

Wisconsin Department of Revenue

# SALES AND USE TAX REPORT

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## I. FOND DU LAC COUNTY ADOPTING COUNTY TAX ON APRIL 1, 2010

Beginning April 1, 2010, the 0.5% county tax will be in effect in Fond du Lac County.

Information about which sales and purchases are subject to county sales or use tax and transitional provisions that apply to Fond du Lac County sellers can be found in Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

**Important:** Sellers who are not located in any of the 62 counties that have adopted the county tax are still subject to the county tax if they make taxable sales in any of the 62 counties. See the article on page 2, Part IV. titled "All Registered Retailers Must Collect Sales and Use Taxes For All Wisconsin Counties and Stadium Districts."

Following is a list of the 62 counties that have adopted the county tax and the effective date of each county's tax.

<u>County</u>	<u>Effective Date</u>	<u>County</u>	<u>Effective Date</u>
Adams	1/1/94	Dunn	4/1/86
Ashland	4/1/88	Eau Claire	1/1/99
Barron	4/1/86	Florence	7/1/06
Bayfield	4/1/91	Fond du Lac	4/1/10
Buffalo	4/1/87	Forest	4/1/95
Burnett	4/1/89	Grant	4/1/02
Chippewa	4/1/91	Green	1/1/03
Clark	1/1/09	Green Lake	7/1/99
Columbia	4/1/89	Iowa	4/1/87
Crawford	4/1/91	Iron	4/1/91
Dane	4/1/91	Jackson	4/1/87
Dodge	4/1/94	Jefferson	4/1/91
Door	4/1/88	Juneau	4/1/92
Douglas	4/1/91	Kenosha	4/1/91

<u>County</u>	<u>Effective Date</u>	<u>County</u>	<u>Effective Date</u>
La Crosse	4/1/90	Richland	4/1/89
Lafayette	4/1/01	Rock	4/1/07
Langlade	4/1/88	Rusk	4/1/87
Lincoln	4/1/87	St. Croix	4/1/87
Marathon	4/1/87	Sauk	4/1/92
Marinette	10/1/01	Sawyer	4/1/87
Marquette	4/1/89	Shawano	4/1/90
Milwaukee*	4/1/91	Taylor	7/1/99
Monroe	4/1/90	Trempealeau	10/1/95
Oconto	7/1/94	Vernon	1/1/97
Oneida	4/1/87	Vilas	4/1/88
Ozaukee*	4/1/91	Walworth	4/1/87
Pepin	4/1/91	Washburn	4/1/91
Pierce	4/1/88	Washington*	1/1/99
Polk	4/1/88	Waupaca	4/1/89
Portage	4/1/89	Waushara	4/1/90
Price	1/1/93	Wood	1/1/04

\*County also has a 0.1% baseball stadium tax.

Counties that have **not** adopted the county tax are:

#### Counties Without County Tax

Brown**	Outagamie
Calumet	Racine*
Kewaunee	Sheboygan
Manitowoc	Waukesha*
Menominee	Winnebago

\*County has a 0.1% baseball stadium tax

\*\*County has a 0.5% football stadium tax

## II. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX ADJUSTED DOWNWARD TO \$138

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2010, the amount subject to use tax is decreased from \$140 to \$138 per plate per month. (**NOTE:** The use tax per plate per month is not \$138. Rather, \$138 is multiplied by

the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the decrease to \$138 per plate is that sec. 77.53(1m)(a), Wis. Stats. (2007-08), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. All Urban Consumers, U.S. City Average, was 218.815 as of June 30, 2008 and decreased to 215.693 as of June 30, 2009.

The statutory provision under sec. 77.53(1m)(a), Wis. Stats. (2007-08), has no restriction prohibiting or disallowing a decrease in the index.

Consequently, since the index changed over this period by -1.42678%, the measure of use tax for dealers' motor vehicle license plates is adjusted downward from \$140 to \$138 as of January 1, 2010 = (\$140 \* (215.693/218.815)) rounded to the nearest whole dollar.

## III. REMINDER: PREMIER RESORT AREA TAX RATES TO INCREASE FOR CITY OF WISCONSIN DELLS AND VILLAGE OF LAKE DELTON

Effective January 1, 2010, the premier resort area tax rates for the City of Wisconsin Dells and the Village of Lake Delton will be increasing from 0.5% to 1.0%. The authority to increase this tax was provided in 2009 Wis. Act 28.

