

Important Rate Changes!

BEGINNING JANUARY 1, 2024:

- Milwaukee County sales and use tax rate increases from 0.5% to 0.9%
- City of Milwaukee imposes a new 2% sales and use tax
- See [Fact Sheet 2414](#) *Milwaukee Sales and Use Taxes*

See the [Sales Tax Rate Chart](#) for a complete list of county sales and use tax rates and their effective dates

Restaurants and Bars

How Do Wisconsin Sales and Use Taxes Affect Your Operations?

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I. INTRODUCTION

A. General

This publication explains how Wisconsin sales and use taxes affect restaurants, bars, and similar businesses that sell food, food products, and beverages. The publication includes examples of taxable and nontaxable sales and purchases.

The information in this publication relates to the state's 5% sales and use tax. Certain sales and purchases by restaurants, bars and similar businesses which are subject to the 5% state sales and use tax may also be subject to the:

- 0.5% county sales and use tax
- 0.1% baseball stadium sales and use tax
- 0.5% football stadium sales and use tax
- 0.5% local exposition tax
- 0.5% or 1% premier resort area sales tax (1.25% in City of Wisconsin Dells and Village of Lake Delton as of July 1, 2014)

Additional information about these taxes is contained in the following:

[Publication 201](#), *Wisconsin Sales and Use Tax Information*

[Publication 410](#), *Local Exposition Taxes*

[Publication 403](#), *Premier Resort Area Tax*

You may also find the following publications helpful:

[Publication 220](#), *Grocers*

[Publication 223](#), *Bakeries*

These publications are available on the department's website – revenue.wi.gov.

CAUTION

The information in this publication reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and in effect as of December 1, 2014. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this publication. Also note that lists of taxable or exempt items in this publication are not all-inclusive. They merely set forth common examples.

II. OBTAINING A SELLER'S PERMIT AND FILING RETURNS

A. Who Must Obtain a Seller's Permit

Every person engaged in the business of selling, licensing, leasing, or renting taxable products or services in Wisconsin must have a seller's permit for each location, unless all sales by the seller are exempt from sales and use tax. This means nearly all Wisconsin restaurants and bars will need to register with the Wisconsin Department of Revenue and collect Wisconsin sales tax on their sales.

To register for a seller's permit go to tap.revenue.wi.gov/btr.

B. When Should You Apply For a Seller's Permit?

- You must apply for a seller's permit before making any taxable sales. If you buy an existing business, the seller's permit cannot be transferred to you. You must apply for a new permit.
- If you apply for a seller's permit and don't receive your permit before opening your business, you are allowed to make retail sales. However, you are responsible for the taxes and for keeping proper records from the start of your business.
- You must pay the taxes by the due date, even if you have not yet received your permit or certificate.

III. SALES BY RESTAURANTS AND BARS

A. Food and Beverages

Sales of foods and beverages by restaurants and bars are generally subject to sales tax, as explained below. The tax treatment applies to carryout sales, as well as sales for consumption on the premises.

Taxable sales include:

- Candy
- Dietary supplements
- Prepared food (see Part III.A.3. and the flowchart in Appendix A)
- Alcoholic beverages
- Beverages sold in a heated state
- Beverages sold in glasses or cups
- Soft drinks
- Other beverages

1. Candy

Candy is taxable. "Candy" includes any preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces, but does not include any product that contains flour or that requires refrigeration.

Example: Bar sells candy bars at room temperature and from a refrigerated display case. The candy bars do not contain flour and are not required to be refrigerated. Because the candy bars do not contain flour and are not required to be refrigerated, they meet the definition of "candy." Bar's sales of the candy bars are taxable, regardless of whether they are sold at room temperature or sold from the refrigerated display case.

Following are examples of "candy":

- Caramel apples
- Chewing gum
- Granola bars that contain sugar but no flour
- Mints
- Nuts that are candy, such as honey roasted cashews or chocolate covered peanuts
- Raisins that are candy, such as chocolate covered raisins

2. Dietary Supplements

Dietary supplements are taxable.

Dietary supplements can be identified by the "Supplement(al) Facts" box found on the product label as required by 21 CFR 101.36, as opposed to a "Nutrition(al) Facts" box found on the labels of other foods and food ingredients.

Dietary supplements include antioxidants, bee pollen, enzymes, garlic capsules, ginseng tablets, herbal supplements, immune supports, lecithin capsules, metabolic supplements, vitamins and minerals, and zinc lozenges.

A dietary supplement sold in beverage form is taxable.

3. Prepared Food (also see the flowchart in Appendix A)

"Prepared food" is taxable. "Prepared food" includes:

- Food sold in a heated state¹
- Food or nonalcoholic beverages heated by the retailer but sold unheated (e.g., hard boiled eggs), other than:
 - Bakery items, and
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold by weight or volume²
- Food or nonalcoholic beverages for which plates, bowls, glasses, or cups are necessary to receive the food (e.g., self-serve salad bar, milk from a bulk dispenser)
- Two or more food or nonalcoholic beverage ingredients mixed or combined by the retailer for sale as a single item (e.g., potato salad), other than:
 - Bakery items,
 - Items sold unheated by weight or volume²,
 - Items that are only sliced, repackaged or pasteurized by the retailer, and
 - Items that contain meat, fish, egg, or poultry in raw form.
- Food or nonalcoholic beverages for which the retailer's customary practice is to physically give or hand a utensil³ to the purchaser along with the food or beverage (e.g., a napkin along with an ice cream cone).

75% Rule:

Food, food ingredients, and beverages that fall under one or more of the above categories are "prepared food" and subject to Wisconsin sales and use tax. In addition, if a restaurant or bar's sales of certain "prepared food" are more than 75% of its sales of all food and food ingredients **and** the restaurant or bar makes utensils³ available to its customers, **all of that restaurant's or bar's sales of food, food ingredients, and beverages are considered to be sales of prepared food.** See Appendix B. Sales of alcoholic beverages do not factor into the calculation of this percentage.

¹ "Sold in a heated state" means sold at a temperature higher than the air temperature of the room or place where they are sold.

² See Part II.D.2.(c) of Publication 220, *Grocers*, for information about what it means to be sold by weight or volume.

³ "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.

If a restaurant or bar has more than one establishment in Wisconsin, the information from all establishments in Wisconsin must be combined when determining whether its sales of certain prepared food are more than 75% of its sales of all food and food ingredients.

Exception to 75% Rule:

Food or beverages that contain four or more servings, are packaged as one item, and are sold for a single price may not be taxable. See the flow chart in Appendix A.

4. *Alcoholic Beverages*

Alcoholic beverages are taxable. Alcoholic beverages are beverages that are suitable for human consumption and contain 0.5 percent or more alcohol by volume.

5. *Beverages Sold in a Heated State*

Beverages sold in a heated state are taxable. For example: coffee, cappuccino, or hot cocoa

"Sold in a heated state" means sold at a temperature higher than the air temperature of the room or place where they are sold.

6. *Beverages Sold in Glasses or Cups*

Beverages sold in glasses or cups are taxable.

Examples:

- Retailer fills cup with beverage and hands it to purchaser
- Cups are available for purchaser to fill at self-serve fountain
- Milk from a bulk dispenser

Beverages are also taxable if the retailer's customary practice is to hand a straw or napkin (utensil) to the purchaser with the beverage.

Nonalcoholic beverages fall within the definition of food and food ingredients. As a result, such beverages may be taxable as "prepared food."

7. *Soft Drinks*

"Soft drinks" are taxable.

Beverages containing less than 0.5 percent alcohol and containing a natural or artificial sweetener are "soft drinks," except for a beverage containing:

- Milk or a milk product
- Soy, rice, or similar milk substitutes
- Fifty percent or more vegetable or fruit juice by volume

Although a nonalcoholic beverage may not be subject to tax as a "soft drink," it may be subject to tax as "prepared food."

8. Other Beverages

For beverages not described in 1 through 7 above, the sales tax treatment is described as follows.

- **Retailer's sales of certain prepared foods are more than 75% of the retailer's total sales of all food and food ingredients and retailer makes utensils³ available to the purchaser:⁴**

Retailer's sales of beverages are taxable.

Exception: If the beverage item has four or more servings, see the flowchart in Appendix A.

- **Retailer's sales of certain prepared foods are 75% or less of the retailer's total sales of all food and food ingredients:⁴**

Retailer's sales of beverages are exempt, unless any of the following apply:

- The beverages are sold in a heated state¹,
- The beverages are "soft drinks,"
- The beverages are "alcoholic beverages,"
- The beverages are "dietary supplements,"
- The retailer's customary practice is to physically give or hand utensils³ to the purchaser with the beverage,
- A glass or cup is necessary for the purchaser to receive the beverage and the glass or cup is made available to the purchaser, or
- The retailer mixes or combines two or more ingredients for sale as a single item and does not sell the item by weight or volume².

For example, if

1. the retailer's sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients,
2. products are pre-packaged as purchased by the retailer,
3. products are not sold heated¹, and
4. the retailer does not have a customary practice of physically giving or handing a utensil³ to the customer with the product, its sales of the following are not taxable:
 - Unsweetened bottled water
 - Cartons of milk
 - Bottled beverages that contain milk or milk products
 - Bottles of unsweetened iced tea
 - Bottled juices that are more than 50% fruit or vegetable juice by volume

¹ "Sold in a heated state" means sold at a temperature higher than the air temperature of the room or place where they are sold.

² See Part II.D.2.(c) of Publication 220, *Grocers*, for information about what it means to be sold by weight or volume.

³ "Utensils" include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.

⁴ See Appendix B for a description of how to compute this percentage.

9. Examples Illustrating Sales of Food and Beverages

The tax treatment for sales of food and beverages is illustrated in *Examples 1-25*. The index for the examples provides a brief summary of the items in a particular transaction and the corresponding taxability. A detailed explanation for each example listed in the index is provided directly following the index.

Index to Examples 1–25

Taxable Food and Beverages (*Examples 1-9*) – Retailer's sales of the following food and beverage items are taxable.

Example 1: Restaurant's sale of a hamburger and soda – Taxable

Example 2: Restaurant's sale of a hamburger and wine – Taxable

Example 3: Restaurant's sale of coffee - Taxable

Example 4: Tavern's sales of honey roasted peanuts – Taxable

Example 5: Discount Store's sale of a slice of pizza and milk served in a cup – Taxable

Example 6: Donut Shop's sales of donut where napkin is physically handed to the customer - Taxable

Example 7: Bar's sale of canned and bottled beer – Taxable

Example 8: Liquor Store's sale of canned and bottled beer – Taxable

Example 9: Convenience Store's sale of bag of ice cubes – Not taxable

More Than 75% (*Examples 10 – 15*) - Retailers' sales of certain prepared foods are more than 75% of its total sales of all food and food ingredients and the retailer makes utensils available to customers. (See Appendix B)

Example 10: Fast Food Restaurant's sale of a hamburger and milk "to go" – Taxable

Example 11: Fast Food Restaurant's sale of milk in a carton "to go" – Taxable

Example 12: Deli makes and sells unheated sandwiches for \$5 per pound – Taxable

Example 13: Fast Food Restaurant's sale of ice cream cake made by Fast Food Restaurant – Taxable

Example 14: Fast Food Restaurant's sale of ice cream cake made by a supplier – Not taxable

Example 15: Bar's sale of candy, pretzels, and mixed drink – Taxable

75% or Less (*Examples 16 – 25*) – Retailers' sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients and the retailer makes utensils available to customers, but does not physically give or hand utensils to customers. (See Appendix B)

Example 16: Discount Store's sale of a slice of pizza and carton of milk – Pizza – Taxable; Milk – Not taxable

Example 17: Bar's sale of candy, pretzels, and mixed drink – Candy – Taxable; Pretzels – Not taxable; Mixed drink – Taxable

Example 18: Convenience Store's sales of ice cream cones, ice cream bars, and sundaes in frozen food section – Not taxable

Example 19: Ice Cream Shop's sale of sundae – Taxable

Example 20: Deli purchases sandwiches from wholesaler and sells unheated – Not taxable

Example 21: Deli makes and sells unheated sandwiches for \$5 each – Taxable

Example 22: Deli makes and sells unheated sandwiches for \$5 per pound – Not taxable

Example 23: Deli's sale of heated chicken – Taxable

Example 24: Vending machine sales of apples, cookies, and pretzels – Not taxable

Example 25: Vending machine sales of soft drinks – Taxable

Taxable Food and Beverages (Examples 1 – 9): Retailer's sales of the following food and beverage items are taxable.

