



SALES AND USE TAX REPORT

July 2013
Issue 1-13

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New Sales and Use Tax Laws! The sales and use tax law changes that are contained in 2013 Act 20 are summarized in Part XI of this report, beginning on page 8.

Upcoming My Tax Account Webinar! See Part VII.

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I. SALES TAX – SALES OF APPLIANCES, INCLUDING "BUILT-IN" APPLIANCES

In order to determine the tax treatment of the sale of an appliance, the seller must first determine whether it is making a *real property improvement* or selling *tangible personal property*. Sales of *real property improvements* are not taxable, while sales of *tangible personal property* are taxable, unless an exemption applies.

Sales of Built-In Appliances

A "built-in" appliance is an appliance that is affixed to the real estate with the intention that it remain permanently with the building or home. An appliance that is direct-wired or connected to a natural gas line is not considered to be "built-in" solely because of this connection. Similarly, a refrigerator with an ice maker or water dispenser is not considered to be "built-in" solely because of its connection to the realty by a water line.

The tax treatment of the sale of a built-in appliance is dependent upon a number of factors:

1. Is it a built-in appliance that is permanently affixed in a residential facility?
 - Yes – Real property improvement
 - No – Tangible personal property

2. Is it built-in in a nonresidential facility?
 - Yes – Is the appliance used for a process or business function (for example, refrigerator in a restaurant)?
 - Yes – Tangible personal property
 - No – Real property improvement
 - No – Tangible personal property

The tax treatment of a real property improvement (RP) and tangible personal property (TPP) is provided in the chart at the end of this article, with examples of some common appliances.

Sales of Appliances Not "Built-In"

The sale of an appliance that is not "built-in," including charges for shipping or delivery, is subject to Wisconsin sales tax, since it is the sale of *tangible personal property*. The seller may purchase, without tax for resale, the appliance and all parts and materials that are physically transferred to the customer.

Repair or Other Service to Appliances

The repair of or other service to appliances is subject to Wisconsin sales or use tax. The law deems certain items, such as refrigerators, freezers, stoves, ovens, range hoods, dishwashers, to retain their character as tangible personal property for purposes of repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance. The service provider may purchase without tax, for resale, the repair parts that it physically transfers to its customer in the performance of such services.

Note: The tax treatment for repair and other service applies to appliances in both residential and non-residential buildings, regardless of whether the appliance was tangible personal property or a real property improvement when installed.

Chart to Determine Whether Appliances are Real Property (RP) or Tangible Personal Property (TPP)

The following chart provides the tax treatment of a retailer's sale of an appliance that is delivered and installed/set-up by the retailer.

RP – Sale is not taxable; seller/installer pays tax on its purchase of appliance and other materials

TPP – Sale is taxable, unless exemption applies; seller/installer may purchase without tax for resale the appliance and other property that is physically transferred to customer

<i>Item</i>	<i>Residential</i>	<i>Nonresidential – Serves a Business or Process Function</i>	<i>Nonresidential – Serves a Building Function (e.g., a dishwasher in an employee breakroom)</i>
Dishwasher (Built-in)	RP	TPP	RP
Dishwasher (Portable or Freestanding)	TPP	TPP	TPP
Range (Freestanding)	TPP	TPP	TPP
Oven (Built-in)	RP	TPP	RP
Slide-in Range	TPP	TPP	TPP
Stovetop (Built into countertop)	RP	TPP	RP
Range Hood	RP	TPP	RP
Warming Drawer	RP	TPP	RP
Microwave Drawer	RP	TPP	RP
Over-the-range microwave	RP	TPP	RP
Microwave (Freestanding)	TPP	TPP	TPP
Microwave (Built into cabinet)	RP	TPP	RP
Refrigerator (Built-in)	RP	TPP	RP
Refrigerator (Freestanding)	TPP	TPP	TPP
Wine cooler (Built into cabinet)	RP	TPP	RP
Ice maker (Built into cabinet)	RP	TPP	RP



II. NON-MOTORIZED CAMPERS PURCHASED BY NONRESIDENTS

A Wisconsin retailer is required to collect the Wisconsin 5% state sales tax if the nonresident takes possession of the camper in Wisconsin. There is no Wisconsin sales tax exemption that applies to an individual's purchase of the non-motorized camper. The retailer is also required to collect the applicable 0.5% county, 0.5% football stadium, and 0.1% baseball stadium taxes.