## IV. ALL REGISTERED RETAILERS MUST COLLECT SALES AND USE TAXES FOR ALL WISCONSIN COUNTIES AND STADIUM DISTRICTS

Effective October 1, 2009, all retailers that are registered in Wisconsin to collect and remit the 5% Wisconsin state sales and use tax are also required to collect and remit the applicable county and stadium sales and use taxes for any sales that are sourced to (i.e., the sale takes place in\*) a county or stadium district that has adopted the applicable county or stadium sales or use tax. This provision applies regardless of whether the

retailer is “engaged in business” in the county or stadium district to which the sale is sourced. (Section 77.73 (3), Wis. Stats., as created by 2009 Wisconsin Act 2 and amended by 2009 Wisconsin Act 28)

**Example:** Retailer A is located in LaCrosse, Wisconsin in LaCrosse County. Retailer A is not engaged in business in any county other than LaCrosse County. Retailer A sells a taxable product to Customer B. Customer B is located in Madison, Wisconsin in Dane County. Retailer A sends the product in the mail to Customer B. Customer B receives the product at its location in Dane County. Retailer A is required to collect and remit both the Wisconsin state sales tax and the Dane County sales tax since the sale is sourced to Customer B’s location in Dane County, even though Retailer A is not “engaged in business” in Dane County.

Under prior Wisconsin law, a retailer was only required to collect and remit the county and/or stadium sales and use taxes if the retailer was “engaged in business” in the applicable county and/or stadium district.

\*For additional information about the new sourcing provisions, refer to sec. Tax 11.945, Wis. Adm. Code, as created by EmR0924 (effective October 1, 2009). This emergency rule can be accessed on pages 186 – 190 of the Emergency Rule Order at <http://www.revenue.wi.gov/sstp/ch11emerrule.pdf>.

**V. SALES OF USED MOTOR VEHICLES, BOATS, SNOWMOBILES, RECREATIONAL VEHICLES AS DEFINED IN S. 340.01 (48r), WIS. STATS., TRAILERS, SEMITRAILERS, ALL-TERRAIN VEHICLES, AND AIRCRAFT BY PERSONS WHO ARE NOT DEALERS**

Effective October 1, 2009, any retailer that is registered to collect and remit Wisconsin sales and use taxes must also collect and remit the applicable state, county, and/or stadium sales and use tax on its 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 a “dealer” or “licensed dealer” of the item sold.

In addition, a person registering or titling one of the above items must present proof that the tax has been paid to the retailer. Therefore, a person who purchases one of the above items from a retailer should obtain a receipt from the retailer at the time of the purchase so they can provide the receipt at the time the item is registered or titled as proof that the tax has been paid. (Section 77.61(1)(b), Wis. Stats. (2007-08), as amended by 2009 Wisconsin Act 2)

Under prior law, a person who was not a “dealer” or “licensed dealer” was not required to collect and remit the applicable Wisconsin state, county, and/or stadium sales and/or use tax on its sales of used motor vehicles, boats, snowmobiles, recreational vehicles as defined in s. 340.01 (48r), Wis. Stats., trailers, semitrailers, all-terrain vehicles, and aircraft.

**Example 1:** Company A is engaged in the business of selling computer equipment and is registered to collect and remit Wisconsin sales and use tax. Company A is not a licensed motor vehicle dealer. Company A sells a truck that it had used in its business operations to Company B. Company A is required to collect the applicable Wisconsin state, county, and/or stadium sales tax on its sale of the used truck. Company A should provide a receipt to Company B showing the Wisconsin state, county, and/or stadium sales or use tax that it collected from Company B. At the time Company B registers or titles the truck, Company B should provide a copy of the receipt as proof that it paid the applicable Wisconsin state, county, and/or stadium sales or use tax to Company A.

**Example 2:** Individual A operates a hardware store as a sole proprietor and is registered to collect and remit Wisconsin sales or use tax. Individual A sells his car to Individual B. Individual A did not use the car in his business. Since Individual A did not use the car in his business, Individual A is not required to collect Wisconsin state, county, and/or stadium sales or use tax on his sale of the motor vehicle. Individual B would report the applicable Wisconsin state, county,

and/or stadium sales or use tax at the time Individual B registers or titles the motor vehicle.

**NOTE:** If the seller of a motor vehicle (or other registered property) would not need a seller's permit, except for its sale of the motor vehicle (or other registered property) that it used in its business, the seller is not required to obtain a seller's permit solely to collect and remit this tax. However, the buyer is still liable for Wisconsin use tax upon registration in this state of the motor vehicle (or other registered property).

