

Streamlined Sales Tax

Fall Training 2010

Topics

- Sourcing
- Digital Goods
- Bundled Transactions
- Buy 1 Get 1 Free
- Prepared Foods
- Medical Exemptions
- Miscellaneous

Sourcing Sales

Uniform Sourcing Rules

- General Sourcing Rules – Where sale occurs
 - Hierarchy:
 1. Seller's location (over-the-counter sales)
 2. Delivery address
 3. Billing address
 4. Other address
 5. Location from where shipped
- Section 77.522(1)(b), Wis. Stats.

Definition of Receive

“Receive,” as defined in s. 77.522 (1) (a) 1., Stats., “...means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.; making first use of services; or taking possession or making first use of digital goods under s. 77.52 (1) (d), Stats., whichever comes first. 'Receive' does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., on a purchaser's behalf.”

Example 1

- Wisconsin corporation hires shipping company to pick up purchased equipment
- Shipping company picks up equipment in Minnesota
- Shipping company delivers equipment to Wisconsin corporation (purchaser) in Wisconsin
- Where is sale sourced?

Answer 1

- Prior Law
 - If contract carrier, situs of sale occurs in Minnesota
 - If common carrier, situs of sale occurs in Wisconsin
- Current Law
 - Purchaser “receives” equipment in Wisconsin
 - Sale is sourced to Wisconsin regardless of whether common or contract carrier

Statute Reference

77.522 (1) (a) 1

- 'Receive' does not include a shipping company taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats., on a purchaser's behalf.

Example 2

- Same facts as Example 1, except Wisconsin corporation sends an employee into Minnesota to pick up purchased equipment
- Where is the sale sourced?

Answer 2

- Prior law:
 - Situs of sale occurs in Minnesota
 - 77.51(14r) states a sale takes place at time and place where possession is transferred by seller or seller's agent to purchaser or purchaser's agent
- Current law
 - Sale is sourced to Minnesota

Statute Reference

77.522 (1) (a) 1

'Receive,' as defined in s. 77.522 (1) (a) 1., Stats., means taking possession of tangible personal property or items or property under s. 77.52 (1) (b) or (c), Stats.; making first use of services; or taking possession or making first use of digital goods under s. 77.52 (1) (d), Stats., whichever comes first.

Uniform Sourcing Rules

- Special Sourcing Rules for:
 - Leases, licenses, and rentals (sec. 77.522(3), Wis. Stats.)
 - Telecommunication services (sec. 77.522(4), Wis. Stats.)
 - Florists (sec. 77.522(5), Wis. Stats.)
 - Direct mail (sec. 77.522(1)(c), Wis. Stats.)

Sourcing Leases, Licenses and Rentals

Leases, Licenses and Rentals – Defined (77.51(7))

- Lease and Rental
 - Any transfer of possession or control for a fixed or indeterminate period of time for consideration
 - Includes
 - Transfer with future option to purchase
 - Motor vehicles/trailers if the consideration may be increased or decreased by referencing amount realized on future sale or other disposition
 - True regardless of whether GAAP treats these as leases or rentals

Leases, Licenses and Rentals – Defined (77.51(7))

- Lease and Rental
 - Does not include:
 - Security agreement or deferred payment plan if title automatically transfers after all required payments are made
 - Agreement requires transferring title after all required payments made and after paying an option price that does not exceed the greater of \$100 or 1% of the total amount of required payments

Leases, Licenses and Rentals – Defined (77.51(7))

- Lease and Rental
 - Does not include:
 - Providing TPP and operator if operator is necessary for TPP to perform in manner designed and operator does more than maintain, inspect or set-up
 - Cranes – Taxability depends on service performed
 - Fine grading with operator – Landscaping and taxable
 - True regardless of whether GAAP treats these as leases or rentals

Uniform Sourcing Rules (77.522)(3)) (Leases, Licenses, and Rentals)

General rules

- Does not apply to:
 - Motor vehicles, trailers, semi-trailers and aircraft that are not “transportation equipment”
 - Transportation equipment

Uniform Sourcing Rules (77.522)(3)) (Leases, Licenses, and Rentals)

General rules – Single Payment

- If only one payment required
 - Source under same hierarchy (1 – 5) as on previous slides
 - Sale

Uniform Sourcing Rules (77.522)(3)) (Leases, Licenses, and Rentals)

General Rules – Multiple Payments

- First payment
 - Source under same hierarchy (1 – 5) as on previous slides
- Subsequent payments
 - Source based on property's primary location
 - Intermittent use elsewhere does not alter sourcing

Uniform Sourcing Rules (77.522)(3)) (Leases, Licenses, and Rentals)

- Motor vehicles, trailers, semitrailers and aircraft that are not “transportation equipment”
 - If only one payment
 - Sourced under same hierarchy (1 – 5) as on previous slides
 - If more than one payment
 - All payments sourced to property’s primary location
 - Address provided by lessee to lessor and available in lessor’s business records
 - Intermittent use elsewhere does not alter sourcing

Example 1

- Corporation A leases an automobile from a Minnesota car dealer for a sales representative
- Corporation A picks up the vehicle in Minnesota
- First and subsequent payments sent from Wisconsin corporation headquarters to Minnesota car dealer
- Sales representative works in Hudson corporate office but has territory throughout Minnesota and Wisconsin
- Property's primary location is Hudson
- Where is this lease sourced?

Answer 1

- Prior law
 - The vehicle is customarily kept in Wisconsin
 - Wisconsin tax due on all lease payments
- Current Law
 - Since there is more than one payment, all lease payments sourced to Wisconsin

Statute Reference

- Uniform Sourcing Rules (77.522)(3)) - Leases, Licenses, and Rentals
 - If more than one payment
 - All payments sourced to property's primary location
 - Address provided by lessee to lessor and available in lessor's business records
 - Intermittent use (Minnesota) elsewhere does not alter sourcing

Example 2

- Same facts as previous example except Corporation A is leasing a laptop for the sales representative
- Corporation A leases a laptop from a Minnesota retailer for a sales representative
- Corporation A picks up the laptop in Minnesota
- First and subsequent payments sent from Wisconsin corporation headquarters to Minnesota retailer
- Sales representative works in Hudson, WI corporate office but has territory throughout Minnesota and Wisconsin (i.e., property's primary location is Hudson, WI)
- Where is this lease sourced?

Answer 2

- Prior law
 - Wisconsin tax due on all lease payments while property situated in Wisconsin
- Current law
 - First payment sourced to Minnesota
 - Subsequent payments
 - Sourced to Wisconsin

Statute Reference

- Uniform Sourcing Rules (77.522)(3))
(Leases, Licenses, and Rentals)
- If first payment
 - Source under general sales hierarchy
 - Hierarchy:
 1. Seller's location
 2. Delivery address
 3. Billing address
 4. Other address
 5. Location from where shipped
- Subsequent payments
 - Source based on property's primary location

Uniform Sourcing Rules (77.522)(3)) (Leases, Licenses, and Rentals)

- “Transportation Equipment”
 - Locomotives and railcars
 - Trucks & truck tractors – GVWR > 10,000 lbs
 - Trailers, semitrailers and buses
 - Registered under sec. 341.405
 - Operated under federal authority to carry persons or property in interstate commerce
 - Aircraft authorized by feds to carry persons or property in interstate commerce
- All payments sourced under general sourcing hierarchy

Example 1

- Wisconsin individual goes to a Minnesota dealer and rents a semitrailer for three months.
- Wisconsin individual brings semitrailer into Wisconsin where it is used to haul property.
- Semitrailer is registered under sec. 341.405
- All rent payments sent to Minnesota dealer after the semitrailer is picked up.
- Where are the rent payments sourced?

