



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations in a tax release.)

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CORPORATION FRANCHISE AND INCOME TAXES

1 Carryforwards of Wisconsin Tax Credits

Statutes: Sections 71.28, 71.30(3), 71.47, 71.49(1), 71.75, and 71.77, Wis. Stats. (2001-02)

Wis. Adm. Code: Section Tax 2.11, Wis. Adm. Code (February 1990 Register)

Note: This tax release incorporates and updates the information from the tax release titled “Adjustment to Manufacturer’s Sales Tax Credit Carryover” published in *Wisconsin Tax Bulletin* 78 (July 1992), page 14.

Background: Wisconsin has a variety of nonrefundable tax credits, described below, that may be available to corporations and insurance companies. If a credit is not entirely offset against Wisconsin franchise or income taxes due for the current taxable year, the law generally provides that the balance may be carried forward for 15 years. None of the nonrefundable credits may be offset against the recycling surcharge.

The nonrefundable tax credits are listed in the order in which they must be claimed, as provided in secs. 71.30(3) and 71.49(1), Wis. Stats. (2001-02):

- **Manufacturer’s sales tax credit** equals the amount of Wisconsin state, county, and baseball and football stadium sales and use taxes paid on fuel and electricity used in manufacturing tangible personal property in Wisconsin. The carryforward period for credits computed prior to the 1980 taxable year was 5 years. [Sections 71.28(3) and 71.47(3), Wis. Stats. (2001-02).]
- **Research expense credit** provides an incentive for increasing qualified research activities in Wisconsin for the 1984 taxable year and thereafter. [Sections 71.28(4) and 71.47(4), Wis. Stats. (2001-02).]
- **Development zones additional research credit** provides an incentive for increasing qualified research activities in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. [Sections 71.28(4)(am) and 71.47(4)(am), Wis. Stats. (2001-02).]
- **Research facilities credit** is available for 5% of the qualified expenditures to construct and equip new research facilities or expand existing research facilities in Wisconsin for the 1984 taxable year and thereafter. [Sections 71.28(5) and 71.47(5), Wis. Stats. (2001-02).]
- **Community development finance credit** is available on or after July 1, 1982, to corporations that contribute to the Wisconsin Housing and Economic Development Authority and, in the same year, purchase stock in the Wisconsin Community Development Finance Company. The 15-year carryforward period for unused credits applies beginning with credits available in the 1984 taxable year. [Sections 71.28(1) and 71.47(1), Wis. Stats. (2001-02).]
- **Development zones jobs credit** encourages the hiring of certain persons to work in a business in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. The jobs credit was refundable for taxable years begin-

ning before January 1, 1997. [Sections 71.28(1dj) and 71.47(1dj), Wis. Stats. (2001-02).]

- **Development zones sales tax credit** equals the amount of Wisconsin state, county, and stadium sales and use taxes paid for eligible property used in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. The sales tax credit was refundable for taxable years beginning before January 1, 1997. [Sections 71.28(1ds) and 71.47(1ds), Wis. Stats. (2001-02).]
- **Development zones investment credit** encourages the purchase of certain kinds of depreciable, tangible personal property for use in a business in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998, and for use in a business in certain development opportunity zones for taxable years beginning after January 1, 2000. [Sections 71.28(1di) and 71.47(1di), Wis. Stats. (2001-02).]
- **Development zones location credit** encourages investment in real property located in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. [Sections 71.28(1dL) and 71.47(1dL), Wis. Stats. (2001-02).]
- **Development zones capital investment credit** provides an incentive to purchase tangible personal property or to acquire, construct, rehabilitate, remodel, or repair real property located in certain development opportunity zones for taxable years beginning on or after January 1, 2002, and in the agricultural development zone for taxable years beginning on or after January 1, 2003. [Sections 71.28(1dm) and 71.47(1dm), Wis. Stats. (2001-02).]
- **Development zones day care credit** encourages the provision of employment-related day care benefits to qualifying individuals employed in a development zone for taxable years beginning on or after January 1, 1995, and before January 1, 1998. [Sections 71.28(1dd) and 71.47(1dd), Wis. Stats. (2001-02).]
- **Development zones environmental remediation credit** encourages the clean-up of environmental pollution in a development zone for taxable years beginning on or after January 1, 1995, and before January 1, 1998. [Sections 71.28(1de) and 71.47(1de), Wis. Stats. (2001-02).]