## **VI. EQUIPMENT PROVIDED WITH OPERATOR - TAX TREATMENT CHANGED**

Effective October 1, 2009, when equipment is provided with an operator that does more than maintain, inspect, or set up the equipment and the operator is necessary for the equipment to perform in the manner for which it is designed, the transaction is considered to be a service and not a lease or rental of the equipment. This change is provided in 2009 Wis. Act 2, and was made to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement and the definition of "lease or rental."

Following is a description of the sales and use tax treatment of equipment rentals with operators before October 1, 2009 and October 1, 2009 and thereafter.

### **Sales and Use Tax Treatment Prior to October 1, 2009**

**General:** When equipment was provided with an operator, the tax treatment of the transaction depended on who was responsible for the satisfactory completion of the job, as explained below.

**Leases and Rentals of Equipment:** If a person furnished equipment with an operator to perform a job which the lessee supervised and was responsible for the satisfactory completion of, the person furnishing the equipment was considered a lessor renting out the equipment. If it was customary or mandatory that the lessee accept an operator with the leased equipment, the entire

charge, including the charge for the operator, was subject to sales or use tax. However, the operator's services were not taxable if billed separately and if the lessor customarily gave the lessee the option of taking the equipment without the operator.

A lessor was allowed to purchase equipment without tax for resale if the lessor used the equipment solely for leasing or renting. A lessor was also allowed to purchase lubricants, repair parts, and repair services for equipment used solely for leasing or renting, without tax for resale.

**Example – Crane Provided with Operator Prior to October 1, 2009:** Company A provided a crane with an operator to Customer B. Company A did not give Customer B the option of renting the crane without an operator. Company B was on site when the crane was being operated and directed the operator in the operation of the crane. Therefore, Company A was renting the crane to Customer B, and was subject to sales tax on its gross receipts from the rental, including the charge for the operator. If Company A used the crane only to lease or rent it to customers in the same manner that it rented the crane to Company B, then Company A could have purchased the crane without sales or use tax, for resale, by providing a properly completed sales and use tax exemption certificate (Form S-211) to its supplier. Company A could also have purchased all of the repair parts and repair services for this crane without tax for resale.

**Equipment Used to Provide a Service:** If a person used its own equipment to perform a job and assumed responsibility for the satisfactory completion of the job, the person was considered to be performing a service. The person performing the service was liable for the payment of sales or use tax on its purchases of the equipment used. The sales and use tax treatment of the charge for the service depended on whether the service performed was a taxable service or a nontaxable service.

**Service Contract, Maintenance Agreements, and Warranties for Equipment:** The sale of a service contract, maintenance agreement, or warranty

was taxable provided the equipment to which the service contract, maintenance agreement, or warranty related was subject to sales or use tax.

### **Sales and Use Tax Treatment Effective October 1, 2009**

**General:** When equipment is provided with an operator, the tax treatment of the transaction depends on whether the operator does more than maintain, inspect, or set up the equipment and if the operator is necessary for the equipment to perform in the manner for which it is designed, as explained below.

**Leases and Rentals of Equipment:** Leases and rentals of equipment with an operator that only maintains, inspects, or sets up the equipment are subject to sales or use tax. A lessor may purchase equipment without tax for resale if the lessor uses the equipment solely for leasing or renting. A lessor may also purchase lubricants, repair parts, and repair services for equipment used solely for leasing or renting, without tax for resale.

**Equipment Used to Provide a Service:** If equipment is provided along with an operator and the operator does more than maintain, inspect, or set up the equipment and is necessary for the equipment to perform in the manner for which it is designed, the transaction is considered to be a service and not a lease or rental of the equipment. A service provider is liable for the payment of sales or use tax on its purchases of equipment that it uses to provide a service. A service provider is also liable for the payment of sales or use tax on its purchases of repair parts and repair services for such equipment.

**Example – Crane Provided with Operator on or after October 1, 2009:** Company A provides cranes with operators to its customers. For all of the crane transactions, the operators provided by Company A operate the cranes while they are in use (i.e., the operators provided by Company A do more than maintain, inspect, or set up the cranes and are necessary for the cranes to perform in the manner for which they are designed). Company A's customers are on site when the cranes are being operated, directing the crane operators in the operation of the cranes, and are

responsible for the satisfactory completion of the jobs. Company A is considered to be providing services, rather than leasing or renting the cranes to its customers. Company A is considered the consumer of the cranes, and the consumer of the repair parts and repair services for the cranes, and is liable for the payment of sales or use tax on its purchases of the cranes, repair parts, and repair services.