Answer 1

- Prior law
 - Wisconsin tax due on all rent payments
- Current law
 - Rent payments sourced to Minnesota

Statute Reference

- Section 77.522(1)(b), Wis. Stats.
- All payments sourced under general sourcing hierarchy
 - Hierarchy:
 - 1. Seller's location**
 2. Delivery address
 3. Billing address
 4. Other address
 5. Location from where shipped

Telecommunications

Telecommunications Services (77.51(21n))

- Definition
 - “...means electronically transmitting, conveying, or routing voice, data, audio, video, or other information or signals to a point or between or among points...”

Telecommunications Services (77.51(21n))

- Specifically excludes:
 - Data processing and information services if primary purpose is the processed data
 - Installing or maintaining wiring or equipment on a customer's premises
 - Tangible personal property
 - Advertising, including directory advertising
 - Billing and collection services
 - Internet access services
 - Radio and TV audio and video programming
 - Ancillary services
 - Digital products delivered electronically

Ancillary Services (77.51(1ba))

- Definition
 - “...means services that are associated with or incidental to providing telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice-mail service.”

Uniform Sourcing Rules (77.522(4)) (Telecommunications Services)

- Special sourcing provisions for telecommunications services
- Section Tax 11.66 (3), Wis. Adm. Code (June 2010)
 - Call-by-call basis (charge per call)
 - Other than call-by-call basis (monthly fee)
 - Mobile telecom
 - Postpaid basis (pay using credit card)
 - Private communication service

Call-by-call basis (charge per call)

- Section Tax 11.66 (3)(a)1, Wis. Adm. Code (June 2010)
- Sourced to taxing jurisdiction
 - Where the call originates and terminates
 - Assuming call originates and terminates in same taxing jurisdiction; or
 - Where the service address is located
 - Assuming call does not originate and terminate in same taxing jurisdiction

Other than call-by-call basis (monthly fee)

- Section Tax 11.66 (3)(a)2, Wis. Adm. Code (June 2010)
- Sourced to customer's place of primary use

Other than call-by-call basis (monthly fee)

- “Place of primary use” means:
 - Address representative of where customer’s use of the service primarily occurs; and
 - Must be (both):
 - Residential street address or primary business street address
 - Within licensed service area of the home service provider

Mobile telecom

- Section Tax 11.66 (3)(a)3, Wis. Adm. Code (June 2010)
- Sourced to customer's place of primary use
 - Excludes air-to-ground radiotelephone service and prepaid calling service

Postpaid basis (pay using credit card)

- Section Tax 11.66 (3)(a)4, Wis. Adm. Code (June 2010)
- Sourced to location where the signal of the telecommunications service originates
 - First identified by the telecommunications system; or
 - If the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider

Private communication service

- Section Tax 11.66 (3)(a)7, Wis. Adm. Code (June 2010)
- If separate charge - sourced to location of the customer channel termination point
- If separate charge and 2 customer channel termination points are located in different taxing jurisdictions, sourced in an equal percentage to each jurisdiction
- If no separate charge and more than one taxing jurisdiction, use percentage
 - Divide the number of customer channel termination points in that jurisdiction by total termination points in all jurisdictions
- No credit for tax paid to another state if other state apportions similar to WI

Uniform Sourcing Rules (77.522(4)) (Telecommunications Services)

- Prepaid calling service
 - Use general sourcing hierarchy
 - Section Tax 11.66 (3)(a)5, Wis. Adm. Code (June 2010)
- Prepaid wireless calling service
 - Use general sourcing hierarchy, except if cannot determine under 1. to 4. use either:
 - Where the call originated or
 - The location associated with the mobile telecom number, as determined by the seller
 - Section Tax 11.66 (3)(a)6, Wis. Adm. Code (June 2010)

Sourcing Florists Sales

Uniform Sourcing Rules (77.522 (5)) (Florists)

- **Retail Florists**

- Generally source sales in same manner as other retailers
- Exception for situations where retail florist transmits order to second retail florist for delivery

Uniform Sourcing Rules (77.522 (5)) (Florists)

- **Retail Florists**

- Defined to mean “...a person engaged in the business of selling cut flowers, floral arrangements, and potted plants and who prepares such flowers, floral arrangements, and potted plants. ‘Retail florist’ does not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.”

Uniform Sourcing Rules (77.522 (5)) (Florists)

- **Retail Florists – Wire Delivery Service**
 - Based on agreements entered into with states for certain transactions
 - Sourced to location where first retail florist received the order

Example 1

- Retail Florist A receives order from customer in Wisconsin
- Order is for floral arrangement delivered to a location in South Dakota
- Retail Florist A transmits order to Retail Florist B in South Dakota
- Retail Florist A collects money from the customer in Wisconsin

Answer 1 and Statute Reference

- Transaction is sourced to Wisconsin
- Treated same under prior and current law
- 77.522 (5)

Sourcing Direct Mail

What is Direct Mail?

- **General Definition (77.51(3pd))**
 - “...means printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addresses on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material...is not billed directly to the recipients...does not include multiple items of printed materials delivered to a single address.”

Uniform Sourcing Rules (Direct Mail) (77.522(1)(c))

- **Two Types of Direct Mail**
 - Advertising and Promotional Direct Mail (77.51 (1ag))
 - Other Direct Mail (77.51 (9r))
 - Different Sourcing Rule for Each
 - Act 330

Uniform Sourcing Rules

(Advertising and Promotional Direct Mail)

(77.522(1)(c)1.)

- **Advertising and Promotional Direct Mail**
(77.51 (1ag))
 - “...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.”

Uniform Sourcing Rules

(Advertising and Promotional Direct Mail)

(77.522(1)(c)1.)

- Sourced to location from where the direct mail was shipped (origination), unless:
 - Purchaser provides one of the following:
 - Direct pay permit;
 - Exemption certificate claiming direct mail; or
 - Taxing jurisdiction information

Uniform Sourcing Rules (Other Direct Mail) (77.522(1)(c)2.)

- **Other Direct Mail (77.51(9r))**
 - “...means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing...”
 - Includes invoices, bills, account statements, privacy notices, stockholder reports, newsletters, and informational pieces

Uniform Sourcing Rules (Other Direct Mail) (77.522(1)(c)2.)

- Sourced to purchaser's business address (#3 under general sourcing hierarchy), unless:
 - Purchaser provides either:
 - Direct pay permit; or
 - Exemption certificate claiming direct mail

Uniform Sourcing Rules (Direct Mail) (77.522(1)(c)3.)

- Advertising and promotional direct mail and other direct mail included in same mailing
- Sourced as “other direct mail”

Uniform Sourcing Rules (Direct Mail) (77.522(1)(c)4.)

