

SALES AND USE TAX REPORT

3-05

December 2005

I. CORRECTION TO SEPTEMBER 2005 SALES AND USE TAX REPORT

An error was made in the September 2005 *Sales and Use Tax Report*, in the description of the law change relating to the state rental vehicle fee. The error was corrected and the revised report was posted on the department's web site on September 23, 2005. Please go to <http://www.dor.state.wi.us/ise/sales/index.html> to see the revised report.

The revision to the Report appears in Section IV.H. The prior version incorrectly stated that the state rental vehicle fee applies to the gross receipts on the rental of "...certain motor vehicles, trucks, trailers, buses, mobile homes and camping trailers..." The corrected version states that the fee applies to the gross receipts on the rental of "... Type I automobiles, mobile homes, motor homes, and camping trailers..."

II. NEW TAX LAWS

A. Refund of Tax From Seller to Buyer (2005 Act 49, renumber sec. 77.59(4)(c) to 77.59(5m) and amend as renumbered, and amend sec. 77.59(5), first applies to notices of refunds or notices of amounts due dated, offsets taken, and the discovery of amounts collected erroneously as taxes on October 28, 2005, even if the notices, offsets, and amounts relate to sales that occurred after August 31, 1994.)

A seller who collects amounts as taxes erroneously from buyers, but who does not remit such amounts to the state, or who is entitled to a refund under sec. 77.59(4)(a) or (b), Wis. Stats., that is offset under sec. 77.59(5), Wis. Stats., shall submit the taxes and related interest to the buyers from whom the taxes were collected, or to the Department of Revenue if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has collected taxes erroneously from the buyers.

If the seller does not submit the taxes and related interest to the Department of Revenue or the buyers

within that period, the seller shall submit to the department any part of a refund or taxes that the seller does not submit to a buyer or to the department along with a penalty of 25% of the amount not submitted or, in the case of fraud, a penalty equal to the amount not submitted.

A person who collects amounts as taxes erroneously from buyers for a real property construction activity or nontaxable service may reduce the taxes and interest that he or she is required to submit to the buyer or to the Department of Revenue under this provision for that activity or service by the amount of tax and interest subsequently due and paid on the sale of or the storage, use, or other consumption of tangible personal property that is used by the person in that activity or service and transferred to the buyer.

The department may offset the amount of any refund for a period, together with interest on the refund, against deficiencies for another period, and against penalties and interest on the deficiencies, or against any amount of whatever kind, due and owing on the books of the department from the person who is entitled to the refund. Prior law referred to the person "claiming the refund," rather than the person "who is entitled to the refund."

B. Definition of Timely Filed Revised to Include Private Delivery Services (2005 Act 49, amend sec. 77.61(14), effective October 28, 2005).

Documents and payments required or permitted that are mailed shall be considered furnished, reported, filed or made on time, if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked, or marked or recorded electronically as provided under sec. 7502(f)(2)(c) of the Internal Revenue Code, before midnight of the date prescribed for such furnishing, reporting, filing or making, provided such document or payment is actually received by the department or at the destination that the department or the Department of Administration prescribes within five days of such prescribed

date. Documents and payments that are not mailed are timely if they are received on or before the due date.

“Mailed” includes delivery by a delivery service designated under sec. 7502(f) of the Internal Revenue Code.

III. SALES TAX EXEMPTION REPLACES MANUFACTURER’S SALES TAX CREDIT

Beginning January 1, 2006, a sales and use tax exemption applies for fuel and electricity consumed in manufacturing tangible personal property in Wisconsin. To claim this exemption, manufacturers will need to determine the amount of fuel and/or electricity that is consumed in manufacturing and provide an exemption certificate to the supplier of the fuel and/or electricity. The *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211) has been revised to allow manufacturers to claim exemption from Wisconsin sales and use tax on the percentage of fuel and electricity that is exempt. The revised form can be obtained from the Department of Revenue’s web site at: www.dor.state.wi.us/forms/sales/s-211.pdf.

The amount of fuel and/or electricity that qualifies for exemption from Wisconsin sales and use tax beginning January 1, 2006 should be calculated in a similar manner as was previously used to calculate the amount of fuel and/or electricity that qualified for the manufacturer’s sales tax credit for tax years beginning prior to January 1, 2006. When making the determination as to the amount of fuel and/or electricity that qualifies for exemption, the following rules should be kept in mind:

- Fuel and electricity “consumed in manufacturing” means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not “consumed in manufacturing” if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.
- Purchasers (other than purchasers holding a direct pay permit) are not allowed to claim 100% exempt usage for fuel or electricity when they know at the time of purchase that the exempt usage will be less than 100%. The exemption percentage claimed should represent the buyer’s best estimate of the exempt usage and should be calculated and claimed on a meter-by-meter basis for each meter that is measuring electricity and/or natural gas consumption.

- If a purchaser provides a properly completed exemption certificate to a seller and the seller accepts that certificate in good faith, the seller of the fuel and/or electricity is not liable for the sales tax on the gross receipts from the sale of the fuel and/or electricity which the purchaser has indicated is exempt on the exemption certificate.
- If a purchaser provides an exemption certificate to a seller and the seller does not charge sales tax on that portion of the fuel and/or electricity which the purchaser has indicated is exempt from tax on the exemption certificate and the purchaser subsequently uses the fuel and/or electricity in a taxable manner, the purchaser is responsible for self-assessing and remitting use tax on the taxable portion of the fuel and/or electricity originally purchased without tax.
- If a purchaser pays sales or use tax on fuel and/or electricity that is used in an exempt manner, the purchaser may claim a refund of those sales or use taxes. The purchaser may request the seller to refund the sales or use tax paid to the seller in error, or, under certain circumstances, the purchaser may file a claim for refund of these taxes directly with the Department of Revenue. See Wisconsin Publication 216, *Filing Claims for Refund of Sales or Use Tax*, for additional information.
- Electricity and/or natural gas is considered sold at the time of billing as provided in sec. 77.54(30)(b), Wis. Stats. (2003-04). If the billing is being made by mail, the time of billing is the day on which the billing is mailed. Therefore, electricity and/or natural gas that is metered prior to January 1, 2006, but which is billed on or after January 1, 2006, may qualify for the new exemption.
- Sales of fuels other than natural gas are considered sold when possession of the fuel is transferred from the seller or seller’s agent to the purchaser or purchaser’s agent as provided in sec. 77.51(14r), Wis. Stats. (2003-04). Therefore, fuels other than natural gas that are delivered to the purchaser prior to January 1, 2006 will not qualify for the new exemption, regardless of when the purchaser is billed for these fuels.

For questions and answers concerning the exemption for fuel and electricity consumed in manufacturing, please see the FAQ’s on the Department of Revenue’s web site at <http://www.dor.state.wi.us/faqs/ise/exemptn.html>.

Information about how to carry forward the manufacturer’s sales tax credit is provided on pages 4 – 6 of *Wisconsin Tax Bulletin* #137 (January 2004) and page 44 of *Wisconsin Tax Bulletin* #138 (April 2004). These bulletins are available on the Department of Revenue’s web site at www.dor.state.wi.us/ise/wtb/index.html.