

# SALES AND USE TAX REPORT

*Special Edition*

July 2009

## NEW WISCONSIN SALES AND USE TAX LAWS

The Wisconsin Legislature has enacted a number of changes to the Wisconsin sales and use tax laws. These provisions are contained in 2009 Wisconsin Act 28. This act can be accessed at <https://docs.legis.wisconsin.gov/2009/related/acts/28>.

This *Special Edition* of the *Sales and Use Tax Report* provides information about each of the new tax laws that apply to Wisconsin sales and use taxes. If you have questions relating to any of the new tax law changes, you may contact the Department of Revenue at [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov) or you may call (608) 266-2776.

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**A. Baseball Park District - Funds Restrictions**  
(2009 Act 28, amend sec. 20.835(4)(gb), and create secs. 25.40(1)(a) 26., 341.14(6r)(b)13., and 341.14(6r)(f)60., effective July 1, 2009.)

Section 341.14(6r)(f)60., Wis. Stats., authorizes special motor vehicle license plates to be issued for persons interested in expressing their support of a major league professional baseball team that uses as its home field baseball park facilities that are constructed under Subchapter III of Chapter 229, Wis. Stats. Section 341.14(6r)(b)13.b., Wis. Stats., provides that net monies derived after crediting the appropriation account as provided in sec. 341.14(6r)(b)13.a., Wis. Stats., shall be credited to the appropriation account under sec. 20.835(4)(gb), Wis. Stats. The Wisconsin Department of Transportation shall identify and record the percentage of moneys that are attributable to each professional baseball team represented by a plate under sec. 341.14(6r)(f)60., Wis. Stats.

Section 77.705, Wis. Stats., provides that any moneys received by the baseball park district under sec. 341.14(6r)(b)13.b., Wis. Stats., and credited to the appropriation account under sec. 20.835(4)(gb), Wis. Stats., shall be used exclusively to retire the district’s debt.

**B. Biotechnology and Manufacturing Exemptions**  
(2009 Act 28, create sec. 77.54(57), effective January 1, 2012.)

Effective January 1, 2012, exemptions from Wisconsin sales and use taxes were created for purchases of the following:

- Machinery and equipment, including attachments, parts, and accessories, that are sold to persons who are engaged primarily in manufacturing or biotechnology in Wisconsin and are used exclusively and directly in qualified research.
- Tangible personal property and certain other items that are sold to persons who are engaged primarily in manufacturing or biotechnology in Wisconsin, if the property or item is consumed or destroyed or loses its identity while being used exclusively and directly in qualified research.
- Machines and specific processing equipment, including accessories, attachments, and parts for the machines or equipment, that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.
- The items listed in sec. 77.54(3m)(a) to (m), Wis. Stats., medicines, semen for artificial insemination, fuel, and electricity that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing.

For purposes of the exemptions described above, the following definitions apply.

“Animals” include bacteria, viruses, and other microorganisms.

“Biotechnology” means the application of biotechnologies, including recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses, that use living organisms or parts of an organism to produce or modify products to improve plants or animals or improve animal health, develop microorganisms

for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

“Biotechnology business” means a business, as certified by the Department of Revenue in the manner prescribed by the Department of Revenue, that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

“Machinery” means a structure or assemblage of parts that transmits forces, motion or energy from one part to another in a predetermined way by electrical, mechanical or chemical means, but “machinery” does not include a building (by reference to sec. 70.11(27)(a)2., Wis. Stats.).

“Primarily” means more than 50%.

“Qualified research” means qualified research as defined under section 41(d)(1) of the Internal Revenue Code.

“Used exclusively” means used to the exclusion of all other uses except for other use not exceeding 5% of total use (by reference to sec. 77.54(3)(b)3., Wis. Stats.).

**C. Clarify that the Sale, License, Lease, or Rental of a Product May Be Taxed Only Once for Sales and Use Tax Purposes** (2009 Act 28, create sec. 77.61(20), effective July 1, 2009.)

The sale, license, lease, or rental of a product may be taxed only once under the sales and use tax law, regardless of whether such sale, license, lease, or rental is subject to taxation under more than one imposition provision under the sales and use tax law. This provision merely clarifies, but does not change, the tax treatment of any transaction.

*Example 1:* Individual A brings his clothing to Laundry B. Laundry B cleans the clothing for Individual A for a fee. The provision of laundry service is taxable under sec. 77.52(2)(a)6., Wis.

