

# SALES AND USE TAX REPORT

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## I. DEPARTMENT OF REVENUE REFORM BILL

On November 16, 2011, Governor Walker signed into law 2011 Wisconsin Act 68 referred to as the DOR Reform Bill. This law is effective on March 1, 2012.

"This new law advances the goal of good customer service for Wisconsin taxpayers," Revenue Secretary Richard Chandler said in a November 16, 2011 press release.

### Negligence Penalties

Under current law, the burden is on the taxpayer to disprove negligence if DOR assesses a negligence penalty. The new law requires DOR to show that the taxpayer's action or inaction is due to the taxpayer's willful neglect and not due to reasonable cause. DOR's burden of proof applies when a taxpayer files an incorrect or incomplete tax return or a late return.

### Rules and Published Guidance

The law also provides that, except in circumstances described below, DOR may not take a position against the taxpayer if that position is contrary to a rule in effect during the period related to the audit, assessment, or claim, or that is contrary to any guidance published by DOR prior to that period and not subsequently retracted, altered or amended by DOR.

Exception: DOR may retroactively apply a rule change to implement a legislative act or a final decision of the Tax Appeals Commission (TAC) or courts if the rule change is submitted to the governor for approval of the scope statement no later than 18 months after the latter of the legislative act publication date, effective date, or initial applicability date, or the date on which the TAC or court decision becomes final. The rule change can take effect no earlier than the act's effective date or the date on which the TAC or court decision became final, unless otherwise prescribed by the Legislature, TAC or courts. Any other retroactive rule change must be approved by the governor when the rule scope statement is approved.

### Taxpayer-Specific Written Guidance

DOR may not take a position that is contrary to any taxpayer-specific written guidance that was provided to a person who is a party to DOR's determination or the appeal of a determination regarding the same facts as in the determination and not subsequently retracted, altered or amended by DOR, the Legislature or by final decision of TAC or the courts.

### Retraction of Published or Written Guidance

If DOR retracts, alters or amends previously published or previously issued written guidance for any purpose other than to implement a legislative act or final decision of TAC or the courts, DOR shall apply the retraction, alteration or amendment prospectively unless the change is to the taxpayer's benefit.

If DOR retracts, alters, or amends previously published or previously issued written guidance to implement a legislative act or final decision of TAC or the courts, the change may take effect no earlier than the act's effective date or the date on which the decision became final unless otherwise prescribed by the Legislature, TAC or the courts.

### Class Action Lawsuits

Under current law, class action lawsuits may be commenced after exhausting administrative remedies. The new law prohibits class action lawsuits against the state or any other party if the relief sought includes the refund of any tax administered by the state.

### Reliance on Past Audits

Contrary to information published by several tax services, there are no provisions in Act 68 related to reliance on past audits. Act 68 does include non-statutory language that requires DOR to submit as part of its 2013-15 biennial budget a provision that addresses the ability of a taxpayer to rely on a past audit.

## II. NEW "BUY ONE, GET ONE FREE" TAX RELEASE

Effective September 1, 2011, if a retailer provides an item free of charge with the required purchase of another **taxable** product, the retailer may purchase the item provided free of charge without tax, for resale.

A tax release titled "['Buy One, Get One Free' and Similar Promotions](#)" has been posted to the department's web site to reflect the change in law. This tax release replaces a prior article by the same name.

## III. REMINDER - MANUFACTURING AND BIOTECHNOLOGY EXEMPTION BECOMES EFFECTIVE JANUARY 1, 2012

[Section 77.54\(57\)](#), Wis. Stats., was created by 2009 Wis. Act. 28. The effective date of the exemption is January 1, 2012.

The new exemption provides that purchases of the following are exempt:

- 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.

Additional information about the new exemption will be forthcoming. Please continue to check the department's [web site](#) for updates. Updates will also be sent to subscribers of the sales and use tax [electronic mailing list](#).

## IV. SALES TAX ARTICLES UPDATED

The following articles published in previous *Sales and Use Tax Reports* have been updated. The updated articles are provided below.

**A. Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles as defined in [sec. 340.01\(48r\)](#), Wis. Stats., Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft by Persons Who are Not Dealers**

This [updated article](#) replaces the article by the same name published in *Sales and Use Tax Report 5-09* (December 2009).

All retailers that are registered to collect and remit Wisconsin sales and use taxes must also collect and remit the applicable state, county, and/or stadium sales and use tax on their sales of the following items:

- Motor vehicles
- Boats
- Snowmobiles
- Recreational vehicles as defined in [sec. 340.01\(48r\)](#), Wis. Stats.
- Trailers
- Semitrailers
- All-terrain vehicles
- Aircraft

The requirement to collect and remit tax, even if the retailer is not a "dealer" or "registered dealer" of the item sold, became effective October 1, 2009.

