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Retail Sales Tax: Road Construction

Does the purchaser owe the retail sales tax upon charges made by contractors for road and bridge construction, repair, or maintenance upon (1) private land owned by the purchaser; (2) private land owned by another party; or (3) alternate sections of private land owned by the purchaser and public land where costs are shared and the private and public parties each has an easement in the other's land?

(1) Where the roads and bridges are constructed entirely on private land, the construction is defined as a retail sale under RCW 82.04.050 and the retail sales tax is applicable to the full contract price when the work is performed by an independent contractor. When the work is performed on the purchaser's property by employees of the purchaser, the purchaser is the consumer of the material used and the retail sales tax or use tax is applicable to the materials used. Neither retail sales tax nor use tax is imposed on the value of services performed by the employees.

(2) When a contractor contracts to build a road on private land owned by another party retail sales tax must be paid.

(3) Where the taxpayer owns alternate sections of land and a government entity owns the remaining sections the cost of the road is shared between the private and public owners, and permanent rights of way have been exchanged between the taxpayer and the public body, the road is publicly owned for purposes of the retail sales tax.

This is because the public body owns a fee in certain sections of the property over which the road is built and has a permanent easement in the other sections which are on private lands. Therefore, the public body owns an interest in all the property over which the road is built. The entire road should be considered publicly owned for purposes of the retail sales tax.

If the public entity is the state of Washington, the contractor must collect retail sales tax on the total cost of the road and may give a resale certificate (WAC 458-20-102A) for purchases made before January 1,

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2010, or a reseller permit (WAC 458-20-102) for purchases made on or after January 1, 2010, to the seller to document the wholesale nature of the purchases of material used in constructing the entire road. Note: Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

If the public body is the federal government or a local government, then the contractor is subject to the B&O tax under the public road construction classification on the full contract price. Also, the contractor will be liable for retail sales tax on its purchase of materials and if retail sales tax was not paid the contractor will be liable for use tax on those materials. The parties for whom the road is constructed are not liable for retail sales tax.
