

SALES AND USE TAX REPORT

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to additional information concerning this change may be found at www.revenue.wi.gov/taxpro/news/100127a.html.

II. WAUKESHA AND WISCONSIN RAPIDS OFFICES CLOSED

As part of an office consolidation effort announced in late 2007, the Department of Revenue office in Waukesha closed on May 13, 2010 and the Wisconsin Rapids office closed on May 18, 2010.

The Department of Revenue announced in December 2007 the consolidation of 27 field offices into seven regional offices as part of restructuring the operations of the agency. The consolidation will be complete by the end of the year. The seven regional offices will be located in Appleton, Green Bay, Eau Claire, Madison, Milwaukee, Wausau and Chicago, and will continue providing comprehensive services to taxpayers across the state.

III. IPT TAX SEMINAR TO BE PRESENTED IN MADISON

The Institute for Professionals in Taxation (IPT), in cooperation with the Wisconsin Department of Revenue, is presenting a one-day tax seminar in Madison on September 23, 2010. The all-day seminar, which will be held at the Monona Terrace Community and Convention Center, will include current tax issues specific to Wisconsin. Presentations on a variety of topics will be made by Department of Revenue personnel.

Additional information concerning this seminar, including the specific agenda and registration materials, will be available in July on the Department of Revenue’s web site at www.revenue.wi.gov.

In This Issue

	Page
I. Reminder - Local Food and Beverage Tax Rate Increase to 0.5%	1
II. Waukesha and Wisconsin Rapids Offices Closed	1
III. IPT Tax Seminar to Be Presented in Madison.....	1
IV. New Tax Laws	2
V. Can Retailers Absorb the Sales Tax for Their Customers?	6
VI. Lawn Care Services.....	7
VII. Sales and Use Tax Treatment of Procurement Card Programs.....	7
VIII. How is Use Tax Computed on Items Previously Purchased Using an Exemption Certificate?.....	9

I. REMINDER – LOCAL FOOD AND BEVERAGE TAX RATE INCREASE TO 0.5%

Effective July 1, 2010, the 0.25% local food and beverage tax will be increased to 0.5%. Note: A change in items subject to the local food and beverage tax occurred effective October 1, 2009. A link

IV. NEW TAX LAWS

The Wisconsin Legislature has enacted the following changes to the Wisconsin sales and use tax laws. These provisions are contained in 2009 Wisconsin Acts 204 and 330.

A. Exemption Expanded to Include Food and Food Ingredients Sold by Child Welfare Facilities (2009 Act 204, amend sec. 77.54(20n)(b), effective May 6, 2010.)

Effective May 6, 2010, food and food ingredients, except soft drinks, sold by any facility certified or licensed under Chapter 48, Wis. Stats., are exempt from Wisconsin sales and use taxes. Such facilities include licensed child placement agencies, residential care centers, foster homes, treatment foster homes, group homes, and shelter care facilities.

Under prior law, food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities, as defined in sec. 50.01(1g), Wis. Stats., and day care centers registered under Chapter 48, Wis. Stats., were exempt from Wisconsin sales and use taxes. These sales continue to be exempt under current law.

B. Create Definition of “Advertising and Promotional Direct Mail” (2009 Act 330, create sec. 77.51(1ag), effective May 27, 2010).

“Advertising and promotional direct mail” is defined to mean direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

C. Create Definition of “Other Direct Mail” (2009 Act 330, create sec. 77.51(9r), effective May 27, 2010).

“Other direct mail” is defined to mean any direct mail that is not advertising and promotional direct mail, regardless of whether

advertising and promotional direct mail is included in the same mailing. “Other direct mail” includes all of the following:

1. Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, account statements, and payroll advices.
2. Any legally required mailings, including privacy notices, tax reports, and stockholder reports.
3. Other nonpromotional direct mail, including newsletters and informational pieces, that is delivered to existing or former shareholders, customers, employees, or agents.

“Other direct mail” does not include printed materials that result from developing billing information or providing any data processing service that is more than incidental, as defined in sec. 77.51 (5), Stats., to producing the other direct mail.

D. Amend Definition of “Prepared Food” to Make Technical Correction (2009 Act 330, amend sec. 77.51(10m)(a)3.a., effective May 27, 2010).

The definition of “prepared food” is amended to provide that a retailer is considered to have provided utensils if the utensils are available to the purchaser and the retailer’s sales of prepared food under sec. 77.51(10m)(a)1., 2., and 4., Stats., and food for which plates, bowls, glasses, or cups are necessary to receive the food are more than 75 percent of the retailer’s total sales of all food and food ingredients, as determined under sec. 77.51(10m)(c), Stats. Previously, the language in sec. 77.51(10m)(a)3.a., Stats., was inconsistent with the language contained in sec. 77.51(10m)(c), Stats.

