



## 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 the position of 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 answers in a tax release.)

The following tax releases are included:

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## SALES AND USE TAX

### 1 Discount/Membership Cards

The examples in this tax release explain the proper Wisconsin sales and use tax treatment of membership fees charged by a retailer that a customer is required to pay before being allowed to purchase tangible personal property or services from the retailer.

- Membership fees charged by a retailer that allow the purchaser of the membership to purchase taxable tangible personal property or taxable services from the retailer are subject to Wisconsin sales or use tax.

**Example 1:** Retailer A requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer A only sells items that are subject to Wisconsin sales or use tax. The \$30 membership fee is subject to Wisconsin sales or use tax.

- Membership fees charged by a retailer that **only** allow the purchaser of the membership to purchase nontaxable tangible personal property or services from the retailer are not subject to Wisconsin sales or use tax.

**Example 2:** Retailer B requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer B only sells items that are not subject to Wisconsin sales or use tax. The \$30 membership fee is not subject to Wisconsin sales or use tax.

- Membership fees charged by a retailer to a customer that allow the customer to purchase both taxable and nontaxable tangible personal property or services from the retailer are subject to tax to the same extent the items being purchased are subject to tax. If the percentage of taxable items being purchased by the customer is not known by the retailer at the time the membership is sold, the retailer may charge Wisconsin sales or use tax on the entire membership fee. The retailer is liable for Wisconsin sales or use tax on the entire membership fee, unless the retailer can document the amount of its nontaxable sales to the customer.

**Example 3:** Retailer D requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer D sells both items that are subject to Wisconsin sales or use tax and items that are not subject to Wisconsin sales or use tax. Retailer D does not know what percentage of a particular customer’s purchases will be subject to tax at the time the membership is sold. Retailer D may charge Wisconsin sales or use tax on the entire \$30 membership fee.

- A retailer is not liable for Wisconsin sales or use tax on its receipts from membership fees charged to customers who provide the retailer with properly completed continuous Wisconsin Sales and Use Tax Exemption Certificates (Form S-211), claiming a valid exemption on **all** of their purchases from the retailer.

**Example 4:** Retailer X requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Customer Y resells all of the items it purchases from Retailer X and provides Retailer X with a properly completed continuous Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), claiming resale, at the time Customer Y purchases the membership from Retailer X. Since Customer Y has provided Retailer X with a properly completed continuous Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), for all its purchases from Retailer X, Retailer X is not required to collect Wisconsin sales or use tax on the \$30 membership fee.

## 2 Digital-to-Analog Converter Box Coupon Program

The Department of Commerce's National Telecommunications and Information Administration (NTIA), a federal agency, will be administering a federally-funded coupon program that enables each household in the United States to receive up to two (2) coupons that are each good for up to \$40 off the purchase of a television converter box that will allow analog televisions receiving over-the-air broadcasts to continue to work even after the over-the-air television signals are converted to all digital signals. This conversion is scheduled to be completed by February 17, 2009. Only one coupon can be used towards each converter box purchased. This tax release describes the NTIA coupon program and the Wisconsin sales and use tax treatment of purchases made using these NTIA- issued coupons.

### The Coupon Program

Under the NTIA coupon program, an eligible household will complete an application to apply for up to two (2) coupons that can only be used towards the purchase of "coupon eligible digital-to-analog converter boxes" (CECBs). A CECB is a converter box that contains only those features or functions necessary to convert any channel broadcast in the digital television service into a format that the consumer can display on a television

receiver designed to receive and display signals only in the analog television service. The NTIA will identify the specific converter boxes that qualify for this program and the retailers of these converter boxes will agree to only accept the NTIA-issued coupons for the CECBs.

Once the household has received an NTIA-issued coupon for a CECB, they may take the NTIA-issued coupon to a participating retailer to receive the lesser of the purchase price or \$40 off the purchase price of the CECB. If the CECB costs \$40 or less, the customer will not be required to pay anything. If the CECB costs more than \$40, the customer will be required to pay the difference between the selling price and the \$40 NTIA coupon. A customer that purchases a CECB using one of these coupons may not return the CECB for a full cash refund or make an exchange for another item, unless it is another CECB.

The retailer will then provide the required information to the NTIA to receive reimbursement for each of the NTIA-issued coupons they redeem. The NTIA will reimburse the retailer directly for the lesser of the purchase price or \$40 for each of the CECBs sold by the retailer under this program and for which NTIA-issued coupons were presented by the customers and accepted by the retailer.

### Wisconsin Sales and Use Tax Treatment

If the total selling price of the CECB is \$40 or less and the customer presents an NTIA-issued coupon to the retailer for the purchase of the CECB, no Wisconsin sales or use tax will be due on this transaction since the reimbursement is made directly from the NTIA to the retailer. The \$40 or less that the retailer receives directly from the NTIA towards the purchase of the CECB is not taxable since this is considered a sale to the federal government.

**Example:** Customer A purchases a CECB from Retailer B. The selling price of the CECB is \$35. Customer A presents an NTIA-issued coupon to Retailer B that entitles Customer A up to \$40 off the purchase price of the CECB. Since the total selling price of the CECB was less than \$40, Customer A is not required to pay anything to receive the CECB. Retailer B does, however, receive \$35 directly from the NTIA from the sale of this CECB. Since the NTIA is a federal government agency that is paying the retailer directly for the CECB, this is considered a sale to the federal government and there is no Wisconsin sales or use tax due on this transaction. Sales to the federal government are not subject to Wisconsin sales or use tax.

If the total selling price of the CECB is more than \$40 and the customer presents an NTIA-issued coupon to the retailer for the purchase of the CECB, Wisconsin sales or use tax would only be due on the difference between the total selling price and the \$40 reduction the customer received due to the NTIA-issued coupon, since the reimbursement for the \$40 coupon is made directly from the NTIA to the retailer.

**Example:** Customer Y purchases a CECB from Retailer Z. The selling price of the CECB is \$65. Customer Y presents an NTIA-issued coupon to Retailer Z that entitles Customer Y up to \$40 off the purchase price of the CECB. Since the total selling price of the CECB is more than \$40, Customer Y is required to pay the additional \$25 to purchase the CECB. In addition to the \$25 Retailer Z receives from Customer Y, Retailer Z also receives \$40 directly from the NTIA relating to the sale of this CECB, due to the NTIA-issued coupon. Retailer Z is liable for the tax on the additional \$25 that Customer Y pays for the CECB. However, the \$40 that is paid directly to Retailer Z from the NTIA, a federal government agency, is not subject to Wisconsin sales or use tax since this part of the sale is considered a sale to the federal government.