

# **Electrical Contractors**

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

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**IMPORTANT CHANGES**

**Registration, Filing Tax Returns, and Payment of Tax.** Registration, filing, and payment information has been updated. Pages 3 and 4.

**Contractor Acting As a Retailer and Consumer on Same Job.** Information has been added to explain the sales and use tax treatment of a contractor's sales and purchases when a contract or job includes both non-taxable services to real property and taxable tangible personal property and/or services. Pages 8 to 10.

**Exceptions To Part II.** Exceptions to Part II. have been added and updated. Pages 12 to 15.

**County and Stadium Use Tax.** Information about how county and stadium use taxes are imposed and the list of counties with a county tax has been updated. Pages 17 to 20 and Appendix A.

**Credit for Tax Paid to Other States.** Information and examples have been added to explain the credit for taxes paid to other states. Page 23.

**Special Situations.** Information has been added for the tax treatment of real property contracts with exempt entities, general contractors and subcontractors, county and stadium use tax on construction materials, and construction contracts on Native American Reservations. Pages 16 to 21.

**Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft by Persons Who are Not Dealers.** Any retailer that is registered to collect and remit or required to collect and remit Wisconsin sales and use taxes must collect and remit the applicable state, county, stadium, and premier resort area taxes on its sales of motor vehicles, boats, snowmobiles, recreational vehicles, trailers, semitrailers, all-terrain vehicles, and aircraft, even if they are not "dealers" or "registered dealers" of the item sold. Page 23.

## 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 web site.

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 February 1, 2012. 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 tangible personal property; items, property and goods listed in Part I.C.2. to 4.; or taxable services at retail in Wisconsin. Generally, a sale of such property, items, goods, and services is at retail unless the buyer purchases the property, item, good, or service for the purpose of reselling it.

\*Sales tax is imposed on a seller's taxable "sales price" rather than "gross receipts," effective October 1, 2009.

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) or for tangible personal property, items, property, or goods described in Part I.C.2. to 4. (taxable), or 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 tangible personal property; items, property, and goods listed in Part I.C.2. to 4.; and taxable services that are stored, used, or otherwise consumed in Wisconsin, and upon which a Wisconsin sales or use tax has not previously been paid.

\*Use tax is imposed on a purchaser's taxable "purchase price," rather than "sales price," effective October 1, 2009.

**Example 1:** A 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:** A 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:** A 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:** Effective September 1, 2011, 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, but is considered a real property construction activity under the other state's laws, 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, the terms "items, property, and goods," "items, property, or goods," or "item, property, or good," refers to the items, property, and goods described in Part I.C.1. through 4.

As used throughout this publication, the term “digital goods” refers collectively to products listed in Part I.C.4.

#### **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). If the sale is subject to the 0.5% football stadium tax, the tax rate is 5.5% (5% state tax and 0.5% football stadium tax).

#### **E. Registration**

##### **1. 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 taxable sales of property, items, goods, 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.

##### **2. 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 tangible personal property; items, property, and goods described in Part I.C.2. to 4.; and

taxable services in Wisconsin must obtain a use tax certificate.

##### **3. Application**

A person may apply for a seller’s permit or one of the use tax certificates described in 2. 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](#) web site.
- 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.

##### **4. 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 web site](#).

##### **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 web site](#). 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 logon ID and password from the Department of Revenue. Go to the [My Tax Account FAQs](#) on the Department of Revenue's web site for more information, including how to obtain your logon ID 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 web site. 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 e-mail acknowledgement to confirm receipt of a successful file transmission. Information about file transmission can be found on the Department of Revenue's web site at <http://www.revenue.wi.gov/eserv/eftgen.html>.

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 8902, Madison, WI 53708-8902; calling (608) 266-2776; or e-mailing the Department of Revenue at [DORSales-BusinessTaxandWithholding@wisconsin.gov](mailto:DORSales-BusinessTaxandWithholding@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 tangible personal property or items, property, and goods described in Part I.C.2. to 4., or
2. Engaging in real property construction activities.

