



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

SEPTEMBER 1973

EXEMPTION FOR ADVERTISING MATERIALS

Effective May 21, 1972, an exemption was added to the sales tax law for:

"The gross receipts from the sales of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state."

This exemption applies to catalogs designed to be used by a retailer's potential customer-consumers. Parts price lists, parts stock order books, order forms, and stocking and purchasing guides designed to be used by wholesalers and retailers of products do not qualify for the exemption. Matchbooks, calendars and playing cards also do not qualify for the exemption.

GREAT LAKES BOAT OPERATOR'S RECEIPTS

When the owner of a Great Lakes vessel supplies the crew, which remains under the control and direction of the owner, and charges fisherman for the privilege of participating in the sport of fishing measured on an admission or entrance or length of stay aboard the vessel, the total charge is subject to the 4% sales tax, including any charges labeled as "guide service".

If a vessel is leased or rented to fishermen on a "bare boat" basis (without a crew), the total gross proceeds from the lease of the boat are also subject to the sales tax.

BOARDING OF HORSES

The entire gross receipts from boarding riding horses, show horses, or other recreational horses are subject to the 4% sales tax. No portion of the retailer's gross receipts may be considered nontaxable, even if it is designated as stall rental or the rental of real estate. Shoeing recreational or show horses is also a taxable service. Services performed by veterinarians are not taxable, nor are the receipts from training horses or giving riding lessons.

The sale of medicines for animals is subject to the tax, including the sale of animal medicines by veterinarians independent of the performance of a veterinary service. Veterinarians are the consumers of, rather than the sellers of medicines they furnish in conjunction with their services.

BINGO RECEIPTS

Newspaper articles have indicated that a few local organizations are sponsoring bingo games on a regular basis. The gross receipts realized from conducting these games are subject to the 4% sales tax. The organization's total receipts are taxable, even though a procedure is followed whereby the game is played and the winner is selected before so-called "donations" are made to the organization by the persons playing the game.

BUYERS CLUBS MEMBERSHIP FEES

If the membership fee in the buyers club allows a member to purchase items directly from a manufacturer or distributor, and the transaction is entirely between the manufacturer or distributor and the club member, without any participation by the buyers club, the membership fee in the buying club is not subject to the 4% tax.

However, if the club purchases any tangible personal property and resells it to members at "wholesale" prices, the membership fee is related to anticipated retail sales and is taxable.

SUCCESSOR'S LIABILITY

Sections 77.52(18) and (18)(a) of the Sales and Use Tax Law describe the responsibilities of a purchaser of a business (successor) under the law. Although this has been part of the law since 1962, it appears that many members of the business community are not fully aware of these provisions. For that reason the text of Technical Memorandum S-8.1 is reproduced below.

1. Law: When a retailer who owes sales or use taxes sells his business, the purchaser must withhold a sufficient portion of the purchase price to cover that tax liability. A method is provided by which the purchaser can protect himself from becoming personally liable for the predecessor's tax. (See *Elrick, Elrick and Romensko d/b/a Jack's Pizza v. Department-Wisconsin Tax Appeals Commission*. (1969), 8 WTAC 72.)
2. Policy: Collection efforts will first be directed against the predecessor. Action against the successor will not commence until it appears that a delay would jeopardize collection of the amount due. A demand for a successor to pay his predecessor's tax liability is subject to the right of appeal.
3. Procedure:
 - a. The purchaser of a business withholds enough from his payment so that he is sure the amount withheld will cover any possible sales tax liability.

- b. The purchaser submits a written request to the department for a clearance certificate. The letter requesting the certificate should include the real name, business name and/or seller's permit number of the prior operator. The department must have returns for all periods the predecessor operated before it can issue the certificate.
- c. The department is allowed 60 days to ascertain the amount of sales tax liability, if any, or a maximum of 90 days if the former owner does not immediately make his records available for audit. The department must, within these time limits, issue to the purchaser either:
 - (1) A Clearance Certificate, or
 - (2) A Notice of Sales Tax Liability to Purchaser and Successor in Business.
- d. A Notice of Sales Tax Liability to Purchaser and Successor in Business shall be served and handled as a deficiency determination under Section 77.59 of the Wisconsin Statutes.

4. Guidelines:

- a. The successor is liable only to the extent of his purchase price. Said price includes the consideration paid for tangible property and for intangibles such as leases, licenses and good will. Debts assumed by the purchaser are included in the purchase price.
 - (1) Where a corporation is created and then acquires the assets subject to the liabilities of the sole proprietor in consideration of the corporation's capital stock, the corporation is liable for the sales tax of the sole proprietorship.
 - (2) Where there is no purchase price, the successor has no liability.
 - (3) A surviving joint tenant has no successor's liability for delinquent sales tax, where the property merely passes by law to the remaining joint tenant. A mortgagee who forecloses on a loan to a retailer owing delinquent sales tax does not incur a successor's liability.
- b. The successor is liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability does not bear interest.
- c. When a retail business or stocks of goods passes from A to B to C, and B's successor liability is unpaid, said liability does not pass to C. The new successor, C, is liable only for B's unpaid sales and use tax.
- d. The successor's liability is determined by law and cannot be changed or shifted by agreements or contracts between buyer and seller.
- e. The liability of the successor is limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location, while incurring a total liability for all locations, his liability incurred at the location sold must be determined. This represents the amount for which the successor can be held liable.

PURCHASES MADE BY FARMERS

Sales of certain items to persons engaged in farming, agriculture, horticulture or floriculture as a business enterprise are exempt, provided the customer furnishes a signed

Farmer's Exemption Certificate. Items which qualify if used in this restricted way are: tractors and machines, including fuel, parts and repair service therefor, but not motor vehicles or trailers for highway use.

