

(8) **PROPERTY PURCHASED TO FULFILL A CONTRACT WITH AN EXEMPT ENTITY.** (a) The sales tax exemption provided to governmental units and other exempt entities (such as churches and nonprofit hospitals) does not apply to building materials purchased by a contractor for use under a construction contract to alter, repair or improve real property for the exempt entity. Gross receipts from sales of such building materials to a contractor are subject to the tax if the building materials become part of real property after construction or installation. For example, a contractor shall pay the tax to its supplier of tangible personal property purchased to construct a bridge, road or government building. A contractor also shall pay the tax on its purchases of pumps and other equipment for use at a municipal well or at a water or sewerage lift or pumping station, since such property becomes a part of realty after installation.

(b) A contractor may purchase without tax for resale tangible personal property which retains its character as personal property after installation (as described in sub. (6)), even though the resale of such property by the contractor is exempt when the property is sold to a governmental unit or other exempt entity having a Wisconsin certificate of exempt status. Such property includes furniture; processing machinery or equipment used in a municipal sewerage or water treatment plant; classroom laboratory sinks, tables and other equipment; and seating for an auditorium. This exemption does not apply to property which becomes a part of real property as described in sub. (5) and par. (a).

(9) **USE OF PROPERTY PURCHASED OUTSIDE WISCONSIN.** (a) If a construction contractor, when the contractor acts as a consumer, purchases property outside this state for use in Wisconsin, the contractor shall pay the Wisconsin use tax, but may claim a credit against this use tax for any sales or use tax paid in the state where the purchase was made.

(b) If Wisconsin has jurisdiction over the out-of-state supplier, the supplier shall collect the use tax and remit it to the department. If the supplier fails to do so, the contractor shall report and pay the tax to Wisconsin.

(10) **CONSTRUCTION AND REPAIR SERVICES.** (a) A contractor who performs real property construction activities shall not add tax to any charge for labor or material, since gross receipts from such activities are not taxable. The tax which a contractor pays on its purchases of materials consumed in real property construction increases its cost of such materials, thereby becoming a cost of doing business.

(b) A contractor's charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all tangible personal property are taxable. Solely for the purpose of imposing the tax on such service, numerous items that in other circumstances and for other purposes are deemed part of real property are deemed to retain their character as tangible personal property. Accordingly, any construction contractor who is engaged in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of any items listed in par. (c) or other items of tangible personal property shall register as a retailer and pay the tax on gross receipts from the performance of such services.

(c) Section 77.52 (2) (a) 10, Stats., provides in part that ". . . the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers,

Tax 11

stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, juke boxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, 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 and swimming pools; office, restaurant and tavern type equipment including by way of illustration, but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs."

(d) Charges for tangible personal property (such as a repair part) incorporated into property listed in par. (c) being repaired are taxable. Because the item repaired is deemed personal property, any tangible personal property incorporated into it is deemed purchased by the contractor for resale and therefore may be purchased without tax. For example, if a contractor is engaged to repair a refrigerator (whether free-standing personal property or built-in so as to be a part of real property) in a home, the repair service and any charge for parts are taxable.

(11) REPAIR SERVICES CONTRASTED WITH REPLACEMENT SERVICES. Section 77.51 (11) (c) 4, Stats., provides that taxable gross receipts do not include the price received for labor or services used in installing property which constitutes a capital improvement of real property. On the other hand, s. 77.52(2)(a)10, Stats., provides that the price received for labor or services in repairing, servicing, altering, fitting, cleaning, painting, coating, towing, inspection and maintenance of tangible personal property is taxable and many specifically named items retain their character as personal property regardless of the extent to which fastened to, connected with or built into real property. Among such items are furnaces and boilers used for space heating. In view of these statutes, charges for services and repair parts for *repair* of tangible personal property covered by both statutes (such as a furnace boiler) are taxable, but charges for services in totally *replacing* such property are not taxable. In the no-tax situation, the replacement personal property is taxable when sold to the contractor installing it, but the contractor's charge for the replacement service is not taxable.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (d), (6) (a)2. and 12., (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; reprinted to correct error in (10) (b), Register, January, 1984, No. 337.

Tax 11.69 Financial institutions, (s. 77.51 (4) (k)) (1) EXEMPT SALES. Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's Register, January, 1984, No. 337