

Construction

Construction

Businesses must understand Washington's business tax system and general application of Business and Occupation (B&O) tax classifications, retail sales tax, and use tax to properly report tax. This publication is a guide to help those engaged in construction activities determine their state tax liability.

For more information or answers to any questions about Washington excise taxes, please [contact us](#).

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Updated February 2023

Contents

Overview

Overview

Washington's excise taxes apply to all business activities conducted in the state. Corporations, partnerships, sole proprietorships, joint ventures, nonprofit organizations, limited liability organizations, etc., conducting business in this state are all subject to these taxes, even if they do not have an office here.

Businesses subject to any of Washington's excise taxes must register with the Department of Revenue by completing a [Business License Application](#).

The following section provides an overview of how tax applies to construction businesses. Terminology, construction activities and a general description of the seven categories of construction will be covered.

Terminology

Business and occupation tax: Washington's business and occupation (B&O) tax is based on the gross receipts of business operations. This means there are no deductions for labor, materials, taxes or other costs of doing business. This is different from an income tax which is applied to the net income from business operations. The nature of the business activity determines the appropriate B&O tax classification. There are different B&O tax classifications for extracting, manufacturing, wholesaling, government contracting, public road construction, service and other activities, retailing and others. Each classification has its own tax rate. Businesses performing more than one activity may be subject to tax under one or more B&O tax classifications. Each business owes the B&O tax on its gross income. For example: where a prime contractor has a \$100,000 construction contract and hires a subcontractor to perform a portion of the construction for \$20,000, the prime contractor is taxable on \$100,000 and the subcontractor is taxable on \$20,000.

Retail sales tax: Businesses selling goods at retail or performing [retail services](#) (such as custom prime construction) must also collect and remit retail sales tax on their total charges unless a specific exemption applies. The taxable amount includes charges for permits and other fees, labor, profit, materials and charges for

subcontractors. Sales tax rates vary around the state. Contractors performing retail services must collect sales tax based on the tax rate of the jurisdiction where they perform their services.

Wholesale sales: Businesses making wholesale sales do not collect retail sales tax on their charges. However, they must obtain a [reseller permit](#) from the buyers to document why sales tax was not collected. Wholesale sales are those made to businesses buying a product or service for resale. Subcontractors on custom construction projects (a wholesaling activity) must obtain a reseller permit from the prime contractor or another subcontractor.

Use as a consumer: All persons engaged in construction are consumers in regard to the tools (purchased or rented) and supplies (items which are not finally incorporated into the real estate) used in performing the construction. However, depending on the type of construction being performed, the builder may also be considered the consumer of materials incorporated into the job. Refer to the section addressing the particular construction activity to find the types of items that are used as a consumer. Contractors may not use a reseller permit to purchase items "used as a consumer" in performing construction services.

Purchases for resale: Purchases for resale are purchases of items or services which will be resold without intervening "use as a consumer." Retail sales tax or use tax is not paid on purchases for resale. Contractors purchasing items for resale must give the vendor a reseller permit to avoid paying sales tax. If sales tax is paid, the contractor may claim a "tax paid at source" deduction ([WAC 458-20-102](#)).

Use tax: In general, use tax is due on items "used as a consumer" when retail sales tax has not been paid. If sales tax has not been paid on purchases of tools, supplies, and materials used in the construction but not incorporated into the real estate improvements, use tax is due. Use tax is also due on items extracted (such as rock) or produced (such as tooling) and used by the contractor in performing the construction. The use tax and sales tax rates are the same. The applicable tax rate is determined by the location where the item is first used or where the construction service is performed.

Deferred sales tax: Deferred sales tax is due when goods are acquired without payment of sales tax under such conditions that the sales tax was due. This most commonly occurs when goods are purchased for dual purposes. A purchase for dual purpose occurs when a business purchases goods both to resell and to use in the business. A business may give its supplier a reseller permit for goods purchased for dual purposes if the majority of the goods are purchased for resale ([WAC 458-20-102](#)). While many people assume that use tax is due if goods are used without the payment of sales tax, it's actually deferred sales tax that is due. Referring to the tax as "deferred" simply means that the payment of sales tax is deferred until it is determined that the goods will not be resold. Deferred sales tax is computed on the purchase price. This includes shipping/handling or freight charges. The tax rate and location code (tax jurisdiction) is based on where the contractor received the items, just like sales tax. For example, if the contractor picked up the items at a store, the store location would determine the sales tax rate and location code. If the items were delivered to the contractor, the delivery address would determine the correct sales tax rate and location code.

Report deferred sales tax on the use tax/deferred sales tax line and the local use tax/deferred sales tax lines of your excise tax returns.

Gross contract price - taxable consideration: The gross contract price to provide a construction service is the amount subject to tax. The gross contract price includes all charges related to a specified job under one contract. This includes all consideration paid without deduction for costs, even if those costs would not be defined as construction services if provided independent of a construction contract. For example, billings to a customer for building permits, engineering fees, architectural fees, tools, and tax expenses are part of the gross contract price subject to tax. A customer's payment of the contractor's liabilities directly to third parties is also taxable as part of the gross contract price.

When a contract calls for progress payments, tax is due on the gross amount billed. Sales tax is considered collected **only** when stated separately on contract documents and/or sales invoices.

Disputed claims/billings: An amount not paid because of a dispute is subject to tax until the unpaid claim is written off as a bad debt. If additional income results from a court ordered settlement, the income is considered part of the gross contract amount subject to tax. Some of the settlement amount may be considered by the court to be interest because of late payments. This interest is not part of the gross contract amount, but it is subject to tax under the Service and Other Activities B&O classification.

Penalty clause in the contract: Losses suffered by a contractor because of a penalty clause for failure to complete work by a specified time are not deductible from the gross contract price in determining taxes due. If retainage is not paid because the contractor failed to perform, the lost retainage is not deductible from the gross amount subject to tax.

Construction activities

In general terms, construction activities include, **but are not limited to**:

- Installing, repairing, cleaning, improving, constructing, and decorating real property.
- Constructing and improving new or existing buildings and structures.
- Cleaning, fumigating, razing, or moving structures.
- Cleaning and repairing furnaces and septic tanks.
- Clearing land and moving earth.
- Drilling oil or water wells.
- Building or improving streets, roads, etc.
- Hazardous waste site cleanup.
- Radioactive waste cleanup.
- Services in respect to the performance of any of the above jobs.

In more specific terms, construction activities also include the performance of general contracting, construction management, construction cleanup/debris removal, landscaping, painting, plumbing, electrical wiring, heat/ventilation/air conditioning, roofing, flooring/carpeting, windows, masonry, concrete, drywall, lighting, windows, framing, carpentry, trim work, etc.

Construction categories for tax purposes

Businesses perform construction activities as prime contractors, subcontractors, or speculative builders. Businesses may perform construction as a prime contractor on one job, a subcontractor on another, and as a speculative builder on yet another project.

Generally, a **prime** contractor is hired by the landowner and a **subcontractor** is hired by a prime contractor. For state tax purposes, the difference between a prime contractor and a subcontractor is only significant on "custom" contracting jobs. Otherwise, a prime and subcontractor are treated the same for tax purposes.

To determine how to properly report your taxes, you must determine which category of construction activities you perform. A general description of each of the categories follows. More information on each category of construction activity is detailed in the respective section of this guide.

1. Custom construction

Generally, custom construction involves residential and commercial construction performed for others, including road construction for the state of Washington. However, custom construction is also a catch-all (or default) category for other construction activities. That is, custom contracting is the category for construction activities that are not specifically designated as speculative building; federal government contracting; public road

construction; logging road construction; radioactive waste cleanup on federal lands; or designated hazardous site cleanup jobs.

Prime contracting: Custom prime contracting is when a contractor is hired by a landowner (or a person having the rights of ownership, such as a lessee or easement holder) to complete an entire construction project. The custom prime contractor may perform all, or a portion of the construction, or hire other contractors (subcontractors) to perform all, or a portion of the work. The income from custom prime contracting (without deduction for any amounts paid to subcontractors) is reported under the Retailing B&O tax classification and is subject to retail sales tax unless a specific exemption applies.

