

Wisconsin Department of Revenue
**SALES AND USE
TAX REPORT**

3-07

December 2007

In This Issue

	Page
I. New Tax Laws.....	1
II. Internet Tax Freedom Act Extended, But Internet Access Services Remain Taxable in Wisconsin	3
III. Integrated Tax System Implementation Continues.....	3
IV. Fees For Sports.....	3
V. Can Retailers Absorb the Sales Tax for Their Customers?	4

I. NEW TAX LAWS

The Wisconsin Legislature has enacted a number of changes to the Wisconsin sales and use tax laws. These provisions are contained in 2007 Wisconsin Act 20.

A. Increase in Dry Cleaning Fee (2007 Act 20, amend sec. 77.9961(1m), first applies to the quarterly payment that is due April 25, 2008)

The dry cleaning fee that applies to every person operating a dry cleaning facility is increased from 1.8% to 2.8% of the gross receipts from the previous three months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

B. Exemption for Sales by a Home Exchange Service (2007 Act 20, create sec. 77.54(54), effective December 1, 2007)

An exemption is created for the gross receipts from the sale of and the storage, use, or other

consumption of tangible personal property and taxable services that are sold by a home exchange service that receives moneys from the appropriation account under sec. 20.485(1)(g), Wis. Stats., and is operated by the Department of Veterans Affairs.

C. Exempt Sales of Biomass Used for Fuel Sold for Residential Use (2007 Act 20, create sec. 77.54(30)(a)1m., effective December 1, 2007)

A sales and use tax exemption is created for the gross receipts from the sale of biomass, as defined in sec. 196.378(1)(ar), Wis. Stats., that is used for fuel sold for residential use. Section 196.378(1)(ar), Wis. Stats., provides:

“ ‘Biomass’ means a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as a resource or landfill gases. ‘Biomass’ does not include garbage, as defined in s. 289.01(9), or nonvegetation-based industrial, commercial or household waste, except that ‘biomass’ includes refuse-derived fuel used for a renewable facility that was in service before January 1, 1998.”

D. Exemption Created for Certain Catalogs and their Mailing Envelopes (2007 Act 20, amend secs. 77.52(2)(a)11. and 77.54(25), and create secs. 77.51(1j) and 77.54(25m), effective April 1, 2009)

Effective April 1, 2009, an exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of catalogs, and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms. “Catalog” means a printed and bound, stitched,

sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

E. Exemption Created for Certain Cemetery Companies and Corporations (2007 Act 20, create sec. 77.54(9a)(i), effective July 1, 2009)

Effective July 1, 2009, an exemption is created for the gross receipts from sales to, and the storage by, use by or other consumption of tangible personal property and taxable services by a cemetery company or corporation described under sec. 501(c)(13) of the Internal Revenue Code, if the tangible personal property or taxable services are used exclusively by the cemetery company or corporation for the purposes of the company or corporation.

Section 501(c)(13) of the Internal Revenue Code provides for the exemption from federal income tax of cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incidental to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

F. Exemption Related to Wind, Solar, and Gas from Anaerobic Digestion of Agricultural Waste (2007 Act 20, create sec. 77.54(56), effective July 1, 2009)

Effective July 1, 2009, an exemption is provided for the gross receipts from the sale of and the storage, use, or other consumption of a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, except that the exemption under this subsection does not apply to an uninterruptible power source that is designed primarily for computers.

Effective July 1, 2009, an exemption is also provided for the gross receipts from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described in the paragraph above, except for the sale of electricity or energy that is exempt from taxation under sec. 77.54(30), Wis. Stats.

G. Exemption for Motion Picture Film or Tape Revised (2007 Act 20, amend sec. 77.54(23m), effective October 27, 2007)

The exemption for the gross receipts from the sale, lease or rental of or the storage, use or other consumption of motion picture film or tape and advertising materials related thereto, sold, leased or rented to a motion picture theater or radio or television station, is amended to include motion pictures or radio or television programs for listening, viewing, or broadcast.