Example 1: Restaurant's sale of a hamburger and soda – Taxable

Restaurant sells food and beverages to its customers.

- Customer is seated at a table at Restaurant.
- Customer orders a hamburger and soda. Restaurant's employees cook the hamburger and serve the heated hamburger to Customer on a plate. Restaurant's employee serves the soda to Customer in a glass.

The sale of the hamburger and soda by Restaurant to Customer is taxable. The hamburger meets the definition of "prepared food" because the hamburger is sold in a heated state. The soda is taxable because it meets the definition of "soft drink."

Example 2: Restaurant's sale of a hamburger and wine – Taxable

Same as *Example 1*, except that Customer orders a glass of wine (instead of soda) with the hamburger.

- The price of the wine is \$5 per glass and the hamburger is \$10.
- Restaurant serves the wine to Customer in a glass.

The sale of the hamburger and wine by Restaurant to Customer is taxable. The hamburger meets the definition of "prepared food" because the hamburger is sold in a heated state. The sale of the wine is taxable because all retail sales of alcoholic beverages are taxable.

Example 3: Restaurant's sale of coffee - Taxable

Restaurant sells food and beverages to its customers.

- Customer is seated at a table at Restaurant.
- Customer orders coffee and Restaurant's employee serves Customer the coffee in a cup.

The sale of the coffee by Restaurant to Customer is taxable. The coffee sold meets the definition of "prepared food" because it is sold in a heated state.

Example 4: Tavern's sale of honey roasted peanuts - Taxable

Tavern sells food and beverages to its customers.

- Customer is seated at a table at Tavern.
- Customer orders a bag of honey roasted peanuts and Tavern's employee provides the bag of peanuts to Customer.

The sale of the bag of honey roasted peanuts by Tavern to Customer is taxable because honey roasted peanuts meet the definition of “candy.”

Example 5: Discount Store’s sale of a slice of pizza and milk served in a cup – Taxable

Discount Store sells food and beverages to its customers.

- Customer orders a slice of hot pizza and a cup of cold milk. Discount Store’s employee hands the pizza to Customer in a cardboard container. Discount Store’s employee hands the milk to Customer in a cup.

The sale of the pizza and milk by Discount Store to Customer is taxable. The pizza and milk meet the definition of “prepared food” because the pizza is sold in a heated state and the milk is served in a cup (i.e., a cup necessary to receive the milk is made available to Customer).

Example 6: Donut Shop's sale of donut where napkin is physically handed to the customer - Taxable

Donut Shop sells donuts and beverages to its customers.

- Customer is seated at a table at Donut Shop.
- Customer selects donut in display case. Donut Shop's employee places selected donut on a napkin and hands to Customer.

The sale of the donut by Donut Shop to Customer is taxable. The donut sold meets the definition of "prepared food" because Donut Shop physically hands a napkin (i.e., utensil) to Customer with the donut.

Example 7: Bar’s sale of canned and bottled beer – Taxable

- Bar sells individual cans and bottles of beer to its patrons for consumption at Bar.

The sale of the beer is taxable. Beer is an alcoholic beverage and all retail sales of alcoholic beverages are taxable.

Example 8: Liquor store’s sale of canned and bottled beer – Taxable

- Liquor Store sells individual cans and bottles of beer, as well as six-packs, 12-packs, and cases for off-premises consumption.

The sale of the beer is taxable. Beer is an alcoholic beverage and all retail sales of alcoholic beverages are taxable.

Example 9: Convenience Store's sale of bag of ice cubes – Not taxable

Convenience Store offers bags of ice cubes for sale.

The sales of bags of ice cubes by Convenience Store are not taxable.

More than 75% (Examples 10 – 15): Retailers’ sales of certain prepared foods are more than 75% of its total sales of all food and food ingredients and the retailer makes utensils available to customers. (See Appendix B)

Example 10: Fast Food Restaurant's sale of a hamburger and milk "to go" – Taxable

Fast Food Restaurant sells food and beverages to its customers.

- More than 75% of Fast Food Restaurant's sales of food and food ingredients are sales of certain prepared foods.
- Customer orders a hamburger and a one-serving carton of milk "to go." Fast Food Restaurant's employee puts the hamburger and the milk in a bag and gives the bag to Customer. Fast Food Restaurant's employee does not hand Customer any utensils or put any utensils in the bag; however, utensils are available to Customer.

The sale of the hamburger by Fast Food Restaurant to Customer is taxable. The hamburger meets the definition of "prepared food" because it is sold in a heated state. The milk meets the definition of "prepared food" because more than 75% of Fast Food Restaurant's total sales of food and food ingredients are sales of certain prepared foods and Fast Food Restaurant makes utensils available to its customers.

Example 11: Fast Food Restaurant's sale of milk in a carton "to go" – Taxable

Same as *Example 10*, except that Customer only orders a one-serving carton of milk from Fast Food Restaurant.

- Fast Food Restaurant's employee puts the carton of milk in a bag and gives the bag to Customer. Fast Food Restaurant's employee does not hand Customer any utensils or put any utensils in the bag; however, utensils are available to Customer.

The sale of the milk by Fast Food Restaurant to Customer is taxable. The milk meets the definition of "prepared food" because more than 75% of Fast Food Restaurant's total sales of food and food ingredients are sales of certain prepared foods and Fast Food Restaurant makes utensils available to its customers.

Example 12: Deli makes and sells unheated sandwiches for \$5 per pound – Taxable

Deli makes and sells an unheated, packaged, ready-to-eat sandwich for \$5 per pound.

- Deli's sales of certain prepared foods are more than 75% of its total sales of all food and food ingredients.
- Deli does not have a customary practice of physically giving or handing napkins or other utensils to its customers; however, utensils are made available.

The sale of the sandwich by Deli is taxable because the sandwich meets the definition of "prepared food."
Note: See *Example 22* for Deli's sales of unheated sandwiches sold by weight where Deli's sales of certain prepared foods are 75% or less of its total sales of food and food ingredients.

Example 13: Fast Food Restaurant's sale of ice cream cake made by Fast Food Restaurant – Taxable

Fast Food Restaurant makes and sells ice cream cakes.

- Fast Food Restaurant purchases various food ingredients (i.e., ice cream, fudge, and cookie bits) to make an ice cream cake. The ice cream cake is made by Fast Food Restaurant starting with a layer of

ice cream, placing a layer of fudge and cookie bits on top of the ice cream, and then covering the layer of fudge and cookie bits with another layer of ice cream. Finally, the top of the ice cream cake may be decorated for a particular special occasion.

- The price of the ice cream cake sold will not vary based on weight or volume of the cake.

The sale of the ice cream cake by Fast Food Restaurant is taxable because the ice cream cake meets the definition of "prepared food" (i.e., the ice cream cake consists of two or more items combined by the retailer to be a single item that is not sold by weight or volume). *Note: The tax treatment would be the same if Fast Food Restaurant's sales of certain prepared foods were 75% or less of its total sales of food and food ingredients.*

Example 14: Fast Food Restaurant's sales of ice cream cakes which are made by a supplier – Not taxable

Fast Food Restaurant purchases and sells ice cream cakes already made and decorated by its supplier.

- Fast Food Restaurant purchases an ice cream cake from its supplier and the ice cream cake contains four or more servings.
- Fast Food Restaurant sells the ice cream cake to its customer without physically giving or handing a napkin or other utensil to the customer.

The sale of the ice cream cake by Fast Food Restaurant is not taxable because the ice cream cake does not meet the definition of "prepared food." *Note: The tax treatment would be the same if Fast Food Restaurant's sales of certain prepared foods were 75% or less of its total sales of food and food ingredients, because the ice cream contains four or more servings.*

Example 15: Bar's sale of candy, pretzels, and mixed drink – Taxable

Bar sells beer, wine, mixed drinks, and soft drinks for consumption at the bar. Bar also sells pizzas, brats, burgers, French fries, and various snacks, such as candy, bags of pretzels, and nuts.

- Bar's sales of certain prepared foods are more than 75% of its total sales of all food and food ingredients.
- Customer orders a mixed drink, a bag of pretzels, and some candy.

The sale of the candy, pretzels, and mixed drink by Bar is taxable. The pretzels meet the definition of "prepared food" because more than 75% of Bar's total sales of food and food ingredients are sales of certain prepared foods and Bar makes utensils available to its customers.

The mixed drink is an alcoholic beverage and all retail sales of alcoholic beverages are taxable. Bar's sale of the candy is also taxable.

75% or less (Examples 16-25): Retailer's sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients and the retailer makes utensils available to customers, but does not physically give or hand utensils to customers. (See Appendix B)

Example 16: Discount Store’s sale of a slice of pizza and carton of milk – Pizza – Taxable; Milk – Not taxable

Discount Store sells food and beverages to its customers.

- Customer orders a slice of hot pizza and a prepackaged one-serving carton of milk. Discount Store’s employee hands the pizza to Customer in a cardboard container. Customer grabs the carton of milk from a cooler.

The sale of the pizza by Discount Store to Customer is taxable. The pizza meets the definition of “prepared food” because it is sold in a heated state.

The sale of the carton of milk by Discount Store is not taxable. The milk does not meet the definition of “prepared food” (i.e., it is not sold heated, Discount Store does not have a customary practice of physically giving or handing the customer utensils with the milk, and no utensil is needed by Customer to receive the milk).

Example 17: Bar’s sale of candy, pretzels, and mixed drink – Candy – Taxable; Pretzels – Not taxable; Mixed drink – Taxable

Bar sells beer, wine, mixed drinks, and soft drinks for consumption at the bar. Bar also sells various snacks, such as candy, bags of pretzels, and nuts.

- Bar’s sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients.
- Customer orders a mixed drink, a bag of pretzels, and some candy. Bar does not have a customary practice of physically giving or handing a napkin or other utensil with bags of pretzels.

The sale of the bag of pretzels by Bar is not taxable because the bag of pretzels is neither “candy” nor a “prepared food.” The sale of the mixed drink by Bar is taxable because the mixed drink is an alcoholic beverage and all retail sales of alcoholic beverages are taxable. Bar’s sale of the candy is also taxable.

Example 18: Convenience Store’s sales of ice cream cones, ice cream bars, and sundaes in frozen food section – Not taxable

Convenience Store sells ice cream cones, ice cream bars, and sundaes in its frozen food section.

- These products are manufactured by a third party and sold frozen to Convenience Store.
- Convenience Store’s sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients.
- Convenience Store does not have a customary practice of physically giving or handing napkins or other utensils to its customers who purchase one of these products.

The sales of these items by Convenience Store are not taxable.

Example 19: Ice Cream Shop’s sale of sundae – Taxable

Ice Cream Shop sells ice cream sundaes priced according to size: small, medium, and large.

- When the customer orders a sundae, Ice Cream Shop scoops the ice cream into a dish, adds topping (e.g., chocolate syrup) and whipped cream on the ice cream.

The sale of the sundae by Ice Cream Shop is taxable. The sundae meets the definition of “prepared food” (i.e., the sundae consists of two or more items combined by the retailer to be a single item that is not sold by weight or volume). **Note:** *The tax treatment would be the same if Ice Cream Shop's sales of certain prepared foods were more than 75% of its total sales of food and food ingredients.*

Example 20: Deli purchases sandwiches from wholesaler and sells unheated – Not taxable

Deli sells unheated, prepackaged, ready-to-eat sandwiches that it purchases from Wholesaler.

- Deli's sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients.
- Deli does not have a customary practice of physically giving or handing utensils to its customers.

The sales of these sandwiches by Deli are not taxable.

Example 21: Deli makes and sells unheated sandwiches for \$5 each – Taxable

Deli makes and sells an unheated, packaged, ready-to-eat sandwich for \$5.

The sale of the sandwich by Deli is taxable because the sandwich meets the definition of “prepared food” (i.e., the sandwich consists of two or more items combined by the retailer to be a single item that is not sold by weight or volume). **Note:** *The tax treatment would be the same if Deli's sales of certain prepared foods were more than 75% of its total sales of food and food ingredients.*

Example 22: Deli makes and sells unheated sandwiches for \$5 per pound – Not taxable

Deli makes and sells an unheated, packaged, ready-to-eat sandwich for \$5 per pound.

- Deli's sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients.
- Deli does not have a customary practice of physically giving or handing napkins or other utensils to its customers.

