

## **Important Changes**

- Menominee County tax begins April 1, 2020
- Baseball stadium district tax ends March 31, 2020
- Outagamie County tax begins January 1, 2020
- Calumet County tax begins April 1, 2018
- Brown County tax begins January 1, 2018
- Kewaunee County tax begins April 1, 2017
- Sheboygan County tax begins January 1, 2017
- Brown County football stadium tax ended September 30, 2015

# **Auctioneers**

## **How Do Wisconsin Sales and Use Taxes Affect Your Operations?**

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**IMPORTANT CHANGES**

**Location of Auction.** Information has been added to clarify the location where an auction is held or conducted. See Part II.C. on page 3.

**Online Auctions.** Information has been added which describes online auctions and how Wisconsin sales and use taxes apply to sales and purchases made using online auctions. See Part VII., beginning on page 10.

**Auctions for Nonprofit Organizations.** Part VIII. has been modified to clarify when a person providing auction services for a nonprofit organization is liable for collecting, reporting, and payment of sales taxes. See Parts VIII.A. and B. beginning on page 11.

**I. INTRODUCTION**

This publication explains how the 5% Wisconsin state sales and use taxes apply to sales made at auctions.

**Note:** Certain transactions which are subject to the 5% state tax may also be subject to (a) 0.5% county sales and use tax, (b) 0.1% baseball stadium sales and use tax, (c) 0.5% football stadium sales and use tax, and (d) 0.5% local exposition food and beverage tax. Additional information about these taxes is contained in the following:

- (a) County and stadium taxes: [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part XVIII.
- (b) Local exposition food and beverage tax: [Publication 410](#), *Local Exposition Taxes*. (Sales of candy, prepared foods, and soft drinks which are subject to the 5% Wisconsin state sales tax may also be subject to the 0.5% local exposition tax if the sale takes place in a municipality located wholly or partially in Milwaukee County. The 0.5% tax is also imposed on sales of alcoholic beverages in Milwaukee County if the alcoholic beverage is for consumption on the seller's premises.)

**CAUTION**

The information in this publication reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and in effect as of January 1, 2014. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this publication. Also note that lists of taxable or exempt items in this publication are not all-inclusive. They merely set forth common examples.

**II. DEFINITIONS**

As used in this publication, the terms below have the following definitions:

**A. Auction**

A sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of tangible personal property; items, property, or goods listed in Parts III. B., C., or D.; services; or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of tangible personal property; items, property, or goods listed in Parts III. B., C., or D.; services; or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

**B. Auctioneer**

An individual who engages in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of tangible personal property; items, property or goods listed in Parts III. B., C., or D.; services; or real estate at an auction.

**Note:** Examples of sales by auction include traditional auctions, in which the auctioneer and bidders are present at the auction location, and online auctions, where the auctioneer and bidders interact through the use of a website and the Internet. See Part VII. for additional information related to online auctions.

**C. Location of Auction**

The location where an auction is held or conducted is the location where the auctioneer calls the auction or recognizes and accepts bids. This location may or may not also be the location where the items up for auction may be inspected by prospective buyers and may or may not also be the location where the winning bidder is to pick up or receive the property or service purchased. For indoor locations, "location" means a building, except that in the case of a shopping mall, "location" means a store.

### III. WHICH SALES ARE SUBJECT TO SALES AND USE TAXES?

Sales, licenses, leases, and rentals of the following property, items, and goods are subject to the 5% Wisconsin state sales tax:

- A. Tangible personal property;
- B. Coins or stamps of the United States that are sold, licensed, leased, rented, or traded as collector's items above their face value;
- C. Leased tangible personal property that is affixed to real property, if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed;
- D. Specified digital goods, additional digital goods, and digital codes. These goods are characterized by the fact that they are transferred electronically to the purchaser (i.e., accessed or obtained by the purchaser by means other than tangible storage media). "Specified digital goods" means "digital audio works," "digital audiovisual works," and "digital books." "Additional digital goods" means greeting cards, finished artwork, periodicals, video or electronic games, and newspapers or other news or information products. See [Publication 240](#) for a description of the products that are included;

In addition, certain services are subject to Wisconsin sales and use taxes. For a list of taxable services, see Part X.B. of [Publication 201](#).

### IV. WHO IS SUBJECT TO SALES TAX AT AUCTIONS?

#### A. Who Is Subject to Sales Tax?

An auctioneer making sales of property, items, or goods listed in Parts III.A., B., C., and D., or taxable services at auctions is liable for the collection, reporting, and payment of sales tax on taxable sales. (See Part VI on pages 5-9 for an explanation of taxable and exempt sales. For a listing of taxable services, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part X.)

#### B. Who Must Obtain a Seller's Permit?

An auctioneer making taxable sales is required to obtain a seller's permit from the Wisconsin Department of Revenue.

If an auctioneer makes only exempt sales, it is not required to hold a seller's permit or collect sales tax.

#### C. How to Obtain a Seller's Permit

An auctioneer may apply for a seller's permit using one of the following methods:

- Use the Department of Revenue's online [Business Tax Registration Process](#) to submit the application electronically.
- Complete [Form BTR-101](#), *Application for Business Tax Registration*, and mail it to the Department of Revenue. Keep a copy of the completed application for your records.

