



## Sales/Use Tax Updates and Reminders

### Exemption for Building Materials That Become Part of Facility Owned by Local Government or Qualifying Exempt Entity

Section 77.54(9m), Wis. Stats., effective for contracts entered into January 1, 2016, or thereafter, provides an exemption from sales and use tax exemption for property sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the property to a qualifying exempt entity, if the property becomes part of a facility in Wisconsin that is owned by the qualifying exempt entity. In order for the exemption to apply, the following criteria must be met:

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

#### ***What Is a Qualifying Exempt Entity?***

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

- Any county, city, village or town within Wisconsin
- Any public school district within Wisconsin
- A county-city hospital established under sec. 66.0927, Wis. Stats.
- A sewerage commission organized under sec. 281.43(4), Wis. Stats.
- A metropolitan sewerage district organized under secs. 200.01 to 200.15 or 200.21 to 200.65, Wis. Stats.
- Any joint local water authority created under sec. 66.0823, Wis. Stats.
- Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number\*
- A non-Wisconsin nonprofit organization if it is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation

**Note:** A qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity.

- Retroactively for contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity will include holding companies which are all of the following:
  - Described under sec. 501(c)(2), IRC;
  - Exempt from federal income tax under sec. 501(a), IRC; and

---

## Wisconsin Tax Bulletin 202 – July 2018

- Organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.
- For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity will include:
  - Technical colleges, any institution as defined in sec. 36.05(9), Wis. Stats., or campus as defined in sec. 36.05(6m), Wis. Stats., in the University of Wisconsin System, and the University of Wisconsin Extension
  - A state veterans organization. "State veterans organization" means the Wisconsin state organization or department of a national veterans organization incorporated by an act of congress.

Additionally, a contractor's purchase of building materials used in a construction activity for any federally recognized American Indian tribe or band within Wisconsin is also exempt from sales and use tax if the construction activity occurs on the tribal reservation and the construction project will benefit the Tribe. This tax treatment is not part of the exemption described above and also applies prior to the effective date of the exemption.

\* **Caution:** Not all nonprofit organizations that are exempt from federal income taxes are qualifying exempt entities for purposes of this exemption. Many fraternal, social, and civic organizations **are not qualifying** entities (e.g., chambers of commerce, professional organizations, labor organizations). A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity.

This exemption also **does not apply** to facilities constructed for the following entities, even if the entity holds a Wisconsin CES number:

- A non-Wisconsin county, city, village or town
- A non-Wisconsin public school district
- A public college, university or technical college (regardless of whether Wisconsin or non-Wisconsin for contracts entered into prior to July 1, 2018)
- A state governmental unit (regardless of whether Wisconsin or non-Wisconsin)
- A federal governmental unit
- A Wisconsin nonprofit organization that does not hold a Wisconsin CES number
- Individual Native American Tribe members

### ***What Is a "Facility?"***

The exemption applies to property that becomes part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity.

"Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility.

"Facility" does NOT include a highway, street, road, or anything not specifically listed above.

---

## Wisconsin Tax Bulletin 202 – July 2018

### ***Can a Subcontractor "Transfer" the Property to the Exempt Entity?***

A subcontractor's purchase of property qualifies for exemption if the property becomes part of a facility located in Wisconsin owned by a qualifying exempt entity. Although the subcontractor is providing a real property construction activity under contract with the general contractor, the property is ultimately transferred to a qualifying exempt entity upon completion of the contract between the general contractor and the qualifying exempt entity.

#### ***How to Claim the Exemption***

A contractor who makes purchases that qualify for this exemption, must provide a fully completed exemption certificate to the seller. The contractor should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(9m), Wis. Stats."

**Note:** A contractor who provides the seller an exemption certificate claiming an item will be used in this exempt manner, then uses it in a taxable manner, is liable for use tax on its purchase price of such items.

#### ***Documentation to Maintain***

*Retailers* - The seller is not liable for Wisconsin sales tax on its sales of taxable products if, within 90 days of the sale, it receives a fully completed exemption certificate from the contractor indicating the contractor is using the items in an exempt manner. Sellers are required to maintain adequate records, including exemption certificates obtained from contractors, to identify that the sale is exempt.

*Contractors & Subcontractors* - This exemption is for the purchase of building materials used in real property construction; therefore, the customer or general contractor purchasing real property construction services from the contractor or subcontractor does not provide an exemption certificate. Real property construction activities are nontaxable which means no exemption is necessary. However, the contractor or subcontractor will need to obtain information to maintain in their records to show that its purchases of building materials qualified for the exemption provided in sec. 77.54(9m), Wis. Stats.

*Contractors* - The contractor is required to maintain records to verify that the exemption applies when the real property construction activity is performed on a facility owned by the qualifying exempt entity. This may be done by obtaining a nonprofit organization's CES number and maintaining contracts and invoices showing the work was for this qualifying exempt entity.

[Form S-227](#), *Contractor Statement of Building Materials Purchased*, is available to assist in documenting the necessary information, but contractors are not required to use this form.

**Important:** A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity. Property used in a real property contract with a Wisconsin nonprofit organization that does not hold a Wisconsin CES number does not qualify for this exemption.

Although a qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity, the contractor must be able to verify that the entity is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation. For example,

---

## Wisconsin Tax Bulletin 202 – July 2018

the non-Wisconsin qualifying organization may provide the contractor with a copy of its IRS 501(c)2 or 501(c)3 exempt status determination letter.

**Caution:** Nonprofit organizations that the IRS exempts under another section of its code (e.g., 501(c)6, 501(c)7) **are not** qualifying exempt entities for purposes of this exemption. In addition, a Wisconsin state governmental unit that holds a CES number is not a qualifying exempt entity for purposes of this exemption.

For qualifying exempt entities that are not required to hold a CES number (e.g., a Wisconsin municipality, the University of Wisconsin System), the contractor may retain the contract and invoices that indicate the work was performed for the qualifying exempt entity.

State veterans organizations will not be issued a Wisconsin Certificate of Exempt Status number. The contractor must document that its contract is with a qualifying state veterans organization.

*Subcontractors* - The same treatment applies to subcontractors as it does to contractors in the paragraphs above (i.e., subcontractor provides exemption certificate to vendor, maintain documentation). However, a subcontractor may not have a contract indicating the real property construction activity is for the qualifying exempt entity. A subcontractor will need to ensure it can identify the Wisconsin location, on a bill of sale or invoice to the general contractor, where it performed the real property construction activity, and verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

[Form S-227](#), *Contractor Statement of Building Materials Purchased*, is available to assist in documenting the necessary information, but contractors are not required to use this form.

### ***Transitional Provisions***

This law first applies to contracts entered into on January 1, 2016,\* and thereafter. The exemption does not apply if the contractor purchases property after January 1, 2016,\* for a contract that was entered into prior to January 1, 2016.\*

The date the contract was entered into between the contractor and a qualifying exempt entity is used in determining whether the exemption applies. A change order to a contract amends the original contract, but does not nullify the original contract or change the date that the contract was entered into. Therefore, if a contract between the contractor and the exempt entity was irrevocably entered into prior to January 1, 2016,\* the exemption does not apply to property purchased to fulfill the contract. If the contract was not irrevocable and the original contract is cancelled and a new contract is entered into on January 1, 2016,\* or thereafter, the property used to fulfill the new contract may qualify for exemption.

\* The "contract entered into" date is different for contracts with certain exempt qualifying entities. These entities and "contract entered into" dates are as follows:

- For contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity will include 501(c)2 holding companies
- For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity will include:
  - Technical colleges, the University of Wisconsin System, and the University of Wisconsin-Extension
  - A state veterans organization