

TAX REPORT

Sales/Use Tax

JUNE 1988

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NEW WISCONSIN SALES AND USE TAX LAWS

The Wisconsin Legislature enacted new sales and use tax laws in 1988 which may affect you. This report explains these new laws. The effective date of each new law is shown in parenthesis after the title. If you have any additional questions regarding these new laws, contact any Department of Revenue office.

1. **Exempt Certain Sales of Business Assets as Occasional Sales - 10 Day Period for Permit Cancellation** (Amend s. 77.51(9)(a) and create s. 77.51(9)(am), Stats., effective May 17, 1988.)

A sale is exempt from Wisconsin sales and use taxes as an occasional sale if all three of the following conditions are met:

- a. The sale is of personal property (other than inventory held for sale) previously used by the seller to conduct its trade or business at a location.
- b. The sale occurs after the seller ceased operating the business at that location.
- c. The seller delivers its seller's permit to the Department of Revenue for cancellation within ten days after the last sale of personal property (other than inventory held for sale) at that location.

A sale meeting the above three conditions is exempt from Wisconsin sales and use taxes even though the seller holds a seller's permit for one or more other locations.

2. **New Reporting Requirement for Operators of Swap Meets, Flea Markets, Craft Fairs, or Similar Events** (Create s. 73.03(38), Stats., effective May 17, 1988.)

An operator of a swap meet, flea market, craft fair, or similar event must report to the Department of Revenue the name, address, social security number (and if available, the seller's permit number) of each vendor selling merchandise at the swap meet, flea market, craft fair, or similar event.

3. **Change Procedure for Remitting County Use Tax for Sales of Motor Vehicles, Etc.** (Amend s. 77.785(2), Stats., effective May 1, 1988.)

Dealers of boats, all-terrain vehicles, trailers, semi-trailers, aircraft, motor vehicles, mobile homes not exceeding 45 feet in length, and snowmobiles must collect the county use tax on sales of such items which will be customarily kept in a county that has adopted a county sales and use tax ordinance. They will remit those taxes to the Department of Revenue along with the state sales and use taxes. Prior to this law change, dealers remitted the county use tax on sales of such items to the state agency that registers or titles that property at the time of registration or titling.

4. **Clarify that Wisconsin Sales and Use Taxes Apply to Recreational Rights Sold in Connection with Time-Share Property** (Amend 77.52(2)(a)2, Stats., effective May 17, 1988.)

The statutes are amended to clarify that in connection with the sale or use of time-share property, Wisconsin sales and use taxes apply to the sale, furnishing or use of recreational facilities on a periodic basis and to other recreational rights, including but not limited to membership rights, vacation services, and club memberships.

5. **Exempt Intra-LATA Access Charges** (Amend s. 77.51(13)(p) and 77.51(14)(m), Stats., effective May 17, 1988.)

The definition of "retailer" and "sale" are modified to exclude intra-LATA access charges by a telephone company to an interexchange carrier. Thus, intra-LATA access charges by a telephone company to an interexchange carrier are not subject to Wisconsin sales and use taxes.

6. **Exempt Certain Nonresidents' Boats From Use Tax** (Amend s. 77.53(17m), Stats., effective June 1, 1988.)

There is no Wisconsin use tax on a boat berthed in Wisconsin which is owned by a nonresident if the boat was: a) purchased in a contiguous state (Illinois, Iowa, Michigan, Minnesota), b) purchased by a person domiciled in a contiguous state, c) purchased as an exempt occasional sale under the laws of the state in which the purchase was made, and d) berthed in Wisconsin's boundary waters adjacent to the state of the domicile of the purchaser.

7. **Exempt Certain Nonresidents' Aircraft From Use Tax** (Create s. 77.53(17r), Stats., effective May 17, 1988.)

There is no Wisconsin use tax on an aircraft registered in Wisconsin when:

- a. It is purchased in another state.
- b. Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
- c. The owner or lessee is a corporation, and that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of Wisconsin nor has real property or other tangible personal property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.

