



# TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT OF REVENUE

2-82

## i. SALES/USE TAX IMPOSED ON LANDSCAPING AND LAWN MAINTENANCE SERVICES

### Law

A new Wisconsin law, Chapter 317, Laws of 1981, created section 77.52(2)(a)20, to impose a sales/use tax on "The sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services".

These services first became subject to the 5% sales/use tax on May 1, 1982.

### What Services Are Taxable Under This New Law?

The following services are considered taxable under s. 77.52(2)(a)20 when 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 buildings or other developed areas.

- a. Landscaping services, including landscape planning and landscape counseling.
- b. Lawn maintenance services and other lawn services, including planting, sodding, mowing, raking, weeding, thatching, spraying, and fertilizing lawns.
- c. Garden services, including plowing, rototilling, planting, spraying, fertilizing and weeding gardens.
- d. Shrub and tree services, including planting, bracing, fertilizing, spraying, pruning, trimming, surgery and removal of shrubs, stumps and trees.

Although some of these services also involve realty improvements, the services are still taxable. For example, the sale and laying of sod for \$1,000 involves both a taxable service and a realty improvement. The total charge of \$1,000 is considered a taxable service and is subject to the 5% Wisconsin sales/use tax under s. 77.52(2)(a)20.

The above services are taxable, regardless of whether performed by landscapers, architects, construction contractors or any other persons.

### Examples of Taxable Services

The following services, when performed on residential, business, commercial or industrial lawns and gardens, golf courses, cemeteries, stadiums, athletic fields and other lawn areas, are examples of services which are subject to the sales/use tax under s. 77.52(2)(a)20 (the listing below is not all-inclusive):

1. Planting, weeding, edging, spraying, fertilizing, thatching, raking and mowing grass or lawns. (Example: A company charges a homeowner \$100 for fertilizing the homeowner's lawn. The \$100 is subject to the 5% sales tax.)
2. Laying, installing or cutting sod. (Example: A landscaper charges a customer \$1,000 for laying sod. The sod is furnished by the landscaper and is included in the \$1,000 charge. The \$1,000 is subject to the 5% sales tax.)
3. Planting, trimming, spraying, fertilizing, removing, pruning, bracing and surgery of trees, stumps, plants, shrubs, hedges and flowers, including performing these services on trees, stumps, plants, shrubs, hedges and flowers in parking lots and other developed areas. (Example: Company XYZ charges a customer \$5,000 for planting trees and shrubs in front of a shopping center and the parking lot. The trees and shrubs are furnished by Company XYZ and are included in the \$5,000 charge. The \$5,000 is subject to the 5% sales tax.)
4. Planting, plowing, rototilling, weeding, spraying and fertilizing gardens and flower beds.
5. Filling or leveling of topsoil, including the fine grading of topsoil for lawns and gardens. (Example: A landscaper charges a customer \$2,000 for filling in a low area with rough fill dirt, leveling the dirt, putting topsoil on top of the fill dirt and leveling the topsoil. The landscaper furnishes the fill dirt and topsoil. Only the portion of the \$2,000 attributable to furnishing and leveling the topsoil is subject to sales tax.)
6. Installing rocks, stones, boulders, wood bark, wood chips, wood timbers, or wood ties for decorative or ornamental purposes (this does not include walks, steps, patios, or fences).
7. Designing or planning a lawn, garden and the type and location of trees and shrubs, (including designing or planning items in number 6 above). If the designer or planner charges the customer an amount for the total plan of constructing the building, driveway, walks, shrubs, trees, lawn, gardens, etc., only the portion of the total charge that pertains to landscaping (planning or designing the lawn, gardens, trees, shrubs and items in number 6 above) is subject to sales tax.

