

SALES AND USE TAX REPORT

2-06

June 2006

In This Issue

	Page
I. City of Eagle River Adopts Premier Resort Area Tax.....	1
II. Reminder - Florence County Tax Becomes Effective July 1, 2006.....	1
III. Reminder - Regional Transit Authority Fee Becomes Effective June 1, 2006 in Kenosha, Racine, and Milwaukee Counties.....	1
IV. New Tax Laws.....	2
V. Utilities' Budget Billing Plans – Wisconsin Sales and Use Tax Treatment.....	3
VI. Streamlined Sales Tax Exemption Certificate Only Acceptable in Wisconsin for Resale Exemption	3
VII. Internet Access Services Are Subject to Wisconsin Sales or Use Tax	4
VIII. Question and Answer	4

I. CITY OF EAGLE RIVER ADOPTS PREMIER RESORT AREA TAX

Beginning October 1, 2006, the 0.5% premier resort area tax will be in effect in the City of Eagle River.

Every retailer making retail sales or rentals of tangible personal property or taxable services that are subject to the 5% Wisconsin state sales tax is also subject to the 0.5% premier resort area tax on such sales or rentals if all three of the following conditions are met:

1. The retailer is “engaged in business” in a premier resort area.
2. The sale or rental has a “situs” in the premier resort area.
3. The retailer is classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under certain industry numbers.

For more information about the premier resort area tax, refer to Wisconsin Publication 403, *Premier Resort Area Tax*, which is available from any Department of Revenue office or on the department’s web site.

II. REMINDER - FLORENCE COUNTY TAX BECOMES EFFECTIVE JULY 1, 2006

Beginning July 1, 2006, the 0.5% county tax will be in effect in Florence County.

Please see *Sales and Use Tax Report* 1-06 (March 2006) for additional information.

III. REMINDER - REGIONAL TRANSIT AUTHORITY FEE BECOMES EFFECTIVE JUNE 1, 2006

Beginning June 1, 2006, the regional transit authority created by Kenosha, Racine, and Milwaukee counties will impose a \$2 fee for each transaction in the region on the rental of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats., by establishments primarily engaged in the short-term rental of vehicles without drivers, for a period of 30 days or less.

Please see *Sales and Use Tax Report* 1-06 (March 2006) for additional information.

IV. NEW TAX LAWS

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. These provisions are contained in 2005 Wisconsin Acts 149, 327, 335, 366, and 440.

A. Exemption Created for Wisconsin Aerospace Authority (2005 Act 335, amend sec. 77.54(9a)(a), effective April 29, 2006.)

The gross receipts from sales to, and the storage, use, or other consumption of tangible personal property and taxable services by the Wisconsin Aerospace Authority are exempt from Wisconsin sales and use taxes.

B. Farming Exemption Expanded (2005 Act 366, repeal sec. 77.54(34) and amend sec. 77.54(3)(a), (3m)(intro.), and (30)(a)3 and 5, effective July 1, 2007.)

Effective July 1, 2007, the gross receipts from the sales of and the storage, use, or other consumption of lubricants, nonpowered equipment, and other tangible personal property that are used exclusively and directly, or are consumed or lose their identities, in the business of farming will be exempt from Wisconsin sales and use taxes.

In addition, the definition of "farming" is expanded to include silviculture. ("Silviculture" is defined in *Webster's II New College Dictionary*, 1995, as "Care and cultivation of forest trees: FORESTRY.")

C. Create Exemption for Certain Admissions Sold by Gun Clubs (2005 Act 327, renumber sec. 77.52(2)(a)2 to sec. 77.52(2)(a)2.a. and amend as renumbered and create sec. 77.51(4m) and (13s) and sec. 77.52(2)(a)2.b., effective July 1, 2007.)

Effective July 1, 2007, the sale of admissions by a gun club, including the sale of a gun club membership, will not be subject to Wisconsin sales or use tax if the gun club is a nonprofit organization and if the gun club provides safety classes to at least 25 individuals in the calendar year.

