



# SALES AND USE TAX REPORT

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### **I. HURRICANE SANDY VICTIMS QUALIFY FOR DISASTER RELIEF**

Following Hurricane Sandy's landfall, certain counties in Connecticut, New Jersey, New York, and Rhode Island have been declared federal disaster areas. As a result, affected taxpayers in the areas qualify for an extension to February 1, 2013, of certain tax filing deadlines. The start dates for the relief are October 26 in New Jersey and Rhode Island and October 27 in Connecticut and New York.

"Affected taxpayers" include taxpayers whose principal residence or principal place of business is located in a covered disaster area, taxpayers whose books or tax records or whose tax professionals' offices are located in a covered disaster area, and relief workers affiliated with a recognized government or philanthropic organization assisting with the relief activities in a covered disaster area.

For sales and use tax and withholding reporting periods with a due date that falls on or after the applicable start date indicated above and before February 1, 2013, an affected taxpayer may request a 30-day extension of time to file by contacting:

Wisconsin Department of Revenue  
Registration Unit  
PO Box 8949  
Madison, WI 53708-8949

Taxpayers with questions about their particular tax situations may contact the department at (608) 266-2776 or by [email](mailto:). 

## II. MOTOR VEHICLE TRADE-INS AND TURN-INS

It is common for a person who is purchasing or leasing a new motor vehicle to trade in his or her old vehicle to a motor vehicle dealer. Wisconsin law allows a deduction from the sales price of the motor vehicle for the trade-in allowed for another motor vehicle *in the same transaction*. A tax release titled "[Motor Vehicle Lease Dealers - "Trade-Ins" and "Turn-Ins"](#)" is posted on the department's website and explains the sales and use tax treatment of "trading in" one vehicle for another. Examples are provided. [↗](#)

## III. DON'T GET STUCK WITH "SUCCESSOR'S LIABILITY"

A purchaser of a business may become responsible for any unpaid sales and use tax of the seller – referred to as "successor's liability." To avoid successor's liability, the purchaser may hold a sufficient amount of the purchase price in escrow until the Department of Revenue issues a "clearance certificate." A clearance certificate ensures the seller has filed all sales and use tax returns and paid all sales and use taxes due.

DOR's website has [common questions and answers](#) for successor's liability and clearance certificates. Additional information is also available by calling (608) 266-2604. [↗](#)

## IV. SOUVENIR MILKCAPS (PULL-TABS)

Souvenir milkcaps generally are paper rectangles that have a circular disc imprint on one side, with a number of pull-tabs on the other side showing specific dollar value prizes.

Vendors sell the souvenir milkcaps to various businesses, including taverns. The business sells the souvenir milkcaps through vending machines. If a purchaser wins a specific dollar value prize, the business (e.g., tavern) pays the winner.

### Sales from the vendor to the business

The souvenir milkcap vendor's sales of milkcaps are subject to Wisconsin sales or use tax as a sale of tangible personal property (a printed device) it uses in furnishing an intangible right or nontaxable service (like a lottery or raffle). The business may not purchase the milkcaps for resale, because it uses the milkcaps in furnishing the intangible right or nontaxable service. The sale to the business is a retail sale and subject to Wisconsin sales and use tax, as provided in [sec. 77.52\(1\)\(a\)](#), Wis. Stats. (2009-10).

**Example 1:** Vendor sells five hundred souvenir milkcaps to Tavern for \$100.00. Tavern sells the five hundred souvenir milkcaps to its customers for a chance to win a cash prize. The sales price (e.g., \$100.00) of the souvenir milkcaps from Vendor to Tavern is subject to Wisconsin sales or use tax. Tavern is purchasing tangible personal property that it does not resell, but instead uses in furnishing an intangible right to its customers.

**Example 2:** Vendor E sells one thousand souvenir milkcaps to Vendor F for \$200.00. Vendor F then sells the souvenir milkcaps to Tavern for \$275.00. Tavern places the souvenir milkcaps in a machine that dispenses them to persons trying to win a cash prize. The \$200 sale from Vendor E to Vendor F is not subject to Wisconsin sales or use tax if Vendor F provides Vendor E with a fully completed exemption certificate, claiming resale. The \$275 sale

from Vendor F to Tavern is subject to Wisconsin sales or use tax since Tavern does not resell the souvenir milkcaps, but instead uses them to furnish an intangible right to its customers.

