



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

MARCH 1973

COUPONS ISSUED BY MANUFACTURERS

Manufacturers frequently distribute coupons to consumers through the mail which may be redeemable for taxable merchandise (e.g. soap, paper products, etc.) or which may be used to purchase such merchandise at a stated amount less than the sales price at any retail store. The transfer of a bar of "free" soap or "discounted" soap to a customer by a retailer in exchange for a coupon issued by the soap manufacturer is considered a sale. The consideration for the sale upon which the sales tax is imposed is the amount the manufacturer reimburses the retailer plus the amount (if any) that the consumer pays when redeeming the coupon. This consideration constitutes taxable gross receipts of the retailer.

PRESCRIPTION MEDICINES AND INSULIN

The Sales Tax Law has an exemption for medicines prescribed for the treatment of a human being by a person authorized to prescribe the medicine, and dispensed on prescription filled by a registered pharmacist. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician also qualifies for the exemption. Needles, testing materials, etc. purchased by diabetics are taxable.

INDUSTRIAL GASES USED BY MANUFACTURERS

Industrial gases purchased by a manufacturer for use as a fuel are subject to the 4% tax. This includes a manufacturer's purchase of oxygen, acetylene, or other gases for use as a fuel in welding torches. However, shielding gases which do not burn or provide a source of power are exempt, when consumed or destroyed by a manufacturer in the manufacture of tangible personal property destined for sale. Even though the purchase of the gas may be exempt, the charge (sometimes called "demurrage") by the gas supplier for retention by the customer of gas cylinders is subject to the 4% tax.

LITTER OR BEDDING USED BY FARMERS

Sales of sawdust, wood chips, or commercially prepared litter or animal bedding materials are subject to the 4% tax. The law does not provide an exemption for the sale of these items to farmers.

LEASING MOTEL PERSONAL PROPERTY WITH REALTY

We find that the person who owns a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not

indicate the amount of the lease receipts derived from unaffixed personal property as opposed to the realty, the taxable receipts may be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in personal property on the effective date of the lease to his total gross investment in real and personal property on the same date. This ratio will apply until such time as a change is made in the assets being leased, which change results in a new or amended lease agreement between the lessor and lessee.

CONSTRUCTING BUILDINGS FOR EXEMPT ENTITIES (Government, Schools, Churches, etc.)

As a result of numerous inquiries from construction contractors and other interested parties, this department recently issued Technical Information Memorandum S-53 which pertains to real property construction activities performed by contractors for exempt entities. That memorandum is reproduced below.

"The sales tax exemption provided under the law for exempt entities does not extend to building materials purchased by a contractor or subcontractor under an agreement to alter, repair or improve real estate for an exempt entity. Where an exempt entity has entered into a construction contract which includes building materials, deliveries of materials to the contractor are presumed to be pursuant to purchases by him even though the exempt entity arranges to pay for the supplies directly and gives the contractor credit against the contract price.

It is possible for an exempt entity directly to purchase building materials used to construct a building without tax, and then employ a contractor to provide labor to construct the building, provided (1) the exempt entity gives the supplier its signed purchase order and pays for the materials with its own funds, (2) the contract is for labor only, (3) all incidents of ownership to the building materials purchased directly by the exempt entity remain in the exempt entity at all times, (4) the contractor bears no responsibility for inherent defects in the building materials, (5) the contractor bears no risk of loss of any of the building materials (in the event that the contract in question does not specify the risk of loss, it shall be presumed the contractor is assuming such risk), (6) the invitation for bids and the contractors' bids did not provide that the contractor was to furnish any building materials and (7) the contractor does not realize an income or discount, direct or indirect, on the sale of the materials by the supplier to the exempt entity.

In some instances, the exempt entity, in addition to contracting with a contractor for the erection of a building or the alteration or repair of real estate, appoints and designates the contractor as "purchasing agent" for such exempt entity in connection with the construction contract. In such situations, the department generally does not recognize the agency relationship asserted, especially if any one of the seven conditions set forth above is not met.

Contractors should be aware that the assertion that a particular sale of building materials was made directly to an exempt entity will be closely scrutinized by this department. If a review of the bids, contracts, and all the surrounding circumstances indicates substance has been subverted by form, appropriate tax assessments, including interest and penalties provided by law, will be issued."

COIN-OPERATED VENDING MACHINES AND AMUSEMENT DEVICES

This department recently issued Technical Information Memorandum S-54 which relates to the status of coin-operated machine operators under the Sales and Use Tax Law. The text of that memorandum is shown below.

1. Seller's Permits

- a. Operators of vending machines or devices dispensing tangible personal property, or services, which are subject to the 4% sales tax are required to hold a Seller's Permit to engage in such business activity. One permit is sufficient for all the machines of each operator.
- b. A notice must be affixed to each coin-operated machine showing the name and address of the operator and his Seller's Permit number.
- c. As used in this memorandum, "operator" means the person who owns the property sold through the machine, has the right of access into the machine to stock the machine and remove the gross receipts, and who, in general, has control over the machine and its contents. "Operator" also means the person who is responsible for providing laundry, dry cleaning, photographic, photocopy, or other services through vending machines.

2. Taxable Receipts Include:

- a. Receipts from machines dispensing tangible personal property, including, but not limited to: chewing gum, candy, peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, handkerchiefs, combs, and hygienic products; and receipts from sales of fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption.

The total gross receipts from the sale of food and beverages through vending machines are presumed to be derived from on-premise consumption and taxable, unless the operator has records to show which portion of his sales are made for off-premise consumption and involve exempt food.

- b. Receipts from coin-operated machines which result from the license to use or rental of personal property or provide a taxable service, including, but not limited to: hair drying machines, shoe shine machines and bowling ball cleaning machines.
- c. Receipts from coin-operated amusement devices including, but not limited to: juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

3. Non-Taxable Receipts Include:

- a. Receipts from laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated self-service machines.
- b. Receipts from coin-operated storage lockers, lavatories, and scales.
- c. Receipts from sales of cigarettes.

4. Reporting and Record Keeping

- a. The total gross receipts of operators of vending machines and amusement devices are subject to the 4% sales tax. This includes, for example, receipts from sales of one, five, ten and twelve cent items, as well as sales of higher priced items. No deduction is permitted for the cost of the property sold, materials used, labor or service cost, or any other expense including commissions paid to place machines in someone else's establishment.
- b. Sales tax collected from customers may be deducted from gross receipts, before computing the 4% tax, provided the customers are advised of the amount of sales tax they are paying by a sign posted on the machine.
- c. Adequate and complete records must be kept by each machine operator including: (1) the location or locations of each machine (2) the serial number of each machine (3) purchases and inventories of all merchandise bought for sale through the machines (4) receipts from sales of exempt merchandise (5) purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user of consumer; for example, a vending machine or juke box, including repairs and parts therefor, and recordings used in the juke box.

5. Sale, Lease or Rental of Machines

- a. The receipts from the sale, lease, rental or license to use coin-operated machines, and from attachments, parts and supplies therefor, are subject to the 4% sales tax. This would include sales made to persons providing a service, such as laundry and dry cleaning service. If the machines, parts, attachments or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser is required to report and remit a 4% use tax directly to the Department of Revenue.
- b. Machines purchased exclusively for rental to others may be purchased by the lessor without payment of tax if the lessor issues a Resale Certificate to his supplier. If the lessor intends to make any use of the machines other than rental, a Resale Certificate cannot be used, and the sale of the machines to him is taxable to his supplier. In either event, the lessor's rental receipts are taxable.