

## Sales- and use-tax reform?

John Topp  
July 13, 2005

Should we correct a problem, even if we know it might hurt us financially?

That's the question behind the state's use-tax policy for construction contractors working with tax-exempt entities. This antiquated and unjust policy pumps significant dollars into the state budget every year. Is the state not correcting this policy because it would cost the state money that it needs?

This is clearly a situation where the rules are so complex that it costs more to comply than it would to simply pay more. When tax-exempt entities buy goods and services and real property construction, the rules for real property are so difficult that the state receives revenue from tax-exempt entities by default.

When tax-exempt entities – such as churches, schools, local, state and federal governments – build a building, the labor is exempt from sales and use tax, just as it is for any nonexempt entity. However, the contractor pays taxes on materials such as concrete, windows, doors, lights and heating units through a use tax, which is the same rate as the local sales tax.

The state considers this a tax on the contractor as the consumer of the goods, not a tax on the tax-exempt entity paying for the building project. The net effect is the contractor's cost of material is increased by the amount of tax and therefore increases the cost of construction to the tax-exempt entity.

In the case of state construction projects, the tax is paid to the state through the contract cost and is returned to the state by collecting the tax. There is a third and fourth dimension to this circle when you throw in the county and stadium taxes. For other tax-exempt entities, they just pay more. This is the sort of thing bureaucracies are made of.

## Exemption meaningless

The state offers an exemption to the tax-exempt entity, provided it buys the goods itself. But these entities have no idea what to buy without the contractor's input, which creates unnecessary paperwork and presents other issues, such as warranty and liability concerns. Major contracts with large definable items to purchase are accounted for with a tremendous amount of unnecessary paperwork in order to save the payment of tax, but the smaller items become impossible, and the cumulative effect is where the discrepancies enter into play.

Special legislation in the past has extended exemptions to the contracting industry for waste-treatment facilities and sports complexes, so why is it not made universal?

Most contractors pay this tax and in turn charge more for the material. This just falls through the cracks, and the system seems to be unaffected. Sort of like what you don't know won't hurt you. This should make one noncompetitive; however, if everyone does it the same, it has a neutralizing effect.

The solution is simple. Make all work done for tax-exempt entities tax exempt. The industry is requesting relief from the burdensome paperwork to simultaneously reduce the amount of money that tax-exempt and charitable organizations pay for construction.

This mirrors our tobacco-tax situation in one respect, where we know cigarettes kill us, but heaven help our budget if people stop smoking. Here we know the tax collection is wrong, but heaven help our budget if we correct the problem.

*John Topp is the executive director of Building Advantage and the Construction Labor Management Council of Southeast Wisconsin Inc.*