The contractor's sales and purchases are taxed differently under 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 per-

sonal 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.2.
- 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 the tangible personal property or items, property, and goods described in Part I.C.2. to 4. that are either sold or physically transferred to the customer in the installation, repair, or servicing of tangible personal property or items, property, and goods described in Part I.C. 2. to 4. 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 would include 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 demoiseurize 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 tangible personal property and items and goods described in Part I.C.2. and 4. when engaged in 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 tangible personal property, and items and goods described in Part I.C.2. and 4., 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 tangible personal property or items or goods described in Part I.C.2. and 4. 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 property, item, or good 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 tangible personal property or items or goods described in Part I.C. 2. and 4. which 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 billing 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:

- 1. 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.
- 2. 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.

*Separately Stated or Lump Sum Options*

When a contractor is hired to provide both taxable and nontaxable items, a contractor may either

(1) separately state the charges for the taxable and nontaxable items on the invoice provided to the customer or (2) charge one lump sum for all of the taxable and nontaxable items provided under the contract. If the contractor makes a separate charge for the taxable items provided under the contract, the contractor is required to charge the applicable sales tax on those charges. However, if the contractor charges one lump sum for both the taxable and nontaxable items, the proper tax treatment depends on the amount of taxable items provided under the contract in relation to the total contract amount, as described in (a) and (b) below.

*(a) Services Only – Lump Sum Contract*

If a contractor has a contract to perform both taxable and nontaxable services for a customer, [sec. Tax 11.67\(2\)\(c\), Wis. Adm. Code \(November 2010 Register\)](#), provides that if the contractor charges one lump sum for all of the services, the contractor should charge sales tax on the entire amount, unless the department determines that the primary purpose of the transaction or a reasonable allocation more accurately reflects the tax.

If the amount the contractor would normally charge for the taxable services provided is 10% or more of the total contract amount, a reasonable allocation between the taxable and nontaxable items will need to be made. However, if the amount the contractor would normally charge for the taxable services provided under the contract (i.e., if the contractor had separately stated the amounts) is less than 10% of the total contract amount, see the information in (b) below under the heading “Few Taxable Items (Property or Services) Provided in Contract to Construct Building or Other Structure” for the proper tax treatment.

*(b) Few Taxable Items (Property or Services) Provided in Contract to Construct Building or Other Structure*

The following information only applies to those situations in which a contractor has a single contract to provide both (1) real property improvements and (2) a small amount of taxable services, tangible personal property, and/or items, property, or goods described in Part I.C. 2. to 4. The information below does not apply to contracts if:

- Based on a reasonable allocation of the selling price, the taxable services, taxable tangible per-

sonal property and/or items, property, or goods described in Part I.C. 2. to 4. provided is 10% or more of the total contract amount; or

- The amount for the taxable services, tangible personal property, and/or items, property, or goods described in Part I.C. 2. to 4. is separately stated in any document provided to the customer.

If a contract for a real property improvement also includes tangible personal property; items, property, or goods described in Part I.C. 2 to 4.; and/or taxable services, a contractor may use its cost of the property, items, goods, and/or taxable services as the amount subject to sales tax if both of the following apply:

- (1) The tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; or taxable services are minor in relation to the total amount of the contract (i.e., based on a reasonable allocation, the selling price of the taxable services, taxable tangible personal property, and/or items, property, or goods described in Part I.C. 2. to 4. provided in the contract is less than 10% of the total contract amount), **and**
- (2) No separate charge is made in any documents provided to the customer (e.g., contract, contract addendum, appendix, payment request, etc.) for the tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; and/or taxable services.

If a separate charge is made for any of the tangible personal property; items, property, or goods described in Part I.C. 2 to 4.; or taxable 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 that the contractor pays to its own employees.