The sale of the sandwich by Deli is not taxable. **Note:** *See Example 12 for Deli's sales of unheated sandwiches sold by weight where Deli's sales of certain prepared foods are more than 75% of its total sales of food and food ingredients.*

Example 23: Deli's sale of heated chicken – Taxable

Deli roasts whole chickens on a rotisserie.

- Deli sells the roasted chickens in a heated state.

The sale of roasted chicken by Deli is taxable. The roasted chicken meets the definition of "prepared food" because it is sold in a heated state. **Note:** *The tax treatment would be the same if Deli's sales of certain prepared foods were more than 75% of its total sales of food and food ingredients.*

Example 24: Vending machine sales of apples, cookies, and pretzels – Not taxable

A vending machine offers apples, cookies, and pretzels for sale. The apples are not chocolate covered.

- The vending machine operator's sales of certain prepared foods are 75% or less of its total sales of all food and food ingredients.
- The vending machine operator does not have a customary practice of physically giving or handing utensils to its customers.

The sales of the apples, cookies, and pretzels are not taxable, because these items are not "candy," "soft drinks," or "prepared foods."

Example 25: Vending machine sales of soft drinks – Taxable

A vending machine offers cans of soft drinks for sale.

Sales of soft drinks are taxable. *Note:* The tax treatment would be the same if the retailer's sales of certain prepared foods were more than 75% of its total sales of food and food ingredients.

B. Taxable Sales of Products Other Than Food and Beverages

Examples of other taxable sales by restaurants and bars include:

- Antacid tablets
- Bumper stickers and decals
- Cigars, cigarettes, and other tobacco products
- Clothing (e.g., t-shirts, caps, jackets)
- Gifts and souvenirs
- Greeting cards
- Ice blocks
- Lighters and matches
- Mugs, growlers, and drinking glasses
- Pain relievers
- Pens and pencils
- Personal hygiene items (e.g., combs)
- Toys (e.g., stuffed animals)

C. Other Common Charges by Restaurants and Bars

1. Tips and Gratuities

The sales price of food and beverages that are served by a restaurant is generally subject to Wisconsin sales or use tax. The taxable sales price of the food and beverages includes charges by the seller for any services necessary to complete the sale. Therefore, if a mandatory tip or gratuity is added to the bill, the mandatory tip or gratuity is also subject to the tax. If the tip or gratuity is discretionary, the tip or gratuity is not subject to tax. The difference between mandatory and discretionary tips and gratuities is explained below.

Mandatory Tips or Gratuities (Taxable)

A flat amount or flat percentage, whether designated as a tip, gratuity, or service charge, that the seller adds to the price of its taxable products or services, is subject to tax. It does not matter if the seller subsequently pays over all or part to employees.

Discretionary Tips or Gratuities (Nontaxable)

A tip or gratuity which is either a) given directly to an employee in cash, or b) added by a customer to a bill and paid in full (less any withholding) to the employee, is exempt if the following two conditions are met:

1. The amount of the tip or gratuity is wholly in the discretion or judgment of the customer, and
2. The customer has not made an arrangement with the seller regarding the amount or the percentage of the tip or gratuity.

Example 1: Customer orders food at Restaurant and receives a bill for the food. Restaurant does not add a mandatory gratuity to the bill. Customer is under no obligation to leave a tip or gratuity for the server. Customer leaves cash on the table as a tip for the server. Since the tip is wholly at the discretion of Customer and an arrangement regarding the tip has not been made with Restaurant, the tip is not subject to sales tax.

Example 2: Customer orders food at Restaurant and receives a bill for the food. An 18% gratuity is added by Restaurant to the bill. Since the gratuity is added to the bill by Restaurant, the gratuity is subject to sales tax as part of Restaurant's sales price of the food and beverages sold.

Example 3: Customer brings a party of six to Restaurant and is informed that a \$50 charge will be added to Customer's bill to cover service fees and gratuities. Since the \$50 service and gratuity fee is added to the bill by Restaurant, the service and gratuity fee is subject to sales tax as part of Restaurant's sales price of the food and beverages sold.

2. *Cover and Minimum Charges*

Cover charges or minimum charges that entitle the patron to receive entertainment and/or to receive taxable food, meals, or drinks are taxable. It does not make a difference if the charge is listed separately on a bill or collected as an admission fee or fixed charge. (**Note:** Cover and minimum charges are not subject to the local exposition food and beverage tax. See [Publication 410](#), *Local Exposition Tax* for additional information.)

Example 1: Cover Charges: A restaurant provides entertainment in its bar on Saturday nights. Everyone entering the bar after 8:00 p.m. is charged a \$2 cover charge. The \$2 charge is subject to Wisconsin sales tax.

Example 2: Minimum Purchase: Bar hires a band to perform at their bar. The band charges Bar a predetermined fee to perform. Bar does not charge a cover charge to view the band, but instead requires that each customer purchase at least two drinks. The charge for the two drinks is subject to Wisconsin sales tax, regardless of whether the purchaser actually consumes the drinks. **Note:** *The band's charge to Bar for performing is not taxable.*

3. *Delivery Charges*

Extra charges by the seller for delivery of taxable foods or beverages (e.g., room service, catered food, delivery fee) are taxable.

Example: Restaurant receives an order from Customer to deliver two hot pizzas. Restaurant charges Customer \$30 for the pizzas plus a delivery charge of \$5. The entire \$35 charge is taxable.

4. *Food and Beverages Provided to Employees*

Sales of taxable food and beverage products (i.e., prepared food, soft drinks, candy, and dietary supplements) or alcoholic beverages, to employees by an employer for a consideration are subject to tax. "Consideration" is paid if:

- An actual, specific charge for these products is deducted from an employee's wages;
- The employee pays cash for the products consumed;
- An employee receives the products in lieu of cash to bring the employee's compensation up to the legal minimum wage; or
- An employee has the option to receive cash for the products not consumed.

"Consideration" is not paid if:

- A value is assigned to the products only as a means of reporting the fair market value for FICA, social security, or union contract purposes; or
- An employee who does not consume available products has no recourse against the employer for additional cash wages.

When the employer does not receive any consideration for the taxable food products or beverages, there is no sales tax because there is no "sales price" upon which Wisconsin sales tax may be imposed. However, a restaurant or bar owes sales or use tax on its purchases of taxable food and beverages that it gives away.

Exception: A restaurant does not owe sales or use tax on its purchases of the following items if the items are provided to the restaurant's employee for no consideration during the employee's work hours:

- Taxable food and beverages (except alcoholic beverages)
- Disposable products (e.g., paper napkins, plastic plates) that are transferred along with such food and beverages.

For purposes of this exemption, "restaurant" includes bars, grocery stores, convenience stores, and delis that prepare, serve, or sell meals to the general public.

Example 1: Employee is allowed one fountain soft drink at no charge while working each shift at Restaurant. Employee uses a disposable cup provided by Restaurant in order to receive the soft drink. Since the soft drink is provided to Employee at no charge, there is no sales tax because there is no sales price upon which Wisconsin sales tax may be imposed. Additionally, Restaurant does not owe Wisconsin sales or use tax on its cost of the soft drink and disposable cup provided to Employee because the items are provided during work hours.

Example 2: Restaurant allows its employees free fountain soft drinks anytime while they are at the Restaurant. Prior to work hours, Employee uses a disposable cup provided by Restaurant in order to receive the free fountain soft drink. Since the soft drink is provided to Employee at no charge, there is no sales tax because there is no sales price upon which Wisconsin sales tax may be imposed. However, because the fountain soft drink is provided to Employee outside of work hours, Restaurant owes Wisconsin sales or use tax on its cost of the soft drink provided free of charge. Additionally, Restaurant owes Wis-

consin sales or use tax on its cost of the disposable cup used by Employee to receive the free fountain soft drink.

Example 3: Employee is allowed one fountain soft drink at a 50% discount while working each shift at Restaurant. Employee uses a disposable cup provided by Restaurant in order to receive the soft drink. Although the soft drink is provided to Employee during work hours, there is a sale of the soft drink by Restaurant to Employee. Thus, the discounted sales price of the soft drink is subject to Wisconsin sales or use tax. Restaurant does not owe Wisconsin sales or use tax on its cost of the soft drink and does not owe Wisconsin sales or use tax on its cost of the disposable cup provided to Employee.

Example 4: Employee is allowed one meal, consisting of prepared food and a soft drink during each 8-hour shift at Restaurant. Restaurant does not charge Employee for the prepared food and soft drink. Since the prepared food and soft drink are provided free of charge, there is no sales tax because there is no sales price for the prepared food and soft drink upon which Wisconsin sales tax may be imposed. Restaurant does not owe Wisconsin sales or use tax on its cost of the prepared food and soft drink because the items are provided to Employee during work hours. Additionally, Restaurant does not owe Wisconsin sales or use tax on its cost of any disposable products (i.e., napkins, cups, etc.) transferred to Employee with the prepared food and soft drink.

Example 5: Employee is allowed to purchase prepared food and a soft drink at a 50% discount from Restaurant while Employee is working at Restaurant. Employee elects to purchase prepared food and a soft drink for \$9.00, prior to the discount, during work hours. The \$4.50 (\$9.00 x 50% discount) sales price Restaurant charges Employee is subject to Wisconsin sales and use tax. Restaurant does not owe Wisconsin sales or use tax on its cost of the disposable products (i.e., napkins, cup, etc.) transferred with the prepared food and soft drink.

For additional information of food and beverages given away to restaurant employees, see Part IV.B.

5. Discounts and Coupons

The Wisconsin sales and use tax treatment of discounts and coupons used by the purchaser depends on whether the retailer (i.e., restaurant or bar) or a third party (e.g., manufacturer) offers the discount or coupon, whether the item being sold is subject to Wisconsin sales tax, and whether the third party reimburses the restaurant or bar for the amount of the discount or coupon allowed by the retailer.

Manufacturer, Distributor, and Other Third Party Coupons or Discounts

Payments received by a restaurant or bar from a third party for coupons issued by the third party and redeemed by the customer for a free taxable product or a reduced price for a taxable product, are part of the “sales price” of the taxable product sold and subject to Wisconsin sales tax. A restaurant or bar may charge the customer the sales tax due on the amount it is reimbursed by the manufacturer, distributor, or other third party. However, coupon handling fees paid by the manufacturer, distributor, or other third party to the restaurant or bar are not subject to Wisconsin sales tax.

Example: Customer obtains a coupon for a free fish dinner with the purchase of a fish dinner from Restaurant. Restaurant receives a \$10 reimbursement from Distributor for each coupon redeemed. The amount subject to sales tax is the total amount that Restaurant receives from Customer and Distributor.

First meal	\$10.00
<u>Second meal</u>	<u>10.00</u>
Taxable receipts	\$20.00

5% state sales tax	+ 1.00
Subtotal	\$21.00
Reimbursement from	
Distributor for free meal	- 10.00
<u>Amount due from customer</u>	<u>\$11.00</u>

Retailer's Coupon or Discount

Discounts and coupons offered by restaurants and bars which are *not reimbursed* by a third party are not subject to Wisconsin sales tax. This includes discounts offered by restaurants and bars where the restaurant or bar “matches” a discount offered by a manufacturer (e.g., double coupon days). No Wisconsin sales tax should be charged on the discounts offered by a restaurant or bar, because they are not receiving any consideration for these discounts.

Example: Customer has a coupon for a free fish dinner with the purchase of a fish dinner from Restaurant. Restaurant receives no reimbursement from a third party for redeeming the coupon. The amount subject to sales tax is only the amount that Restaurant receives from Customer.

First meal	\$10.00
Second meal	10.00
Subtotal	\$20.00
Coupon for free meal	- 10.00
Taxable receipts	\$10.00
5% state sales tax	+ 0.50
<u>Amount due from Customer</u>	<u>\$10.50</u>

6. *Gift Certificates Sold by Restaurants and Bars*

Gift Certificates Sold for Face Value

The sale of a gift certificate with a specified dollar value by a restaurant or bar is not subject to Wisconsin sales tax. The gift certificate represents a nontaxable intangible right. When the gift certificate is redeemed for a taxable product or service (e.g., prepared food), the value of the gift certificate is treated as though it is cash. Therefore, if the product being purchased with the gift certificate is subject to Wisconsin sales or use tax, the applicable tax is due at that time. If the product being purchased with the gift certificate is not subject to, or exempt from, Wisconsin sales and use tax, no tax is due.