### V. COMPUTING THE SALES TAX

#### A. Sales Tax Imposed on Sales Price

Sales tax is imposed on an auctioneer's taxable sales price. "Sales price" is the total amount of the sales, license, lease, or rental price, whether received in money or something other than money.

#### Taxable sales price includes:

1. Amounts received from buyers from sales of property, items, or goods listed in Parts III.A., B., C., or D., or taxable services.

*Example:* Auctioneer sells business inventory for \$20,000 at an auction. Auctioneer retains a commission of \$2,000 and remits the remaining \$18,000 to the owner of the business inventory. Auctioneer's sales price subject to tax is \$20,000.

2. Charges made by the auctioneer for delivery of the property.

*Example:* Auctioneer sells business equipment for \$950 at an auction and also charges \$50 for delivering the equipment to the customer. Auctioneer's sales price subject to tax is \$1,000 (\$950 + \$50). **Note:** If the item sold is not taxable, then the delivery charge is also not taxable.

3. Buyer's fees charged on taxable sales.

*Example:* Auctioneer charges all buyers a 1% fee, which is added to the price of the taxable property sold. Auctioneer sells business assets for \$10,000 at an auction. Auctioneer also receives from the buyers a 1% fee of \$100. Auctioneer's sales price subject to tax is \$10,100.

4. Charges for warranty or maintenance contracts.

Charges for warranty or maintenance contracts that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property and items, property or goods listed in Parts III. B., C., and D. are included in taxable sales price, unless the sale, license, lease, or rental in Wisconsin of the property, items, or goods to which the contract relates is or was exempt, to the purchaser of the contract, from sales and use taxes.

**Taxable sales price does not include:**

1. Charges for customer identification cards.

**Note:** Although an auctioneer's charges for customer identification cards are not subject to sales tax, an auctioneer must pay sales or use tax on its purchases of customer identification cards.

*Example:* Auctioneer charges a \$1 fee to each customer for an identification card. The \$1 fee is charged whether or not the buyer makes any purchases. Auctioneer's receipts from the \$1 fee are not included in its taxable receipts.

2. Interest, financing, and carrying charges from credit that is extended on a sale if the amount of the interest, financing, or carrying charges is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

3. Charges for insurance, where such charges are separately set forth upon the invoice given by the seller to the purchaser. However, this does not include contracts that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of the tangible personal property and items, property or goods listed in Parts III. B., C., and D., unless

the sale, license, lease, or rental in Wisconsin of the property, items, or goods to which the contract relates is or was exempt, to the purchaser of the contract, from sales and use taxes.

**B. Tax Rate**

- Wisconsin state sales and use tax rate: 5%
- County sales and use tax rate (effective in those counties which have adopted the county tax): 0.5%
- Baseball stadium sales and use tax rate (effective in Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties): 0.1%
- Football stadium sales and use tax rate (effective in Brown County): 0.5%
- Local exposition food and beverage tax rate (effective in municipalities located wholly or partially in Milwaukee County): 0.5%.

**Note:** Effective October 1, 2009, any retailer who holds or is required to hold a Wisconsin seller's permit or Wisconsin use tax registration certificate must charge and collect, in addition to the applicable Wisconsin state sales and use taxes, all applicable county, stadium, and local exposition sales and use taxes.

**VI. TAXABLE AND EXEMPT AUCTION SALES**

**A. Taxable Auction Sales**

An auctioneer's sales of tangible personal property; items, property, or goods listed in Parts III. B., C., and D., and taxable services are subject to the 5% sales tax, and the auctioneer is liable for the tax on such sales, unless the sales meet one of the exemptions described in Part VI.B, on pages 6-9.

**Note:** If the contract between an auctioneer and the owner of the property, items, or goods is for calling the auction only, and the owner of the property, items, or goods clerks the auction and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds; the owner of the property, items, or goods (not the auctioneer) is liable for sales tax on sales made at the auction.

*Example:* Financial Institution, who repossessed business equipment from a debtor, contracts with Auctioneer to call an auction to sell the business equipment. Auctioneer is engaged in the business of

making sales at auctions. The contract between Financial Institution and Auctioneer is for calling the auction only. Financial Institution clerks the auction and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds. Financial Institution handles customer identification, accepts payment from customers, and pays a fee to Auctioneer for calling the auction.

Financial Institution is liable for sales tax on the auction sales of the business equipment.

**Note:** Special rules apply in the case of an auctioneer calling an auction for a nonprofit organization. See Part VIII., beginning on page 11.

**Note:** Information is included in Part VIII., on pages 11 and 12, relating to sales by nonprofit organizations; in Part IX.A., on pages 12 and 13, relating to sales of motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, mobile homes, trailers, and semitrailers; and in Part XI.B., on pages 14 and 15, relating to where the sale occurs.

## B. Exempt Auction Sales

Auction sales exempt from the 5% sales and use tax include:

- Sales for which the buyer claims exemption, and
- Sales of personal farm property or personal household goods.

**Note:** Auction sales of real estate are not subject to sales and use tax.

Additional information about these two exempt auction sales is provided below.

### 1. Sales for which the buyer claims exemption

Four common ways that a buyer claims exemption from Wisconsin sales and use taxes are as follows:

#### a. Buyer furnishes auctioneer a resale certificate.

If a fully completed resale certificate is given to the auctioneer at the time of the sale, the sale is exempt.