**Example 1 – Taxable Items Separately Stated** - Contractor O enters into a contract to construct a house for Individual P for \$250,000. Contractor O separately states the charges for the tangible personal property (\$7,500) and/or taxable services (\$10,000) included in the \$250,000 contract price. Even though the value of the tangible personal property and taxable services is less than 10% of the total contract amount (i.e., it is only 7%), since Contractor O separately stated the charges for the tangible personal property and/or taxa-

ble services, Contractor A is required to charge sales tax on the \$17,500 (\$7,500 plus \$10,000).

**Example 2 – Taxable Items Minor** – Contractor A enters into a contract to construct a building for Retailer B for \$500,000. However, included in the \$500,000 contract price are a few items of tangible personal property and/or taxable services. Contractor A does not separately state any charges for the tangible personal property and/or taxable services included in the contract in any documents that are provided to Retailer B. If the contractor would have separately stated the charges for the tangible personal property and/or taxable services included in the contract, the contractor would have charged the customer \$40,000 for those items. The contractor's cost of those same items is \$30,000. Since the normal selling price of the tangible personal property and/or taxable services included in the contract (\$40,000) is less than 10% of the total contract amount (i.e., it is 8%) and the contractor has not separately stated the charge for the tangible personal property and/or taxable services, the contractor can use its cost (\$30,000) of these items as the measure subject to sales tax.

**Example 3 – Taxable Items Not Minor** – Contractor X enters into a contract to construct a building for Company Y for \$5,000,000. Included in the \$5,000,000 contract price is tangible personal property and/or taxable services which the contractor would have charged \$600,000 for if the contractor had separately stated the items. Contractor X does not separately state any charges for the tangible personal property and/or taxable services included in the contract in any of the documents that are provided to Company Y. Since the amount the contractor would have charged for the tangible personal property and/or taxable services included in the contract (\$600,000) is more than 10% (i.e., it is 12%) of the total contract amount (\$5,000,000), Contractor X is required to charge sales tax on the \$600,000 for the tangible personal property and/or taxable services.

### 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. Tangible personal property and property described in Part I.C.2. and 3., 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.

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 tangible personal property and items and property described in Part I.C.2. and 3., which becomes a component part of an industrial, utility, or governmental waste treatment facility, and includes tangible personal property and items and property described in Part I.C.2. and 3., purchased by contractors who transfer the property and items 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 a waste treatment facility property tax exemption under sec. 70.11(21)(a), Wis. Stats. for periods prior to October 1, 2007 and under sec. 70.11(21), Wis. Stats. for periods on and after October 1, 2007. 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](#).

Refer to [sec. Tax 12.40, Wis. Adm. Code](#), 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) 266-1147. The web site is [www.revenue.wi.gov/contact/slfbmta.html](http://www.revenue.wi.gov/contact/slfbmta.html). 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 [www.revenue.wi.gov/training/assess/assrlist.pdf](http://www.revenue.wi.gov/training/assess/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 Section, Mail Stop 6-97, P.O. Box 8971, Madison, WI 53708-8971; telephone (608) 266-8162.

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

### 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 the purchases of tangible personal property and items and property described in Part I.C.2. and 3., 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.

## 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 an 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 is subject to tax. (See [sec. Tax 11.04, Wis. Adm. Code, "Constructing buildings for exempt entities."](#)) Exceptions to this rule are when building materials are purchased to alter, repair, or improve a waste treatment facility as described in Part IV.C. of this publication and when building materials are purchased to construct, renovate, or develop certain professional sports and entertainment home stadiums as described in Part IV.D. of this publication.

*Exempt Entities Buying Materials and Taxable Services Tax Free:* Under Wisconsin sales and use tax law, purchases of tangible personal property; items, property, and goods described in Part I.C.2. through 4.; and taxable 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 federal or Wisconsin governmental unit's, tribe's, band's or other 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) and the Wisconsin Tax Appeals Commission January 7, 1998 decision in the case of *Precision Metals, Inc. v. Wisconsin Department of Revenue* (CCH 400-337) 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. Tangible Personal Property; Items, Property, and Goods Described in Part I.C. 2. through 4.; and Taxable Services (including items in Part IV. which are treated as personal property and landscaping)**

The subcontractor is selling the items of tangible personal property; property, items, and goods described in Part I.C. 2. through 4.; and taxable services to the general contractor who will ultimately resell them to the customer. In this situation, the subcontractor may purchase the tangible personal property; items, property, and goods described in Part I.C.2. through 4.; and taxable 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 could 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 tangible personal property and items, property, and goods described in Part I.C.2. through 4., 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 tangible personal property and items, property, and goods described in Part I.C.2. through 4., stored in a county that has adopted the 0.5% county sales and use tax if that tangible personal property or item, property, or good described in Part I.C.2. through 4., 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 ac-

tivity. 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.