Stats. (2007-08). Additionally, the cleaning of tangible personal property (e.g., clothing) is taxable under sec. 77.52(2)(a)10., Wis. Stats. (2007-08). Although the tax is imposed under two separate provisions of the sales and use tax law, the service may only be taxed once.

**Example 2:** Individual C purchases a new automobile for \$20,000 plus tax. Three years later, Individual C sells the automobile to Individual D. Individual D pays the tax upon registering the automobile with the Department of Transportation. Individual D later sells the automobile to Individual E, who also pays the tax upon registering the automobile with the Department of Transportation. Tax was correctly paid on each of these separate transactions. The taxation of these transactions is not affected by the creation of sec. 77.61(20), Wis. Stats.

**D. Credit for Tax Paid to a Tribe** (2009 Act 28, create sec. 77.53(16m), effective July 1, 2009.)

A credit against Wisconsin use tax is provided for sales tax paid to a federally recognized American Indian tribe or band in Wisconsin for purchases of property and services that occurred on tribal lands.

If the purchase, rental, or lease of tangible personal property or service subject to Wisconsin sales and use taxes occurred on tribal lands and, prior to imposing the tax under this subchapter, was subject to a sales tax by a federally recognized American Indian tribe or band in Wisconsin, the amount of sales tax paid to the tribe or band may, as determined by an agreement between the Department of Revenue and the tribal council under sec. 73.03 (65), Wis. Stats., be applied as a credit against and deducted from the sales and use tax. For purposes of this credit, “sales tax” includes a use or excise tax imposed on the use of tangible personal property or taxable service by the tribe or band.

**E. Disregarded Entities** (2009 Act 28, amend sec. 77.51(10) and create sec. 77.61(19m)(a) - (c), effective July 1, 2009, and amend 77.58(3)(a), effective September 1, 2009.)

The Act provides that a single-owner entity that is disregarded as a separate entity (i.e., the single-owner entity and its owner are treated as a single entity) for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin

Statutes (“disregarded entity”) is disregarded as a separate entity for purposes of Wisconsin sales and use taxes. The Act also removes the owner of a single-owner entity that is disregarded as a separate entity under Chapter 71 of the Wisconsin Statutes from the definition of “person” for purposes of Chapter 77 (effective July 1, 2009).

Prior to July 1, 2009, a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes was treated as an entity separate from its owner for Wisconsin sales and use tax purposes, except for reporting purposes.

The Act also provides that a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes has the option to (1) include the information from the disregarded entity on the owner’s return, or (2) file a separate electronic sales and use tax return for the disregarded entity. If an owner that owns more than one disregarded entity elects to file a separate return for one if its disregarded entities, the owner is required to file separate returns for all of its disregarded entities. Such returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath. (The provision relating to filing options (1) and (2) is effective September 1, 2009.)

For sales and use tax returns filed prior to September 1, 2009, the owner of a disregarded entity must include the information from the disregarded entity on the owner’s sales and use tax return.

**Transitional Provisions:** The law includes the following transitional provisions to ensure that, solely due to this law change, the owner of a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes will not incur a use tax liability on purchases made prior to the effective date of the law change or on real property contracts entered into prior to the effective date of the law change:

- A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for purposes of the sale, lease, license, or

rental of and the storage, use, or other consumption of tangible personal property purchased by the single-owner entity or its owner prior to July 1, 2009.

- A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for purchases of building materials, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

**The following examples help to explain how the new law is applied:**

**EXAMPLE 1 - Construction Company's Purchasing Entity:** Contractor A is the single owner of a disregarded entity (LLC B). LLC B purchases and sells materials to Exempt Entity C, a federal governmental unit. Exempt Entity C hires Contractor A to install the materials that it purchases from LLC B. The materials become a part of real property when installed.

**Contract Entered Into Prior to July 1, 2009 –** LLC B may purchase the materials without tax for resale. LLC B's sale of the materials to Exempt Entity C are not taxable. Contractor A's charge for installing the materials is not taxable.

**Transitional Provisions –** Same as *Prior Law* if the amount payable to Contractor A and LLC B is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009 or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

**Contracts Entered Into July 1, 2009 and Thereafter –** Contractor A and LLC B are treated as a single entity for Wisconsin sales and use tax purposes; therefore, the purchase by LLC B of materials that are used by Contractor A in a real

property construction activity are subject to tax. A person who performs a real property construction activity is the consumer of the materials that it uses and is liable for Wisconsin sales or use taxes on the purchase of such materials.