*Example:* Auctioneer sells store shelving at an auction. (The store shelving is business

equipment and does not qualify for exemption as an auction sale of personal farm property or personal household goods.)

The buyer provides Auctioneer with a fully completed resale certificate. Auctioneer's sale of this store shelving is exempt from sales tax.

- b. *Buyer furnishes auctioneer a fully completed exemption certificate stating that buyer's use is exempt.*

*Example 1 — Manufacturer's Exemption Certificate:* Auctioneer sells a machine to a manufacturer who will use the machine exclusively and directly in manufacturing.

The manufacturer provides Auctioneer with a fully completed exemption certificate. Auctioneer's sale of the machine is exempt from sales tax.

*Example 2 — Farmer's exemption:* Auctioneer sells a tractor at an auction. Auctioneer is the owner of the tractor. (The tractor is business inventory of Auctioneer and the sale does not qualify for exemption as a sale of personal farm property or personal household goods.)

The buyer provides Auctioneer with a fully completed exemption certificate. Auctioneer's sale of the tractor is exempt from sales tax.

- c. *Buyer organization is exempt (e.g., Wisconsin public schools and municipalities, federal government, nonprofit organizations holding a Certificate of Exempt Status) and furnishes required documentation to auctioneer.*

- d. *Buyer holds a direct pay permit and furnishes required documentation to auctioneer.*

**Note:** See Part XII., on pages 15 and 16, for information on the records an auctioneer is required to keep to support exempt sales.

### 2. Auction sales of personal farm property or personal household goods

For an auction sale of personal farm property or personal household goods to be exempt from sales and use tax, all three conditions listed below must be met. The auctioneer is not required to obtain an

exemption certificate from the buyer for a sale which meets all three conditions.

**Condition 1:** Sale must be by auction.

**Condition 2:** The auction must be held at a location where the auctioneer holds five or fewer auctions during the calendar year.

**Condition 3:** The property sold must be personal farm property or personal household goods of the owner.

Additional information about each of the three conditions is provided below.

**Condition 1:** Sale must be by auction.

A sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of tangible personal property; items, property, or goods listed in Parts III. B., C., or D.; services; or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of tangible personal property; items, property, or goods listed in Parts III. B., C., or D.; services; or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

**Condition 2:** The auction must be held at a location where the auctioneer holds five or fewer auctions during the calendar 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. (**Note:** An auctioneer may have more than one location at which its auctions do not meet Condition 2.)

The location where an auction is held or conducted is the location where the auctioneer calls the auction or recognizes and accepts bids. See Part II.C.

*Example 1:* Auctioneer holds an auction at the home of Person in December 2010. This is the only auction held at Person's home in 2010. The auction meets Condition 2.

*Example 2:* During 2010, Auctioneer holds eight auctions at Company A's warehouse and five auctions at Store B. The eight auctions held by Auctioneer at Company A's warehouse do not

meet Condition 2. The five auctions held by Auctioneer at Store B meet Condition 2.

*Example 3:* In 2010, Auctioneer holds five auctions of personal household goods and one auction of business assets at a rented store. All six auctions held by Auctioneer at the rented store in 2010 do not meet Condition 2.

*Example 4:* During 2010, Auctioneer holds ten auctions in a rented hall and six auctions in a park shelter. All ten of Auctioneer's auctions held in the rented hall and all six of Auctioneer's auctions held in the park shelter during 2010 do not meet Condition 2.

*Example 5:* Auctioneer holds five radio auctions at one location during 2010. Auctioneer's radio auctions meet Condition 2.

*Example 6:* Auction Company holds an online auction of household goods. The household goods are located at the owner's home. Bidders may go to the home and view the items being auctioned. Successful bidders may go to the home and pick up the items they purchase. Auction Company is not located at the home while accepting bids and otherwise conducting the auction. Instead, Auction Company is at its office while accepting bids and otherwise conducting the auction. The auction is held at the location of Auction Company's office where Auction Company accepts bids and otherwise conducts the auction. Auction Company holds five auctions at its office during the calendar year. The five auctions held by Auction Company at its office meet Condition 2.

**Condition 3:** Property sold must be personal farm property or personal household goods of the owner.

- "Owner" is the person who owns the personal farm property or personal household goods being sold at the auction by an auctioneer.
- In the case of property owned by an estate, "owner" includes the decedent who owned the personal farm property or personal household goods being sold at the auction by an auctioneer.
- "Personal farm property" or "personal household goods" is personal property the owner

“used” (see definition of “used” below) in farming or as part of the owner’s household.

- “Used” includes both the storage and the use of (1) personal farm property which was obtained for use in farming, and (2) personal household goods obtained for use as part of the household.

**a. Types of personal farm property**

“Personal farm property,” means the tangible personal property and the items, property and goods listed in Parts III.B., C., and D., used by the owner in the business of farming, and includes (this list is not all-inclusive):

- Tractors
- Plows
- Cultivators
- Cattle, horses, chickens, pigs
- Milking pumps and motors
- Milk cans
- Tools
- Lumber

*Example:* Person uses a tractor in farming. The tractor is sold at an auction to a construction company which plans to use the tractor in its construction business, not in farming. The tractor is “personal farm property” because the owner, Person, used the tractor in farming.