E. Amend Definition of “Product” so That It Applies to Definition of “Advertising and Promotional Direct Mail” (2009 Act 330, amend sec. 77.51(11d), effective May 27, 2010).

The definition of “product” is amended so that it applies to the use of the term “product” as it is used in the definition of “advertising and promotional direct mail,” contained in sec. 77.51(1ag), Stats., as created by this Act.

F. Clarify That Prepaid Calling Services Are Subject to Tax (2009 Act 330, amend sec. 77.52(2)(a)5.am., effective May 27, 2010).

This clarifies that prepaid calling services are subject to tax.

G. Provide Explanation of “Good Faith” (2009 Act 330, renumber secs. 77.52(14)(am) to 77.52(14)(am)1. and 77.53(11)(b) to 77.53(11)(b)1. and create secs. 77.52(14)(am)2. and 77.53(11)(b)2., effective May 27, 2010).

If a seller does not obtain an exemption certificate as required by secs. 77.52(14)(a) or 77.53(11)(a), Stats., the seller is allowed 120 days after they are notified by the state to substantiate the exemption to either provide proof of the exemption by other means or to obtain, in good faith, a fully completed exemption certificate from the purchaser.

An exemption certificate received by a seller is received in good faith if the exemption certificate claims an exemption for which all of the following apply:

1. The exemption was authorized by law on the date of the transaction in the jurisdiction where the transaction is sourced.
2. The exemption could be applicable to the property, item, good, or service being purchased.

3. The exemption being claimed is reasonable for the purchaser’s type of business.

H. Explain When Seller is Liable For Tax Even If Seller Obtains Exemption Certificate (2009 Act 330, create secs. 77.51(14)(am)3. and 77.53(11)(b)3., effective May 27, 2010).

A seller that obtains the information as described in either sec. 77.52(14)(am)2. or 77.53(11)(b)2., Stats., as created by this Act, is relieved of liability for the tax unless it is discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this provision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

I. Amend Sourcing Provisions Relating to “Advertising and Promotional Direct Mail” (2009 Act 330, renumber sec. 77.522(1)(c) to 77.522(1)(c)1., and amend as renumbered, and create sec. 77.522(1)(c)3., effective May 27, 2010).

The sale of advertising and promotional direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail is shipped, if the purchaser does not provide to the seller a direct pay permit, an exemption certificate claiming direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. If

the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit, as appropriate, to the department the tax imposed under sec. 77.53, Stats., on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit the tax on any transaction to which the direct pay permit or exemption certificate applies. If the purchaser provides delivery information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients, the seller shall source the sale to those jurisdictions and collect and remit the tax according to the delivery information provided by the purchaser and, in the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on the sale of advertising and promotional direct mail for which the seller has sourced the sale and collected tax pursuant to the delivery information provided by the purchaser. If a transaction is a bundled transaction that includes advertising and promotional direct mail, this subdivision only applies if the primary purpose of the transaction is the sales of products or services that meet the definition of advertising and promotional direct mail.

Exception: If “advertising and promotional direct mail” and “other direct mail” are included in a single mailing, the sale of that mailing is sourced the same as a sale of “other direct mail.”

J. Create Sourcing Provisions Relating to “Other Direct Mail” (2009 Act 330, create secs. 77.522(1)(c)2. and 3., effective May 27, 2010).

The sale of other direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of other direct mail, is sourced under sec.

77.522(1)(b)3., Stats., if the purchaser does not provide to the seller a direct pay permit or an exemption certificate claiming direct mail. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit, as appropriate, to the department the tax imposed under sec. 77.53, Stats., on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit tax on any transaction to which the direct pay permit or exemption certificate claiming direct mail applies.

If “advertising and promotional direct mail” and “other direct mail” are included in a single mailing, the sale of that mailing is sourced the same as a sale of “other direct mail.”

K. Sourcing Provisions Relating to Transactions That Include the Development of Billing Information and the Providing of Data Processing Services (2009 Act 330, create sec. 77.522(1)(c)4., effective May 27, 2010).

Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to producing direct mail are not direct mail and are sourced under sec. 77.522(1)(b), Stats., but transactions that include incidental data processing services are direct mail and are sourced under sec. 77.522(1)(c), Stats. “Incidental” has the meaning given in sec. 77.51(5), Stats.