Example 1: Gift Certificate Used to Purchase Taxable Product - Mary purchases a \$50 gift certificate from Restaurant for \$50. Restaurant's sale of the gift certificate to Mary is a sale of a nontaxable intangible right. Mary purchases a dinner at Restaurant for \$70. The dinner is taxable as prepared food. She pays for the dinner by presenting the gift certificate along with \$23.50 in cash.

Sales price of Mary's dinner (taxable receipts)	\$70.00
5% state sales tax	+ 3.50
Subtotal	\$73.50
Less: Gift certificate	- 50.00
<u>Amount due from Mary</u>	<u>\$23.50</u>

Example 2: Gift Certificate Used to Purchase Exempt Product - Joe purchases a \$25 gift certificate from Restaurant for \$25. Restaurant's sale of the gift certificate to Joe is a sale of a nontaxable intangible right. Joe purchases two dozen muffins from Restaurant for \$30. The muffins are packaged as a single item and

are sold for the single price of \$30. The muffins do not meet the definition of "prepared food" and the sale of the muffins is exempt from sales tax. He pays for the muffins by presenting the \$25 gift certificate along with \$5 in cash. No part of the \$30 consideration paid by Joe is taxable.

Gift Certificates Sold for Less Than Face Value

The Wisconsin sales and use tax treatment of gift certificates with a specified dollar value sold by restaurants and bars for less than their face value depends on whether or not the retailer selling the gift certificate maintains adequate records to substantiate the amount for which the gift certificate was sold. If the retailer maintains adequate records to substantiate the amount for which the gift certificate was sold, and assuming the gift certificate was redeemed for taxable products, the retailer is only liable for tax based on the amount for which the gift certificate was sold. If the retailer does not maintain adequate records to substantiate the amount for which the gift certificate was sold, the retailer is liable for tax based on the face value of the gift certificate.

Example 1: *Bar Maintains Records to Substantiate Amount for Which Gift Certificate Was Sold* - Bar sells a \$30 gift certificate for \$25 to Customer. Bar maintains adequate records to track and substantiate the amount Customer paid for that gift certificate. Customer purchases \$40 of alcoholic beverages at Bar and presents Bar with the \$30 gift certificate and \$10 in cash. Bar is liable for Wisconsin sales tax on the \$35 sales price of the alcoholic beverages (\$25 received for the gift certificate and the additional \$10 received in cash).

Sales price of alcoholic beverages to Customer	\$40.00
<u>Less: Discount on gift certificate</u>	<u>- 5.00</u>
Taxable Receipts	\$35.00
<u>5% state sales tax</u>	<u>+ 1.75</u>
Subtotal prior to gift certificate	\$36.75
<u>Less: Gift certificate</u>	<u>- 30.00</u>
<u>Amount due from Customer</u>	<u>\$ 6.75</u>

Example 2: *Bar Does Not Maintain Records to Substantiate Amount for Which Gift Certificate Was Sold* - Same as *Example 1*, except that Bar does not maintain adequate records to track and substantiate the amount Customer paid for that gift certificate. Bar is liable for Wisconsin sales tax on the \$40 sales price of the alcoholic beverages (the \$30 face value of the gift certificate redeemed and the \$10 received in cash).

7. *Discounted Certificates and Product Vouchers Sold by Promotional Companies*

A restaurant or bar may enter into an agreement with a promotional company to have that promotional company sell, at a discount from face value, certificates that may be redeemed for either the face value of the certificate (e.g., \$20, \$25, \$50) or vouchers that may be redeemed for the specific product identified (e.g., fish dinner).

These types of certificates and vouchers are commonly advertised on various websites, are emailed to persons who have agreed to receive such emails, and are often referred to as "deal of the day" certificates or vouchers. A person purchases these certificates or vouchers by contacting and paying the promotional company and not the restaurant or bar. The purchaser then presents the certificate or voucher to the restaurant or bar in exchange for products from the restaurant or bar.

The promotional company's sales of the discounted certificates and product vouchers are not subject to Wisconsin sales or use taxes, as these are sales of intangible rights by the promotional company. Wisconsin sales and use taxes are due when the customer redeems the certificate or voucher for taxable products or services.

The restaurant or bar that accepts the certificate or voucher in exchange for taxable products or services is liable for sales tax on the amount the customer paid for the certificate or voucher, plus any additional amounts it receives from the customer. This assumes the restaurant or bar can identify the amount the customer paid for the certificate or voucher (e.g., the amount paid is clearly noted on the face of the certificate or voucher).

Example 1: Discounted Certificate - Restaurant operates a store located in Milwaukee, Wisconsin. Promotional Company has entered into a contract with Restaurant to advertise and sell discounted certificates. Each certificate has a face value of \$50, clearly indicates the amount the customer paid for the certificate, and may be used by the certificate holder to purchase food and beverages from Restaurant.

Under the terms of the agreement between Restaurant and Promotional Company, Promotional Company is obligated to remit \$20 to Restaurant for each certificate it sells.

Customer purchases one of these certificates from Promotional Company for \$30. Promotional Company keeps the remaining \$10 in return for the advertising and promotional services it provides to Restaurant under the agreement.

Customer goes to Restaurant's location in Milwaukee and purchases three pizzas and four pitchers of beer for \$99.99. Customer pays for the pizzas and beer by presenting the \$50 certificate and using a credit card to pay the remaining \$49.99 and the applicable tax.

Restaurant's taxable receipts from this sale are \$79.99 (the \$30 Customer paid for the certificate and the additional \$49.99 Customer paid Restaurant). Restaurant is liable for Wisconsin state, Milwaukee County, baseball stadium, and local exposition sales tax of \$4.88. The \$20 difference between the \$50 face value of the certificate and the \$30 Customer paid for the certificate is a discount allowed by Restaurant and is not included in the measure subject to Wisconsin sales or use tax.

Sales price of pizzas and beer	\$99.99
<u>Less: Discount on sale of certificate</u>	<u>- 20.00</u>
Taxable Receipts	\$79.99
6.1% sales tax (state, Milwaukee County, <u>baseball stadium, and local exposition)</u>	<u>+ 4.88</u>
Subtotal	\$84.87
<u>Less: Face value of certificate</u>	<u>- 50.00</u>
<u>Amount due from Customer</u>	<u>\$ 34.87</u>

Note: If the amount Customer paid for the certificate (i.e., \$30) is not clearly indicated on the certificate, the discount on the sale of the certificate (i.e., \$20) is not allowed to reduce the taxable receipts. In this example, Restaurant's taxable receipts would be the sales price of the three pizzas and four pitchers of beer (i.e., \$99.99).

Example 2: Product Voucher - Restaurant enters into an agreement with Promotional Company to sell vouchers that may be redeemed by the voucher holder for two dinners at Restaurant's location in Waukesha County, Wisconsin. Customer purchases the voucher from Promotional Company for \$25, and this \$25 purchase price is clearly noted on the voucher. Under the terms of the agreement with Restaurant, for each voucher sold, Promotional Company remits \$13 to Restaurant and keeps the remaining \$12 as compensation for the advertising and promotional services provided to Restaurant.

When the voucher is redeemed by Customer, Restaurant has taxable receipts of \$25 because Restaurant's sale of the dinners is a sale of prepared food and is subject to Wisconsin sales tax. Because Customer receives the dinners in Waukesha County, Restaurant is liable for Wisconsin state and baseball stadium sales tax of \$1.28 ($\$25 \times 5.1\%$) on the sale of the dinners.

8. *Vending Machine Sales*

Sales of food, food ingredients, and beverages that are “candy,” “dietary supplements,” “soft drinks,” or “prepared food,” and other tangible personal property through vending machines are subject to Wisconsin sales tax. If the restaurant or bar “controls” or is the “operator” of the vending machine, the restaurant or bar is responsible for reporting and paying the tax due on these sales.

A restaurant or bar is considered to have “control” over the vending machine or be the “operator” if the restaurant or bar has the right to access the machine for stocking, restocking, or removing the receipts from the machine; or if the restaurant or bar owns the products sold through the vending machine.

If the restaurant or bar does not have “control” over the vending machine and is not the “operator,” but instead receives commissions from a third party who “controls” or is the “operator,” the restaurant or bar's commissions are not subject to Wisconsin sales or use tax, and the third party is responsible for reporting Wisconsin sales tax on the total sales from the machines, without any deduction for the commission paid.

Examples of taxable products sold in vending machines include (list is not all-inclusive):

- Breath mints
- Candy
- Chewing gum
- Cigars and cigarettes
- Dietary supplements
- Personal hygiene items
- Photocopies
- Heated food, heated beverages, and other prepared food
- Soft drinks
- Vitamins

Sales of food or food products through vending machines that are not “candy,” “dietary supplements,” “soft drinks,” or “prepared food,” are not subject to Wisconsin sales or use tax.

9. *Video Games, Amusement Devices, and Video Gambling Machines*

Receipts from video games, amusement devices, and video gambling machines are subject to Wisconsin sales tax. If the restaurant or bar is the “operator” of the game, device, or machine, the restaurant or bar is responsible for reporting and remitting the sales tax to the Department of Revenue. The restaurant or bar is the “operator” of the game, device, or machine if it has access to the machine for stocking or restocking or for removing the receipts, or if it, in general, has control over the machine and its contents. The “operator” is also required to pay Wisconsin sales or use tax on its purchase price of these types of equipment, devices, and machines.

Flowcharts that illustrate the sales and use tax treatment for video gambling machines are provided in Appendix D.

Caution: The operation of video gambling machines is a violation of Wisconsin law. See [Wisconsin Tax Bulletin 140, page 4](#), for additional information.

The determination of who the operator is depends on the facts of each case. The following examples are provided to help determine whether the "operator" is the restaurant or bar or the distributor that placed the machines at the restaurant or bar.

Example 1: Bar purchases a video game machine from Distributor. Bar owns the video gambling machine and is responsible for all aspects of the operation of the machine, including determining the payout percentages, who may play the machine, whether a player will receive a cash payout, and removing cash from the machine and using some of the cash to pay customers for accumulated credits (payouts). Distributor provides routine service and maintenance to the machine for a fee.

Bar is the operator of the machine and is liable for sales tax on its total receipts from the machine (before subtracting payouts) because it has access to the machine to remove the receipts and has general control over the machine. Bar must also pay sales or use tax on the purchase of the machine from Distributor.

Example 2: Bar rents video gambling machines from Distributor for a fixed monthly charge. Bar is responsible for all aspects of the operation of the machines, including determining which types of machines it will rent, the payout percentages, who may play the machines, whether a player will receive a cash payout, removing cash from the machines, and using some of the cash to pay customers for accumulated credits (payouts). Distributor provides routine service and maintenance to the machines as needed.

Bar is the operator of the machines and is liable for sales tax on its total receipts from the machines (before subtracting any payouts) because it has access to the machines for removing the receipts and has general control over the machines. Bar must also pay sales or use tax on the rental of the machines from the distributor.

Example 3: Distributor owns video gambling machines that are placed at Bar's establishment after the terms are negotiated with Bar. Bar agrees that it will provide adequate and appropriate space for the machines, provide the electricity necessary to operate the machines, and keep them connected to electrical outlets and in operation during all business hours. Bar must also take reasonable measures to protect the equipment from tampering, vandalism, injury, and damage and will contact Distributor promptly of any malfunctions. Bar agrees not to allow "houseplay" or free use of the machines. Bar determines who may play the machines and if the player receives a cash payout. Bar has keys to the machines, removes the cash from them for safe keeping, and uses some of the cash to pay customers for accumulated credits (payouts).

Distributor has the right to select the type and number of machines it places at Bar's location. Distributor has keys for all the machines placed at Bar's location and provides routine service and maintenance to them. Distributor is responsible for setting each machine's payout percentage and does not provide Bar with access codes or the technical information necessary to change the counters or the payout percentages.

Distributor regularly visits Bar to read the machine meters. Distributor provides a statement to Bar showing the total receipts (amount deposited into the machines), the sales tax, and the amount split or shared with Bar. The statement also shows the amount of payouts. The receipts are split between Distributor and Bar provided in their agreement. If there are money shortages, Distributor has the right to take the keys for the machines away from Bar.

Answer 3: Distributor is the operator of the machines and is liable for sales tax on its total receipts from the machines (before subtracting any payouts). Distributor must also pay sales or use tax on the purchase of the machines. Distributor is the operator of the machines because it has the right of access to the machines for removing the receipts and has general control over them, as explained below.

Right of access for removing the gross receipts: Distributor always has the right of access to the machines. Bar may have the right to do so as well, but it is conditional and subject to revocation by Distributor. While the agreement between Distributor and Bar may not expressly provide for an agency relationship, Bar is removing the cash to protect it on behalf of Distributor so that the proper division can be made when Distributor arrives.

