



Wisconsin Sales and Use Tax for the Construction Industry

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- *This presentation considers guidance provided by the SBA and US Department of the Treasury through April 21, 2021. Additional guidance is being provided on a regular basis, please refer to the US Department of the Treasury website (<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>) for recent updates.*



Wisconsin Sales and Use Tax

- Sales tax
 - 5% tax on the sale, license, lease or rental of tangible personal property and certain services
 - Collected by retailers from purchasers
- Use tax
 - 5% tax on the storage, use or other consumption of tangible personal property or services subject to sales tax that is purchased from any retailer
 - Tax that is due from a purchaser when a sales tax has not been collected by a Wisconsin retailer



Wisconsin Sales and Use Tax

- Sales tax is charged on Gross Sales Price which includes:
 - Transportation charges
 - Handling charges
 - Costs associated with sale of personal property
 - Such as labor, travel, meals and lodging
 - Manufacturer's rebates and coupons
 - The tax is calculated before the coupon is applied
- What about installment sales?
 - Wisconsin says to report once possession has been transferred



Wisconsin Sales and Use Tax

- Gross Sales Price does **not** include:
 - Cash or term discount on sales
 - Coupons with no reimbursement by 3rd party
 - Trade-ins of personal property for personal property
 - Tax the difference
 - Bad debts relating to taxable sales
 - Refunds, returns and allowances of taxable items



Wisconsin Sales and Use Tax

- Taxable services
 - Services to tangible personal property
 - Admissions to amusement, athletic, entertainment or recreational events
 - Parking and docking
 - Cable TV services
 - Landscaping and lawn maintenance services
 - Laundry services
 - Photographic services
 - Printing services
 - Rooms or lodging (periods < one month)
 - Telecommunication and messaging services



Exempt Sales

- Exempt sales (*Exemption Certificate required)
 - *Common or contract carrier
 - *Farming
 - Fuel and electricity
 - *Manufacturing
 - *Nonprofit organization
 - Packaging and shipping materials
 - Printed advertising materials
 - Printed materials
 - *Resale
 - *Waste reduction or recycling
 - *Wisconsin and Federal governmental units



Where Does a Sale Take Place?

- Where the purchaser or purchaser's designated donee receives the product
 - Take possession of tangible personal property; making first use of services, or take possession or make first use of digital goods
 - Does not include a shipping company taking possession of tangible personal property on a purchaser's behalf
- Sourcing rules – destination-based hierarchy
 - Seller's location (when product is picked up)
 - Delivery address
 - Billing address
 - Other address
 - Location from where shipped



County Sales and Use Tax

- Retailers must charge county and stadium sales tax
 - If business holds a Wisconsin Sellers Permit and the sale is subject to Wisconsin sales tax, required to charge proper county and stadium taxes regardless of whether the business is engaged in business in the county
 - This includes 0.5% county tax, premier resort area tax and local exposition tax
 - Local exposition tax (Milwaukee County) requires a separate return



County Sales and Use Tax

- Contractors
 - County and stadium use taxes are imposed upon a contractor engaged in construction activities in a county and stadium district which have adopted the tax
 - Exception: County and stadium use taxes are not imposed if the contractor already paid Wisconsin county or stadium sales tax
 - Credit for similar local taxes paid to another state



County Sales and Use Tax – Sourcing

- Obligation to pay or remit sales or use tax to the appropriate county on any real property improvements
- The state will always receive the highest tax rate
- Questions to consider
 - Where did possession of the materials transfer to the purchaser (delivered or picked-up)?
 - What county will the improvement be made in (does the county have a tax in effect)?
 - Is storage of the materials involved (use tax)?



Use Tax on Purchases

- Applies when Wisconsin sales tax has not been previously paid and an exemption does not apply
- Common use tax situations
 - **Property purchased from an out-of-state retailer**
 - Property purchased for resale or for a nontaxable use and then used by the purchaser in a taxable manner
 - Property purchased outside Wisconsin without payment of Wisconsin sales tax and brought into Wisconsin and used in a taxable manner
 - **Property delivered to one county and used in another**



Use Tax on Purchases

- Examples of purchases subject to use tax
 - **Computer and telephone equipment**
 - **Office furniture**
 - Warehouse equipment
 - **Office supplies**
 - Books
 - Pre-written computer software
 - Digital goods
 - **Construction tools, supplies and equipment**



Wisconsin Contractor Overview

- Factors in determining if contractor is acting as a RETAILER or a CONSUMER
 - Is contractor working on real or personal property?
 - Is contractor doing an installation or a repair?
 - Is contractor performing work in a residential or a commercial building?
- Wisconsin Department of Revenue Publication 207 is an excellent resource



