

# Sales & Use Tax Exemption: Q & A – Common Inquiries

November, 2016

The Associated General Contractors of Greater Milwaukee provides the following chart as a resource for our contractors who purchase building materials in association with certain projects for tax exempt entities. The Wisconsin Department of Revenue's Division of Income, Sales & Excise Tax compiled these answers to commonly asked questions regarding the new building materials exemption in sec. 77.54(9m), Wis. Stats. Any further questions may be directed to AGC General Counsel, Nathan Jurowski, at (414) 778-4100 or [njurowski@agc-gm.org](mailto:njurowski@agc-gm.org).

Question	DOR Response
<b>Do building materials, such as concrete, used to construct a sidewalk qualify for exemption?</b>	No, only building materials for the items listed in the definition of "facility" in sec. 77.54(9m), Wis. Stats., qualify for exemption. A sidewalk is not on the list of facilities.  Similarly, the following real property improvements do not meet the definition of "facility": street lights, water-access steps, fountains, statues, and permanently-affixed concrete benches.
<b>Does a developer's purchase of sewer pipes qualify for exemption?</b>	Yes, but only if there is a contract between the developer and the municipality to transfer the sewers to the municipality upon completion of the contract.
<b>Does backfill that is placed over sewer pipes placed under a road qualify for exemption?</b>	The backfill needed to install the pipes qualifies for exemption, including the needed subgrade. However, materials used in the deconstruction, repair, and/or rebuilding of the road (from the rock base and other road base materials to and including the road materials) do not qualify for the exemption.
<b>Are curbs part of the sewer system or the street?</b>	Curbs and gutters are part of the street; therefore, materials used to construct the curbs do not qualify for exemption.
<b>Do storm sewer grates and manhole covers qualify for exemption?</b>	Storm sewer grates and manhole covers are part of the storm sewer piping and are exempt (but not the road itself or the curbing).
<b>If a contract was entered into prior to January 1, 2016, can a change order be used to change the date of the contract so that the materials qualify for exemption?</b>	No, a change order does not negate the original contract/contract date.
<b>Can purchases by subcontractors qualify for exemption, since the subcontractors are transferring the materials to the general contractor (rather than the exempt entity)?</b>	Yes. For purposes of claiming the exemption, "transfer" means that the possession of the property rests with the exempt entity upon completion of the real property construction activity. Therefore, the exemption applies to a subcontractor's purchase of building materials that are ultimately transferred to the exempt entity upon completion of the contract.
<b>Does the exemption apply to a contractor's purchase of building materials used to fulfill a contract with the State of Wisconsin (or University of Wisconsin)?</b>	No, the State of Wisconsin is not a qualifying exempt entity.
<b>Can a contract that was entered into prior to January 1, 2016 be cancelled and resigned after January 1, 2016.</b>	For projects where work has not begun, a contract can be cancelled and resigned after January 1, 2016 and come within the exemption.  For projects where the work has begun, if the parties can renegotiate the bring future work yet to be started under a new contract signed after January 1, 2016, materials purchased for work completed after the renegotiated contract date would come within the exemption.

<p><b>If materials were purchased prior to January 1, 2016 and put into inventory, then used in a qualifying manner, do those materials qualify for the exemption? If the contractor paid tax when they purchased the materials, can the contractor get a refund of that tax?</b></p>	<p>If a contractor has materials in its inventory that were purchased prior to January 1, 2016 and such materials become a component of a "facility" that becomes the property of a qualifying exemption entity under a contract that was entered into on January 1, 2016 or thereafter, the materials may qualify for exemption if <b>all</b> of the following apply:</p> <p>The contractor must be both a retailer of tangible personal property and a consumer of tangible personal property used in real property construction activities.</p> <p>The contractor did not know at the time of purchase and until after January 1, 2016 that the materials would be used in a real property construction activity.</p> <p>The contractor did not pay tax on its purchase of the materials.</p> <p>If all of the above criteria are met, the contractor will not be held liable for use tax on the materials that become a component of a "facility." If contractor previously paid tax on the materials in its inventory, the contractor may not request a refund of the tax previously paid.</p>
<p><b>Does the exemption only apply to building materials that become a part of real property? Or does it apply to building materials that become a part of tangible personal property?</b></p>	<p>The exemption does not apply to building materials that retain their character as tangible personal property when installed. However, a contractor may purchase such property without tax, for resale, that is physically transferred to the exempt entity and that retains its character as tangible personal property when installed. The sale of tangible personal property to an exempt entity (e.g., a Wisconsin county) is exempt from tax.</p>
<p><b>How does a contractor claim the exemption on its purchase of qualifying building materials?</b></p>	<p>A contractor who makes purchases that qualify for this exemption, must provide a fully completed exemption certificate (Form S-211) 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."</p>



1243 N 10<sup>th</sup> St., Suite 175, Milwaukee, WI 53205  
 Phone: 414-778-4100 \* Fax: 414-778-4119 \* [www.agc-gm.org](http://www.agc-gm.org)