### Example of Services Which Are Not Taxable

Examples of services which are **not** taxable under s. 77.52(2)(a)20 include the following (this listing is not all-inclusive):

1. Planting trees and shrubs for agriculture or business purposes, such as planting trees to resell later as Christmas trees, planting trees in a forest for future resale or use in

- manufacturing or logging, planting trees and shrubs for a nursery which will resell the trees.
2. Trimming or pruning Christmas trees for a commercial grower of such trees.
  3. Planting, fertilizing, spraying or trimming trees for a commercial orchard or nursery.
  4. Cutting down trees in a forest for pulpwood, lumber or other business purposes.
  5. Plowing, planting, fertilizing or harvesting a farmer's field or a piece of land upon which crops are raised for resale as a business operation.
  6. Rough grading, such as the digging, hauling, leveling, moving or removal of earth, sand, gravel, stones and rocks, and the removal and clearing of sod, brush and trees related to constructing a highway, parking lot, sidewalk, patio, swim pool, basement or foundation of a building.
  7. Installing fences, patios, steps, decks, driveways, parking lots, walks, swim pools, tennis courts, sprinkler systems, outdoor lighting and outdoor signs.
  8. Cutting sod on a sod farm for person who is in the business of growing, selling and/or installing sod.

#### **Purchases By Persons Providing Taxable Services**

Persons engaged in providing services subject to the 5% sales/use tax under s. 77.52(2)(a)20 may purchase without tax for resale, items physically transferred to the customer in conjunction with providing the taxable service. For example, a lawn maintenance company that applies fertilizer to customers' lawns may purchase such fertilizer without tax. A landscaper who delivers, levels and installs topsoil and installs sod for a customer in providing a taxable landscaping service may purchase the topsoil and sod without tax for resale. The lawn maintenance company and landscaper should give a completed resale certificate to the person from whom they purchased the fertilizer, topsoil and sod.

If a person ("A") performs taxable services under s. 77.52(2)(a)20 for another person ("B") who will resell such services to the customer ("C"), person "B" may buy such services without sales tax from person "A" by giving person "A" a completed resale certificate. (Example: A general contractor has a contract with a customer for one million dollars to construct a building, plant a lawn, shrubs, trees, etc. The contractor has a contract for \$20,000 with a subcontractor (landscaper) to plant the lawn, shrubs, and trees. The \$20,000 of taxable services for planting the lawn, trees and shrubs may be purchased by the contractor without tax by giving the landscaper a completed resale certificate. However, the selling price of such taxable services (which may be more than \$20,000) by the contractor to the customer is subject to the 5% sales tax, unless the customer is a governmental agency or other exempt entity which is able to purchase the landscaping service without tax.)

#### **Written Contracts Entered Into Before May 1, 1982**

If any of the taxable services described above are furnished under a written contract entered into before May 1, 1982, and the seller is unconditionally obligated to provide the services for the amount fixed in the contract, the seller is exempt from sales or use tax on the services until the contract is terminated, extended, renewed or modified.

From the time these services became taxable on May 1, 1982 until the contract is terminated, extended, renewed or modified, the purchaser must pay use tax to the department on the services purchased under the contract. However, the seller may as a convenience to a purchaser, and with the purchaser's approval, collect the 5% tax from the purchaser and remit the tax to the department. If this occurs, the purchaser will not be required to report this use tax on a return and remit the tax to the department.

#### **Do You Still Have Questions?**

Persons who have questions about landscaping and lawn maintenance services may visit or phone any Department of Revenue office or write to the Wisconsin Department of Revenue, P.O. Box 8910, Madison, WI 53708. The Appleton, Eau Claire, Madison and Milwaukee Offices are open Monday through Friday, while most of the other department offices are only open for assistance on Monday morning.

## **II. GROCERS' SALES OF YOGURT**

All sales of yogurt by grocers are exempt from sales tax regardless of the size of the container except:

1. Yogurt in any form or size container sold for consumption on the grocery store premises.
2. Yogurt sold for consumption off the grocery store premises in a form commonly sold by soda, ice cream or yogurt fountains or parlors, such as cones, bars and sundaes.

Currently, administrative rule Tax 11.51, "Grocers' Guidelist", provides that only grocers' sales of yogurt in pints or larger size containers are exempt from sales tax. This rule is being amended to reflect the new policy stated above.