- **Development zones credit** provides an incentive to clean up environmental pollution and to create or retain jobs in a development zone for taxable years beginning on or after January 1, 1998. [Sections 71.28(1dx) and 71.47(1dx), Wis. Stats. (2001-02).]
- **Technology zones credit** promotes investment in high-technology businesses in a technology zone for taxable years beginning on or after January 1, 2002. [Sections 71.28(3g) and 71.47(3g), Wis. Stats. (2001-02).]
- **Supplement to federal historic rehabilitation credit** equals 5% of the qualifying costs to rehabilitate certified historic structures located in Wisconsin and used for business purposes if the work begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989. [Sections 71.28(6) and 71.47(6), Wis. Stats. (2001-02).]

Although the carryforward period generally is 15 years for each of the tax credits listed above, the statutory language concerning the carryforward of unused credits differs.

Carryforward Provisions

Section 71.28(3), Wis. Stats. (2001-02), relating to the manufacturer's sales tax credit, provides in part:

(b) The tax imposed upon or measured by corporation Wisconsin net income under s. 71.23(1) or (2) ***shall be reduced*** by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. ...

(c) 1. If the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance ***shall be carried forward and credited*** against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years ***to the extent not offset by these taxes otherwise due in all intervening years*** between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

[Emphasis added.]

Prior to the enactment of 1987 Wisconsin Act 27, which became effective August 1, 1987, the manufacturer's

sales tax credit language was found in sec. 71.043, Wis. Stats., which provided in part:

(3) If any corporation in any year is entitled to a credit under this section, such credit, to the extent not offset by the tax liability of the same year *may be offset* against the tax liability of the subsequent year, and if not completely offset by the tax liability of such year, the remainder of such credit may be offset against the tax liability of the following year. A credit under sub. (2) *may be carried forward and offset against tax liability in the next succeeding 15 years*. [Emphasis added.]

Section 71.28(4), Wis. Stats. (2001-02), relating to the research expense credit, provides in part:

(a) *Credit*. Any corporation *may* credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained ...

(f) *Carry-over*. If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance *may be carried forward and credited* against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years *to the extent not offset by these taxes otherwise due in all intervening years* between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

(h) *Timely claim*. No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75(2).

[Emphasis added.]

Carryforward provisions similar to the research expense credit language in sec. 71.28(4)(f) apply to the rest of the tax credits listed above.

Refund and Assessment Provisions

Under sec. 71.75(2), Wis. Stats. (2001-02), with limited exceptions, refunds may be made if the claim is filed within 4 years of the unextended date on which the tax return was due. The Department of Revenue has 4 years from the date a franchise or income tax return is filed within which to issue a notice of assessment of a tax or an assessment to recover all or part of any tax credit, pursuant to sec. 71.77(2), Wis. Stats. (2001-02). Under certain circumstances, the statute of limitations for issuing a notice of assessment may be extended, as

provided in sec. 71.77(7), Wis. Stats. (2001-02). For purposes of assessments and refunds, a return filed on or before the last day prescribed by law for the filing of the return shall be considered as filed on such last day. A return filed after the last day prescribed by law shall be considered as filed on the date that the return is received by the Department of Revenue. See sec. 71.77(8), Wis. Stats. (2001-02).

Manufacturer's Sales Tax Credit Issues

Facts and Question 1: Corporation A computes a \$25,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation A's gross franchise tax liability for 2002 is \$1,000. Corporation A does not have any manufacturer's sales tax credit carryforward from prior years.

Does Corporation A have to offset \$1,000 of the manufacturer's sales tax credit against its 2002 franchise tax due, or may the corporation choose to carry forward the entire \$25,000 credit to future years?

Answer 1: Corporation A is required to use its 2002 manufacturer's sales tax credit on its 2002 Wisconsin return to the extent that it has Wisconsin franchise or income tax liability for 2002. As a result, \$1,000 is used to reduce Corporation A's 2002 franchise tax liability to zero, and \$24,000 is carried forward to future years.