“Personal farm property” does not include racing, pleasure riding, or show horses, pets or other recreational animals not used in farming, highway vehicles, and boats.

**b. Types of personal household goods**

(1) “Personal household goods” means tangible personal property and the items, property and goods listed in Parts III. B., C., and D., which are associated with and used for maintaining a household and is for family use. “Personal household goods” includes (this list is not all-inclusive):

- Furniture
- Clothing
- Bicycles
- Personal collections of guns, dolls, antiques, stamps, coins, etc.
- Tools
- Sporting goods (baseball gloves, golf clubs, fishing and hunting equipment, etc.)
- Appliances (washing machines, stoves, ranges, refrigerators, freezers, vacuum cleaners, etc.)
- Pets, riding horses
- Lawn mowers, snowblowers

*Example 1:* Person receives clothing as a gift. Person stores the clothing in the closet. Because “use” includes Person’s storage of the clothing, the clothing is “personal household goods.”

*Example 2:* Person P hires an auctioneer to sell at an auction, personal household goods which Person P used as part of her household. Person Q, Person R, and Person S bring to the auction personal household goods, such as furniture and tools, which were used by these persons as part of their households. All the household goods brought to the auction by Persons P, Q, R, and S are “personal household goods.”

*Example 3:* Person hires an auctioneer to sell his collection of 300 guns along with furniture and other personal property which Person used as a part of his household. Person is not engaged in the business of selling guns. The 300 guns are “personal household goods.”

(2) “Personal household goods” does not include (a) highway motor vehicles or trailers, snowmobiles, all-terrain vehicles, mini bikes, aircraft and boats,



- (b) business inventory, and
- (c) business assets.

- a. Highway motor vehicles or trailers, snowmobiles, all-terrain vehicles, mini bikes, aircraft and boats

*Example 1:* Individual A is moving to another state, and hires Auctioneer to conduct an auction to sell various personal use assets owned by Individual I that he does not want to move to his new residence. This property includes a power boat. The power boat does not qualify as a “personal household good.” Auctioneer is subject to sales tax on its auction sale of this power boat.

- b. Business inventory

*Example 1:* Retailer, who operates an appliance store, hires Auctioneer to hold an auction to sell appliances during Retailer’s going-out-of-business sale.

Auctioneer’s sales of appliances for Retailer do not qualify as sales of personal household goods and, therefore, are taxable.

*Example 2:* Auctioneer attends various auctions of personal farm property and household goods. At these auctions, Auctioneer buys items which were for sale at the auctions but did not sell to bidders. Auctioneer then holds an auction to sell these items.

These items are business inventory of Auctioneer, not personal farm property or personal household goods. Auctioneer’s receipts from its auction sales of such items are taxable.

*Example 3:* Person, who is engaged in business as an antique dealer, brings antiques to an auction. The antiques owned by

Person are not “personal household goods” because they are business inventory of Person. The auctioneer’s receipts from its auction sales of the antiques are taxable.

*Example 4:* Auctioneer holds an auction on television. The various items sold in the television auction are tangible personal property donated by local retailers. The items sold are business inventory, not “personal household goods.” Auctioneer’s receipts from its auction sales of such business inventory are taxable.

- c. Business assets

*Example 1:* Auctioneer holds an auction to sell business assets of Retailer. Retailer has ceased operating its restaurant business. The business assets include ovens, stoves, a dishwasher, tables, chairs, and a cash register. Retailer’s business assets are not personal household goods. Auctioneer’s receipts from its auction sales of such assets are taxable.

*Example 2:* Auctioneer is hired by the estate of Person to hold an auction to sell personal property of the estate. Before his death, Person operated a construction business from his home. Included among the personal property of Person’s estate are tools and equipment which Person had used in his construction business.

The tools and equipment used by Person in his construction business are not personal household goods. Auctioneer’s receipts from auction sales of such tools and equipment are taxable.

## VII. ONLINE AUCTIONS

Online auction sales are taxable, provided the sale takes place at a location in Wisconsin. For purposes of collecting the proper sales tax, online auction sales generally take place at the location where the purchaser receives the product. See Part XI. for more information about where a sale takes place.

**Note:** For purposes of determining the location where an auction is held, see Part II.C. The location where an auction is held is used to determine whether the auctioneer meets Condition 2 on page 7. Condition 2 must be met in order for the exemption for auction sales of personal household goods or personal farm property to apply.

### Description and Tax Treatment of Online Auction Purchase

Persons buy and sell tangible personal property, goods, and services ("items") via Internet auctions. A person selling an item (owner) sets up an account with an Internet auction company (Online Auction Company). The owner provides a description and possibly a picture of the item. The owner may set a minimum bid for the item and clarifies additional terms and conditions such as who pays for shipping and insurance. The owner chooses the date and time at which the auction will end.

Bidders or potential bidders might email the owner during the course of the auction. The owner responds to such inquiries. If a bidder's maximum bid is exceeded by another bidder, Online Auction Company notifies the bidder by email. Bidding automatically ends when the auction ends. Online Auction Company sends the owner and high bidder emails when the auction ends. Online Auction Company posts results (the bidding history, final bid price, and the user names for the owner and the high bidder) for a certain period of time.