- Sourcing
 - Transactions that include development of billing information or data processing services
 - If more than incidental – use general sourcing rules (not direct mail sourcing rules)
 - If incidental – use direct mail sourcing rules

Example 1

- Wisconsin Company A contracts with a Wisconsin advertising agency to produce and send out advertising flyers
- Wisconsin Company A provides the advertising agency with direct pay permit
- Where is this sale sourced?

Answer 1

- Prior law
 - Direct pay permit provided, the advertising agency does not charge tax
- Current law
 - Direct pay permit provided, the advertising agency does not charge tax
- Company A responsible for tax on flyers mailed to Wisconsin addresses for prior and current law
- Answer also applies to other direct mail

Example 2

- Wisconsin Company A contracts with a Wisconsin advertising agency to produce and send out advertising flyers
- Wisconsin Company A provides the advertising agency with the taxing jurisdiction information
- Where is this sale sourced?

Answer 2

- Prior law
 - Tax due on the flyers mailed to Wisconsin addresses
- Current law
 - Sourced based on the taxing jurisdictions provided by Company A
 - Note: Taxing jurisdiction information must be more than just supplying the mailing addresses

Example 3

- Assume instead of advertising and promotional direct mail, the advertising agency sends “other direct mail”
- No direct pay permit or exemption certificate provided
- Sourced to Company A’s business address
 - #3 under general sourcing hierarchy

Example 4

- Wisconsin Company A contracts with a Wisconsin advertising agency to produce and send out advertising flyers
- Wisconsin Company A only provides list of mailing addresses to advertising agency
- Where is this sale sourced?

Answer 4

- Prior law
 - Tax due on flyers mailed to Wisconsin addresses
- Current law
 - Sourced to location from where the direct mail was shipped (origination)
 - Wisconsin tax due on all flyers since the flyers were shipped from the advertising agency's Wisconsin location

Example 5

- Assume instead of advertising direct mail, the advertising agency sends “other direct mail”
 - Sourced to Company A’s business address (#3 under general sourcing hierarchy)
 - Wisconsin tax due since Company A’s business address is a Wisconsin address



Questions?

Digital Goods

Digital Goods

- Digital Goods
 - Effective October 1, 2009
 - Tax is imposed on the sale of:
 - Specified Digital goods
 - Additional digital goods
 - Digital goods are transferred electronically
- Section 77.52(1)(d), Wis. Stats

Digital Goods Reminders

- Digital Goods
 - If tangible form is exempt – then digital form is exempt (sec. 77.54(50), Wis. Stats.)
 - Follows general sourcing hierarchy in sec. 77.522(1)(b), Wis. Stats., for determining where the sale takes place

Specified Digital Goods

- Specified Digital Goods Include:
 - Digital audio works
 - Digital audiovisual works
 - Digital books
 - Digital codes relating to the above items
- Section 77.51 (17x), Wis. Stats.

Example 1

- Customer A, using a computer and internet access reaches a website in which they can purchase a recorded seminar.
- Customer A purchases the recorded seminar and is able to stream the recorded seminar on their computer.
- Customer A's billing address is in Dane County, but Customer A may be located anywhere when they access the recorded seminar.
- Is this purchase subject to Wisconsin sales/use tax?

Answer 1

- Customer A's purchase of the recorded seminar would be subject to Wisconsin sales/use tax.
- The recorded seminar is a digital audiovisual work.
- This sale would be sourced to Dane County based on Customer A's billing address.
- Customer A would pay sales/use tax at the rate of 5.5% (5% state tax and 0.5% Dane County tax).

Analysis 1

- Section 77.51 (3p), Wis. Stats.,
 - “‘Digital audiovisual works’ means a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, and that are transferred electronically....”

Example 2

- Soda Company B, located in Wisconsin (i.e., whose billing address is in Wisconsin) purchases 10,000 codes to put under their soda bottle caps.
- The bottles of soda are distributed to various vendors.
- Customer A purchases a bottle of soda whose cap contains a digital code. With the digital code, the customer can go online and download a song for free.
- Is the purchase of the digital codes by Soda Company B subject to Wisconsin sales/use tax?

Answer 2

- Yes, the purchase of the digital codes by Soda Company B would be subject to sales or use tax.
- The purchase of the codes would be sourced to Wisconsin since that is where Soda Company B's billing address is located.
- Soda Company B is the consumer of these codes.

Analysis 2

- Section 77.51 (3pc), Wis. Stats.,
 - “(A) code that provides the person who holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book and that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as a song code, video code, or book code.....”

Example 3

- Customer A purchases a \$25 music gift card.
- Customer A uses the music gift card to purchase and download any song they choose.
- Is Customer A's purchase of the \$25 music gift card subject to Wisconsin sales/use tax?

Answer 3

- Customer A's purchase of the \$25 music gift card would not be subject to Wisconsin sales/use tax.

Analysis 3

- Section 77.51 (3pc), Wis. Stats.,
 - “.....’Digital code’ does not include the following:
 - a code that represents any redeemable card, gift card, or gift certificate that entitles the holder of such card or certificate to select any specified digital goods or additional digital goods at the cash value indicated by the card or certificate.....”

Additional Digital Goods

- Additional Digital Goods Include:
 - Greeting cards
 - Finished artwork
 - Periodicals
 - Video or electronic games
 - Newspaper or other news or information products
- Section 77.51 (1a), Wis. Stats.

Finished Artwork

- Definition:
 - “...the final art used for actual reproduction by photomechanical or other processes or for display purposes, **but does not include Web site or home page designs.**”
- Section 77.51 (3rm), Wis. Stats.
- Includes:
 - Drawings
 - Paintings
 - Designs
 - Photographs
 - Lettering
 - Paste-ups
 - Mechanicals
 - Assemblies
 - Charts
 - Graphs
 - Illustrative Materials

Example 4

- Company XYZ contracts with Company A, located in MI, to create a powerpoint presentation.
- Company A creates the powerpoint presentation and emails it to Company XYZ.
- Is the sale of the powerpoint presentation that is emailed to Company XYZ subject to Wisconsin sales/use tax?

Answer 4

- Company XYZ's purchase of the powerpoint presentation is subject to Wisconsin sales/use tax.

Analysis 4

- The purchase of the powerpoint presentation meets the definition of “finished artwork” because it is the final art for display purposes.

Example 5

- Company A designs, creates, and distributes electronic newsletters for clients.
- Would the charges to their clients be subject to Wisconsin sales/use tax?

Answer 5

- Company A's charges to design, create, and distribute the newsletters electronically would be subject to Wisconsin sales tax.

Analysis 5

- The charges would meet the definition of “additional digital goods” (as outlined above), since they are “other news or information products.”

Example 6

- Advertising Company designs a digital image and sends it electronically to Company Z for review.
- Company Z approves the digital image.
- Advertising Company sends the digital image to Printer Y to print 1,000 business cards for Company Z.
- Printer Y uses its own paper and ink to print the business cards.
- The business cards are sold by Printer Y to Company Z.
- Is the charge by Advertising Company to Company Z for the digital image subject to Wisconsin sales/use tax?

