

Wisconsin Department of Revenue

SALES AND USE TAX REPORT

1-08

March 2008

I. TOP 10 REASONS TO VISIT THE DEPARTMENT OF REVENUE'S (DOR'S) WEB SITE

10. The latest versions of publications covering various tax topics can easily be found at www.revenue.wi.gov/html/taxpubs.html.

9. All of the published *Sales and Use Tax Reports* (from June 1968) can be found on the DOR web-site at www.revenue.wi.gov/ise/sales/index.html.

The *Sales and Use Tax Report* is a report that is published one or more times each year. It includes general information about Wisconsin's sales and use tax laws and law changes.

8. All of the published *Wisconsin Tax Bulletins* (from October 1976) can be found at www.revenue.wi.gov/ise/wtb/index.html.

The *Wisconsin Tax Bulletin* is a quarterly newsletter published by DOR. It includes information about taxes administered by DOR, including income, corporation franchise, sales and use, excise tax, and withholding taxes. Most bulletins are divided into the following sections:

- **Articles** - Information on tax laws, administrative rules, and return filing requirements
- **Report on Litigation** - Summaries of Wisconsin tax cases decided by the Wisconsin Tax Appeals Commission and the courts
- **Tax Releases** - Interpretations of Wisconsin tax laws
- **Private Letter Rulings** - Written statements that interpret and apply Wisconsin tax laws to a taxpayer's specific set of facts

A search function is provided for help in locating a particular topic in the *Wisconsin Tax Bulletins*.

You may also search the *Wisconsin Tax Bulletins* using the [Index](#).

7. The current *Wisconsin Topical and Court Case Index* can be found on the DOR web site at www.revenue.wi.gov/ise/top-cc/index.html.

The *Wisconsin Topical and Court Case Index* is an annual publication, with an addendum published midway through the year. The index provides an easy way to research Wisconsin tax questions. It includes references, by tax type and alphabetically, to Wisconsin statutes, administrative rules, tax releases, private letter rulings, Wisconsin tax publications, *Sales and Use Tax Reports*, *Wisconsin Tax Bulletin* articles, Attorney General Opinions, and court decisions of the Wisconsin Tax Appeals Commission and the Wisconsin courts.

6. Answers to your most taxing questions are at your fingertips in the FAQs, which can be accessed at www.revenue.wi.gov/faqs/index.html.

The FAQs are categorized under topical headings to find your answers quickly. At the end of each FAQ is information regarding how to contact us, if you have additional questions.

5. Information about the latest electronic options can be accessed from the DOR home page and at www.revenue.wi.gov/eserv/index.html.

One electronic option is subscribing to one or more of the DOR's electronic mailing lists, which are available to the public. The goal is to provide communications from DOR to subscribers on information and news specific to the respective list they have signed up for. Sign up to be a subscriber to any of the electronic mailing lists at www.revenue.wi.gov/html/lists.html.

4. Current forms, including a number of "fill-in forms," are available at www.revenue.wi.gov/html/formpub.html.

3. Information in Spanish is available at www.revenue.wi.gov/html/espanol.html.
2. The latest Wisconsin tax news, common links, topical links, and contact links can all be accessed from the DOR home page at www.revenue.wi.gov/index.html.

And the Number 1 reason to visit the DOR web site is...

1. ***You can save valuable time by going to the DOR web site at any time, day or night, to get forms, publications, and answers to your tax questions with just a click of your mouse!***



II. DISCOUNT/MEMBERSHIP CARDS

The examples below 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.

III. 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 article 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 1: 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 2: 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.

If you have any questions concerning this coupon program, please feel free to contact the Wisconsin Department of Revenue at (608) 261-6261 or by e-mail at sales10@revenue.wi.gov.

IV. QUESTIONS AND ANSWERS

Q Does the amount of Wisconsin sales tax paid on the purchase of an over-the-counter medicine qualify for reimbursement from a flexible spending arrangement?

A Yes, if the purchase of the over-the-counter medicine qualifies for reimbursement as an acceptable medical expense, the amount paid for sales tax on that purchase also qualifies for reimbursement under the flexible spending arrangement. The sales tax paid is part of the purchaser's cost of the medicine.

A health **flexible spending arrangement** (FSA) allows employees to be reimbursed for medical expenses. FSAs are usually funded through voluntary salary reduction agreements with employers. No employment or federal or Wisconsin state income taxes are deducted from contributions to the FSA. The employer may also contribute. The benefits of an FSA are as follows:

- Contributions made by an employer can be excluded from the employee's gross income.
- No employment or income taxes are deducted from the contributions.
- Withdrawals may be tax free if used to pay qualified medical expenses.

- Funds can be withdrawn from the account to pay qualified medical expenses even if the funds have not yet been placed into the account.

For additional information about FSAs, please see IRS Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans*, which can be accessed from the IRS web site at www.irs.gov/pub/irs-pdf/p969.pdf.

Q Is the sale of corn used in a corn burner (corn burning furnace) that is used for residential heating subject to Wisconsin sales tax?

A No, provided the corn is used to heat a person's *permanent principal residence*. Section 77.54(30)(a)1m., Wis. Stats. (effective December 1, 2007), provides an exemption from Wisconsin sales and use taxes for biomass used for fuel sold for residential use. "Biomass" means a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource or landfill gases.

"Biomass" does not include garbage, as defined in sec. 289.01(9), Wis. Stats., or nonvegetation-based industrial, commercial or household waste, except that "biomass" includes refuse-derived fuel used for a renewable facility that was in service before January 1, 1998.

"Permanent principal residence" does not include use in secondary residences, motor homes not used as a permanent principal residence, travel trailers, other recreational vehicles, and transient accommodations.

If a customer specifies to a retailer that the corn will be used as residential fuel and is exempt from tax, the retailer does not need to get an exemption certificate from the customer. However, the retailer should indicate on its records (for example, copy of the invoice) that the sale was exempt for residential use.

Under prior law, the sale of corn used in a corn burner was subject to Wisconsin sales or use tax.