

SALES AND USE TAX REPORT

The Sales and Use Tax Reports are no longer being printed. The Sales and Use Tax Reports will continue to be available electronically on the Department of Revenue’s web site. Don’t miss an issue!

- Subscribe **now** to the sales and use tax electronic mailing list to receive notification when a new *Sales and Use Tax Report* is available at www.revenue.wi.gov/html/lists.html.
- View all *Sales and Use Tax Reports* at www.revenue.wi.gov/ise/sales/index.html.

In This Issue

	Page
I. Reminder - Fond du Lac County Tax Becomes Effective April 1, 2010	1
II. Local Food and Beverage Tax Rate Increase to 0.5%	1
III. Retailers Who Were Not Previously Required to Register for the Local Food and Beverage Tax May Now be Required to Register	1
IV. Change in Items Subject to Local Food and Beverage Tax	2
V. Products Purchased Prior to October 1, 2009 That No Longer Qualify For Exemption Because of Changes in Definitions - Use Tax Not Due	4
VI. Drop Shipment Sales – Change in Wisconsin Sales and Use Tax Treatment	5
VII. Sales to Restaurant Employees	5
VIII. Sales of Food and Food Ingredients by Hospitals and Other Facilities	5
IX. All Registered Retailers Must Collect Sales and Use Taxes For All Wisconsin Counties and Stadium Districts	6

I. REMINDER – FOND DU LAC COUNTY TAX BECOMES EFFECTIVE APRIL 1, 2010

Beginning April 1, 2010, the 0.5% county tax will be in effect in Fond du Lac County.

Please see *Sales and Use Tax Report* [5-09](#) (December 2009) for additional information.

II. LOCAL FOOD AND BEVERAGE TAX RATE INCREASE TO 0.5%

Effective July 1, 2010, the 0.25% local food and beverage tax will be increased to 0.5%. This increase is a result of the Wisconsin Center District exercising its authority to increase the rate, as provided in sec. 77.981, Wis. Stats., (2007-08), as amended effective October 1, 2009 by 2009 Wis. Act 2.

III. RETAILERS WHO WERE NOT PREVIOUSLY REQUIRED TO REGISTER FOR THE LOCAL FOOD AND BEVERAGE TAX MAY NOW BE REQUIRED TO REGISTER

Many retailers who were not previously required to register to collect and remit the local food and beverage tax may now be required to do so. Examples of retailers who are now required to register are as follows (not all-inclusive):

Retailers Shipping Taxable Items to Locations in Milwaukee County

Prior to October 1, 2009, only sellers who were “engaged in business” in Milwaukee County were subject to the local exposition taxes. **Effective October 1, 2009 and thereafter**, every person selling lodging, certain food or beverages, or who is primarily engaged in the short-term rental of passenger automobiles is subject to the local ex-

position taxes if the sale or rental takes place in Milwaukee County, regardless of whether the person is “engaged in business” in Milwaukee County.

Example: Company A, located in Madison sells candy to Customer B located in Milwaukee County. Company A is not “engaged in business” in Milwaukee County. Company A ships the candy to Customer B via the United States Postal Service to Customer B’s location in Milwaukee County. Company A is required to collect and remit the 0.25% (0.5%, effective July 1, 2010) local food and beverage tax on this sale.

Retailers That Have More Than \$1,000 in Taxable Sales Subject to the Local Food and Beverage Tax

Retailers selling food and beverages subject to the food and beverage tax are exempt from the tax if their liability for the tax on such food and beverages is less than \$5 for the taxable year.

Effective July 1, 2010, the local food and beverage tax increases from 0.25% to 0.5%. Consequently, the exemption for an annual tax liability less than \$5 only applies to persons with less than \$1,000 of sales subject to the local food and beverage tax. Prior to July 1, 2010, the exemption for an annual tax liability less than \$5 applies to persons with less than \$2,000 of sales subject to the local food and beverage tax.

[Publication 410](#), *Local Exposition Taxes*, has been revised to reflect these changes and provides numerous examples to illustrate the changes.

IV. CHANGE IN ITEMS SUBJECT TO LOCAL FOOD AND BEVERAGE TAX

Effective October 1, 2009, the local food and beverage tax applies to sales of candy,* soft drinks,* and prepared food* that take place in Milwaukee County.