Answer 6

- The charge by the Advertising Company to Company Z for the finished artwork (digital image) is exempt from Wisconsin sales tax.
- The finished artwork is consumed in the production of business cards which are sold by Printer Y to Company Z.

Analysis 6

- Section 77.54(2), Wis. Stats., provides an exemption for TPP and items and property under sec. 77.52(1)(b) and (c) that is consumed, destroyed...in manufacturing TPP destined for sale.
- Section 77.54(50), Wis. Stats., provides an exemption for the digital form of an item if the tangible form of that same item would have qualified for exemption.

Example 7

- ABC Bar purchases sports tickers from an out of state company.
- The sports tickers are current updates of sport scores that run on the bottom of the TV screens at the bar.
- Would the purchase of the sports tickers be subject to Wisconsin sales/use tax?

Answer 7

- The sports ticker is an additional digital good.
- Subject to tax unless exemption applies.

Analysis 7

- The sports ticker meets the definition of an “additional digital goods” (as outlined above), since it is an “other news or information product.”

Example 8

- Customer E pays a subscription fee to access a searchable database.
- Customer E accesses this database by logging onto their supplier's website via the internet and enters a password, once the subscription fee is paid.
- Is the subscription fee to access the searchable database subject to Wisconsin sales/use tax?

Answer 8

- Although the on-line searchable information database is a “digital good,” it is not one of the types of digital goods upon which Wisconsin sales/use tax is imposed.
- Customer E would not owe sales/use tax on the subscription fee.

Example 9

- Company A, an Application Service Provider (ASP), provides access to its software.
- The software is stored on Company A's server and the customer accesses the software via the Internet.
- Customers that contract with Company A have access to Company A's servers, but do not operate or have control over the servers.
- Company A has control over the computer hardware and software, loads the software onto the server and is responsible for security measures.
- Is Company A's charge to access its software subject to Wisconsin sales/use tax?

Answer 9

- Company A is providing a data processing service, which is not subject to Wisconsin sales and use tax, regardless of whether the server is located in Wisconsin or outside Wisconsin.
- See Computer Hardware and Software FAQs on website

Example 10

- Company P contracts with businesses and individuals to create new and update old websites.
- There are some instances in which a customer is charged for photographic services.
- Company P separately states the charges on his invoices.
- Are any of the charges by Company P subject to Wisconsin sales tax?

Answer 10

- Company P's charges for web site design would not be subject to Wisconsin sales tax.
- Company P's charges for photographic services that would be included on the website would be subject to Wisconsin sales tax.

Analysis 10

- Section Tax 11.47 (1), Wis. Adm. Code
 - "(1) Taxable services and sales of tangible personal property and items, property and goods under s. 77.52 (1) (b), (c) and (d), Stats., of commercial photographers and others providing photographic services, including video taping, include charges for:
 - (a) Taking, reproducing, and selling photographs and videos.
 - (b) Processing, developing, printing, and enlarging film.
 - (c) Enlarging, retouching, tinting, or coloring photographs.
 - (e) Reproducing copies of documents, drawings, photographs, videos, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment."

Digital Goods - Reminders

- Keep in mind – If it is a digital good, it doesn't mean its automatically taxable.
- You cannot buy items as TPP exempt for resale and sell it in a digital form.
- You cannot “manufacture” a digital good.

Recap – Digital Goods Quick Reference

- Applicable Statutes:
 - Definitions – 77.51 (1a), (3p), (3pa), (3pb), (3pc), (3rm), (17x), and (21q)
 - Imposition of Tax – 77.52 (1)(d)
 - Exemption – 77.54 (50)



Questions?

Bundled Transactions

Importance of Bundled Transactions

- *Only* potentially, have a “bundled transaction” when taxable and non-taxable items are being “bundled” together for one price
- If taxable products are greater than 10% = generally taxable to customer (certain exceptions apply)
- If taxable products 10% or less = not a bundle and generally not taxable

Importance of Bundled Transactions

- If no combination of taxable and nontaxable products - “bundled transaction” rules really don’t matter
 - Taxability of transaction is based on the taxability of products being sold...
 - If all taxable products = Taxable
 - If all non-taxable products = Not taxable

Imposition of Tax (77.52(20))

- Tax imposed on:
 - Entire sales price of a bundled transaction
 - 77.52(20)(a)
 - Exception 77.52(20)(b)
 - Retailers can opt to “unbundle” and charge tax only on the taxable products under certain circumstances
 - » *Discuss later*

Definition (77.51(1f))

- Bundled Transactions Defined – 77.51 (1f)
 - Retail sale of 2 or more products (not including real property or services to real property) that are *distinct and identifiable* and sold for *one nonitemized price*

Definition (77.51(11d))

- Two or more “products”
 - “Products” includes:
 - TPP
 - Services
 - Digital goods
 - Property and items under sec. 77.52(1)(b) and (c)
 - Bundling definition excludes real property and services to real property

Definition (77.51(3pf))

Definition - “Distinct and Identifiable” – 77.51(3pf)

Does ***not*** include:

- Containers, boxes, sacks, bags, etc. that are incidental or immaterial to the retail sale
- Product *provided free in conjunction with required purchase of other product and sales price of other product does not vary*, whether free product is included or not (BOGOF – Cover in detail later)
- Any item specified under sub.(12m)(a) or (15b)(a)...(definitions of purchase price and sales price)

Definition (77.51(9p))

- “One non-itemized price” – 77.51(9p)

Does *not* include, a price:

- separately identified on binding sales document, made available to customer in paper or electronic form
 - e.g. contract, invoice, bill of sale, lease or service agreement, price list, etc.

Definition (77.51(1f)(a))

- Bundled Transactions – Exceptions (i.e., *not* bundled transactions)
 - Price varies or is negotiable based on products selected - 77.51(1f)(a)
 - Purchaser has option to select or decline products and price varies accordingly
 - Computer support services example

Definition (77.51(1f)(b))

- Bundled Transactions – Exceptions (i.e., *not* bundled transactions)
 - TPP and service –
 - TPP essential to Service
 - TPP is provided exclusively in conjunction with Service
 - True object is Service - 77.51(1f)(b)
 - Service provider is consumer of TPP, per 77.52(22)

Note: Customer is required to purchase TPP from this service provider

Definition (77.51(1f)(c))

- Bundled Transactions – Exceptions (i.e., *not* bundled transactions)
 - Service and Service –
 - Service (A) is essential to Service (B)
 - Service (A) is provided exclusively in conjunction w/ Service (B)
 - True object is Service (B) - 77.51(1f)(c)
 - Service Provider B is the consumer of Service A per 77.52(23)

Definition (77.51(1f)(d))

- Bundled Transactions – Exceptions (i.e., *not* bundled transactions)
 - Transaction includes taxable and nontaxable products
 - Taxable products are 10% or less of total sales or purchase price - 77.51(1f)(d)
 - Taxable products included in the transaction are exempt from sales tax - 77.54(51)
 - Retailer that bundled the products together owes use tax on their cost of the taxable products included

Definition (77.51(1f)(e))

- Bundled Transactions – Exceptions (i.e., *not* bundled transactions)
 - Transaction includes taxable and nontaxable property
 - Transaction include food, drugs, DME, MEE, prosthetic devices or medical supplies
 - Taxable property is 50% or less -77.51(1f)(e)
 - Taxable property included in this transaction is exempt - 77.54(52)
 - Retailer bundling does NOT owe use tax on their cost of the taxable items included

Imposition of Tax (77.52(20)(b))

- Exception for bundled transactions:
 - Retailer's Option - “unbundle” if can identify through:
 - *Reasonable and verifiable* standards
 - *Books and records*
 - *Ordinary* course of business
 - Portion which is attributable to products that are not taxable
 - “Unbundling” does NOT apply if transaction contains food, drugs, DME, MEE, prosthetic devices or medical supplies

Bundled Transactions - Examples

Facts 1:

- For \$100, Retailer C will provide:
 - Daily Newspaper subscription (non-taxable)
 - \$10 Coffee mug (taxable)

Is this a Bundled Transaction?

