

# SALES AND USE TAX REPORT

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## I. NEW TAX LAWS

The following new sales and use tax and dry cleaning fee laws have been enacted. The effective date of each law is shown in parentheses.

### A. Exempt Sales of Food and Beverages Given to Restaurant Employees (effective December 1, 1999)

Sales of the following are exempt from Wisconsin sales or use tax if provided by a restaurant to the restaurant's employe during the employe's work hours:

- Meals and sandwiches, whether heated or not.
- Heated food and heated beverages.
- Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas.
- Candy, chewing gum, lozenges, popcorn, and confections.
- Soda water beverages as defined in sec. 97.29(1)(i), Wis. Stats., bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices in sec. 97.02(27), 1967 Wis. Stats.

- Disposable products that are transferred with the above items, such as paper cups, napkins, straws, etc.

Under prior law, sales of the above items to a restaurant that the restaurant provided to employes without consideration were subject to Wisconsin sales or use tax.

### B. Exempt Sales of and Admissions to Time-Share Property (effective December 1, 1999)

The following are **not** subject to Wisconsin sales or use tax:

- The furnishing of rooms or lodging to a person for a continuous period of less than one month through the sale of any kind of time-share property.
- Charges associated with a time-share property, including the annual fees for the owner's pro rata share of real estate taxes, maintenance, and repairs.
- The sale or furnishing of the use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services, and club memberships, in connection with the sale or use of time-share property.

Under prior law, the sale of time-share property and associated charges were subject to Wisconsin sales or use tax if both of the following conditions were met:

- the time-share property was the type described in sec. 707.02(32), Wis. Stats., and
- the use of the rooms or lodging was not fixed at the time of the sale as to the starting day or lodging unit.

**C. Expand Exemption for Electricity Sold for Use in Farming** (effective for sales on or after May 1, 2000)

The sales and use tax exemption for electricity sold for use in farming, including but not limited to agriculture, dairy farming, floriculture, and horticulture, is expanded to include sales of electricity during the entire year.

Under prior law, the exemption was limited to electricity sold during the months of November, December, January, February, March, and April.

**D. Occasional Sale Exemption for Auctions** (effective January 1, 2000)

The definition of “occasional sales,” in regard to auctions, is amended to include five or fewer auctions that are the sale of personal farm property or household goods and that are held by the same auctioneer at the same location during the year. For indoor locations, “location” means a building, except that in the case of a shopping center or a shopping mall, “location” means a store.

**Example 1:** During 2000, Auctioneer J holds eight personal household goods auctions at Company ABC’s warehouse and three personal household goods auctions at Store XYZ. The eight auctions held by Auctioneer J at Company ABC’s warehouse do not qualify as exempt occasional sales. The three auctions held by Auctioneer J at Store XYZ may qualify as exempt occasional sales.

**Example 2:** During 2000, Auctioneer L holds six personal household goods auctions in a rented hall and four auctions in a park shelter. The six auctions held in the rented hall do not qualify for the occasional sale exemption. However, the four auction sales at the park shelter may qualify for the occasional sale exemption.

**E. Exempt Certain Sales From Vending Machines** (effective July 1, 2001)

Sales of food, food, products, and beverages from a vending machine are considered to be sold for consumption off the seller’s premises. Therefore, sales from a vending machine of food, food products, and beverages for human consumption (e.g., fruit, potato chips, cookies, milk) are exempt from Wisconsin sales or use tax, except for the following:

- Medicines, tonics, vitamins, and medicinal preparations in any form.
- Fermented malt beverages as defined in sec. 125.02, Wis. Stats. (e.g., beer).
- Intoxicating liquors as defined in sec. 139.01(3), Wis. Stats.
- Soda water beverages as defined in sec. 97.29(1)(i), Wis. Stats., bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices in sec. 97.02(27), 1967 Wis. Stats.
- Meals and sandwiches, whether heated or not.
- Heated food and heated beverages.
- Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas.
- Candy, chewing gum, lozenges, popcorn, and confections.