- d. The owner or lessee is a partnership, and all of the corporate partners fulfill the requirements in c. above and none of the general partners or limited partners who has management or control responsibilities is domiciled in Wisconsin and the partnership has no other tangible personal property and no real property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.
- e. The owner or lessee is an individual, and the owner or lessee is not domiciled in Wisconsin.
- f. The owner or lessee is an estate, trust, or cooperative, and that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property, except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft, in Wisconsin at the time the aircraft is registered in Wisconsin.
- g. The Department of Revenue has not determined that the owner, if the owner is a corporation, trust, or partnership, was formed to qualify for the exemption from Wisconsin use tax.

8. Refund Sales Tax to Consumer Upon Return of Motor Vehicle to Manufacturer Under "Lemon Law" (Create s. 218.015(2)(f), Stats., effective April 28, 1988.)

The law governing repair, replacement, and refund under a new motor vehicle warranty, commonly called the "lemon law," allows a consumer to return a motor vehicle to its manufacturer for a refund of all or a portion of the purchase price, if the motor vehicle has certain conditions or defects which remain after a reasonable attempt to repair the motor vehicle. The "lemon law" also allows a consumer to recover the sales tax from the manufacturer for a contract to purchase entered into on or after April 22, 1986.

Under this new provision, the department will refund sales tax directly to certain consumers, based on the amount of the refund of the purchase price of a new motor vehicle actually received by the consumer, if all the following apply:

- a. The consumer did not receive a refund of the sales tax from the manufacturer.
- b. The contract to purchase the motor vehicle when new, was entered into on or before April 21, 1986 and the motor vehicle was bought new on or after November 3, 1983.
- c. The consumer applies for a refund of sales tax with the Department of Revenue and provides evidence to substantiate the claim.

9. Exempt Equipment for Treatment of Diabetes and Supplies Used to Determine Blood Sugar Level (Amend s. 77.54(28), Stats., effective March 1, 1989.)

Apparatus or equipment for the treatment of diabetes and supplies used to determine blood sugar level are exempt from Wisconsin sales and use taxes.

10. Exempt Heavy Logging Equipment (Create s. 77.54(39), Stats., effective April 1, 1989.)

The following are exempt from Wisconsin sales and use taxes: off-highway heavy mechanical equipment such as feller bunchers, slashers, delimiters, chippers, hydraulic loaders, loaders, skidder-forwarders, skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. "Heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

11. Occasional Sales by Nonprofit Organizations (Repeal s. 77.51(9)(c), amend s. 77.52(7) and create s. 77.54(7m), Stats., effective January 1, 1989.)

This provision changes the standards for determining the occasional sale exemption on sales by nonprofit organizations. Under the new standards, sales of tangible personal property and services, including admissions or tickets to an event, conducted by a nonprofit organization are exempt occasional sales if: 1) there is no professional entertainment, 2) the organization is not engaged in a trade or business and 3) the organization is not otherwise required to have a seller's permit.

Under the statute an organization is deemed to be engaged in a trade or business if its sales of tangible personal property or services (not including sales of tickets to events), or its events occur on more than 20 days during the year. However, if an organization's receipts do not exceed \$15,000 for the year, it is not considered to be engaged in a trade or business even if its sales and/or events exceed 20 days.

A nonprofit organization whose gross receipts have become taxable because it has exceeded the above standards must obtain a seller's permit and pay taxes on all taxable receipts received after it is required to obtain that permit.

If an organization later becomes eligible for the occasional sale exemption except for its possession of a seller's permit, it may surrender that permit.

12. Change Nexus Standards for Foreign Publishers (Amend s. 77.51(13g)(intro.) and create s. 77.51(13h), Stats., effective January 1, 1990.)

If a foreign corporation is a publisher, the purchase from a printer of a printing service or of tangible personal property printed in Wisconsin for the publisher and the storage of printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher does not create nexus within Wisconsin, even though the printed material is resold or delivered in Wisconsin.

Therefore, a foreign corporation that is a publisher is not required to collect Wisconsin use tax on its sale or delivery of printed material in Wisconsin if only the above activities occur in Wisconsin.

"Raw material" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.