An individual is not required to collect the Wisconsin state, county or stadium taxes when selling his/her personal camper. The nonresident owes the applicable Wisconsin state, county, or stadium use taxes if the camper is first stored or used in Wisconsin.

How to determine what Wisconsin state, county and stadium taxes apply is explained in the article titled "Non-Motorized Campers Purchased by Nonresidents of Wisconsin," which was published in [Wisconsin Tax Bulletin #179](#) (April 2013). [☞](#)

III. TAX RELEASE ON INSPECTION SERVICES

The service of inspecting tangible personal property or items, property, or goods under [sec. 77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2011-12), is generally subject to tax. "Inspection" means determining whether tangible personal property or an item, property, or good is functioning properly or is in need of repair, service, alteration, fitting, cleaning, painting, coating, towing, or maintenance.

A tax release titled "Inspection Services" was published in [Wisconsin Tax Bulletin #179](#) (April 2013) that explains when a service is taxable as an inspection service. Examples are provided. [☞](#)

IV. LIMOUSINE FEE

Limousine service, which includes the use of a limousine with a driver, is a transportation service that is not subject to Wisconsin sales or use tax. However, a 5% limousine fee is imposed on the charge for providing a limousine with a driver in Wisconsin.

The article titled "[Limousine Fee](#)" explains the following, with examples:

- What types of vehicles are subject to the limousine fee?
- When is the service provided in Wisconsin?
- When is limousine service provided on an hourly basis?
- What charges are subject to the limousine fee?
- Are there exemptions that apply to the limousine fee? [☞](#)

V. CREDIT CARD "SWIPE" FEES

Beginning January 27, 2013, a retailer may charge a "swipe" fee to a customer using certain credit cards for payment.

If the product or service being sold is taxable and the retailer chooses to charge a "swipe" fee, sales or use tax applies to the total amount charged by the retailer for the product or service, which includes the "swipe" fee charged.

Example: Individual purchases a new television for \$599 at Retailer's store. Individual pays using a credit card. Retailer charges Individual a 2% "swipe" fee on the \$599 selling price. Retailer's taxable receipts from the sale of the television are computed as follows:

Selling price of television	\$599.00
"Swipe" fee charged by Retailer (\$599 X .02)	<u>11.98</u>
Taxable receipts	<u>\$610.98</u>

If the credit card is being used to pay for both taxable and nontaxable products or services, the retailer may allocate the "swipe" fee between the taxable and nontaxable purchases. In this case, the sales tax applies to the total amount charged for the taxable products or services, which includes the "swipe" fee charged on the taxable products or services.

Example: Individual goes to Grocery Store and purchases exempt food items in the amount of \$65 and taxable items in the amount of \$28. Individual pays using a credit card. Grocery Store charges Individual a 2% "swipe" fee on the \$93 total selling price. Grocery Store's taxable receipts are determined as follows:

Selling price of taxable items	\$ 28.00
"Swipe" fee on taxable items (\$28 X .02)	<u>.56</u>
Taxable receipts	<u>\$ 28.56</u> 

VI. REMINDER – NEW EXEMPTIONS EFFECTIVE ON JULY 1, 2013

Two sales and use tax exemptions were created by 2011 Wis. Act 32, effective on July 1, 2013:

A. Snowmaking and Snow-Grooming Machines and Equipment

The exemption applies to the sale or purchase of snowmaking and snow-grooming machines and equipment, including accessories, attachments, and parts for the machines and equipment and the fuel and electricity used to operate such machines and equipment, that are used exclusively and directly for snowmaking and snow grooming at ski hills, ski slopes, and ski trails. ([Section 77.54\(58\)](#), Wis. Stats.)

B. Advertising and Promotional Direct Mail

Advertising and promotional direct mail is exempt from sales and use tax. ([Section 77.54\(59\)](#), Wis. Stats.)