"Gun club" includes a trapshooting club, skeet-shooting club, sporting-clay club, rifle and pistol club, sportsmen's club, hunting club, rod and gun club, hunting and fishing club, and conservation club. "Gun club" does not include a wild animal farm or bird hunting preserve licensed under Chapter 169, Wis. Stats.

"Safety classes" means all classes approved by the Department of Natural Resources related to hunting, including hunting with a bow, and related to firearms, all-terrain vehicles, boats, and snowmobiles.

D. Village of Sister Bay May Impose Premier Resort Area Tax (2005 Act 440, amend sec. 66.1113(2)(a) and (b) and create sec. 66.1113(2)(g), effective June 6, 2006.)

The Village of Sister Bay may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized value of the taxable property within the Village of Sister Bay is used by tourism-related retailers. The Village may not impose the tax, however, unless the Village Board adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the village voting on the resolution at a referendum, to be held at the first spring primary or election or September primary or general election following by at least 45 days the date of adoption of the resolution.

E. Village of Ephraim May Impose Premier Resort Area Tax (2005 Act 440, amend sec. 66.1113(2)(a) and (b) and create sec. 66.1113(2)(h), effective June 6, 2006.)

The Village of Ephraim may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized value of the taxable property within the Village of Ephraim is used by tourism-related retailers. The Village may not impose the tax, however, unless the Village Board adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the village voting on the resolution at a referendum, to be held at the first spring primary or election or September primary or general elec-

tion following by at least 45 days the date of adoption of the resolution.

F. Clarify References to Property That Retains its Character as Tangible Personal Property for Purposes of Certain Services (2005 Act 149, amend sec. 77.52(2)(a)10 and create sec. 77.52(2)(ag), effective April 5, 2006.)

For improved readability and conformity with current style, the list of property that retains its character as tangible personal property for purposes of certain services was moved from sec. 77.52(2)(a)10 to sec. 77.52(2)(ag) and divided into tabular form. This is a nonsubstantive change.

G. Clarify Exemption Relating to Persons Dispensing Prescription Medicine (2005 Act 149, renumber sec. 77.54(14)(f) to sec. 77.54(14)(f)(intro.) and amend as renumbered, effective April 5, 2006.)

To improve readability, the list of persons dispensing exempt prescription medicines was subdivided into tabular form and put into a different order to accommodate the numbering of the subdivided list. This is a nonsubstantive change.

H. Clarify Definitions of “Meal” and “Sandwich” (2005 Act 149, renumber sec. 77.54(20)(bg)1 to sec. 77.54(20)(bg)1.a. and amend as renumbered; renumber sec. 77.54(20)(bg)2 to sec. 77.54(20)(bg)2.a. and amend as renumbered, effective April 5, 2006.)

For improved readability and conformity with current style, these provisions were subdivided and punctuation was added and modified. This is a nonsubstantive change.

V. UTILITIES’ BUDGET BILLING PLANS – WISCONSIN SALES AND USE TAX TREATMENT

Wisconsin law provides a sales and use tax exemption for electricity and natural gas sold during the months of November through April for residential use. For purposes of this exemption, electricity or natural gas is considered sold at the time of billing.

(Section 77.54(30)(a)2 and (b), Wis. Stats. (2003-04))

The department has received questions about how the sales tax exemption applies for a residential customer who has entered into a budget billing plan agreement with a utility. In such plans, the utility agrees to collect a pre-determined amount from the customer each month. The difference between the pre-determined amount and the customer’s charges for usage for the month is tracked as a balance that will be settled in the future.

The amount of electricity or natural gas that is considered to be sold on the date of the billing is the amount for which usage charges are shown on the billing, even if the customer pays a different amount under the budget plan.