Subcontracting: Custom subcontracting is when a contractor is hired by a custom prime contractor to provide a portion of the services necessary to complete the project. Income from custom subcontracting is reported under the Wholesaling B&O tax classification.

2. Speculative building

Speculative building is when a builder makes improvements on land he/she owns. Speculative builders are not subject to B&O tax or retail sales tax on the sale of the real estate. They are, however, subject to the real estate excise tax. On some projects, the landowner will directly hire different contractors to perform portions of the total project. In these cases, each contractor hired by the landowner is taxable as a custom prime contractor.

3. Federal government contracting

The Government Contracting B&O tax classification applies only when a prime or subcontractor engages in constructing, installing, and improving real property of, or for, the United States, its instrumentalities, or a county or city housing authority.

4. Public road construction

The Public Road Construction B&O tax classification applies only when a prime or subcontractor builds, repairs, or improves streets, roads, etc., owned by a municipal corporation or political subdivision of the state of Washington or the federal government. (This type of construction does not apply to roads owned by the state of Washington.)

5. Logging road construction

Logging road construction is road construction which is directly related to a logging operation. Generally, income from logging road construction which is directly related to a logging operation is reported under the Extracting/Extracting for Hire B&O tax classification.

6. Construction services performed in Indian country

When construction is performed in Indian Country for enrolled tribal members.

Custom construction

Custom construction

This section refers to all construction jobs **except** those which are specifically defined as speculative building, federal government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or construction services performed in Indian Country for enrolled members.

Prime contracting

Elements of custom prime contracting: Generally, the prime contractor on a custom construction job is a contractor who is hired by the owner of the land (or person having the rights of ownership such as lessee) to

complete an entire job according to contract specifications. The custom prime contractor may perform the construction services or hire others to perform some, or all, of the work.

Excise tax reporting: Gross receipts from prime contracting on a custom construction job are taxable under the Retailing B&O tax classification and are subject to retail sales tax unless a specific exemption applies.

Custom prime contractors as consumers: The prime contractor is a consumer of all items that are not incorporated into the final project. In other words, a prime contractor is a consumer of tools, equipment, and supplies used in performing the construction service. As a consumer, the contractor must pay retail sales tax or use tax on such items.

Retail sales tax

Collecting retail sales tax

Prime contractors must collect retail sales tax from the landowner on the gross contract price (without deduction of costs incurred). Billing invoices must separately state the sales tax. If the contract requires retainage, sales tax must be computed before deducting such amounts.

For purposes of determining the tax due, the department presumes that a selling price quoted in any agreement between parties **does not** include the retail sales tax unless that tax is separately itemized ([RCW 82.08.050](#)). This is true even if the contractor and buyer know and agree that the price quoted includes state and local taxes. The words "tax included" is not sufficient to overcome the requirement to separately state the sales tax.

Bid, contract, pay estimate, or draw request

A contract is written evidence of a sale and should show sales tax as a separate amount. Even though written contract language may state that the selling price includes sales tax, it does not meet the requirement of separately stating sales tax from the selling price. Additionally, progress billings made against the total contract price of a job should separately state the sales tax. If a contract separately states the tax while individual billings omit the tax, the contract will be satisfactory proof that a separate and identifiable sales tax amount was collected from the customer. If individual billings separate the tax, the individual billings are proof of tax collected.

Is sales tax separately stated?

XYZ, Inc. custom builds residential homes on Jane Smith's land. XYZ, Inc. has determined that the contract to build is \$162,000 (\$150,000 plus 8% tax). The table below identifies the various ways in which the contractor may write the contract and explains the tax consequences:

Contract wording:

XYZ, Inc. has a signed contract with Jane Smith which states the selling price is \$162,000 with "sales tax included." XYZ, Inc. was paid \$162,000 in total. There are no other documents supporting amounts received.

Is sales tax separately stated?

NO - The terms "sales tax included" do not quantify rate and amount of sales tax paid by Jane Smith.

$\$162,000 \times \text{tax rate} = \text{sales tax due}$

$\$162,000 \times .08 = \$12,960 \text{ sales tax due}$

Contract wording:**Is sales tax separately stated?**

B&O tax is due on \$162,000

XYZ, Inc. signs a contract stating the total price is \$150,000 plus \$12,000 sales tax. Progress invoices do not separately state sales tax.

YES - The contract quantifies the rate and amount of sales tax paid by Jane Smith and this information is clearly stated to Jane Smith and XYZ, Inc.

$\$150,000 \times \text{tax rate} = \text{sales tax due}$

$\$150,000 \times .08 = \$12,000 \text{ sales tax due}$

B&O tax is due on \$150,000

XYZ, Inc. signs a contract indicating tax was included on total price of \$162,000. However, the invoices separately state sales tax.

YES - The invoices quantify the rate and amount of sales tax paid by Jane Smith and this information is clearly stated to Jane Smith and XYZ, Inc.

$\$150,000 \times \text{tax rate} = \text{sales tax due}$

$\$150,000 \times .08 = \$12,000 \text{ sales tax due}$

B&O tax is due on \$150,000

Retainage

You must compute sales tax **before** amounts for retainage are deducted on the invoice or bill to the customer. On the excise tax return, report the full selling price without a deduction for retainage under the Retailing B&O tax classification and retail sales tax. (Contractors reporting on a cash basis must also report in this manner.)

As an example, let's say that School Builders, Inc. has a contract with City High School to renovate the cafeteria for \$100,000. School Builders, Inc. will invoice based on progress of the job. The sales tax rate is 8% and retainage is 5%. School Builders first progress billing should appear as follows:

School Builders, Inc. 123 Anywhere St. Olympia, WA 98501 000.000.0000 Fax 000.000.0000		INVOICE																								
INVOICE NO: 1 DATE: January 6, 2003																										
To: City High School	Billing Period:	August 2002																								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>ACTIVITY</th> <th>DESCRIPTION</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td></td> <td>Completed to date</td> <td>\$10,000.00</td> </tr> <tr> <td></td> <td>Billed to date</td> <td>0.00</td> </tr> <tr> <td></td> <td>Contract amount due to date</td> <td>\$10,000.00</td> </tr> <tr> <td></td> <td style="text-align: right;">SUBTOTAL</td> <td>\$10,000.00</td> </tr> <tr> <td></td> <td style="text-align: right;">SALES TAX @ .08</td> <td>800.00</td> </tr> <tr> <td></td> <td style="text-align: right;">Less retainage (5% of \$10,000)</td> <td>(500.00)</td> </tr> <tr> <td></td> <td style="text-align: right;">TOTAL DUE this billing</td> <td>\$10,300.00</td> </tr> </tbody> </table>			ACTIVITY	DESCRIPTION	AMOUNT		Completed to date	\$10,000.00		Billed to date	0.00		Contract amount due to date	\$10,000.00		SUBTOTAL	\$10,000.00		SALES TAX @ .08	800.00		Less retainage (5% of \$10,000)	(500.00)		TOTAL DUE this billing	\$10,300.00
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	TOTAL DUE this billing	\$10,300.00																								
<p>Make all checks payable to: School Builders, Inc. THANK YOU FOR YOUR BUSINESS!</p>																										

Line Item Billing

Retail sales tax must be collected on the full selling price. The selling price includes costs that may be itemized and charged directly to the landowner. Such costs are not deductible from the total contract amount. The following invoice illustrates this:

XYZ, Inc. 123 Anywhere St. Olympia, WA 98501 000.000.0000 Fax 000.000.0000		INVOICE																														
INVOICE NO: 2 DATE: August 2002																																
To: Mr. and Mrs. Jones	Billing Period:	July 2001																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>ACTIVITY</th> <th>DESCRIPTION</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>Misc.</td> <td>Building permit</td> <td>\$200.00</td> </tr> <tr> <td></td> <td>Architectural services</td> <td>500.00</td> </tr> <tr> <td></td> <td>Dozer rental</td> <td>1,000.00</td> </tr> <tr> <td></td> <td>Paid dozer rental tax</td> <td>80.00</td> </tr> <tr> <td></td> <td style="text-align: right;">SUBTOTAL</td> <td>\$1,780.00</td> </tr> <tr> <td></td> <td style="text-align: right;">Profit & overhead</td> <td>178.00</td> </tr> <tr> <td></td> <td style="text-align: right;">TOTAL SUBJECT TO TAX</td> <td>\$1,958.00</td> </tr> <tr> <td></td> <td style="text-align: right;">SALES TAX @ .08</td> <td>156.64</td> </tr> <tr> <td></td> <td style="text-align: right;">TOTAL DUE</td> <td>\$2,114.64</td> </tr> </tbody> </table>			ACTIVITY	DESCRIPTION	AMOUNT	Misc.	Building permit	\$200.00		Architectural services	500.00		Dozer rental	1,000.00		Paid dozer rental tax	80.00		SUBTOTAL	\$1,780.00		Profit & overhead	178.00		TOTAL SUBJECT TO TAX	\$1,958.00		SALES TAX @ .08	156.64		TOTAL DUE	\$2,114.64
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Collecting sales tax – local tax rates

Determining the correct local sales tax rate for retail construction services

Retail construction services are sourced to the location where the construction takes place. This means construction that takes place in Seattle is sourced to Seattle (location code 1726) and taxed at Seattle's combined state and local sales tax rate.