H. Exemption for Purchases of Clay Pigeons – Technical Correction (2007 Act 20, amend sec. 77.54(47)(b)2., effective July 1, 2007)

With this technical correction, the sales and use tax exemption for sales of clay pigeons applies if (1) the clay pigeons are sold to a nonprofit gun club that charges for shooting at the facility, and (2) the charges for shooting at the facility qualify for the exemption provided in sec. 77.52(2)(a)2.b., Wis. Stats. (The exemption provided in sec. 77.52(2)(a)2.b., Wis. Stats., which was effective July 1, 2007, applies to the sale of certain admissions by a gun club 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.)

Note: The exemption for sales of clay pigeons is not limited to the sales described above. For additional information about the exemption for sales of clay pigeons, see *Wisconsin Tax Bulletin* #144 (September 2005), page 16. For additional information about the exemption for sales of certain admissions by gun clubs, see *Wisconsin Tax Bulletin* #148 (July 2006), page 14. These bulletins are available on the Department of Revenue's web site at www.revenue.wi.gov/ise/wtb/index.html.

I. Sales and Use Tax on Intercompany Transfers (2007 Act 20, renumber sec. 77.51(17) to 77.51(17)(intro.), and amend as renumbered; amend secs. 77.51(4)(c)1., (12)(a), 77.982(2), 77.991(2), 77.9951(2) and 77.9972(2); and create secs. 77.51(13)(p), (14)(m) and (n), (17)(a) to (f), 77.52(1b) and (2n), and 77.53(1b); effective retroactively to January 1, 2006)

These provisions reverse the March 8, 2007 decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue vs. River City Refuse Removal, Inc.* In this decision, the Wisconsin Supreme Court found that the intercompany transfers the taxpayer participated in do not fall within Wisconsin's use tax statute. See *Wisconsin Tax Bulletin* #151 (April 2007), pages 21-22, for a summary of this decision.

The law changes are detailed in *Wisconsin Tax Bulletin* #154 (November 2007). Both of these *Wisconsin Tax Bulletins* are available on the Department of Revenue's web site at www.revenue.wi.gov/ise/wtb/index.html.

II. INTERNET TAX FREEDOM ACT EXTENDED, BUT INTERNET ACCESS SERVICES REMAIN TAXABLE IN WISCONSIN

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. Although the federal Internet Tax Freedom Act was recently amended to extend the moratorium on the taxation of Internet access services until November 1, 2014, Wisconsin remains exempt from the moratorium. Therefore, Wisconsin sales and use taxes continue to apply to the monthly fees paid by customers to access the Internet. For example, a \$30 monthly fee paid for high-speed Digital Subscriber Line (DSL) service is taxable.

Wisconsin sales or use tax also applies to tangible personal property purchased over the Internet. If a buyer does not pay tax to the seller on the purchase of a taxable item, the buyer must pay use tax to the Wisconsin Department of Revenue. For example, if you buy clothing or appliances from a seller lo-

cated outside Wisconsin, and the seller does not charge you tax, you are liable for the payment of use tax. For additional information about use tax, please see Publication 205, *Use Tax Information for Individuals* available at www.revenue.wi.gov/pubs/pb205.pdf or Publication 214, *Businesses: Do You Owe Use Tax?* available at www.revenue.wi.gov/pubs/pb214.pdf.

III. INTEGRATED TAX SYSTEM IMPLEMENTATION CONTINUES

In December 2007, the Department of Revenue's new computer system, the Wisconsin Processing and Audit System (WINPAS) assumed the handling of sales and use tax, business tax registration and occasional consumer use tax. Here are a few tips about things that taxpayers will notice after this implementation: Taxpayer accounts will continue to be identified by a 15-digit number. However, certain elements of a specific taxpayer's number may change after implementation.