**EXAMPLE 2 - Transportation Company:** Retailer X is the single owner of a disregarded entity (LLC Y). LLC Y is a contract transportation entity that hauls Retailer X's goods for hire. LLC Y purchased a semitrailer which is used exclusively to transport Retailer X's goods.

**Semitrailer Purchased Prior to July 1, 2009 –** LLC Y's purchase of the semitrailer is exempt from tax under the common and contract carrier exemption. LLC Y's purchase of parts and service to the semitrailer are also exempt from tax. LLC Y's charge to Retailer X for transporting its goods is not taxable (i.e., transportation services are not taxable).

**Transitional Provisions –** Same as prior law for transactions relating to the semitrailer (and any other property) that was purchased prior to July 1, 2009, including parts and service purchased after July 1, 2009 for the semitrailer.

**Semitrailers Purchased July 1, 2009 and Thereafter –** Retailer X and LLC Y are treated as a single entity for Wisconsin sales and use tax purposes; therefore, LLC Y's purchase of the semitrailer does not qualify for the common and contract carrier exemption, since it is not hauling goods for others for hire. LLC Y's purchase of parts and service for the semitrailer are taxable.

**EXAMPLE 3 - Leasing Company:** Company G is the single owner of a disregarded entity (LLC H). LLC H's only business activity is to lease its aircraft to Company G and others.

**Aircraft Purchased Prior to July 1, 2009 –** LLC H may purchase the aircraft without tax for resale. LLC H's purchase of parts and service to the aircraft are also exempt from tax. LLC H's charges to Company G and others for leasing its aircraft are taxable.

**Transitional Provisions –** Same as prior law for transactions relating to the aircraft that was purchased prior to July 1, 2009, including parts and service purchased after July 1, 2009 for the aircraft.

***Aircraft Purchased July 1, 2009 and Thereafter*** – Company G and LLC H are treated as a single entity for Wisconsin sales and use tax purposes; therefore, LLC H’s purchase of the aircraft does not qualify for resale, since LLC H is not solely leasing the aircraft to others. LLC H’s purchase of parts and service for the aircraft are taxable.

**IMPORTANT NOTE:** Owners of disregarded entities that hold or are required to hold a seller’s permit should contact one of the Department of Revenue’s customer service representatives at (608) 266-2776 or at [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov) if any of the following apply:

1. The owner and one or more disregarded entity have the same business location. (Seller’s permits issued to a disregarded entity that has the same business location as its owner must be inactivated.)
2. The owner elects to file a separate electronic sales and use tax return for the disregarded entity.
3. The owner and/or one or more of its disregarded entities are currently improperly registered (e.g., have different 15-digit account identification numbers).

If you contact the department, be sure to include the following information:

- ✓ Tax account number. Include the business name and address if you have more than one location.
- ✓ Federal employer identification number (FEIN).
- ✓ Effective date of change.
- ✓ Explanation of change.

**F. Entities Exempt from Sales and Use Taxes** (2009 Act 28, amend sec. 77.54(9a)(a) and create sec. 77.54(9a)(ed) and (er); various effective dates.)

- *Wisconsin Quality Home Care Authority* - Section 77.54(9a)(a), Wis. Stats., is amended, effective July 1, 2009, to add the Wisconsin Quality Home Care Authority as an entity that is exempt from Wisconsin sales and use taxes on its purchases.

- *Wisconsin Indian Bands and Tribes* - Section 77.54(9a)(ed), Wis. Stats., is created, effective August 1, 2009, to add any federally recognized American Indian tribe or band in Wisconsin as an entity exempt from Wisconsin sales and use taxes on its purchases.
- *Regional Transit Authorities* - Section 77.54(9a)(er), Wis. Stats., is created, effective July 1, 2009, to add the Southeastern Regional Transit Authority created under sec. 59.58(7), Wis. Stats., and any regional transit authority created under sec. 66.1039, Wis. Stats., as entities exempt from Wisconsin sales and use taxes on their purchases.

**G. Fuel for Charter Fishing Boats Exemption** (2009 Act 28, create sec. 77.54(30)(a)7., effective July 1, 2009.)

A sales and use tax exemption is created for fuel sold for use in motorboats that are regularly employed in carrying persons for hire for sport fishing in and upon the outlying waters, as defined in sec. 29.001(63), Wis. Stats., and the rivers and tributaries specified in sec. 29.2285(2)(a)1. and 2., Wis. Stats., if the owner and all operators are licensed under sec. 29.514, Wis. Stats., to operate the boat for that purpose.