Prior to October 1, 2009, the local food and beverage tax applied to the following sales that took place in Milwaukee County:

1. The sale of meals, food, food products, and beverages sold for direct consumption on the seller’s premises, and
2. The sale of the following items for off-premises consumption (including sales from vending machines):
 - a. Meals and sandwiches, whether heated or not;
 - b. Heated food or heated beverages;
 - c. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas; and
 - d. Candy, chewing gum, lozenges, popcorn, and confections.

*The definitions of "candy," "soft drink," and "prepared food" are provided in sec. Tax 11.51(3)(a), (3)(d), and (4), Wis. Adm. Code, as amended by [EmR0924](#), respectively. Please see pages 103-107 of this Emergency Rule Order.

When the emergency rule becomes a permanent rule, the rule, in its entirety, will be available from the Wisconsin State Legislature’s web site at www.legis.wi.gov/.

The following examples illustrate some of the changes that were effective on October 1, 2009 (this list is not all-inclusive). For purposes of the following examples, the retailers’ sales of "prepared food" at the establishment are not greater than 75% of its total sales of all food and food ingredients at the establishment and, unless indicated, the retailer does not physically give or hand utensils to its customers.

- Prior to October 1, 2009, sales of soft drinks sold in cans or bottles for off-premises consumption were not subject to the local food and beverage tax. **Effective October 1, 2009, sales of soft drinks are subject to the local food and beverage tax, regardless of whether the soft drinks are sold from a dispenser, or sold in cans or bottles, and regardless of whether sold for consumption on or off the seller’s premises.**

Example: Grocery Store A in Milwaukee County sells individual cans and bottles of soda, as well as six-packs, 12-packs, and cases of soda for off-premises consumption. Customers select the soda they wish to purchase from shelves of refrigerated display cases. Grocery Store A's sales of the soda are subject to the local food and beverage tax. (Prior to October 1, 2009, sales of soda from a dispenser were subject to the local food and beverage tax, but sales of soda in cans and bottles were not subject to the local food and beverage tax.)

Prior to October 1, 2009, sales of items such as ice cream bars, ice cream sandwiches, and popsicles were subject to the local food and beverage tax as candy or confections. Effective October 1, 2009, sales of items such as ice cream bars, ice cream sandwiches, and popsicles are not taxable, unless they meet the definition of "prepared food." The reason these types of items are not taxable is because the definition of "candy" excludes items that require refrigeration.

Example 1: Grocery Store B in Milwaukee County sells ice cream cones, ice cream bars, and sundaes in its frozen food section. Sales of these items are not subject to the local food and beverage tax. (Prior to October 1, 2009, sales of frozen confections were subject to the local food and beverage tax.)

Example 2: Ice Cream Shop C in Milwaukee County sells ice cream sundaes for \$5.75 each. When the customer orders a sundae, Ice Cream Shop C scoops the ice cream into a dish, adds topping (e.g., hot fudge) and whipped cream, and provides the customer with a spoon. Ice Cream Shop C's sales of the sundaes are subject to the local food and beverage tax, since the sundaes that Ice Cream Shop C is selling meet the definition of "prepared food" (i.e., each sundae consists of two or more items combined by the retailer for sale as a single item and the sundae is served with utensils). (Prior to October 1, 2009, the sales of the sundaes were also subject to the local food and beverage tax.)

- Prior to October 1, 2009, sales of meals and sandwiches were subject to the local food and beverage tax. Effective October 1, 2009, sales of meals and sandwiches that are not prepared by the retailer are not taxable, unless they meet the definition of "prepared food" (for example, sold in a heated condition or sold with utensils).

Example 1: Deli D in Milwaukee County sells sandwiches that it purchases from Wholesaler E. Sales of these sandwiches are not subject to the local food and beverage tax, unless Deli D sells the sandwiches in a heated condition or provides utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws, with the sandwiches (i.e., the sandwiches are only subject to the local food and beverage tax if they are "prepared food"). (Prior to October 1, 2009, sales of sandwiches were subject to the local food and beverage tax.)

Example 2: Deli F in Milwaukee County makes and sells sandwiches for \$5.00 each. Sales of the sandwiches that Deli F makes and sells are subject to the local food and beverage tax, since the sandwiches are "prepared foods." (Prior to October 1, 2009, sales of sandwiches were also subject to the local food and beverage tax.)

Example 3: Deli F in Milwaukee County makes and sells unheated sandwiches for \$5 per pound. Sales of the sandwiches that Deli F makes and sells are not subject to the local food and beverage tax, since the sandwiches are sold by volume or weight. Sales of unheated items that are sold by volume or weight are not "prepared foods." (Prior to October 1, 2009, sales of sandwiches were subject to the local food and beverage tax, regardless of whether sold by weight or volume or otherwise.)

