

Wisconsin Department of Revenue

SALES AND USE TAX REPORT

2-07

September 2007

I. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$133

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

Effective January 1, 2008, the amount subject to use tax is increased from \$130 to \$133 per plate per month. (**Note:** The use tax per plate per month is not \$133. Rather, \$133 is multiplied by the 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 \$133 per plate is that sec 77.53(1m)(a), Wis. Stats. (2005-06), 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 determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 2006 to June 2007 was 2.69% ($\$130 \times 1.0269 = \133 rounded to the nearest whole dollar).

II. NEW TAX LAWS

The Wisconsin Legislature has enacted two changes to the Wisconsin sales and use tax laws. These provisions are contained in 2007 Acts 11 and 19.

A. Changes Relating to Mobile Homes and Manufactured Homes (2007 Act 11, amend secs. 77.51(4)(b)6 and 7, (13)(am), and (15)(b)5 and 6, 77.52(2)(a)1, 77.53(17) and (18), 77.54(7)(b)(intro.), (31), and (36), 77.54(36), 77.61(1)(a) and (c), 77.71(4), 77.78, 77.785(2), and 77.995(2), effective January 1, 2008.)

Note: 2007 Act 11 relates to revisions in terminology that affect mobile homes, manufactured homes, modular homes, manufactured buildings, recreational vehicles, and mobile and manufactured home communities, and changes that apply to monthly fees collected by certain local governmental units. In addition to the statutory provisions listed above, which relate to sales and use taxes and to the state rental vehicle fee, 2007 Act 11 contains revisions to various other statutory provisions.

1. New manufactured homes (amendment to sec. 77.51(4)(b)6 and (15)(b)5, Wis. Stats.)

- Terminology will change from "mobile home" to "manufactured home"

- 35% exemption will apply if structure is designed to be used as a dwelling and is certified by the federal Department of Housing and Urban Development (HUD) as complying with the standards under 42 USC 5401 to 5425. As provided in 42 USC sec. 5402(6), "manufactured home" means "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle."
- Currently, to qualify for the 35% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
- 2. **Used manufactured homes** (manufactured or assembled on or after June 15, 1976; amendment to sec. 77.54(31), Wis. Stats.)
 - 100% exemption will apply if structure is designed to be used as a dwelling and is certified by HUD as complying with the standards under 42 USC 5401 to 5425. (See Part II.A.1, above, for additional information.)
 - Currently, to qualify for the 100% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

- Exemption does not apply to leases and rentals, under either current law or as amended. (Rental may qualify for exemption under sec. 77.54(36), Wis. Stats. See Part II.A.4., below.)

3. Used mobile homes (manufactured or assembled before June 15, 1976; amendment to sec. 77.54(31), Wis. Stats.)

- 100% exemption will apply if structure meets the definition of “mobile home” in sec. 101.91(10), Wis. Stats., which states, in part: “ ‘Mobile home’ means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction, which has an overall length in excess of 45 feet. ...”
- Currently, to qualify for the 100% exemption, home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.
- Exemption does not apply to leases and rentals, under either current law or as amended. (Rental may qualify for exemption under sec. 77.54(36), Wis. Stats. See Part II.A.4., below.)

4. Rentals of mobile and manufactured homes (amendment to sec. 77.54(36), Wis. Stats.)

- *Mobile homes (manufactured or assembled before June 15, 1976)* - 100% exemption will apply if (1) the rental is for a continuous period of one month or more, and (2) the structure meets the definition of “mobile home” in sec. 101.91(10), Wis. Stats. (See Part II.A.3., above, for additional information.)

To qualify for the 100% exemption under current law, the rental must be for a continuous period of one month or more and the home must (1) exceed 45 feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

- *Manufactured homes (manufactured or assembled on or after June 15, 1976)* - 100% exemption will apply if (1) the rental is for a continuous period of one month or more, and (2) the structure is designed to be used as a dwelling and is certified by HUD as complying with the standards under 42 USC 5401 to 5425. (See Part II.A.1, above, for additional information.)

To qualify for the 100% exemption under current law, the rental must be for a continuous period of one month or more and the home must (1) exceed 45

feet in overall length, or (2) be transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

5. State rental vehicle fee (amendments to sec. 77.995(2), Wis. Stats.)

- Terminology will change from “mobile home” to “recreational vehicle.”
- In addition to the rental of Type 1 automobiles and other vehicles, the 5% state rental vehicle fee will apply to the rental (but not for rental and not for rental as a service or repair replacement vehicle) of recreational vehicles. “Recreational vehicle” is defined in sec. 340.01(48r), Wis. Stats., as amended by 2007 Act 11, as “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.”
- Under current law, the 5% state rental vehicle fee applies to the rental (but not for rental and not for rental as a service or repair replacement vehicle) of mobile homes as defined in sec. 340.01(29), Wis. Stats., which states that “ ‘Mobile home’ means a vehicle designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction.”