**NOTE:** If the service provided is a taxable service (e.g., landscaping services or the repair or maintenance of tangible personal property), the charge for the service is also subject to sales or use tax.

**Service Contracts for Equipment:** The sale of contracts, including service contracts, maintenance agreements, and warranties, that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of equipment, are subject to Wisconsin sales or use tax, unless the sale, license, lease, or rental in Wisconsin of the equipment to the purchaser of the contract is or was exempt from sales and use taxes.

### **Facts and Questions**

#### **Facts:**

- Company C purchased several cranes prior to October 1, 2009.
- The cranes were purchased without tax for resale because they were only leased or rented to others with an operator, the customer directed the operator, and the customer was responsible for the satisfactory completion of the job.
- Prior to October 1, 2009, this was considered a lease or rental of the cranes.
- Prior to October 1, 2009, Company C purchased extended warranties for the cranes. The extended warranties promised indemnity against defects in the equipment.
- Company C continues to provide the cranes to others on and after October 1, 2009 the same as it did prior to October 1, 2009 (i.e., with an operator who is directed by the customer). However, on and after October 1, 2009, Company C is no longer considered to be leasing or

renting the cranes. Instead, it is deemed to be using the cranes to provide services.

**Question 1:** Are Company C's purchases of the cranes prior to October 1, 2009 subject to Wisconsin use tax on or after October 1, 2009 since (a) the cranes are stored, used, or consumed in Wisconsin on or after October 1, 2009 and (b) providing tangible personal property with an operator who does more than maintain, inspect, or set up the tangible personal property is no longer considered a "lease" or "rental" of that property?

**Answer 1:** No. Since Company C purchased the cranes prior to October 1, 2009, at which time the cranes were not subject to Wisconsin sales or use tax because they were used solely for leasing and renting purposes, the subsequent change in the definition of "lease" and "rental" does not subject the original purchase of those cranes to Wisconsin sales or use tax.

**Question 2:** Are repair parts that Company C purchased prior to October 1, 2009 for use on cranes that were used solely for lease and rental purposes prior to October 1, 2009 subject to Wisconsin use tax on or after October 1, 2009 since those parts are being stored, used, or consumed in Wisconsin on cranes that are provided along with an operator and which are no longer considered to be "leased" or "rented"?

**Answer 2:** No. Since Company C purchased the repair parts prior to October 1, 2009, at which time the repair parts were not subject to Wisconsin sales and use tax because they were going to be used on cranes that were being used solely for lease or rental to others, the subsequent storage, use, or other consumption of the repair parts for these cranes purchased prior to October 1, 2009 is not subject to Wisconsin sales or use tax.

**Question 3:** Are purchases of repair parts and labor for these cranes subject to Wisconsin sales or use tax on and after October 1, 2009?

**Answer 3:** Yes. Since the use of the cranes no longer meets the definition of "lease or rental" on and after October 1, 2009, repair parts and

labor for the cranes may not be purchased without tax for resale, regardless of whether Company C's purchases of the cranes prior to October 1, 2009 qualified for exemption from Wisconsin sales and use tax as property for resale.

**Question 4:** Does Company C owe Wisconsin sales or use tax on its purchase prior to October 1, 2009 of the extended warranties for the cranes, if the extended warranties cover repairs made to these cranes on and after October 1, 2009?

**Answer 4:** No. The sale of the warranties to Company C was not subject to Wisconsin sales or use tax because the equipment to which the warranties related was not subject to sales or use tax, either at the time Company C purchased the extended warranties or at an earlier date. Therefore, even though the extended warranty covers repairs to cranes made on and after October 1, 2009, since the warranty was not subject to tax when it was purchased, it does not become taxable on October 1, 2009.

**Question 5:** Is Company C's purchase of an extended warranty prior to October 1, 2009 relating to a crane that Company C purchased prior to October 1, 2009 that was used solely for lease and rental purposes prior to October 1, 2009 subject to Wisconsin use tax on or after October 1, 2009 since (a) the cranes are stored, used, or consumed in Wisconsin on or after October 1, 2009 and (b) providing tangible personal property with an operator who does more than maintain, inspect, or set up the tangible personal property is no longer considered a "lease" or "rental" of that property?

**Answer 5:** No. Company C's purchase of the extended warranty is not subject to Wisconsin use tax on or after October 1, 2009 because (a) Company C purchased the extended warranty prior to October 1, 2009, at which time Company C's purchases of the crane to which the warranty related was not subject to Wisconsin sales or use tax (the crane was going to be used solely for lease or rental to others), and (b) Company C did not make a taxable purchase of the crane at an earlier date.