The owner and the high bidder are responsible for contacting each other within a given period of time after the end of the auction. The owner may contact the next highest bidder if the owner cannot conclude the transaction with the highest bidder within that time period. The winning bidder pays the owner directly for the item. It is the owner's responsibility to fulfill the order once payment terms are met.

Following is the Wisconsin sales and use tax treatment for the Internet auction sales described above. (**Note:** This tax treatment assumes the buyer receives the item at a location in Wisconsin and no exemption applies.)

**Online Auction Company is a Retailer.** Online Auction Company is the retailer and is liable for the collection and payment of the applicable Wisconsin sales or use taxes if Online Auction Company has or is required to have a Wisconsin seller's permit or use tax registration certificate (e.g., if Online Auction Company is engaged in business in Wisconsin).

**Owner.** If Online Auction Company does not collect the applicable Wisconsin sales or use tax, the owner is liable for the collection and payment of the Wisconsin sales or use taxes if the owner has or is required to have a Wisconsin seller's permit or use tax registration certificate.

**Buyer.** The buyer is required to pay the use tax related to such purchases directly to the Wisconsin Department of Revenue, unless the purchaser pays the tax either to Online Auction Company or to the owner and obtains a receipt with the tax separately stated.

**Note 1:** The tax applies to the sales price of the taxable goods or services. "Sales price" includes any shipping and handling charges and any "buyer's fee" that are charged by the auctioneer and/or owner in addition to the amount of the winning bid.

**Note 2:** See [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Parts III. and IV., to determine if you are required to have a Wisconsin seller's permit or use tax registration certificate.

*Example (1):* Online Auction Company conducts online auctions as described above. In addition, Online Auction Company is not engaged in business in Wisconsin and does not have a Wisconsin seller's permit or use tax registration certificate. Business B holds a Wisconsin seller's permit. Business B lists clothing for sale on Online Auction Company's website. The clothing is sold using the bidding process described above. Business B receives payment from the winning bidder, Individual D, and ships the clothing to Individual D's home in Rock County, Wisconsin. Business B is required to collect and remit 5.5% Wisconsin state and Rock County sales taxes.

*Example (2):* Same facts as Example (1), except Business B is not engaged in business in Wisconsin and does not have a Wisconsin seller's permit or use tax registration certificate. Neither Online Auction Company nor Business B charges Wisconsin sales or use tax on the sale. Individual D is responsible to pay 5.5% Wisconsin state and Rock County use tax on the purchase.

*Example (3):* Same facts as Example (1), except Business B ships the clothing to a location in New York. No Wisconsin sales or use tax is owed on the sale.

*Example (4):* Same facts as Example (1), except Online Auction Company has a business location in Wisconsin. Online Auction Company is required to collect and remit 5.5% Wisconsin state and Rock County sales taxes on the sale of the clothing.

*Example (5):* Online Auction Company conducts online auctions as described above. In addition, Online Auction Company is not engaged in business in Wisconsin and does not have a Wisconsin seller's permit or use tax registration certificate. Individual M lists fishing equipment for sale on Online Auction Company's website. Individual M is not engaged in a business. The fishing equipment is sold using the bidding process described above. Individual M receives payment from the winning bidder, Individual P, and ships the fishing equipment to Individual P's home in LaCrosse, Wisconsin. No Wisconsin sales or use tax is charged on the sale. Individual P is responsible to pay 5.5% Wisconsin state and LaCrosse County use tax on the purchase.

*Example (6):* Company C conducts online auctions using the online bidding process described above. In addition, Company C allows persons to advertise merchandise for sale on its website that may be purchased for a predetermined price rather than being purchased using the online bidding process. Company C does not sell such merchandise. Rather, the person listing the merchandise for sale is the seller of the merchandise. Business J is located in Wisconsin and has a Wisconsin seller's permit. Business J advertises a camera from Business J for sale on Company C's website. Individual I purchases the camera from Business J and has it shipped to a location in Polk County, Wisconsin. Business J is required to collect and remit 5.5% Wisconsin state and Polk County use tax on the sale of the camera.

*Example (7):* Same facts as Example (6), except Business J is located outside Wisconsin and is not engaged in business in Wisconsin. No Wisconsin sales or use tax is charged on the sale. Individual I is responsible to pay 5.5% Wisconsin state and Polk County use tax on the purchase.

## Exemptions

Exemptions that may apply include (this list is not all-inclusive)

- Resale (the buyer is engaged in business and will resell the item purchased for a business purpose prior to making any use of the item)

- Tax exempt entity (the buyer is a Wisconsin or federal governmental unit or is a nonprofit organization that holds a Certificate of Exempt Status issued by the Wisconsin Department of Revenue)
- Manufacturing (machinery or equipment purchased will be used exclusively and directly by a manufacturer in manufacturing tangible personal property)

Additional information about exemptions is provided in [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part XI.

## VIII. AUCTION SALES BY NONPROFIT ORGANIZATIONS

An auctioneer's liability for sales tax on auction sales by nonprofit religious, charitable, educational, or civic organizations and other nonprofit organizations depends on whether the auctioneer's services are donated.