Construction services performed at a construction site outside of Washington

You are not required to collect Washington sales tax or pay B&O tax when the construction site is outside of Washington.

Paying retail sales tax

A contractor is the consumer of items purchased for use in the construction process and not used as component parts of the finished structure. Therefore, retail sales tax must be paid to the vendors of such items.

Payment of sales tax on goods delivered to job site

Custom contractors that have supplies delivered to the job site pay sales tax on such orders based on the job site location. Custom contractors do not typically need to pay sales tax on construction materials that are incorporated into the real estate improvements.

Reseller permits

The purchase of materials by custom contractors that will become part of the completed project are purchases for resale (wholesale). Such purchases are not subject to retail sales tax. Custom contractors may also purchase subcontractor services for resale. To document that material purchases and subcontractor services are for resale, a prime contractor must give a valid reseller permit to the materials supplier or subcontractor.

Reseller permits are free and are issued to businesses that make wholesale purchases, including qualified contractors. The permits allow businesses to purchase items or services for resale without paying retail sales tax.

Contractors who make purchases for resale (wholesale purchases) must apply for a reseller permit. Applications are available online. Contractors use a separate reseller permit application that includes detailed information on materials and labor purchased.

All reseller permits for the construction industry are valid for two years.

A contractor **may not** use a reseller permit to purchase items which are consumed in performing construction. Examples of such purchases are equipment, equipment rentals, dyed fuels, tools, form lumber, or visqueen not incorporated into the structure, duplex nails, temporary silt fencing used for erosion control, and other supplies used in performing the construction. The contractor is the consumer of these items.

Contractors who use reseller permits to purchase items or services they use as consumers **and** do not pay deferred sales tax or use tax on such purchases to the department shall be assessed a misuse penalty of 50% of the tax due on the improperly purchased item or service ([RCW 82.32.291](#)). This is in addition to all other taxes, penalties, and interest due.

If the contractor gives a reseller permit to the seller and later uses the items purchased, or if the seller failed to collect the sales tax on items, the buyer must remit the deferred sales tax or use tax due to the department.

Retention of reseller permits: Contractors who accept reseller permits must retain all permits accepted for 5 years.

WAC [458-20-102](#)

Use tax

Use tax is due if sales tax has not been paid on items the contractor uses as a consumer. Normally, use tax is due (if sales tax hasn't been paid) on the following: equipment, tools, supplies, and rentals of equipment, even if the cost for these items is passed along to the landowner. The manner in which the contractor bills to recover expenses of items used as a consumer is inconsequential. For example, the sales tax or use tax is due on the purchase of a specialized tool for a one-time job even though the purchase price is passed on to the customer as a line item.

Custom construction (continued)

Custom construction (continued)

Rental of equipment by the contractor

Contractors sometimes rent equipment for construction projects. When this happens, the contractor is the consumer of the rented item and owes retail sales tax to the rental company.

This is no different than purchasing a tool the contractor must have in order to perform its services and passing the cost on to the customer. The sales tax paid by the contractor to the rental company is a cost of doing business and, if it is passed on to the customer, it is considered to be part of the gross contract price that is subject to sales tax.

In this case, there are two separate transactions. The first transaction is between the contractor and the rental company. The contractor is the consumer of the rental equipment and must pay sales tax to the rental company. The second transaction is between the contractor and its customer. The customer is the consumer of the construction services and must pay sales tax to the contractor on the total contract price which includes the equipment rental charges, even if they are passed on to the customer with an itemized charge on the invoice/receipt provided to the customer.

The sales tax rate depends on the following:

Single payment

If a single payment is made and the contractor picks up the equipment at the location of the rental company, the sales tax rate and location code are based on the location of the rental company.

If a single payment is made but the equipment is delivered to the contractor at another location, the sales tax rate and location code is based on the location where the contractor receives the equipment.

If you use line item billing to invoice your customers, see our discussion on line item billing.

Periodic payments

If the item is rented or leased for a length of time and periodic payments are made, the first payment is coded to the location where the contractor receives the equipment, normally the location of the

rental company. All subsequent payments are coded to the location where the equipment is primarily used by the contractor.

Rental of equipment with operator services vs. subcontractor services

Rental of equipment with operator services

The department presumes that providing equipment along with an operator to a construction contractor is a retail sale unless it can be demonstrated that the business providing the equipment with operator is responsible for installing, connecting, or affixing construction materials or equipment to land or improvements.

Example A

A business is hired by a prime contractor to provide a crane and a crane operator to work under the direction of the prime contractor to move construction materials and equipment to various locations at the construction site. The business providing the crane and crane operator must charge sales tax to the prime contractor because this activity is considered the rental of equipment with an operator (not a construction service) since that business has no responsibility to actually install or affix materials or equipment to the real property under construction. In addition, the charges for this service are taxable under the retailing B&O tax classification. The crane business cannot accept a reseller permit from the prime contractor.

Subcontractor services

If the business providing the equipment and operator is contractually responsible for the completed construction, such as installing, connecting, or affixing materials to land or buildings, then it must report its income based on the nature of the activities performed (for example, wholesaling, government contracting, or public road construction, as the case may be). For a custom construction contract, a business providing the equipment and operator can accept a reseller permit from the prime contractor and not collect sales tax. **In this limited case**, it reports under the wholesaling B&O tax classification and sales tax does not apply.

However, where the construction is taxable as government contracting or public road construction, the charges for providing the subcontractor services are taxable under the government contracting or public road construction B&O tax classification (not wholesaling). Subcontractor services performed in Indian Country for a prime contractor are subject to B&O tax under the wholesaling classification. The subcontractor does not qualify for exemption for construction in Indian Country unless they have contracted directly with the Tribe or a Tribal member.

Example B

A crane operator is hired by a prime contractor to install the HVAC system on the top of a commercial building and must bolt the HVAC system to the roof top framework. In this case, the business providing the equipment and operator is taxable as a subcontractor and may accept a reseller permit from the prime contractor and report under the wholesaling B&O tax classification (sales tax will not apply).

Working directly for landowner

Fees for providing equipment with an operator to a landowner (for example, speculative builder) are taxable as a retail sale regardless of whether such services are considered rental of equipment with operator services or “subcontractor services.”

For further information, see the [Indian tax guide](#).

Concrete pumping services

The department has published an [interim guidance statement](#) on the tax treatment of concrete pumping services.

Services rendered in respect to construction

Services rendered in respect to constructing means those services that are directly related to the constructing, building, repairing, improving, or decorating of buildings or other structures and that are performed by a person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity.

Responsible for the performance means that the person is responsible for the completed construction without regard to who actually performs the construction. A person who only reviews work related to construction but who does not supervise or direct the work is not providing “services rendered in respect to constructing.”

A contract to perform professional services (such as engineering, architectural, surveying, etc.) will not be considered "services rendered in respect to constructing" if a subsequent construction contract is awarded separately to the same person. The contracts will be considered as awarded separately if, at the time the professional services contract is awarded, the parties did not contemplate that the same person would be "responsible for the performance" of the construction.

When a single contract calls for both professional services and “services rendered in respect to constructing,” the total contract price is subject to tax according to the predominant activity performed under the contract.

