



SALES AND USE TAX REPORT

July 2015
Special Edition

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 the Governor's Budget Bill ([2015 Wisconsin Act 55](#)).

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 DORSalesandUse@revenue.wi.gov or you may call (608) 266-2776.

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A. Definition of "Retailer" Amended (2015 Wis. Act 55 amend sec. 77.51(13)(intro.) and create sec. 77.51(13b)(a) through (c), effective July 14, 2015.)

The definition of "retailer" was amended to allow a person to operate a distribution facility and make sales of tangible personal property and items under sec. 77.52(1)(b), Wis. Stats., on behalf of third-party sellers, without becoming liable for the tax on such sales, if all of the following conditions apply:

1. The person or any of the person's affiliates operates a distribution facility.
2. The person or any of the person's affiliates sells the tangible personal property or items under sec. 77.52(1)(b), Wis. Stats., on behalf of a 3rd-party seller.
3. The 3rd-party seller owns the tangible personal property or items under sec. 77.52(1)(b), Wis. Stats., and is disclosed to the customer as the seller.
4. Neither the person nor any affiliate of the person makes any sales for which the customer takes possession of the tangible personal property or items under sec. 77.52(1)(b), Wis. Stats., at a location operated by the person or any of the person's affiliates.

Prior to July 14, 2015, a person may have been liable for the payment of sales tax if the person was acting for a known or disclosed principal, had possession of tangible personal property owned by the principal, and made sales of such property. The person's liability may have been incurred if the principal was engaged in the full or part-time business of selling tangible personal property and the principal failed to pay the tax.

The new provision in the law does not apply to the following:

- Sales at auction;
- Sales of tangible personal property or items under sec. 77.52(1)(b), Wis. Stats., owned or previously owned by the person operating the distribution facility or by any of the person's affiliates; or
- Sales of any of the following that are registered or titled, or required to be registered or titled, in Wisconsin or the United States:
 - Motor vehicles
 - Aircraft
 - Snowmobiles
 - Recreational vehicles, as defined in sec. 340.01(48r), Wis. Stats.
 - Trailers
 - Semitrailers
 - All-terrain vehicles
 - Utility terrain vehicles
 - Boats [☞](#)

B. Effective Date Postponed for Private Label Credit Card Company Bad Debt Deductions (2015 Wis. Act 55 amends sec. 6(1) of 2013 Wis. Act 229 so that it takes effect on July 1, 2017, and first applies to bad debts resulting from sales completed on July 1, 2017.)

2013 Wis. Act 229 included provisions to allow a seller to claim a deduction on its sales and use tax return for the amount of any bad debt that the lender writes off as uncollectible in the lender's books and records. In order to claim the deduction for the lender's bad debt, the bad debt must be eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the lender is required to file a federal income tax return. A seller would also be allowed to compute the bad debt deduction using an estimate, if the Department of Revenue approves the method for computing the estimate.

The following changes were made in 2015 Wis. Act 55:

- The effective date of the bad debt provisions in Wis. Act 229 has been postponed to July 1, 2017.
- The bad debt provisions only apply to bad debts resulting from sales completed on July 1, 2017 and thereafter.

For sales completed prior to July 1, 2017, a seller is not allowed to claim a bad debt deduction for amounts that **the lender** writes off as uncollectible in its books and records.

IMPORTANT: Sellers who claimed a bad debt incurred by a lender resulting from sales completed prior to July 1, 2017 must amend their return(s) to pay the tax on such bad debts.

Note: The law did not change with respect to a seller claiming a bad debt deduction for amounts that **the seller** writes off as uncollectible in its books and records, except that for sales completed on July 1, 2017 and thereafter, a seller may, under certain conditions, compute a bad debt deduction using an estimate.

See the article in Part III.F. of [Sales and Use Tax Report 2-14](#) (June 2014) for additional information, including definitions. [↗](#)

- C. Clarification – Refund Setoffs of Overpayments** (2015 Wis. Act 55, amend secs. 71.75(9), 71.80(3) and (3m), and 77.59(5), and create secs. 71.93(3)(c) and 71.935(6). First applies to taxable years beginning on January 1, 2015.) **Note:** This *Sales and Use Tax Report* was revised on July 20, 2015 to correctly reflect the January 1, 2015 effective date of this provision.

The law was amended to clarify that overpayments are not characterized as refunds until after set-offs are made for delinquent debts to the Department of Revenue, other Wisconsin state agencies, and local governmental units in Wisconsin. [↗](#)

- D. Exemption for Farm-Raised Deer** (2015 Wis. Act 55, create sec. 77.54(62) effective January 1, 2016.)

Beginning on January 1, 2016, sales of farm-raised deer, as defined in sec. 95.001(1)(ag), Wis. Stats., sold to a person operating a hunting preserve or game farm in Wisconsin are exempt from Wisconsin sales and use taxes.

"Farm-raised deer" means a cervid that is kept in captivity or a cervid that is present in the wild and that has an ear tag or other mark identifying it as being raised on a farm.

Prior to January 1, 2016, sales of farm-raised deer to a hunting or shooting preserve are taxable unless purchased for resale or used exclusively in the business of farming.

Note: Farm-raised deer that are transferred to a hunter as part of the sale of an admission to hunt are not purchased for resale or used exclusively in the business of farming. [↗](#)

- E. Nexus-Creating Activities** (2015 Wis. Act 55, amend sec. 77.51(13g)(a) and (b) and create sec. 77.51(13g)(e), (f), and (g), effective July 14, 2015.)

Effective July 14, 2015, the following changes have been made to sec. 77.51(13g), Wis. Stats., to clarify when a retailer has nexus with Wisconsin for purposes of use tax collection responsibilities:

- Section 77.51(13g)(a), Wis. Stats., is amended to provide that nexus is created for a retailer:
 - By maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, an agent, or some other person, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state.

- Section 77.51(13g)(b), Wis. Stats., is amended to provide that nexus-creating activities include having any representative in Wisconsin to:
 - Perform services
 - Performing any of the other activities described in sec. 77.51(13g), Wis. Stats.
- The following provisions have been added to sec. 77.51(13g), Wis. Stats., as nexus-creating activities:
 - Servicing, repairing, or installing equipment or other tangible personal property, or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats.
 - Delivering tangible personal property or items under sec. 77.52(1)(b) into Wisconsin in a vehicle operated by the person that sells the property or items that are delivered.
 - Performing construction activities in Wisconsin. [↗](#)

F. City of Rhinelander May Impose Premier Resort Area Tax (2015 Act 55, amend 66.1113(2)(a) and create sec. 66.1113(2)(j), effective July 14, 2015 and amend sec. 66.1113(2)(b), effective January 1, 2016.)

The City of Rhinelander may enact an ordinance or adopt a resolution declaring itself to be a premier resort area, even if less than 40% of the equalized assessed value of the taxable property within Rhinelander is used by tourism-related retailers. The city may not impose the tax, however, unless the common council adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the city voting on the resolution at a referendum, to be held at the first spring primary or election or partisan primary or general election following by at least 70 days the date of adoption of the resolution.

The city may use the proceeds from the tax only to pay for transportation-related infrastructure expenses within the jurisdiction. The city must expend at least the same amount of other funds on transportation-related infrastructure each year that it spent during the calendar year prior to the year in which the premier resort area tax is first imposed. [↗](#)