

**WISCONSIN DEPARTMENT OF REVENUE  
DIVISION OF INCOME, SALES, AND EXCISE TAX**

**NOTICE OF PROPOSED GUIDANCE DOCUMENTS**

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

**SUBMITTING PUBLIC COMMENTS**

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

**DEADLINE FOR SUBMISSION**

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

| <b>Document Number</b> | <b>Document Title</b>                              |
|------------------------|----------------------------------------------------|
| <b>100130</b>          | Frac Sand Mining and Processing - Common Questions |

State of Wisconsin  
Department of Revenue

# Frac Sand Mining and Processing

**This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.**

1. What is "Frac Sand"?
2. If I purchase land for mining frac sand, is the sale of the land subject to Wisconsin sales or use taxes?
3. If I am the lessor of land and the lessee obtains the right to extract the frac sand on the leased land, are my lease receipts subject to Wisconsin sales or use taxes?
4. A business purchases or leases land for extracting the frac sand from the land. Rather than selling the frac sand, the business ships the frac sand out of state where a business' natural gas production wells will use the frac sand. Does this business owe Wisconsin use tax on the frac sand it extracted in Wisconsin?
5. A business has extracted frac sand from land owned or leased. The business sells the frac sand extracted. The frac sand is loaded onto rail cars in Wisconsin and shipped by a railroad company to purchasers in other states. Is sale of the frac sand subject to Wisconsin sales or use taxes?
6. A business purchased or leased land for the purpose of extracting and producing frac sand. Is there an exemption from Wisconsin sales and use taxes for the equipment the business uses in extracting the frac sand from the earth?
7. Are there any Wisconsin sales and use taxes exemptions for equipment and consumables used in washing, cleaning, and drying extracted material to produce frac sand?
8. What is "manufacturing" for purposes of the sales and use tax exemptions?
9. How do I know when the extraction process ends and the manufacturing process begins?
10. How do I know when the manufacturing process has ended?

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## 1. **What is "Frac Sand"?**

Frac sand is quartz sand of a specific grain size and shape suspended in fluid and injected into oil and gas wells under very high pressure. That pressure opens and enlarges fractures. It also creates new ones. Then the extra strength sand grains are carried into these fractures, propping

them open as the fluid pumps out. Optimal frac sand is round grain, relatively course, and holds up under tremendous pressure.

**2. If I purchase land for mining frac sand, is the sale of the land subject to Wisconsin sales or use taxes?**

No. Sales of real property (land) are not subject to Wisconsin sales or use taxes.

**3. If I am the lessor of land and the lessee obtains the right to extract the frac sand on the leased land, are my lease receipts subject to Wisconsin sales or use taxes?**

No. The lease of land that grants the lessee the right to extract frac sand from the property is a lease of real property. Leases of real property are not taxable. This is the case whether the lease agreement is for a fixed sum or based on the amount of material removed (e.g., amount based on per ton of frac sand).

**4. A business purchases or leases land for extracting the frac sand from the land. Rather than selling the frac sand, the business ships the frac sand out of state where a business' natural gas production wells will use the frac sand. Does this business owe Wisconsin use tax on the frac sand it extracted in Wisconsin?**

No. The company obtained the frac sand through the purchase or lease of real property. The purchase or lease of real property is not subject to Wisconsin sales or use taxes, as explained in [answers \(1\)](#) and [\(2\)](#).

**5. A business has extracted frac sand from land owned or leased. The business sells the frac sand extracted. The frac sand is loaded onto rail cars in Wisconsin and shipped by a railroad company to purchasers in other states. Is sale of the frac sand subject to Wisconsin sales or use taxes?**

No. The sale of the frac sand is not subject to Wisconsin sales or use taxes because the sale occurs outside of Wisconsin.

The sale of the frac sand occurs where the purchaser receives possession of the sand from the seller. The purchaser receives the sand at the location where the railroad delivers it to the purchaser.

If a shipping company (such as a railroad company) delivers the product, the purchaser "receives" the product at the location where it is delivered by the shipping company to the purchaser. This is the case, even if the purchaser arranges with the shipping company for transportation.

([Section 77.522\(1\)\(a\)1.](#) and [\(b\)2.](#), Wis. Stats.)

**Note:** If the seller transfers possession of the frac sand to the purchaser in Wisconsin, the sale is subject to Wisconsin sales tax, unless an exemption applies. This will be the case when: (a) the purchaser, or the purchaser's agent who is not a shipping company, picks up the frac sand at the seller's location, or (b) the seller transfers the material to a shipping company and the shipping company delivers the frac sand to the purchaser at a location in Wisconsin.

**6. A business purchased or leased land for the purpose of extracting and producing frac sand. Is there an exemption from Wisconsin sales and use taxes for the equipment the business uses in extracting the frac sand from the earth?**

No. There are no Wisconsin sales and use tax exemptions that apply to the purchase of equipment used to extract mineral deposits from the earth.

Example: An excavator digs frac sand deposits from a wall of material. The purchase of the excavator is taxable.

**7. Are there any Wisconsin sales and use taxes exemptions for equipment and consumables used in washing, cleaning, and drying extracted material to produce frac sand?**

Yes. A business' washing, cleaning, grading, and drying of extracted material to produce frac sand is "manufacturing". Section 77.51(7h)(a)1., Wis. Stats., specifically provides that "manufacturing" includes crushing, washing, grading, and blending sand, rock, gravel, and other minerals.

