



TAX REPORT



WISCONSIN DEPARTMENT of REVENUE

JUNE 1971

TAXABLE TRANSPORTATION CHARGES

When a retailer charges the purchaser for the delivery of goods (sales of which are subject to the tax), the transportation charges are also subject to the 4% sales or use tax. The total gross receipts of the seller are taxable, including the amount received from the customer for transportation. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States Postal Service.

A Wisconsin consumer who purchases goods without tax, which goods are used in Wisconsin in a taxable manner, is subject to the 4% tax based on the "sales price" of the goods to him. The "sales price" includes transportation charges paid by the Wisconsin consumer to his supplier for shipment of the goods to him.

The December 1969 and June 1970 tax reports also contained articles advising retailers that transportation charges are taxable under the sales and use tax law.

INDUSTRIAL GASES USED BY MANUFACTURERS

Industrial gases purchased by a manufacturer for use as a fuel are subject to the 4% tax. This includes a manufacturer's purchase of oxygen, acetylene, or other gases for use as a fuel in welding torches. All purchases of gases by a repair shop are taxable. For more information on this subject, write to this department, P.O. Box 39, Madison, Wisconsin 53701, and request a copy of TIM S-35 entitled "Industrial Gases, Welding Rods and Fluxing Materials".

SALES TAX LIABILITY OF SUCCESSORS

Are you planning to acquire an existing business?

A successor can be liable for the sales tax liability of a prior owner, unless a certificate is obtained from the department stating that no taxes are due from the predecessor.

A request for the certificate of release must be in writing. A phone call will not meet requirements of the law.

You should withhold from the purchase price an amount sufficient to cover the tax liability of the seller until you have received the certificate of release from the department, or notice of an amount due.

SALES OF EQUIPMENT WITH THE BUSINESS

The tax generally applies to all retail sales of tangible personal property by a seller who holds or is required to hold a Seller's Permit. This also applies to the sale of an entire business, which may include equipment, fixtures, or other tangible personal property.

There are, however, exemptions in the law for the following limited types of transfers:

1. The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock;
2. The contribution of property to a newly formed partnership solely in consideration for a partnership interest therein;
3. The transfer of property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation;
4. The distribution of property by a corporation to its stockholders as a dividend or in whole or partial liquidation; and/or
5. The distribution of property by a partnership to its partners in whole or partial liquidation.

RETAILERS CANNOT ADVERTISE TAX WILL BE ABSORBED

Section 77.52 (4) of the sales tax law reads as follows:

"It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor".

SANDWICHES, HEATED FOODS OR BEVERAGES

The gross receipts from sales of heated foods or heated beverages are taxable under the law, regardless of whether the item purchased is consumed on or off the premises of the retailer. Thus, the tax applies when:

1. A supermarket sells chicken or ribs roasted on a rotisserie.
2. A bakery sells hot coffee, or
3. A fish market sells hot prepared fish.

All sales of meals or sandwiches are also taxable whether heated or not. This includes food items which comprise a meal, or are components of a meal (e.g. a basket of chicken with cole slaw, and french fries) for on premises or "to go" consumption.

CARPET & FLOOR TILE INSTALLATION

Pursuant to Section 77.51 (4) (i) and (18), Wisconsin Statutes, contractors and subcontractors are deemed the consumers of tangible personal property used by them in real property construction activities (commonly referred to as "realty improvements"), and the sales and use tax applies to the sale of tangible personal property to them. Affixing carpeting or tile permanently to realty is regarded as a real property construction activity. A person who sells and installs carpeting or tile in a permanent manner, whether the installation is performed by his employees or by an independent subcontractor hired by him, is the consumer of the carpeting, tile, and other materials used in such installation. The 4% tax is measured by the contractor's purchase price of such property. This is the case even though the work is done for an exempt entity, such as a school or church.

The exemption from the tax on the sale of tangible personal property to any governmental unit, as well as to school districts and religious and charitable institutions, does not extend to building materials such as carpeting and tile purchased by a contractor under an agreement to improve real estate for such exempt entity. If repair or cleaning of carpeting is done for an exempt entity, they may purchase this service without tax.