



TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

MARCH 1971

CONTAINERS USED BY MOVERS

Moving companies are the consumers of containers and other packing materials used by them. The tax applies on sales of such items to movers, whether the containers are used in intrastate or interstate moving activities.

MANUFACTURING MACHINERY

The department has just completed a study of "slaughtering" and "dressing" machinery and processing equipment used in the meat packing industry. You may obtain a copy of the department's statement outlining the scope of manufacturing in this industry by writing to the Compliance Section of this department, P.O. Box 39, Madison, Wisconsin 53701. This statement further clarifies the writeup on the meat packing industry referred to in the June 1970 Tax Report.

COMMERCIAL PHOTOGRAPHERS AND PHOTOGRAPHIC MATERIAL

A photographer may purchase items without tax which become a component part of an article of tangible personal property destined for sale. This includes such items as mounts, frames, and sensitized paper used in the finished photograph and physically transferred to the customer. The exemption would also apply to film (i.e., colored transparencies, movie film) in which the negative and the positive are one and the same, and are permanently transferred to the customer as part of the taxable photographic service. Purchases of containers, labels or other packaging and shipping material used to transfer merchandise to customers may also be made without tax.

Photographers do not qualify as "manufacturers" under the law. Consequently, no exemption applies for tangible personal property which is used, consumed or destroyed in the rendition of photographic services. A photographer is required to pay the tax to his supplier when purchasing such items as chemicals, trays, film (other than noted above), proof paper, plates and cameras.

Model fees, mileage charges, or similar charges made by photographers are part of the expense of producing photographs or performing a taxable photographic service. These charges cannot be deducted from the gross receipts of a photographer in computing his sales tax liability, whether or not these are separately itemized on the billing to the customer.

A newspaper publisher is regarded as a "manufacturer" under the sales tax law and qualifies for an exemption when purchasing machines and specific processing

equipment directly and exclusively used in producing the newspaper. However, the exemption does not apply to the publisher's purchases of photographic equipment or supplies such as cameras, film, chemicals, trays, etc. These articles are not directly used in manufacturing.

EXEMPTION CERTIFICATES NEEDED

The sales and use tax law, as related to exemptions, provides that all gross receipts are subject to the 4% tax until the contrary is established. The burden of proving that a sale is exempt is upon the person who makes the sale, unless he takes an exemption certificate in an approved form in **good faith** from the purchaser. Our field staff is finding that some sellers are making sales without tax, even though they have not acquired exemption certificates from the purchaser as stated in the law. When we encounter this situation, we must increase the seller's taxable sales by the amount of the unsubstantiated deductions.

If a seller does accept an approved resale or other exemption certificate in good faith, he is no longer liable for the tax. The good faith of the seller will be questioned, if he accepts a resale certificate where he has knowledge which gives rise to the reasonable inference that the purchaser does not intend to resell the property or use it for an exempt purpose. For example, knowledge that a purchaser of merchandise is not engaged in the business of selling the type of merchandise purchased would indicate that the resale certificate was not accepted in good faith. The same reasoning would apply if a seller accepts an exemption certificate when the type of exemption claimed is not provided for under the law, or when the seller is aware that the merchandise is not going to be used for an exempt purpose. Where the seller is in doubt and is not prepared to prove that a transaction is exempt, he should collect the tax and remit the same to the Wisconsin Department of Revenue.

SPECIAL NOTE - INFORMATION REPEATED

The articles which follow were also included in the December 1970 Tax Report. Every retailer did not receive the December issue because of bulk mailing weight restrictions. For that reason, we have taken the liberty of repeating the articles which follow.

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".

REPAIRMENTS' 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.