



SALES AND USE TAX REPORT

March 2014
Issue 1-14

If you would like to receive notification when a new *Sales and Use Tax Report* is available, subscribe to the sales and use tax electronic mailing list at revenue.wi.gov/html/lists.html. All of the *Sales and Use Tax Reports* are available at revenue.wi.gov/ise/sales/index.html.

In This Issue

	Page
I. Premier Resort Area Tax Rates to Increase for City of Wisconsin Dells and Village of Lake Delton	1
II. Wisconsin/Minnesota Sales Tax Seminars	1
III. Online Filers: Don't Forget County and Stadium Taxes	2
IV. Aircraft Purchased by Nonresidents	2
V. Alternative Energy Producing Products	3
VI. Tips and Gratuities	3
VII. Take and Bake Pizza	4
VIII. Virtual Currency	4
IX. Sellers Using Distribution Facilities in Wisconsin Are Liable for Wisconsin Tax on Their Sales	5
X. New Law - Tax Exemptions for Printers	6


I. PREMIER RESORT AREA TAX RATES TO INCREASE FOR CITY OF WISCONSIN DELLS AND VILLAGE OF LAKE DELTON

Effective July 1, 2014, the premier resort area tax rates for the City of Wisconsin Dells and the Village of Lake Delton are increasing from 1.0% to 1.25%. The authority to increase this tax was provided in 2013 Wis. Act 20. [↗](#)


II. WISCONSIN/MINNESOTA SALES TAX SEMINARS

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in April 2014. The seminars will provide an overview of Minnesota and Wisconsin sales and use tax laws for companies that do business in both states. They are designed for business owners, bookkeepers, purchasing agents and accountants who need a working knowledge of each state's laws and how to meet their obligations. Topics covered will include:

- Who needs to register for sales and use taxes in Minnesota, Wisconsin, or both states
- What cities, counties, and other jurisdictions in each state have local taxes
- What's taxable in each state
- Exceptions to the general taxation rules and exemptions
- How and when to use or accept an exemption certificate

Seminar dates, times, and locations, as well as registration information, are available on the Wisconsin Department of Revenue's [Sales and Use Tax Training web page](#). 


III. ONLINE FILERS: DON'T FORGET COUNTY AND STADIUM TAXES

If you make sales in any of the counties that impose a county or stadium sales tax, you must complete Step 2 and/or Step 3 when filing your sales and use tax return using [My Tax Account](#). The department has found that users complete Step 1 reporting their state sales and use tax and then submit their return without completing Steps 2 and 3. 

IV. AIRCRAFT PURCHASED BY NONRESIDENTS

Although Wisconsin use tax applies to property that is stored, used, or consumed in Wisconsin, an aircraft that is purchased in another state is exempt from Wisconsin use tax if the owner or lessee paid all of the sales and use taxes imposed in the state in which it was purchased and if the owner or lessee is:

- A. A corporation - Exemption applies if that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has 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 Wisconsin at the time the aircraft is registered in Wisconsin.
- B. A partnership - Exemption applies if all of the corporate partners fulfill the requirements in A., above, and none of the general partners and none of the limited partners who have management or control responsibilities are domiciled in Wisconsin and the partnership has no other tangible personal property and no real property (except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft) in Wisconsin at the time the aircraft is registered in Wisconsin.
- C. A limited liability company - Exemption applies if all of the corporate members fulfill the requirements in A., above, and none of the managers and none of the members who have management or control responsibilities are domiciled in Wisconsin and the limited liability company has no other tangible personal property and no real property (except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft) in Wisconsin at the time the aircraft is registered in Wisconsin.
- D. An individual - Exemption applies if the owner or lessee is not domiciled in Wisconsin.
- E. An estate, a trust, a cooperative, or an unincorporated cooperative association - Exemption applies if that estate, that trust and its grantor or that cooperative or association 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 Wisconsin at the time the aircraft is registered in Wisconsin.

NOTE: For corporations, trusts, partnerships, and limited liability companies, the information above assumes the purchasing entity was not formed to qualify for this exemption. 

V. ALTERNATIVE ENERGY PRODUCING PRODUCTS

Alternative energy producing products are exempt from sales and use tax if they convert wind, solar radiation, or gas produced from the digestion of animal manure and other agricultural wastes into alternating current electricity or heat.

Alternative energy producing products include the following:

- Wind turbine generators, including blade assembly and tower
- Gas turbine generators, including the gas turbine
- Gas fueled furnaces, space heaters, and water heaters
- Photovoltaic cells, modules and arrays, including tracking equipment that maintains optimal orientation to the sun
- Solar thermal collectors

Products or devices must be capable of producing at least 200 watts of alternating current or 600 British thermal units per day. The exemption does not apply to uninterruptible power sources that are designed primarily for computers.

Additional information for "wind, solar, and certain gas powered products" is provided in sec. [Tax 11.10](#), Wis. Adm. Code (July 2012 Register). [☞](#)

VI. 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 product 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. [↗](#)

VII. TAKE AND BAKE PIZZA

The department was recently asked to provide guidance as to whether the sale of take and bake pizzas are subject to Wisconsin sales tax. In general, sales of food and food ingredients are not taxable, however, sales of the following food and food ingredients are taxable:

- candy
- soft drinks
- dietary supplements
- prepared food

Sales of take and bake pizzas made by a retailer are subject to Wisconsin sales tax because the pizzas are prepared food. Prepared food includes two or more food ingredients mixed or combined by a retailer for sale as a single item.

