

SALES AND USE TAX REPORT

3-06

September 2006

In This Issue

	Page
I. Motor Vehicle Dealers' Measure of Use Tax Increased to \$130.....	1
II. New Tax Laws.....	1
III. Reminder - Premier Resort Area Tax Becomes Effective in the City of Eagle River on October 1, 2006.....	2
IV. TeleFile Taxpayers: Payment by Direct Withdrawal Now Available.....	3
V. Truck Owner-Operators: Does the Common or Contract Carrier Exemption Apply?.....	3
VI. Disaster Relief Payments: Wisconsin Sales and Use Tax Treatment.....	4
VII. Filing Sales and Use Tax Returns Electronically... 4	

I. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$130

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, 2007, the amount subject to use tax is increased from \$125 to \$130 per plate per month. (**Note:** The use tax per plate per month is not \$130. Rather, \$130 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 \$130 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 2005 to June 2006 was 4.32% ($\$125 \times 1.0432 = \130 rounded to the nearest whole dollar).

II. NEW TAX LAWS

The Wisconsin Legislature has enacted two changes to the Wisconsin sales and use tax laws. These provisions are contained in 2005 Wisconsin Acts 441 and 479.

A. Definition of "Person" Expanded to Include Unincorporated Cooperative Associations (2005 Act 441, amend secs. 77.51(10) and 77.53(17r)(f), effective May 26, 2006.)

The definition of "person" in sec. 77.51(10), Wis. Stats. (2003-04), is expanded to include any unincorporated cooperative association.

Section 77.53(17r)(f), Wis. Stats. (2003-04), is amended to provide that use tax does not apply to an aircraft purchased in another state if the owner or lessee is an unincorporated cooperative association that does not have real property or other tangible personal property (except aircraft and such property as hangars, accessories, attachments, fuel, and parts required for operation of aircraft) in this state at the time the aircraft is registered in this state, and if certain other requirements under sec. 77.53(17r), Wis. Stats. (2003-04), are met.

B. Sales and Use Tax Exemption Created for "Internet Equipment Used in the Broadband Market" if Certified by Department of Commerce (2005 Act 479, create

sec. 77.51(6m) and 77.54(48), effective July 1, 2007.)

Note: Income and franchise tax credits for certain Internet equipment used in the broadband market were also created in 2005 Act 479. See page 10 of *Wisconsin Tax Bulletin* #148 (July 2006), which can be accessed at <http://www.dor.state.wi.us/ise/wtb/148art.pdf>

Subject to the nonstatutory provisions identified below, a sales and use tax exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of Internet equipment used in the broadband market, if the purchaser certifies to the Department of Commerce, in the manner prescribed by the Department of Commerce, that the purchaser will, within 24 months after the effective date of this exemption (July 1, 2007), make an investment that is reasonably calculated to increase broadband Internet availability in Wisconsin.

“Internet equipment used in the broadband market” is defined to mean equipment that is capable of transmitting data packets or Internet signals at speeds of at least 200 kilobits per second in either direction.

Every person who is required to make an investment that qualifies for this exemption and is reasonably calculated to increase broadband Internet availability in Wisconsin, shall, within 60 days after the end of the year in which the investment is made, file a report with the Department of Commerce that provides a detailed description of the investment, including the amount invested. The Department of Commerce shall provide copies of the report to the Department of Administration, the Department of Revenue, and the Public Service Commission.

Nonstatutory Provisions

Not later than December 31, 2006, the Department of Commerce shall implement a program for certifying businesses as eligible for the tax credits and exemptions under secs. 71.07(5e), 71.28(5e), 71.47(5e), and 77.54(48), Wis. Stats.

If the Department of Commerce certifies a business as eligible for the credits and exemptions under secs. 71.07(5e), 71.28(5e), 71.47(5e), and 77.54(48), Wis. Stats., the Department of Commerce shall determine the maximum amount of credits and exemptions that the business may claim, subject to certain requirements. The amount of the tax credits allocated to each business for each year in which the business may claim credits shall equal the amount of the exemptions allocated to the business. The Department of Commerce may not allocate tax credits and exemptions to a business unless the allocation of tax credits and exemptions to the business is likely to increase the availability of broadband Internet service in areas of this state that are not served by a broadband Internet service provider or are served by not more than one broadband Internet service provider, as determined by the Department of Commerce. The total amount of exemptions from the taxes imposed under subchapter III of Chapter 77 of the statutes and tax credits allocated to all eligible businesses may not exceed \$7,500,000. The Department of Commerce shall complete the certifications and determinations under this paragraph and the preceding paragraph no later than July 1, 2007.

Note: For additional information, see pages 14 - 16 of *Wisconsin Tax Bulletin* #148 (July 2006), which can be accessed at <http://www.dor.state.wi.us/ise/wtb/148art.pdf>

III. REMINDER - PREMIER RESORT AREA TAX BECOMES EFFECTIVE IN THE CITY OF EAGLE RIVER ON OCTOBER 1, 2006

Beginning October 1, 2006, the 0.5% premier resort area tax will be in effect in the City of Eagle River.

Please see *Sales and Use Tax Report 2-06* (June 2006) for additional information.

IV. TELEFILE TAXPAYERS: PAYMENT BY DIRECT WITHDRAWAL NOW AVAILABLE

Effective July 3, 2006, the Department of Revenue (DOR) has added another payment option for persons filing sales and use tax returns using TeleFile. TeleFile determines if an amount is due and provides the taxpayer an option to pay the balance due by direct withdrawal from the taxpayer's bank account. This direct debit payment option is only available during the call in which the return is being filed.