Section 71.28(3)(b), Wis. Stats. (2001-02), provides that the franchise or income tax "shall be reduced" by the manufacturer's sales tax credit. In statutes, the word "shall" denotes a mandatory or absolute duty or directive. Thus, the Legislature's use of the word "shall" for the manufacturer's sales tax credit makes it clear that taxpayers cannot choose when to claim the credit.

Facts and Question 2: Corporation B computes a \$50,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation B's 2002 gross franchise tax liability is \$5,000. The corporation must offset \$5,000 of the credit against its 2002 gross tax, and it has \$45,000 of unused credit to carry forward to 2003. Corporation B does not qualify to compute a manufacturer's sales tax credit for 2003. Corporation B's 2003 gross franchise tax liability is \$500.

Does Corporation B have to claim \$500 of the credit carryforward against its 2003 tax due, or may the corporation choose to carry forward the \$45,000 of unused credit to future years?

Answer 2: Corporation B is required to claim the 2002 manufacturer's sales tax credit carryforward on its 2003 Wisconsin return to the extent that it has Wisconsin franchise or income tax liability for 2003. As a result, \$500 is used to reduce Corporation B's 2003 franchise tax liability to zero, and \$44,500 is carried forward to future years.

Section 71.28(3)(c)1, Wis. Stats. (2001-02), provides that the unused balance "shall be carried forward and credited" against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years "to the extent not offset by these taxes otherwise due in all intervening years" between the year in which the expense was incurred and the year in which the credit carryforward is claimed.

Facts and Question 3: Corporation C computes a \$30,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation C's 2002 gross franchise tax liability is \$20,000. In addition, Corporation C has a \$5,000 manufacturer's sales tax credit carryforward from 1987 that will expire if it cannot be claimed on the corporation's 2002 return.

May Corporation C choose to use the 1987 credit carryforward before claiming its 2002 manufacturer's sales tax credit?

Answer 3: No, Corporation C cannot choose to use its 1987 credit carryforward first. On its 2002 return, the corporation must use its entire 2002 manufacturer's sales tax credit before it may claim any credit carried forward from prior years. As a result, the corporation must offset \$20,000 of its 2002 credit against its 2002 gross tax, and it has an unused 2002 credit of \$10,000 to carry forward to 2003. The \$5,000 unused credit carryforward from 1987 is lost.

Section Tax 2.11(3)(b), Wis. Adm. Code, states: "The sales tax credit *shall* first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied." [Emphasis added.]

Facts and Question 4: Corporation D timely filed its 1998 Wisconsin franchise or income tax return and paid Wisconsin franchise tax of \$30,000. After the statute of limitations had expired, Corporation D determines that it would have been eligible for a 1998 manufacturer's sales tax credit of \$47,000.

May Corporation D claim any portion of the unused 1998 manufacturer's sales tax credit in open years?

Answer 4: No, Corporation D cannot go back to a closed year and compute a manufacturer's sales tax credit where one had not previously been claimed. Therefore, Corporation D does not have any unused manufacturer's sales tax credit from 1998 to carry forward to open years.

Facts and Question 5: On July 1, 2003, Corporation E files a late Wisconsin franchise or income tax return for the 1996 calendar year. The return reports gross franchise tax of \$15,000 and a manufacturer's sales tax credit of \$20,000.

May Corporation E carry forward the \$5,000 of unused 1996 manufacturer's sales tax credit to receive a refund of taxes paid for future years?

Answer 5: No, since Corporation E filed its Wisconsin return after the statute of limitations for claiming a refund had expired, it cannot carry forward the \$5,000 of unused manufacturer's sales tax credit shown on its 1996 return.

Facts and Question 6: Corporation F filed a timely 1997 Wisconsin franchise or income tax return. On that return the corporation computed a manufacturer's sales tax credit of \$12,000 based on the sales and use tax it paid on fuel and electricity used in manufacturing in 1997. Corporation F offset \$4,000 of the credit against its 1997 Wisconsin franchise tax liability and carried the \$8,000 balance forward to 1998.