### A. Auctioneer's Services Donated

If the auctioneer's services are donated, the auctioneer is not liable for the collection, reporting, or payment of sales tax. An auctioneer's services are donated when the auctioneer receives no compensation for his or her services other than reimbursement for travel expenses. The donated services can include any or all of the following:

- Calling the auction
- Clerking the auction
- Being responsible for sales proceeds, down payments, earnest money deposits, and other trust funds

*Example:* Auctioneer, for no charge, calls and clerks an auction for a nonprofit organization. Auctioneer also has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds. The nonprofit organization only pays the Auctioneer \$75 for reimbursement of travel expenses incurred by Auctioneer.

Auctioneer is not liable for the collection, reporting, or payment of sales tax on sales at the auction for the nonprofit organization.

**Caution:** If the nonprofit organization holds or is required to hold a seller's permit, the nonprofit organization may be liable for sales tax. For more in-

formation regarding sales by nonprofit organizations, see [Publication 206: Sales Tax Exemption for Nonprofit Organizations](#).

## B. Auctioneer Paid For Services

When an auctioneer is paid by the nonprofit organization for his or her services, the auctioneer is liable for the collection, reporting, and payment of sales taxes on taxable sales when:

- The auctioneer provides complete auction services, or
- The auctioneer contracts with the owner of the auctioned property and arranges for the clerking of the auction.

An auctioneer is paid by the nonprofit organization when the auctioneer receives compensation other than reimbursement for travel expenses.

**Note:** The auctioneer may be paid by the nonprofit organization and not be liable for the collection, reporting, and payment of sales tax if the only service provided by the auctioneer is the calling of the auction. See Part VI.A.

*Example:* Auctioneer calls an auction for a nonprofit organization, for no charge. The nonprofit organization reimburses Auctioneer \$25 for travel expenses and \$100 for clerking the auction. The clerks are employees of Auctioneer, and Auctioneer pays the clerks the \$100 received from the nonprofit organization as wages for their time spent clerking the auction.

Auctioneer is liable for sales tax on its sales at the auction.

## C. Silent Auctions

Nonprofit organizations making sales by silent auction are the retailers with respect to those sales. A nonprofit organization's sales by silent auction of tangible personal property, items, property and goods described in Part III.B. to D., and taxable services are subject to tax unless the sales are exempt occasional sales for the nonprofit organization and the nonprofit organization does not hold a seller's permit at the time of sale, except for bingo. See [Publication 206: Sales Tax Exemptions for Nonprofit Organizations](#), Part IV., for the standards to be met for exempt occasional sales, and Part V.B., for information and examples of sales made by a nonprofit organization by silent auction.

## IX. AUCTION SALES OF MOTOR VEHICLES, BOATS, AIRCRAFT, SNOWMOBILES, ALL-TERRAIN VEHICLES, RECREATIONAL VEHICLES, TRAILERS, AND SEMITRAILERS

**(Note:** "Recreational vehicle," as used in this publication, means a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length.)

### A. Liability For Tax

Auctioneer is liable for all applicable Wisconsin state and local sales and use taxes on its auction sales of motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, recreational vehicles, trailers and semi-trailers that are sourced to Wisconsin as explained in Part XI.B.

Any retailer who holds or is required to hold a Wisconsin seller's permit or Wisconsin use tax registration certificate must charge and collect, in addition to the applicable Wisconsin state sales and use taxes, all applicable county and baseball or football stadium sales and use taxes.

In general, if the auction sale is sourced, as explained in Part XI.B., to a location in:

- a county that has imposed the county sales and use tax, or
- the baseball or football stadium district

the auctioneer is responsible for charging and collecting all such sales and use taxes that apply. However, special rules apply in the case of auction sales of motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, recreational vehicles, trailers and semitrailers.

#### 1. Motor vehicles, boats, recreational vehicles, and aircraft

The seller is liable for local sales or use taxes on sales of motor vehicles, boats, recreational vehicles, and aircraft, based on the location where the purchaser will customarily keep the property.

*Example:* Auctioneer, who is not a licensed motor vehicle dealer, sells a motor vehicle at an auction

conducted in Dane County to Individual, who resides in Milwaukee County. Individual receives possession of the motor vehicle in Dane County. Individual will keep the vehicle in Milwaukee County. Auctioneer is liable for 5% Wisconsin state sales tax, the 0.5% Milwaukee County use tax, and the 0.1% baseball stadium use tax.

**2. Snowmobiles, trailers (other than recreational vehicles in Part IX.A.1.), semi-trailers, and all-terrain vehicles.**

The seller is liable for local sales or use taxes on sales of snowmobiles, trailers (other than recreational vehicles in Part IX.A.1.), semi-trailers, and all-terrain vehicles, based on the location where the purchaser or the purchaser's donee receives possession of the property from the seller.

**Note:** If a purchaser receives possession of the property in a county without a county tax and that is not part of a stadium district, and the purchaser stores, uses, or otherwise consumes the property in a taxable county and/or stadium district, the purchaser owes the applicable county and/or stadium tax for the location where the item is first stored, used, or otherwise consumed. The seller may choose to collect this tax for the convenience of the purchaser.

*Example (1):* Auctioneer, who is not an all-terrain vehicle dealer, sells an all-terrain vehicle at an auction conducted in Dane County to Individual, who resides in Brown County. No exemption applies to the sale. Individual receives possession of the all-terrain vehicle in Dane County. Individual will keep the all-terrain vehicle in Brown County. Auctioneer is liable for 5% Wisconsin state sales tax, and the 0.5% Dane County sales tax. Auctioneer is not required to collect the 0.5% football stadium district use tax in effect for Brown County. Also, Individual is not liable for the 0.5% football stadium tax.