6. Manufactured buildings (amendments to sec. 77.51(4)(b)7 and (15)(b)6, Wis. Stats.)

- Terminology will change from “manufactured building” to “modular home,” for purposes of the reduction in “gross receipts” and “sales price” for sales of such items.

7. Other related changes (amendments to secs. 77.51(13)(am), 77.52(2)(a)1, 77.53(17), 77.53(18), 77.54(7)(b)(intro.), 77.61(1)(a) and (c), 77.71(4), 77.78, and 77.785(2), Wis. Stats.)

- Terminology will change from “mobile home not exceeding 45 feet in length” to “recreational vehicle, as defined in s. 340.01(48r),” for the following purposes (see Part I.A.5., above, for definitions):
 - The definition of “retailer” (sec. 77.51(13)(am), Wis. Stats.)
 - The exemption from use tax for certain property purchased outside Wisconsin and brought into Wisconsin by a nondomiciliary for certain storage, use or consumption in Wisconsin (sec. 77.53(17), Wis. Stats.)

- The occasional sale exemption for certain registered or titled property (sec. 77.54(7)(b)(intro.), Wis. Stats.)
 - Administrative provisions relating to registration and titling (secs. 77.61(1)(a) and (c), Wis. Stats.) and relating to county taxes (secs. 77.71(4), 77.78, and 77.785(2), Wis. Stats.).
- b. “Manufactured homes” and “recreational vehicles” will be added to the types of accommodations that are subject to the sales and use tax if lodging is furnished under sec. 77.52(2)(a)1, Wis. Stats. (See definition of “manufactured home” in Part II.A.1., above, and definition of “recreational vehicle” in Part II.A.5., above.)
- c. “Manufactured homes” and “recreational vehicles” for personal use will be added to the property that will qualify for a use tax exemption if purchased by a nondomiciliary of Wisconsin outside Wisconsin 90 days or more before bringing the property into Wisconsin in connection with a change of domicile to Wisconsin (sec. 77.53(18), Wis. Stats.).

B. Industrial Waste Treatment Facilities (2007 Act 19, renumber sec. 70.11(21)(a) to 70.11(21)(am) and amend as renumbered, amend secs. 74.35(2m), 74.35(5)(d), 76.025(1), 76.81, 77.54(26), 79.04(1)(a), and 79.04(2)(a), and create sec. 70.11(21)(ab). The treatment of secs. 70.11(21)(a) and (ab) and 74.35(2m) and (5)(d) first applies retroactively to the property tax assessments as of January 1, 2007. The treatment of sec. 77.54(26) is effective October 1, 2007.)

The Act updates a property tax exemption and a sales and use tax exemption relating to waste treatment facilities and pollution abatement equipment. Under the previous law, written in 1953, the property tax exemption applied to all property purchased or constructed as a waste treatment facility used for the treatment of industrial waste or air contaminants if certain requirements were met. The Department of Revenue historically implemented this exemption, through administrative rule, to include only property used exclusively and directly in the treatment of waste that had no value.

The sales and use tax exemption applies for tangible personal property that becomes a component part of an industrial waste treatment facility that is exempt under the property tax statute.

In 2004, the property tax exemption provided for waste treatment facilities was expanded by the Tax Appeals Commission in its ruling in *The Newark Group, Inc. v. The Wisconsin Department of Revenue*. The Act restores the Department of Revenue’s interpretation of the property tax exemption in use before the *Newark* decision.

Section 70.11(21)(a), as renumbered 70.11(21)(am) and amended by 2007 Act 19, provides a property tax exemption for all property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants for the purpose of

abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property’s owner is taxed under chapter 76, if the property is approved by the Department of Revenue. The Department of Natural Resources and Department of Health and Family Services shall make recommendations upon request to the Department of Revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to sec. 70.11(21), 1973 stats.

The sales and use tax exemption provision, sec. 77.54(26), Wis. Stats., was amended to reference sec. 70.11(21), Wis. Stats., rather than sec. 70.11(21)(a), Wis. Stats.

“Air contaminants” has the meaning given in sec. 285.01(1), Wis. Stats.

“Industrial waste” means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3.b., and that would otherwise be considered superfluous, discarded, or fugitive material. “Industrial waste” does not include other wastes, as defined in sec. 281.01(7).

