



TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

DECEMBER 1971

RETAILER'S DISCOUNT REDUCED TO 1%

A recent change in the Sales Tax Law has reduced the retailer's discount from 2% to 1% of the sales and use tax paid. For reporting sales and use tax, retailers may deduct 1% of the total sales and use tax paid or payable on or after January 1, 1972, provided the payment of such taxes is not delinquent.

Retailers should note that the new 1% discount applies to all returns for tax reporting periods ending on December 31, 1971, which returns must be filed by January 31, 1972.

PURCHASES FOR USE AND RENTAL

If tangible personal property is purchased by a person who uses such property part of the time and rents it out to others part of the time, the sale of such property to the purchaser is subject to the 4% tax. The rental receipts of the purchaser-lessee are also taxable unless a specific exemption applies.

SEMEN IS NOW EXEMPT

Chapter 64, Laws of 1971, effective July 22, 1971 added an exemption to the Sales Tax Law for "The gross receipts from the sale of semen used for artificial insemination of livestock". The artificial insemination of exempt farm animals had not been subject to the tax, but the sale of semen to the farmer or other person providing the insemination service was taxable prior to July 22, 1971.

STAMPS AND COINS

The definition of "tangible personal property" under the 4% General Sales and Use Tax Law includes "coins and stamps of the United States sold or traded as collectors' items above their face value". Therefore, the sale by a dealer to a collector of cancelled stamps at any price, or of coins or uncanceled stamps at a price in excess of their face value is subject to the 4% tax based upon the total gross receipts from the sale.

REPOSSESSED PROPERTY

Finance companies, insurance companies, banks, and other such institutions which repossess tangible personal property and sell such repossessed property are required to have a Seller's Permit, unless the only tangible personal property they repossess and sell is motor vehicles.

The repossession of the tangible personal property for resale is not a taxable transaction, but the retail sale of such property by the repossessing institution is a taxable transfer.

LEASED DEPARTMENTS

Where a retailer has leased certain departments in his place of business to other persons for the selling of tangible personal property or taxable services to consumers, each such leased department is required to secure a seller's permit as a retailer,

and is responsible for the filing of returns and payment of the tax due. The permit shall at all times be conspicuously displayed at the place of business for which it is issued, pursuant to Section 77.52(9) of the Wisconsin Statutes.

If the retailer leasing such departments keeps the books for the leased departments and makes collections on account of their sales, the lessor may, as agent for the lessee, make the required separate returns for such departments, and pay the taxes due; but the lessee shall not be relieved of his tax liability in case the lessor fails to make the proper returns or fails to pay taxes due.

IMPORT TAX SURCHARGE

The President's new economic program includes an import tax surcharge on most imported goods. The importer who pays the tax may pass the tax along to the Wisconsin consumer as a separately billed item.

The Wisconsin Sales Tax Law provides that the retailer's gross receipts or sales price subject to the 4% tax cannot be reduced by the importers' excise tax included in or added to the purchase price. The amount of the import tax surcharge included in or added to the sale price is subject to the 4% tax whether separately itemized or not.

CLEANING TANGIBLE PERSONAL PROPERTY

The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all items of tangible personal property are taxable under the law. Accordingly, the gross receipts of coin-operated machines that shine shoes, or clean and shine bowling balls or other tangible personal property are subject to the 4% tax.

VENDOR'S SALES OF FOODS AND BEVERAGES

The gross receipts from sales of tangible property (except cigarettes) through vending machines are taxable, including all receipts from the sales of food, food products and beverages sold for consumption on the "premises" in which the vending machine is located. "Premises" is broadly defined in the law, and includes the room or area in which a vending machine is located. Under the law, it is presumed that all of a retailer's gross receipts are subject to the tax unless the contrary is established. Therefore, the vendor's receipts from sales of food, food products, and beverages are deemed to be for on-premise consumption and taxable, unless he has records to show which portion of his sales are made for off-premise consumption and involve food which could be treated as exempt food.

RESALE CERTIFICATES

1. Resale certificates, if taken in good faith and if complete and properly executed, are an aid to sellers in proving that a sale of tangible personal property or taxable service is not a sale at retail. Sellers should exercise caution when accepting resale certificates. As required by the law, the resale certificate:

- a. Shall be signed by and bear the name and address of the purchaser.
- b. Shall indicate the general character of the tangible personal property or service sold by the purchaser.
- c. Shall contain a general description of the property purchased for resale, if a "Continuous" resale certificate is used; for a "Single Purchase" certificate, an itemization of the property purchased is necessary.
- d. Shall indicate the Seller's Permit number held by the purchaser, except that:
 - (1) A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a Seller's Permit number; or
 - (2) A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to him by that state . . .
- e. Must be accepted in good faith (see below).

If all of these conditions are met, the seller is relieved from the burden of proving that the sale of tangible personal property or taxable services was not a taxable sale at retail.

2. A resale certificate also should indicate the general character of the purchaser's business, for the protection of the seller, since it enables him to determine whether he should sell a particular article without collecting the tax. If the nature of the business described is such that the property purchased normally would not be resold, the

seller should question the purchaser's reason for issuing the certificate. For example, a "Continuous" resale certificate describing the business as a "tavern" should not be accepted for the sale of a radio, camera, auto part, or similar item not regularly sold by taverns.

3. The resale certificate must be accepted in "good faith". This means that if the resale certificate does not meet the tests prescribed in the preceding paragraphs, or if the seller has knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property, the seller should not accept the certificate.
4. A resale certificate may be issued 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. For example, some construction contractors who also sell construction supplies through retail shops do not know when they purchase such supplies whether they will be consumed in construction contracts or resold to others. In such instances there are two courses open to the construction contractor at the time he make his purchases.

- a. He can give a resale certificate to his supplier. Thereafter, if he resells the items, he pays sales tax on the sales price to his customers. If he uses the items in fulfillment of his construction contracts, he pays a use tax on his purchase price of the items.

- b. He can pay sales tax to his supplier on all items. Then, as to the items he consumes in construction contracts he has his tax obligation taken care of. As to the items he resells at retail, he owes a sales tax on such retail sale but may take as a credit against such sales tax, the tax he previously paid to his supplier. The credit is claimed by entering the purchase price (excluding sales tax paid) under "Tax Paid Purchases Resold Before Use" in the deductions section of the sales tax return (Form ST-12).