

## Sales and Use Tax Issues

Sales taxes apply to every sale of tangible personal property (and some services) to all persons, including local governments. For purposes of determining whether a purchase or project exceeds an agency's, bid limits, sales tax must be included when determining the cost of a public work, or when calculating the cost of materials, supplies, and equipment purchased separately from a public work.

However, there are some sales and use tax exemptions for certain public works projects. The exemptions include:

- Labor and services rendered for the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle owned by a city or town which is used primarily for pedestrian or vehicle traffic. Materials used in constructing these projects are not exempt from the sales and use tax.
- Labor and services for the processing and handling of sand, gravel, and rock taken from city and/or county pits and quarries when the material is for publicly owned road projects.

MRSC has prepared a table - *WAC 458-20-171Matrix* - which attempts to summarize WAC regulations regarding sales and use tax applicability to public works contracts. For almost all local government public works contracts, the sales and use tax issue boils down to this:


*Does the contractor include sales and use taxes, as applicable, in his/her unit prices or lump sum bid or does the agency include a line item in the contract for sales tax, either on the whole amount or on items not included in the exemptions?*

When developing contract documents, it may be useful, in the bid proposal (bid item listing), to group those items that are subject to sales tax. Then, in a separate line item labeled "sales tax," reference that group, making it clear that in all other bid items, sales and use taxes, as applicable, are to be included in the unit price or lump sum bid.

Notes:

- If an agency furnishes materials to a contractor for use in public works contract, it either must have paid applicable sales tax on the items furnished or must specifically instruct the contractor to pay use taxes on the items.
- Labor and services in the construction of a pedestrian pathway in a park are probably not exempt from sales and use tax. RCW 82.04.050(7) does exempt any "street, place, road . . . easement, right of way . . . which is used or to be used primarily for foot or vehicular traffic." However, the Department of Revenue believes that any such path or sidewalk must be in the street right-of-way to qualify for the exemption. Similarly, unless a public parking lot is used for mass transit, it is not exempt.
- The Department of Revenue has a very good online discussion of taxes due on public roads construction at <http://dor.wa.gov/docs/pubs/industSpecific/construction.pdf> , pages 14-15.

**WAC 458-20-170 & 171 Matrix (September 2004)**

Applicable B&O, Use Taxes and Sales Taxes Are to be Included in (Unit) Bid Prices for: (Rule 171)	Sales Tax Added to (Unit) Bid Prices for: (Rule 170)
<p>building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)</p> <p>The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry.</p>	<p>railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields;</p>
<p>docks used primarily by ferry boats operated in connection with a street, road or highway, (and which is owned by a municipal corporation or political subdivision of the state or by the United States)</p>	<p>ferry boats purchased by the state or municipal corporations are exempt from retail sales taxes (WAC 458-20-189(6)(f))</p>
<p>roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.</p>	<p>constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid</p>
<p>constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting;</p>	
<p>constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.</p>	<p>constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.</p>
<p>includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.</p>	

WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

#### Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

#### Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

- (a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or
- (b) Placed on the street, road, or highway by the county or city itself using its own employees, or
- (c) Sold by the county or city at actual cost to another county or city for road use.

#### Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

#### Use Tax

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

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