



Associated General Contractors of Greater Milwaukee
Leading the Construction Industry Forward

SALES AND USE TAX EXEMPTION

Q. Are materials used in a Right-of-Way exempt? A. It depends.

The new sales and use tax exemption, effective January 1, 2016, applies to materials used in a facility, but does "facility" include a right-of-way?

As a refresher, this new exemption applies to the purchases of building materials that become part of a facility transferred to and owned by a local unit of government or qualifying nonprofit organization. By definition, the term "facility" includes a building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility; but does not include a highway, street, or road.

The question of whether a right-of-way constitutes a "facility" still remained, until recently, when the Wisconsin Department of Revenue issued the following ruling:

Backfill Needed to Install Qualified Piping – The materials used in the "facility" (including the amount of backfill needed to install the pipes, including the needed subgrade to protect the sewer piping) may qualify for the exemption. The materials used in the deconstruction, repair, and/or rebuilding of the road, sidewalk, path, or driveway (from the rock base and other road base materials to and including the road materials) do not qualify for the exemption.

Curbs and Gutters – Do not qualify for the exemption since they are considered part of the street.

Driveway Aprons – Do not qualify for exemption. The exemption does not apply to highways, streets, or roads.

Electrical Lines, Electrical Lines for Street Signs – Do not qualify for the exemption with the exception of the electric lines that become part of a building, shelter, or parking lot (including electric lines under a parking lot that provide electricity to parking lot lights) for a qualifying entity. Regardless of whether the electric lines are part of the road or independent of the road, underground electric lines are not listed in the definition of "facility."

Landscaping – Does not qualify for the exemption because it is deemed to be a taxable service; however, the contractor is able to purchase materials physically transferred to the exempt entity without tax for resale and can accept an exemption certificate from the exempt entity for the sale. The tax treatment of landscaping or other personal property jobs are not affected by the new exemption law.

Natural Gas Lines – Do not qualify for the exemption (with the exception of the gas lines that become part of a building or shelter for a qualifying entity).

Retaining Wall – While a retaining wall is real property, it does not qualify for the exemption because it does not meet the definition of "facility."

Sewer Pipes/Water Supply Pipes – Qualify for the exemption.

Sidewalks or Paths – Do not qualify for exemption. A sidewalk is not included in the definition of "facility."

Storm Sewer Grates and Manhole Covers – Qualify for the exemption because they are considered part of the storm sewer piping.

Street Lights – Do not qualify for the exemption because it is not included in the definition of "facility."

Additional questions can be directed to AGC General Counsel, Nathan Jurowski, at njurowski@agc-gm.org or at (414) 778-4104.