To use a direct withdrawal, the taxpayer will be required to:

- Provide DOR with its bank account information, and
- Authorize DOR to make an electronic withdrawal from its account.

The bank information will not be retained in DOR's database. A taxpayer will need to enter bank information every time it uses the direct debit option.

If a return is filed before the due date, the taxpayer may choose to "warehouse" the payment, which means that the payment will not be initiated until the due date of the return. If the warehouse option is not selected, the direct withdrawal will be processed the next business day. The taxpayer can pay the total amount due or make a partial payment.

TeleFile also allows a taxpayer to file more than one return during a call.

Please note that persons filing sales and use tax returns using TeleFile may continue to pay the amount due using a credit card, Electronic Funds Transfer, or paper check or money order.

V. TRUCK OWNER-OPERATORS: DOES THE COMMON OR CONTRACT CARRIER EXEMPTION APPLY?

Wisconsin provides an exemption from Wisconsin sales and use taxes for motor trucks that are sold to common or contract carriers who use the motor trucks exclusively in common or contract carriage. For the common carrier exemption to apply, the

truck must be sold or leased *directly* to a common or contract carrier. Wisconsin does not allow a pass-through of a common or contract carriage designation to another person for purposes of this exemption.

Owner-Operator Leases Truck to Another Party

A buyer that is an owner-operator is entitled to purchase a motor truck without paying sales or use tax if the owner-operator will make no use of the truck other than leasing it to another party. When purchasing or leasing the truck, the owner-operator should provide the dealer with an exemption certificate (Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*) claiming resale.

This assumes that the other party (e.g., a trucking company) provides control and direction over the owner-operator's actions. For example, if the trucking company directs the owner-operator as to what to pick up, when and where to make the pickups, and when and where to make the deliveries, the trucking company is considered to be leasing the truck with a driver from the owner-operator.

The owner-operator's charge to the trucking company for the lease of the truck is not subject to Wisconsin sales or use tax, provided (1) the trucking company is a common or contract carrier that uses the truck exclusively in common or contract carriage, and (2) the trucking company provides the owner-operator with a properly completed exemption certificate claiming the common or contract carrier exemption.

Owner-Operator Provides Transportation Service

If a driver is provided by the owner-operator with the truck and the Public Service Commission and the Department of Transportation's Division of Motor Vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies (rather than a lease of the truck to the trucking company), the charge by the owner-operator to the trucking company is not subject to sales or use tax. The owner-operator is providing a nontaxable transportation service.

An "owner-operator" that uses its truck exclusively in common or contract carriage may purchase its truck without tax by providing the dealer with an

exemption certificate claiming the common and contract carrier exemption.

VI. DISASTER RELIEF PAYMENTS: WISCONSIN SALES AND USE TAX TREATMENT

The Federal Emergency Management Agency (FEMA) and the American Red Cross (ARC) have provided relief to disaster victims by distributing funds to those in need. Funds have been distributed to disaster victims using various methods including: (1) making electronic transfers directly into a disaster victim's bank account; (2) issuing U.S. Treasury checks to a disaster victim; (3) issuing FEMA debit cards to a disaster victim; (4) providing the disaster victim with an ARC Disbursing Order (ARCDO); and (5) providing the disaster victim with a Client Assistance Card (CAC).

Purchases made by disaster victims with funds from the following are subject to Wisconsin sales or use tax in the same manner as any other purchase made by that individual:

- FEMA funds that have been electronically transferred into the victim's bank account or received by the victim in the form of U. S. Treasury Checks.
- FEMA issued debit cards set up in the victim's name.

Purchases made using the following are exempt from Wisconsin sales or use tax:

- American Red Cross Disbursing Order (ARCDO) voucher that the ARC provides to a disaster victim for a specific vendor that is good up to a specific dollar amount.
- American Red Cross Client Assistance Cards (CACs) that the ARC issues to some victims, provided the invoice for the purchase is made out in the name of ARC.

The retailer should keep a copy of the ARDCO or CAC and receipt and indicate ARC's Certificate of Exempt Status (CES) number on the receipt to prove that the sale qualifies for exemption from Wisconsin sales and use tax.

For additional information, please see pages 20-21 of *Wisconsin Tax Bulletin* #145 (November 2005), which can be accessed at <http://www.dor.state.wi.us/ise/wtb/145art.pdf>.

VII. FILING SALES AND USE TAX RETURNS ELECTRONICALLY

The Wisconsin Department of Revenue (DOR) has several different ways for you to electronically file your Wisconsin sales and use tax returns. Filing and paying your taxes electronically makes the filing process easier for you! The electronic system provides confirmation receipts for your returns and payments, checks your math, and ensures that your returns have all the required information. These returns are less likely to be adjusted, which reduces interest charges and speeds up processing.

Electronic Filing Options Available for Sales and Use Tax Return Filing

- 1. Sales TeleFile**
- 2. Sales Internet Process**
- 3. File Transmission**

Electronic Payments

DOR accepts Electronic Funds Transfer for most types of tax payments. It is easy to use and you are issued an acknowledgement that your payment has been received, which is a service that cannot be provided for checks and money orders.

Questions About Electronic Filing?

Information about each of the electronic filing options and electronic payments listed above can be found:

- In the March 2006 issue of the *Sales and Use Tax Report*, which can be accessed at <http://www.dor.state.wi.us/ise/sales/06-1.pdf>.
- Under the "Business" or "E-Services" sections of the DOR web site at www.dor.state.wi.us.

You may also write to the Wisconsin Department of Revenue, Technical Assistance Unit at Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949; call (608) 266-2776; or e-mail sales10@dor.state.wi.us.