**Question 6:** If Company C purchases an extended warranty on or after October 1, 2009 for a crane that it purchased prior to October 1, 2009, does Company C owe Wisconsin sales or use tax on the purchase of the warranty?

**Answer 6:** No. The sale of the extended warranty to Company C is not subject to Wisconsin sales or use tax because the sale of the equipment to which the extended warranty relates is or was exempt to Company C.

## VII. ITEMS GIVEN AWAY FOR FREE – CHANGE IN WISCONSIN SALES AND USE TAX TREATMENT EFFECTIVE OCTOBER 1, 2009

This article explains the proper Wisconsin sales and use tax treatment of transactions in which an item is provided free of charge on the condition that the purchaser makes some other required purchase.

### Applicable Wisconsin Statutes

Section 77.51 (1f) (intro.), Wis. Stats., defines “bundled transaction” to mean “...the retail sale of 2 or more products, not including real property or services to real property, if the products are distinct and identifiable products and sold for one nonitemized price...”

Section 77.51 (3pf) (b), Wis. Stats., provides that “distinct and identifiable product” does not include “A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.”

Section 77.51(11d), Wis. Stats., provides that, “For purposes of subs. (1f), (3pf), and (9p) and ss. 77.52 (20) and (21), 77.522, and 77.54 (51) and (52), ‘product’ includes tangible personal property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and services.”

Section 77.52 (20), Wis. Stats., imposes Wisconsin sales tax on the entire sales price of a bundled transaction.

Section 77.52 (21), Wis. Stats., provides that “A person who provides a product that is not a distinct and identifiable product because it is provided free of charge, as provided in s. 77.51 (3pf) (b), is the consumer of that product and shall pay the tax imposed under this subchapter on the purchase price of that product.”

### Sales and Use Tax Treatment Effective October 1, 2009 and Thereafter

Based on sec. 77.52 (21), Wis. Stats., a retailer is the consumer of the items it provides free of charge in conjunction with the required purchase of another product and is required to pay Wisconsin sales or use tax on its purchases of these free items. (See *Exception*, below.) This is true regardless of whether the customer is required to purchase a separate taxable or nontaxable item before getting the free item. This is a change from prior law.

Prior to October 1, 2009, retailers were considered to have made a retail sale of the items they transferred to customers who were required to purchase some other property in order to receive the “free” item. In addition, retailers were allowed to purchase such “free” items without tax for resale.

**Exception:** Items that were purchased without tax for resale prior to October 1, 2009 that were intended to be transferred to customers who are required to purchase some other property in order to receive the “free” item do not become subject to use tax solely due to the sec. 77.52 (21), Wis. Stats., law change. This includes such items that are transferred to customers October 1, 2009 or thereafter. However, if a customer receives a taxable “free” item when purchasing a nontaxable item, the seller may use the cost of the “free” item to determine the amount that is subject to sales tax.

The following examples illustrate this change.

**Example 1: Taxable Item Given Away with Required Purchase of Nontaxable Item** – On or after October 1, 2009, Retailer A provides a hat free of charge to any customer that purchases a certain number of gallons of gasoline (i.e., a nontaxable item). The price of the gasoline does not vary de-

pending on whether the hat is included in the transaction. Since Retailer A is giving a hat at no charge to any customer that purchases the required number of gallons of gasoline, Retailer A is the consumer of these hats, as provided in sec. 77.52 (21), Wis. Stats., and is required to pay Wisconsin sales or use tax on its purchases of the hats.\*

For sales made prior to October 1 2009, Retailer A was required to allocate its selling price between the taxable item (i.e., the hat) that was “given away” and the nontaxable item (i.e., the gasoline) that was sold. Retailer A was liable for the sales tax on the portion of its selling price allocated to the taxable item (i.e., the hat) that was “given away.” Retailer A could have purchased the hats without tax, because they were for resale.

\*Hats that were purchased without tax for resale prior to October 1, 2009 that are “given away” on October 1, 2009 or thereafter will not become subject to use tax solely due to the change in law. Retailer A may use the cost of the hats to determine the amount that is subject to sales tax.