Land development and management services

"Land development and management" is excluded from "services rendered in respect to" construction activities if provided by a person that is not also responsible for the construction activities.

Prior to June 11, 2020, these activities were included in the definition of "services rendered in respect to construction."

“Land development or management” is defined in RCW 82.04.051 as:

... site identification, zoning, permitting, and other preconstruction regulatory services provided to the consumer of the constructing, building, repairing, improving, or decorating services. This includes, but is not limited to, acting as an owner's representative during any design or construction period, including recommending a contractor, monitoring the budget and schedule, approving invoices, and interacting on the behalf of the consumer with the person who has control over the work itself or responsible for the performance of the work.

Land development and management services are excluded from the definition of "services rendered in respect to" construction activities, as long as the land development or management services are provided by a person who is:

- **Not responsible** for the constructing, building, repairing, improving, or decorating activities; or
- **Responsible** for the constructing, building, repairing, improving, or decorating activities, **but** all the following apply:
 - There are separate contracts for these activities and the land development or management services.
 - The initial contract was for the land development or management services.
 - The person can prove that at the time of the first contract, it was not contemplated by the parties that the same person would be awarded both contracts.

If either of the above conditions apply in their entirety, charges for land development and management services are subject to the Service and Other Activities B&O tax classification and retail sales tax is not due.

Construction management

Construction management services performed for a consumer are considered services rendered in respect to construction and the income is subject to retailing B&O tax and retail sales tax. This includes those management jobs where the management in substance is prime contracting. Statements in contracts that the "manager" does not have liability for payment of subcontractors or material billings, or does not have final choice over the vendors of these items, does not preclude the activity from being considered services in respect to construction.

Construction activities and related parties

Washington's tax structure imposes a tax on transactions. Whenever there is a transaction (purchase, sale) between two or more persons (entities), tax generally applies. For tax purposes, individuals as well as any separately organized entities (such as partnerships, corporations, joint ventures, etc.) are separate persons. For example, a corporate officer is a separate person from the corporation even though the officer may own all of the corporate shares. Transactions between related entities are treated the same way as transactions between unrelated entities. Persons who perform custom construction upon land owned by related entities are custom prime contractors and must collect sales tax on their charges.

When there is no contract price stated, no billings to support the contract price, or the receipts do not indicate taxable income, the taxable amount is the total amount of construction costs including any charges for licenses, fees, permits, etc., required for construction and paid by the contractor.

Solid fuel burning devices

Custom prime contractors must collect and remit the solid fuel burning device fee, \$30 per device, from consumers for all such devices installed in construction improvements. A solid fuel burning device means any device for burning wood, coal, or any other non-gaseous and non-liquid fuel, including a woodstove and fireplace.

Other income

Income received under energy efficient housing credits or union subsidized wages is taxable under the Service and Other Activities B&O tax classification.

Deductions

Following are some deductions applicable to custom construction activities. Some deductions apply to both the B&O tax and retail sales tax. However, many deductions only apply to one tax or the other.

Sales tax paid on materials: A deduction is allowed under retail sales tax for the purchase price of materials incorporated into the structure if sales tax was paid. For example, if materials costing \$500 plus \$40 sales tax are incorporated into a custom prime contracting job, then a deduction of \$500 is allowed from retail sales tax under the deduction line "Taxable Amount for Sales Tax Paid at Source."

Construction performed outside this state: Neither B&O tax nor retail sales tax apply to income earned from construction activities performed outside of Washington.

Installation of manufacturing/research and development machinery and equipment: Charges for installing machinery and equipment for manufacturers at a manufacturing site are exempt from retail sales tax. In addition,

the cost of the machinery and equipment is also exempt. The manufacturer must provide a [manufacturer's sales and use tax exemption certificate \(pdf\)](#) ([RCW 82.08.02565](#)).

High unemployment county sales and use tax deferral: The High Unemployment County Deferral/Exemption Program grants a waiver of sales/use tax on pre-approved construction of facilities used for manufacturing, research and development and/or commercial testing for manufacturers, and installation of qualified machinery and equipment. The facility must be located in an eligible county or community empowerment zone (CEZ). The contractor is not required to collect sales tax on such charges if the customer presents a deferral certificate from the Department. For more information see our [Special Notice: High Unemployment County Sales and Use Tax Deferral Program \(pdf\)](#).

Construction on Indian reservations: See [Construction Services Performed in Indian Country by Nonenrolled Persons](#) section.

Farmworker housing: Construction of qualifying farmworker housing is exempt from retail sales tax when performed for: agricultural employers, housing authorities, federal, state, and local government agencies, nonprofit community or neighborhood-based organizations that are exempt from income tax under [501\(c\) of the Internal Revenue Code of 1986](#), and for-profit providers of housing for farmworkers. A [Farmer's certificate for wholesale purchases and sales tax exemptions](#) must be secured from the farmworker housing provider.

Alternative housing for youth in crisis: Sales tax does not apply to materials (only) used in construction performed for health and welfare organizations or Alternative Housing for Youth in Crisis. The contractor must segregate materials from all other charges. All other costs and charges, such as labor, are subject to sales tax.

Other types of prime contracting

Technically, federal government contractors, public road contractors, and logging road contractors may also be prime contractors, however, the taxability of those particular activities is different from that of custom prime contracting jobs. Accordingly, those activities are discussed separately in other sections of this guide.

Subcontracting

Generally, a custom subcontractor is a contractor who is hired by a prime contractor to provide a portion of the construction services necessary to make improvements on real estate owned by a third party. Sales tax need not be collected on the subcontractor's charges if the subcontractor secures a reseller permit from the prime contractor. Income from custom subcontracting jobs is reported under the Wholesaling B&O tax classification. (The prime contractor will collect sales tax from the landowner on the total contract price which includes all subcontractors' charges.)

Subcontracting activities Generally, subcontractors perform: roofing, electrical, plumbing, concrete paving, asphalt paving, heat/ventilation/air conditioning, excavating/moving earth, windows, carpeting, lighting, interior decorating, drywall, plaster, tiling, fencing, finish work, and landscape installation.

Speculative building

Speculative building

Speculative builders construct residential or commercial buildings for sale or rental on land they own. Speculative construction includes the activity commonly referred to as "house flipping," for example, purchasing a structure and renovating it with the intent of reselling (or "flipping") it for profit. Speculative construction also includes the renovation of commercial, residential, or multifamily housing to be made available for rental on

either a short-term or long-term basis, including property that will be made available for rental on an online marketplace.

Speculative builders, including those engaged in house flipping, are subject to real estate excise tax on the selling price of the land along with all attachments including, buildings, roads, and other structures. The sale of real estate is not subject to the B&O tax or retail sales tax.

If the real property is rented or leased on a long-term basis (30 or more continuous days), the rental income is not subject to B&O tax. See WAC 458-20-118. However, if a property is rented on a short-term basis (less than 30 days), the rental income is subject to retail sales tax, retailing B&O tax, and any applicable taxes on lodging. See our [Personal home rentals](#) information in our [Lodging](#) guide.

A speculative builder is the consumer of all material incorporated into the real estate. A speculative builder may not use a reseller permit to purchase materials used in speculative building. Any construction contractor hired by a speculative builder is a custom prime contractor for tax purposes and not a subcontractor. Hence, any contractor performing construction services for a speculative builder must charge sales tax on the total contract price.

Payment of sales tax on goods delivered to job site

Speculative developers that have materials and supplies delivered to the job site pay sales tax based on the job site delivery location.

Land ownership

As explained above, the definitions of custom and speculative building and the resulting tax consequences are based on who owns the land. Building on land owned by another is prime construction (unless specifically defined otherwise) and building on your own land is speculative construction. Therefore, land ownership must be established to determine the proper tax application to the construction work performed.

The owner of real property is generally the holder of the recorded title. However, it is possible for a person to hold title to real property which he/she does not own. Therefore, attributes of ownership, other than mere title to the property, may determine the tax application.

[WAC 458-20-170](#) identifies four criteria that can be used in determining who holds the attributes of real estate ownership (other criteria may be used as well). They are:

1. The intentions of the parties in the transaction under which the land was acquired.
2. The person who paid for the land.
3. The person who paid for improvements to the land.
4. The manner in which all parties, including financiers, dealt with the land.