“Used exclusively” means to the exclusion of all other uses except any of the following:

- a. For other use not exceeding 5% of total use.
- b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95% or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50% or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

Nonstatutory provisions:

1. *Property Tax Exemption*. Notwithstanding any other provision of Chapter 70, Wis. Stats., property tax assessments under sec. 70.11(21), Wis. Stats. as affected by 2007 Act 19, as of January 1, 2007, supersede any other property tax assessments under sec. 70.11(21), Wis. Stats. (2005), for property tax assessments as of January 1, 2007, that are made prior to the effective date of this subsection. Notwithstanding secs. 70.47(7) and 70.995(8), Wis. Stats, an objection to a property tax assessment under sec. 70.11(21), Wis. Stats., as affected by 2007 Act 19, for property tax assessments as of January 1, 2007, may be filed no later than 60 days after the effective date of this subsection or no later than the time allowed under sections 70.47(7) and 70.995(8), Wis. Stats., whichever is later.

2. *Sales and Use Tax Exemption.* Section 77.54(26), Wis. Stats., as affected by 2007 Act 19, does not apply to tangible personal property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility, if the contract is entered into, or a formal bid is made, prior to the effective date of this subsection and the tangible personal property is affixed to and made a structural part of the waste treatment facility.

C. Exemption for the Collection of Certain Low-Income Assistance Fees (2005 Wis. Act 141 amend sec. 77.54(44), effective July 1, 2007.)

The phrase “public benefits fees” was replaced with “low-income assistance fees,” in the exemption for such fees that are charged under sec. 16.957(4)(a) or (5)(a).

III. REMINDER - NEW EXEMPTIONS THAT BECAME EFFECTIVE JULY 1, 2007

A. Farming Exemption

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 are exempt from 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.”) Additional information about the sales and use tax exemptions for silviculture is provided on pages 19-31 of *Wisconsin Tax Bulletin 152* (July 2007), which can be accessed at <http://www.revenue.wi.gov/ise/wtb/152tr.pdf>.

The exemption under sec. 77.54(3)(a), Wis. Stats., applies to tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property if they meet all four of the following tests:

1. The property must be used *exclusively* and *directly* in farming **or** be *consumed or lose its identity* in farming.
2. The property *must not be* an automobile, truck, or other motor vehicle for highway use or an accessory, attachment, or part for such an automobile, truck, or other motor vehicle.
3. The property *must not be* attached to, fastened to, connected to, or built into real property; or become an addition to, component of, or capital improvement or real property; when sold to the farmer.
(**Note:** There is an exception to this requirement in “3.” Certain machines, and accessories, attachments, and parts for these machines, are considered tangible personal property and may qualify for ex-

emption regardless of the extent to which the machine is connected or fastened to real estate. Each of the items which meet this exception are noted with an asterisk on pages 7 to 9 of Publication 221, *Farm Suppliers and Farmers, How Do Wisconsin Sales and Use Taxes Affect Your Operations?*, which is available at <http://www.revenue.wi.gov/pubs/pb221.pdf>.)

4. The property *must not be* used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property.

B. Admissions to Certain Gun Clubs

Effective July 1, 2007, the sale of admissions by a gun club, including the sale of a gun club membership, are not 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.

IV. MERCHANDISE DELIVERIES ACROSS STATE LINES

A Wisconsin retailer that delivers merchandise in its own truck (or by the U.S. Postal Service or a common carrier) to its customer located in another state is not liable for Wisconsin sales or use tax on its sale of such merchandise. (EXCEPTION: Retailers making out-of-state deliveries with knowledge directly or indirectly that the property or service is intended for storage, use, or other consumption in Wisconsin must collect the tax from the purchaser, pursuant to sec. 77.53(3), Wis. Stats.)

The Internal Revenue Service (IRS) provides links to each state’s tax department on its web site at <http://www.irs.gov/businesses/small/article/0,,id=99021,00.html> that may be used to assist a retailer in determining whether it has a liability in the other state.

A non-Wisconsin retailer that delivers merchandise to Wisconsin in its own truck is engaged in business in Wisconsin and is liable for Wisconsin sales or use tax on its Wisconsin sale of the merchandise. If the non-Wisconsin retailer does not charge the tax, the purchaser is liable for Wisconsin use tax on his purchase.

Example 1: Furniture Company A is located in Wisconsin. Customer B purchases a sofa that Furniture Company A will deliver in its truck to Customer B’s home in Illinois. Since the sale of the sofa occurs in Illinois, no Wisconsin sales or use tax liability is incurred on the sale of the sofa. The sale may, however, be subject to Illinois tax.

Example 2: Appliance Store D is located in Illinois. Customer E purchases a refrigerator that Appliance Company D will deliver in its truck to Customer E’s home in Wisconsin. Since Appliance Store D is making a taxable sale of property in Wisconsin, Appliance Store D is liable for Wisconsin sales or use tax on its sale of the refrigerator that it delivered in Wisconsin.