**B. Sales-Use Tax Exemption: Property Consumed, Destroyed, or Losing Its Identity in Manufacturing**

This [updated article](#) replaces the article by the same name published in *Sales and Use Tax Report 4-10* (December 2010).

The exemption for property consumed or destroyed or losing its identity in manufacturing was changed, effective August 1, 2009, to require **exclusive and direct use by a manufacturer**. The article provides examples of some items that no longer qualify for this exemption.

**C. Reporting Sales Tax on Sales of Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft**

This [updated article](#) replaces the article by the same name published in *Sales and Use Tax Report 4-10* (December 2010).

**V. WHEN A BUSINESS CLOSES, WHEN IS ITS FINAL RETURN DUE?**

If you close your business or cancel your seller's permit because you no longer make sales or purchases subject to tax, you are required to file a final return within 30 days after closing the business or cancelling the permit, regardless of your filing frequency. The department will accept the final return as timely filed as long as it is filed by the end of the month following the month in which the sales and use tax account was closed (20th day of the month for early monthly filers).

**Example:** If the account is closed effective June 15, the final sales and use tax return should be filed within 30 days but no later than July 31.

## VI. MY TAX ACCOUNT UPGRADE

We have received a lot of positive feedback from you about the *My Tax Account* upgrade launched in June.

We have built on that by giving *My Tax Account* a more modern look and improved navigation.

New features include:

- The ability to print from the confirmation page
- Improved tabs and menu options
- Revised motor fuel tax refund claim for faster filing
- The ability to e-file other motor fuel tax forms to meet your filing requirement

Plus, we have redesigned our web site. Look for an improved *My Tax Account* login page and navigation that makes it easier for businesses and individuals to find all of our online features.

## VII. DEPARTMENT OF REVENUE WEB SITE REDESIGN

The Wisconsin Department of Revenue launched our [new web site](#) based on feedback from customer surveys, focus groups, and search statistics. The web site has a new look, improved layout, and easier navigation.

We have reorganized the content to make it easier for you to find what you need. The content is now organized by customer groups, so you can find everything you need about a topic quickly.

Additional updates include:

- A photo gallery Headlines player on the homepage
- Each customer page has recent messages or articles, important upcoming dates, and quick references to "How Do I..." topics
- Each customer page has online tools, forms, and other content that is used or searched for routinely
- Links to tax information, forms, common questions, resources and references
- New search options to make it easier to find commonly-used forms and answers to common questions
- A one-stop Contact Us page so you can easily find customer service numbers or search by topic

Please take a few minutes to explore the look and design of the [new web site](#). We will post a survey in the near future to get your feedback so that we can continually improve our web service.

## VIII. SALES OF BULLION COINS ARE TAXABLE

Sales of bullion coins are subject to Wisconsin sales and use tax. A bullion coin is a coin that is valued by its weight in a specific precious metal, such as gold, silver, and platinum. Unlike coins

valued by rarity, condition, and age, bullion coins are purchased by investors seeking a simple and tangible means to own and invest in the gold, silver, and platinum markets.

Bullion is not legal currency because it has not been minted or otherwise legitimately issued by a government. Gold and silver coins that are a form of currency are also taxable when they sold or traded above their face value as collector's items.

Retailers who are in the business of buying and selling bullion may purchase the bullion without tax for resale if the retailer's only use of the bullion is to hold it for sale in its regular course of business. *Persons who are not in the business of buying and selling bullion, but, instead, purchase bullion for investment purposes may not purchase bullion without tax for resale.*

A seller is relieved of its liability for the tax on the sale of bullion if the seller receives a fully completed exemption certificate ([Form S-211](#) or [Form S-211-SST](#)) from the purchaser claiming resale no later than 90 days after the date of the sale. A seller is not relieved of its liability if the seller solicits the purchaser to claim an unlawful exemption or if the seller fraudulently fails to collect and remit the applicable tax.

**Note:** A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor and is subject to a penalty of \$250 for each invoice or bill related to the prohibited use of the certificate.

## IX. EXEMPTIONS FROM THE LOCAL ROOM TAX

**Q** If the charge by a hotel for a lodging service is exempt from the Wisconsin state, county, and stadium sales and use taxes because it is sold to an exempt entity holding a Certificate of Exempt Status (CES), is that charge also exempt from the local room tax?