Corporation F filed a timely 1998 Wisconsin franchise or income tax return reporting \$25,000 of gross tax liability. The corporation computed a manufacturer's sales tax credit of \$15,000 based on the sales and use tax it paid on fuel and electricity used in manufacturing in 1998. Corporation F paid net tax of \$2,000 after offsetting its 1998 manufacturer's sales tax credit of \$15,000 and its 1997 credit carryforward of \$8,000. After the statute of limitations for 1997 and 1998 had expired, Corporation F determines that it had understated its 1997 manufacturer's sales tax credit by \$6,500.

May Corporation F carry forward the additional \$6,500 of unused 1997 manufacturer's sales tax credit to receive a refund of taxes paid for future years?

Answer 6: Corporation F may carry forward the additional \$6,500 of unused 1997 manufacturer's sales tax credit. Since Corporation F had claimed a manufacturer's sales tax credit on its timely filed 1997 return, the corporation can correct the amount of credit that it had originally claimed. Of the additional \$6,500 of credit, \$2,000 must be used to offset Corporation F's \$2,000 of net tax liability for 1998. Since 1998 is not open under the statute of limitations, Corporation F may not receive a refund for 1998. The \$4,500 balance may be carried forward to offset Wisconsin franchise tax liability for 1999 and succeeding years during the remainder of the 15-year carryforward period.

Facts and Question 7: Corporation G claimed a \$50,000 manufacturer's sales tax credit on its calendar-year 1998 Wisconsin franchise or income tax return. Its gross tax was \$40,000, resulting in \$10,000 of unused credit. Corporation G carried forward the unused credit to offset its tax liability on its 1999 Wisconsin return. The Department of Revenue conducts an audit of Corporation G's 1998 and 1999 Wisconsin franchise or income tax returns. At the time of the audit, the 1999 return is open to assessment by the department. However, the 1998 return is closed to assessment under sec. 71.77(2), Wis. Stats. (2001-02). The department determines that Corporation G underreported its income on its 1998 return and made an error in computing its 1998 manufacturer's sales tax credit.

May the department adjust both Corporation G's 1998 income and its manufacturer's sales tax credit?

Answer 7: The department may adjust both Corporation G's reported 1998 income and its manufacturer's sales tax credit; however, the department cannot issue an assessment for 1998. The statute of limitations relates only to assessments and does not prevent income or a credit from being recomputed in order to determine the correct amount of credit to carry forward to future years. The department determines that Corporation G's adjusted gross franchise tax liability for 1998 is \$48,000, and its manufacturer's sales tax credit is \$47,500. As a result, Corporation G does not have an unused manufacturer's sales tax credit to carry forward to 1999. The department can issue an assessment to Corporation G for the \$10,000 of manufacturer's sales tax credit carryforward claimed on its 1999 return.

Other Tax Credits

Facts and Question 8: Corporation H computes a \$15,000 research expense credit on its 2002 Wisconsin franchise or income tax return based on its qualified research expenses incurred during 2002. Corporation H's gross franchise tax liability for 2002 is \$500. Corporation H does not have any research expense credit carryforward from prior years.

Does Corporation H have to offset \$500 of the research credit against its 2002 franchise tax due, or may the corporation choose to carry forward the entire \$15,000 credit to future years?

Answer 8: Corporation H may choose whether or not to claim up to \$500 of its 2002 research expense tax credit on its 2002 Wisconsin return. If the corporation does not claim any of the credit on its 2002 return, it may use the entire \$15,000 of 2002 credit in future years within the 15-year carryforward period.

Section 71.28(4)(a), Wis. Stats. (2001-02), provides that a corporation "may" credit against taxes otherwise due under chapter 71 the research expense credit. In statutes, the word "may" denotes an optional or permissive privilege, right, or grant of discretionary authority. Thus, the Legislature's use of the word "may" for the research expense credit indicates that taxpayers have the option to choose whether to claim the credit for the current taxable year or carry it forward to a future year during the 15-year carryforward period when it will be more beneficial.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer's sales tax credit.