**Effective October 1, 2009**, 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 football stadium tax).

<p><b>Prior to October 1, 2009</b>, the contractor could not take a credit for stadium sales and use tax paid against county use tax due.</p>
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**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 62 counties that have adopted the 0.5% county tax as of February 1, 2012, and the effective date for each county's tax.

As of February 1, 2012, there is **no** county sales and use tax in the following 10 Wisconsin counties.

**Counties Without County Tax**

Brown	Menominee	Waukesha
Calumet	Outagamie	Winnebago
Kewaunee	Racine	
Manitowoc	Sheboygan	

**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%) - effective January 1, 1996**

Milwaukee County	Waukesha County
Ozaukee County	Washington County
Racine County	

**Football Stadium Tax (0.5%) - effective November 1, 2000**

Brown 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.

**Effective October 1, 2009**, 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 football stadium tax).

**Prior to October 1, 2009**, the contractor could not take a credit for county sales and use tax paid against stadium use tax due.

**Example:** Contractor A is located in Dane County and purchases materials that will be used in a real property construction activity. The materials are delivered to Contractor A'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, but does not pay any baseball stadium district sales or use tax since Dane County has not adopted the baseball stadium district sales and use tax. Contractor A then transports the materials to a jobsite in Waukesha County (a county that has adopted the baseball stadium district 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 baseball stadium district sales and use tax and no baseball stadium district sales or use tax has been paid on the materials, Contractor A owes the baseball stadium district use tax on these materials but is allowed a credit for the 0.5%

Dane County tax previously paid. Therefore, since the 0.5% Dane County tax previously paid exceeds the 0.1% baseball stadium district use tax, no additional 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 acceptance 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. “Native American” also includes Native American Tribes, Native American corporations (corporations controlled and operated by Native Americans who are enrolled members of the Tribe of the reservation on which the corporation operates), and Native American partnerships (partnerships that are controlled and operated by Native Americans who are enrolled members of the Tribe of the reservation on which the partnership operates).

“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, as well as any Ho-Chunk Nation communities.

“Sales” means sales of tangible personal property or taxable services.

“Tribe” means a federally recognized Tribe or Band of Native Americans and includes tribal entities and tribal authorities.

“Tribal reservation” means the reservation of the Tribe of which a Native American is an enrolled member (for example, the tribal reservation for an enrolled member of the Oneida Tribe is the Oneida reservation). Unless otherwise noted, “reservation” includes trust land, which is 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

Construction materials are taxable if sold to a non-Native American contractor who incorporates the materials into realty on a reservation, regardless of whether the materials were delivered to the contractor off the reservation in Wisconsin or another state, or on the reservation (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 a Native American reservation. 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 the Tribe’s reservation. Since the building of a casino for a Native American Tribe on the Tribe’s reservation will help improve the self-sufficiency of the Tribe, federal preemption applies and the contractor may purchase the materials it uses in building the casino for the Tribe on the Tribe’s reservation without paying any Wisconsin sales or use tax.

A Native American, who takes delivery of construction materials off the reservation, is subject to the Wisconsin sales or use tax.

**Example:** Native American A purchases construction materials from Retailer B at Retailer B's location. Retailer B's location is not on the tribal reservation. Native American A will take the construction materials back to his tribal reservation and use them to fix his house. Native American A is subject to Wisconsin sales or use tax on his purchase of the construction materials from Retailer B.