Under prior law, sales from a vending machine of any food, food products, and beverages were considered to be for on-premises consumption and were subject to Wisconsin sales or use tax, unless an exemption applied (e.g., occasional sales).

**F. Late Filing Fee Increased** (effective for returns filed for periods beginning after September 30, 1999)

The late filing fee for sales and use tax returns filed after the due date (or extended due date, if an extension is obtained) is increased from \$10 to \$20.

**G. Agreements With Direct Marketers** (effective October 29, 1999)

The Department of Revenue may enter into agreements with out-of-state direct marketers to collect Wisconsin state, county, and stadium sales and use taxes. Sales and use tax provisions relating to returns and payments, deficiency and refund determinations, and interest and penalties provided in secs. 77.58, 77.59, and 77.60, Wis. Stats., apply to these agreements, except that the department may negotiate payment schedules and audit procedures with the out-of-state direct marketers.

An out-of-state direct marketer that collects Wisconsin state, county, and stadium sales and

use taxes under such an agreement may retain 5% of the first \$1,000,000 of the taxes collected in a year and 6% of the taxes collected in excess of \$1,000,000 in a year. The retailer's discount under sec. 77.61(4)(c), Wis. Stats., does not apply to the direct marketer agreements.

**Note:** This provision does not apply to out-of-state direct marketers who are required to collect Wisconsin state, county, and stadium sales and use taxes imposed under subchs. III and V of ch. 77, Wis. Stats.

**H. Transfer of Certain Transmission Facilities Are Not Retail** (effective October 29, 1999)

Excluded from the definition of "sale," for sales and use tax purposes, is the transfer of transmission facilities, as defined in sec. 196.485(1)(h), Wis. Stats., to a transmission company, as defined in sec. 196.485(1)(ge), Wis. Stats., after the organizational start-up date, as defined in sec. 196.485(1)(dv), Wis. Stats., of such company in exchange for securities, as defined in sec. 196.485(1)(fe), Wis. Stats.

**I. Exempt Collection of Public Benefit Fees** (effective October 29, 1999)

Gross receipts from the collection of public benefits fees that are charged under sec. 16.957(4)(a) or (5)(a), Wis. Stats., are exempt from Wisconsin sales or use tax.

**J. Dry Cleaning License Fees to be Paid in Installments** (effective for license fee installment payments due April 25, 2000)

Dry cleaning license fees are due in installments payable on or before April 25, July 25, October 25, and January 25, in amounts equal to 1.8% of the previous 3 months' gross receipts from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

The department shall issue a license to each person who pays the January 25 installment and the previous 3 installments and submits a form that the department prescribes. The license is valid for the year in which the January 25 installment is due.

Any person who operates a dry cleaning facility, and who pays the installment after the due date of the installment, must pay to the department \$5 for each day from the date that the installment is due to the date that the installment is paid.

Under prior law, the dry cleaning license fees, which were equal to 1.8 % of the previous year's gross receipts from dry cleaning, were due on or before January 15.

**K. Formal Wear Rental Firms Not Considered Dry Cleaning Facilities** (effective October 29, 1999)

"Formal wear rental firms" are excluded from the definition of who is considered a "dry cleaning facility." Therefore, "formal wear rental firms" are not subject to the dry cleaning license and solvents fees.

A "formal wear rental firm" is defined to mean a facility that rents formal wear to the general public and dry cleans only the formal wear that it rents to the general public. "Formal wear" includes tuxedos, suits, and dresses, but does not include costumes, table linens, or household fabrics.

The department will reimburse the owner or operator of a "formal wear rental firm" any dry cleaning license or solvent fees paid by the owner or operator prior to April 25, 2000.

