

Special Notice

Intended audience: Building construction and land development businesses

June 23, 2020

Land development and management services

Effective June 11, 2020, [House Bill 2229](#) amends [RCW 82.04.051](#) regarding the taxation of land development and management.

This legislation:

- Defines **land development or management** (see below).
- Excludes **land development or management** activities from services rendered in respect to construction activities.

The amendment to the law does not affect the department's position on how the law is applied. Rather, this amendment affirms the department's prior and current position.

Land development or management activities are excluded from the definition of services rendered in respect to construction, if the person providing the land development or management services meets **one** of the following:

- Is **not responsible** for the constructing, building, repairing, improving, or decorating activities.
- Is **responsible** for the constructing, building, repairing, improving, or decorating activities, but the initial contract was only for land development or management services, and 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.

Examples

These examples only address when retail sales tax is due, and do not discuss which business and occupation (B&O) tax rate applies. For more information on B&O tax rates, refer to dor.wa.gov/taxes-rates.

Situation 1

XYZ Development hires Land Inc. to conduct land development (preconstruction) services including site feasibility, permits, engineering, and a budget estimate. Land Inc. will not be responsible for any of the construction activities. The services provided in this situation are not considered services rendered in respect to construction, and retail sales tax is not due.

Situation 2

Assume the same facts as in situation 1. A few months later, after a bidding process, XYZ Development decides to hire Land Inc. to also manage and take responsibility of all building and construction activities. This was not contemplated by either party at the time of the first agreement. Here, the first agreement remains not subject to retail sales tax because, as demonstrated by facts, it was not contemplated by either party that the same person would be awarded both contracts. The separate construction contract is subject to sales tax.

Situation 3

Assume the same facts as in situation 1. XYZ Development hires Land Inc. not only to provide preconstruction services, but also to complete the construction project if site approval is awarded. The entire contract here (both phases) will be subject to retail sales tax if Land Inc. also ends up responsible for construction. At that point the preconstruction services become “services rendered in respect to construction”.

Situation 4

Assume the same facts as in situation 3 but the site is not approved for development. Even though it was contemplated that Land Inc. would also be the company completing the construction if site approval was awarded, approval was not awarded and construction never happened. Therefore, any preconstruction services that were performed are not subject to retail sales tax.

Definitions

Land development or management means 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.

Responsible for the performance means that the person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work. A person who is financially obligated for the work, such as a bank, but who does not have control over the work itself is not responsible for the performance of the work.

Services rendered in respect to means those services that are directly related to the constructing, building, repairing, improving, and 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.

More information

See [HB 2229](#) and [RCW 82.04.051](#).

Questions?

Please visit dor.wa.gov or call 360-705-6705.