

Wisconsin Department of Revenue

SALES AND USE TAX REPORT

2-05 (Part IV.H. Revised 9-23-05)

September 2005

I. WISCONSIN SALES AND USE TAX REPORTS AVAILABLE ON-LINE

All issues of the *Wisconsin Sales and Use Tax Reports* are available on the Department of Revenue's web site at www.dor.state.wi.us/ise/sales/index.html.

II. SALES TAX EXEMPTION TO REPLACE MANUFACTURER'S SALES TAX CREDIT, EFFECTIVE JANUARY 1, 2006

A sales and use tax exemption was created in 2003 Wisconsin Act 99 for fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. This exemption takes effect on January 1, 2006.

To claim this exemption, manufacturers must provide an exemption certificate to the supplier of the fuel and electricity. The *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211) has been revised to include a line for manufacturers to indicate the percentage of fuel and electricity that is exempt. The revised form can be obtained on the Department of Revenue's web site at www.dor.state.wi.us/forms/sales/index.html.

Prior to January 1, 2006, sales of fuel and electricity consumed, destroyed, or losing its identity in the manufacture of tangible personal property generally are not exempt from sales or use tax. Instead, a business may claim a franchise or income tax credit for the sales and use taxes paid on fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. Unused credits may be carried forward for 20 taxable years. The manufacturer's sales tax credit may not be claimed for taxable years that begin after December 31, 2005.

For additional information about how to carry forward the manufacturer's sales tax credit, please see pages 4 – 6 of *Wisconsin Tax Bulletin* #137 (January 2004) and page 44 of *Wisconsin Tax Bulletin* #138 (August 2004). These bulletins are available on the Department of Revenue's web site at www.dor.state.wi.us/ise/wtb/index.html.

III. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$125

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2006, the amount subject to use tax is increased from \$122 to \$125 per plate per month. (Note: The use tax per plate per month is not \$125. Rather, \$125 is multiplied by the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the increase to \$125 per plate is that sec 77.53(1m)(a), Wis. Stats. (2003-04), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 2004 to June 2005 was 2.53% ($\$122 \times 1.0253 = \125 rounded to the nearest whole dollar).

IV. NEW TAX LAWS

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. These provisions are contained in 2005 Wisconsin Act 25. Each of the changes is explained in detail in *Wisconsin Tax Bulletin* #144 (August 2005). This bulletin is available on the Department of Revenue's web site at www.dor.state.wi.us/ise/wtb/index.html.

A. Clarify Definition of "Retailer" (2005 Act 25, amend sec. 77.51(13)(a), effective January 1, 2006.)

The definition of "retailer" in sec. 77.51(13)(a), Wis. Stats. (2003-04), is clarified to include every seller who makes any sale, regardless of whether the sale is mercantile in nature.

This provision reverses the decisions in two court cases, *Kollasch v. Adamany* (104 Wis. 2d 552, 562 (1981)) and *American Heart Association/Wisconsin Affiliate, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 24, 1998). In these decisions, the Courts ruled that a nonprofit organization engaging in “nonmercantile transactions” is not a “retailer” with respect to those transactions as provided in secs. 77.51(13) and 77.52(1), Wis. Stats., and, therefore, is not liable for the sales tax on those transactions, even though the organization may hold a seller’s permit.

B. Increase Dollar Amount of Standards for Occasional Sale Exemption for Nonprofit Organizations (2005 Act 25, amend sec. 77.54(7m), effective January 1, 2006.)

Certain standards, including an entertainment standard and a receipts standard, must be met for a nonprofit organization’s sales to qualify as exempt occasional sales.

The standard to determine whether entertainment is involved at an event is increased to \$500. Under prior law, the entertainment standard was \$300.

The standard relating to a nonprofit organization’s receipts is increased to \$25,000. Under prior law, the receipts standard was \$15,000.

For additional information about the standards that must be met for a nonprofit organization’s sales to qualify as exempt occasional sales, see Publication 206, *Sales Tax Exemption for Nonprofit Organizations*. This publication is available on the Department of Revenue’s web site at www.dor.state.wi.us/html/taxpubs.html#sales.

C. Exempt Certain Sales by Affiliated Businesses (2005 Act 25, create sec. 77.54(49), effective September 1, 2005.)

An exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of taxable services and tangible personal property that is physically transferred to the purchaser as a necessary part of services that are subject to the taxes imposed under sec. 77.52(2)(a)7., 10., 11., and 20., if the seller and the purchaser of such services and property are members of the same affiliated group under sec. 1504 of the Internal Revenue Code and are eligible to file a single consolidated return for federal income tax purposes.