L. Additional Language Added to Make Statutes Consistent With Changes Made in 2009 Wis. Acts 2 and 28 (2009 Act 330, amend sec. 77.54(18), effective May 27, 2010).

The phrase “items, property, or goods under s. 77.52(1)(b), (c), or (d), Stats.”, was added throughout subchs. III and V of ch. 77, Stats., by 2009 Wis. Acts 2 and 28, due to the chang-

ing of the definition of “tangible personal property” by 2009 Wis. Act 2 and the imposition of sales and use tax on digital goods. However, through an oversight, this language was not added in the appropriate context to this section and is being added now to make it consistent with the rest of the affected statutes.

- M. Provide That Certain Sellers That Register Through the Streamlined Sales Tax Governing Board’s Central Registration System and Who Anticipate Making No Taxable Sales in Wisconsin Are Not Required to File Certain Sales and Use Tax Returns** (2009 Act 330, create sec. 77.58(2)(d) and amend sec. 77.58(3)(a), effective May 27, 2010).

A seller, except a seller who use a certified service provider, who registers through the Streamlined Sales Tax Governing Board’s Central Registration System and indicates at the time of registration that it anticipates making no sales into this state is not required to file a return in this state until such time as it makes a taxable sale that is sourced to this state under sec. 77.522, Stats. Once a seller to which this provision applies makes a taxable sale that is sourced to this state under sec. 77.522, Stats., that seller is required to file a return that is due by the last day of the month following the last day of the calendar quarter in which the sale occurred and shall continue to file returns by the last day of the month following the last day of each calendar quarter thereafter, unless the seller is notified in writing by the Department of Revenue of a different filing frequency.

- N. Require Persons Who File Sales and Use Tax Returns to File Those Returns in the Manner and Form Prescribed by the Department of Revenue** (2009 Act 330, amend sec. 77.58(4), effective May 27, 2010).

A person required to file a sales and use tax return shall deliver the return together with the remittance of the amount of tax due to the Department of Revenue or such other place as

the Department of Revenue designates in the manner and form prescribed by the Department of Revenue.

- O. Require That a Bad Debt Can Only Be Claimed On a Transaction That the Seller Has Previously Reported as Taxable and For Which the Seller Has Previously Paid the Tax** (2009 Act 330, amend sec. 77.585(1)(a) and (d), effective May 27, 2010).

The definition of a “bad debt” is the portion of the sales price or purchase price that a seller has previously reported as a taxable sale under subch. III of ch. 77, Stats., and for which the seller has paid the tax and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. A “bad debt” does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Stats., that remain in the seller’s possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

A seller may obtain a refund of the tax reported for any bad debt deducted under sec. 77.585(1)(b), Stats., that exceeds the amount of the seller’s taxable sales as provided in sec. 77.59(4), Stats., except that the period for making the claim begins on the date on which the return on which the bad debt could be claimed would have been required to be submitted to the Department of Revenue under sec. 77.58, Stats.

- P. Require the Department of Revenue to Provide at Least 30 Days Notice to Certain Sellers That Are Not Required to Register and Obtain a Permit Before Issuing an Estimated Assessment** (2009 Act 330, renumber sec. 77.59(9) to sec. 77.59(9)(a), and amend as renumbered, and create sec. 77.59(9)(b), effective May 27, 2010).

If a seller is not required to register and obtain a permit under sec. 77.52 (7) or 77.53 (9), Stats., but has registered and obtained a permit under sec. 77.52 (7) or 77.53 (9), Stats., and has failed to timely file a return that is due, the Department of Revenue shall notify the seller of the failure to file and provide the seller at least 30 days to file the return prior to making the estimate described in sec. 77.59(9)(a), Stats., except that if the seller has a history of not filing returns, or filing returns late, the Department of Revenue may make the estimate under sec. 77.59(9)(a), Stats., without providing such notice.

Q. Imposition of Local Exposition District Food and Beverage Tax (2009 Act 330, repeal and recreate sec. 77.98, effective October 1, 2009).

The local exposition district food and beverage tax may be imposed on the retail sale, except sales for resale, within the district's jurisdiction under sec. 229.43, Stats., of all of the following:

1. Alcoholic beverages, as defined in s. 77.51 (1b), if the alcoholic beverages are for consumption on the seller's premises.
2. Candy, as defined in s. 77.51 (1fm).
3. Prepared food, as defined in s. 77.51 (10m).
4. Soft drinks, as defined in s. 77.51 (17w).

The items described above are not subject to tax if they qualify for an exemption from the sales tax under sec. 77.54 (1), (4), (7) (a), (7m), (9), (9a), (20n) (b) or (c), or (20r), Stats.