**A** Yes. Lodging services that are exempt from Wisconsin state, county, and stadium sales and use taxes because they are furnished to an exempt entity that holds a CES number or other exempt entity described in [sec. 77.54\(9a\)](#), Wis. Stats. (2009-10), such as Wisconsin state and federal governmental units, any federally recognized American Indian tribe or band in Wisconsin, etc., are also exempt from the local room taxes imposed under [sec. 66.0615\(1m\)\(a\)](#), Wis. Stats. (2009-10).

## X. ARE DISASTER RELIEF PAYMENTS TAXABLE?

When a natural disaster occurs, it can lead to financial losses for individuals. The Federal Emergency Management Agency (FEMA) and the American Red Cross (ARC) provide disaster victims funds to those in need. Information about how Wisconsin sales and use tax applies to purchases using such disaster relief payments is provided in the article titled "[Disaster Relief Payments.](#)"

## XI. CREDIT CARD PURCHASES - DON'T PAY TAX TWICE

Many businesses and individuals pay for purchases using credit cards. Typically, these purchases are made from out-of-state vendors. The order may be placed on the Internet, via FAX, or by telephone, and the purchaser may not always print or keep a copy of the receipt.

It is presumed that all purchases of tangible personal property, or items, property, or goods specified under [sec. 77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2009-10), or taxable services are subject to use tax, unless the contrary is established. Without a copy of the receipt with the tax separately stated,

the purchaser is liable for the tax. [Section 77.53\(2\)](#), Wis. Stats. (2009-10), states, in part, the following:

“...The person's **liability is not extinguished until the tax has been paid** to this state, but a **receipt with the tax separately stated** from a retailer engaged in business in this state ... given to the purchaser ... **relieves the purchaser from further liability** for the tax to which the receipt refers.” (Emphasis added.)

When auditing a business, the Department of Revenue will make adjustments where no documentation exists to show that sales or use tax has been paid on a taxable transaction. Businesses and individuals should make sure that they have copies of receipts showing that tax has been paid to ensure that they don't pay the tax twice!

## **XII. BUSINESSES - HOW TO TRACK YOUR USE TAX LIABILITY**

Use tax is the counterpart of sales tax. It must be paid on all taxable items purchased from retailers who do not collect Wisconsin sales tax and on all taxable items brought into Wisconsin.\* It applies to purchases made in foreign countries as well as other states. Use tax only applies when Wisconsin sales tax is not charged.

For example, Company A purchases a computer for its business from Retailer B, who is located in another state. Retailer B ships the computer to Company A's Wisconsin location and does not charge Company A sales tax. Company A owes Wisconsin use tax on its purchase of the computer.

**There are convenient ways to keep track of taxable purchases during the year.** Two of these methods are described, below:

1. **Use Tax Calculator** – The Wisconsin Department of Revenue has developed a free [Use Tax Calculator](#) (in an Excel spreadsheet) to help individuals and businesses track and calculate use tax owed to Wisconsin. The spreadsheet can be used by persons who have some type of spreadsheet software on their computers (Excel, Lotus, QuatroPro, etc.). If you don't have the Microsoft Excel software, you can download a [free viewer](#).

Calculate the use tax by multiplying the total cost of the taxable goods or services purchased, including separately stated charges such as shipping and handling, by the tax rate.

2. **Use Tax Accrual Account** – Some businesses will set up an account in their books of ledger to accrue their use tax liability. For purchases that are subject to use tax, the business will debit the expense account for the amount of the purchase plus the amount of use tax due on the item. The amount of the use tax will be entered as a credit in the use tax accrual account. The balance in the use tax accrual account is remitted when the business files its sales and/or use tax return.

A business should note on the invoice that use tax was remitted when filing its return. A business may also want to keep a copy of such invoices separately to support the use tax remitted.

### **Businesses have two options for paying Wisconsin use tax.**

1. A business can pay use tax on its Wisconsin sales and use tax return, or

2. A business can report and pay use tax quarterly on a [Wisconsin Form UT-5](#), *Consumer Use Tax Return*.

The Department of Revenue audits businesses and enters into agreements with other states to ensure that use tax owed on out-of-state purchases is remitted to the Department. Businesses that don't pay the use tax owed may be subject to interest and penalties in addition to the use tax.

\*Wisconsin allows a credit against the use tax due for the combined state and local sales taxes properly paid to another state. For additional information about this credit, see the tax release titled "[Credit for Sales and Use Taxes Paid to Other States and Their Local Units of Government](#)" published in *Wisconsin Tax Bulletin* #157 (July 2008).