Contractor Overview

- Factors used in determining real vs. personal property
 - General rule
 - Physical annexation to the real property
 - Application of the use of the property to which the real property is devoted
 - Intention of making permanent attachment to the real property

Caution: *General rule does not always apply to commercial buildings*



Contractor as the Consumer of Materials

- Tax Treatment
 - Receipts
 - Sales are considered a real property improvement and are not subject to sales tax
 - Purchases
 - Contractor is considered the user or consumer of all materials used in the performance of the contractor and is required to pay tax on the cost of the materials (with certain exceptions)



Contractor as the Consumer of Materials

Common Examples

- Installations
 - Bathroom fixtures such as tubs, sinks, toilets
 - Building heating and air conditioning equipment
 - Building improvements such as elevators, carpeting, general wiring and plumbing, etc.
 - Built-in items in residential buildings, such as counters, cabinets, garbage disposals, etc.
 - Catwalks providing access to buildings
 - Improvements to land such as driveways, fencing, ponds, retaining walls, sanitary sewers
 - Underground or partially underground swimming pools
 - Waterpark slides



Contractor as a Retailer

Common Examples

- Installations
 - Advertising signs (except concrete foundations)
 - Amusement & recreation equipment such as amusement rides and ski lift equipment
 - Built-in counters and cabinets in a commercial building
 - Catwalks providing access to machinery
 - Communication equipment in a commercial building including computer cabling, intercoms and music/sound equipment, satellite dishes and telephone systems
 - Material handling equipment, such as storage racking
 - “Trade fixtures” used in operation of business
 - Freezers



Contractor as a Retailer

Common Examples

- Counter sales
- Sale of excess inventory
- Sale of used office or construction equipment
- Sales of company vehicles
- Repairs
 - Items classified as taxable personal property upon installation are also considered taxable for repair purposes



Contractor as a Retailer

Common Examples

- Repairs of certain items are taxable even though the item was nontaxable upon installation
 - Central air conditioners
 - Bathroom fixtures, including tubs, faucets, toilets
 - Carpeting
 - Furnaces
 - Garbage disposals and dishwashers
- Publication 207 Appendix A is a great reference



Real and Personal Property Jobs

- Sales issues
 - Personal vs. real property
 - Items must be segregated and billed separately on the invoice
 - Sales tax must be collected on the personal property portion of the invoice
 - Bundling of personal and real property items
 - If personal and real property are not segregated on the invoice, the Department of Revenue has the ability to collect sales tax on the entire invoiced amount
 - Construction contractor exemption could apply



Real and Personal Property Jobs

- Sales issues
 - Examples of personal property items included in general building contracts
 - Advertising signs
 - Communication cabling in commercial building
 - Landscaping charges
 - Built-in cabinets and counters in commercial building
 - The WDOR can audit any party in the transaction including general contractor, subcontractor and customer



Real and Personal Property Jobs

- Purchase issues
 - Contractors may not know at time of purchase if items will be used in real property jobs or resold in personal property jobs
 - Contractors may use either method to pay proper amount of tax
 - Purchase all property exempt as a purchase for resale
 - If purchases are later used in real property job, the contractor would be required to self-assess use tax on the material cost
 - Pay sales tax on all purchases
 - If purchases are later resold as personal property, contractor would be entitled to claim a credit for the sales tax paid upon purchase



Subcontractors

- Real property
 - The subcontractor is the consumer of all materials used in completing a Real Property Improvement for a general contractor (subcontractor owes the tax)
- Personal property
 - The subcontractor is selling the items to the general contractor, who in turn will sell the items to the end customer
 - Both contractors may purchase the items exempt from tax by issuing an exemption certificate claiming resale
 - The general contractor must charge sales tax on the invoice to the customer unless an exemption applies



Contracts with Exempt Entities

- The sales and use tax exemption was effective 1/1/16 for building materials that become part of a local government or qualifying nonprofit facility
- The construction contractor can now purchase construction materials exempt from sales tax if certain criteria are met
- In order for the exemption to apply, the following criteria must be met:
 - The construction must be for a qualifying exempt entity;
 - The property must become part of a facility in Wisconsin that is owned by the exempt entity; and
 - The property must be transferred to the qualifying exempt entity



Contracts with Exempt Entities

- For purposes of this exemption, a qualifying exempt entity includes:
 - Any county, city, village or town within Wisconsin
 - Any public school district within Wisconsin
 - A county-city hospital established under sec. [66.0927](#), Wis. Stats.
 - A sewerage commission organized under sec. [281.43 \(4\)](#), Wis. Stats.
 - A metropolitan sewerage district organized under ss. [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.