The term "premises" as used in sec. 77.98(1)(a), Stats., shall be broadly construed and shall include the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, a rink, or a stadium, or the parking area of a drive-in or an outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served.

R. Add Cross-References to Local Food and Beverage Tax, Local Rental Car Tax, State Rental Vehicle Fee, and Southeastern Regional Transit Authority Fee for Additional Provisions Contained in Subch. III of Ch. 77, Stats. (2009 Act 330, amend secs. 77.982(2), 77.991(2), 77.9951(2), and 77.9972(2), effective May 27, 2010).

Additional cross-references to certain provisions contained in subch. III of ch. 77, Stats., relating to bundled transactions, sourcing transactions, and the ability of the Department of Revenue to provide by rule that the amount of tax collected from the consumer or user be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale, have been added to the local food and beverage tax contained in subch. VIII of ch. 77, Stats.

Additional cross-references to certain provisions contained in subch. III of ch. 77 Stats., relating to sourcing transactions and the ability of the Department of Revenue to provide by rule that the amount of tax collected from the consumer or user be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale, have been added to the local rental car tax contained in subch. IX of ch. 77, Stats., the state rental vehicle fee contained in subch. XI of ch. 77, Stats., and the southeastern regional transit authority fee contained in subch. XIII of ch. 77, Stats.

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. (2007-08), as amended by 1009 Wis. Act 2, 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.”

VI. LAWN CARE SERVICES

The sale of lawn care services is subject to Wisconsin sales tax. Taxable lawn care services include, but are not limited to, lawn mowing, lawn rolling, lawn watering, lawn aerating, fertilizing, and leave raking.

Section 77.52(2)(a)20, Wis. Stats. (2007-08), provides that, “[t]he sale of landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services” are subject to Wisconsin sales and use tax.

Other taxable landscaping services include removing and clearing sod, brush, trees, and other vegetation, planting, weeding, and grading the final planting material, such as topsoil, in preparation of planting seed or sod. Installing edging, laying plastic, and installing rocks, stones, boulders, bark, and wood chips, around plants, trees, and shrubs, to retard the growth of weeds and other plant material are also taxable landscaping services.

Publication 210, *Sales and Use Tax Treatment of Landscaping*, can be downloaded from the department’s web site at www.revenue.wi.gov/pubs/pb210.pdf.

VII. SALES AND USE TAX TREATMENT OF PROCUREMENT CARD PROGRAMS

Background: The Procurement Card (P-Card) program has become increasingly popular with many taxpayers, particularly in today’s economic realities of corporate downsizing and outsourcing. In general, the program assigns P-Card privileges for purchasing a wide range of goods and services to individual employees or to entire cost centers (departments), with fixed or variable dollar limits, based on a predetermined singular or cumulative transactional basis. In certain programs, P-Cards can only be used with certain vendors or limited to a narrowly defined purpose (e.g., travel and entertainment).

There appears to be little doubt that regardless of the business size, utilizing P-Card programs offer a streamlined purchasing solution which tends to reduce internal processing costs and increase efficiencies at the micro as well as the macro operational levels. When implemented correctly, a well functioning P-Card program affords management enhanced tools to better control and track spending across all segments of the organization.

How Does the Program Work: A taxpayer enters into a contract with a bank card company and authorizes certain employees to make purchases using the P-Card. In general, designated employees are subject to strict compliance with predefined procedures and cannot exceed purchases above a pre-established maximum dollar amount. The authorized employees deal directly with the vendors who ship the purchased items directly to the designated cardholder, thus bypassing the purchasing department and its network of pre-approvals and paperwork requirements. This also tends to shorten the time interval required for obtaining the goods and services from the suppliers. The bank card company issues a monthly statement to the company’s accounts payable department summarizing all P-Card purchases throughout the organization. Separate copies are also sent to each cardholder who is responsible for reviewing, reconciling and approving the purchases made under that particular P-Card. The statement is similar in format and content to typi-

cal credit card statements issued to private individuals, where each transaction is separately listed, showing date, amount charged, and merchant used. Many P-Card programs allow for customized account coding to better facilitate the monthly posting of the purchasing activities into the appropriate general ledger accounts of the overall organization. Suppliers receiving multiple orders from various company cardholders, are no longer required to issue separate invoices for each purchase, since all monthly purchases using the card are now summarized on the credit card statement.