For purposes of this provision, if a seller purchases a taxable service or tangible personal property, as described above, that is subsequently sold to a member of the seller’s affiliated group and the sale is exempt under this provision from sales and use taxes, the original purchase of the taxable service or tangible personal property by the seller is not considered a sale for resale or exempt under this provision.

D. Exempt Clay Pigeons Sold to Shooting Facilities (2005 Act 25, renumber sec. 77.54(47) to 77.54(47)(intro.), and amend as renumbered, and create sec. 77.54(47)(b), effective for sales made on or after January 1, 2003.)

An exemption is created for the sale of and the storage, use, or other consumption of clay pigeons that are sold to a shooting facility, if any of the following applies:

- The shooting facility is required to pay the tax imposed under sec. 77.52, Wis. Stats., on its gross receipts from charges for shooting at the facility.
- The shooting facility is a nonprofit organization that charges for shooting at the facility, but is not required to pay the tax imposed under sec. 77.52, Wis. Stats., on its gross receipts from such charges because the charges are for occasional sales, as provided under sec. 77.54(7m), Wis. Stats.

E. Require that Moneys Transferred to the Baseball Park District Be Used Exclusively to Retire the District’s Debt (2005 Act 25, amend secs. 20.835(4)(gb) and 77.705, effective July 27, 2005.)

Any moneys that are transferred from the appropriation account under sec. 20.566(1)(gd) to the appropriation account under sec. 20.835(4)(gb), which relates to the administration of the baseball park district, are required to be used exclusively to retire the baseball park district’s debt.

F. Require that Moneys Transferred to the Football Stadium District Be Used Exclusively to Retire the District’s Debt (2005 Act 25, amend secs. 20.835(4)(ge) and 77.706, effective July 27, 2005.)

Any moneys that are transferred from the appropriation account under sec. 20.566(1)(ge) to the appropriation account under sec. 20.835(4)(ge), which

relates to the administration of the football stadium district, are required to be used exclusively to retire the football stadium district's debt.

G. Clarify Exemption for Meals, Food, Food Products, or Beverages Sold by Day Care Centers (2005 Act 25, amend sec. 77.54(20)(c)4., effective July 27, 2005.)

This provision clarifies that the sale of meals, food, food products, or beverages sold by a day care center licensed under ch. 48, Wis. Stats., and served at a day care center are exempt from tax. Prior law stated that such sales by a day care center registered under ch. 48, Wis. Stats., are exempt from tax.

H. Increase State Rental Vehicle Fee (2005 Act 25, amend sec. 77.995(2), effective for rental or lease agreements entered into on or after October 1, 2005.)

The state rental vehicle fee is increased from 3% to 5% of the gross receipts on the rental, but not on the rental and not for rental as a service or repair replacement vehicle, of Type I automobiles, mobile homes, motor homes, and camping trailers by establishments primarily engaged in the short-term rentals of vehicles without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under sec. 77.54(1), (4), (7)(a), (7m) or (9a), Wis. Stats.

I. Additional Businesses Subject to Premier Resort Area Taxes (2005 Act 25, renumber 77.994(1)(a) to 77.994(1)(am) and create secs. 77.994(1)(ad), (em), (fa), (fb), (fc), (fd), (fe), (ff), (fg), (ka), (kb), (kc), (kd), (ma), (mb), (mc), (md), (me), (mf), (pa), (pb), (qa), and (ta), effective September 1, 2005.)

In addition to the businesses previously identified under sec. 77.994, Wis. Stats., businesses that are classified in the Standard Industrial Classification Manual, 1987 edition, published by the U.S. Office of Management and Budget under the following industry numbers are also subject to the premier resort area tax:

- 5311 — Department stores.
- 5499 — Miscellaneous food stores.
- 5611 — Men's and boys' clothing and accessory stores.
- 5621 — Women's clothing stores.
- 5632 — Women's accessory and specialty stores.
- 5641 — Children's and infants' wear stores.
- 5651 — Family clothing stores.
- 5661 — Shoe stores.

- 5699 — Miscellaneous apparel and accessory stores.
- 5942 — Bookstores.
- 5943 — Stationery stores.
- 5944 — Jewelry stores.
- 5945 — Hobby, toy, and game shops.
- 5948 — Luggage and leather goods stores.
- 5949 — Sewing, needlework, and piece goods stores.
- 5992 — Florists.
- 5993 — Tobacco stores and stands.
- 5994 — News dealers and newsstands.
- 5999 — Miscellaneous retail stores.
- 7922 — Theatrical producers (except motion picture) and miscellaneous theatrical services.
- 7929 — Bands, orchestras, actors, and other entertainers and entertainment groups.
- 7991 — Physical fitness facilities.
- 7997 — Membership sports and recreation clubs.