Bundled Transactions - Examples

Answer 1:

No...If taxable items are 10% or less of the total sales price – Not a Bundle

77.51(1f)(d)

- Does the retailer owe use tax on their cost of the coffee mug? Why?

Bundled Transactions - Examples

Facts 2

- Retailer sells \$30 package that includes:
 - \$10 American flag (non-taxable)
 - \$20 Flag pole and installation accessories (taxable)

Is this a Bundled Transaction?

Bundled Transactions - Examples

Answer 2:

Yes.. it is a bundled transaction:

- Retail sale of 2 or more products (none are real property)
- Products are distinct and identifiable
- Sold for one non-itemized price
- Price doesn't vary based on items selected
- Doesn't include a service
- Doesn't include food, food ingredient, DME, MME, PD, or medical supplies
- Taxable products are more than 10% of the total sales price

Note: Prior to 10/1/09 this would have been an exempt sale because of the inclusion of the American Flag.

Bundled Transactions - Examples

Facts 3:

- Marketing Company sells social media service that includes:
 - Establishing social media account (Non-taxable service)
 - Video clips and photos are created and placed on the web page (Taxable service & digital goods)
 - Manage the campaign and report results (Non-taxable service)

Is this a bundled transaction?

Bundled Transactions - Examples

Answer(s) 3:

- If taxable and non-taxable products are billed separately on invoice - NOT a bundle - per the definition of a bundled transaction 77.51(1f)
- If they bill one non-itemized monthly fee for all taxable and nontaxable items - it is bundled transaction - if the price of taxable products is more than 10% of the total price per 77.51(1f)(d)
- May need to determine if service is main objective and if TPP or other services are incidental to getting that object service – then may not be a bundle per 77.51(1f)(b) and/or (c).

Bundled Transactions - Examples

Facts 4:

- Retailer sells \$10 holiday gift baskets that include:
 - \$5 worth of fruit (non-taxable)
 - \$5 worth of candy (taxable)

Is this a bundled transaction?

Bundled Transactions - Examples

Answer 4:

- Not a bundled transaction...
 - If the transaction contains food & food ingredients, drugs, DME, MEE, PD, or medical services
 - The taxable portion must be more than 50% of the total price.
 - Taxable products included are exempt

Note: Retailer bundling doesn't owe use tax on their cost of the taxable products in this case

RECAP - Bundled Transactions

– Quick Reference

- *Statutes applicable:*
 - Definitions: 77.51(1f), (3pf), and (9p)
 - Imposition of tax: 77.52(20), (21), (22), and (23)
 - Exemptions: 77.54(51) and (52)
- *Administrative Code Section applicable:*
 - Tax 11.985 Bundled Transactions



Questions?



Buy One, Get One Free
(BOGOF)

Buy One, Get One Free

Definition - “Distinct and identifiable” –
77.51(3pf)

Does ***not*** include:

- Product provided free in conjunction with required purchase of other product and sales price of other product does not vary, whether free product is included or not

Buy One, Get One Free

- Retailer is the consumer – 77.52(21)
- Retailer owes tax on purchase of the free item
- Does not matter if purchaser is required to purchase taxable or nontaxable product

Buy One, Get One Free

- Item is considered to be provided free if customer does not have to pay an additional amount to get the free item
- Invoice or receipt provided to customer controls in determining if the item is provided free
- Makes no difference if free item is the same as, similar to or different from the item that must be purchased

Buy One, Get One Free

- Exception –
- Section 77.52(21) does not apply to TPP transferred in conjunction with services identified in sec. 77.52(2)(a)7., 10., 11., and 20
- Section 77.52(2m)(b) provides that these are separate sales

Free Products – Examples

Example 1

- Free hat provide with purchase of gasoline
- Price of gas does not vary if hat is included in transaction
- Receipt indicates no charge for the hat

Is the hat provided free of charge?

Free Products – Examples

Answer 1

- Yes – hat is provided free
- Retailer must pay tax on purchase of the hat as provided in sec. 77.52(21)

Free Products – Examples

Example 2

- Free bicycle with purchase of a couch
- Price of couch does not vary if bicycle is included in transaction
- Receipt indicates no charge for the bicycle

Is the bicycle provided free of charge?

Free Products – Examples

Answer 2

- Yes – bicycle is provided free
- Retailer must pay tax on purchase of the bicycle as provided in sec. 77.52(21)

Free Products – Examples

Example 3

- Free shirt with purchase of shirt
- Shirt one costs \$20
- Receipt indicates no charge for the second shirt

Is the second shirt provided free of charge?

Free Products – Examples

Answer 3

- Yes – the second shirt is provided free
- Retailer must pay tax on purchase of the shirt as provided in sec. 77.52(21)

Free Products – Examples

Example 4

- Free shirt with purchase of shirt
- Shirt one costs \$20
- Receipt indicates \$20 charge for the first shirt, \$20 charge for the second shirt and a discount of \$20 for the second shirt

Is the second shirt provided free of charge?

Free Products – Examples

Answer 4

- Yes – the second shirt is provided free
- Retailer must pay tax on purchase of the shirt as provided in sec. 77.52(21)

Free Products – Examples

Example 5

- Free shirt with purchase of shirt
- Shirt one costs \$20
- Receipt indicates \$20 charge for the first shirt minus \$10 discount and \$20 charge for the second shirt minus a discount of \$10 for the second shirt

Is the second shirt provided free of charge?

Free Products – Examples

Answer 5

- No – the second shirt is not provided free since the receipt indicates that it is being sold for \$20 less a \$10 discount
- Retailer may purchase the shirts without tax for resale

Free Products – Examples

Example 6

- Free shirt with purchase of shirt
- Shirt one costs \$20
- Receipt indicates \$20 charge for the first shirt and \$20 charge for the second shirt
- Separate discount of \$20 noted on receipt that is not tied to a specific item

Is the second shirt provided free of charge?