- Prior to October 1, 2009, food and beverages that were sold for consumption on the seller's premises were subject to the local food and beverage tax. Effective October 1, 2009, candy, soft drinks, and prepared foods are

subject to the local food and beverage tax, without regard to whether such items are for consumption on or off the seller's premises.

Example 1: Bakery G in Milwaukee County sells bakery items and coffee and has a seating area where its customers may eat. Bakery G's sells Customer H a cup of hot coffee and two donuts that are not sold heated, which Customer H consumes at the seating area. Bakery G's sale of the coffee is subject to the local food and beverage tax (i.e., the coffee is served in a heated condition and is a "prepared food"). Bakery G's sale of the donuts is not subject to the local food and beverage tax (i.e., the donuts are not "prepared food"). (Prior to October 1, 2009, the sale of both the coffee and donuts was subject to the local food and beverage tax, since the coffee and donuts were consumed on the seller's premises.)

[Publication 410](#), *Local Exposition Taxes*, has been revised to reflect these changes and provides numerous examples to illustrate the changes.

V. PRODUCTS PURCHASED PRIOR TO OCTOBER 1, 2009 THAT NO LONGER QUALIFY FOR EXEMPTION BECAUSE OF CHANGES IN DEFINITIONS - USE TAX NOT DUE

The legislation conforming Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA) contained numerous changes in how certain terms were defined and what was or was not included within a particular definition. As a result of the adoption of these new definitions, sales of various products that qualified for an exemption from Wisconsin sales and use tax prior to October 1, 2009, will no longer qualify for exemption on and after October 1, 2009. For example, bottles of sweetened tea were not subject to Wisconsin sales or use tax prior to October 1, 2009, but with the adoption of the new definition of "soft drink" in sec. 77.51(17w), Wis. Stats., as created by 2009 Wis. Act 2, sales of bottles of sweetened tea are taxable on and after October 1, 2009.

A person who purchased an item prior to October 1, 2009 that qualified for exemption from Wisconsin sales and use tax at that time because it fell within the definition of a particular exempt item and who subsequently stores, uses, or consumes the item in Wisconsin on or after October 1, 2009 when the "new" definition (i.e., a definition that no longer includes the item) applies, will not owe Wisconsin sales or use tax on the subsequent storage, use, or consumption of that item in Wisconsin.

Example:

- Individual A purchases a case of a sweetened tea beverage prior to October 1, 2009.
- The purchase of the sweetened tea was not subject to tax prior to October 1, 2009 because it was a "tea."
- Effective October 1, 2009, a purchase of that same tea is subject to Wisconsin sales and use tax because it meets the definition of a "soft drink."
- Individual A did not drink any of the tea prior to October 1, 2009. Individual A continued to store the tea in Wisconsin after October 1, 2009 and drank it (used or consumed it) in Wisconsin after October 1, 2009.

Question: Is Individual A's purchase of the "tea" subject to Wisconsin use tax since it is stored, used, or consumed in Wisconsin on or after October 1, 2009?

Answer: No. Since Individual A purchased the tea prior to October 1, 2009, at which time the tea qualified for exemption from Wisconsin sales and use tax, the subsequent change in the definition of "soft drink" (which on and after October 1, 2009 includes this sweetened tea), does not subject the original purchase price of the sweetened tea to Wisconsin sales or use tax.

VI. DROP SHIPMENT SALES - CHANGE IN WISCONSIN SALES AND USE TAX TREATMENT

Effective October 1, 2009, a manufacturer or other seller may accept an exemption certificate claiming resale from an out-of-state purchaser even when the manufacturer or other seller is directed to ship the product to a consumer in Wisconsin and the out-of-state purchaser does not have a Wisconsin seller's permit or Wisconsin use tax registration certificate.

Prior to October 1, 2009, a manufacturer or other seller could not have accepted an exemption certificate claiming resale from an out-of-state business not holding a Wisconsin seller's permit or use tax certificate, if the manufacturer or other seller delivered the product to a consumer in Wisconsin. (Section 77.51(14)(d), Wis. Stats. (2007-08), repealed effective October 1, 2009 by 2009 Wis. Act 2.)

Section 77.51(14)(d), Wis. Stats., was repealed as a part of the legislation necessary to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA).