"Outlying waters," as defined in sec. 29.001(63), Wis. Stats., means Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere.

"Rivers and tributaries" specified in sec. 29.2285(2)(a)1. and 2., Wis. Stats., include any river or stream tributary of Lake Michigan or Green Bay from its mouth upstream to the first dam or lake and any other river or stream tributary of Lake Michigan or Green Bay that is designated by the department.

Section 29.514, Wis. Stats., details the requirement for obtaining and holding an outlying water sport trolling license. No person may be engaged or be employed for any compensation to guide any other person in sport trolling for trout or salmon in and upon the outlying waters unless the person is issued a sport trolling license by the Department of Natural Resources.

**H. Internet Posting of Seller’s Permits that Have Been Revoked** (2009 Act 28, create sec. 73.03(64), effective October 1, 2009.)

A provision has been created that requires the Department of Revenue to post on the Internet a list of every person who has had a seller’s permit revoked under sec. 77.52 (11), Wis. Stats. The Internet site shall list the real name, business name, address, revocation date, type of tax due, and amount due, including interests, penalties, fees, and costs, for each person who has had a seller’s permit revoked under sec. 77.52 (11), Wis. Stats. The Department of Revenue shall update the Internet site periodically to add revoked permits and to remove permits that are no longer revoked or for which the permit holder has made sufficient arrangements with the Department of Revenue so that the permit holder may be issued a monthly seller’s permit. The Department of Revenue shall update the Internet site quarterly to remove revoked permits for entities that have been out of business for at least one year.

**I. Local Licenses and Permits – Requirement to Hold Seller’s Permit Amended** (2009 Act 28, repeal and recreate sec. 77.61(11), as affected by 2009 Act 2, effective October 1, 2009.)

The requirement to hold a seller’s permit, for purposes of issuing local licenses or permits, is amended to allow the holding of a use tax registration certificate.

**J. Manufacturing Consumables and Definition of “Manufacturing”** (2009 Act 28, renumber sec. 77.54(6m)(a) to 77.51(7h)(a)1.; renumber sec. 77.54(6m)(intro.) to 77.51(7h)(a)(intro.) and amend as renumbered; renumber sec. 77.54(6m)(b) to 77.51(7h)(a)2. and amend as renumbered; amend sec. 77.54(2) and (2m); and create sec. 77.51(7h)(a)3. and (b), (10b), and (10c), effective August 1, 2009.)

The definition of “manufacturing” is amended to mean the production by machinery of a new article of tangible personal property with a different form, use, and name from existing materials, by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible per-

sonal property to the point of first storage in the same plant. “Manufacturing” includes:

1. Crushing, washing, grading and blending sand, rock, gravel and other minerals.
2. Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including the preparation of ore for smelting.
3. Conveying work in process directly from one manufacturing process to another in the same plant; testing or inspecting, throughout the manufacturing process, the new article of tangible personal property that is being manufactured; storing work in progress in the same plant where the manufacturing occurs; assembling finished units of tangible personal property; and packaging a new article of tangible personal property, if the manufacturer, or another person on the manufacturer’s behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

“Manufacturing” does not include storing raw materials or finished units of tangible personal property, research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

For purposes of the definition above, “plant” means a parcel of property or adjoining parcels of property, including parcels that are separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer, and “plant inventory” does not include unsevered mineral deposits.

This act also provides that tangible personal property consumed in manufacturing is only exempt if it is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property destined for sale

**K. Nexus Definition – Sales and Use Tax** (2009 Act 28, create sec. 77.51(13g)(d), effective July 1, 2009.)

This provision expands the definition of “retailer engaged in business in this state” to specifically include any person who has an affiliate in Wisconsin, if the person is related to the affiliate and if the affiliate uses facilities or employees in Wisconsin to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in Wisconsin or for providing services to the related person’s purchasers in Wisconsin, including accepting returns of purchases or resolving customer complaints.

For purposes of this provision, two persons are “related” if any of the following apply:

1. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation under section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50% of the corporation’s outstanding stock value.
2. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.
3. An individual stockholder and the members of the stockholder’s family, as defined in section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons’ outstanding stock value.