The attributes of ownership establish who has the rights and liabilities of a property owner. That is, who has the ownership rights and liabilities to the extent that a court would call that person the owner of real property, despite the fact that someone else may hold mere bare title to the property. Holding documentation which, by itself, labels a party to the transaction as landowner does not override the other attributes of ownership if those attributes are held by another person.

For example:

Party A - Original Landowner/Seller

Party B - Contractor/Nominee

Party C - Customer/Purchaser

Party A wishes to sell its land. Party C wishes to purchase Party A's land and have Party B construct a house on it. For financing purposes, title is first transferred to Party B as nominee for Party C. At this point, the title will show Party B as "Grantee and Nominee." Then Party B constructs the home. Afterwards, Party B transfers title to Party C.

Although Party B is shown as title holder during construction of the home, he/she does not have the attributes of ownership. Therefore, Party B is not a speculative builder of the home, but is a custom prime contractor to Party C.

Certain title transfers will be disregarded

When an owner of real estate sells to a builder who improves the property and then resells the improved property back to the original owner, the builder is not taxable as a speculative builder. The total activities are taxed as custom prime construction.

Pre-sales agreements

Additionally, a prospective buyer will not be the owner of land by merely executing a purchase and sale agreement or pre-sale agreement with the contractor (even if a substantial amount of money is paid). In this case, there has not been a transfer of ownership rights and liabilities until the closing has taken place.

Selling a speculative home during the course of construction

When a speculative builder sells or contracts to sell property upon which there is a building under construction, all construction completed subsequent to the date of such sale or contract constitutes custom prime contracting.

The "retail sale" does not take place until the purchasers have the "right of possession" to the real property being constructed. Typically, the right to possession is transferred on the date of closing the property conveyance. Therefore, retail construction on what was originally a speculative house does not occur until after closing.

Joint ventures

The formation of a joint venture is a common way to accomplish the development of real estate. In many cases, the members of the joint venture include a person that owns property (landowner member) and a general contractor (contractor member). The formation of a joint venture is the creation of a third entity. When construction takes place on the property, tax consequence is determined by the answers to the following questions:

1. Which entity owns the land? Does a member or joint venture entity own the land?
2. Which entity is providing the construction services? Is a member performing the construction services as a separate entity (prime contractor for the joint venture or landowner) or is the joint venture performing the construction services itself (contractor is performing service as a member of joint venture)? The answers to these questions will determine the tax liabilities of the joint venture entity and specific members.

If construction services are performed by a member as a separate entity on land owned by one of the other entities (the joint venture entity or landowner), the construction services are taxable as custom prime contracting.

The contractor must collect retail sales tax on the full contract price (labor and materials) from the landowner. This is true even if the contractor is a member of the joint venture.

When a joint venture owns the land and the contractor performs construction services as a member of the joint venture (versus a separate entity), the joint venture is a speculative builder. In this case, the work performed by the contractor is a contribution to the capital of the joint venture. The joint venture entity must pay retail sales tax or use tax on materials purchased or produced for incorporation into the real estate.

To be treated as a speculative builder, a joint venture entity must actually exist and the joint venture entity must own the land **and** perform the construction itself.

Land ownership is established by the attributes of ownership as discussed above. The following factors are significant in determining whether construction activities are performed by a joint venture or by other parties involved in the construction:

1. Was the joint venture specifically formed to perform the contract work?
2. Did the formation of the joint venture begin prior to construction?
3. Was the construction work actually performed by the joint venture (versus by a separate entity)?
4. Were the funds handled as joint venture funds rather than as separate funds of any party to the joint venture agreement?
5. Was there a contribution of money, property and/or labor so that any profit or loss incurred by the joint venture is proportionately shared by all members?

Where a member is guaranteed a fixed amount as compensation for construction services independent of any right to profit or gain, such amount is taxable as custom prime contracting.

Road building on speculative projects

Generally, the construction of roads on private property by a prime contractor is a retail sale subject to retail sales tax on the full contract price (labor and materials). However, when the road will be deeded to a city or county, the construction is taxable as public road construction. In this case, the road contractor's charges to the speculative builder are not subject to retail sales tax. A road contractor is the consumer of all materials it incorporates into the roads. This means the road contractor must pay retail sales tax or use tax on such materials. This includes materials provided by the speculative builder. However, if the speculative builder (landowner) has paid retail sales tax or use tax on the materials, the tax is not due again from the road contractor.

The speculative builder remains a consumer with regard to all materials purchased or produced for incorporation into the road. Therefore, the speculative builder must pay retail sales tax or use tax on materials provided to the road contractor. In this case, both contractors are consumers with liability for payment of retail sales tax or use tax on materials. However, the value of the materials is only subject to the tax once. Therefore, when one contractor has paid the tax, the tax liability has been satisfied with regard to those materials.

If the road is not finally dedicated to the public body within a reasonable period of time after the work is completed, the speculative builder will be liable for use tax on the charges of the road contractor. A reasonable period of time has generally been limited to one year or less.

Government contracting

Government contracting

Government contractors, either as prime or subcontractors, perform construction, installation, and/or improvements to real property of, or for, the United States, its instrumentalities, or a county or city housing

authority. This category does not apply to federal road construction (see public road construction). The activities include, but are not limited to:

- Constructing, repairing, decorating, and improving new or existing buildings or other structures.
- Installing and attaching tangible personal property to new or existing buildings or other structures.
- Clearing land.
- Moving earth.

Gross income from such construction is subject to the government contracting B&O tax. Construction activities performed to improve real property of, or for, the U.S. is not a retail sale. It is prohibited under the federal constitution to directly impose a tax on the federal government. Accordingly, the government contractor does not collect sales tax on charges for such work.

Activities such as the mere sale of tangible personal property or providing professional services to the federal government are not reported under this classification.

Government contractor is the consumer

A government contractor is the consumer of property incorporated in, installed in, or attached to the federal construction job. The contractor (prime or subcontractor) must pay sales or use tax on all materials which become a physical part of the project. This includes items manufactured or extracted by the contractor, and also includes property provided by the federal government.

A government contractor is also a consumer of machinery and equipment provided by the government. Use tax is due on the reasonable rental value of the equipment provided.

Subcontractor's charges to prime contractors on government contracting jobs are not subject to sales tax.

Public road construction

Public road construction

Public road construction is the activity of building roads, streets, sidewalks, etc., owned by cities, counties, or political subdivisions of the state or the United States which are primarily used for foot or vehicular traffic. Both prime and subcontractors engaging in these activities are subject to public road construction B&O tax. Public road contractors do not collect retail sales tax.

Building roads which are owned by the state of Washington, privately owned, or owned by tribes on their Indian reservations, are not public road building. These activities are taxable as custom contracting. There is an exemption from retail sales tax for construction on land owned by tribes on their Indian reservations.

Public road building activities

The terms "building, repairing or improving of a publicly owned street, place, road, etc.," **include all of the following:**

- Clearing, grading, graveling, oiling, paving, and the cleaning thereof.
- Constructing of tunnels, guard rails, fences, walks, and drainage facilities.
- Planting of trees, shrubs, and flowers therein.
- Placing of street and road signs.
- Striping of roadways.
- Painting of bridges and trestles.

- Construction of road and street lighting systems, even though portions of such systems are also used for purposes other than street lighting.
- Construction of a drainage system in roads, even though such systems are also used for the carrying of sewage (storm sewage).
- Mining, sorting, crushing, screening, washing, and hauling of sand, gravel and rock taken from a public pit or quarry.
- Construction of certain mass transit buildings for mass transit authorities.

The terms "building, repairing, or improving of a publicly owned street, place, road, etc., " **do not include:**

- Constructing 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.
- Constructing of sewage disposal facilities (sanitary sewers).
- Installing of sewer pipes for sanitation unless within, and a part of, a street or road drainage system.
- Construction, repairing, improving parking lots (unless part of a mass transportation facility).

Roads dedicated to the city or county

Additionally, construction of streets or roads dedicated to a city or county is public road construction. If the road is not finally dedicated to the public body within a reasonable period of time after the work is completed, retail sales tax applies.