(**Note:** Although the above industry numbers are subject to the premier resort area tax, businesses in the above industry numbers are not used for purposes of determining if 40% of the equalized value of the taxable property in the political subdivision is used by "tourism-related retailers," as is required for a political subdivision to declare itself a premier resort area. See pages 31 to 34 of *Wisconsin Tax Bulletin* #104 (November 1997) for additional information.)

J. Require Department of Revenue to Provide Appropriate Guidance to Retailers With Respect to Premier Resort Area Tax and Impose Premier Resort Area Tax on Certain Additional Retail Outlets (2005 Act 25, create sec. 77.994(3m)(b), effective July 27, 2005.)

The Department of Revenue is required to provide appropriate guidance regarding the application of the premier resort area tax to all persons who hold a sales tax permit issued by the department. In addition, any retail outlet that would have been classified as a tourism-related retailer under sec. 77.994(1), Wis. Stats., but for the fact that it is a retail outlet for a manufacturer or wholesaler, will be considered a tourism-related retailer for purposes of imposing the premier resort area tax.

Note: Information about the premier resort area tax is provided in Publication 403, *Premier Resort Area Tax*. This publication is available on the Department of Revenue's web site at www.dor.state.wi.us/html/taxpubs.html#sales.

K. Regional Transit Authority Fee (2005 Act 25, amend sec. 59.58(6)(title), (a)1. and 2 and ch. 77 (title), create secs. 20.566(1)(gh), 20.835(4)(gh), 59.58(6)(cg) and subch. XIII of ch. 77, and repeal and recreate sec. 59.58(6)(b), effective July 27, 2005.)

Effective Date

The regional transit authority fee is effective on the first day of the month that begins at least 90 days after the governing body of the authority approves the imposition of the fee and notifies the Department of Revenue.

Creation of Regional Transit Authority and Governing Body

The counties of Kenosha, Milwaukee and Racine shall create a regional transit authority. For definitions of “authority” and “region,” as well as the information about the structure of the “governing body,” please see *Wisconsin Tax Bulletin #144* (August 2005).

Jurisdiction of Regional Transit Authority

Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in the region are doing business in that region, and the authority has the jurisdiction to impose the regional transit authority fee on them.

An authority does not have jurisdiction to impose the fee in regard to tangible personal property purchased in a sale that is consummated at a location in this state that does not have in effect an ordinance or resolution imposing this fee and later brought by the buyer into the region that does impose the fee.

Authority to Impose Regional Transit Authority Fee

A regional transit authority may impose a fee that does not exceed \$2 for each transaction in the region on the rental of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats., by establishments primarily engaged in the short-term rental of passenger cars without drivers, for a period of 30 days or less.

This fee is to be collected from the person to whom the passenger car is rented and the retailer that collects this fee is required to separately state the fee on the receipt that the retailer provides to the rental customer. Certain exemptions apply to the regional transit authority fee. For a list of these exemptions,

please see *Wisconsin Tax Bulletin #144* (August 2005).

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Leases and rentals of motor vehicles used principally on the highway at normal highway speeds have a situs in the region if that is where they are customarily kept, except that leases and rentals of drive-it-yourself motor vehicles used principally on the highway at normal highway speeds, if those vehicles are used for one-way trips or leased for less than one month, are located in the region if that is where they come into the lessee’s possession.

Administering and Distributing the Regional Transit Authority Fee

The Department of Revenue is responsible for administering and distributing the regional transit authority fee and may take any action, conduct any proceeding and impose interest and penalties relating to this fee.

Every person subject to the regional transit authority fee is required to register with the Department of Revenue. Any person who is required to register, including any person authorized to act on behalf of a corporation, partnership, or other person who is required to register, and who fails to do so is guilty of a misdemeanor.

The Department of Revenue will distribute 97.45% of the fees collected for each regional transit authority to that authority and, for administering the fees, the Department of Revenue may retain 2.55% of the fees collected. For detailed information about administration and distribution of the regional transit authority fee by the Department of Revenue, please see *Wisconsin Tax Bulletin #144* (August 2005).

Repealing the Regional Transit Authority Fee

To repeal the regional transit authority fee, the governing body of the authority is required to notify the Department of Revenue of the repeal of the fee at least 60 days prior to the effective date of the repeal.

Discontinuation of the Regional Transit Authority Fee

Retailers and the Department of Revenue may not collect this fee for any regional transit authority after the calendar quarter during which the regional transit authority ceases to exist, except that the Department of Revenue may collect from the retailers fees that accrued before that calendar quarter and interest and penalties that relate to those fees. If fees are collected, the authority may use this revenue for any lawful purpose.