**L. Offset Fee - \$25** (2009 Act 28, create sec. 73.03(52)(b), effective August 1, 2010.)

This provision directs the Department of Revenue to enter into agreements with the federal Department of the Treasury that provide for offsetting state payments against federal nontax obligations; and to charge a fee up to \$25 per transaction for such offsets; and offsetting federal payments, as authorized by federal law, against state tax and nontax obligations, and collecting the offset cost from the debtor, if the agreements provide that

setoffs under sec. 73.03(52)(a), Wis. Stats., and secs. 71.93 and 71.935, Wis. Stats., occur before the setoffs under this provision. The agreement shall provide that the federal Department of the Treasury may deduct a fee from each administrative offset and state payment offset. For purposes of this paragraph “administrative offset” is any offset of federal payments to collect state debts and “state payment offset” is any offset of state payments to collect federal nontax debts.

**M. Penalties for Failing to Provide Records** (2009 Act 28, create sec. 77.61 (19), effective July 1, 2009.)

A person who fails to produce records or documents, as provided under secs. 73.03 (9) or 77.59 (2), Wis. Stats., that support amounts or other information required to be shown on a return required under sec. 77.58, Wis. Stats., may be subject to any of the following penalties, as determined by the Department of Revenue, except that the Department of Revenue may not impose a penalty under this subsection if the person shows that under all facts and circumstances the person’s response, or failure to respond, to the Department of Revenue’s request was reasonable or justified by factors beyond the person’s control:

- (a) The disallowance of deductions, credits, exemptions, or inclusions of additional taxable sales or additional taxable purchases to which the requested records relate.
- (b) A penalty for each violation of this subsection that is equal to the greater of \$500 or 25 percent of the amount of the additional tax on any adjustment made by the Department of Revenue that results from the person’s failure to produce the records.
- (c) The Department of Revenue shall promulgate rules to administer this subsection and the rules shall include a standard response time, a standard for noncompliance, and penalty waiver provisions.

**N. Police and Fire Protection Fee** (2009 Act 28, amend secs. 196.202 (2), 196.203 (1), and 196.499 (1) (intro.), and create secs. 20.155 (3) (t), 25.17 (1) (ku), 25.99, and 196.025 (6), effective September 1, 2009.)

The police and fire protection fee is imposed on two types of transactions:

1. A monthly fee of \$0.75 per assigned telephone number (including a communication service provided via a voice over Internet protocol connection and fee modifications for multiple connections to one subscriber), and
2. A fee of \$0.38 on each retail transaction for prepaid wireless plans that occur in Wisconsin.

The Public Service Commission may contract with the Department of Revenue for the collection of the \$0.38 per transaction fee on prepaid wireless telecommunications plans. If the commission and department enter into such a contract, the communications provider or retailer shall remit the fee to the department no later than the first calendar month following the calendar month in which a communications provider or retailer receives from a subscriber the fee on a prepaid wireless telecommunications plan.

A communications provider or retailer may state the amount of the \$0.38 fee separately on a bill for the retail transaction, and if a communications provider or retailer does so, the communications provider or retailer shall identify the fee as “police and fire protection fee.”

Additional information about how to report and remit the fee will be forthcoming.

**O. Police and Fire Protection Fee Exemption** (2009 Act 28, create sec. 77.54(55), effective July 1, 2009.)

A sales and use tax exemption is created for the sales price from the police and fire protection fee imposed under sec. 196.025(6), Wis. Stats.

**P. Premier Resort Area Tax - Village of Lake Delton and City of Wisconsin Dells May Increase Their Rates to 1%** (2009 Act 28, amend sec. 77.9941(1) and create sec. 77.994(3), effective July 1, 2009.)

Under this provision, any municipality that enacted an ordinance imposing the premier resort area tax that became effective before January 1, 2000 (the Village of Lake Delton and the City of Wisconsin Dells), may amend the ordinance to

increase the premier resort area tax rate to 1%. For such an increase, the municipality would have to deliver a certified copy of an amended ordinance to the Secretary of Revenue at least 120 days before the effective date of the increase, and such an increase would be effective on January 1, April 1, July 1, or October 1.

**Q. Regional Transit Authorities - Sales and Use Taxes** (2009 Act 28, amend secs. 77.71(intro), (1), (2), (3) and (4), 77.73(2), 77.75, 77.76(1), (2) and (4), and 77.78, effective July 1, 2009; amend secs. 77.73(3) and 77.77(1)(a) and (b) as created by 2009 Wis. Act 2, effective October 1, 2009; and create secs. 66.1039, 77.54(9a)(er), 77.708, 77.76(3r) and (5), effective July 1, 2009).