Example: Seller A is located in Illinois and does not have a Wisconsin seller's permit or Wisconsin use tax registration certificate. Seller A receives an order from Customer C, who is located in Wisconsin. Seller A places an order for that equipment with Manufacturer B, located in Wisconsin, and directs Manufacturer B to deliver the equipment to Customer C's location in Wisconsin.

Prior to October 1, 2009: Manufacturer B was liable for Wisconsin tax on the equipment that it drop shipped to Customer C, based on the retail selling price of the sale of the equipment by Seller A to Customer C.

Effective October 1, 2009: Manufacturer B may accept a properly completed exemption certificate from Seller A claiming resale.

VII. SALES TO RESTAURANT EMPLOYEES

Effective October 1, 2009, a sales and use tax exemption is provided for sales of and the storage, use, or other consumption of candy, soft drinks, dietary supplements, and prepared foods, and disposable products that are transferred with such items, furnished *for no consideration* by a restaurant to the restaurant's employee during the employee's work hours. A restaurant's *sales* of such items are subject to tax. (Section 77.54(20r), Wis. Stats., as created effective October 1, 2009 by 2009 Wis. Act 2.)

Under prior law, certain food, food products, and beverages and disposable products that were transferred with such items were exempt from Wisconsin sales and use tax if the items were provided by a restaurant to the restaurant's employees during the employee's work hours, regardless of whether the restaurant sold the items to the employee or furnished the items to the employee for no consideration. (Section 77.54(20)(c)4m., Wis. Stats. (2007-08), repealed effective October 1, 2009 by 2009 Wis. Act 2.)

VIII. SALES OF FOOD AND FOOD INGREDIENTS BY HOSPITALS AND OTHER FACILITIES

Effective October 1, 2009, sales of food and food ingredients by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in sec. 50.01(lg), Wis. Stats., or day care centers registered under Chapter 48, Wis. Stats., are exempt from Wisconsin sales and use taxes, regardless of whether the food and food ingredients are served at the hospital, sanatorium, nursing home, retirement home, community-based residential facility, or day care center. "Mobile meals on wheels" sold to the elderly and handicapped continue to be exempt from tax. (Section 77.54(20n)(b), Wis. Stats., as created effective October 1, 2009 by 2009 Wis. Act 2.)

Note: This exemption does not apply to soft drinks and alcoholic beverages. Such sales are subject to tax.

Prior to October 1, 2009, the exemption applied only to meals, food, food products, and beverages that were sold by a hospital, sanatorium, nursing homes, retirement home, community-based residential facility as defined in sec. 50.01(1g), Wis. Stats., or day care center licensed under Chapter 48, Wis. Stats., **and served at** a hospital, sanatorium, nursing home, retirement home, community-based residential facility, or day care center. (Section 77.54(20)(c)4., Wis. Stats. (2007-08), repealed effective October 1, 2009 by 2009 Wis. Act 2.)

Under prior Wisconsin law, a retailer was only required to collect and remit the county and/or stadium sales and use taxes if the retailer was “engaged in business” in the applicable county and/or stadium district.

*For additional information about the new sourcing provisions, refer to sec. Tax 11.945, Wis. Adm. Code, as created by [EmR0924](#) (effective October 1, 2009). This emergency rule can be accessed on pages 186-190 of the Emergency Rule Order.

IX. ALL REGISTERED RETAILERS MUST COLLECT SALES AND USE TAXES FOR ALL WISCONSIN COUNTIES AND STADIUM DISTRICTS

Effective October 1, 2009, all retailers that are registered in Wisconsin to collect and remit the 5% Wisconsin state sales and use tax are also required to collect and remit the applicable county and stadium sales and use taxes for any sales that are sourced to (i.e., the sale takes place in*) a county or stadium district that has adopted the applicable county or stadium sales or use tax. This provision applies regardless of whether the retailer is “engaged in business” in the county or stadium district to which the sale is sourced. (Section 77.73 (3), Wis. Stats., as created by 2009 Wisconsin Act 2 and amended by 2009 Wisconsin Act 28.)

Example: Retailer A is located in La Crosse, Wisconsin in La Crosse County. Retailer A is not engaged in business in any county other than La Crosse County. Retailer A sells a taxable product to Customer B. Customer B is located in Madison, Wisconsin in Dane County. Retailer A sends the product in the mail to Customer B. Customer B receives the product at its location in Dane County. Retailer A is required to collect and remit both the Wisconsin state sales tax and the Dane County sales tax since the sale is sourced to Customer B’s location in Dane County, even though Retailer A is not “engaged in business” in Dane County.