Sales of tangible personal property; items, property, and goods described in Part I.C.2. through 4., and taxable 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 the tribal reservation.

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

**3. The following sales on a tribal reservation 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 reservation and (2) the construction materials will be used on the Native American contractor's tribal reservation. However, if the materials are later used off the Native American contractor's tribal reservation, 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 the reservation which the contractor uses in a construction project on the reservation 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 the tribal reservation, 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. 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. However, if the purchase, rental, license, or lease of tangible personal property, items, property, or goods described in Part I.C.2. through 4. or taxable service was sourced to (i.e., took place on) tribal lands and subject to the sales or use tax imposed by a federally recognized American Indian tribe or band in Wisconsin prior to the property, items, goods and/or services being subject to the Wisconsin state, county, and/or stadium tax, the amount of sales tax paid to the tribe or band may be applied as a credit against the Wisconsin state, county, and/or stadium use tax imposed on that same property, item, good and/or service, as determined by an agreement between the department and the tribal council..

## **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 tangible personal property and items, property, and goods described in Part I.C.2. through 4. 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 tangible personal property or items, property, or goods described in Part I.C.2. through 4., 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 a 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 proper-

ty 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 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.

#### E. 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.

**Effective October 1, 2009**, any person that is registered to collect and remit or required to be registered to collect and remit Wisconsin sales and use taxes must also collect and remit the applicable state, county, and/or stadium sales and use taxes on its sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in sec. 340.01(48r). Wis. Stats., trailers, semitrailers, all-terrain vehicles, and aircraft, even if they are not "dealers" or "registered dealers" of the item sold.

**Prior to October 1, 2009**, a person who was not a "dealer" or "registered dealer" was not required to collect and remit the applicable Wisconsin state, county, and/or stadium sales and/or use tax on their sales of used motor vehicles, boats, snowmobiles, recreational vehicles as defined in sec. 340.01(48r), Wis. Stats., trailers, semitrailers, all-terrain vehicles, and aircraft.

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.

#### F. Credit for Tax Paid to Another State

A contractor is subject to Wisconsin use tax on tangible personal property; items, property, and goods described in Part I.C.2. through 4.; and taxable 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 property, item, good, or service (e.g., the contractor took possession of the property, item, good, or service 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 A 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 A 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 A purchases materials in Minnesota for \$10,000. Contractor A properly paid 6.875% Minnesota sales tax of \$687.50 on the **purchase** of materials. Contractor A uses the materials for the sale and installation of tangible personal property (not a real property construction job) in a job for \$25,000 for Customer C. Contractor A must charge **sales** tax on the entire \$25,000. Contractor A may claim a deduction of \$13,750 (\$687.50 tax paid to Minnesota divided by 5% Wisconsin tax rate = \$13,750) on its Wisconsin sales and use tax return for the tax Contractor A paid to Minnesota on its purchase of the materials.

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](#).

#### G. 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 ( $\$3,000 \times 5\%$ ) 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 tangible personal property; items, property, or goods described in Part I.C.2. through 4.; or taxable 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 that the sales and use tax law provides that all receipts are taxable until the contrary is established. The seller (contractor) has the burden of proving that a sale of tangible personal property; items, property, or goods described in Part I.C.2. through 4.; or taxable services is exempt, unless the seller takes an exemption certificate (or other information as described in 2. and 3. below) 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.

Three common reasons that sales of tangible personal property; items, property, or goods described in Part I.C.2. through 4.; or taxable services may be exempt are:

1. The use to be made of the property, item, good, or service purchased is exempt or the property, item, good, or service is to be resold. For example, the item is going to be used exclusively and directly in manufacturing or in farming and is, therefore, exempt.

The seller should obtain a 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.

2. 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 federal government or Wisconsin governmental unit's, tribe's or band's Certificate of Exempt Status (CES) number on the invoice.

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.

3. The purchaser furnishes the seller (a) a copy of its Wisconsin direct pay permit or (b) a statement that the purchaser holds a Wisconsin direct pay permit, the permit number, and the date the permit was issued. 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.