The prime contractor or developer may provide a letter to a subcontractor certifying that the roads will be dedicated to the city/county at the end of the development. The letter should be signed by the contractor/developer or his/her designated agent. In this case, the subcontractor knows that the construction of the road requires them to bid, with use tax included in their cost considerations. Alternatively, the contractor/developer may give a subcontractor a copy of the city's acceptance letter of the roads for dedication. Both methods are acceptable proof of public road construction as opposed to custom construction.

Public road contractor as the consumer

Public road contractors (both prime and subcontractors) are consumers of materials they incorporate as an ingredient or component of a road. Public road contractors must pay retail sales or use tax on all materials they place in, or on, the road as well as on equipment and supply purchases. This applies to materials whether they are purchased, provided by others, or manufactured/extracted by the contractor.

Manufacturing/extracting materials by the contractor

Off-site asphalt plants: The production of asphalt away from the road construction site is a manufacturing activity. The value of the material produced is subject to the manufacturing B&O tax and use tax.

For periods prior to August 1, 2023, the value is based on the fair market value of the materials as provided in WAC 458-20-112. In the absence of comparable sales of similar products as a guide to value, the value is determined by totaling all costs incurred to produce the asphalt, including labor and overhead.

Method: The determination of comparable sales requires an evaluation of the following factors:

1. Sales at comparable locations in this state.
2. Similar products of like quality and character.
3. In similar quantities.
4. Under comparable conditions of sale.

5. To comparable purchasers.

Effective August 1, 2023, the value of asphalt or aggregates is equal to the sum of all direct and indirect costs attributable to the asphalt or aggregates used, plus a public road construction market adjustment of 5% of those costs.

For more information, please see our [Special Notice](#).

Rock: The removal of rock from either a pit owned by the road builder or from pits owned by or leased to the public authority is considered extracting. The value of the rock is subject to extracting B&O tax. If the contractor also applies the materials to the road, the value of the rock is subject to use tax. The value is based on the fair market value of the materials as provided in WAC 458-20-112. In the absence of sales of similar products as a guide to value, the value is determined by the total costs attributable to the extracted and processed rock, including raw material, extraction and processing costs, overhead, and any transportation costs between the extraction site and the processing site.

Job site plants: The production of asphalt at a public road construction job site pursuant to performing a road construction contract is not manufacturing. Sales tax or use tax is due on the value of the raw materials used to produce the asphalt.

Processing rock for placement by political subdivisions: The B&O 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. This is true 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 is either:

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

In this case, since the rock processor is not applying the materials to the road, it does not owe use tax on them.

Material providers

A business which simply sells (doesn't apply or spread) materials without performing public road construction activity is not in the business of public road construction. They must collect retail sales tax on total charges for materials (including delivery charges) from the purchasing contractor.

Bifurcation of contract activity

Public road construction includes the business of building, repairing, or improving any street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or the United States. Road work completed on property owned by the state or an individual is not public road construction. The definition is based on ownership of the road, not who pays for the road work. Therefore, a road contract with the state which includes improvements to a passage of road owned by the United States is part retail and part public road construction. In this case, only part of the total construction is taxed as public road construction. The remainder is taxed as custom construction.

Logging road construction

Logging road construction

Logging road construction is the activity of building roads directly related to a timber harvesting operation. Such activities include maintaining logging roads as well as the original road construction. The gross contract price is

taxable under the extracting/extracting for hire B&O tax classification. Also, the contractor owes extracting/extracting for hire B&O tax and use tax on the value of materials extracted for the job. Private road construction in any other context is a sale at retail.

Logging road contractors are the consumers of any materials they incorporate into the roads. The contractor must pay retail sales or use tax on the value of the materials. If the contractor has not purchased the materials, he/she must pay use tax based on the value of the materials. For example, rock includes rip rap, pit run, crushed rock, and other rock products used in logging road construction. The value is based on the fair market value of the materials as provided in WAC 458-20-112. In the absence of sales of similar products as a guide to value, the value is determined by the total costs attributable to the extracted and processed rock, including raw material, extraction and processing costs, overhead, and any transportation costs between the extraction site and the processing site.

Contaminated site cleanup/environmental remedial action

Contaminated site cleanup/environmental remedial action

Contaminated site cleanup and other environmental remedial action are taxable based on the specific activity performed. Tax treatment for specific activities is discussed below.

Service activities

The following activities, which may be performed relative to the cleanup of a contaminated site, are service activities:

- Monitoring.
- Treating groundwater.
- Waste disposal.
- Testing.
- Surveying.
- Engineering and design services.
- Consulting.
- Planning services.
- Other activities, not elsewhere defined in Chapter 82.04 RCW.

If you perform the above activities, you are subject to B&O tax under the service and other activities classification. Service providers owe sales tax or use tax on all materials consumed in providing such services.

Retail activities

Improvements to real property are a retail activity if performed for a consumer, unless otherwise provided by law (for example, improvements to buildings for the federal government are not a retail activity). Retail activities include the following:

- Repairing, improving, or cleaning an existing building or structure.
- Razing an existing building or structure.
- Removing underground tanks.
- Installing a cap over contaminated soil.
- "Cleaning" contaminated soil when performed in conjunction with the razing and/or construction of a building or structure such as a dry cleaner or a gas station (See *Combination contracts – services rendered in respect to construction* section below.)

If you perform these services you are subject to the retailing B&O tax and must collect sales tax from the consumer. Subcontractors performing these activities that receive a completed reseller permit from a contractor are subject to the wholesaling B&O tax (sales tax is not collected).

Hauling activities

Hauling for hire, for example, transporting contaminated materials from point A to point B, is subject to either the motor or urban transportation classification of the public utility tax. Hauling for hire includes loading and unloading but does not include hauling for disposal purposes.

Cleaning bare land or water

The cleanup of unimproved land or water such as might occur at the site of an oil spill on an undeveloped beach receives specific tax treatment. Gross revenue from these types of clean-ups is subject to the service and other activities B&O tax classification. The activities may include the following:

- Skimming oil off water.
- Using absorbents to remove oil from land or water.
- Pumping oily water from a vessel and disposing of the waste water.
- Cleaning contaminated fowl or mammals.
- High pressure washing of land.
- Cleaning contaminated soil.

Combination contracts - services rendered in respect to construction

Contracts that include a combination of services are taxable in accordance with the predominant activity of the contract. For example, if you are responsible for razing a gas station, removing the underground tanks, and cleaning contaminated soil, all income associated with these activities will be subject to the same tax treatment as the razing and removal, that is, as a retailing activity.

Construction services performed in Indian Country by nonenrolled persons

Construction services performed in Indian Country by nonenrolled persons

This section applies to prime contractors who work directly for a tribe or enrolled tribal member/citizen in their Indian country

The way the law applies taxes in these instances is significantly different from most other construction contracts (Washington Administrative Code ([WAC\) 458-20-192](#)).

Retail sales tax: If you are a prime contractor, you do not apply retail sales tax to your construction charges to a tribe or enrolled member/citizen when you perform the construction in their Indian country.

If you perform construction both in and outside Indian country, you only exclude sales tax from the portion of the contract that relates to work done in Indian country. If you perform work for a tribe or enrolled tribal member/citizen outside of their Indian country, for example road work that extends outside of Indian country, you must collect and pay retail sales tax on the portion of work performed outside Indian country.

Business and occupation (B&O) tax: If you are a prime contractor, you do not owe B&O tax for construction charges to a tribe or enrolled member/citizen when you perform the construction in their Indian country.

Reseller permit: You may use a reseller permit to purchase materials and subcontractor labor for construction in Indian country for tribal members/citizens. The department considers these purchases you make for resale.

New exemption form: [Tax exemption for sales to tribes](#)

Prime contractors working directly for the tribe do not owe sales tax on construction supplies and rentals if both of the following apply:

- The prime contractor has them delivered in the Indian country of the tribe they work for.
- They will use such items exclusively to perform that construction in Indian country.

Contractors must use the [Tax exemption for sales to tribes](#) to document the exemption.

Examples of supplies:

- Nails.
- Drop cloths.
- Caulk.
- Form lumber.