"Advertising and promotional direct mail" means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

"Direct mail" means printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices, return envelopes, and additional marketing materials. "**Direct mail**" **does not include multiple items of printed material delivered to a single address.**" ([Section 77.51\(3pd\)](#), Wis. Stats.)

Example 1: Company, located in Wisconsin, contracts with Printer to have 10,000 advertising flyers that are designed to promote Company's products printed. Once Printer finishes printing the advertising flyers, Printer mails the flyers to the addresses on a mailing list provided by Company. The addresses are in and outside Wisconsin. The charge by

Printer to Company is exempt from Wisconsin sales and use tax since the advertising flyers are advertising and promotional direct mail.

Example 2: Same as *Example 1*, except the flyers are sent by Printer to Company, the purchaser, and Company mails the flyers to the addresses on the mailing list. The flyers do not qualify for the exemption for advertising and promotional direct mail. The flyers are not advertising and promotional direct mail because the seller (i.e., Printer) is not delivering the flyers to a mass audience or to addresses on a mailing list at the direction of the purchaser (i.e., Company). Other exemptions that may apply are described in Part VI.B. of [Publication 235](#), *Advertising Companies*.

Paper Used for Advertising and Promotional Direct Mail

Paper used in the manufacture of advertising and promotional direct mail that is transported and used solely outside Wisconsin is exempt from Wisconsin sales and use taxes under sec. 77.54(43), Wis. Stats. (2011-12). Paper used in the manufacture of advertising and promotional direct mail that *is not* transported and used solely outside Wisconsin does not qualify for this exemption.

Note: Paper used in the manufacture of advertising and promotional direct mail that is **sold** is exempt from Wisconsin sales and use taxes under sec. 77.54(2), Wis. Stats. (2011-12). Paper used in the manufacture of advertising and promotional direct mail that is *given away* (rather than sold) does not qualify for this exemption, since the exemption requires that the tangible personal property manufactured (that is, advertising and promotional direct mail) be destined for sale.

The tax treatment of paper used for advertising and promotional direct mail did not change with the July 1, 2013 law change.

Printing Services for Advertising and Promotional Direct Mail

The services of *producing, fabricating, processing, printing, or imprinting* that results in advertising and promotional direct mail are not taxable, as provided in sec. 77.52(2)(a)11., Wis. Stats. (2011-12). (2013 Act 20, effective July 1, 2013)

See the article in Part XI.K., for information about this new law change. [↗](#)

VII. MY TAX ACCOUNT WEBINAR

The Wisconsin Department of Revenue will host a training webinar for *My Tax Account* users on Thursday, July 18 and Thursday July 25, 2013 from 9:30 to 11:30 a.m.

In this webinar, you'll receive information on:

- Updating your profile
- Updating your bank account information
- Ceasing your account
- Viewing and printing mail
- Amending returns and much more

The July 18, 2013 training webinar is completely full. Look for information on our website's [Training page](#) on how to register for the upcoming July 25, 2013 webinar. [↗](#)

VIII. BUYERS: HOW TO SPEED UP YOUR CLAIM FOR REFUND OF SALES OR USE TAX

When claiming a refund, it is important that you provide enough information for us to verify your claim. This will ensure a fast and accurate processing of your refund.

Information That May Be Needed

- Proof of payment and copies of invoices
- Chart of Accounts and identification of the accounts to which the items were charged
- Purchase orders or contracts related to items claimed for exemption
- Detailed description of items claimed for exemption, including:
 - How the items are used
 - The period the tax was accrued on the items
 - The exemption that applies and relevant statutes

Additional Information That May Be Needed for Fuel and/or Electricity Claims

- Utility study or explanation of how you determined the claimed percentage
- Description of equipment powered by the fuel/electricity
- Documentation showing that the equipment powered by the fuel/electricity is exempt

Penalty That May Apply

Wisconsin law prohibits filing an incorrect and excessive claim. You should determine that the items claimed are exempt before you submit the claim.