Examples of qualifying machines, attachments and parts are silo unloaders, milk coolers, milking machines, conveyers, hay wagons, powered feeders, feed grinders and mixers, tractor attachments such as slow moving vehicle signs and oil filters for tractors.

Examples of items that do not qualify for the exemption are antifreeze, gasoline additives, motor oil and lubricants for tractors, drugs for animals, lawn and garden tractors, wheelbarrows, feed carts, scales, detergents, nonmechanical feeders, portable calf stalls, farrowing crates, baler twine or wire used to bale crops used on the farm, fencing, construction and building materials and other tangible personal property used to improve real estate.

Breeding fees are not taxable, and semen used for artificial insemination of livestock is exempt effective July 22, 1971.

REALTY VS. PERSONALTY

Certain items such as pumps, furnaces, boilers and standby generators have a variety of functions and may be personal property in some instances and additions to realty in others. When such types of property are installed primarily to provide service to the building or structure, and are essential to the use of the structure, they are realty improvements. However, similar units installed in a plant to perform a processing function, may, as machinery, retain their status as personal property.

Special pumps and other machinery (including furnaces) used to process sewerage at a municipal sewerage treatment plant are deemed to be personal property. A contractor may purchase such equipment without tax for resale, and the contractor's sale of this equipment to the municipality is exempt pursuant to Section 77.54(9a) of the Wisconsin Statutes.

Pumps used by a municipality at a well or in a lift station do not perform a processing function, and are considered realty improvements. A contractor is the consumer of such items and the 4% tax is due on the contractor's purchases of these pumps.

SERVICE STATION EQUIPMENT

If a lessee of the land on which a service station is located installs underground tanks, gasoline pumps, hoists, island lights and yard lights on another person's land, the equipment is considered a "trade fixture" and remains personalty under the Sales Tax Law. Accordingly, the sale or lease of this equipment, and the installation, repair service and maintenance of such property is subject to the 4% tax.

Repairmen are advised to presume that their gross receipts from the installation, repair, service and the maintenance of such service station equipment (parts and labor charges) are taxable, unless the owner or operator of the business provides the repairman with a written statement that the land and equipment are owned by the same person, in which case the equipment is an addition to realty. When the equipment is a realty addition, the repairman's charges for installation, repair, service and maintenance of the equipment are not subject to the tax. The repairman would then only pay tax on his cost of materials used in such jobs.

CHANGES IN THE SALES TAX LAW
(Addendum to September 1973 Tax Report)

The Budget Bill was signed by the Governor on August 2, 1973, and published as Chapter 90, Laws of 1973, on August 4, 1973. The changes it made in the Sales and Use Tax Law are shown below:

1. Added an exemption in s. 77.54(20)(c)4. "Neither shall taxable sales include meals, food, food products or beverages sold to the elderly or handicapped by persons providing 'mobile meals on wheels'." (Effective October 4, 1973.)
2. Created an exemption in s. 77.54(20)(c)5. "Taxable sales shall not include meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education." (Effective with the meals, food, food products or beverages furnished for the fall semester of 1973 and thereafter, regardless of when the contract was entered into or when payment was made.)
3. Created an exemption in s. 77.54(26). "The gross receipts from the sales of and the storage, use or other consumption of all waste treatment or pollution abatement plant and equipment, including containers for animal waste when the construction is ordered by the department of natural resources, purchased pursuant to order, recommendation or approval of the department of natural resources, department of health and social services, city council, village board, or county board pursuant to s. 59.07(53) or (85), 1971 stats., and the sales or use of such recommended or approved items will also be exempt when the sale is to a construction contractor for incorporation into real property in this state pursuant to a real property construction contract but no exemption is permitted under this subsection unless the property involved is exempt from property taxation." (Effective October 4, 1973.)
4. Sales of tangible personal property by vocational, technical and adult education schools are taxable. (Effective October 4, 1973.)

EFFECTIVE DATE OF CHANGES IN THE LAW

Section 561 of Chapter 90 provides that the new sales tax exemptions shall take effect on the 61st day following publication except for the "dormitory meals" exemption in s. 77.54(20)(c)5 which exemption applies to contracts for meals furnished for the fall semester of 1973. The new exemptions for "mobile meals on wheels" and pollution abatement plant and equipment apply only to sales made on or after October 4, 1973.

Generally speaking, a sale is made at the time possession is transferred. Section 77.51(4r) of the Wisconsin Statutes locates a sale involving transfer of ownership of property both as to time and place as follows:

"A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent"

CLAIMING THE POLLUTION ABATEMENT EXEMPTION

Vendors who accept a properly completed Certificate of Exemption in good faith, may make sales, on or after October 4, 1973, of waste treatment or pollution abatement plant and equipment without tax to businesses and contractors. The department requests the following language be inserted in part 7 of Form S-207, Certificate of Exemption, to claim this exemption:

"Waste treatment or pollution abatement plant and equipment exempt under s. 77.54(26), Wisconsin Statutes, pursuant to order or approval issued to (person or company obtaining approval) by (government agency) on (date)."

OTHER TAX CHANGES

Section 71.043 of the Income and Franchise Tax Law has also been amended to provide for a 100% sales tax credit against corporate income or franchise tax due for 1973 and subsequent taxable years for sales or use tax paid on fuel and electricity used in manufacturing.

The occupational tax of 5½ cents per pound of colored oleomargarine or margarine terminates on December 31, 1973.

If you require additional information regarding these changes in the law, contact your local office of this department or write to:

Wisconsin Department of Revenue
Income, Sales, Inheritance & Excise Tax Division
Post Office Box 39
Madison, Wisconsin 53701

or call (608) 266-2776.