#### Sales from the business to the customer

The sale of souvenir milkcaps from the business to the customer (i.e., the end-user), is not subject to Wisconsin sales or use tax. The business is selling an intangible right, not tangible personal property (i.e., the chance to win a cash prize).

*Example:* Customer purchases twenty \$1.00 souvenir milkcaps from Tavern. Customer opens the pull tabs on the reverse side of the souvenir caps to reveal the specific dollar value prizes. Tavern's \$20.00 sales price to Customer is not subject to Wisconsin sales tax since Customer is paying for a chance to win cash prizes (i.e., intangible right) and not the actual souvenir milkcaps (i.e., tangible personal property). [↗](#)

## V. EXEMPTIONS FOR FUEL AND ELECTRICITY USED IN MANUFACTURING AND QUALIFIED RESEARCH

Fuel and electricity consumed in any of the following business activities is exempt from Wisconsin sales and use taxes:

- Manufacturing tangible personal property, or items or property under [sec. 77.52\(1\)\(b\)](#) or [\(c\)](#), Wis. Stats.
- Using exclusively and directly in qualified research by a person primarily engaged in manufacturing or biotechnology in Wisconsin.
- Using exclusively and directly in raising animals when more than 50% of all of the animals raised by the purchaser are sold to biotechnology businesses, public or private institutions of higher education, and governmental agencies for exclusive and direct use by any such entity in qualified research or manufacturing.

To claim exemption, the purchaser must determine the percent of fuel and/or electricity purchased that is consumed in the exempt manner and provide an exemption certificate ([Form S-211](#) or [Form S-211-SST](#)) to the supplier of the fuel and/or electricity. [Form S-211](#) allows manufacturers and biotechnology businesses to claim exemption from Wisconsin sales and use tax on the percentage of fuel and electricity that is exempt.

When determining the percent of fuel and/or electricity that qualifies for exemption, keep in mind the following:

- Fuel and electricity **consumed in manufacturing** means only fuel and electricity used to operate machines and equipment used directly in the step-by-step manufacturing process. Fuel and electricity are not “consumed in manufacturing” if they are used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities. However, fuel and electricity used directly in manufacturing steam which is used by the manufacturer in further manufacturing or in heating a facility, or both, is consumed in manufacturing.

- Fuel and electricity **consumed while being used exclusively and directly in qualified research** means only fuel and electricity used to operate machines and equipment used directly in the qualified research. Fuel and electricity are not “consumed while being used exclusively and directly in qualified research” if they are used in providing building heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development that is not qualified research, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities.
- Fuel and electricity **used exclusively and directly in raising animals** means only fuel and electricity used to operate machines and equipment used directly in the raising of the animals. Fuel and electricity are not “consumed in manufacturing” if they are used in providing building heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, advertising or administrative department activities.
- Purchasers (other than purchasers holding a direct pay permit) are not allowed to claim 100% exemption for fuel or electricity when they know at the time of purchase that the exempt use will be less than 100%. The percent exempt should represent the buyer’s best estimate of the exempt use and should be calculated and claimed on a meter-by-meter basis for each meter that is measuring electricity and/or natural gas consumption.

If a purchaser does not pay tax on fuel and/or electricity and uses it in a taxable manner, the purchaser owes use tax on that fuel and/or electricity. If a purchaser pays sales or use tax on fuel and/or electricity that is used in an exempt manner, the purchaser may claim a refund of those sales or use taxes. The purchaser may request the seller to refund the sales or use tax paid in error or, under certain circumstances, the purchaser may file a claim for refund of these taxes paid in error directly with the Department of Revenue. See Wisconsin [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for additional information.

See the Common Questions for "[Exemption for Fuel and Electricity Consumed in Manufacturing](#)" and "[Exemption for Fuel and Electricity Consumed in Qualified Research](#)" on the Department of Revenue’s website for more information. [↗](#)