Facts and Question 9: Corporation I computes a \$30,000 research expense credit on its 2002 Wisconsin franchise or income tax return based on its qualified research expenses incurred during 2002. Corporation I's 2002 gross franchise tax liability is \$5,000. The corporation does not have any research expense credit carryforward from prior years. Corporation I chooses to offset \$5,000 of the credit against its 2002 gross tax, and it has \$25,000 of unused research credit to carry forward to 2003. Corporation I does not qualify to compute a research expense credit for 2003. Corporation I's 2003 gross franchise tax liability is \$300.

Does Corporation I have to claim \$300 of the research expense credit carryforward against its 2003 tax due, or

may the corporation choose to carry forward the \$25,000 of unused credit to future years?

Answer 9: Corporation I may choose whether or not to claim up to \$300 of its 2002 research expense tax credit on its 2003 Wisconsin return. If the corporation does not claim any of the credit on its 2003 return, it may claim the \$25,000 of unused 2002 research credit in future years during the remainder of the 15-year carryforward period.

Section 71.28(4)(f), Wis. Stats. (2001-02), provides that the unused balance “may be carried forward and credited” against Wisconsin income or franchise taxes otherwise due for the following 15 years “to the extent not offset by these taxes otherwise due in all intervening years” between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer’s sales tax credit.

Facts and Question 10: Corporation J computes a \$40,000 research facilities credit on its 2002 Wisconsin franchise or income tax return based on its 2002 expenditures to construct and equip new facilities in Wisconsin used for qualified research. Corporation J’s 2002 gross franchise tax liability is \$20,000. In addition, Corporation J has a \$5,000 research facilities credit carryforward from 1987 that will expire if it cannot be claimed on the corporation’s 2002 return.

May Corporation J choose to use the 1987 credit carryforward before claiming its 2002 research facilities credit?

Answer 10: Yes, Corporation J may choose to use its 1987 credit carryforward first.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer’s sales tax credit.

Facts and Question 11: Corporation K timely filed its 1998 Wisconsin franchise or income tax return and paid Wisconsin franchise tax of \$30,000. After the statute of limitations had expired, Corporation K determines that it would have been eligible for a 1998 research expense credit of \$47,000.

May Corporation K claim any portion of the unused 1998 research expense credit in open years?

Answer 11: No, Corporation K cannot go back to a closed year and compute a research expense credit where one had not previously been claimed. Therefore, Corporation K does not have any unused research expense credit from 1998 to carry forward to years that are open under the statute of limitations.

Section 71.28(4)(h), Wis. Stats. (2001-02), provides that no credit may be allowed unless it is claimed within the period specified in sec. 71.75(2), Wis. Stats. (2001-02). Section 71.75(2) generally provides that a claim for refund must be filed within 4 years of the unextended due date of the return.

Note: This treatment applies to the rest of the tax credits listed above.

Facts and Question 12: On July 1, 2003, Corporation L files a late Wisconsin franchise or income tax return for the 1996 calendar year. The return reports gross franchise tax of \$18,000 and a research facilities credit of \$27,000.

May Corporation L carry forward the \$9,000 of unused 1996 research facilities credit to receive a refund of taxes paid for future years?

Answer 12: No, since Corporation L filed its Wisconsin return after the statute of limitations for claiming a refund had expired, it cannot carry forward the \$9,000 of unused research facilities credit shown on its 1996 return.

Note: This treatment applies to the rest of the tax credits listed above.

Facts and Question 13: Corporation M filed a timely 1998 Wisconsin franchise or income tax return. On that return the corporation computed a research expense credit of \$19,000 based on its qualified research expenses incurred in 1998. Corporation M offset \$8,000 of the credit against its 1998 Wisconsin franchise tax liability and carried the balance forward to future years. After the statute of limitations for 1998 had expired, Corporation M determines that it had understated its 1998 research expense credit by \$5,000.

May Corporation M carry forward the additional \$5,000 of unused 1998 research expense credit to receive a refund of taxes paid for future years?

Answer 13: No, Corporation M cannot go back to a closed year and increase its research expense credit. Therefore, Corporation M does not have an additional

\$5,000 of research expense credit to carry forward to years that are open under the statute of limitations.


