax by using a resale certificate. If he makes withdrawals from inventory for use in construction contracts, he must pay a 4% use tax on his cost of such withdrawals.
- (c) If the contractor engages in major construction jobs, he may elect to use a separate accounting procedure and make his purchases for resale inventory on a resale certificate, and pay tax to his supplier when purchasing materials destined for use in a specific construction activity.

In any case involving withdrawal from stock purchased on a resale certificate, the use tax will be deemed due during the reporting period in which the material is delivered to the job-site without regard to the time when it actually becomes part of the building.

## SERVICE PERFORMED BY CONTRACTORS

The charge for labor or services performed by a construction contractor in installing or applying tangible personal property which produces a capital improvement of real property is not taxable. Thus, the charge for labor performed by carpenters and other building construction contractors in connection with the erection of a new building or structure or of an addition thereto or a capital improvement thereon is not taxed.

However, the charge for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property is subject to tax and, solely for purposes of such service tax, numerous items (listed below) are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in repairing, servicing, altering, etc. of any of the named items, or other tangible personal property, must register as a retailer and pay the tax on his total gross receipts, including any amounts charged for labor.

The list of items contained in s. 77.52(2)(a)10 of the Wisconsin Statutes on which the repair, service, alteration, etc. is taxable is as follows:

Furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners,

humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration but not of limitation, bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration but not of limitation, lamps, chandeliers, fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines; power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.

Note that the list includes furnaces and boilers. Accordingly, the charge for services (including repair parts) for repair of the one of these units used for heating the premises would be taxable, but the labor charge for completely replacing either item in total is not taxable. In this latter situation the replacement item (furnace or boiler) is taxable when sold to the contractor installing it.

Contractors who have specific questions concerning their sales and use tax liabilities should contact this department for clarification. Inquiries should be directed to: Wisconsin Department of Revenue, P. O. Box 39, Madison, Wisconsin 53701 or call 608-266-2776. We also have available Technical Information Memorandum S-11.2 entitled "Construction Contractors" which provides information of interest to contractors. Most of the information in this article came from that memorandum. You may acquire a copy of this memorandum by writing to the above address.

## PAPER CUPS AND OTHER DISPOSABLE ITEMS USED BY RESTAURANTS, ETC.

The department has reviewed the sales tax status of disposable paper cups, paper and plastic plates, butter chips, hamburger and frankfurter baskets and wrapping materials used by restaurants, cafeterias, vending machines, etc., to serve food, food products and beverages to their customers. Effective January 1, 1972 these retailers may purchase such disposable items without payment of the sales tax provided they are used to serve food, food products and beverages to their customers.

Restaurants and other retailers of food, food products and beverages must continue to pay a sales tax on their purchases of the following items: napkins, place mats, straws, plastic or wooden eating utensils and toothpicks.