*Example (2):* Same facts as Example (1), except the auction is conducted and the purchaser receives possession of the all-terrain vehicle in Outagamie County (a county with no county tax and is not a part of either the baseball or football stadium district). In this case, the auctioneer is liable for the 5.0% Wisconsin state sales tax. The auctioneer may charge and collect the 0.5% football stadium use tax for the convenience of the purchaser. If the purchaser does not pay the football stadium use tax

to the auctioneer, the purchaser is responsible for paying the football stadium use tax to the Department of Natural Resources or to the Department of Revenue.

**Note:** Auction sales of motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, recreational vehicles, trailers, and semitrailers owned by the U.S. government are subject to Wisconsin sales and use taxes when the auctioneer is someone other than the U.S. government itself.

**B. Motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, recreational vehicles, trailers, and semitrailers registered or titled, or required to be registered or titled, do not qualify for exemption as personal farm property or personal household goods.**

Part VI.B.2., on pages 6-9, describes three conditions under which sales of personal farm property or personal household goods are exempt from sales and use tax.

Auction sales of motor vehicles, aircraft, snowmobiles, all-terrain vehicles, recreational vehicles, trailers, and semitrailers registered or titled, or required to be registered or titled in Wisconsin, do not qualify for exemption as sales of personal farm property or personal household goods.

Auction sales of boats registered or titled, or required to be registered or titled in Wisconsin or under the laws of the United States, do not qualify for exemption as sales of personal farm property or personal household goods.

*Example:* Auctioneer sells a truck which was used by the owner only in its farm fields. The truck was titled by the owner but not registered for use on the highway.

Auctioneer is liable for tax on its sale of the truck. The sale of the truck does not qualify for exemption as personal farm property or personal household goods sold at an auction because it was titled by the owner.

## **X. NON-AUCTION SALES**

Sales made in transactions that do not meet the definition of "auction" do not qualify for the auction exemption as sales of personal farm property or personal household goods.

*Example 1:* Company sells personal household goods on behalf of the owners because of death, divorce, retirement,

etc. The owners of the personal household goods are disclosed to the buyers. The owners of the personal household goods are not engaged in the full or part-time business of selling tangible personal property.

Company appraises the personal household goods, determines selling prices, and tags the goods with the selling prices. Company makes all necessary arrangements for the sale and conducts the sale on the owner's premises.

Although title to the personal household goods never passes to Company, Company has the power to transfer title to the personal household goods to the buyers. Payment for the personal household goods is made by the buyer to Company. At the end of the sale, Company deducts its commission and pays the balance to the owner.

Company is liable for sales tax on its sales price from the sale. Company's sales of the personal household goods are not by auction because the sales do not meet the definition of "auction" in Part II.A on page 3. Its sales of the personal household goods do not qualify for the auction exemption as sales of personal farm property or personal household goods. Company is the seller liable for sales tax because (1) Company had possession of the personal household goods, and (2) the owners of the personal household goods are not engaged in the full or part-time business of selling tangible personal property.

**(Note:** In Example 1, if the owners of the personal household goods are engaged in the full or part-time business of selling tangible personal property, the owners are liable for the payment of sales tax. If the owners fail to pay the tax, Company may be liable for it.)

*Example 2:* Same as Example 1, except the owners of the personal household goods are not disclosed to the buyers.

Company is liable for sales tax on its receipts from the sale. Company's sales of personal household goods are not by auction because it tags the goods with selling prices. Company is the seller liable for sales tax because (1) Company had possession of the personal household goods, and (2) Company has the power to transfer title to the personal household goods to the buyer and exercises that power.

**(Note:** In Example 2, Company is the seller liable for sales tax regardless of whether the owners of the property were engaged in the full or part-time business of selling tangible personal property.)

## **XI. WHEN AND WHERE A SALE TAKES PLACE**

### **A. When a Sale Takes Place**

1. A sale or purchase involving transfer of ownership of tangible personal property or the items or property listed in Parts III.B. and C., is completed at the time when possession is transferred by the seller or the seller's agent to the buyer or the buyer's agent. A common carrier or the U.S. Postal Service is considered to be the agent of a seller, regardless of any f.o.b. point and regardless of the method by which the freight is paid.
2. Except when purchased by "subscription," a sale or purchase of a digital good listed in Part III.D., is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent or when the digital good is first used, whichever comes first.
3. A sale or purchase of a digital good sold by "subscription" is completed at the time when the payment for the subscription is due the seller. "Subscription" means an agreement with the seller that grants the consumer the right to obtain products transferred electronically from within in one more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

### **B. Where a Sale Takes Place**

In order to determine where a sale takes place, a specific hierarchy is used (Part XI.B.1.a. to e.). As used in Part XI.B.1.a. to e., "product" includes services.

For purposes of determining where a sale takes place, "receive" means taking possession of tangible personal property or items or property described in Parts III.B. or C.; taking possession or making first use of a digital good described in Part III.D., whichever comes first, or making first use of services. "Receive" does not include a shipping company taking possession of any tangible personal property or items or property described in Parts III.B. or C., on a purchaser's behalf.

