

SALES AND USE TAX REPORT

2-01

September 2001

I. REMINDER: MARINETTE COUNTY TAX EFFECTIVE OCTOBER 1

Beginning October 1, 2001, the 0.5% county tax will be in effect in Marinette County.

Sellers who are not located in Marinette County may still be subject to the Marinette County tax if they deliver property into Marinette County with their own vehicles or are in some other way “engaged in business” in the county.

Information about what sales and purchases are subject to county sales or use tax and transitional provisions that apply to Marinette County sellers can be found in Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

II. NEW TAX LAWS

The Wisconsin Legislature has enacted changes to the Wisconsin sales and use tax laws. In addition to the following sales and use tax changes, laws relating to Wisconsin’s dry cleaning fees have been revised. Information about the dry cleaning fee changes is found in *Wisconsin Tax Bulletin 126* (September 2001), which is available online at www.dor.state.wi.us/ise/wtb/2001.

A. Repairs and Other Services to Deemed Tangible Personal Property (effective October 1, 2001)

- The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items that are deemed to retain their character as tangible personal property for purposes of sec. 77.52(2)(a)10, Wis. Stats., are taxable under this provision, regardless of whether the repair, service, alteration, etc., of the item is an addition to or a capital improvement of real property. Previously, taxpayers and the department may have been required to determine that a repair, service, alteration, etc., to an item listed in sec. 77.52(2)(a)10, Wis. Stats., did not result in an addition to or capital improvement of real property for the service to be taxable.

Note: The original installation or the complete replacement of an item listed in sec. 77.52(2)(a)10, Wis. Stats., continues to be nontaxable if such

installation or replacement is a real property construction activity under sec. 77.51(2), Wis. Stats.

Example 1: Company A applies a new coating to existing bathtubs located in Customer B’s residence to extend their useful life. Because bathroom fixtures are among the items listed in sec. 77.52(2)(a)10, Wis. Stats., Company A’s charge to Customer B (labor and materials) is subject to sales and use tax, even though there may be some argument that the application of the new coating is significant enough to be considered a capital improvement to real property.

Example 2: Company A removes bathtubs from Customer C’s residence and replaces them with new bathtubs. Because the complete replacement of bathtubs in a residence is a real property construction activity, Company A’s charge to Customer C is not subject to sales or use tax. (**Note:** Company A is the consumer of the new bathtubs, and is liable for sales or use tax on its purchase of the new bathtubs.)

- Equipment in offices, business facilities, schools, and hospitals, but not in residential facilities including personal residences, apartments, long-term care facilities as defined under sec. 16.009(1)(em), Wis. Stats., state institutions, as defined under sec. 101.123(1)(i), Wis. Stats., or similar facilities, is deemed to retain its character as tangible personal property for purposes of sec. 77.52(2)(a)10, Wis. Stats., regardless of the extent to which the equipment is fastened to, connected with, or built into real property. Previously, the statute referred to “office, restaurant and tavern type equipment.”

Effective August 1, 2002, “residential facilities,” as used in sec. 77.52(2)(a)10, Wis. Stats., includes Type 1 secured correctional facilities, as defined in sec. 938.02(19), Wis. Stats.

B. Create Exemption for United States and Wisconsin Flags (effective October 1, 2001)

An exemption from Wisconsin sales and use tax is created for the sale of, and the storage, use, or other consumption of, the U.S. flag and the Wisconsin state flag.

A flag, for purposes of this exemption, is considered to include the staff to which the flag is permanently mounted when sold by the retailer. However, if a flag is sold together with other tangible personal property, such as a pole to which the flag may be attached and unattached, and mounting brackets, only that portion of the selling price attributable to the flag is exempt from Wisconsin sales and use tax.

Example: Retailer A sells hand-held U.S. flags permanently mounted with staples to a wood or plastic staff. The sale of the flag (i.e., the fabric and staff to which the fabric is mounted) is exempt from Wisconsin sales or use tax.

Example: Retailer B sells a 40-foot sectional residential flagpole, hardware and Wisconsin state flag to a customer. A rope is attached to the flagpole and the flag is connected to the rope with snap hooks so that it may easily be removed from the flagpole. That portion of Retailer B's charge to the customer for the flagpole and rope and hardware necessary to assemble the pole is subject to Wisconsin sales or use tax. However, the charge attributable to the Wisconsin flag is exempt from Wisconsin sales or use tax.

Example: Retailer C sells an 8-foot sectional "flag kit" consisting of a two-piece pole with a eagle affixed to the top, cord, attaching brackets and screws, and a U.S. flag. The flag is not affixed to the pole at the time of sale. That portion of Retailer C's charge to the customer for the pole, cord, and hardware is subject to Wisconsin sales or use tax. However, the charge attributable to the U.S. flag is exempt from Wisconsin sales or use tax.

Note: The exemption does not apply to the sale of, and the storage, use, or other consumption of, a representation of the U.S. flag or Wisconsin state flag.

Example: Retailer A sells a photograph of the Wisconsin state flag. The sale of the photograph is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

Example: Retailer B sells a cape fashioned after the U.S. flag. The sale of the cape is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

C. Exemption for One-Time License or Right to Purchase Football Game Admissions Made Permanent (effective September 1, 2001)

The exemption for gross receipts from the sale, use, or other consumption of a one-time license or similar right to purchase admission to professional football games at a football stadium, as defined in sec. 229.821, Wis. Stats., is made permanent.

A December 31, 2003 sunset provision contained in prior law has been removed.

D. Create Exemption for Fox River Navigational System Authority (effective September 1, 2001)

The gross receipts from sales to, and the storage, use, or other consumption of tangible personal property and taxable services by the Fox River Navigational System Authority are exempt from Wisconsin sales and use tax.

E. Adopt Provisions of the Uniform Sales and Use Tax Administration Act (effective September 1, 2001)

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. On December 22, 2000 state representatives to the Streamlined Sales Tax Project voted to approve a Uniform Sales and Use Tax Administration Act (Act) and Streamlined Sales and Use Tax Agreement (Agreement). The state representatives amended the Act and Agreement on January 24, 2001.

Wisconsin has adopted the provisions of the Act, as amended on January 24, 2001

Note: Although the sales and use tax law has been modified to adopt the provisions of the Act, Wisconsin will at some future date need to amend and create sales and use tax laws to conform to the provisions of the Agreement it enters into (that is, create uniform sourcing rules, define food, soft drinks, and candy, provide for alternate registration and filing procedures, etc.).

F. Change Date for County Tax Distributions (effective September 1, 2001)

The date by which county taxes must be distributed by the Department of Revenue to counties is changed to 75 days following the last day of the calendar quarter in which the taxes were reported to the Department of Revenue. Under prior law, such amounts had to be distributed to counties no later than the end of the third month following the end of the calendar quarter in which such amounts were reported.

G. City of Eagle River May Impose Premier Resort Area Tax (effective September 1, 2001)

The City of Eagle River may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized assessed value of the taxable property within the City of Eagle River is used by tourism-related retailers. Under prior law, at least 40% of the equalized assessed value of the taxable property within the City of Eagle River must have been used by tourism-related retailers for the City of Eagle River to impose the premier resort area tax.