



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-3411/1  
KRP&JK:klm

## 2017 ASSEMBLY BILL 340

May 19, 2017 - Introduced by Representatives STAFSHOLT, BERNIER, E. BROOKS, HORLACHER, JACQUE, KATZMA, KUGLITSCH, KULP, MACCO, MURPHY, NOVAK, QUINN, RIPP and SANFELIPPO, cosponsored by Senators ROTH, COWLES, FEYEN, MARKLEIN and OLSEN. Referred to Committee on Ways and Means.

1     **AN ACT** *to renumber and amend* 77.54 (60) (a) and 77.54 (60) (c); *to amend*  
2         77.51 (2), 77.52 (2) (a) 10., 77.52 (2m) (b) and 77.54 (60) (b); and *to create* 77.51  
3         (12t), 77.54 (60) (bm), 77.54 (60) (c) 2. and 77.54 (60) (d) 2. and 3. of the statutes;  
4         **relating to:** a sales and use tax exemption for products sold in connection with  
5         real property construction activities.

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### *Analysis by the Legislative Reference Bureau*

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 a 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.

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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.

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

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

2           77.51 (2) “Contractors” and “subcontractors” are the consumers of tangible  
3           personal property or items or goods under s. 77.52 (1) (b) or (d) used by them in real  
4           property construction activities, and the sales and use tax applies to the sale of  
5           tangible personal property or items or goods under s. 77.52 (1) (b) or (d) to them. A  
6           contractor engaged primarily in real property construction activities may use resale  
7           certificates only with respect to purchases of tangible personal property or items or  
8           goods under s. 77.52 (1) (b) or (d) ~~which~~ that the contractor has sound reason to  
9           believe the contractor will sell to customers for whom the contractor will not perform  
10          real property construction activities involving the use of such tangible personal  
11          property or items or goods under s. 77.52 (1) (b) or (d). ~~In this subsection, “real~~  
12          ~~property construction activities” means activities that occur at a site where tangible~~  
13          ~~personal property or items or goods under s. 77.52 (1) (b) or (d) that are applied or~~  
14          ~~adapted to the use or purpose to which real property is devoted are affixed to that real~~  
15          ~~property, if the intent of the person who affixes that property is to make a permanent~~  
16          ~~accession to the real property. In this subsection, “real property construction~~

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1 ~~activities” does not include affixing property subject to tax under s. 77.52 (1) (c) to~~  
2 ~~real property or affixing to real property tangible personal property that remains~~  
3 ~~tangible personal property after it is affixed.~~

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

5 77.51 (12t) “Real property construction activities” means activities that occur  
6 at a site where tangible personal property or items or goods under s. 77.52 (1) (b) or  
7 (d) that are applied or adapted to the use or purpose to which real property is devoted  
8 are affixed to that real property, if the intent of the person who affixes that property  
9 is to make a permanent accession to the real property. “Real property construction  
10 activities” does not include affixing property subject to tax under s. 77.52 (1) (c) to  
11 real property or affixing to real property tangible personal property that remains  
12 tangible personal property after it is affixed.

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

14 77.52 (2) (a) 10. Except for the repair, service, alteration, fitting, cleaning,  
15 painting, coating, towing, inspection, and maintenance of any aircraft or aircraft  
16 parts; except for services provided by veterinarians; and except for installing or  
17 applying tangible personal property, or items or goods under sub. (1) (b) or (d), that,  
18 subject to par. (ag), when installed or applied, will constitute an addition or capital  
19 improvement of real property; the repair, service, alteration, fitting, cleaning,  
20 painting, coating, towing, inspection, and maintenance of all items of tangible  
21 personal property or items, property, or goods under sub. (1) (b), (c), or (d), unless, at  
22 the time of that repair, service, alteration, fitting, cleaning, painting, coating,  
23 towing, inspection, or maintenance, a sale in this state of the type of property, item,  
24 or good repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected,  
25 or maintained would have been exempt to the customer from sales taxation under

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

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

14 77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,  
15 10., 11., and 20. and except as provided in s. 77.54 (60) (b) and (bm) 2., all tangible  
16 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d)  
17 physically transferred, or transferred electronically, to the customer in conjunction  
18 with the selling, performing, or furnishing of the service is a sale of tangible personal  
19 property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) separate from  
20 the selling, performing, or furnishing of the service.

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

23 77.54 (60) (d) (intro.) In this subsection, ~~“lump sum;~~

24 1. “Construction contract” means a contract to perform real property  
25 construction activities and to provide ~~tangible personal property, items or property~~

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

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

9 77.54 (60) (b) The sales price from the sale of and the storage, use, or other  
10 consumption of ~~tangible personal property, items and property under s. 77.52 (1) (b)~~  
11 ~~and (c), and taxable services~~ products that are sold by a prime contractor as part of  
12 a lump-sum construction contract, if the total sales price of all such taxable products  
13 is less than 10 percent of the total amount of the ~~lump-sum~~ construction contract.  
14 Except as provided in par. (c), the prime contractor is the consumer of such taxable  
15 the products and shall pay the tax imposed under this subchapter on the taxable  
16 products.

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

18 77.54 (60) (bm) 1. The sales price from the sale of and the storage, use, or other  
19 consumption of products that are sold by a subcontractor to a prime contractor, or to  
20 another subcontractor for eventual sale to the prime contractor, as part of a  
21 construction contract, if any of the following applies:

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

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

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

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

6           77.54 **(60)** (c) (intro.) If the ~~lump-sum~~ construction contract under par. (b) is  
7 ~~entered into with~~ between a prime contractor and an entity that is exempt from  
8 taxation under sub. (9a), ~~the~~ all of the following apply:

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

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

17           77.54 **(60)** (c) 2. A subcontractor of the prime contractor is the consumer of all  
18 products used by the subcontractor in real property construction activities, but the  
19 subcontractor may purchase without tax, for resale, products that are sold by the  
20 subcontractor to the prime contractor or another subcontractor, as part of the  
21 subcontractor's construction contract under par. (bm), for resale to the entity and  
22 that are not consumed by the subcontractor in real property construction activities.

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

24           77.54 **(60)** (d) 2. "Prime contractor" means a contractor who enters into a  
25 construction contract with an owner or lessee of real property, except for leased

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

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

5 **SECTION 11. Initial applicability.**

6 (1) The treatment of sections 77.52 (2m) (b) and 77.54 (60) (b) and (bm) of the  
7 statutes, the renumbering and amendment of section 77.54 (60) (a) and (c) of the  
8 statutes, and the creation of section 77.54 (60) (c) 2. and (d) 2. and 3. of the statutes  
9 first apply to a contract that is entered into or extended, modified, or renewed on  
10 January 1, 2019.

11 (END)