



Wisconsin Chapter

TAX EXEMPTION CHANGES

GUIDANCE ON NEW SALES AND USE TAX EXEMPTION FOR
BUILDING MATERIALS USED TO CONSTRUCT PROJECTS
FOR CERTAIN TAX EXEMPT ENTITIES¹

What has changed?

Effective January 1, 2016, contractors will be able to directly purchase construction materials on behalf of many of their tax exempt and local government customers without being subject to sales or use tax.

Previously, a construction contractor who both furnished and installed the building materials in the performance of a real property construction activity was not permitted to make purchases of building materials exempt from sales and use tax on behalf of an exempt end-customer.

The new law provides an exemption from sales and use tax for property sold to a construction contractor who, in fulfillment of a real property activity or performance of an improvement to real property, transfers the property to a **qualifying exempt entity**.

Does this change apply to all projects for any tax exempt entities?

No. The exemption only applies to certain projects completed for certain tax exempt entities. In order for the exemption to apply, the following criteria must be met:

- a. The construction must be for a **qualifying exempt entity**,
- b. The property must become **part of a facility** in Wisconsin that is owned by the exempt entity; and
- c. The Property must be **transferred** to the qualifying exempt entity.

For clarification, not all nonprofit organizations that are exempt from federal income and franchise taxes are qualifying exempt entities for purposes of this exemption. Many fraternal, social and civic organizations (Chambers of Commerce, volunteer fire departments, professional organizations, labor organizations) do not hold a Wisconsin Certificate of Exempt Status (CES) number and do not qualify for this exemption.

Further, certain tax exempt entities do not qualify for the exemption, even if they hold a Wisconsin CES number (see #4 below).

¹Associated Builders and Contractors of Wisconsin would like to thank Shea Reese of Wipfli LLP for his contributions to this guidance document.



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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 Wis. Stat. § 66.0927
- A Sewerage commission organized under Wis. Stat. § 281.43 (4)
- A Metropolitan sewerage district organized under Wis. Stat. §§ 200.01 to 200.15 or 200.21 to 200.65
- Any joint local water authority created under Wis. Stat. § 66.0823
- Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number
- 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. These entities are not required to obtain a Wisconsin CES number to be a qualifying exempt entity.
- Any federally recognized American Indian tribe or band within Wisconsin if the construction activity occurs on the tribal reservation and the construction project will benefit the Tribe.

Is any entity with a Wisconsin CES number a qualifying exempt entity?

No. Construction projects for the following entities do not qualify for the exemption, ***even if the entity holds a (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)
- A state governmental unit (regardless of whether Wisconsin or non-Wisconsin)
- A federal governmental unit
- Individual Native American Tribe members
- A Wisconsin nonprofit organization that does not hold a Wisconsin CES number



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If the entity does not have a Wisconsin CES number, can they still be a qualifying exempt entity?

Maybe. Some qualifying exempt entities (like a Wisconsin municipality) are not required to have a CES number. In that case, the contractor should retain the contracts and invoices that indicate the work was performed for the qualifying exempt entity.

In the rare situations where a ***non-Wisconsin*** nonprofit organization is a qualifying exempt entity and does not have a Wisconsin CES number, it is on the contractor to verify that the entity meets the criteria described in #3 above. Remember, if the entity is a Wisconsin nonprofit organization that does not have a CES number they do not qualify for the exemption.

What is a “facility” under the new law?

The exemption only applies to the purchase of 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 and athletic park. “Facility” does not include a highway, street, road or municipal electric utility power substations and distribution wires.

Storm sewer, water supply system, sanitary sewer or sewage and wastewater treatment equipment owned by and located on the property of a qualifying exempt entity are considered a “***facility***” for purposes of this tax exemption (including manholes, fire hydrants, all piping/casting, bedding and the needed subgrade and backfill to install pipes). However, none of this personal property is considered a “***facility***” for purposes of this exemption if it is located on an individual’s property. For example, a property owner’s lateral sewer pipe would not be exempt.

Can a subcontractor qualify for the exemption?

Yes. A subcontractor’s purchase of construction materials qualifies for exemption if the construction materials become part of a facility located in Wisconsin owned by a qualifying exempt entity (i.e. the same treatment the prime contractor receives).



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Who is responsible for determining that the sale tax exempt purchases are for a qualifying exempt entity?

The contractor. That is why it is important to request and retain, in addition to the contract and significant invoices, the organization's **Wisconsin Certificate of Exempt Status (CES)**. Remember, not every tax exempt entity qualifies for the exemption, even if they have a Wisconsin CES number (see #4 above) and some qualifying exempt entities may not be required to have a CES number (see #5 above).

The same obligation exists for the prime contractor and all subcontractors, but 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 on an invoice or bill of sale to the general contractor the 1) Wisconsin location; 2) where it performed the real property construction activity; and 3) verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

How do contractors purchasing material for construction of a facility for a qualifying exempt entity claim the exemption?

A contractor who makes purchases under this exemption must provide a fully completed single purchase Wisconsin Exemption Certificate ([Form S-211](#)) to any and all suppliers and vendors who sell such building materials to the contractor. The suppliers, vendors and sellers are required to retain a copy of the contractor's Form S-211 to identify that the sale is exempt. There has been no change to Form S-211 to take account for this tax exemption. To validate the exemption, it is recommended the contractor should check "other purchases exempted by law" on the certificate on the bottom of Page 2 of that form as shown below.

☒ *Other purchases exempted by law. (State items and exemption): Exempt entity under section 77.54(9m)*



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What documents, related to this exemption, are contractors required to maintain?

For qualifying entities that have a Wisconsin CES number: A contractor should request the Wisconsin nonprofit organization's Wisconsin CES number and retain this number in its records. The contractor should reference this CES number on contracts and invoices showing the work was done for this qualifying exempt entity.

For qualifying entities that do not have a Wisconsin CES number: The contractor working for a qualifying exempt entity who does not have a Wisconsin CES number is required to verify that the entity meets the criteria described in #3 (above). For example, a non-Wisconsin qualifying organization may provide the contractor with a copy of its IRS 501(c) (3) exempt status determination letter. The contractor will need to ensure it can identify on an invoice or bill of sale the 1) Wisconsin location; 2) where it performed the real property construction activity; and 3) verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

Given that the law just changed, on what projects does the exemption apply?

The date the prime contract was entered into between the prime contractor and a qualifying exempt entity is used in determining whether the exemption applies. Subcontracts entered into on or after January 1, 2016 will not qualify for the exemption if the prime contract was not also entered into on or after January 1, 2016.

The exemption would not apply if the contractor purchased property after January 1, 2016 for a contract that was entered into prior to January 1, 2016. Change orders and separate contractors with suppliers and subcontractors by themselves would not qualify if the prime contract was signed in 2015 or earlier.