For example, Utility A and Customer B enter into an agreement in which Customer B will pay \$250 per month for the electricity and natural gas that Customer B uses in its permanent principal residence. On March 10, 2006, Utility A mails a bill to Customer B for the electricity and natural gas Customer B used during the month of February 2006. The bill shows total electric and natural gas charges of \$300. Although Customer B only has to pay \$250, all \$300 of the electricity and natural gas is considered to be sold on March 10, 2006, and qualifies for the exemption.

VI. STREAMLINED SALES TAX EXEMPTION CERTIFICATE ONLY ACCEPTABLE IN WISCONSIN FOR RESALE EXEMPTION

The Streamlined Sales Tax Project is an effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration.

The Streamlined Sales Tax (SST) Governing Board recently approved its uniform sales and use tax exemption certificate and instructions for use in member states. A copy of the final certificate will be posted to the Streamlined Sales Tax web site at a later date (www.streamlinedsalestax.org).

The Wisconsin Department of Revenue will consider the SST exemption certificate, when properly completed and accepted by a seller in good faith, to

be valid when a resale exemption is claimed by a purchaser. However, the certificate is not acceptable for claiming other Wisconsin sales and use tax exemptions.

The department also accepts the *Multistate Tax Commission's Uniform Sales & Use Tax Certificate – Multijurisdiction* in lieu of the department's *Sales and Use Tax Exemption Certificate* (Form S-211) when a resale exemption is claimed by a purchaser. That certificate is available at www.mtc.gov/TXPYRSVS/Cert7200.PDF.

On both the SST and MTC exemption certificates, a purchaser must enter its Wisconsin seller's permit or use tax certificate number, except as follows:

- A wholesaler who only sells to other sellers for resale may insert "Wholesale only" in the space for the seller's permit number.
- A person who only sells or repairs exempt property, such as to a manufacturer or farmer, may insert "Exempt sales only."
- A nonprofit organization may insert "Exempt sales only" if its subsequent sales of the tangible personal property or taxable services are exempt as occasional sales.
- A person registered as a seller in another state who makes no taxable retail sales in Wisconsin may insert the name of the state in which registered and that state's seller's permit or use tax certificate number, except as noted in the *Caution* below.

Caution: A seller may not accept the resale exemption from a business not holding a Wisconsin seller's permit or use tax certificate, if the sale involves the supplier's delivery of goods to a consumer in Wisconsin (i.e., drop shipment).

VII. INTERNET ACCESS SERVICES ARE SUBJECT TO WISCONSIN SALES OR USE TAX

Sales of Internet access services are subject to Wisconsin sales or use tax if the service originates

or terminates in Wisconsin and is charged to a service address in Wisconsin.

Note: There have been questions about how the federal Internet Tax Nondiscrimination Act (P.L. 108-435) affects Wisconsin's sales and use taxes on Internet access services. This act extends, through November 1, 2007, a moratorium on taxation of Internet access services for certain states. However, states like Wisconsin that had enacted a state law imposing sales and use taxes on Internet access services prior to October 1, 1991 are exempt from the moratorium. Therefore, Wisconsin sales and use taxes continue to apply to Internet access services.

VIII. QUESTION AND ANSWER

Q Are fees charged for locker rentals subject to Wisconsin sales tax?

A No, fees charged to use storage lockers at health clubs, country clubs, amusement parks, airports, bus stations, or other facilities are not subject to sales tax.

Note: This answer corrects the tax treatment provided in the tax release titled "Admissions to Athletic or Recreational Events or Places," which was published beginning on page 15 of *Wisconsin Tax Bulletin* #78 (July 1992).

If you paid sales tax in error on your receipts from locker rentals, you may file a claim for refund of such tax. If you collected this tax from buyers, you must return the tax and related interest refunded by the Department of Revenue to the buyers from whom the tax was collected. If you are unable to return the tax and interest to the buyers, you must return the refund to the Department of Revenue.

Additional information is provided in Publication 216, *Filing Claims for Refund of Sales or Use Tax*, available at www.dor.state.wi.us/pubs/pb216.pdf.