If you request a refund on clearly taxable items, the claim may be considered to be negligently filed and a penalty may apply. A person who negligently files an incorrect and excessive claim is subject to a penalty of 25% of the difference between the amount claimed and the amount that should have been claimed (sec. 77.60 (12), Wis. Stats (2011-12)).

Example: John Doe files a claim for refund of sales tax paid on purchases. The claim includes items that are exempt from sales and use taxes; however, the claim also includes items that are clearly taxable based on examples in a Department of Revenue publication. The amount claimed is \$30,000 of tax and the amount that should have been claimed is \$1,400. John Doe filed an incorrect and excessive claim for refund and is, therefore, subject to the 25% negligence penalty. The penalty is \$7,150 ($\$30,000 - \$1,400 = \$28,600 \times 25\% = \$7,150$).

A person who files a fraudulent claim is subject to a penalty of 100% of the difference between the amount claimed and the amount that should have been claimed.

If you have any questions, please contact us at:

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IX. DIPLOMATIC TAX EXEMPTION CARDS MAY NOT BE USED TO PURCHASE MOTOR VEHICLES WITHOUT SALES OR USE TAX

Certain foreign officials are entitled to a sales and use tax exemption. The Department of State, Office of Foreign Missions, issues a *Diplomatic Tax Exemption Card* to qualifying foreign officials. (See the article titled "[New Foreign Diplomat Tax Exemption Card Design!](#)")

Exception: *Diplomatic Tax Exemption Cards* may not be used to claim exemption from Wisconsin sales and use tax on purchases, leases, or rentals of motor vehicles. "Motor vehicles" includes, but is not limited to, automobiles, motorcycles, boats, and aircraft. Special rules require a tax exemption letter from the U.S. Department of State, Office of Foreign Missions.

Additional information is available in an article titled "[Exempt Sales of Motor Vehicles to Foreign Missions](#)," in Wisconsin Tax Bulletin #178 on page 6, and at the [Office of Foreign Mission's website](#). [↗](#)

X. NEW PUBLICATION FOR SCHOOLS

The Department of Revenue has published [Publication 245](#), *Sales and Use Tax Information for Schools*, which explains how Wisconsin state sales and use taxes affect Wisconsin elementary and secondary schools, and school-related organizations. [↗](#)

XI. NEW TAX LAWS

The Wisconsin Legislature has enacted a number of changes to laws relating to sales and use taxes, premier resort area taxes, local exposition taxes, the state rental vehicle fee, and the dry cleaning fee. These provisions are contained in [2013 Wisconsin Act 20](#).

A. Sales and Use Taxes

1. **Appeals to the Circuit Court** (2013 Act 20, amend sec. 77.59(6)(b), effective July 2, 2013.

A taxpayer that appeals a sales and use tax decision of the Wisconsin Tax Appeals Commission must appeal to the circuit court for Dane County or to the circuit court for the county where the taxpayer's commercial domicile is located, where the taxpayer owns other property, or where the taxpayer transacts business in Wisconsin.

"Commercial domicile" means the location from which a trade or business is principally managed and directed, based on any factors the department determines are appropriate, including the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which the employees are directed or controlled.

Under prior law, appeals of Wisconsin Tax Appeals Commission's decisions were required to be made to the circuit court for Dane County.

2. **Deduction on Current Return – Exemption Certificate Received After Sales Tax Paid** (2013 Act 20, create sec. 77.585(10), effective July 2, 2013.)

A retailer receiving a fully completed exemption certificate from the purchaser after reporting a sale covered by the exemption certificate as taxable may claim a deduction on its sales tax return for the sales price of the items covered by the exemption certificate if all of the following conditions are satisfied:

- The retailer has paid the tax to the Department of Revenue,
- The exemption certificate was received by the retailer in the same taxable year (for income or franchise tax purposes) of the retailer in which the sale covered by the exemption certificate occurred, and
- The retailer has returned to the buyer, in cash or credit, all tax previously paid by the buyer.

The deduction is claimed on the return filed for the period in which the retailer receives the exemption certificate.

If the seller is ineligible to claim a deduction on its sales tax return, the seller may file a claim for refund.

