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Tax ruling favors municipalities on sewer construction tax

The Wisconsin Department of Revenue recently issued a private letter ruling clarifying the scope of the sales and use tax exemption applicable to construction materials that are sold to a construction contractor and incorporated into a sewerage system located in Wisconsin.¹ This ruling was issued in response to a request drafted and submitted by Godfrey & Kahn on behalf of a metropolitan sewerage district client.

Municipalities or metropolitan sewerage districts frequently engage construction contractors to build or repair sanitary sewer systems. These sewer systems generally take wastewater and other waste and convey it toward a treatment plant.

Section 77.54(9m) of the Wisconsin Statutes provides a sales and use tax exemption for tangible property sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the tangible property to a municipality or metropolitan sewerage district, but only if the property becomes a component of a “facility” located in Wisconsin owned by the municipality or sewerage district. For purposes of this exemption, “facility” is defined to include a storm sewer or sewerage and waste water treatment facility.

The ruling provides that pipes, pipe liner material, manhole structures, manhole covers, manhole liners and manhole coatings incorporated into a sanitary sewer system qualify for the exemption. Materials that become a component part of the sewer system or the materials necessary to stabilize those items, such as piping, fittings, gravel or other fill necessary to bury the piping to protect it from the road, also qualify for the exemption. The ruling also cautions that materials that become a component part of the road, curb, gutters or sidewalk do not qualify for the exemption, because “facility” does not include a highway, street or road.

While private letter rulings are binding only on the taxpayer requesting the ruling, they are often helpful at illustrating the Department of Revenue’s view regarding the scope of an exemption. This ruling provides much-needed guidance to municipalities, sewerage districts, and contractors with respect to the scope of this exemption. Prior to the ruling, contractors bidding on projects often reached differing conclusions regarding the scope and applicability of the exemption, with many believing the exemption did not apply to materials purchased for projects outside of the “fence” of the treatment plant. This ruling makes clear that the exemption extends to sewerage systems owned by a municipality or sewerage district “outside of the fence.” The industry is viewing this ruling as representing a favorable and more expansive view of the exemption than previously understood.

¹ Wisconsin Private Letter Ruling W1814002 (Jan. 2, 2018).

The information in this article is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.