**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 Billings to its Customers**

To determine its sales and use tax liability, a contractor should segregate its billing charges (sales price) according to whether the contractor is acting as (1) a retailer (selling tangible personal property; items, property, and good described in Part I.C. 2 through 4.; or providing taxable labor or services) or (2) a consumer (improving, altering, or repairing real property).

The billing 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.

If a few items of tangible personal property; items, property, or goods described in Part I.C.2. through 4.; or taxable services, minor in cost in relation to the total amount of a contract (i.e., based on a reasonable allocation, the selling price of the taxable services, taxable tangible personal property, and/or items, property, or goods described in Part I.C. 2. to 4. provided in the contract is less than 10% of the total contract amount), are sold as part of a contract which includes construction of a building or other structure and no separate charge is made in any documents provided to the customer for the tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; or taxable services (e.g., contract, contract addendum, appendix, payment request, etc.), the cost of such property, items, goods, or taxable services to the construction contractor shall be used as the sales price subject to sales tax. If a separate charge is made for any of the tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; or taxable services, the separate charge is subject to the tax, unless an exemption applies. See Part II.D. on pages 8 to 10 of this publication for additional information relating to this item.

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 tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; or taxable 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; tangible personal property; items, property, or goods described in Part I.C. 2. to 4.; and taxable 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. Charges relating to nontaxable sales would not be taxed.

**Example:** A contractor constructs a building for a customer that 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 \$300,000 separately stated charge for items that apply to both the real property and tangible personal property can 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 can be 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 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).

## VIII. ANY QUESTIONS?

### A. Department of Revenue Assistance

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

Visit our web site . . . [www.revenue.wi.gov](http://www.revenue.wi.gov)

E-Mail . . . [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov)

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

Telephone . . . (608) 266-2776

Fax . . . (608) 267-1030

You may also contact any of the Department of Revenue offices. For a listing of offices and their current hours, please see the department's web site at [www.revenue.wi.gov/faqs/ise/address.html](http://www.revenue.wi.gov/faqs/ise/address.html).

### B. Other Information

#### 1. Sales and Use Tax Report

The [Sales and Use Tax Report](#) is published one or more times each year by the Department of Revenue. It includes general information about sales and use tax, including new tax laws enacted by the legislature. These reports are available on the Department's web site at [www.revenue.wi.gov/ise/sales/index.html](http://www.revenue.wi.gov/ise/sales/index.html).

Notification of new reports will be sent to subscribers on the sales and use tax electronic mail list. See Part VIII.B.6.

#### 2. Publications

You may obtain the following sales and use tax publications from any Department of Revenue office, or at the department's web site.

Number	Name
<a href="#">201</a>	Wisconsin Sales and Use Tax Information
<a href="#">202</a>	Sales and Use Tax Information: Motor Vehicle Sales, Leases, and Repairs
<a href="#">203</a>	Sales and Use Tax Information for Manufacturers
<a href="#">204</a>	Sales and Use Tax Information for Colleges, Universities and Technical Colleges
<a href="#">206</a>	Sales Tax Exemption for Nonprofit Organization
<a href="#">207</a>	Sales and Use Tax Information for Contractors
<a href="#">209</a>	Sales and Use Tax Information for Wisconsin Counties and Municipalities
<a href="#">210</a>	Sales and Use Tax Treatment of Landscaping Services