Section 71.28(4)(h), Wis. Stats. (2001-02), provides that no credit may be allowed unless it is claimed within the period specified in sec. 71.75(2), Wis. Stats. (2001-02). Section 71.75(2) generally provides that a claim for refund must be filed within 4 years of the unextended due date of the return.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer's sales tax credit.

Facts and Question 14: Corporation N claimed a \$55,000 research expense credit on its calendar-year 1998 Wisconsin franchise or income tax return. Its gross tax was \$44,000, resulting in \$11,000 of unused credit. Corporation N carried forward the unused credit to offset its tax liability on its 1999 Wisconsin return. The Department of Revenue conducts an audit of Corporation N's 1998 and 1999 Wisconsin franchise or income tax returns. At the time of the audit, the 1999 return is open to assessment by the department. However, the 1998 return is closed to assessment under sec. 71.77(2), Wis. Stats. (2001-02). The department determines that Corporation N underreported its income on its 1998 return and made an error in computing its 1998 research expense credit.

May the department adjust both Corporation N's 1998 income and its research expense credit?

Answer 14: The department may adjust both Corporation N's reported 1998 income and its research expense credit; however, the department cannot issue an assessment for 1998. The statute of limitations relates only to assessments and does not prevent income or a credit from being recomputed in order to determine the correct amount of credit to carry forward to future years. The department determines that Corporation N's adjusted gross franchise tax liability for 1998 is \$49,000, and its research expense credit is \$48,000. As a result, Corporation N does not have an unused research expense credit to carry forward to 1999. The department can issue an assessment to Corporation N for the \$11,000 of research expense credit carryforward claimed on its 1999 return.

Note: This treatment applies to the rest of the tax credits listed above. 

SALES AND USE TAXES

2 Sales and Installations of Compact Satellite Dish Systems

Note: This tax release only applies to the compact satellite dish systems described below. The tax treatment of satellite dish systems, which consist of a satellite dish that is permanently affixed to a substantial concrete foundation and can be 8 to 10 feet in diameter, may be different.

Statutes: Sections 77.51(4) and 77.52(1) and (2)(a)10, Wis. Stats. (2001-02)

Wis. Adm. Code: Section Tax 11.68(7)(a)2 (June 1999 Register)

Background: Section 77.52(1), Wis. Stats. (2001-02), imposes a Wisconsin sales tax on the gross receipts from the sale of tangible personal property at retail in Wisconsin.

Section 77.52(2)(a)10, Wis. Stats. (2001-02), imposes a Wisconsin sales tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property, which includes installation, with certain exceptions.

Section 77.51(4)(a), Wis. Stats. (2001-02), defines gross receipts, in part, to mean total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise. Gross receipts include the price received for labor or services used in installing or applying tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or capital improvement of real property and provided such amount is separately set forth from the amount received for the tangible personal property.

Section 77.51(4)(b)1, Wis. Stats. (2001-02), provides that gross receipts subject to sales tax do not include cash or term discounts allowed and taken on sales. For the discount to reduce a retailer's gross receipts, the retailer must provide the discount (i.e., the retailer may not be reimbursed by a third party for the discount allowed or taken on a sale).

Facts and Question 1: Company A sells and installs satellite dish systems that are used by customers to receive satellite television services from Company B. The satellite dish system consists of a satellite dish (18-20

inch diameter), wiring, one or more receivers, and one or more remote controls. The satellite dish is affixed to a roof, wall, or railing of a building with a simple mounting bracket and screws. A wire is connected to the dish and routed into the building where it connects to a receiver that is located on a shelf or cabinet near a television set. It is likely that if a customer were to move, the satellite dish would be uninstalled and taken by the customer to a new location.

Is the sale and installation of the satellite dish system subject to Wisconsin sales or use tax?

Answer 1: Yes. The satellite dish system is tangible personal property when installed. The sale of tangible personal property is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (2001-02), unless an exemption applies (e.g., sale to a Wisconsin governmental unit). The gross receipts from the installation of the satellite dish system are subject to Wisconsin sales tax under sec. 77.51(4)(c)4 and 77.52(2)(a)10, Wis. Stats., unless an exemption applies.

