



# TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

DECEMBER 1969

## NEW LEGISLATION

The legislature recently adopted a number of important changes to the original sales tax law. These changes, which are set forth below, were all made to apply retroactively to September 1, 1969.

### MANUFACTURERS' MACHINERY EXEMPTION

The exemption for manufacturing machines and processing equipment has been changed to read, "machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property". This change allows manufacturers' machines and processing equipment not exclusively designed and made for their use, but exclusively and directly used by manufacturers in manufacturing, to be purchased without tax. The Manufacturer's Exemption Certificate (Form S-207m, N. 5-69) currently in use may be used by persons qualifying for the exemption, although the form indicates the machinery must be "exclusively designed" for a manufacturer. A redesigned exemption form will soon be available.

### FUEL EXEMPTION

Diesel fuel, L.P. gas and other fuel used in tractors and other farm machines when used directly in farming is exempt, provided the purchaser or user is engaged in farming as a business enterprise. An exemption was also added for fuel sold to persons using aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce.

### STORAGE AND USE DEFINITION

The definition of "storage" and "use" has now been amended to conform to the definition contained in the prior selective sales tax law. As amended the law now provides that "storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state.

### EXEMPT CONSTRUCTION CONTRACTS

The transitional provision affording relief to contractors who entered into written contracts or bids before September 1, 1969 to perform real property construction activities has been broadened so that the exemption provision [S. 77.54 (18)] now reads as follows:

"The sale of material purchased by persons engaged in the business of constructing, altering, repairing or improving real estate for others when the material

so purchased by such persons is affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a written contract, or formal written bid which contract was entered into or which bid was made before September 1, 1969, shall be exempt from taxation under this subchapter, but only with respect to material which did not constitute taxable tangible personal property for purposes of the Wisconsin selective sales and use tax law."

Contractors with "fixed price" contracts or bids which were not subject to change, were the only persons that could qualify for the exemption prior to this amendment.

### WHEN AND WHERE A SALE TAKES PLACE

Section 77.51(4r) of the law has been amended so as to locate a sale involving transfer of the ownership of property both as to time and place as follows:

"(4r) A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent, except that for purposes of this subsection a common carrier or the U.S. Postal Service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid."

The effect of the law, as changed, on the determination of when a Wisconsin or out-of-state sale takes place is illustrated by the following examples:

1. When a Wisconsin seller transfers possession to the purchaser at the seller's Wisconsin plant or other Wisconsin place of business, and the buyer removes the property in his own truck or other conveyance, possession transfers to the buyer in Wisconsin and there has been a Wisconsin sale. It is immaterial that the purchaser may, subsequent to the sale, transport the property out of the state. This sale is subject to the tax.
2. When a Wisconsin seller carries the property in his own conveyance from his place of business in Wisconsin to Chicago, and there delivers the property to his Illinois customer, possession has transferred in Illinois and the sale is not a Wisconsin sale. In this situation the result would be the same if the seller moved the goods in a conveyance operated by his employee, or by an independent contractor engaged by him for such hauling.

3. When property is transferred between the seller and the buyer by a common carrier or by the United States Postal Service, such property shall be deemed to come into the possession of the buyer when turned over to the buyer or his agent by such carrier or postal service at destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is to be paid. Accordingly, sales made by a Wisconsin seller to a nonresident buyer which are shipped by common carrier f.o.b. the seller's Wisconsin plant and delivered by such common carrier to the purchaser in Illinois, are not Wisconsin sales.

### TRANSPORTATION CHARGES

For the purpose of computing the tax, no deduction is allowable on account of freight, express, mail, cartage or other transportation or delivery charges incurred on tangible personal property prior to completion of transfer of possession of such property from the seller to the purchaser. It is immaterial whether such transportation charges are separately itemized on the invoice.

- A. If a Wisconsin seller charges for delivery of the goods to a purchaser who accepts delivery in Wisconsin, these charges are not deductible from the seller's gross receipts in computing the tax. If the seller uses a common carrier or the United States Postal Service and charges this amount to the purchaser the same result would be obtained.
- B. If a retailer located outside this state charges for delivery of the goods to a purchaser who accepts delivery in Wisconsin where delivery is made by the retailer's vehicle, contract or common carrier or the U.S. Postal Service, the transportation charges are not deductible from the retailer's gross receipts in computing the tax. If the retailer is not registered with this department for collection of the Wisconsin tax, the Wisconsin purchaser is subject to the tax on the sales price of the goods, which includes the transportation charges.
- C. If the Wisconsin seller ships personal property (by using his vehicle, common or contract carrier or the U.S. Postal Service) to a point outside this state, the delivery charges and receipts from the sale of the property are not subject to the sales tax.

### ANNUAL INFORMATION RETURN (Monthly and Quarterly Filers)

The new sales tax law requires an annual information return from each retailer.

Because the new sales tax law has only been in effect since September 1, the department has decided not to require annual information returns this year. In 1970, the first fiscal returns due are for fiscal years ending on or after September 30, 1970. Calendar 1970 returns are due in 1971 when the income tax returns are filed. By this time the retailer will become familiar with the new sales tax and have kept the proper records.

### INSTRUCTION BULLETIN (Form SUB-1)

A new 4% Wisconsin General Sales Tax Instruction Bulletin was recently mailed to all sales and use tax registrants. The new bulletin (Form SUB-1) provides a list of taxable services and exempt transactions, and other information of a general nature relating to the new law. The material in the Instruction Bulletin reflects the law as it existed on September 1, 1969. Since that date the law has been changed principally by adding to or expanding the number of exemptions. These recent (November 1969) changes are described in the first part of this Tax Report.

### ANNUAL FILERS' NEW RETURNS REQUIRE DETAIL OF EXEMPT SALES

Persons filing one return per year, because of their minimal tax liability, must also provide detailed information on their return covering the first filing year which includes 12 months under the new law. Persons filing 1969 calendar year returns will not be required to furnish this information. Information relating to the following exempt sales are now required on the back of the sales tax return: Sales for resale, sales of groceries and cigarettes, sales of highway fuel, manufacturers' and farmers' exemptions, sales to churches, schools and governments, sales in interstate commerce, and other deductions.

### TAX INFORMATION AVAILABLE

In 1968 the Department of Revenue began to print its policy decisions on sales, income and withholding tax matters and make them available to the public on a subscription basis. They are called Technical Information Memoranda. Over twenty of these sales tax memoranda have been issued in 1969. Some of these memoranda dealing with sales tax have been digested and reproduced in these reports. You may receive individual copies of reports that you are interested in by writing to Wisconsin Department of Revenue, Room 1030 State Office Building, 1 West Wilson Street, Madison, Wisconsin 53702.

If you are interested in subscribing to a service so that you automatically receive reports, you may do so at an annual cost of \$2. The subscription price for 1968 and 1969 is \$4. Binders may be purchased at an additional cost of \$2 each.

If you wish to obtain this service (or binders), send your request with the appropriate money to the Department of Administration, Document Sales Section, Room B237, State Office Building, One West Wilson Street, Madison, Wisconsin 53702.