**Example 2: Taxable Item Given Away with Required Purchase of a Different Taxable Item** – On or after October 1, 2009, Retailer B provides a bicycle free of charge to every customer that purchases a new couch. The price of the couch does not vary depending on whether the bicycle is included in the transaction. Since Retailer B is providing a bicycle free of charge to every customer that purchases a couch, Retailer B is the consumer of these bicycles as provided in sec. 77.52 (21), Wis. Stats., and is required to pay Wisconsin sales or use tax on its purchases of the bicycles.\*\*

For sales made prior to October 1 2009, since both the item that was being purchased (i.e., the couch) and the item that was being “given away” (i.e., the bicycle) are taxable items, no specific allocation between the selling prices of the items would have been made (i.e., Retailer B would have charged sales tax on the entire selling price, regardless of any allocation of the selling price between the two items). Retailer B could have purchased the bicycles without tax, because they were for resale.

\*\*Bicycles that were purchased without tax for resale prior to October 1, 2009 that are “given away” on October 1, 2009 or thereafter will not become subject to use tax solely due to the change in law. Retailer B is liable for Wisconsin sales tax on its sale of the couch, but it not liable for Wisconsin use tax on its purchase of the bicycle.

**Example 3: Taxable Item Given Away with Required Purchase of Both Taxable and Nontaxable Items** – On or after October 1, 2009, Retailer C provides a soft drink free of charge to every customer that purchases \$20 worth of products. The sales prices of the products in the required purchase do not vary depending on whether the soft drink is included in the transaction and the products that are purchased by the customer may or may not be subject to Wisconsin sales or use tax. Since Retailer C is providing a soft drink free of charge to every customer that purchases \$20 worth of products, Retailer C is the consumer of the soft drinks it provides free of charge, as provided in sec. 77.52 (21), Wis. Stats., and is required to pay Wisconsin sales or use tax on its purchases of these soft drinks.\*\*\*

For sales made prior to October 1, 2009, Retailer C would have made an allocation of the selling price between the taxable item that was “given away” (i.e., the soft drink) and the taxable and nontaxable items that were sold. Retailer C would have been required to charge sales tax on the total amount allocated to the taxable items (which would include the taxable item that was “given away”). This allocation could have been computed by determining the ratio of the overall cost of all of the taxable items (including the taxable item that was “given away”) to the overall cost of all of the items in the transaction (including the cost of the taxable item that was “given away”) and then multiplying that ratio times the total selling price charged to the customer to arrive at the amount subject to Wisconsin sales tax.

\*\*\*Soft drinks that were purchased without tax for resale prior to October 1, 2009 that are “given away” on October 1, 2009 or thereafter will not become subject to use tax solely due to the change in law. Retailer C may use the cost of the



soft drinks to determine the amount that is subject to sales tax.

### **VIII. MATERIALS USED IN REAL PROPERTY CONSTRUCTION OUTSIDE WISCONSIN**

A contractor that purchases materials in Wisconsin and uses them in making a real property improvement is subject to Wisconsin sales or use tax on its purchase of the materials even though the real property improvement occurs outside Wisconsin. The classification of the improvement as a sale of real property or tangible personal property is determined under Wisconsin law, even if the construction activity takes place in another state.

A purchase of materials is in Wisconsin if the contractor takes possession from the seller at the seller's location or a shipper delivers the construction materials from the seller to the contractor in Wisconsin.

#### **Examples**

The examples, below, illustrate that materials are subject to Wisconsin sales or use tax if purchased or stored in Wisconsin and are subsequently used in the construction of real property outside Wisconsin. (The examples do not reflect any county or stadium sales and use taxes that may apply.)

**Example 1:** Company A purchased materials from an out-of-state supplier. The supplier hired a shipping company to deliver the materials to the taxpayer's warehouse in Wisconsin. The supplier was not engaged in business in Wisconsin; therefore, was not required to collect Wisconsin sales tax. The materials were later removed from inventory and used in the construction of real property located outside of Wisconsin. The materials that Company A purchased in Wisconsin, stored in its Wisconsin warehouse, and used in the construction of real property outside Wisconsin are subject to use tax. The materials are "stored" in Wisconsin, thus the materials are subject to Wisconsin use tax.

**Example 2:** Company B purchased materials from a Wisconsin supplier. The supplier hired a shipping company to deliver the materials via common carrier to the taxpayer's warehouse in

Wisconsin. Company B provided the supplier with a properly completed exemption certificate, indicating resale. The materials were later removed from inventory and used in the construction of real property located outside of Wisconsin. The materials that Company B purchased in Wisconsin, stored in its Wisconsin warehouse, and used in the construction of real property outside Wisconsin are subject to use tax. The materials are "stored" in Wisconsin, thus the materials are subject to Wisconsin use tax.