**Creation of Regional Transit Authorities**

The enactment of 2009 Act 28 authorizes the creation of the following regional transit authorities, as provided in sec. 66.1039, Wis. Stats.:

**Chequamegon Bay Regional Transit Authority**

The Chequamegon Bay Regional Transit Authority is created if the governing bodies of the counties of Ashland and Bayfield each adopt a resolution authorizing its respective county to become a member of the authority.

Once the Chequamegon Bay Regional Transit Authority is created, any county other than Ashland or Bayfield may join the authority if the governing body of the county adopts a resolution authorizing that county to become a member of the authority and the authority approves that county’s joinder.

The jurisdictional area of the Chequamegon Bay Regional Transit Authority is the combined territorial boundaries of Ashland and Bayfield Counties, plus the territorial boundaries of any other county that subsequently joins the authority.

**Chippewa Valley Regional Transit Authority**

The Chippewa Valley Regional Transit Authority is created if the governing body of Eau Claire County adopts a resolution authorizing the county to become a member of the authority.

Once created, Chippewa County may become a member of the authority if the governing body of Chippewa County adopts a resolution to become a member of the authority.

The jurisdictional area of the Chippewa Valley Regional Transit Authority is the territorial boundaries of Eau Claire County, plus the territorial boundaries of Chippewa County, if that county subsequently joins the authority.

### **Dane County Regional Transit Authority**

The Dane County Regional Transit Authority (DC RTA) is created if the Dane County Board passes a resolution to become a member of the DC RTA. Upon creation, any municipality located in whole or in part within the Madison metropolitan planning area as of January 1, 2003, is a member of the DC RTA. Any municipality located in whole or in part within Dane County that is not located in whole or in part within the Madison metropolitan planning area on January 1, 2003, may join the DC RTA if the governing body of the municipality adopts a resolution to join the authority and the board of directors of the authority approves the municipality's joinder. The initial jurisdiction of the DC RTA is the Madison metropolitan planning area.

If a municipality joins the DC RTA, the area of its territorial boundaries becomes a part of the DC RTA jurisdiction as of the first day of the first calendar quarter that begins at least 120 days after the Department of Revenue receives a certified copy of the resolution that approves the joining. The DC RTA shall also provide the Department of Revenue with a description of the new boundaries of the DC RTA's jurisdictional area, as provided under sec. 66.1039(4)(s)2., Wis. Stats.

The jurisdictional area of the DC RTA is the area of the Madison metropolitan planning area, plus the area of any municipality joining the DC RTA.

### **Provisions applicable to all regional transit authorities created under sec. 66.1039, Wis. Stats.**

Once a regional transit authority is created, that authority may impose a sales and use tax, pursuant to secs. 66.1039(4)(s)1. and 77.708(1), Wis. Stats., at a rate of up to 0.5%. The sales and use tax will apply within the transit authority's jurisdictional area. The sales and use tax imposed by a transit authority is effective on the first day of the first calendar quarter that begins at least 120 days after adoption of the resolution by the transit authority that imposes the tax. The transit authority

must notify the Department of Revenue at least 120 days prior to the effective date of the tax.

Under sec. 77.708(2), Wis. Stats., retailers and the Department of Revenue may not collect a regional transit authority sales and use tax for any transit authority created under sec. 66.1039, Wis. Stats., after the calendar quarter during which the transit authority adopts a repeal resolution under sec. 66.1039(4)(s), Wis. Stats., except that the Department of Revenue may collect from retailers taxes that accrued before such calendar quarter and fees, interest, and penalties that relate to those taxes.

Under sec. 66.1039(4)(s)2., Wis. Stats., if the boundaries of the transit authority are other than a county line, the transit authority is required to furnish to the Department of Revenue a complete list of all the 9-digit zip codes that are entirely within the transit authority jurisdictional area, and a complete list of all the street addresses that are within the transit authority jurisdictional area that are not included in any 9-digit zip code that is entirely within the transit authority's jurisdictional area. This information is to be furnished in the manner, format and layout prescribed by the Department of Revenue.

Section 77.54(9a)(er), Wis. Stats., provides that a regional transit authority created under sec. 66.1039, Wis. Stats., is an entity that is exempt from paying Wisconsin sales and use taxes on its purchases.

Sections 77.71(intro), (1), (2), (3) and (4), 77.73(2), 77.75, and 77.76(1) and (2), and 77.78, Wis. Stats., as they apply to county and stadium district sales and use taxes, have been amended to apply to regional transit authority sales and use taxes as well.