Under prior law, a retailer who filed a sales tax return and paid the sales tax on a transaction and subsequently received a fully completed exemption certificate from the purchaser for that transaction, must have amended that sales tax return in order to have received a refund.

3. Federal Legislation for Remote Sellers - Revenues Must be Used to Reduce Wisconsin Income Tax (2013 Act 20, create sec. 73.03(71)(a) – (c), effective July 2, 2013.)

The Department of Revenue is required to determine the amount of additional revenue collected from sales and use taxes as a result of any federal law that expands the state's authority to require out-of-state retailers to collect and remit Wisconsin sales and use taxes on purchases by Wisconsin residents during the first 12 months following the date on which the department begins collecting such additional revenue.

After determining the amount of additional revenue, the department must determine how much the individual income tax rates may be reduced in the following taxable year in order to eliminate the alternative minimum tax under [sec. 71.08](#), Wis. Stats., and decrease individual income tax revenue by the amount determined under the paragraph above. The department will calculate the tax rate reductions in proportion to the share of gross tax attributable to each of the tax brackets under sec. 71.06, Wis. Stats., in effect during the most recently completed taxable year.

The Department of Revenue will then certify these determinations to the Secretary of the Department of Administration, the governor, and the legislature and specify that the elimination of the alternative minimum tax and the new tax rates will take effect in the taxable year following the taxable year in which the department makes its certification.

4. Increase Dollar Amounts Used to Establish Filing Frequency (2013 Act 20, amend sec. 77.58(1)(a), effective January 1, 2014.)

For tax years beginning on or after January 1, 2014, a retailer's reporting period for sales and use tax purposes will be monthly if the amount of tax due in any one calendar quarter is more than \$1,200. Under prior law, this standard was \$600.

- 5. Interest Rate Paid on Refunds Adjusted** (2013 Act 20, amend secs. 77.59(6)(c) and 77.60(1)(a), first applies to refunds paid on July 2, 2013 regardless of the taxable periods to which the refunds pertain.)

Sales and use taxes that are refunded to sellers will bear the interest rate of 3% per year from the due date of the return to the date on which the refund is certified on the refund rolls. Sales and use tax refunds that are issued to buyers will bear interest at 3% per year from the last day of the month following the month during which the buyer paid the tax to the date on which the refund is certified on the rolls.

The 3% interest rate also applies to refunds of deposited amounts to persons who filed a petition for redetermination and deposited the entire amount of the deficiency (including any penalty or interest) with the department when the petition was filed or at any time before the department makes its redetermination. The refunded amount will bear interest at 3% per year during the time that the funds were on deposit.

Under prior law, the interest rate on refunds was 9% per year.

- 6. Lump Sum Contracts** (2013 Act 20, amend sec. 77.51(11d) and create 77.54(60), applies to contracts entered into on or after October 1, 2013.)

A sales and use tax exemption is created for the sales price from the sale of and the storage, use, or other consumption of tangible personal property, items and property under sec. 77.52(1)(b) or (c), and taxable services that are sold by a contractor as a part of a lump sum contract, if the total sales price of all such taxable products is less than 10 percent of the total amount of the lump sum contract. The contractor is the consumer of such taxable products and is liable for sales or use tax on its purchase of these taxable products. (See *Exception*, below.)

"Lump sum contract" means "a contract to perform real property construction activities and to provide tangible personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services and for which the contractor quotes the charge for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as one price, including a contract for which the contractor itemizes the charges for labor, services of subcontractors, tangible personal property, items and property under s. 77.52 (1) (b) and (c), and taxable services as part of a schedule of values or similar document."

Exception: If the lump sum contract is entered into with an entity that is exempt from tax under sec. 77.54(9a), Wis. Stats., the contractor may purchase without tax, for resale, the taxable products that are sold by the contractor as part of the lump sum contract with the exempt entity and that are not consumed by the contractor in real property construction activities. The contractor is still the consumer of all taxable products used by the contractor in real property construction activities.

For contracts entered into prior to October 1, 2013, if the taxable products accounted for 10 percent or less of the total contract amount in a contract for real property construction activities AND no separate charge was made in any document provided to the customer for the taxable products, the tax was based on contractor's cost of the taxable products. If a separate charge was made in any document provided to the customer, including a contract,

contract addendum, appendix, or payment request, for any of the taxable products or services, the separate charge was subject to tax.

