



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1628/P3
KRP:ahc

DOA:.....Wimmer, BB0303 - Sales tax treatment of lump sum contracts

FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill expands the sales and use tax exemption for products sold in connection with real property construction activities as part of a lump sum contract to all construction contracts.

Under current law, there is a sales and use tax exemption for property, items, and services (products) sold by a contractor as part of a lump sum contract for real property construction activities if the total sales price attributable to the taxable products is less than 10 percent of the total contract price. Under the bill, the exemption is expanded to apply to all construction contracts involving real property construction activities if the total sales price of the taxable products is less than 10 percent of the total contract price. If the exemption applies, the contractor is the consumer of, and pays the sales tax on, the products.

The bill also provides that, if the prime contract qualifies for the exemption, the exemption applies to all subcontracts entered into with respect to the real property construction activities. If the exemption applies to a subcontract, the subcontractor is the consumer of, and pays the sales tax on, the products.

Under current law, if a construction contract is between a contractor and a tax-exempt entity, the contractor may purchase, without tax for resale to the tax-exempt entity, any products that will be sold by the contractor to the tax-exempt

entity as part of a construction contract. The bill extends that sales and use tax exemption to products purchased by a subcontractor for eventual resale to the tax-exempt entity.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.51 (2) of the statutes is amended to read:

77.51 (2) “Contractors” and “subcontractors” are the consumers of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) used by them in real property construction activities, and the sales and use tax applies to the sale of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) to them. A contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of tangible personal property or items or goods under s. 77.52 (1) (b) or (d) ~~which~~ that the contractor has sound reason to believe the contractor will sell to customers for whom the contractor will not perform real property construction activities involving the use of such tangible personal property or items or goods under s. 77.52 (1) (b) or (d). ~~In this subsection, “real property construction activities” means activities that occur at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or (d) that 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 that property is to make a permanent accession to the real property. In this subsection, “real property construction activities” does not include affixing property subject to tax under s. 77.52 (1) (c) to~~

~~real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.~~

SECTION 2. 77.51 (12t) of the statutes is created to read:

77.51 (12t) "Real property construction activities" means activities that occur at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or (d) that 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 that property is to make a permanent accession to the real property. "Real property construction activities" does not include affixing property subject to tax under s. 77.52 (1) (c) to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.

SECTION 3. 77.52 (2) (a) 10. of the statutes is amended to read:

77.52 (2) (a) 10. Except for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft or aircraft parts; except for services provided by veterinarians; and except for installing or applying tangible personal property, or items or goods under sub. (1) (b) or (d), that, subject to par. (ag), when installed or applied, will constitute an addition or capital improvement of real property; the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d), unless, at the time of that repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property, item, or good repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a

nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.522 or unless the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance is provided under a contract that is subject to tax under subd. 13m. The tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in par. (ag), regardless of whether the installation or application of tangible personal property or items, property, or goods under sub. (1) (b), (c), or (d) related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in par. (ag), if that installation or replacement is a real property construction activity under s. 77.51 (2).

SECTION 4. 77.52 (2m) (b) of the statutes is amended to read:

77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7., 10., 11., and 20. and except as provided in s. 77.54 (60) (b) and (bm) 2., all tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) physically transferred, or transferred electronically, to the customer in conjunction with the selling, performing, or furnishing of the service is a sale of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) separate from the selling, performing, or furnishing of the service.

SECTION 5. 77.54 (60) (a) of the statutes is renumbered 77.54 (60) (d) (intro.) and amended to read:

77.54 (60) (d) (intro.) In this subsection, ~~“lump sum”~~:

1. “Construction contract” means a contract to perform real property construction activities and to provide ~~tangible personal property, items or property~~ under s. 77.52 (1) (b) or (c), ~~or taxable services and for which the contractor quotes~~

~~the charge for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as one price, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as part of a schedule of values or similar document products.~~

SECTION 6. 77.54 (60) (b) of the statutes is amended to read:

77.54 **(60)** (b) The sales price from the sale of and the storage, use, or other consumption of ~~tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services~~ products that are sold by a prime contractor as part of a ~~lump sum~~ construction contract, if the total sales price of all ~~such taxable products~~ is less than 10 percent of the total amount of the ~~lump sum~~ construction contract. Except as provided in par. (c), the prime contractor is the consumer of ~~such taxable~~ the products and shall pay the tax imposed under this subchapter on the ~~taxable~~ products.

SECTION 7. 77.54 (60) (bm) of the statutes is created to read:

77.54 **(60)** (bm) 1. The sales price from the sale of and the storage, use, or other consumption of products that are sold by a subcontractor to a prime contractor, or to another subcontractor for eventual sale to the prime contractor, as part of a construction contract, if any of the following applies:

a. The total sales price of all products is less than 10 percent of the total amount of the construction contract.

b. The products will be sold by the prime contractor as part of a construction contract, and that sale is exempt under par. (b).

2. Except as provided in par. (c), the subcontractor is the consumer of the products exempted under this paragraph and shall pay the tax imposed under this subchapter on the products.

SECTION 8. 77.54 (60) (c) of the statutes is renumbered 77.54 (60) (c) (intro.) and amended to read:

77.54 **(60)** (c) (intro.) If the ~~lump-sum~~ construction contract under par. (b) is ~~entered into with~~ between a prime contractor and an entity that is exempt from taxation under sub. (9a), ~~the~~ all of the following apply:

1. The prime contractor is the consumer of all ~~taxable~~ products used by the prime contractor in real property construction activities, but the prime contractor may purchase without tax, for resale, ~~tangible personal property, items and property~~ under s. 77.52 (1) (b) and (e), and taxable services products that are sold by the prime contractor to the entity as part of the ~~lump-sum~~ construction contract ~~with the entity~~ and that are not consumed by the prime contractor in real property construction activities.

SECTION 9. 77.54 (60) (c) 2. of the statutes is created to read:

77.54 **(60)** (c) 2. A subcontractor of the prime contractor is the consumer of all products used by the subcontractor in real property construction activities, but the subcontractor may purchase without tax, for resale, products that are sold by the subcontractor to the prime contractor or another subcontractor, as part of the subcontractor's construction contract under par. (bm), for resale to the entity and that are not consumed by the subcontractor in real property construction activities.

SECTION 10. 77.54 (60) (d) 2. and 3. of the statutes are created to read:

77.54 **(60)** (d) 2. "Prime contractor" means a contractor who enters into a construction contract with an owner or lessee of real property, except for leased

property under s. 77.52 (1) (c), to perform real property construction activities on the real property.

3. "Subcontractor" means a contractor who enters into a construction contract with a prime contractor or another subcontractor.

SECTION 9338. Initial applicability; Revenue.

(1) LUMP SUM CONTRACT SALES TAX EXEMPTION. The treatment of sections 77.52 (2m) (b) and 77.54 (60) (b) and (bm) of the statutes, the renumbering and amendment of section 77.54 (60) (a) and (c) of the statutes, and the creation of section 77.54 (60) (c) 2. and (d) 2. and 3. of the statutes first apply to a contract that is entered into or extended, modified, or renewed on the effective date of this subsection.

SECTION 9438. Effective dates; Revenue.

(1) LUMP SUM CONTRACT SALES TAX EXEMPTION. The treatment of sections 77.52 (2m) (b) and 77.54 (60) (b) and (bm) of the statutes, the renumbering and amendment of section 77.54 (60) (a) and (c) of the statutes, the creation of section 77.54 (60) (c) 2. and (d) 2. and 3. of the statutes, and SECTION 9338 (1) take effect on the first day of the 3rd month beginning after publication.

(END)