Section 77.76(4), Wis. Stats., as it applies to taxes, interest and penalties collected for the taxes imposed by the baseball and football stadium districts, has been amended to apply in the same manner to taxes, interest and penalties collected for the taxes imposed by regional transit authorities.

Section 77.76(5), Wis. Stats., provides that if a retailer receives notice from the Department of Revenue that the retailer is required to collect and remit the taxes imposed under sec. 77.708, Wis. Stats., but the retailer believes that the retailer is

not required to collect such taxes because the retailer is not doing business within the transit authority's jurisdictional area, the retailer shall notify the Department of Revenue no later than 30 days after receiving notice from the Department of Revenue. The Department of Revenue shall affirm or revise its original determination no later than 30 days after receiving the retailer's notice.

Section 77.76(3r), Wis. Stats., provides that, from the appropriation under sec. 20.835(4)(gc), Wis. Stats., the Department of Revenue shall distribute 98.5 percent of the taxes reported for each transit authority that has imposed taxes under this subchapter, minus the transit authority portion of the retailers' discount, to the transit authority no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the Department of Revenue shall indicate the taxes reported by each taxpayer. The "transit authority portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross transit authority sales and use taxes payable and the denominator of which is the sum of the gross state and transit authority sales and use taxes payable. The transit authority taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments of the transit authority taxes previously distributed. Interest paid on refunds of transit authority sales and use taxes shall be paid from the appropriation under sec. 20.835(4)(gc), Wis. Stats., at the rate paid by this state under sec. 77.60(1)(a), Wis. Stats. Any transit authority receiving a report under this subsection is subject to the duties of confidentiality to which the Department of Revenue is subject under sec. 77.61(5), Wis. Stats.

Sections 77.73(3), and 77.77(1)(a) and (b), Wis. Stats., as created by 2009 Wis. Act 2, and effective as of October 1, 2009, as it applies to county and stadium district sales and use taxes, has been amended to apply to regional transit authority sales and use taxes as well.

**R. Regional Transit Authorities – Vehicle Rental Fee** (2009 Act 28, renumber sec. 77.9971 and amend as renumbered, amend secs. 59.58(6)(a)1., subch. XIII (title) of Chapter 77, 77.9972(3), and 77.9973, repeal and recreate sec. 58.58(6)(cg),

create secs. 59.58(6)(f), 59.58(7), 77.54(9a)(er), 77.9971(2) and 77.9972(6), effective July 1, 2009.)

**KRM Regional Transit Authority – Vehicle Rental Fee**

The Act repeals the statutory authority provided to the KRM Regional Transit Authority under sec. 59.58(6)(cg)1., Wis. Stats., (2007-08), to impose the \$2.00 per vehicle rental fee on the rental of passenger automobiles without drivers, for a period of 30 days or less (except the rental of a service or replacement vehicle), that originate in the counties of Kenosha, Racine or Milwaukee, under sec. 77.9971, Wis. Stats. **The repeal is effective July 1, 2009.**

Under sec. 59.58(6)(f), Wis. Stats., the existing KRM Regional Transit Authority shall terminate on October 1, 2009.

Under sec. 59.58(6)(cg), Wis. Stats., as recreated under the Act, no later than October 1, 2009, the KRM Regional Transit Authority shall transfer to the Southeastern Regional Transit Authority created under sec. 59.58(7), Wis. Stats., all revenues received under sec. 59.58(6)(cg)1., Wis. Stats., retained by the KRM Regional Transit Authority.

**Southeastern Regional Transit Authority - Vehicle Rental Fee**

The Act creates the "Southeastern Regional Transit Authority" (SERTA), as of July 1, 2009.

The SERTA has the power to create, construct and manage a KRM (Kenosha, Racine, and Milwaukee Counties) commuter rail line.

The SERTA's jurisdictional area is the geographic area formed by the combined territorial boundaries of the counties of Kenosha, Racine, and Milwaukee.

The SERTA is an entity exempt from Wisconsin sales and use taxes on its purchases pursuant to sec. 77.54(9a)(er), Wis. Stats.

The SERTA is authorized to impose the vehicle rental fee under sec. 77.9971(1), Wis. Stats., in an amount up to \$18.00 per vehicle rental by resolution made by its board of directors. The fee is effective on the first day of the first month that begins at least 90 days after the board of directors of the SERTA approves the imposition of the fee and notifies the Department of Revenue. The

board of directors shall notify the Department of Revenue at least 60 days before the effective date of a repeal of the fee.