Free Products – Examples

Answer 6

- No – the second shirt is not provided free since the receipt indicates that each shirt is being sold for \$20 (\$40 total) and a \$20 discount is being applied to the transaction
- Retailer may purchase the shirts without tax for resale

Prepared Food

Prepared Food

- Definition of “prepared food” (77.51(10m))
 - Heated foods and beverages
 - 2 or more food ingredients mixed or combined by the retailer
 - Exceptions
 - Food and food ingredients sold with utensils
 - 75% test

Prepared Food

- Definition of “prepared food” (cont’d)
 - Heated Items
 - Rotisserie chicken
 - Coffee
 - Soups
 - Hamburgers/Hot dogs
 - Pizza slices
 - Does not include items heated by customer

Prepared Food

- Definition of “prepared food” (cont’d)
 - Items mixed or combined by the retailer
 - Sandwiches made by retailers
 - Ice cream sundaes made by retailers
 - Meatloaf
 - Exceptions

Prepared Food

- Definition of “prepared food” (cont’d)
 - Mixed or combined ingredients – exceptions:
 - Mixed or combined by retailer and sold as single item, unheated, by weight or volume
 - Potato salad sold by pound
 - Cheese and meat trays

Prepared Food

- Definition of “prepared food” (cont’d)
 - Mixed or combined ingredients – exceptions:
 - Bakery items made by the retailer
 - Bread
 - Cakes
 - Donuts
 - Pies
 - Taxable if they are sold heated

Prepared Food

- Definition of “prepared food” (cont’d)
 - Mixed or combined ingredients – exceptions:
 - Food and food ingredients that are only sliced, repackaged, or pasteurized by a retailer.
 - Cheese
 - Meat

Prepared Food

- Definition of “prepared food” (cont’d)
 - Mixed or combined ingredients – exceptions:
 - Eggs, fish, meat, poultry and foods containing these items in raw form and that require cooking by the consumer as recommended by the FDA to prevent food-borne illnesses.
 - Marinated meats

Prepared Food

- Definition of “prepared food” (cont’d)
 - Mixed or combined ingredients – exceptions:
 - Primary classification in the NAICS is manufacturing (311)
 - Bologna manufacturer sells bologna they produced

Prepared Food

- Definition of “prepared food” (cont’d)
 - Food and food ingredients sold with eating utensils
 - Hot food bars
 - Salad bars – including self-service
 - Fountain drinks
 - Bagel sold with a knife
 - Utensils include plates, bowls, knives, forks, spoons, glasses, cups, napkins and straws

Prepared Food

- Definition of “prepared food” (cont’d)
 - Utensils are considered provided by the retailer if:
 - The retailer’s customary practice is to physically hand or give the utensils to the purchaser
 - Except that plates, glasses, bowls, or cups that are necessary to receive the food and food ingredients need only be made available to the purchaser

Prepared Food

- Definition of “prepared food” (cont’d)
 - Utensils are considered provided by the retailer if:
 - The sales of prepared foods are 75% or more and utensils are just made available to the customers

Prepared Food

- Definition of “prepared food” (cont’d)
 - Utensils are considered provided by the retailer if:
 - The sales of prepared foods are less than 75% and the retailer’s customary practice is to physically hand them to the customer – except that plates, glasses, or cups necessary for the purchaser to receive the product only need to be available

Prepared Food

- Definition of “prepared food” (cont’d)
 - Computing the 75%:
 - Numerator includes heated food and foods that are mixed and combined and that meet the definition of prepared food and food for which plates, bowls, glasses or cups are necessary to receive the food
 - Denominator includes all food and food ingredients including prepared food, candy, dietary supplements and soft drinks
 - Compute each year

Prepared Food

- Definition of “prepared food” (cont’d)
 - If sales of “prepared foods” are greater than 75%:
 - Items sold that contain 4 or more servings as one item for a single price are not prepared food simply because the retailer has utensils available, but is prepared food if the retailer physically gives or hands the utensils to the customer, except that plates, bowls, glasses, or cups necessary for the purchaser to receive the food only need to be made available.

Prepared Food

- Definition of “prepared food” (cont’d)
 - If a retailer sells food items that have a utensil placed in the package by someone other than the retailer, the utensils are considered provided by the retailer unless:
 - The person who placed the utensil in the package has a NAICS code that is manufacturing under sector 311.

Bakery Example 1

Facts

- Bakery A sells a donut and a hot cup of coffee “to go”
- Bakery A’s sales of prepared foods are 75% or less of all of its sales of food and food ingredients
- Bakery A’s customary practice when it sells donuts and coffee “to go” is to sell the donuts without physically giving or handing napkins or other utensils
- Plates, bowls, glasses, or cups are not necessary to receive the donut

Bakery Example 1

Answer

- Prior Law:
 - The sale of the donut is not subject to tax because the customer does not eat the donut on the Bakery's premises
 - The sale of the coffee is subject to tax because it is a "heated" beverage

Bakery Example 1

Answer

- Current Law:
 - The sale of the donut is not subject to tax because it does not meet the definition of prepared food
 - The sale of the coffee is subject to tax because it does meet the definition of prepared food

Bakery Example 1

Analysis

- The donut is not a prepared food because:
 - It is not sold heated
 - Bakery A's customary practice is not to physically give or hand utensils to its customers with donuts that are sold "to go"
 - Plates, bowls, glasses, or cups are not necessary to receive the donut
 - Bakery A's sales of prepared foods are 75% or less of all of its sales of food and food ingredients
- The coffee is prepared food because
 - It is sold heated

Bakery Example 2

Facts

- Bakery M sells a donut and a hot cup of coffee to be eaten at the bakery
- Bakery M's customary practice when selling donuts to be eaten at its bakery is to physically give or hand its customer a napkin with the donut

Bakery Example 2

Answer

- Prior Law:
 - The sale of the donut and coffee are subject to tax because they are consumed on Bakery M's premises
- Current Law:
 - The sale of the donut and coffee are subject to tax because they meet the definition of prepared food

Bakery Example 2

Analysis

- The donut is prepared food because:
 - Bakery M's customary practice when it sells donuts to be eaten at the bakery is to physically give or hand its customers a napkin along with the donut
- The coffee is prepared food because:
 - It is sold heated

Bakery Example 3

Facts

- Bakery Z sells one donut (single serving) and a carton of milk (single serving) “to go”
- Bakery Z’s sales of prepared food are MORE THAN 75% of all of its sales of food and food ingredients
- Bakery Z’s customary practice when it sells donuts and cartons of milk “to go” is to sell the donuts and milk to its customers without physically giving or handing them napkins or other utensils
- Napkins and other utensils are made available to customers
- Plates, bowls, glasses, or cups are not necessary to receive the donut or milk

Bakery Example 3

Answer

- Prior Law:
 - The donut and carton of milk are not subject to tax because they are not consumed on Bakery Z's premises

Bakery Example 3

Answer

- Current Law:
 - The sale of the donut and the sale of the carton of milk are subject to tax because they are prepared food

Bakery Example 3

Analysis

- The donut and the carton of milk are prepared foods because:
 - Bakery Z's sales of prepared foods are more than 75% of all its sales of food and food ingredients and
 - Bakery Z makes utensils available to its customers

Deli Example 1

Facts

- Deli A sells the following items:
 - Potato Salad for \$1.29/lb.
 - Unheated Ham for \$2.29/lb.
 - Cheese for \$1.89/lb.
 - Fruit Salad for \$1.19/lb.
- Customer B purchases 1 pound of each of these items to take home
- Deli A's customary practice for items sold by the pound is to not physically give or hand the customer a napkin or other utensil

Deli Example 1

Answer

- Prior Law:
 - The sale of the these items are not subject to tax because the items:
 - are not eaten on the deli's premises,
 - are not sold heated, and
 - do not meet the definition of a meal or sandwich