**II. DEPARTMENT REVISES POSITION REGARDING CONSTRUCTION FOR EXEMPT ENTITIES**

A tax release titled "*Purchases of Building Materials by Exempt Entities for Use by Contractor in Real Property Construction*" in *Wisconsin Tax Bulletin 74* (October 1991), pages 22 to 30, stated that given the following facts, a taxable transaction occurred between the contractor and the exempt entity (except elementary and secondary schools):

- An exempt entity and contractor entered into a contract for real property construction.
- The contract provided that the contractor was to provide all materials, and the contract price included those materials.
- The exempt entity purchased materials directly from suppliers subsequent to entering into the contract with the contractor.
- The exempt entity transferred the materials it purchased to the contractor.
- A change order or similar reduction to the contract price was prepared for the materials the exempt

entity purchased directly from suppliers and transferred to the contractor.

- The contractor used the materials purchased by the exempt entity in real property construction.

The department has reversed the position stated in *WTB 74*. As a result of the department's change in position, given the facts above, the exempt entity's transfer to its construction contractor of materials that the exempt entity purchases directly from suppliers is no longer considered a taxable transaction, regardless of whether:

1. The contract specifies that the contractor is to provide all materials and the exempt entity subsequently obtains a reduction in the contract price for the direct purchased materials (e.g., change order), or
2. The contract excludes those materials the exempt entity will purchase directly from suppliers, resulting in no need for a reduction in the contract price (e.g., change order).

A new tax release published in *Wisconsin Tax Bulletin 115* (October 1999) replaces the prior tax release and applies prospectively **and** retroactively to all periods open to adjustment under the statute of limitations. A copy of the new tax release in *WTB 115* may be obtained from any Department of Revenue office or through the department's Internet web site at [www.dor.state.wi.us/ise/wtb/115tr.pdf](http://www.dor.state.wi.us/ise/wtb/115tr.pdf).

### III. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$106

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

**Effective January 1, 2000, the amount subject to use tax is increased from \$104 to \$106 per plate per month.**

**Note:** The use tax per plate per month is not \$106. Rather, \$106 is multiplied by the appropriate 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 increase to \$106 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1997-98), 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 deter-

mined by the U.S. Department of Labor for the 12-month period ending June 30. The percentage change for the period July 1998 to June 1999 was 1.96% ( $\$104 \times 1.0196 = \$106$ , rounded to the nearest whole dollar).

### IV. LODGING PROVIDERS MAY BE SUBJECT TO USE TAX

Lodging providers, such as hotels and motels, are the consumers of the items they use to provide lodging services to their customers. Therefore, lodging providers must pay Wisconsin sales or use tax on their purchases of such items.

**Note:** If Wisconsin sales or use tax is not charged by the supplier of these items, Wisconsin use tax must be reported and paid by the lodging providers to the Wisconsin Department of Revenue on its Wisconsin Sales and Use Tax Return (Form ST-12).

Examples of the types of property that may be subject to use tax include the following:

- Furniture and appliances, such as artwork, blinds and drapes, lamps, radios, recreational equipment, telephones, televisions, video cassette players or recorders (VCRs), video games, pool tables, dart boards, and jukeboxes.
- Office equipment and supplies, such as advertising brochures and literature used in Wisconsin, computer equipment, copy and FAX machines and supplies, file folders, guest receipts, name badges, paper, pens and pencils, reservation slips, and stationery.
- Room supplies, such as bath mats, bibles, candy, clothing hangers, coffee makers, cups, door tags, garbage cans, keys, matchbooks, paper and plastic bags, shampoo, soap, tissues, and toiletries.
- Linen supplies, such as bedding, laundry bags, towels, uniforms, and washcloths.
- Cleaning and maintenance equipment and supplies, such as carpet sweepers, cleaning supplies, laundry machines and dryers, lawn equipment and supplies, maid carts, pool chemicals and supplies, repair parts for any taxable tangible personal property, snow removal equipment (e.g., snow blowers, plows, shovels), storage racks, and portable vacuum cleaners.