The effect of the law change is that the contractor is the consumer of the taxable products provided in a lump sum contract if the total sales price of the taxable products is less than 10 percent of the total sales price of the contract, **regardless of whether the contractor separately itemizes the charges for taxable products in a schedule of values or similar document that is provided to its customer.**

7. Printing Exemptions (2013 Act 20, create sec. 77.54(61), effective October 1, 2013.)

The following sales and use tax exemptions apply to purchases by a person primarily engaged in: (a) commercial printing (except screen printing and books printing) without publishing (except grey goods printing); (b) printing or printing and binding books and pamphlets without publishing; or (c) performing prepress and postpress services in support of printing activities:

- (1) Purchase of computers and servers that are used to store copies of the product that is sent to a printing press.
- (2) Tangible personal property purchased from out-of-state sellers that are temporarily stored, remain idle, and are not used in this state for not more than 180 days and that are then delivered and used outside of Wisconsin.

8. Property Used to Raise Animals Sold Primarily to a Biotechnology Business, a Public or Private Institution of Higher Education, or a Governmental Unit For Use in Qualified Research (2013 Act 20, renumber sec. 77.54(57)(a)1f. to 77.51(1c), renumber sec. 77.54(57)(a)1m. to 77.51(1d), renumber sec. 77.54(57)(a)4. to 77.51(10rn), amend sec. 77.54(57)(a)5., and create sec. 77.54(57d), effective for sales made on or after July 2, 2013.)

For purposes of the sales and use tax exemptions provided in sec. 77.54(57)(b)3. and 4., the definition of "qualified research" is modified to mean "*qualified research as defined under [section 41\(d\)\(1\) of the Internal Revenue Code](#), except that it includes qualified research that is funded by a member of a combined group for another member of a combined group.*"

9. Qualified Research (2013 Act 20, repeal sec. 77.54(57)(b)1. and 2., renumber sec. 77.54(57)(a)1f. to 77.51(1c), renumber sec. 77.54(57)(a)1m. to 77.51(1d), renumber sec. 77.54(57)(a)4. to 77.51(10rn), amend sec. 77.54(57)(a)5., and create sec. 77.54(57d), effective for sales made on or after July 2, 2013.)

A sales and use tax exemption applies for machinery and equipment, including attachments, parts, and accessories, and other tangible personal property or items, or property under [sec. 77.52\(1\)\(b\) or \(c\), Wis. Stats.](#), that are sold to any of the following and are consumed or destroyed or lose their identities while being used exclusively and directly in qualified research:

- (1) A person engaged in manufacturing in Wisconsin at a building assessed under [sec. 70.995, Wis. Stats.](#)
- (2) A person primarily engaged in biotechnology in Wisconsin

- (3) A combined group member who is conducting qualified research for another combined group member and that other combined group member is a person described in (1) or (2).

For purposes of this exemption:

- "Building" has the meaning given in [sec. 70.111\(10\)\(a\)1., Wis. Stats.](#)
- "Combined group" has the meaning given in [sec. 71.255\(1\)\(a\), Wis. Stats.](#)
- "Machinery" has the meaning given in [sec. 70.11\(27\)\(a\)2., Wis. Stats.](#)
- "Qualified research" means qualified research as defined under [section 41\(d\)\(1\) of the Internal Revenue Code](#), except that it includes qualified research that is funded by a member of a combined group for another member of a combined group
- "Used exclusively" has the meaning given in [sec. 77.54\(3\)\(b\)3., Wis. Stats.](#)

Under prior law, an exemption applied for: (1) machinery and equipment, including attachments, parts, and accessories that are sold to a person engaged primarily in manufacturing or biotechnology in Wisconsin and used exclusively and directly in qualified research, and (2) other tangible personal property or items or property under sec. 77.52(1)(b) or (c), Wis. Stats., that were sold to a person engaged primarily in manufacturing or biotechnology in Wisconsin and which were consumed or destroyed or lost their identities while being used exclusively and directly in qualified research. Under prior law, "qualified research" was limited to activities that met the definition of qualified research under sec. 41(d)(1) of the Internal Revenue Code, which excluded research to the extent funded by any contract, grant, or otherwise by another person (or governmental entity).