Deli Example 1

Answer

- Current Law:
 - The sale of these items are not subject to tax because they are:
 - sold unheated by weight or volume,
 - the retailer does not hand utensils to the customer, and
 - plates, bowls, glasses, or cups are not necessary to receive the items

Deli Example 2

Facts

- Deli M prepares and sells a serving of potato salad, unheated ham, cheese, and fruit salad as a single serving size meal for \$3.29
- The unheated ham does not require further cooking by the consumer
- Deli M plates each of the items in a clam shell container for Customer D
- Customer D will consume the meal off the deli's premises

Deli Example 2

Answer

- Prior Law:
 - The sale is subject to tax because it is a meal
- Current Law:
 - The sale is subject to tax because it is prepared food because the retailer mixed or combined 2 or more food ingredients for sale as a single item and it is not:
 - sold unheated by weight or volume
 - a bakery item
 - only sliced, repackaged, or pasteurized by the retailer
 - It also does not require further cooking by the consumer

Deli Example 3

Facts

- Customer F makes selections from Deli G's salad bar
- Customer F puts the selections in a clam shell container made available by Deli G
- The clam shell container is necessary to receive the food and food ingredients
- Customer F eats the salad off Deli G's premises

Deli Example 3

Answer

- Prior Law:
 - The sale of the salad is not subject to tax
- Current Law:
 - The sale of the salad is subject to tax as prepared food because:
 - Plates, bowls, glasses, or cups are necessary for Customer F to receive the food and
 - Plates, bowls, glasses, or cups are made available by Deli G

Deli Example 4

Facts

- Deli L sells meat and cheese trays
- Deli L prepares the meat and cheese trays by slicing various types of meats and cheeses and placing them on a platter
- The meat and cheese trays are not sold heated
- Deli L's customary practice is not to physically give or hand utensils with the purchase of a meat and cheese tray
- Plates, bowls, glasses, or cups are not necessary to receive the food

Deli Example 4

Answer

- Prior Law:
 - The sale of the meat and cheese tray is not subject to tax
- Current Law:
 - The sale of the meat and cheese tray is not subject to tax because the meat and cheese are only sliced and repackaged and:
 - Are not sold heated
 - Deli L's customary practice is not to physically give or hand utensils to the customer with the purchase of the meat and cheese tray
 - Plates, bowls, glasses, or cups are not necessary to receive the food

Prepared Food - References

- *Statutes applicable:*
 - Definitions: 77.51(10m)
- *Administrative code sections applicable:*
 - 11.51 – Grocers' Guide list
 - 11.87 – Prepared food, food and food ingredients, and soft drinks
- *Publications applicable:*
 - Publication 220: Grocers



Questions?

Medical Exemptions

New Definitions for “medical related” terms

- Drugs (replaces “medicine”)
- Durable Medical Equipment(DME)
- Mobility Enhancing Equipment(MEE)
- Prosthetic Devices(PD)

Exemptions REPEALED

- Specific exemption for oxygen delivery equipment - 77.54(14s)
(Note: Meets definition of DME now)
- Exemption for artificial devices, individually designed, constructed, etc. - 77.54(22)
(Note: Most will still be exempt)

Exemptions: New or Amended

- New exemption for “Durable Medical Equipment,” “Mobility Enhancing Equipment,” & “Prosthetic Devices” - 77.54(22b)
- Amended Exemptions - 77.54(14) (drugs) and 77.54(28) (supplies to determine blood sugar level)

Exemptions From Tax (77.54)(14)

– Definition of “Drug”

- Drugs (replaces “Medicine”)– 77.51(3pj) – Defined:
 - Compound, substance or preparation except:
 - Food, dietary supplements and alcoholic beverages
 - Listed in U.S. Pharmacopoeia, Homeopathic Pharmacopoeia or National Formulary
 - Intended for use in diagnosing, curing, mitigating, treating or preventing disease
 - Intended to affect a function or structure of the body

Exemptions from Tax – (77.54)(14)) – IF Drug is...

- Prescribed by an authorized prescriber & dispensed by prescription
- Sold to licensed physician, surgeon, etc.
- Furnished by a licensed physician, etc.
- Furnished by a hospital (not nursing homes)
- Furnished w/o charge to a physician, etc. if drug may not be dispensed w/o prescription
- *Must be for the treatment of a human being*
Note: Just because it's a "drug" doesn't mean its exempt.

Exemptions From Tax (77.54)(22b))

- Durable medical equipment for home use - 77.51(3pm)
- Mobility enhancing equipment - 77.51(7m)
- Prosthetic devices - 77.51(11m)
- Accessories, repair and replacement part for the above items
- Must be used for a human being

Exemptions From Tax (77.54)(22b))

- Durable Medical Equipment – 77.51(3pm):
 - Primarily and customarily used for medical purpose
 - Can withstand repeated use
 - Generally not useful absent an illness or injury
 - Not placed in or worn on the body
 - Includes repair and replacement parts
- Exempt only if for use in a person's home

Exemptions From Tax (77.54)(22b))

- Mobility Enhancing Equipment - 77.51 (7m):
 - Primarily and customarily used to provide or increase the ability of a person to move
 - May be used in a person's home or motor vehicle
 - Generally not used by a person who has normal mobility
 - Includes repair and replacement parts
 - Doesn't include motor vehicles, or equipment on a motor vehicle generally provided by motor vehicle manufacturer
- Exempt if for human use

Exemptions From Tax (77.54)(22b))

- Prosthetic Devices – 77.51(11m):
 - **Placed in or worn on** the body to:
 - Artificially replace a missing portion of the body
 - Prevent or correct a physical deformity or malfunction
 - Support a weak or deformed portion of the body
 - Includes repair and replacement parts
- Exempt if for human use

Important Difference - DME or PD

- DME not worn in or on the body
- PD is worn in or on the body
 - DME - exempt only when purchased for use by a human being in a person's home
 - PD - exempt when purchased for a human being *regardless* of whether it is purchased for use in a person's home

Exemptions From Tax (77.54)(22b))

- Streamlined Sales Tax Governing Board prepared lists that categorizes products as either:
 - Durable medical equipment
 - Prosthetic devices
 - Mobility-enhancing equipment
 - Drugs
 - Medical supplies
 - *These are also listed in our Administrative Rules (Tax 11.08, 11.09, 11.17 and 11.45)*

Exemptions From Tax (77.54)(22b))

- The SSTGB lists are available at:
- <http://www.streamlinedsalestax.org/uploads/downloads/Appendix L AD06002 Health-Care List June 2002-2006.pdf>
- [http://www.streamlinedsalestax.org/uploads/downloads/Appendix M Health Care Items Addendum List 2 5 07 \(2\).pdf](http://www.streamlinedsalestax.org/uploads/downloads/Appendix M Health Care Items Addendum List 2 5 07 (2).pdf)

Exemptions From Tax (77.54)(28))

- Diabetes supplies
 - Supplies used to determine blood sugar level are exempt
 - Equipment still exempt as DME if for home use

Note on “Drugs”

Prior to October 1, 2009 – “Medicine”

As of 10/1/09 “DRUG”

- new definition
- virtually same exemption

Does not include:

- DME
- MME
- PD
- Alcoholic beverages, soft drinks, and distilled water
- Dietary supplements

Examples of Durable Medical Equipment (DME)

- Oxygen equipment (Still exempt if for home use as DME)
- Bed pans
- Heating pads
- Nebulizers
- Injection guns for drug delivery
- Cervical pillows
- Ventilators
- Vaporizers

Exemption includes accessories and repair and replacement parts

Requires that the item be for use in a person's home

Mutually exclusive from Mobility Enhancing Equipment

Mobility Enhancing Equipment (MEE) - Example

Example 1

Facts:

Contractor is hired to install a wheel chair ramp at a disabled person's home. The ramp is affixed to the real property at the disabled person's home.