**Example 3:** Company C purchased materials from a Wisconsin supplier. Company C picked up the materials with its truck from the supplier's store located in Wisconsin and drove the materials to a location outside of Wisconsin for use in the construction of real property. The sale of the materials that Company C purchased in Wisconsin and used in the construction of real property outside Wisconsin are subject to use tax. If Company C provides the vendor with an exemption certificate indicating resale, Company C is liable for Wisconsin use tax on its purchase of the materials.

### **IX. REVOKED SELLERS INTERNET POSTING**

The Wisconsin Department of Revenue is required to post on the Internet a list of every person who has had their seller's permit revoked under state sales tax law. Section 73.03(64), Wis. Stats., as created by 2009 Wis. Act 28, provides that the Internet site will list the real name, business name, address, revocation date, type of tax due and delinquent amount owed including interest, penalties, fees, and costs. DOR will update the Internet site periodically to add revoked permits and to remove permits that are no longer revoked, or for which the permit holder has made sufficient arrangements with the department so that the permit holder will be issued a monthly seller's permit. The department will update the Internet site quarterly to remove revoked permits for entities that have been out of business for at least one year. The department will not post the accounts, or will remove the accounts overnight, of taxpayers who have entered into an installment agreement, submitted a compromise, or have filed

for bankruptcy. These provisions took effect October 1, 2009 and the first posting occurred on October 6, 2009.

## **X. YOUTH SPORTS**

Effective July 1, 2009, admissions, such as league entry fees, sold by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger are not subject to Wisconsin sales tax. (Section 77.52(2)(a)2.c., Wis. Stats. (2007-08), as created by 2009 Wis. Act 28)

Oftentimes, a team will pay (1) a fee to an association, or (2) a fee to an organization that enables the team to participate in a tournament or other sporting activity.

**Question:** Are these fees subject to Wisconsin sales and use tax as taxable admissions?

**Answer:** Yes, the fees are taxable unless the association or organization is a nonprofit organization AND more than 50 percent of the participants (i.e., team members) are 19 years old or younger.

**NOTE:** If the team holds a Wisconsin Certificate of Exempt Status (CES) number, the fees are exempt from tax, regardless of whether the youth sports exemption in sec. 77.52(2)(a)2.c., Wis. Stats., applies. In this case, the team should provide the association or organization with its CES number.

## **XI. DOR WILL NO LONGER MAIL FORMS ST-12 OR WT-7**

The Wisconsin Department of Revenue has mailed over 162,000 mandate letters to businesses who continue to file paper tax returns. The mandate letters require these businesses to electronically file their sales and use tax return (Form ST-12) and their withholding tax return (WT-7). As part of the initiative to increase electronic filing, the department will no longer mail Form ST-12 (Sales and Use Tax Return) and Form WT-7 (Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages) effective immediately. Form ST-12, Schedule CT, Form WT-7, and their instructions remain

available on the department's web site at [www.revenue.wi.gov/html/formpub.html](http://www.revenue.wi.gov/html/formpub.html).

## **XII. DEPARTMENT'S EFT SYSTEM FOR CERTAIN BUSINESS TAXES TO END JANUARY 5, 2010**

The department's electronic funds transfer (EFT) registration and payment system for sales and use tax, withholding tax, business tax registration renewal fee, premier resort area tax, and rental vehicle fee will no longer be available as of January 5, 2010. All taxpayers and businesses who use this system for these business taxes and fees will need to transition to My Tax Account by January 5, 2010. You can register for My Tax Account at the department's web site at [www.revenue.wi.gov](http://www.revenue.wi.gov). EFT will remain available for income taxes, corporation taxes, dry cleaning fees, estimated taxes, excise taxes, and delinquent taxes.

## **XIII. NEW WITHHOLDING TELEFILE**

Beginning in January 2010, you may use the new withholding teleFile option to file and pay your WT-6 deposit reports and WT-7 annual withholding reconciliation. The new withholding teleFile is quick, free, and secure. No pre-registration is necessary. Call (608) 261-5340 or (414) 227-3895 to use teleFile.

## **XIV. RETAILERS SHIPPING WINE TO WISCONSIN CUSTOMERS MUST COLLECT SALES TAX**

Wineries that hold a Wisconsin wine shipper's permit are authorized to ship wine directly to an individual in Wisconsin who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery.

**No wine may be shipped directly to an individual in Wisconsin by a person holding a direct wine shipper's permit unless sales or use tax is paid on the sale of such wine.** A winery that holds a direct wine shipper's permit is required to collect and remit the tax on its sales of wine shipped to Wisconsin addresses.