General control over the gambling machines and their contents: While Bar has physical custody of the machines, control over their operations is in the hands of Distributor. Only Distributor sets the payout percentages. Distributor controls where the machines are placed and which machines will be installed in Bar's location. Bar's control over maintenance is limited to notifying Distributor of any problems. Bar is prohibited from setting up "houseplay" or free plays for itself, its staff, or customers. Although Bar is making the cash payouts and storing the cash, this is being done on behalf of Distributor. It is Distributor's machines that determine the winners and the amount they win.

10. Catering and Bartender Services Offered by Restaurants and Bars

Food and food ingredients that are sold as prepared food, candy, soft drinks, or dietary supplements by caterers are taxable. A caterer's sales of alcoholic beverages are taxable. Charges by a caterer for preparing, serving, and delivering taxable products are also taxable.

"Caterer," as used in this publication, means a business engaged in the selling and serving of prepared food, candy, soft drinks, dietary supplements, and alcoholic beverages on premises designated by a purchaser. This includes a restaurant or bar that offers this type of service.

The method a caterer uses to bill a customer for the meals does not affect the taxability of the charge (e.g., price per plate, price per meal, lump sum, price per type of service).

Example 1 - Price Per Service: Caterer agrees to prepare, deliver, and serve prepared food for Customer at a wedding dinner and reception. Caterer bills Customer \$200 for preparing the food, \$50 for transporting the food to the location of the dinner and reception, and \$300 for serving the food to the guests. The entire \$550 charge is taxable.

Example 2 - Price Per Meal: The catering department of Grocer is hired to provide a meal for 200 people at Company. The meal consists of prepared foods and soft drinks. Grocer charges Company \$15 per meal plus a \$3 per meal gratuity. The entire \$3,600 charged by Grocer to Company is taxable.

Example 3 - Lump Sum: Caterer agrees to provide, prepare, and serve enough prepared food and beverages, including soft drinks and alcoholic beverages for 200 people for a fee of \$5,000. The entire \$5,000 charge is taxable.

Example 4 - Chef and Bartender Services: Customer hires Chef to prepare food for an event. Customer also hires Bartender to prepare and serve alcoholic beverages and soft drinks at the event. Customer purchases the food and food ingredients needed by Chef, all of which are exempt food and food ingredients. Customer also purchases all of the alcoholic beverages and soft drinks. Chef's charge to Customer for the service of preparing the food and food ingredients is not taxable because the services are performed on exempt food and food ingredients. The charge by Bartender for preparing and serving the alcoholic beverages and soft drinks is taxable.

11. Banquet Room Rentals

Charges by a restaurant or bar for the rental of a banquet room that will be used for an amusement, athletic, entertainment or recreational event are taxable. Room rental charges for a room that will be used for an event that is not amusement, athletic, entertainment or recreational in nature (e.g., used for a meeting or training seminar) are not taxable.

Example 1: Customer rents a room at Restaurant for a surprise birthday party. Restaurant charges Customer \$300 for the room. The \$300 is taxable as an admission to an entertainment facility.

Example 2: Customer rents a room at Restaurant for a holiday dinner. Restaurant charges \$500 for prepared food, \$200 for soft drinks and alcoholic beverages and \$100 for the room. The \$100 room fee is mandatory in order for Customer to receive the drinks and prepared food. Restaurant's total charge of \$800 is taxable. The \$100 room fee is taxable as part of the sales price of the drinks and prepared food.

Example 3: Company rents a room at Restaurant for \$200 for an educational seminar. In addition, Company decides to purchase from Restaurant and provide to attendees prepared food for \$300 and \$200 for soft drinks and cookies. The \$200 room fee is not mandatory in order for Company to receive the prepared food, soft drinks, and cookies. Restaurant's sales of certain prepared foods are more than 75% of its total sales of all food and food ingredients and the retailer makes utensils available to customers (see Appendix B). The \$200 room fee is not taxable because the room is used for an educational seminar. Restaurant's total charge of \$500 for prepared food, soft drinks, and cookies is taxable.

12. Parking

Charges by a restaurant or bar to customers or employees for parking are taxable. If a restaurant or bar buys parking services in order to provide free parking for its customers or employees, the restaurant or bar must pay sales tax to the parking service provider on its purchases of the parking services.

13. Price Includes Sales Tax

A seller is allowed to take a deduction on its sales and use tax return for sales tax included in the selling price of products if customers are notified that the price includes sales tax. Sellers may notify customers by providing a receipt that separately itemizes the sales tax, a receipt that indicates "price includes sales tax" or conspicuously posting a sign which states "prices include sales tax."

Example: A bar, located in a county which has a combined 5.5% Wisconsin state and county sales and use tax rate in effect, conspicuously posts a sign stating "Prices Include Sales Tax." The bar's gross receipts from sales of food and beverages are \$10,000 for the month. When filing its sales and use tax return, Form ST-12, the bar may deduct \$521.33 of sales tax to arrive at the taxable receipts of \$9,478.67 (\$10,000 divided by 1.055 = \$9,478.67). The tax payable by the bar is determined by multiplying its taxable receipts times the tax rate (\$9,478.67 x .055 = \$521.33 tax payable).

14. Drinks Purchased at Bar Versus in the Restaurant

When drinks are purchased in the bar area of a restaurant, sales tax is often included in the price of the drink, as a convenience to both the restaurant and the customer. This is acceptable if the bar advertises or otherwise notifies the customer that sales tax is included in the prices being charged at the bar, as described in "Price Includes Sales Tax" above. However, when drinks are sold in the eating area of the restaurant, as opposed to at the bar, sales tax is often stated separately and added to the total bill for the prepared food and drinks.

When a bar tab is transferred to restaurant tab, it is acceptable to show sales tax charged separately only on the restaurant portion as long as the retailer can show sales tax was included in the price of the drinks at the bar.

15. Sales of Used Equipment

Sales of equipment which a restaurant or bar previously used in operating the restaurant or bar are taxable, unless an exemption applies. Examples include:

- Cooking equipment
- Display cases
- Glasses
- Motor vehicles
- Silverware
- Stoves
- Tables and chairs
- Televisions

Example: Restaurant holds a seller's permit and sells two used display cases for \$150. The sale of the display cases is taxable.

Exception: An exemption may apply if the sale of the item, property, or good is made after the restaurant or bar has ceased business. For additional information about this exemption, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part XV.

Example: Bar, which held a Wisconsin seller's permit, ceased its business activities on June 28, 2014. In July 2014, Bar sold its business equipment and inventory. Because it had ceased its business activities before selling the equipment, the sale of its business equipment is exempt from sales and use taxes. Sales of inventory, however, are taxable unless an exemption applies (e.g., resale).

IV. PURCHASES BY RESTAURANTS AND BARS

A. Purchase of Products For Resale

A restaurant or bar may purchase products without tax if it will not make any use of the products other than holding them for sale. Depending on what type of product is being purchased, the restaurant or bar may be required to provide its supplier with an exemption certificate (e.g., a *Wisconsin Sales and Use Tax Exemption Certificate (Form S-211)* or *Streamlined Sales and Use Tax Certificate of Exemption – Wisconsin (Form S-211-SST)*), claiming resale. A copy of Form S-211 is provided in Appendix C.

1. Products Purchased For Resale – No Exemption Certificate Required

Certain products that a restaurant or bar purchases to resell may be purchased without Wisconsin sales and use tax because the products qualify as exempt food or food ingredients for human consumption. These items include, but are not limited to:

- Bakery goods
- Barbecue sauces
- Bread and buns
- Juice that contain more than 50% fruit or vegetable juice by volume

- Ketchup and mustard
- Peanuts, plain or salted (unless honey roasted or candy coated)
- Potato chips (unless chocolate covered)
- Potatoes
- Pretzels
- Raw meat
- Salad dressings
- Syrup

A comprehensive list of food and food ingredients that may be purchased without paying Wisconsin sales and use tax and without issuing one of the exemption certificates described above can be found in Part III. of [Publication 220, Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations?](#)

2. *Products Purchased For Resale – Exemption Certificate Required*

A restaurant may purchase taxable products without tax if it resells the products. The restaurant should provide its supplier with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate (Form S-211)* or *Streamlined Sales and Use Tax Certificate of Exemption – Wisconsin (Form S-211-SST)*, claiming resale.

Example 1: Restaurant purchases t-shirts from Vendor to sell at its restaurant. Restaurant provides Vendor with a fully completed exemption certificate claiming resale, which allows Restaurant to purchase the t-shirts without tax. Restaurant's sales of the t-shirts are taxable.

Example 2: Bar purchases caramel corn from Supplier. Bar will resell the caramel corn to its customers for \$1 per bag. Bar may purchase the caramel corn from Supplier without sales tax by providing Supplier with a fully completed exemption certificate claiming resale. (**Note:** If Bar gives the caramel corn to its customers without a required purchase of another taxable item, Bar owes use tax on its purchase of the caramel corn. Caramel corn is "candy" and is not an exempt food or food ingredient.)

Example 3: Restaurant purchases CO₂ from Seller. Restaurant uses the CO₂ to make tap beer and fountain soda. Restaurant provides Seller with a fully completed exemption certificate claiming resale. Restaurant's purchase of the CO₂ is for resale because it becomes a part of the tap beer and fountain soda that Restaurant sells. If Seller also charges Restaurant for the use of the cylinder in which the CO₂ is delivered, that charge is exempt from Wisconsin sales tax because the CO₂ in the cylinder is exempt from sales tax. **Note:** A charge for a cylinder that remains on premise and is refilled on-site by the vendor is taxable as a charge for the rental of the cylinder.

3. *Disposable Products Used by a Restaurant or Bar*

Disposable products used by a restaurant that are transferred to customers in conjunction with a restaurant or bar's sale of food, food ingredients, and beverages may be purchased without tax for resale. The restaurant or bar should provide its supplier with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate (Form S-211)* or *Streamlined Sales and Use Tax Certificate of Exemption – Wisconsin (Form S-211-SST)*, claiming resale.

Examples of products that may qualify for resale are as follows (list is not all-inclusive):

- "Take-out" containers
- Coffee stirrers
- Disposable eating utensils

- Disposable place mats
- Disposable plates
- Doggie bags
- Paper and plastic cups and lids
- Paper doilies
- Paper napkins
- Pizza delivery boxes and liners
- Stir sticks
- Straws
- Toothpicks
- Wetnaps

Note: Some of the disposable products identified above may also qualify for the exemption for containers used to transfer merchandise to customers described below. (See Part V.B.2.)

4. *Products Purchased for Resale But Used By the Restaurant or Bar Rather Than Resold*

If a restaurant or bar purchases a taxable product without tax for resale but later uses that product instead of reselling it, the restaurant or bar is liable for use tax on its purchase price of that product.

Example: Restaurant purchases t-shirts from Vendor to sell at its restaurant. Restaurant provides Vendor with a fully completed exemption certificate claiming resale, which allows Restaurant to purchase the t-shirts without tax. Rather than reselling them, Restaurant gives the t-shirts to its employees. Restaurant is liable for use tax on its purchase price of the t-shirts.

B. Food and Beverages Given Away to a Restaurant's Employees

When a restaurant furnishes candy, soft drinks, dietary supplements, and prepared foods to the restaurant's employees for no consideration during the employee's work hours, the restaurant's purchases of such candy, soft drinks, dietary supplements, and prepared foods, and disposable products that are transferred with such items, are not subject to Wisconsin sales or use tax. **Note:** The restaurant's sales of such items are subject to tax, even if sold to employees during the employee's work hours.

Note 1: "Restaurant," for purposes of this exemption includes bars, grocery stores, convenience stores, and delis that prepare, serve, or sell meals to the general public.

Note 2: Purchases of the items listed above are taxable if the items are given to the employees outside of the employees' work hours.

Example 1: Restaurant purchases soft drinks without sales tax to sell to customers. A portion of the soft drinks are not sold. Instead, they are furnished by Restaurant, for no consideration, to its employees during the employees' work hours. Since the soft drinks are provided to employees at no charge, there is no sales tax because there is no sales price upon which Wisconsin sales tax may be imposed. Restaurant does not owe Wisconsin sales or use tax on its cost of the soft drinks because the soft drinks are provided to its employees during the employees' work hours. Additionally, Restaurant does not owe Wisconsin sales or use tax on its cost of any disposable products used by its employees to receive the free soft drinks.

