



# TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

JUNE 1975

## CLAIMS FOR REFUND OF SALES TAX

If you discover that you have overpaid your sales or use tax, you should promptly file a claim for refund with the Department. No special form is necessary, but the Department has designed a form which you may use to file a refund claim entitled "Amended Sales and Use Tax Return - Form ST-12X". Copies of this form may be obtained from any of our offices.

A refund claim must be in writing and must contain a statement giving the specific grounds upon which it is based. This statement is important in the event the claim is disallowed by the Department since an appeal of the Department's action to the Wisconsin Tax Appeals Commission would be limited to the grounds set forth in the original refund claim.

The law specifically provides that the only person who may apply for a refund from the state is the person who paid the tax to the state. Therefore, persons who have paid the tax to a retailer must obtain any refund they are entitled to through the retailer, who is the party who actually paid the tax, and the party who must apply for the refund.

Since a self-adjustment on a current return does not constitute a refund claim under the law, it is not permissible to make a self-adjustment on a current return in order to recapture any alleged overpayments made earlier. In order to recapture any alleged overpayments a taxpayer must file a claim for refund in the manner described above.

## SALES TAX LIABILITY OF SUCCESSORS

Are you planning to acquire an existing business? A successor can be held liable for the sales tax liability of the prior owner, unless a clearance certificate is obtained from the department stating that no taxes are due from the predecessor. The request for the certificate must be in writing.

You should withhold from the purchase price a sufficient amount to cover any possible sales and use tax liability of the seller until you have received the clearance certificate from the department.

## FILE A RETURN FOR EVERY PERIOD

Do not neglect to file a return for each reporting period even if you have no tax to report. Seasonal businesses and many part-time operations may have periods during which no business is transacted. Taxpayers holding Seller's Permits for such businesses are reminded to file timely returns for all such periods showing a "NO SALES" notation.

Failure to file returns timely will result in late filing penalties being imposed. These penalties are mandatory under the law, and the department has no discretion in the matter.

## GROSS RECEIPTS OR SALES PRICE

This department recently issued Technical Information Memorandum S-62 which, in part, is reproduced below.

### I. Handling or Service Charges

"A retailer's gross receipts from customer alteration charges, handling service charges, small order charges, returned merchandise, restocking charges, split shipment charges and similar charges for services related to retail sales represent part of the total gross receipts derived from the sales of tangible personal property or taxable services to which the tax applies. However, canceled order charges are not taxable if there is no transfer of merchandise to the customer.

### II. Cash Discounts or Price Rebates

"Cash discounts allowed by a retailer to his customer reduce the gross receipts subject to the tax. The customer is the party who must receive the benefit of the discount in order for the retailer to exclude it from his gross receipts. For example, a refund made to a nonprofit organization based on a percentage of the purchases made by the group's members may not be treated as a cash discount.

"A retailing cooperative's rebates to members, which are made after the net profit is determined at the end of the year, are patronage dividends, not cash discounts, and are not deductible from the gross receipts of the cooperative."

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A manufacturer's cash rebate to a customer who purchases an automobile, appliance or other tangible personal property from a retailer is not to be considered a reduction in the sales price of the item sold by the retailer.

### III. Sales Tax Collected from Customers

"Section 77.51 (11) (a) 4 provides in part that 'if a retailer establishes to the satisfaction of the department that the sales tax imposed by this subchapter has been added to the total amount of the sales price and has not been absorbed by him, the total amount of the sales price shall be deemed to be the amount received exclusive of the sales tax imposed.' Therefore, in cases where the 4% tax has been collected from customers, and they have been notified of that fact, the amount of the tax collected is not included in the base to which the 4% applies in computing the tax due the state. For example, if a business had \$100 of taxable sales and had collected \$4 in tax, for a total of \$104, the businessman would multiply 4% times \$100 to determine the tax payable.

"Pursuant to Section 77.61 (3), a bracket system has been provided by this department which retailers are required to use in collecting the proper amount of tax from their customers. When more than one item is sold in a single transaction, the tax is computed on the sum of the aggregate sales prices of the items sold.

"If a retailer cannot collect any tax because his sales are of inexpensive items (i.e., 12 cents or less) on which no tax is collectible under the bracket system, he may not consider any part of his gross receipts as tax collected from customers. For example, a vending machine operator whose only receipts are from sales of 10 cent items has no deduction for sales tax collected from customers and the 4% tax applies to his total gross receipts.

"If a vending machine operator makes sales of taxable items at a price of 15 cents or more so that the sales tax is collectible under the bracket system, part of his gross receipts will be considered to include sales tax from his customers if the customers are advised that the vending machine prices include the sales tax."

### WASTE TREATMENT AND POLLUTION ABATEMENT EQUIPMENT

Effective October 4, 1973, a sales and use tax exemption was added for tangible personal property becoming a component part of waste treatment or pollution abatement plant and equipment provided the new facility is ordered, recommended or approved by the State Department of Natural Resources or other approving governmental agency and the new facility is exempt from property taxation. The new addition must also be exempt for property tax purposes to qualify for the sales tax exemption. The exemption also applies to purchases of building materials by construction contractors who incorporate such purchased materials into an approved waste treatment or pollution abatement facility.

The exemption does not apply to either municipal water supply systems or storm sewers, nor to such items as form lumber, equipment or fuel used by a construction contractor engaged in building an exempt facility. If you desire more information on this subject, write to the department and ask for a copy of Technical Information Memorandum S-56.

### BEWARE OF PURCHASERS OFFERING SEPARATE CHECKS FOR SALES TAX

The 4% sales tax is imposed upon a retailer's taxable gross receipts regardless of whether he collects the sales tax payable from the customer. A few retailers have received two checks from a customer to pay for a particular transaction. The first check is equal to the price of the article, and the second check, alleged to represent the sales tax, is equal to the amount of the sales tax. The second check is made out in such a manner that it will not be honored by the bank. Under such circumstances the retailer must realize that he is responsible for the 4% sales tax even though the check from his customer purporting to be for payment of the tax is not honored by the bank.