The following exemptions from Wisconsin sales and use taxes apply to "manufacturing" operations:

- Machinery and specific processing equipment, including repair parts, replacements, and safety attachments for such machinery and specific processing equipment, used exclusively and directly by a manufacturer in manufacturing tangible personal property
- Tangible personal property and an item under sec. 77.52(1)(b)., Wis. Stats., that is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or items and property under sec. 77.52(1)(b) and (c)., Wis. Stats., that is either:
  - Destined for sale and that becomes an ingredient or component part of the property or is consumed, destroyed, or loses its identity, or
  - Consumed or destroyed or loses its identity in manufacturing the article of tangible personal property or item or property under sec. 77.52(1)(b) or (c)., Wis. Stats., destined for sale
- Fuel and electricity consumed in manufacturing tangible personal property or items or property under sec. 77.52(1)(b) and (c)., Wis. Stats., in Wisconsin

In addition, a manufacturer may also qualify for other exemptions, including exemptions for property used in constructing an industrial waste treatment facility, chemicals and supplies used in operating an industrial waste treatment facility, and machinery and equipment used exclusively and directly in waste reduction and recycling activities.

Information about these and other exemptions is provided in detail in [☞ Publication 203: Sales and Use Tax Information for Manufacturers.](#)

**8. What is "manufacturing" for purposes of the sales and use tax exemptions?**

"Manufacturing" is defined in sec. 77.51(7h)., Wis. Stats.

"Manufacturing" means the production by machinery of a new article of tangible personal property or item or property under sec. 77.52(1)(b) or (c)., Wis. Stats., with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or item or property under sec. 77.52(1)(b) or (c)., Wis. Stats., to the point of first storage in the same plant. It includes crushing, washing, grading, and blending sand, rock, and gravel and other minerals. "Manufacturing" also includes:

- Conveying work in progress directly from one manufacturing process to another in the same plant
- Testing or inspecting, throughout the manufacturing process, the new article of tangible personal property or item or property under sec. 77.52(1)(b) or (c)., Wis. Stats., that is being manufactured

- Storing work in progress in the same plant where the manufacturing occurs
- Assembling finished units of tangible personal property or item or property under sec. 77.52(1)(b) or (c), Wis. Stats., and
- Packaging a new article of tangible personal property or items or property under sec. 77.52(1)(b) or (c), Wis. Stats., if the manufacturer, or another person on the manufacturer's behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer

"Manufacturing" does not include storing raw materials or finished units of tangible personal property or property or items under sec. 77.52(1)(b) or (c), Wis. Stats., research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

"Plant" is defined in sec. 77.51(10b), Wis. Stats., and means: "For purposes of sub. (7h), 'plant' means a parcel of property or adjoining parcels of property, including parcels that are separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer."

**Note:** As indicated in the answer to question (5), the extraction of mineral deposits is not a manufacturing operation.

#### 9. **How do I know when the extraction process ends and the manufacturing process begins?**

Extraction ends once the in-place mineral deposit has been severed from the earth.

Manufacturing begins with the conveyance of raw materials from plant inventory to the place that work is performed in the same plant.

**Example 1:** An excavator digs in-place mineral deposits from the ground and places the material into trucks. The excavator is used in the extraction of the in-place mineral deposits. The purchase of the excavator is taxable.

**Example 2:** Blasting is used to blast material from the face of walls. The material then falls to the ground as loose material. An excavator scoops up this material and transfers it to trucks, which carry the materials, within the same plant, to the processing equipment. The excavator and trucks are used within the scope of manufacturing because they are used in the process of conveying raw material from plant inventory to the first work point in the same plant. If the excavator and trucks are used exclusively for this purpose, the purchase of the excavator and trucks are exempt.

**Example 3:** Blasting is used to blast material from the face of walls. The material then falls to the ground as loose material. An excavator scoops up this material and transfers it to trucks, which carry the materials to a stockpile within the same plant. The materials are left in that stockpile until they are needed for use in the manufacturing process. When the materials are needed, a front-end loader picks them up and carries them to the first work point in the same plant. The excavator and trucks are used prior to the start of the manufacturing process and are taxable, but the front-end loader, which carries the materials from the stockpile to the first work point, is used within the scope of manufacturing and qualifies for exemption if it is used exclusively for this purpose.

**Example 4:** Blasting is used to blast material from the face of walls. The material then falls to the ground as loose material. An excavator scoops up this material and transfers it to trucks. The trucks deliver the material to the processing plant, where the material is introduced into the first step in the manufacturing process immediately upon arrival. The processing facility is not in the same plant as is the loose material blasted from the walls. The excavator and trucks are not used within the scope of manufacturing. The excavator and trucks are being used to deliver the material from one plant to another plant, rather than convey raw materials from plant inventory to the first work point in the same plant. The purchases of the excavator and trucks are taxable.

10. **How do I know when the manufacturing process has ended?**

"Manufacturing" ends with the conveyance of a finished product to the point of first storage in the same plant.

**Example 1:** Frac sand is produced at a single plant. Once the frac sand is a finished product, it is immediately conveyed to and loaded into waiting rail cars. In this plant, manufacturing ends with the placement of the finished frac sand into the rail car.

**Example 2:** Frac sand is produced at a single plant. Once the frac sand is a finished product, it is placed in silos. Orders are filled by moving the frac sand from the silo to rail cars. In this plant, manufacturing ends with the placement of the finished frac sand into silos.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 77.51, 77.52, 77.522 and 77.54, Wis. Stats.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

### FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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