- The new number will be used on returns, letters, notices and certificates as they are issued by WINPAS. However, the department will continue to recognize the old number in tax filings or correspondence, since the department is maintaining a link between the old and new numbers.
- There is no need for a business taxpayer to reissue a resale certificate to a vendor just to record the new number. A certificate using either number is acceptable.
- WINPAS will allow a taxpayer to align the fiscal year end for their sales tax account to the fiscal year end used on their income tax return. A taxpayer wishing to make this realignment can send a written request to Wisconsin Department of Revenue, P. O. Box 8902, Madison, WI 53708-8902.

IV. FEES FOR SPORTS

Section 77.52(2)(a)2, Wis. Stats (2005-06), imposes a sales or use tax on admissions to amusement, athletic, entertainment or recreational events or places. Admissions includes the furnishing for dues, fees, or other consideration, the privilege of access to clubs or the privilege of having access to or the use of

amusement, entertainment, athletic, or recreational devices or facilities.

League entry fees and/or registration fees to play baseball, basketball, volleyball, soccer, pool, bowling, and other sports are subject to Wisconsin sales and use tax. These fees provide access to, or the use of, facilities for amusement, entertainment, athletic, or recreational purposes. "Facilities" include, but are not limited to, baseball diamonds, football fields, tennis courts, gymnasiums, pool tables, dartboards, soccer fields, and bowling alleys.

Exception: Sales of tangible personal property, tickets, or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball are exempt from sales and use taxes.

Example 1: A tavern charges customers \$100 to play in a volleyball league. The fee entitles the customer to play 20 games of volleyball at the tavern's facilities. Part of the fee paid to the tavern is used for referees, trophies, and maintenance of the facility. The entire \$100 fee charged by the tavern is subject to Wisconsin sales tax.

Note Regarding Purchases: *The tavern is the consumer of the trophies that it purchases and provides incidentally to the league participants with its sale of the admissions. Therefore, the tavern is liable for Wisconsin sales or use tax on its purchase of the trophies.*

Example 2: A city recreation department charges participants \$50 to register for the city softball league. The \$50 registration fee entitles each participant to a T-shirt and 10 games at city softball facilities. Part of the fee paid to the city recreation department is used for the T-shirts, field maintenance, and trophies. The entire \$50 fee charged by the city is subject to Wisconsin sales tax.

Note Regarding Purchases: *The city is the consumer of the trophies that it purchases and provides incidentally to the league participants with its sale of the admissions. However, since purchases by a Wisconsin governmental unit are exempt from sales and use taxes, the city is exempt from sales or use tax on its purchase of the T-shirts and trophies.*

Example 3: A youth baseball organization charges league entry fees of \$75 to play baseball. The league entry fee allows the player use of a uniform and equipment as well as 12 baseball games using the organization's facilities. A team coach may also organize periodic practices to help the players to develop their skills. The \$75 entry fee is subject to Wisconsin sales tax.

Note Regarding Purchases: *If the youth baseball organization holds a Wisconsin Certificate of Exempt Status number, the youth baseball organization is exempt from sales and use tax on its purchase of the uniforms and equipment.*

Caution: If fees are paid to a nonprofit organization, they may be exempt from Wisconsin sales and use taxes if the nonprofit organization meets certain conditions. (See Publication 206, *Sales Tax Exemption for Nonprofit Organizations*.)

V. CAN RETAILERS ABSORB THE SALES TAX FOR THEIR CUSTOMERS?

Occasionally, retailers advertise that they will absorb or pay the sales tax for their customers. Some of these advertising phrases may state the following:

"Pay no sales tax!"

"We'll pay your sales tax."

"Receive a discount equal to the sales tax."

This practice violates Wisconsin sales and use tax law, even if the retailer pays the correct amount of sales tax to the Department of Revenue.

Section 77.52(4), Wis. Stats. (2005-06), provides that "[i]t is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor."

Retailers may, however, advertise that their prices "include sales tax."