Sales and Use Tax Treatment: In Wisconsin, sales and use taxes are imposed in accordance with Chapter 77, Subchapter III and Subchapter V of the Wisconsin Statutes. The purchasing method used to obtain goods and services in Wisconsin is entirely irrelevant to the taxable status of the items purchased. Consequently, P-Card purchases are subject to or exempt from Wisconsin sales and use taxes in the same manner as any other purchase would be, without any distinction.

Record Keeping: The requirements for records and record keeping are addressed in sec. Tax 11.92, Wis. Adm. Code as amended by CR 09-090. This rule can be found in **SECTIONS 270 through 279** of CR 90-090 at: www.legis.state.wi.us/cr_final/09-090.pdf. In general, taxpayers are required to keep **any** records which were used in the preparation of the sales and use tax returns. Any record keeping system (electronic or otherwise) should have the capability of producing visible and legible records which will allow for verification of the taxpayer's tax liability. Taxpayers should maintain the ability to trace any transaction back to the original source or forward to a final total. An audit trail must be designed so that the details underlying the summary financial data may be identified and made available to the department upon request. At a minimum, supporting documents for purchase transactions may include the following; (1) vendor issued invoice, receipt or statement detailing total amount purchased, date purchased, general ledger account being charged and associated sales tax charged (where applicable), (2) cancelled checks or other records indicating amount actually paid

for the purchase, (3) computations of self assessed use tax accruals (where applicable), (4) location where the goods and services are used or consumed and (5) appropriate information to support a claimed exemption (where applicable) for the given purchase (e.g., resale, printed advertising material, farming etc.). Purchases made under a P-Card program are not afforded any particular preferential advantage over any other purchasing method and are subject to the same record keeping and record retention requirements as outlined in sec. Tax 11.92 of the Wis. Adm. Code.

Auditing Procurement Card Programs: The Department routinely audits taxpayers who have implemented P-Card programs for a portion of their purchasing activities. A variety of auditing techniques are employed to examine a taxpayer's purchasing activities, including P-Card purchases. Every audit is specifically tailored to address the unique circumstances of a taxpayer's accounting system, record filing methods, record retrieval systems, volume of records being examined and a host of other pertinent factors. The department has extensively utilized sampling methodologies to develop effective audit strategies in examining taxpayer's purchasing activities, including but not limited to; (1) random statistical samples, (2) stratified systematic samples and (3) various block type samples. Although sampling strategies are widely used, there may be special circumstances where a specific review of purchases is warranted. As a rule, regardless of the auditing strategies ultimately selected, the purchasing universe being examined includes all Wisconsin purchase transactions, including P-Card purchases. In some circumstances, P-Card purchases may even be examined separately from other purchase transactions. This is especially true where certain taxpayers maintain separate accounting systems to track their purchase transactions by major categories (e.g., capital additions, P-Cards, purchase orders, manual, etc.). Taxpayers are encouraged to maintain supporting documentation for their P-Card transactions similar to those which are maintained for all other purchase transactions and in compliance with the requirements outlined in sec. Tax 11.92 of the Wis. Adm. Code.

VIII. HOW IS USE TAX COMPUTED ON ITEMS PREVIOUSLY PURCHASED USING AN EXEMPTION CERTIFICATE?

It is not uncommon for a purchaser to buy an item without tax (e.g., purchasing an item without tax for resale by presenting the vendor with a fully completed exemption certificate) and then later use that item in a taxable manner. Effective October 1, 2009, when a taxable use is made of such an item, use tax is owed based on the original purchase price of the item. (Section 77.57, Wis. Stats. (2007-08), as amended by 2009 Wis. Act 2)

Under prior law, if the first taxable use occurred more than six months after the purchase, the purchaser was allowed to measure use tax by (1) the fair market value of the item at the time that first taxable use occurred, or (2) the purchase price.

Example 1: Computer Store A buys and sells computers. A laptop computer was purchased without tax for resale on January 1, 2008 for \$550. On November 1, 2009, Computer Store A took the laptop out of inventory and gave it away as a promotional item (i.e., taxable use). The fair market value of the laptop at the time that the first taxable use occurred was \$300. Since the first taxable use occurred after October 1, 2009, Company A's use tax liability is based on its purchase price of \$550.

Example 2: Same as *Example 1*, except that Computer Store A took the laptop out of inventory and gave it away as a promotional item (i.e., taxable use) on September 1, 2009. The fair market value of the laptop at the time that the first taxable use occurred was \$300. Since the first taxable use occurred more than six months after Company A purchased the laptop *and* the first taxable use occurred before October 1, 2009, Company A may choose to measure its use tax liability by its purchase price of \$550 or by the laptop's fair market value of \$300.