10. Sales to Health Insurance Risk-Sharing Plan Authority No Longer Exempt (2013 Act 20, amend sec. 77.54(9a)(a), effective January 1, 2015.)

Due to the dissolution of the Health Insurance Risk-Sharing Plan and Authority, the exemption for sales made to the authority will be rescinded on January 1, 2015.

11. Self-Service Laundry Machines (2013 Act 20, amend sec. 77.52(2)(a)6., effective October 1, 2013.)

Laundry, dry cleaning, pressing, and dyeing services are not taxable when the service is performed by the customer through the use of self-service machines. The effect of this law change is that these services provided by self-service machines operated by tokens, magnetic cards, or other medium other than coins are no longer subject to tax.

Under prior law, only such services performed by the customer through the use of coin-operated, self-service machines were not taxable.

12. Services Resulting in Advertising and Promotional Direct Mail (2013 Act 20, amend sec. 77.52(2)(a)11., effective July 1, 2013.)

The sales and use tax exemption for the sale of advertising and promotional direct mail is effective on July 1, 2013. This amendment provides that the services of producing, fabricating, processing, printing, or imprinting that result in advertising and promotional direct mail are also not taxable.

Note: The sale of paper to a person who provides the paper to a printer, who then uses that paper to manufacture advertising and promotional direct mail, is taxable when the advertising and promotional direct mail is mailed to addresses in Wisconsin. This is further explained in Part VI.B. of this *Sales and Use Tax Report*.

13. Technical Corrections and Clarifications

The following technical corrections and clarifications became effective July 2, 2013, unless otherwise noted, pursuant to 2013 Act 20.

- a. **"Advertising and promotional direct mail"** – Clarify that credit for tax paid to another state on advertising and promotional direct mail purchases is not allowed if the purchaser did not provide to the seller a direct pay permit, an exemption certificate claiming advertising and promotional direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. (Amend sec. 77.53(16))
- b. **Collection of delinquent sales and use taxes.** Clarify that the levy is included in collection tools available for delinquent sales tax collection. (Amend sec. 77.62(intro.))
- c. **"Custom farming services"** – Clarify that "custom farming services" includes services performed by veterinarians to farm livestock or farm work stock used exclusively in the business of farming. A veterinarian may be eligible to use various sales and use tax exemptions for items used by the veterinarian in providing custom farming services (sec. Tax 11.61(2)(b)3., Wis. Adm. Code (November 2010 Register)). "Custom farming services" means *"the performance of an activity, defined as farming in this section, for a farmer, for a fee. The fee may include a cash payment, a share of the harvest or other valuable consideration."* (Create sec. 77.51(2d))
- d. **Due date for filing refund claims** – Clarify that sales and use tax refund claims (whether filed by a seller or buyer) must generally be filed within four years of the unextended (original) due date of the claimant's Wisconsin income or franchise tax return. (Amend sec. 77.59(4)(a), effective August 1, 2013)
- e. **"Place of primary use"** – Definition amended to replace the reference to federal law with specific language. As amended, "place of primary use" means the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" means a street address within the licensed service area of the home service provider. (Amend sec. 77.522(4)(a)9.)
- f. **"Prepaid wireless calling service"** – Definition amended to read: "a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined units or dollars that decrease with use in a known amount." (Amend sec. 77.51(10f))
- g. **"Prepared food"** – Definition amended to include "bowls" as eating utensils when a retailer is determining if food and food ingredients are sold with eating utensils under sec. 77.51(10m)(a)3., Stats., and to include "bowls" as utensils necessary for the pur-

chaser to receive the food and food ingredients. (Amend sec. 77.51(10m)(a)3.(intro.) and b.)