Contracts with Exempt Entities

- For purposes of this exemption, a qualifying exempt entity includes:
 - Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number
 - Certain non-Wisconsin nonprofit organizations (not required to hold CES)
 - Technical colleges, any institution as defined in sec. 36.05(9), Wis. Stats., or campus as defined in sec. 36.05(6m), Wis. Stats., in the University of Wisconsin System, and the University of Wisconsin-Extension
 - A state veterans organization which means the Wisconsin state organization or department of a national veterans organization incorporated by an act of congress



Contracts with Exempt Entities

- Cautions!
 - Not all nonprofit organizations that are exempt from federal income and franchise taxes are qualifying exempt entities for purposes of this exemption.
 - Many fraternal, social, and civic organizations are not qualifying entities (i.e. Chambers of Commerce, volunteer fire departments, professional organizations, labor organizations).
 - This exemption does not apply to:
 - A non-Wisconsin jurisdiction or public school
 - A state or federal government unit
 - A Wisconsin nonprofit organization that doesn't hold a Wisconsin CES



Contracts with Exempt Entities

- Definition of “facility”
 - Any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and wastewater treatment facility.
 - Facility does not include a highway, street, or road.
- How to claim the exemption?
 - A contractor who makes purchases that qualify for this exemption must provide a fully completed exemption certificate to the seller.
 - The contractor should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(9m), Wis. Stats."



Contracts with Exempt Entities - Documentation

- Contractor is required to maintain records to verify that the exemption applies
 - Obtain a nonprofit organization's CES number
 - Maintain contracts and invoices showing the work was for qualifying exempt entity (applies to municipalities, UW system, veteran organizations)
 - Request a copy of IRS 501(c)2 or 501(c)3 determination letter from qualifying non-Wisconsin nonprofit organizations
 - Subcontractors should verify that the property became part of a qualifying facility transferred to a qualifying exempt entity
 - [Form S-227](#), Contractor Statement of Building Materials Purchased, is available on WDOR website to assist in documenting the necessary information, but contractors are not required to use this form



Construction Contract Exemption

- Now includes lump sum and time & material contracts
 - Applies if total sales price of tangible personal property, taxable services and nontaxable services is less than 10% of contract
 - Intended to make Wisconsin sales & use tax simpler for contractors
 - If customer provides an exemption certificate, the percentage is calculated without taking the exemption into account
 - This could mean that the customer cannot take advantage of the exemption
 - If 10% applies, prime contractor must pay sales or use tax on purchases of all materials, supplies and taxable services consumed in real property construction
 - Exception for contracts for exempt entities
 - If subcontractor involved, prime contractor can provide an exemption certificate, check "other purchases exempted by law", enter "exempt under sec. 77.54(60), Wis. Stats."
 - If no exemption cert provided the subcontractor's sales of taxable products and services sold to prime contractor are taxable



Construction Contract Exemption – Subcontractor

- The construction contract exemption applies if either:
 - The prime contractor provides the subcontractor with an exemption certificate claiming the construction contract exemption in sec. 77.54(60), Wis. Stats.
 - The subcontractor’s contract with the prime contract meets the criteria for the construction contract exemption (10% rule)
- If the construction contract exemption is applicable:
 - Subcontractor’s sale to prime contractor is nontaxable
 - Subcontractor must pay sales or use tax on materials and supplies used on job
- See Publication 207, page 20-21 for sales and use tax liability when an exemption is provided incorrectly



Professional Sports and Entertainment Stadiums

- Materials, supplies, and equipment purchased solely for, and used solely in, the construction, renovation, or development of a professional sports stadium are exempt from tax under 70.11(36) Wis. Stats.
- Exemption applies to property consisting of or contained in the stadium including parking lots, restaurants, concession facilities, etc.
- Wisconsin Tax Bulletin 188 includes information on the 2015 Act 60 sales and use tax exemption for materials, supplies, equipment and landscaping services used to build sports and entertainment arena facilities



Landscaping Services

- Landscaping Services are Subject to Sales Tax
- Examples of taxable landscaping services include:
 - Design services
 - Removing and clearing brush, tree trimming, stump removal
 - Planting, weeding, edging, fertilizing, raking, thatching, etc.
 - Installing grass and sod



Landscaping Services

- Some work done by landscapers is **not** subject to sales tax
 - Examples of services that are not landscaping
 - Rough grading
 - Installing retaining walls
 - Installing fences, patios and decorative walkways
 - Pond construction
 - In these examples, the landscaper is performing real property construction services and should pay tax on purchase of materials
 - Publication 210 is an excellent resource



Construction Performed Outside Wisconsin

- Materials that a contractor takes possession of in Wisconsin are subject to tax even though those materials may be used in a construction project outside Wisconsin
 - Exception for modular homes and manufactured homes
- Credit for taxes paid to Wisconsin allowed in other state
- Sales and use tax nexus is established when contractors begin work within a state. This applies to all construction contractors in every state that has a sales and use tax
- Agency nexus through subcontractors, etc.





THANK YOU! Questions?

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