The SERTA board of directors has the authority to adjust the fee for inflation in the manner prescribed under sec. 77.9971(2)(a), Wis. Stats. If the Department of Revenue receives a notification of a fee adjustment under sec. 77.9971(2)(b), Wis. Stats., the Department of Revenue shall publish the new adjusted fee at least 30 days before the adjustment becomes effective.

The fee will apply to the rental but not for rental and not for rental as a service or repair replacement vehicle, of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats., by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from sales taxes under sec. 77.54(1), (4), (7)(a), (7m), (9), or (9a), Wis. Stats.

Section 77.9972(3), Wis. Stats., provides that, from the appropriation under sec. 20.835(4)(gh), Wis. Stats., the Department of Revenue shall distribute 97.45% of the fees collected under this subchapter to the SERTA and shall indicate to the authority the fees reported by each fee payer in the authority's jurisdiction, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The fees distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the fee under this subchapter shall be paid from the appropriation under sec. 20.835(4)(gh), Wis. Stats., at the rate under sec. 77.60(1)(a), Wis. Stats. If the SERTA receives a report along with a payment under this subsection, the SERTA is subject to the duties of confidentiality to which the Department of Revenue is subject under sec. 77.61(5), Wis. Stats.

Under sec. 77.9973, Wis. Stats., retailers and the Department of Revenue may not collect fees under this subchapter for the SERTA after the calendar quarter during which the SERTA ceases to exist, except that the Department or Revenue may collect from retailers fees that accrued before that calendar quarter and interest and penalties that relate to those fees. If fees are collected, the SERTA may use the revenue for any lawful purpose.

**S. Retailer's Discount Limited to \$1,000 Per Reporting Period** (2009 Act 28, amend sec. 77.61(4)(c), first applies to the taxes payable on October 1, 2009.)

The retailer's discount that may be deducted on a sales and use tax return is limited to \$1,000 per reporting period.

**T. Towing and Hauling of Motor Vehicles** (2009 Act 28, create sec. 77.52(2)(a)8m., effective July 1, 2009.)

Sales and use tax applies to the towing and hauling of motor vehicles by a tow truck, as defined in sec. 340.01(67n), Wis. Stats., unless at the time of towing or hauling a sale in this state of the motor vehicle to the purchaser would be exempt from sales and use taxes, not including the exempt sale of a motor vehicle to a nonresident under sec. 77.54(5)(a), Wis. Stats., and nontaxable sales described in sec. 77.51(14r), Wis. Stats.

"Tow truck" is defined in sec. 340.01(67n), Wis. Stats., to mean "a motor vehicle that is equipped with mechanical or hydraulic lifting devices or winches capable of, and used for, the recovery or transport or both of wrecked, disabled, abandoned, used or replacement vehicles."

**Note:** Under prior law, sales and use tax applied to the towing of tangible personal property, including the towing of motor vehicles, unless, at the time of the towing, a sale in Wisconsin of the type of property towed would have been exempt to the customer from sales tax, other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), Wis. Stats., and other than nontaxable sales under sec. 77.51(14r), Wis. Stats. This tax treatment is provided in sec. 77.52(2)(a)10., Wis. Stats., and was not changed in 2009 Act 28.

**U. Wind, Solar, and Gas from Agricultural Waste Exemption – Effective Date Delayed Until July 1, 2011** (2009 Act 28, amend sec. 77.54(56), effective July 1, 2009.)

Section 77.54(56), Wis. Stats., was created by 2007 Act 20, with an effective date of July 1, 2009. As a result of the enactment of 2009 Act 28, the effective date of this exemption is changed to July 1, 2011.

Section 77.54(56), Wis. Stats., provides an exemption from sales and use taxes for:

(a) 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.

(b) Except for the sale of electricity or energy that is exempt from taxation under sub. (30), the gross receipts from the sale of and the storage, use, or other consumption of electricity or energy produced by a product described under par. (a).

**V. Youth Sports Exemption** (2009 Act 28, create sec. 77.52(2)(a)2.c., effective July 1, 2009.)

Admissions, such as league entry fees, sold by a nonprofit organization to participate in any sports activity in which more than 50 percent of the participants are 19 years old or younger are not subject to Wisconsin sales tax.

Under prior law, youth sports organizations were required to register to collect and remit Wisconsin sales tax on their registration fees. Municipalities that organize youth recreation programs were also required to pay tax on their receipts from registration fees.