Use tax: Prime contractors do not owe use tax on the materials that they permanently install or affix to real estate in Indian country when the construction they perform is for the tribe or an enrolled member/citizen. Prime contractors do not owe use tax on consumables or services that they fully consume to perform such construction.

Rentals: Prime contractors who work in Indian country do not owe sales or use tax on equipment rentals with or without an operator, when they have the equipment or services delivered to the reservation. The prime contractor must use the [Tax exemption for sales to tribes](#).

This section applies to subcontractors who work for a prime contractor in Indian country

Subcontractors who work in Indian country are generally taxed as if the construction occurred outside of Indian country. In other words, a subcontractor works for the prime contractor and not directly with the tribe or tribal member/citizen. Subcontractors owe B&O tax (generally, under the wholesaling classification if they obtain the prime's reseller permit).

Rentals: Subcontractors who work in Indian country owe sales or use tax on equipment rentals with or without an operator.

Retail sales tax: If subcontractors obtain a reseller permit from the prime contractor, they are not required to charge sales tax.

Use Tax: Subcontractors do not owe use tax on materials they permanently install or affix to the project in Indian country when the construction they perform is for the prime contractor. Subcontractors do owe use tax on consumable supplies or services that they consume to perform construction.

This section applies to construction you perform in Indian country for non-Indians

The law does not provide a special tax treatment for contractors or subcontractors that perform work for a non-Indians inside Indian country. If you work for a consumer/landowner/speculative builder, you owe both retail

sales tax and retailing B&O tax on the contract price.

Federal government construction

The tax treatment described above relating to construction for tribes and tribal members does not apply to construction for the federal government, even if the work is performed in Indian country. Please refer to the government contracting section in this guide for more information ([WAC 458-20-17001](#)).

How to document tax-exempt transactions

Contractors that provide construction services to tribes or enrolled tribal members/citizens in Indian country must verify the tax-exempt status of the tribe or enrolled tribal member/citizen. To do this, they must review the buyer's identification and obtain a completed [Tax exemption for sales to tribes](#) from the buyer.

Here are some examples of acceptable identification:

- Tribal membership card.
- Letter from tribal official.
- List of tribal members from a tribal official.
- Treaty fishery identification card.

You must keep appropriate records on the tax exempt status of transactions for five years. Individual businesses may contact the department to determine the best way to keep records for specific situations.

Current Indian tribes

Our state allows pre-emption of tax for federally recognized tribes and their members.

As of the date of this notice, the following tribes are federally recognized and have Indian country within the state of Washington:

- Chehalis Confederated Tribes.
- Colville Confederated Tribes.
- Cowlitz Tribe.
- Hoh Tribe.
- Jamestown S'Klallam Tribe.
- Kalispel Tribe.
- Lower Elwha Klallam Tribe.
- Lummi Nation.
- Makah Tribe.
- Muckleshoot Tribe.
- Nisqually Tribe.
- Nooksack Tribe.
- Port Gamble S'Klallam Tribe.
- Puyallup Tribe.
- Quileute Tribe.
- Quinault Nation.
- Samish Nation.
- Sauk-Suiattle Tribe.
- Shoalwater Bay Tribe.
- Skokomish Tribe.
- Snoqualmie Tribe.
- Spokane Tribe.
- Squaxin Island Tribe.
- Stillaguamish Tribe.

- Suquamish Tribe.
- Swinomish Tribe.
- Tulalip Tribes.
- Upper Skagit Tribe.
- Yakama Nation.

You can find contact information on tribal government and administration on the [Governor's Office of Indian Affairs](#) website or:

Governor's Office of Indian Affairs
210 11th Avenue SW, Suite 415
PO Box 40909
Olympia WA 98504
360-902-8827

Definitions

Indian means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an "enrolled member," "member," "enrolled person," "enrollee," or "tribal member." The term "Indian" includes only those persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. An enrolled member's spouse is considered an "Indian" for purposes of this rule if this treatment does not conflict with tribal law.

Indian country means all land within the limits of any Indian reservation. In addition, Indian country includes trust land located outside of a reservation. This includes allotments that have restricted land status. "Restricted land" is identified by title that is vested in an Indian or tribe, and the property is subject to federal restrictions on alienation and encumbrance.

Tribe means an Indian nation, tribe, band, community, or other entity recognized Indian tribe by the United States' Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe."

Materials means items that become a permanent part of the finished construction provided that the items have not previously been used or consumed in the performance of the construction activity. For example, "materials" include concrete, tie rods, lumber, finish hardware, windows, roofing, etc., which become part of the structure being built or improved.

Consumables means items and services consumed in the performance of the construction. This includes rental equipment with or without an operator. Consumables include form lumber, sand paper, saw blades, equipment, and tools.

Out-of-state contractors

Out-of-state contractors

The following contractors are required to [register](#) with the Department of Revenue and are subject to excise taxes:

- Construction contractors who are responsible for construction activities within this state under any of the following categories:
 - Custom construction.

- Government contracting.
- Public road construction.
- Extracting.
- Subcontractors that are responsible for construction activities within this state **and** who meet at least one of the [nexus](#) thresholds.

Use tax is due on all equipment brought into this state to perform construction if sales or use tax has not been paid to another state. The value subject to use tax is based on the fair rental value of such equipment if it is used in this state for a period not exceeding 180 days in any 12-month period. If the use exceeds 6 months, the use tax is based on the full market value of such equipment used here.

For more information see our [Out-of-State Business](#) guide.

Requirements to obtain contractors' UBI numbers

Requirements to obtain contractors' UBI numbers

[RCW 82.32.070](#) requires all taxpayers to maintain a record of the Unified Business Identifier (UBI) account number of each contractor they hire to perform construction. For example, the law requires a general contractor to record the UBI number of all subcontractors. Taxpayers must keep record of the UBI numbers for at least five years. If a taxpayer fails to record the contractor's UBI number, the taxpayer will not be allowed to bid on a public works contract for two years. The taxpayer will also be subject to a penalty not to exceed \$250.

Tax paid at source deduction

Tax paid at source deduction

Custom construction contracts

Washington Administrative Code (WAC) [458-20-102](#) (11)(b) discusses the procedures to be followed when a contractor has paid Washington sales tax on goods incorporated into a custom contract.

If a contractor pays Washington sales tax on purchases of materials and subsequently resells a portion of the materials as components of a custom contract, the contractor may claim a deduction on the retail sales tax line of the excise tax return for the amount paid for the materials, not including the sales tax. The contractor is still required to collect sales tax on the total contract price from their customer based on the job site location.

When completing the excise tax return, the deduction under the retail sales tax must be itemized on the deduction detail as "taxable amount for tax paid at source." Failure to properly identify the deduction may result in the deduction being disallowed. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the same location code reported by the seller.

Example

A custom contractor purchases materials costing \$100,000 from a supplier located in the City of Tacoma. The contractor picks up the materials at the supplier's location and pays retail sales tax to the supplier based on the Tacoma tax rate. The contractor later uses the materials in a \$200,000 retail (custom) construction project in the City of Seattle. The contractor is required to collect from its customer sales tax at Seattle's tax rate. Tax is collected on the total contract price of \$200,000. To recover the sales tax paid on materials purchased from the Tacoma supplier, the contractor is entitled to claim the "**taxable amount for tax paid at source**" deduction, and the local tax deduction must be coded to the City of Tacoma.

In reporting the retail construction income, the contractor must code the income to the City of Seattle. The net result of this procedure is to collect and remit retail sales tax based on the location of the construction service (Seattle). By coding the "tax paid at source" deduction to the location where sales tax was paid on the purchase of materials (Tacoma), the local sales tax for retail construction services is properly applied *in full* to the place where the construction activity occurs.

The construction income in this example would be reported on the excise tax return as follows:

Retailing B&O tax (Gross Amount) \$200,000

No Deduction

Retailing, Net (same as gross) 200,000

Retail Sales Tax - State Rate (Gross Amount) \$200,000

Taxable Amount for Tax Paid at Source deduction (100,000)

Net taxable amount \$100,000

Local city and/or county sales and use tax

City of Seattle - location code 1726 \$200,000

City of Tacoma - location code 2717 (\$100,000)

This reporting procedure results in a corresponding reduction of local sales tax distribution to the City of Tacoma. This is proper since sales tax was not actually due on the purchase of materials from the Tacoma supplier, and sales tax is actually due based on the location of the construction activity.

