



# TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

SEPTEMBER, 1975

## Business Tax Changes

The Budget Bill, Chapter 39, Laws of 1975 provides a number of tax law changes. A brief description of several of the principal changes which affect business are set forth below.

### A. Sales and Use Taxes

The 4% general sales tax is now imposed on the sales of: cigarettes (effective September 1, 1975), cable television service (effective October 1, 1975), and nonvoice communication services provided by telephone companies (effective July 31, 1975).

### B. Waste Treatment Facilities (Industrial and Municipal)

The exemption for pollution abatement plant and equipment has been restricted. Now only waste treatment facilities qualify. A standard definition is provided for waste treatment facilities that are exempt for property, franchise/income, and sales tax purposes. To qualify as exempt, the waste treatment facility must abate or eliminate pollution of the surface waters or air of this state, and be approved as such by the *department of revenue*. Previously other agencies granted these tax exemption approvals.

The scope of the new waste treatment exemption for sales tax purposes is described in the department's Technical Information Memorandum S-56.1. Contractors who are involved in constructing industrial or municipal waste treatment facilities (or any other interested party) should write to the department and request a copy of this memorandum.

### C. Withholding and Sales Tax Payment Dates

Certain employers will now be required to deposit twice monthly the income taxes that are withheld from employes' wages. If the amount deducted in any quarter exceeds \$5,000, the department of revenue will notify the employer to deposit twice a month. On the last day of the month, the employer must deposit the taxes withheld from the 1st through the 15th day of the month. Taxes withheld from the 16th day to the last day of the month will be due on the 15th day of the following month.

Sales taxes due the department of revenue will have to be paid by the 20th, instead of the last day, of the month following the month of collection if the amount of tax for any calendar quarter exceeds

\$3,000. The department of revenue will notify the retailers affected.

This article is intended to provide you with general information about several of the recent tax law changes. If you have any questions about how you may be affected by any of these changes contact any of our offices which are located in most of the larger cities in Wisconsin. If you prefer to write to Madison, the address is Wisconsin Department of Revenue, Central Compliance Section, P.O. Box 39, Madison 53701, or call this office by dialing (608) 266-2776.

## Retailer's 1% Discount

A recent Dane County Circuit Court decision held that a retailer holding a Wisconsin seller's permit is entitled to the 1% retailer's discount when paying consumers use tax. *Wisconsin Electric Power Company et al v. Wisconsin Department of Revenue*, decided April 28, 1975. The department will not appeal this decision.

The department had taken the position that the retailer's discount did not apply to consumers use tax paid, even if it was paid by a retailer.

## Construction Contractors

The department recently issued Technical Information Memorandum S-11.4 entitled "Construction Contractors." Most of the following information is merely taken from this memorandum, which should be of interest to contractors and their suppliers. If you desire a copy, please write to the address shown above.

Pursuant to the Wisconsin sales and use tax law, persons who function as contractors or subcontractors engaged in constructing, altering, repairing or improving real property are the consumers of material used by them in such activities. As consumers, sales to contractors of building materials which are incorporated into reality in performing construction contracts are subject to the 4% tax. Even though such building materials may be purchased by a contractor for use in construction activities performed for a school, governmental unit, church or other exempt entity, the contractor is deemed the consumer of such articles and the sales to him are taxable. A contractor who performs a real property construction activity is not permitted to collect the tax, as such, from his customer, because the tax is imposed on the sale of materials to the contractor. This tax, in reality, increases

the cost of the contractor's building materials, and, presumably, in negotiating the contract consideration will have been given to the tax on the contractor's purchases.

#### Realty or Personal Property After Installation?

Contractors must determine whether a particular contract or transaction results in an improvement to realty, or the sale and installation of personal property. If there is an improvement to realty, the contractor is the consumer of the building materials incorporated into the realty. If there is a sale of personal property the sale and installation are subject to the tax, but the item transferred to the customer may be purchased by the contractor without tax for resale. In the latter situation a contractor must obtain a Seller's Permit and pay a tax on his sales of personal property.

Contractors selling and installing tangible personal property may not be familiar with the numerous factors affecting the classification of property (between realty and personalty) and for that reason, as an aid to contractors, the department is providing this guide to show the usual classification of many borderline items.

#### Building Materials—Realty Improvements.

The construction contractor is the consumer of these items, which are incorporated into or become a part of the real estate, and his purchases of such items are subject to the tax. This is the case, even though the building materials are used by the contractor in performing construction activities for a school, governmental unit, church, hospital or other exempt entity. Items which become realty improvements include the following:

- A. Boilers and furnaces for space heating.
- B. Built-in household appliances such as dishwashers, fans and garbage disposers.
- C. Cemetery monuments.
- D. Buildings, structural and other improvements to buildings including awnings, carpeting, foundations, floors, partitions, general wiring and lighting facilities, roofs, stairways, sprinkler systems, storm doors and windows, loading platforms, central air conditioning, heating, cooling and ventilation systems. Also, building elevators, sanitation and plumbing systems.
- E. Fixed (year-around) wharves and docks.
- F. Improvements to land including retaining walls, roads, walks, bridges, fencing, railway switch track, ponds, dams, ditches, wells, irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary and fire protection.
- G. Planted nursery stock.
- H. Residential water heaters, water softeners, intercoms, incinerators and garage door opening equipment (except portable equipment).
- I. Silos and grain elevators.
- J. Swimming pools (wholly or partially underground).
- K. Storage tanks constructed on the site.

- L. Traffic signals, street, and parking lot lighting.
- M. Truck platform scales.
- N. Walk-in cold storage units becoming a component part of the building.

#### *Items Provided as a Part of a Construction Contract which retain their Character as Personal Property.*

The following are examples of the types of property furnished by contractors which after the sale and installation retain their status as personal property. In this situation the contractor-seller is required to register as a retailer and pay sales tax on his retail sales of such items to his customers.

- A. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air conditioning units.
- B. Communication equipment in business, industrial or commercial buildings, schools and hospitals, including intercoms, music and sound equipment. This does not apply to apartment houses, convalescent homes or other residential buildings.
- C. Machinery, equipment, tools and appliances used by manufacturers, industrial processors and others performing a processing function with such items.
- D. Office, bank and savings and loan furniture and equipment, including office machines, safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.
- E. Articles referred to as trade fixtures used for the purpose of carrying on a trade or business, including those annexed to realty by a lessee for the purpose of carrying on a trade or business. Included within this category are fixtures and equipment installed in stores, taverns, night clubs, restaurants, gasoline service stations, ice arenas, bowling alleys, hotels and motels, barber and beauty shops, figure salons and theatres.
- F. Prefabricated cabinets, school gymnasium and athletic equipment, laboratory tables, counters, lockers, and related items of equipment attached to the structure only by hooks, screws or other fasteners which are easily and readily removed.
- G. Shades, curtains, drapes, venetian blinds and associated hardware.
- H. Radio, television and CATV station equipment.
  - I. Transformers and electrical substation equipment.
- J. Mobile homes located in a mobile home park on land owned by person other than mobile home owner.
- K. Advertising signs, except their underground concrete foundations.
- L. Buildings sold for removal.
- M. Utility transmission and distribution lines installed on land owned by others.
- N. Incinerators that do not become an integral part of the building.
- O. Seating in auditoriums and theatres. Theatre stage lights and projection equipment.