



TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

DECEMBER 1970

PURCHASES MADE BY FARMERS

Sales of certain items to persons engaged in farming, agriculture, horticulture or floriculture as a business enterprise are exempt from the sales tax, provided the farmer furnishes his supplier a signed Farmer's Exemption Certificate.

Farming is the business of producing food products or other useful growths or crops by tilling and cultivating the soil, and by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. Farming does not go beyond those operations normally incidental to the harvesting and storage of unprocessed food products on the farm premises.

The following activities are not "farming": home gardening and similar non-commercial activities; the breeding and raising of dogs, cats or other pets; the raising of horses, game animals, birds, fish or other animals intended for use in laboratories or in sporting or recreational activities; hatching and raising chicks for several weeks and then selling the chicks to farmers; or performing a specialized service for farmers on a contract basis.

A recent decision of the Wisconsin Tax Appeals Commission ruled that a specialist engaged in the business of crop spraying, crop dusting, fertilizing and seeding of agricultural land, and performing related services on a contract basis for farmers, is not entitled to the exemption provided for "farmers"

REPAIRMENS' MILEAGE CHARGES

Retailers engaged in the business of repairing household appliances, television sets, business equipment, etc., commonly charge their customers a mileage charge in addition to the charge for repair labor and parts. The mileage charge of the repairman is one of his costs of doing business, which cannot be deducted in computing taxable receipts. The total gross receipts the repairman receives from his customer are taxable, even though he separately itemizes a mileage charge on the customer's bill.

SALES TO COMMON OR CONTRACT CARRIERS

The gross receipts from the sales of "Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers . . ." are exempt from the 4% sales and use tax.

Sales of self-propelled vehicles for off-highway use, such as road machinery and fork lift or other industrial trucks, do not qualify for this common or contract carrier exemption.

A recent Circuit Court decision ruled that trucks used by a company to haul material for others, and also to deliver their own materials to their customers are not tax exempt. The court held the vehicles must be used exclusively in "for hire" hauling for others to qualify for the exemption.

The Wisconsin Tax Appeals Commission in another case ruled that a refuse disposal service used its trucks principally for private business purposes and not as an exempt contract carrier. This corporation hauled most of its industrial and commercial waste (which does not constitute "property" within the definition of "contract motor carrier" in the Wisconsin Statutes) to locations of its own choosing, and only a small percentage of the waste was hauled to places designated by its customers.

SCHOOL BUSES

The sales of school busses (and accessories, attachments, parts, supplies and materials therefor or repair services thereon) to a school bus operator under contract with a public or private school are exempt from the sales tax, if the vehicle is used exclusively in the transportation of students to or from school, or to transport students to extra-curricular school activities designated by the school.

A bus must have a passenger-carrying capacity of 10 or more persons including the operator. Passenger-carrying capacity is determined by dividing the total seating space measured in inches by 20.

PAPER CUPS AND CONTAINERS

Paper cups, paper and plastic coated plates, butter chips, hamburger and frankfurter baskets, and other such items are subject to the 4% tax when purchased by restaurants, drug stores, cafeterias, vending machine operators, etc., and used to serve food, food products, and beverages for on-premise consumption. As defined in the law, "premises" includes the lobby, aisles and auditorium of a theater or the seating, aisles and parking area of an arena, rink or stadium or the parking area of a drive-in restaurant or outdoor theater. The premises of a caterer with respect to catered meals or beverages is the place where served. Vending machine premises include the room or area in which located.

The law does provide an exemption for paper cups, paper buckets, and other containers used by restaurants, vending machine operators, or other similar retailers of food or beverages to transfer merchandise to the customer for home (off-premise) consumption. However, this kind of retailer should not issue an exemption certificate for all purchases of paper cups or other containers, if only a small percentage will be used to transfer merchandise to customers for off-premise consumption. He should pay tax on all purchases of paper cups or other paper containers at the time of purchase (except as noted below). Then, when the restaurant operator or similar retailer files his sales tax return, he may deduct the cost of the containers which qualify for the exemption. Records should be maintained to substantiate the deduction.

A retailer may properly issue an exemption certificate for a type of container which is exclusively used in an exempt manner (i.e., never used for on-premise consumption items).

RECEIPTS OF RECREATIONAL DEVICES

The gross receipts from recreational devices such as juke boxes, pinball machines, arcades, mechanical rides and mechanical games became subject to the 4% sales tax effective September 1, 1969.

The person who removes the receipts from the machine is responsible for paying the 4% tax to this department, based on the total amount removed, regardless of the percentage of the receipts that are turned over to the operator of the premises.

"DEDUCTIONS" MUST BE ITEMIZED

Retailers are again reminded that the deduction information shown on the back of the sales and use tax return must be provided. When this essential information is not submitted, the deductions claimed to arrive at taxable sales are disallowed resulting in an increased sales tax liability.