Exceptions: Sales of the following take and bake pizzas made by a retailer may not be considered prepared food and, therefore, may not be taxable (see the flowchart in Appendix I of [Publication 220, Grocers](#), for more information):

1. Pizzas sold unheated by volume or weight.
2. Pizzas, no part of which was previously heated by the retailer, that are sold unheated, contain meat, fish, egg, or poultry in raw form, and that require cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its food code to prevent food borne illnesses.

The full definition of "prepared food" is found in sec. [77.51\(10m\)](#), Wis. Stats. (2011-12) and described further in sec. [Tax 11.51\(4\)](#), Wis. Adm. Code (August 2012 Register). [↗](#)

VIII. VIRTUAL CURRENCY

"Virtual currency" is a form of currency or medium of exchange that is electronically created and stored. It is defined by the U.S. Department of Treasury as "a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency." While


real paper money and coins are legal tender, virtual currency does not have the status as legal tender. Some other names for virtual currency are virtual money, digital money, and cryptocurrency.

While virtual currency is used to purchase virtual goods within a variety of online communities, virtual currency may also be used to purchase physical goods and services. Some common virtual currencies are Bitcoin, Peercoin, Ripple, and Litecoin.

When a person purchases virtual currency, the virtual currency may be used as cash to make purchases from one or more retailers (e.g., social networking websites, online gaming and merchandise websites). Although there may be some limitations on where and on what the virtual currency can be spent, the virtual currency can be spent or redeemed similar to cash and gift certificates.

The sales price from the sale of the virtual currency is not taxable because the virtual currency represents an intangible right. When virtual currency is redeemed for a taxable product, the transaction is completed and the retailer's sales or use tax liability accrues at that time. The tax is computed on the value of the consideration received by the seller, measured in U.S. dollars as of the date that the virtual currency is received.

Note: If the sale of virtual currency represents the sale of a specific identifiable product or service that is subject to tax (such as an admission to an amusement event, digital music, or other digital good), the sale is taxable as the sale of the specific identifiable product.

Additional information about virtual currency is available on the Internal Revenue Service's website at www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance. 

IX. SELLERS USING DISTRIBUTION FACILITIES IN WISCONSIN ARE LIABLE FOR WISCONSIN TAX ON THEIR SALES

Businesses that sell products online, by mail order, or otherwise may contract with a distribution or fulfillment facility to store their products, ship their products to customers, and/or handle product returns. When the distribution or fulfillment facility is located in Wisconsin, sellers with products stored at the facility are engaged in business in Wisconsin. It does not matter that the sellers are located outside Wisconsin and do not have their own business location or employees in Wisconsin.

When a seller is engaged in business in Wisconsin, the seller is liable for Wisconsin sales or use tax on its sales of taxable products when the sales take place in Wisconsin (i.e., products are shipped to locations in Wisconsin). The seller is liable for tax on sales that take place in Wisconsin, regardless of whether a product is shipped from the Wisconsin facility or from another facility which may be located outside Wisconsin. In addition, the seller is liable without regard to whether the distribution or fulfillment facility lists the seller's products on its website and/or collects payments on behalf of the seller.

When a distribution or fulfillment facility is responsible for collecting payments from the seller's customers, the seller may request the distribution or fulfillment facility to collect the sales or use tax on the seller's behalf. In some cases, the distribution or fulfillment facility may also be liable for the tax, but this does not relieve the seller of its liability to remit the tax. When more than one party is liable for the tax, the liability for the tax is extinguished for both parties when either party remits the tax to the department.

Sellers may apply electronically for a Wisconsin seller's permit using the department's online [Business Tax Registration](#) application. A seller may also apply by completing [Form BTR-101, Application for Business Tax Registration](#), and mailing their completed application to the Department of Revenue. [↗](#)

X. NEW LAW – TAX EXEMPTIONS FOR PRINTERS

(2013 Act 145, amending sec. 77.54(61), as created by 2013 Act 20, and creating sec. 77.54(61)(c), both effective retroactively to October 1, 2013.)

Effective retroactively to October 1, 2013, the following sales and use tax exemptions apply to purchases by a person primarily engaged in, as determined by the Department of Revenue: (a) commercial printing as described under code 323111 of the North American Industry Classification System (NAICS); (b) book printing as described under code 323117 of the NAICS; or (c) support activities for printing as described under code 323120 of the NAICS:

- (1) Purchases of 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 pre-press or postpress activities.
 - "Primarily" means more than 50%.
 - "Prepress activities" include making print-ready plates, typesetting, trade binding, and sample mounting.
 - "Postpress activities" include paper bronzing, die-cutting, edging, embossing, folding, gilding, gluing, and indexing.
- (2) Purchases from out-of-state sellers of tangible personal property that are temporarily stored, remain idle, and not used in Wisconsin and that are then delivered and used solely outside Wisconsin. "Temporarily" means not more than 180 days.

NOTE: Wisconsin [Sales and Use Tax Report 2-13](#) (September 2013) Part V.B., provides eight examples of the application of sec. 77.54(61), Wis. Stats., as created by 2013 Act 20. These examples are not affected by 2013 Act 145 (i.e., the examples are still valid). [↗](#)

REGARDING NEW TAX LAWS

This *Sales and Use Tax Report* reflects new law changes as of March 28, 2014. Other sales and use tax law changes may be adopted in the current legislative session.