Example 2: Same as *Example 1*, except the soft drinks are furnished to employees outside of employees' work hours. Since the soft drinks are provided to employees outside of work hours, Restaurant owes Wisconsin

sales or use tax on its cost of the soft drinks provided free of charge. Additionally, Restaurant owes Wisconsin sales or use tax on its cost of any disposable cups used to receive the soft drink provided free of charge.

For additional information and examples on food and beverages provided to employees, see Part III.C.4.

C. Purchases of Products Used in Operating a Restaurant or Bar

1. Products Used in Food or Beverage Preparation and Service

A restaurant or bar's purchases of products used by the restaurant or bar to prepare, store, and serve food, food ingredients, and beverages to its customers are subject to Wisconsin sales and use tax. Examples of such items are as follows:

- Aprons
- Cleaning supplies
- Cloth napkins
- Disposable gloves
- Employee uniforms
- Food slicers
- Grills
- Measuring utensils
- Menus
- Mixing bowls
- Ovens
- Pans
- Plastic steak markers
- Plates, bowls, glasses, and cups
- Products given to customers (e.g., matchbooks, toothpicks, candy)
- Receipt books
- Scales
- Serving utensils
- Table covers (either plastic or cloth)
- Thermometers

2. Containers Used to Transfer Products to Customers

A restaurant's or bar's purchases of containers and other packing, packaging, and shipping materials used by the restaurant or bar to transfer merchandise to customers are exempt. To purchase these products without tax, the restaurant or bar should provide its supplier with a fully completed *Wisconsin Sales and Use Tax Exemption Certificate* ([Form S-211](#)) or *Streamlined Sales and Use Tax Certificate of Exemption – Wisconsin* ([Form S-211-SST](#)), claiming the exemption for containers and packaging materials. Examples of products that may qualify for the container and packaging materials exemption include (list is not all-inclusive):

- Carry-out bags
- Disposable cups and lids
- Doggie bags
- Ice cube bags

- Pizza delivery boxes and liners
- Take-out containers

Note: Containers used by the restaurant or bar only for storage or to transfer merchandise owned by the restaurant or bar from one location to another are subject to Wisconsin sales and use tax. **Exception:** Containers for meat and meat products qualify for this exemption, regardless of whether they are used to transfer merchandise to a customer.

Example: Restaurant gives free pizzas to its customers in celebration of its grand opening. Because Restaurant B is not making taxable sales of the pizzas, its purchase of the pizza boxes and liners do not qualify for the resale exemption. However, if the pizzas have meat or a meat product on them (e.g., sausage, pepperoni), Restaurant can purchase the pizza boxes and liners without tax because they are used in packaging a meat or meat product. **Note:** The purchase of pizza boxes and liners used for cheese or vegetarian pizzas do not qualify for this exemption because they do not contain a meat or meat product.

D. Purchases of Equipment, Furniture, and Supplies

A restaurant's or bar's purchases of equipment, furniture, and supplies which it uses to operate its business are subject to Wisconsin sales or use tax.

Examples of equipment, furniture, and supplies that are subject to Wisconsin sales and use tax include (list is not all-inclusive):

- Advertising signs and displays
- Automatic dishwashing machines
- Bowls
- Brooms and mops
- Buckets, sponges, and cleaning supplies
- Cash registers
- Chairs
- Cloth napkins
- Computer scanning systems
- Cookware
- Counters
- Cups
- Deep fryers
- Display cases and shelving units
- Freezers
- Garbage bags
- Glassware
- Grills
- Office furniture and equipment
- Office supplies
- Ovens, including microwave ovens
- Pans
- Prewritten computer software

- Radios
- Receipt books and register paper
- Refrigerators and coolers
- Serving carts and utensils
- Silverware
- Soda dispensers and ice makers
- Stools
- Storage racks and containers
- Stoves
- Tables and tablecloths
- Televisions
- Towels and rags
- Training materials for employees
- Vacuum cleaners and bags
- Walk-in cold storage units that are not a component part of a building
- Warming bins

If a restaurant or bar does not pay Wisconsin sales tax to the seller on its purchase of taxable equipment, furniture, and supplies, the restaurant or bar is generally required to pay use tax on its purchases of these items.

Example: Restaurant purchased tables and chairs for its dining room from Seller, an out-of-state retailer. Seller did not and is not required to collect Wisconsin sales tax on its sale of furniture to Restaurant. Restaurant must report use tax on its Wisconsin sales and use tax return for its purchase of the tables and chairs.

EXCEPTION: If a restaurant or bar purchases taxable items from a seller whose sale of such items is exempt from Wisconsin sales and use tax (e.g., sale by the federal government, exempt occasional sale), no use tax is due. (See Parts XV. and XVI. of [Publication 201](#), *Wisconsin Sales and Use Tax Information*, for information regarding exempt occasional sales and exempt organizations' sales.)

Example 1: Restaurant purchased used kitchen equipment from a Wisconsin public high school. The high school did not charge sales tax on its sale to Restaurant. Because sales of tangible personal property by a non-profit public or private secondary school are exempt from Wisconsin sales and use taxes, Restaurant does not owe use tax on its purchase of the kitchen equipment.

Example 2: Restaurant purchased used pizza ovens from Pizza Place, whose sale of the pizza ovens qualified as an exempt occasional sale. Pizza Place did not charge sales tax on its sale of pizza ovens to Restaurant. Because the sale was exempt from Wisconsin sales and use taxes, Restaurant does not owe use tax on its purchase of the pizza ovens. (Note: The purchaser may want to inquire whether the seller qualifies for the occasional sale exemption and indicate this in its records.)

E. Promotional Items

If you purchase taxable products and give them to your customers for no charge, your purchases of the products are taxable. If you did not pay sales tax to the seller when buying the products, you owe Wisconsin use tax on your purchases of the products.

Example 1: Bar buys alcoholic beverages without tax for resale. At times, Bar gives some of these beverages to customers for no charge and without the required purchase of any other product. Bar owes Wisconsin use tax on the beverages that it gives away.

Example 2: Bar buys alcoholic beverages without tax for resale. Bar advertises a Thursday night special for a free bottle of beer with the purchase of a bottle of beer. Bar may buy both bottles of beer without tax for resale.

Example 3: Restaurant buys t-shirts from a vendor located outside Wisconsin and does not pay any sales or use tax to the vendor. Restaurant gives the t-shirts away to customers. Restaurant owes Wisconsin use tax on its purchase of the t-shirts.

F. Hiring Entertainment

Amounts paid by a restaurant or bar to entertainers for performing are not subject to sales or use tax.

V. RESTAURANTS AND BARS LEASED TO OPERATORS

The owner of a restaurant or bar might lease an entire restaurant or bar, including the real and personal property, to a third party who will operate it. If the owner leases both the real property (e.g., the land and buildings) and personal property that is affixed to the real property (e.g., booths, specialized lighting fixtures, advertising signs), the charge by the owner for the real property and the personal property affixed to the real property is not subject to Wisconsin sales or use tax. However, the owner is required to pay Wisconsin sales or use tax on its purchase price of the personal property that is affixed to the real property. The owner is required to charge the operator (lessee) sales tax on the portion of the lease payments relating to any personal property that is not affixed to the real property (e.g., tables, chairs, glasses, kitchen equipment). The owner (lessor) may purchase the personal property that is not affixed to the real property without tax for resale.

If the lease does not indicate the portion of each payment related to the real property and personal property, an allocation of the payment between the real and personal property must be made. The allocation is made based on a ratio of the owner's (lessor's) purchase price of the personal property as compared to the owner's (lessor's) total purchase price of all the real and personal property being leased to the operator (lessee). This ratio will apply as long as the lease agreement and the property included in the lease remains unchanged. (**Note:** If the lessor of the real property is also the lessor of the personal property that is affixed to the real property, the numerator of the ratio does not include the lessor's purchase price of the personal property that is affixed to the real property.)

VI. COMPUTATION OF TAX

A. Mathematical Computation or Bracket System

A restaurant or bar must determine the tax due on a transaction either by multiplying the applicable tax rate by the sales price of each taxable product individually or by multiplying the applicable tax rate by the aggregate sales price of all taxable products sold in a single transaction. The amount collected from the customer should be rounded to the nearest cent as follows:

1. For amounts less than \$0.005, the amount should be rounded down to the next lowest penny.
2. For amounts equal to or greater than \$0.005, the amount should be rounded up to the next highest penny.

A restaurant or bar may also use bracket charts to determine the amount of tax that may be collected from its customers. The bracket charts represent a straight mathematical computation using the rounding convention

described above. Tables of the rate combinations are in [Publication 229](#), *Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales*.

B. Sales Tax Included in Price

A restaurant or bar may not wish to "add-on" the Wisconsin sales tax to the price it charges its customers. Instead, the restaurant or bar may include the sales tax in the price it charges its customer by conspicuously posting a notice indicating its prices include Wisconsin sales tax. Restaurants and bars that post this notice may calculate the taxable selling price by dividing their total receipts from these transactions by 1 plus the tax rate, and remit sales tax on that amount.

Example: Bar posts a conspicuous sign stating that Wisconsin sales tax is included in the selling price. Bar's December 2013 receipts, including the sales tax, are \$10,000. The Wisconsin sales tax due by Bar is computed as follows:

Total receipts including tax	\$10,000.00
Divide by 1 plus tax rate	<u>1.05</u>
Taxable receipts	\$ 9,523.81
Multiply times tax rate	<u>5%</u>
Sales tax due	<u>\$ 476.19</u>

VII. RECORDKEEPING

A. General

A restaurant or bar is required to keep adequate records so that it, as well as the Department of Revenue, can determine the correct tax due.

CAUTION

If the Department of Revenue conducts an audit of a restaurant or bar's records, and the restaurant or bar does not have or obtain the required exemption or resale certificates or other required documents to prove that the sales are exempt, the sales will be presumed to be taxable.

B. Records to Keep — Exempt Sales

If some or all of a restaurant or bar's sales of property, items, goods, or taxable services are not subject to Wisconsin sales and use tax, it must keep records to support the exemptions claimed.

The reason for keeping such records is that all sales made by a restaurant or bar are presumed taxable until the contrary is established. The restaurant or bar has the burden of proving that a sale of a taxable product or service is not subject to Wisconsin sales tax, unless: (a) the restaurant or bar receives a fully completed exemption certificate from the purchaser no later than 90 days after the date of the sale, or (b) the restaurant or bar has the other records and information described below to substantiate the exemption claimed.

Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, is provided in Appendix C.

C. Common Exemptions and Records Needed to Support the Exemptions Claimed

Common reasons that sales of tangible personal property, items, property, or goods or taxable services by a restaurant or bar may not be subject to Wisconsin sales tax and the records to keep to support the exemptions include:

1. *Exempt Food Items*

Although sales of prepared foods, soft drinks, candy, dietary supplements, and alcoholic beverages are taxable, a restaurant or bar may have an exempt sale of a food or beverage product (e.g., sale of gallon of milk to go). Although the restaurant or bar is not required to obtain any information from the purchaser for these types of sales, the restaurant or bar must maintain records which support the amount of exemption claimed for sales of these types of items.

2. *Products Being Resold by the Purchaser*

Sales of products are not subject to Wisconsin sales tax if the purchaser furnishes the restaurant or bar with an exemption certificate claiming resale or some other valid Wisconsin exemption. The restaurant or bar must keep the exemption certificate provided by the purchaser to support the exemption from sales tax.

Example: Restaurant sells sandwiches to Caterer. Caterer will sell the sandwiches to its customers. Caterer must provide Restaurant with an exemption certificate claiming resale to purchase the sandwiches without Wisconsin sales tax.

3. *Sales to Governmental Agencies and Exempt Entities*

Sales to a Wisconsin or federal governmental agency, any federally recognized American Indian Tribe or Band in this state, or to a nonprofit organization that holds a certificate of exempt status (CES) number issued by the Wisconsin Department of Revenue are exempt from Wisconsin sales and use taxes.

Sales to Wisconsin and federal governmental agencies, municipalities, and public schools may be supported by either: (a) a copy of the purchase order or similar written document identifying the governmental unit as the purchaser, (b) an exemption certificate, or (c) by recording the CES number on the copy of the invoice kept by the restaurant or bar.

Sales to nonprofit organizations (e.g., churches) must be supported by either: (a) an exemption certificate from the organization, or (b) by recording the CES number on the sales invoice kept by the restaurant or bar.