Sales tax paid to other states

Sometimes out-of-state contractors purchase materials in another state and pay that state's sales tax. If such a contractor is the consumer of the materials (e.g., a speculative builder) the contractor may take a credit against their Washington use tax liability for another state's sales or use tax paid on the materials used in Washington.

However, if the contractor is performing custom construction, the contractor is required to collect Washington sales tax from his customer on his gross contract price. There is no provision under Washington law by which a credit can be given against the sales tax due on the contractor's sale for another state's sales or use tax paid by the contractor. Further, the deduction under the retail sales tax classification for Taxable Amount for Tax Paid at Source is only for the cost of materials on which Washington sales tax was paid. No deduction is allowed if sales tax was paid to another state on such materials.

Other construction scenarios include:

Public road construction

Sales tax applies to construction materials installed in public roads owned by cities, counties, municipal subdivisions and in road construction for the federal government. The local sales tax is based on the location

where the contractor receives the materials from the supplier. In the above example, the local sales tax would be coded to the City of Tacoma (Code 2717).

Government contracting

In construction of buildings and other structures for the United States government, local sales tax applies to the construction materials based on the location where the contractor receives the materials from the supplier. In the above example, the local sales tax would go to the City of Tacoma.

State (or private) road construction

In construction of *state or private roads*, local sales tax applies to the construction charges based on where the construction activity occurs. If a contractor pays sales tax to a supplier when purchasing materials used in this type of construction activity, the contractor is entitled to take a "taxable amount for tax paid at source" deduction, as noted above under Custom Construction. With this procedure, the proper amount of local sales tax revenue is distributed to the location where the construction activity takes place.

Temporary staffing for construction

Temporary staffing for construction

Real estate developers (speculative builders) owe retail sales tax on temporary labor

Washington State law requires real estate developers to pay retail sales tax or use tax on charges paid to staffing companies for temporary workers who perform construction related services on real estate owned by the developer.

Following are common questions about temporary labor and the application of retail sales tax.

Have real estate developers always been subject to sales tax or use tax on charges for temporary laborers?

Yes, Washington law has always required developers to pay retail sales tax or use tax on charges by staffing companies for providing temporary construction labor. Due to confusion within the staffing industry, the department has only recently begun to enforce the requirement for staffing companies to collect sales tax on charges for retail labor. Nevertheless, customers of staffing businesses that use temporary construction laborers owe sales tax (reported as "use tax") on such charges whenever the staffing business has not collected retail sales tax.

What charges by temporary staffing businesses to a developer are subject to retail sales tax?

Retail sales tax applies to all charges to consumers, including developers, for services related to altering, repairing, or improving either real or personal property. This is true even where the charges are for "labor only." Sales tax must be collected by the seller from the buyer.

Examples of retail services include:

Carpentry, clearing land, commercial construction, concrete work, demolition, electrical work, excavation work, landscape maintenance, moving earth, painting, paper hanging, plastering/drywall installation, residential construction, roofing, sheet metal installation, site cleanup, etc.

What if the developer has not paid sales tax on past retail purchases?

If retail sales tax has not been paid to the temporary staffing business, the developer must report and pay any tax due directly to the Department of Revenue. Failure of the seller to collect the tax does not relieve the buyer from the responsibility to pay the tax due. Registered businesses should report untaxed purchases on the "Use Tax" line of their Washington State excise tax return.

Specific questions should be directed to the Department of Revenue, Taxpayer Services Division. You may call 360-705-6705.

Laws and rules on construction activities

Laws and rules on construction activities

The taxability of performing construction activities within the state of Washington is discussed in the following laws and rules:

Revised Code of Washington References (RCW)

Number	Title
64.04.010	Conveyances and encumbrances to be by deed
64.04.030	Warranty deed - Form and effect
64.04.040	Bargain and sale deed - Form and effect
64.04.050	Quitclaim deed - Form and effect
82.04.030	"Person," "Company"
82.04.050	"Sales at Retail," "Retail Sales"
82.04.190	Consumer
82.04.390	Exemptions - Amounts Derived From Sales of Real Estate
82.12.010	Definitions

Washington Administrative Code References (WAC)

Number	Title
WAC 458-20-102	Reseller Permits
WAC 458-20-107	Selling Price - Advertised prices including sales tax
WAC 458-20-110	Freight and Delivery Charges
WAC 458-20-112	Value of Products
WAC 458-20-135	Extracting Natural Products
WAC 458-20-170	Constructing and Repairing of New or Existing Building or other Structures upon Real Property
WAC 458-20-17001	Government Contracting - Construction, Installation or Improvements to Government Real Property
WAC 458-20-171	Building, Repairing or Improving Streets, Roads, etc.
WAC 458-20-172	Clearing Land, Moving Earth, Cleaning, Fumigating, Razing or Moving Existing Buildings & Janitorial Services

Title

Number	Title
<u>WAC 458-20-178</u> Use Tax	
<u>WAC 458-20-190</u> Sales to and by the U.S., its Departments, Institutions and Instrumentalities-Sales to Foreign Governments	
<u>WAC 458-20-192</u> Indians-Indian Reservations	
<u>WAC 458-20-193</u> Inbound and Outbound Interstate Sales of Tangible Personal Property	
<u>WAC 458-20-194</u> Doing Business Inside and Outside the State	
<u>WAC 458-20-197</u> When Tax Liability Arises	
<u>WAC 458-20-199</u> Accounting Methods	
<u>WAC 458-20-211</u> Leases or Rentals of Tangible Property, Bailments	
<u>WAC 458-20-223</u> Persons Performing Contracts on the Basis of Time and Material, or Cost-Plus-Fixed-Fee	

Construction tax matrix

Construction tax matrix

Type of Contractor	B&O Tax	Retail Sales Tax	Use/Deferred Sales Tax
General or prime contractor: Performs work for others at retail. Does not own the real property. This is referred to as custom construction.	Subject to retailing B&O tax classification.	Sales tax is collected and due on the total contract price.	Contractor pays sales/use tax on all materials consumed by him (tools, sandpaper, etc.) Does not pay sales tax on materials which become a permanent part of the building. May use a reseller permit to purchase these items.
Subcontractor (custom construction): Performs work for others at wholesale. Does not own the real property. Hired by general or prime contractor to perform all or portion of contract.	Subject to wholesaling B&O tax classification, if provided a reseller permit by general or prime contractor. Otherwise, retailing B&O tax classification.	If general or prime contractor provides reseller permit to subcontractor, then does not collect retail sales tax on contract price. Otherwise, sales tax due on total charge to general contractor.	Contractor pays sales/use tax on all materials consumed by him (tools, sandpaper, etc.) Does not pay sales tax on materials which become a permanent part of the building. May use a reseller permit to purchase these items.
Speculative builder: Constructs residential or commercial buildings on land he owns.	No B&O tax due on sales of property. The sale of property is subject to real estate excise tax.	Does not collect retail sales tax on the sale of the property.	Builder must pay sales/use tax on all materials used and on all billings from other contractors.
Public road contractor: Builds roads for cities, counties, and the federal government. Does not include roads built for Washington State. Note: Comments apply whether prime or subcontractor.	Subject to the public road construction B&O tax classification on the gross contract price.	Does not collect retail sales tax on road work where the road is a city, county, or federal road. Roads for the state of Washington are subject to sales tax. Follow rules above for general contractor.	Contractor is defined by law as the consumer and must pay sales/use tax on all materials used, applied, or installed by him.
Logging road contractor: Builds logging roads in	Subject to the B&O tax under the extracting	Does not collect retail sales tax on charges for building logging roads.	Contractor is defined by law as the consumer and must pay sales/use tax on all

Type of Contractor

conjunction with logging parcels of land.

Government contractor:

Construction to real property for the federal government. Does not apply to road construction. NOTE: Taxability the same for both prime and subcontractor.

B&O Tax

classification on the gross contract price.

Subject to the B&O tax under the government contracting tax

No sales tax collected from the federal government.

Retail Sales Tax

materials used, applied, or installed by him.

Contractor is defined by law as the consumer and must pay sales/use tax on all materials used, applied, or installed by him.