Effective October 1, 2009, all retailers, including wineries, that are registered in Wisconsin to collect and remit the 5% Wisconsin state sales and use tax are also required to collect and remit the applicable county and stadium sales and use taxes for any sales that are sourced to (i.e., the sale takes place in) a county or stadium district that has adopted the applicable county or stadium sales or use tax. See Part IV for additional information.

## **XV. FOND DU LAC AND SUPERIOR OFFICES CLOSED**

As part of an office consolidation effort announced last year, the Department of Revenue office in Fond du Lac closed November 16, 2009 and the office in Superior will be closing on December 10, 2009. These offices are two of 20 locations across the state that will be consolidated through 2010.

For a listing of Department of Revenue offices and their current hours, please see the department's web site at [www.revenue.wi.gov/faqs/isc/address.html](http://www.revenue.wi.gov/faqs/isc/address.html).

Assistance and information are also available on the department's web site at [www.revenue.wi.gov](http://www.revenue.wi.gov).

## **XVI. WISCONSIN CIGARETTE TAX LAW REMINDER**

Cigarette retailers are reminded that they may only purchase cigarettes and tobacco products from licensed Wisconsin wholesalers. Cigarettes purchased from unauthorized sources (such as Tribal smoke shops, the Internet, and other out-of-state sellers) are subject to confiscation and the retailer may face criminal charges.

Wisconsin law requires all purchasers of untaxed cigarettes to remit the excise tax within 15 days of receipt of the cigarettes. If the tax is not paid within 15 days, the purchaser is also subject to delinquent interest and a penalty of \$25 per carton. Cigarettes purchased from out-of-state sellers or through the Internet are also subject to Wisconsin sales tax. Form CT-121S may be used to pay both the Wisconsin cigarette excise tax and

the Wisconsin sales tax. This form can be found on the Department of Revenue's website at <http://www.revenue.wi.gov/forms/excise/ct-121s.pdf>.

In addition to civil penalties, Wisconsin law provides for criminal penalties of up to \$500 in fines and up to 6 months imprisonment for violations of the state's cigarette tax laws related to unauthorized purchases.

If you have questions or you wish to report violations, please call the Department of Revenue at (608) 266-6757 or send an e-mail to [roger.johnson@revenue.wi.gov](mailto:roger.johnson@revenue.wi.gov).

## **XVII. WISCONSIN/MINNESOTA SALES TAX SEMINARS**

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in March of 2010. The seminars will include information on similarities and differences in the two states' sales and use tax laws. All of the seminars are for general businesses. The specific dates, times, and locations of the seminars, as well as registration information, is available on the "Training" page of the Department of Revenue's web site at [www.revenue.wi.gov/training/events.html](http://www.revenue.wi.gov/training/events.html).

## **XVIII. MY TAX ACCOUNT VIDEOS**

There are six new self-help videos posted on the Department's Internet home page to help businesses and tax practitioners with registering for *My Tax Account*, filing returns and making payments. The videos are each only a few minutes long. They can be run side by side with *My Tax Account* for real time assistance. Use these videos to save phone charges and time waiting for available customer service representatives. To view the videos, go to the link for *My Tax Account* "How-to Videos" on the Department of Revenue's home page at <http://www.revenue.wi.gov/>.

## **XIX. QUESTIONS AND ANSWERS**

**Q** Is a nonresident's purchase in Wisconsin of a motor vehicle that will be used at the buyer's summer home in Wisconsin and winter home in

another state subject to Wisconsin sales or use tax? Does it matter if the vehicle will be registered in the other state?

**A** Yes, the sale of a motor vehicle in Wisconsin that will be used by a nonresident at the buyer's summer home in Wisconsin and winter home in another state is subject to Wisconsin tax, regardless of whether the motor vehicle is registered in Wisconsin or another state.

**NOTE:** An exemption from Wisconsin sales and use tax exists for the sale of motor vehicles to persons who are not residents of Wisconsin who will make no use of such property other than in the removal of such property from Wisconsin. This exemption does not apply because the purchaser is making a use of the property other than removal.

**Q** Are layaway charges subject to Wisconsin sales tax?

**A** Layaway charges (i.e., an additional charge by a retailer that allows the purchaser to make payments for merchandise while the retailer holds the merchandise until it is paid in full) are included in the selling price of the merchandise for purposes of computing Wisconsin sales or use tax. Therefore, if the merchandise sold is subject to Wisconsin sales or use tax, the amount of the layaway charge is subject to Wisconsin sales or use tax.