1. A sale (but not a license, lease, or rental) takes place at the location determined using the following hierarchy:
  - a. If a purchaser receives the product at a seller's business location, the sale takes place at that business location.

- b. If a purchaser does not receive the product at a seller's business location, the sale takes place at the location where the purchaser, or the purchaser's designated donee, receives the product, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.
- c. If the location of a sale of a product cannot be determined under a. and b., the sale takes place at the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.
- d. If the location of a sale of a product cannot be determined under a. to c., the sale takes place at the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address is not in bad faith.
- e. If the location of a sale of a product cannot be determined under a. to d., including the circumstance in which the seller has insufficient information to determine the locations under a. to d., the location of the sale is determined as follows:
  - (1) If the property or item is described in Parts III.A., B., or C., the sale takes place at the location from which the property or item is shipped.
  - (2) If the item sold is a good described in Part III.D. or computer software delivered electronically, the sale takes place at the location from which the digital good or computer software was first available for transmission by the seller, not including any location that merely provided the digital transfer of the product sold.
  - (3) If a service is sold, the sale takes place at the location from which the service was provided.

*Example 1:* At an auction held in La Crosse, Wisconsin, a piano is sold to a buyer from La Crescent, Minnesota. The piano is delivered to the buyer's residence in La Crescent by a shipping company.

The sale occurs in Minnesota, where possession of the piano is transferred by the seller's agent (the shipping company) to the buyer. Because the sale occurred in Minnesota, it is not subject to Wisconsin sales tax.

*Example 2:* A buyer located in New Mexico has an agent attend an auction of business equipment held in Green Bay, Wisconsin. The buyer's agent is not a shipping company. The buyer's agent successfully bids for a piece of equipment and takes possession of the equipment in Green Bay.

The sale occurs in Green Bay, since that is where possession is transferred to the buyer's agent, and is subject to Wisconsin sales tax.

**Note:** For information about where a lease, license, or rental takes place (i.e., sourcing lease, license, or rental payments), see Publication 201, Part XIII.D.

## XII. RECORDKEEPING

### A. General Records to Keep

An auctioneer required to file sales and use tax returns must keep adequate records of business transactions to enable the auctioneer and the Department of Revenue to determine the correct tax due.

#### CAUTION

If the Department of Revenue conducts an audit of an auctioneer's records, and the auctioneer does not have or obtain the required exemption or resale certificates or other required documents to prove that the sales are exempt, the sales will be presumed to be taxable and subject to the sales tax.

### B. Records to Keep - Exempt Sales of Personal Farm Property or Personal Household Goods

Sales of personal farm property or personal household goods that are exempt from tax as discussed in Part VI.B.2., on pages 6-9, do not need to be supported by exemption certificates. However, for each of such auctions, the following information must be kept by the auctioneer:

1. A copy of the contract between the owner of the property and the auctioneer. (See definition of "owner" in Part VI.B.2, on pages 6 and 7.)

2. Name and address of the owner of the property.
3. The date and location of the auction.
4. A description of each item sold, including the type of property (e.g., personal household goods, business inventory, personal farm property), and the selling price of each item. However, if several items were sold as a group, such as in one box, indicate the general character of the items (e.g., glassware, knickknacks, tools, miscellaneous kitchen items).

If all items sold at an auction were of one type (e.g., personal household goods, business inventory, personal farm property), it is acceptable for the auctioneer to indicate that all items are of one particular type (e.g., all items sold were personal household goods), rather than listing the type of property next to each item sold.

#### **C. Records to Keep - Resale and Other Exemption Certificates**

An auctioneer may receive resale certificates and other exemption certificates (e.g., manufacturer's exemption certificates, farmer's exemption certificates), or information that proves an exemption from buyers. If an auctioneer claims a deduction on its sales and use tax return for such sales, the auctioneer must keep as part of its records the completed certificates or information that proves the exemption as evidence that the sales are exempt.

#### **D. Records to Keep - Sales to Exempt Organizations**

1. Exempt sales to federal and Wisconsin governments, municipalities, and public schools must be supported by either one of the following:
  - A purchase order received from such an organization, or

- A fully completed exemption certificate received from such an organization.
2. Exempt sales to organizations holding a Certificate of Exempt Status (e.g., churches) must be supported by either one of the following:
    - Listing the Certificate of Exempt Status number of such an organization on the auctioneer's copy of the invoice, or
    - A fully completed exemption certificate received from such an organization.

#### **E. Records to Keep - Buyer Holds Direct Pay Permit**

Exempt sales to buyers who hold a direct pay permit must be supported by either one of the following:

- A copy of the buyer's direct pay permit, or
- A statement that the buyer holds a direct pay permit, the permit number, and the date the permit was issued.

Contact any Department of Revenue office for more information on direct pay.

### **XIII. IF YOU HAVE QUESTIONS**

If you have a question, call, write, or email the department.

Write ... Wisconsin Department of Revenue  
Mail Stop 5-77  
P.O. Box 8946  
Madison, WI 53708-8946

Telephone ... (608) 266-2776

Fax ... (608) 267-1030

Email ... [DORSalesandUse@revenue.wi.gov](mailto:DORSalesandUse@revenue.wi.gov)

Visit our website ... [revenue.wi.gov](http://revenue.wi.gov)