Number	Name
<a href="#">211</a>	Sales and Use Tax Information for Cemetery Monument Dealers
<a href="#">212</a>	Businesses: Do You Owe Use Tax on Imported Goods?
<a href="#">214</a>	Do You Owe Use Tax? (Businesses)
<a href="#">216</a>	Filing Claims for Refund of Sales or Use Tax
<a href="#">217</a>	Auctioneers
<a href="#">219</a>	Hotels, Motels, and Other Lodging Providers
<a href="#">220</a>	Grocers
<a href="#">221</a>	Farm Suppliers and Farmers
<a href="#">222</a>	Motor Vehicle Users - Do You Owe Use Tax?
<a href="#">223</a>	Bakeries
<a href="#">224</a>	Veterinarians
<a href="#">225</a>	Barber and Beauty Shops
<a href="#">226</a>	Golf Courses
<a href="#">228</a>	Temporary Events
<a href="#">229</a>	Brackets for Collecting Wisconsin Sales or Use Tax Paid on Retail Sales
<a href="#">230</a>	Sales and Use Tax Information for Sellers of Antiques, Crafts and Artwork
<a href="#">240</a>	Digital Goods
<a href="#">403</a>	Premier Resort Area Taxes
<a href="#">405</a>	Wisconsin Taxation of Native Americans
<a href="#">410</a>	Local Exposition Taxes

### 3. *Wisconsin Tax Bulletin*

The [Wisconsin Tax Bulletin](#) is a quarterly publication of the Department of Revenue that includes information on most taxes administered by the Department of Revenue, including sales and use, income, franchise, and excise taxes. It includes up-to-date information on new tax laws, interpretations of existing laws, and information on filing returns. It gives brief excerpts of major Wisconsin tax cases decided by the Wisconsin Tax Appeals Commission and the courts.

The Bulletins are available online at: [www.revenue.wi.gov/ise/wtb/index.html](http://www.revenue.wi.gov/ise/wtb/index.html).

### 4. *Rules – Wisconsin Administrative Code*

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

A book of the administrative rules of the Department of Revenue may be obtained from: Department of Administration, Document Sales, P.O. Box 7840, Madison, WI 53707-7840. A subscription update service which provides all new Department of Revenue rules and changes to existing rules is also available from Document Sales. Sales and use tax rules are also available online at

[www.legis.state.wi.us/rsb/code/tax/tax011.pdf](http://www.legis.state.wi.us/rsb/code/tax/tax011.pdf).

### 5. *Topical and Court Case Index*

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

The **Topical and Court Case Index** is available on the Department of Revenue's web site at: [www.revenue.wi.gov/ise/top-cc/index.html](http://www.revenue.wi.gov/ise/top-cc/index.html).

### 6. *Electronic Mailing Lists*

The Department of Revenue has several free [Electronic Mailing Lists](#) available to the public. The goal of the electronic mailing lists is to provide an efficient means of communicating pertinent information from the Department to the persons who have signed up for the respective list(s). For additional information on the electronic mailing lists or to subscribe, go to: [www.revenue.wi.gov/html/lists.html](http://www.revenue.wi.gov/html/lists.html).

## IX. SPEAKERS BUREAU

The department's Speakers Bureau provides speakers to professional organizations and community groups throughout Wisconsin. If you would like a speaker to ad-

dress your group, please call the Speakers Bureau at (608) 266-1911.

Subjects that may be discussed include updates on income, corporate, and sales tax and homestead credit laws, audit procedures, common taxpayer errors, how tax laws apply to exempt organizations, sales tax problems for contractors or manufacturers, etc.

There is no charge for services provided by the Speakers Bureau.

**X. BUSINESS DEVELOPMENT  
ASSISTANCE – DEPARTMENT OF  
COMMERCE, PERMIT INFORMATION  
CENTER**

If you have questions about what other permits may be needed for your business, or need assistance in obtaining a permit, call the Permit Information Center at 1-800-HELPBUS (435-7287) or find information online at [ww2.wisconsin.gov/state/wizard/app/LoadIntro](http://ww2.wisconsin.gov/state/wizard/app/LoadIntro).

**APPENDIX A**

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

Listed below are the 62 counties that have adopted the 0.5% county tax as of February 1, 2012, 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	Taylor (60)	7/1/99
Iowa (25)	4/1/87	Trempealeau (61)	10/1/95
Iron (26)	4/1/91	Vernon (62)	1/1/97
Jackson (27)	4/1/87	Vilas (63)	4/1/88
Jefferson (28)	4/1/91	Walworth (64)	4/1/87
Juneau (29)	4/1/92	Washburn (65)	4/1/91
Kenosha (30)	4/1/91	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