

**WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.** (1) **Introduction.** This rule explains the taxation of businesses engaged in "government contracting"; i.e., constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, its instrumentalities, or a county or city housing authority created pursuant to chapter 35.82 RCW. It also explains the reporting requirements for persons engaged in these activities.

(a) **Examples.** Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

(b) **Other rules that may apply.** The following rules may contain additional relevant information for persons engaged in government contracting or persons working with or for government contractors:

(i) WAC 458-20-134 Commercial or industrial use;

(ii) WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property;

(iii) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic;

(iv) WAC 458-20-178 Use tax and the use of tangible personal property;

(v) WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments;

(vi) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(c) **Definitions.** The definitions in WAC 458-20-170 apply equally for this rule, as appropriate. In addition, the terms "clearing land" and "moving earth" include any grading or clearing of land, including razing buildings or other structures, as well as well drilling, core drilling, and digging holes, regardless of whether or not casing materials are installed.

(2) **Business and occupation tax.**

(a) **Manufacturing.** Government contractors that manufacture or produce any tangible personal property for their own commercial or industrial use in performing government contracting activities must report the value of the property manufactured under the manufacturing B&O tax classification. See RCW 82.04.240. In these circumstances, the government contractor is considered the consumer of the manufactured product and should not report the value of the manufactured product on either the retailing or wholesaling B&O tax classifications. The multiple activities tax credit is not allowed on this transaction.

(b) **Government contracting.** Persons, including subcontractors, engaged in constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property, including installing or attaching tangible personal property therein or thereto, and clearing land or moving earth, of or for the United States, its instrumentalities, or county or city housing authorities of chapter 35.82 RCW are taxable under the government contracting B&O tax classification, on the gross income from those activities. See RCW 82.04.280 (1)(g). The measure of the tax is the gross contract price.

(3) **Retail sales tax.**

(a) **Government contracting activities excluded.** The retail sales tax does not apply to any portion of the contract price for any business activities taxable under the government contracting B&O tax classification described in subsection (2)(b) of this section.

(b) **Materials.** Prime and subcontractors engaged in government contracting are "consumers" under RCW 82.04.190 and must pay retail sales tax or use tax on all purchases of materials. Examples of common materials on which sales or use tax would apply include prefabricated and precast items, equipment, and other tangible personal property installed, applied, attached, or otherwise incorporated in their government contracting work. Sales tax applies to the contractor's purchases notwithstanding that the full purchase price of the property will be reimbursed by the government or housing authority in the gross contract price, and notwithstanding that the contract provides that the title to the property vests in the government or housing authority immediately upon its acquisition by the contractor.

(c) **Tools and consumables.** Government contractors must pay retail sales tax on purchases and leases or rentals of tools, consumables, and other tangible personal property they use as consumers in performing government contracting as described in subsection (2)(b) of this section.

(4) **Use tax.**

(a) Use tax applies to the value of all materials, equipment, and other tangible personal property a government contractor purchases at retail, acquires as a bailee or donee, or manufactures or produces for commercial use or industrial use and upon which the contractor, its bailor, or its donor paid no retail sales tax.

(b) Government contractors are required to remit use tax on the value of government-provided tooling as well as property provided by the federal government to the contractor for installation or inclusion in the contract work.

(c) Either the prime contractor or a subcontractor may be held responsible for payment of the applicable use tax unless there is proof that one of these persons has paid the tax to the department because both persons are "consumers" of the tooling/property under RCW 82.04.190(6).

**Example 1.** Prime Contracting LLC contracts directly with the United States government to construct a new mess hall on a military base. As part of the project, Prime Contracting LLC manufactures custom wall cabinet storage units at their workshop, then delivers and installs the units in the newly constructed kitchen. Prime Contracting LLC must report the value of the manufactured cabinets under the manufacturing B&O tax classification. Prime Contracting LLC is also subject to use tax on the value of the cabinets. The gross income from the government contract must be reported under the government contracting B&O tax classification.

**Example 2.** Assume the same facts as Example 1, except Prime Contracting LLC, after manufacturing the cabinets, hires a subcontractor, Classy Cabinets Ltd., to install them. If Prime Contracting LLC does not report and remit use tax on the value of the cabinets, Classy Cabinets would be responsible for paying the use tax. Both Prime Contracting LLC and Classy Cabinets Ltd. will report their income from the project under the government contracting B&O tax classification.

**Example 3.** Assume the same facts as Example 1, except Prime Contracting LLC hires subcontractor, Classy Cabinets Ltd., to build and install the custom cabinets. In this scenario, Classy Cabinets Ltd. is

the manufacturer of the cabinet units and must report the value of the manufactured cabinets under the manufacturing B&O tax classification. Both Prime Contracting LLC and Classy Cabinets Ltd. will report their income from the project under the government contracting B&O tax classification. Classy Cabinets Ltd. is also subject to use tax on the value of the cabinets. If Classy Cabinets Ltd. does not report and remit use tax on the value of the manufactured cabinets, Prime Contracting LLC would be responsible for paying the use tax.

**Example 4.** Assume the same facts as Example 3, except the United States government provides Classy Cabinets Ltd. with a tool necessary to install the manufactured cabinets. Classy Cabinets Ltd. is subject to use tax on the value of the tool used. See RCW 82.12.010(7) and WAC 458-20-178 (4)(f) for information on the use tax value of articles used in bailment situations. If Classy Cabinets Ltd. does not report and remit use tax on the value of the tool used, Prime Contracting LLC would be responsible for paying the use tax.

(5) This rule does not apply to public road construction. See WAC 458-20-171.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 22-14-026, § 458-20-17001, filed 6/24/22, effective 7/25/22. Statutory Authority: RCW 82.32.300. WSR 86-10-016 (Order ET 86-9), § 458-20-17001, filed 5/1/86.]