Question:

- Is this a taxable sale to the disabled person?
- Is this a real property improvement?
 - If yes, can the contractor purchase the ramp exempt?
 - Why or why not?

Mobility Enhancing Equipment (MEE) - Example

Answer:

- It is a real property Improvement in a residential setting
 - Charge to customer is not taxable
 - Purchase of the ramp by contractor is NOT taxable to since:
 - » It is Mobility Enhancing Equipment per 77.51(7m) Wis. Stats.
 - » Exempt by Statute - 77.54(22b)
 - » If used for a human being
- Prior law: The contractor would not have been able to purchase the ramp exempt from tax.

Examples of MEE

- Wheel chair ramps
- Stairway lift chairs
- Lifts & ramps for automobiles
- Walkers
- Tub & shower stools
- Transfer belts & benches
- Canes
- Bed pull-up Ts
- Scooters & transporters

Includes accessories & replacement parts
Must be used for a human being

Prosthetic Devices - Example

Example

Question (PD):

- Hearing aids with wireless capabilities connecting to:
 - Cell phones
 - Home phones
 - TV links
 - I-pads
 - Accessories include remotes & plugs for connection

Are these hearing aids and accessories taxable?

Prosthetic Devices - Example

Answer (PD):

- No...
 - Hearing aids
 - Including repair and replacement parts
 - Are classified as a prosthetic device under sec. 77.51(11m), Wis. Stats.
 - Section 77.54(22b), Wis. Stats. provides an exemption for prosthetic devices and accessories, if used for a human being

Prior Law: Would have been exempt under sec. 77.54(22)(b), Wis. Stats.

Examples - Prosthetic Devices (PD)

New Language has broadened the exemption to include:

- Ace bandages
 - Arch supports
 - Abdominal belts
 - Arm slings
 - Eye glasses
 - Shoe lifts
- Includes accessories and repair and replacement parts
 - Must be used for a human being

RECAP – “Medical Related” Transactions – Quick Reference

- *Statutes applicable:*
 - Definitions: 77.51(3pj), (3pm), (7m), (10n), & (11m)
 - Sourcing: 77.522(1)
 - Exemptions: 77.54(14), (14m), (22b), (28)

Administrative Code Sections Applicable:

- Tax 11.08 DME, MEE, Prosthetic devices
- Tax 11.09 Drugs
- Tax 11.17 Hospital, clinic & medical professions
- Tax 11.45 Sales by pharmacies & drug stores



Questions?

Miscellaneous Changes and Reminders

County and Stadium Tax Changes

- Retailers that hold or are required to hold a seller's permit or use tax certificate
- Required to collect all applicable local sales and/or use taxes
 - County sales and use tax (0.5%)
 - Baseball stadium district sales and use tax (0.1%)
 - Football stadium district sales and use taxes (0.5%)
 - Local food and beverage tax (0.25% or 0.5%)
 - Premier resort area tax (0.5% or 1.0%)
- Regardless of whether they are “engaged in business” in the county or district

County and Stadium Tax Changes (77.71)(4))

- Registered or titled items
- Motor vehicles, boats, recreational vehicles and aircraft – owe county/stadium tax if customarily kept in taxable county/district
- Snowmobiles, trailers, semitrailers and ATVs – removed from “customarily kept” provision – sourced under sec. 77.522 – may still owe use tax

Sales of Motor Vehicles

- Retailers must collect tax on sales of motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Wis. Stats., trailers, semitrailers, all-terrain vehicles, and aircraft, even if they are not "dealers" or "registered dealers" of the item sold.
- **Prior to October 1, 2009**, a person who was not a "dealer" or "licensed dealer" was not required to collect and remit the tax on such sales.

Exemption Certificates

- 120-Day Notice Requirement
 - Effective October 1, 2009, DOR must allow 120 days to provide an exemption certificate for untaxed sales during audit period
 - DOR provides 120-day notice when the sales are selected for audit

Exemption Certificates

- 120-Day Notice Requirement
 - Taxpayer can request audit be completed before the full 120-day period by signing
 1. Wavier form
 2. Closing agreement

Use Tax on Items Previously Purchased Exempt – Converted to Taxable Use (77.57)

- Prior to October 1, 2009
 - If first taxable use occurred more than 6 months after purchase, use cost or FMV
- October 1, 2009 and Thereafter
 - Use of sales price required

Use Tax on Items Previously Purchased Exempt – Change in Definition Makes Them Taxable

- Item purchased prior to October 1, 2009
 - Qualified for exemption (sweetened tea)
 - Meets new definition of taxable product effective October 1, 2009 (soft drink)
 - No use tax due on item purchased prior to October 1, 2009.
 - Purchases of same item on an after October 1, 2009 are subject to tax

Equipment Provided With Operator

– Not a Lease or Rental

- Equipment provided with operator
- Operator does more than inspect, maintain and set-up
- Operator necessary for equipment to operate
- Specifically excluded from definition of lease or rental



Questions?

Wisconsin Indian Bands and Tribes

- Sales to these entities off-reservation are exempt effective 8/1/09
- Exemption does not extend to tribal members purchasing off the reservation
- Section 77.54(9a)(ed), Wis. Stats.

Manufacturing Consumables

- **Manufacturing Consumables**
 - Effective August 1, 2009
 - Requires exclusive and direct use by a manufacturer in the scope of manufacturing

Sections 77.54(2) and (2m), Wis. Stats.

Sales Tax Rate Look-up Application

- Rate/jurisdiction database
 - Tax rate by jurisdiction (includes state, county, and stadium tax)
 - Based on 5 & 9-digit zip code
 - Updated quarterly
 - Posted on DOR website and SSTP site
 - Seller held harmless for errors in database except for over-the-counter sales
 - Sales Tax Rate Look-up Application
 - <https://ww2.revenue.wi.gov/STRB/application>

Miscellaneous

- ***Manpower Decision***
 - Department did not appeal or nonacquiesce to WTAC decision
 - Services furnished by temporary help companies
 - Tax Release in Wisconsin Tax Bulletin
- **Summer Camps**
 - Articles on DOR website

Miscellaneous

- Local Expo Food and Beverage Tax Rate
 - Increase to 0.5% (7/1/2010)
- Local Exposition Room Tax Rate
 - Increase from 2% to 2.5% (1/1/2011)
- Premier Resort Area Tax
 - Wisconsin Dells and Lake Delton
 - Increased to 1% effective January 1, 2010



Questions?