Note: If exemptions are claimed for any of these reasons, the seller must keep the completed exemption certificates, purchase orders, invoices, statements, or records mentioned above to prove that the sales were not subject to Wisconsin sales tax.

D. How Long Must the Records Be Kept?

Restaurants or bars must keep the records and exemption certificates to support the amounts reported and deductions claimed on the sales and use tax returns for a **minimum** of four years after the due date of the corresponding Wisconsin income or franchise tax return.

Caution: If a restaurant or bar is being audited, any written agreement between a restaurant or bar and the Department of Revenue that extends the time period upon which the department is authorized to determine the correct tax liability of the restaurant or bar, also extends the time the records must be kept.

VIII. ALCOHOL BEVERAGE AND TOBACCO LAWS

Information about state alcohol beverage and tobacco laws is provided in [Publication 302](#), *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*.

IX. DO YOU HAVE QUESTIONS OR NEED ASSISTANCE

If you are unable to find an answer to your question about sales and use taxes, email, write, or call the department.

Visit our website . . . revenue.wi.gov

Email . . . DORSalesandUse@revenue.wi.gov

Write . . . Wisconsin Department of Revenue
P.O. Box 8949, Mail Stop 5-77
Madison, WI 53708-8949

Telephone . . . (608) 266-2776

Fax . . . (608) 267-1030

You may also contact any of the Department of Revenue offices. Please see the department's website for a [listing of offices](#) and their current hours.

Notes To “Prepared Food” Flowchart

1. "Food and food ingredient" means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" includes beverages, but not alcoholic beverages or tobacco.
2. Food and food ingredients are sold in a heated state if they are sold at a temperature higher than the room temperature.
3. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses.
4. A business' code under the North American Industry Classification System (NAICS) is based on that business' primary business activity. NAICS subsector 311 covers all food manufacturing businesses and industry group number 3118 covers bakeries and tortilla manufacturing.
5. Bakery items include breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
6. Serving sizes are based on the information contained on the label of each item sold, except that if the item does not contain a label, the serving size is based on the retailer's reasonable determination.
7. Utensils are not considered to be “made available” by the retailer to the purchaser solely by virtue of a utensil being placed in the package along with the food item by a person other than the retailer. “Utensils” include napkins, straws, forks, spoons, knives, plates, bowls, glasses, and cups.

How to Compute the Percentage of Certain Prepared Foods Sold by the Retailer

"Food and food ingredients" includes beverages, but not alcoholic beverages or tobacco.

A retailer's sales of food and beverages are generally taxable if more than 75% of the retailer's sales of food and beverages are sales of certain items. This chart explains how to compute this percentage. Also, see Part IV.A. of this publication.

1. The **numerator** of the percentage is made up of the retailer's sales of food and food ingredients that are the following:
 - (a) Sold heated;
 - (b) Heated by the retailer but sold unheated, but not including:
 - The retailer's sales of bakery items,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118, and
 - Two or more food ingredients mixed or combined by the retailer for sales as a single item and sold unheated by weight or volume
 - (c) Two or more food ingredients mixed or combined by the retailer for sale as a single item, but not including:
 - The retailer's sales of bakery items,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item if the retailer's primary NAICS code is manufacturing under subsector 311 but not including bakeries and tortilla manufacturers under industry group number 3118,
 - Two or more food ingredients mixed or combined by the retailer for sale as a single item and sold unheated by weight or volume,
 - Items that are only sliced, repackaged, or pasteurized by the retailer, or
 - Eggs, meat, fish, poultry or any food item containing them in raw form that requires cooking by the consumer.
 - (d) Food for which plates, bowls, glasses, or cups are necessary to receive the food.
2. The **denominator** of the percentage is made up of all of the retailer's sales of food and food ingredients, including the retailer's sales of prepared food, candy, dietary supplements, and soft drinks.
3. Alcoholic beverages are not included in the numerator or denominator.
4. A retailer must compute the percentage for the retailer's current tax or business fiscal year based on the retailer's data from the retailer's prior tax or business fiscal year, as soon as practical after the retailer's accounting records are available, but no later than 90 days after the day on which the retailer's tax or business fiscal year begins.
5. If a retailer has no prior tax or business fiscal year in Wisconsin, the retailer shall make a good faith estimate of its percentage for the retailer's first tax or business fiscal year and shall adjust the estimate prospectively after the first 3 months of the retailer's operations if the actual percentage is materially different from the estimated percentage.
6. For retailers with more than one establishment in Wisconsin, a single determination that combines the information for all of the retailer's establishments in Wisconsin shall be made annually, and will apply to all of the retailer's establishments in Wisconsin.

Example 1 – Computing Percentage of Certain Prepared Foods: Restaurant/Bar has the following sales during its fiscal year ending June 30, 2013:

- Food sold heated or served on plates or in bowls - \$400,000
- Nonalcoholic beverages served in glasses or cups - \$150,000
- Nonalcoholic beverages served in bottles and cans - \$100,000
- Bakery items made by Restaurant/Bar and not served on plates - \$50,000
- Alcoholic beverages - \$500,000

Restaurant/Bar's sales of certain prepared foods are 79% of its total sales of all food and food ingredients. To compute this percentage:

The numerator = food sold heated or served on plates or in bowls (\$400,000) and nonalcoholic beverages served in glasses or cups (\$150,000).

The denominator = the numerator (\$550,000), plus the nonalcoholic beverages served in bottles and cans (\$100,000) and the bakery items made by Restaurant/Bar (\$50,000).

$$\$550,000 / \$700,000 = 79\%$$

Sales of alcoholic beverages are not included in this computation. Restaurant/Bar must use this percentage for the fiscal year ending June 30, 2014.

Example 2 – Computing Percentage of Certain Prepared Foods: Coffee Shop has the following sales during its fiscal year ending June 30, 2013:

- Food sold heated or served on plates or in bowls - \$50,000
- Nonalcoholic beverages served in glasses or cups - \$300,000
- Nonalcoholic beverages served in bottles and cans - \$50,000
- Bakery items made by Coffee Shop and not served on plates - \$100,000

Coffee Shop's sales of certain prepared foods are 70% of its total sales of all food and food ingredients. To compute this percentage:

The numerator = food sold heated or served on plates or in bowls (\$50,000) and nonalcoholic beverages served in glasses or cups (\$300,000).

The denominator = the numerator (\$350,000), plus the nonalcoholic beverages served in bottles and cans (\$50,000) and the bakery items made by Coffee Shop and not served on plates (\$100,000).

$$\$350,000 / \$500,000 = 70\%$$

Sales of alcoholic beverages are not included in this computation. Coffee Shop must use this percentage for the fiscal year ending June 30, 2014.

WISCONSIN SALES AND USE TAX EXEMPTION CERTIFICATE

Check One Single Purchase Continuous

Purchaser's Business Name	Purchaser's Address
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The above purchaser, whose signature appears on the reverse side of this form, claims exemption from Wisconsin state, county, baseball or football stadium, local exposition, and premier resort sales or use tax on the purchase, lease, license, or rental of tangible personal property, property under sec. 77.52(1)(b), items under sec. 77.52(1)(c), goods under sec. 77.52(1)(d), or taxable services, as indicated by the box(es) checked below.

I hereby certify that I am engaged in the business of selling, leasing, licensing, or renting: _____

(Purchaser's description of property, items, goods, or services sold by purchaser.)

Purchaser's description of property or services purchased (itemize property, items, or goods purchased if "single purchase"):

Seller's Name	Seller's Address
---------------	------------------

REASON FOR EXEMPTION

Resale (Enter purchaser's seller's permit or use tax certificate number) _____

Manufacturing and Biotechnology

- Tangible personal property (TPP) or item under s.77.52(1)(b) that is used exclusively and directly by a manufacturer in manufacturing an article of TPP or items or property under s.77.52(1)(b) or (c) that is destined for sale and that becomes an ingredient or component part of the article of TPP or items or property under s.77.52(1)(b) or (c) destined for sale or is consumed or destroyed or loses its identity in manufacturing the article of TPP or items or property under s.77.52(1)(b) or (c) destined for sale.
- Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s.77.52(1)(b) or (c) and safety attachments for those machines and equipment.
- The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of machines and specific processing equipment, that the above purchaser would be authorized to purchase without sales or use tax, at the time the service is performed. Tools used to repair exempt machines are not exempt.
- Fuel and electricity consumed in manufacturing tangible personal property or items or property under s.77.52(1)(b) or (c) in this state.
Percent of fuel exempt: _____ % Percent of electricity exempt: _____ %
- Portion of the amount of fuel converted to steam for purposes of resale. Percent of fuel exempt: _____ %
- Property used exclusively and directly in qualified research, by persons engaged in manufacturing at a building assessed under s. 70.995, by persons engaged primarily in biotechnology in Wisconsin, or a combined group member conducting qualified research for another combined group member that meets these requirements.

Farming (To qualify for this exemption, the purchaser must use item(s) exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, or custom farming services.)

- Tractors (except lawn and garden tractors), all-terrain vehicles (ATV) and farm machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property or items or property under s.77.52(1)(b) or (c) that are used exclusively and directly, or are consumed or lose their identities in the business of farming. This includes services to the property and items above.
- Feed, seeds for planting, plants, fertilizer, soil conditioners, sprays, pesticides, and fungicides.
- Breeding and other livestock, poultry, and farm work stock.
- Containers for fruits, vegetables, grain, hay, and silage (including containers used to transfer merchandise to customers), and plastic bags, sleeves, and sheeting used to store or cover hay and silage. Baling twine and baling wire.
- Animal waste containers or component parts thereof (may only mark certificate as "Single Purchase").
- Animal bedding, medicine for farm livestock, and milk house supplies.

Federal and Wisconsin Governmental Units

Enter CES No., if applicable

- The United States and its unincorporated agencies and instrumentalities or any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
- Any federally recognized American Indian tribe or band in this state.
- State of Wisconsin or any agency thereof; Local Exposition District, Professional Baseball Park District, Professional Football Stadium District, UW Hospitals and Clinics Authority, Wisconsin Aerospace Authority, Health Insurance Risk-Sharing Plan Authority, Wisconsin Economic Development Authority, or Fox River Navigational System Authority.
- Wisconsin county, city, village, or town, including public inland lake protection and rehabilitation district, municipal public housing authorities, uptown business improvement districts, local cultural arts district, a county-city hospital, sewerage commission, metropolitan sewerage district, or a joint local water authority.
- Wisconsin public schools, school districts, universities, or technical college districts.

Other

- Containers and other packaging, packing, and shipping materials, used to transfer merchandise to customers of the purchaser.
- Trailers and accessories, attachments, parts, supplies, materials, and service for motor trucks, tractors, and trailers which are used exclusively in common or contract carriage under LC or IC No. (if applicable) _____.
- Items or services purchased directly by and used by religious, charitable, educational, scientific, or other organizations holding a Wisconsin Certificate of Exempt Status. CES No. _____.
- Machines and specific processing equipment used exclusively and directly in a fertilizer blending, feed milling, or grain drying operation, including repair parts, replacements, and safety attachments.
- Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer or for storage of such grain, if such structures are used in a fertilizer blending, feed milling, or grain drying operation.
- Tangible personal property and items, property and goods under s.77.52(1)(b), (c), and (d) to be resold by _____ on my behalf where _____ is registered to collect and remit sales tax to the Department of Revenue on such sales.
- Tangible personal property, property, items and goods under s.77.52(1)(b), (c), and (d), or services purchased by a Native American with enrollment # _____, who is enrolled with and resides on the _____ Reservation, where buyer will take possession of such property, items, goods, or services.
- Tangible personal property and items and property under s.77.52(1)(b) and (c) becoming a component of an industrial or municipal waste treatment facility, including replacement parts, chemicals, and supplies used or consumed in operating the facility. Caution: Do not check the "continuous" box at the top of page 1.
- Portion of the amount of electricity or natural gas used or consumed in an industrial waste treatment facility. (Percent of electricity or natural gas exempt _____ %)
- Electricity, natural gas, fuel oil, propane, coal, steam, corn, and wood (including wood pellets which are 100% wood) used for fuel for residential or farm use.