- h. Property transferred incidentally with a taxable service** – The amendment clarifies that a service provider who transfers tangible personal property, or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., incidentally with a taxable service is the consumer of such property, items, or goods, and may not purchase such property, items, or goods without tax for resale. **Exception:** Property, items, or goods physically transferred, or transferred electronically, to the customer in conjunction with the selling, performing, or furnishing of a service subject to tax under sec. 77.52(2)(a)7., 10., 11., and 20., Wis. Stats., may be purchased without tax for resale by the service provider. (Amend sec. 77.52(21)(b))

Note: Section 77.51(5), Wis. Stats., provides, in part, that tangible personal property or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, items, or goods, even though the property, items, or goods may be necessary or essential to providing the service.

- i. "Prosthetic device"** – Definition amended to clarify that a device must be a "replacement, corrective, or supportive" device to fall within the definition. (Amend sec. 77.51(11m))
- j. Reference to "drugs"** – The exemption for certain items used in raising animals is amended to replace "medicines" with "drugs." The term "medicine" is not a defined term in the Wisconsin Statutes. "Drug" is a defined term under sec. 77.51(3pj), Stats., which was created effective October 1, 2009. (Amend sec. 77.54(57)(b)4.)
- k. "Sales price" and "purchase price"** – Definitions amended to provide that "sales price" and "purchase price" do not include taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser if the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on and collect the tax from the user or consumer. Provide that municipal and local exposition district room taxes may be collected from the consumer or user and are not included in "sales price" and "purchase price" if the tax is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser. (Amend sections 66.0615(1m)(a) and 77.51(12m)(a)2. and (15b)(a)2. and create sections 77.51(12m)(b)3m. and (15b)(b)3m.)

B. Premier Resort Area Tax

- 1. City of Wisconsin Dells and the Village of Lake Delton May Increase Premier Resort Area Tax Rate to 1.25%** (2013 Act 20, renumber sec. 77.994(3) to 77.994(3)(a) and create sec. 77.994(3)(b), effective July 2, 2013.)

Section 77.994(3)(b), Wis. Stats., authorizes both the City of Wisconsin Dells and the Village of Lake Delton to increase the premier resort area tax in effect in its municipality to a maximum rate of 1.25%.

The governing body of the municipality must first adopt a resolution proclaiming its intent to increase the rate of its premier resort area tax. The resolution must then be approved by

a majority of the electors in the municipality voting on the resolution at a referendum, to be held at the first spring primary or election or partisan primary or general election following by at least 70 days the date of adoption of the resolution.

Currently, the premier resort area tax rate in effect in both the City of Wisconsin Dells and the Village of Lake Delton is 1.0%.

- 2. Village of Stockholm May Impose Premier Resort Area Tax** (2013 Act 20, amend sec. 66.1113(2)(a) and create sec. 66.1113(2)(i), effective July 2, 2013 and amend sec. 66.1113(2)(b), effective January 1, 2014.)

The Village of Stockholm may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized assessed value of the taxable property within the Village of Stockholm is used by tourism-related retailers. The Village may not impose the tax, however, unless the Village Board adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the Village voting on the resolution at a referendum, to be held at the first spring primary or election or partisan primary or general election following by at least 70 days the date of adoption of the resolution.

C. Local Exposition Taxes and State Rental Vehicle Fee

- 1. Disregarded Entity Clarification** (2013 Act 20, amend sections 66.0615(1m)(f)2., 77.982(2), 77.991(2), and 77.9951(2), effective September 1, 2013.)

A single-owner entity that is disregarded as a separate entity (i.e., the single-owner entity and its owner are treated as a single entity) for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes is also disregarded as a separate entity for purposes of the local exposition taxes and the state rental car fee. This provision clarifies that such disregarded entities are treated the same for local exposition taxes and the state rental car fees as they are for sales and use taxes.

D. Dry Cleaning Fee

- 1. "Gross receipts" for purposes of the dry cleaning fee** (2013 Act 20, amend sec. 77.996(6), effective July 2, 2013.)

Definition amended to clarify that "gross receipts, for purposes of computing the dry cleaning fee, does not include sales tax when the retailer establishes to satisfaction of the department that the sales tax has been added to the total amount of the sales price and has not been absorbed by the retailer. [✎](#)