Note: Although sec. Tax 11.68(7)(a)2, Wis. Adm. Code (June 1999 Register), provides, in part, that satellite dishes installed in apartment buildings, convalescent homes or other residential buildings are real property when installed, the rule was referring to satellite dishes that were 8 to 10 feet in diameter and installed by permanently affixing the dish to a substantial concrete foundation. Section Tax 11.68(7)(a), Wis. Adm. Code, is currently in the process of being amended to reflect the different character of current satellite dish systems.

Facts and Question 2: Assume the same facts as in Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$300 commission.
- In order to attract customers for Company B's service and receive the \$300 commissions, Company A offers a satellite dish system and installation for a price of \$99.
- Company B does not set the price at which Company A must sell the satellite dish system and installation.

- The \$300 commission is not dependent on Company A's sale of the satellite dish system or installation.
- Company A purchases the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 2: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$99. Company A's gross receipts subject to sales tax from the sale of the satellite dish system and installation do not include the \$300 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 3: Assume the same facts as Facts and Question 2, except that Company A provides the satellite dish system to the customer for free and charges \$49 for installation because the customer chooses not to self-install the dish system.

What is the sales and use tax treatment of these transactions?

Answer 3: Company A's sale to the customer of the satellite dish system installation is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$49. Company A's gross receipts subject to sales tax from the installation of the satellite dish system do not include the \$300 commission paid by Company B to Company A. Company A is subject to Wisconsin sales or use tax on its \$149 purchase of the satellite dish system it provided to the customer without charge (i.e., did not resell).

Facts and Question 4: Assume the same facts as Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$100 commission. The \$100 commission is not dependent on Company A's sale of the satellite dish system or installation.

- In order to attract customers, Company B offers a promotion that requires Company A to sell a satellite dish system and installation at a price of \$99, which is well below what Company A would charge for the system and installation without the promotion.
- Because of the reduced promotion price Company A must charge its customer, Company B pays Company A \$150.
- Company A purchased the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 4: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$249. Company A's gross receipts subject to sales tax from the sale and installation of the satellite dish system and installation include the amount paid by the customer (\$99) plus the \$150 payment by Company B to Company A for reimbursement of the discounted price Company B required Company A give to its customer. Company A's gross receipts subject to sales tax from the sale and installation of satellite dish system and installation do not include the \$100 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 5: Assume the same satellite dish system as described in Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$100 commission. The \$100 commission is not dependent on Company A's sale of the satellite dish system or installation.
- In order to attract customers, Company B offers a promotion that requires Company A to provide a satellite dish system without charge to the customer. Under that same promotion, Company A must furnish installation at a price of \$49, which is collected from the customer.
- Company B pays Company A (1) \$200 for the satellite dish system it required Company A to furnish to the customer at no charge, and (2) \$50 for the reduced installation price Company B required Company A to charge the customer.
- Company A purchased the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 5: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$299. Company A's gross receipts subject to sales tax from the sale and installation of the satellite dish system include the amount paid by the customer (\$49) plus the \$250 payment by Company B to Company A for the satellite dish system and reimbursement of the installation discount that Company B required Company A to give its customer. Gross receipts subject to sales tax from the sale and installation of the satellite dish system do not include the \$100 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 6: Assume the same facts as Facts and Question 5. The customer discontinues service with Company B during the first year of the service contract. As a result of discontinuing service, the agreements between the parties require that:

- Company A return to Company B \$150 of the \$250 satellite dish system and installation reimbursement made by Company B and the \$100 commission.
- The customer pay Company A \$100, in addition to the original \$49 the customer paid when it purchased the equipment and installation, in order to retain the satellite dish system.

What is the sales and use tax treatment of these transactions?

Answer 6: For the period in which the money is returned to Company B, Company A may claim a deduction on line 4 of its sales and use tax return (Form

ST-12) for \$150 of the \$250 reimbursement it previously reported tax on when selling the satellite dish system and installation, provided the tax on that amount is returned to the customer. Also, the additional \$100 payment by the customer to Company A for the satellite dish system is subject to Wisconsin sales tax. [↩](#)