	% of Electricity Exempt	% of Natural Gas Exempt	% of Fuel Exempt
<input type="checkbox"/> Residential	_____ %	_____ %	_____ %
<input type="checkbox"/> Farm	_____ %	_____ %	_____ %

Address Delivered: _____

- Percent of printed advertising material solely for out-of-state use. _____ %
- Catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.
- Computers and servers used primarily to store copies of the product that are sent to a digital printer, a plate-making machine, or a printing press or are used primarily in prepress or postpress activities, by persons whose NAICS code is 323111, 323117, or 323120.
- Purchases from out-of-state sellers of tangible personal property that are temporarily stored, remain idle, and not used in this state and that are then delivered and used solely outside this state, by persons whose NAICS code is 323111, 323117, or 323120.
- Other purchases exempted by law. (State items and exemption). _____

I hereby certify that if the item(s) being purchased are not used in an exempt manner, I will remit use tax on the purchase price at the time of first taxable use. I understand that failure to remit the use tax may result in a future liability that may include tax, interest, and penalty.

Signature of Purchaser	Print or Type Name	Title	Date
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(DETACH AND PRESENT TO SELLER)

INSTRUCTIONS

This certificate may be used to claim exemption from Wisconsin state, county, baseball and football stadium, local exposition, and premier resort sales or use taxes.

Under the sales and use tax law, all receipts from sales of tangible personal property, property, items and goods under sec. 77.52(1)(b), (c), and (d), or taxable services are subject to the tax until the contrary is established. However, a seller who receives a fully completed exemption certificate no later than 90 days after the date of sale is relieved of any responsibility for collection or payment of the tax upon transactions covered by the certificate. A fully completed certificate is one which is completely filled in and indicates the reason for exemption.

RESALE: A purchaser using the resale exemption is attesting that the tangible personal property, property, items, or goods under sec. 77.52(1)(b), (c), or (d), or taxable services being purchased will be resold, leased, licensed, or rented. However, in the event any such property, items, or goods is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, license, or rental in the regular course of business, the purchaser is required to report and pay the tax on the purchase of the property, item, or good.

The following purchasers may make purchases for resale even though they do not hold a Wisconsin seller's permit or use tax certificate: (a) A wholesaler who only sells to other sellers for resale may insert "Wholesale only" in the space for the seller's permit number; (b) A person who only sells or repairs exempt property, such as to a manufacturer or farmer, may insert "Exempt sales only"; (c) A nonprofit organization may insert "Exempt sales only" if its subsequent sales of the tangible personal property, property, items, or goods under sec. 77.52(1)(b), (c), or (d), or taxable services are exempt as occasional sales.

A seller is allowed to accept an exemption certificate from an out-of-state retailer claiming the resale exemption for tangible personal property and items, property, and goods under sec. 77.52(1)(b), (c) and (d), Wis. Stats., drop shipped to a Wisconsin location, regardless of whether or not the out-of-state retailer holds a Wisconsin seller's permit. The out-of-state retailer's permit number, if the other state issues one, and state should be listed on the exemption certificate. If the exemption certificate does not list the Wisconsin seller's permit number or the out-of-state retailer's permit number and state, to be fully complete and valid the exemption certificate must contain a statement indicating the out-of-state retailer is a seller that is not required to hold a permit.

A resale exemption may be granted if the purchaser is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If the buyer purchases an item without tax for resale, but uses the item, the buyer owes use tax on its purchase of the item.

MANUFACTURING: "Manufacturing" means the production by machinery of a new article of tangible personal property or items or property under sec. 77.52(1)(b) or (c) with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with the conveying raw materials and supplies from plant inventory to

the place where work is performed in the same plant and ends with conveying finished units of tangible personal property or items or property under sec. 77.52(1)(b) or (c) to the point of first storage in the same plant.

FARMING: This certificate may not be used by farmers to claim exemption for the purchase of motor vehicles or trailers for highway use, lawn or garden tractors, snowmobiles, or for items used for the personal convenience of the farmer. When claiming an exemption for an ATV which is also registered for public use, a written description including the percentages of time for personal and farm use, must be submitted with the ATV Registration Application.

The sales price from the sale of electricity, natural gas, and other fuels for use in farming are exempt all 12 months of the year. Farmers claiming this exemption should check the box for electricity and fuel located in the "Other" section.

This certificate cannot be used as an exemption for paying Wisconsin motor vehicle fuel tax.

FEDERAL AND WISCONSIN GOVERNMENTAL UNITS:

This exemption may only be accepted from federal and Wisconsin governmental units and federally recognized American Indian tribes or bands in Wisconsin and replaces the requirement for having a purchase order from the governmental unit or recording on invoices the Certificate of Exempt Status (CES) number of the governmental unit. Governmental units of other countries and states may not use this exemption certificate. The governmental unit should check the box that best describes their unit of government.

OTHER:

Containers: This exemption applies regardless of whether or not the containers are returnable. Containers used by the purchaser only for storage or to transfer merchandise owned by the purchaser from one location to another do not qualify for the exemption.

Common or contract carriers: The exemption available to common or contract carriers for certain vehicles and repairs listed on this certificate applies only to those units used "exclusively" in such common or contract carriage. A carrier may qualify for the common or contract carriage exemption even if it does not hold a LC or IC number. The fact that a carrier holds a LC or IC number is not in itself a reason for exemption. A carrier may qualify for the common or contract carrier exemption even if it does not hold an LC or IC number.

Organizations holding a Certificate of Exempt Status (CES) number:

Wisconsin organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, may purchase products or services exempt from Wisconsin sales tax if the organization holds a CES number issued by the Wisconsin Department of Revenue. Wisconsin and federal governmental units, and any federally recognized American Indian tribe or band in Wisconsin, will also qualify for a CES.

A similar out-of-state organization, generally organized under sec. 501(c)(3) of the Internal Revenue Code, may purchase products or services exempt from Wisconsin sales tax even though it has not been issued a CES number. This exemption does *not* apply to out-of-state public schools, including public colleges and universities, and governmental units from other states.

Purchases (for lodging, meals, auto rental, etc.) by employees/representatives of exempt organizations performing organization business, are exempt from sales tax, provided 1) the retailer issues the billing or invoice in the name of the exempt organization, 2) the CES number is entered on the billing or invoice, and 3) the retailer retains a copy of that document.

Waste treatment facilities: The exemption applies to the sale of tangible personal property and items and property under sec. 77.52(1)(b) and (c) to a contractor for incorporation into real property which is part of an industrial or commercial waste treatment facility that qualifies for property tax exemption or a Wisconsin or federal governmental waste treatment facility.

Electricity, natural gas, fuel oil, coal, steam, corn, and wood (including wood pellets which are 100% wood) used for fuel:

- The sales price from the sale of electricity and natural gas for residential use during the months of November through April are exempt from sales and use tax.
- The sales price from sales of fuel oil, propane, coal, steam, corn, and wood (including wood pellets which are 100% wood) used for fuel sold for residential use are exempt from sales or use tax. Wood pellets are considered 100% wood even though the pellets may contain a small amount of binding material used to form the pellets.
- The sales price from the sale of fuel and electricity for use in farming are exempt all year.

A retailer of electricity, fuel, or natural gas shall have a signed exemption certificate for exempt sales for residential or farm use unless any of the following apply:

1. 100% of the electricity, fuel, or natural gas is for exempt use.
2. The sale is to an account which is properly classified as residential or farm pursuant to schedules which are filed for rate tariff with the Wisconsin Public Service Commission which are in force at the time of sale.
3. The sale is to an account which is properly classified as residential or farm for classification purposes as directed by the Federal Rural Electrification Administration.

"Farm use" means used in farming, including use in a tractor or other farm machines used directly in farming, in a furnace heating a farm building, in providing lighting in farm buildings, and use in operating motors of machines used directly in farming.

"Residential use" means use in a structure or portion of a structure which is a person's permanent principal residence. It does not include use in motor homes, travel trailers, other recreational vehicles, or transient accommodations. "Transient accommodations" means rooms or lodging available to the public for a fee for a continuous period of less than one month in a building such as a hotel, motel, inn, tourist home, tourist house or court, summer camp, resort lodge, or cabin.

Other purchases exempted by law include:

1. Printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.
2. Parts, supplies, or repairs for a school bus used exclusively as a contract carrier pursuant to a contract with a school or other organization.
3. Waste reduction and recycling machinery and equipment, including parts and repairs, which are exclusively and directly used for waste reduction and recycling activities.
4. Railway cars, locomotives, and other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants, or fuel therefor.
5. Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts, and fuel therefor.
6. Fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in sec. 29.001(63), Wis. Stats., and the rivers and tributaries specified in sec. 29.2285(2)(a)1. and 2., Wis. Stats., if the owner and all operators are licensed under sec. 29.514, Wis. Stats., to operate the boat for that purpose.
7. A product whose power source is the wind, direct radiant energy received from the sun, or gas generated by the anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or at least 600 British thermal units per day, but not including a product that is an uninterrupted power source that is designed primarily for computers.
8. Effective July 1, 2013, snowmaking and snow-grooming machines and equipment, including accessories, attachments, and parts for the machines and fuel and electricity used to operate such machines and equipment, that are used exclusively and directly for snowmaking at ski hills, ski slopes, and ski trails.
9. Effective July 1, 2013, advertising and promotional direct mail and printing services used to produce advertising and promotional direct mail.

SIGNATURE: For corporations, this form must be signed by an employee or officer of the corporation.

QUESTIONS: If you have questions, please contact us.

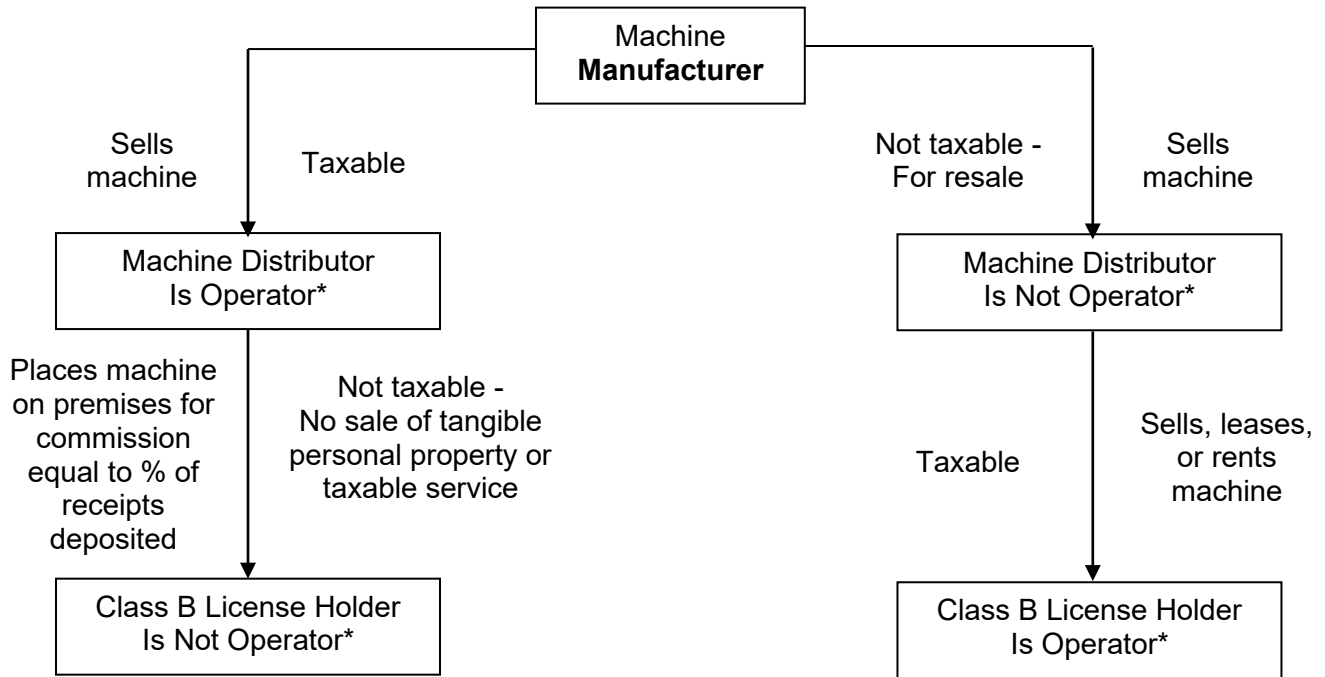
WISCONSIN DEPARTMENT OF REVENUE
Customer Service Bureau
PO Box 8949
Madison WI 53708-8949

Phone: (608) 266-2776

Fax: (608) 267-1030

Website: revenue.wi.gov

Sale, Lease, or Rental of Gambling Machine



* “Operator” means the person who owns property sold through the machine, has access to the machine for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine and its contents.

Gross Receipts From Furnishing Access to Gambling Machines

