



# TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT of REVENUE

SEPTEMBER 1972

## FILING SALES AND USE TAX RETURNS

Every holder of a Seller's Permit, Use Tax Registration Certificate and Consumer's Use Tax Registration Certificate must file a return for each reporting period even though no tax may be due for the period covered by the return.

Most persons file returns on a quarterly basis. However, the law provides that a person with a tax liability exceeding \$500 in any one quarter is required to file on a monthly basis if a written notice is received from this department. We also honor requests from quarterly filers who, for one reason or another, would rather report on a monthly basis. Registrants with a tax liability under \$100 per year usually are allowed to file on a yearly basis (i.e. one return covering an entire calendar or fiscal year).

Accounts are reviewed each December to determine the proper or suitable reporting interval for each registrant. Permit holders will receive notification from this department on or about January 20th of the following year if a change in their filing period is required by law (e.g. quarterly to monthly) or if a change is contemplated for administrative purposes (e.g. quarterly to annual or vice-versa).

## BACKGROUND MUSIC

Persons in the business of providing background music usually utilize one, or both, of the methods set forth below. The sales and use tax consequences from the use of each method are as follows:

### 1. Music Played at Central Studio

Certain music companies furnish background music to business and industry from a central studio over leased telephone circuits or by FM radio. The gross receipts of companies providing this type of service (music) are not subject to the 4% tax. These companies are the consumers of the tapes, tape players, speakers and other tangible personal property used to provide the service and the 4% tax applies to their purchases of these items. The tax also applies to the telephone services provided by the telephone company.

### 2. Music Played by Customer

Other companies provide all the equipment and tapes to the customer, and the customer operates the equipment. These tapes and equipment are furnished, installed, owned and serviced by the background music companies, but are located on the customer's premises

The gross receipts of these music companies are subject to the 4% sales tax as gross receipts from the lease, rental, hire or license to use the tangible personal property. If there is a separate charge for installing the equipment, such charge is also subject to the tax. The companies providing the equipment and tapes to customers may purchase the equipment and tapes without tax, because a purchase for rental only is the equivalent of a purchase for resale.

## CHANGE IN THE SALES TAX LAW

Effective May 21, 1972 an additional exemption (Section 77.54 (25)) was added to the sales tax law for:

"The gross receipts from the sales of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state."

## COUPON BOOKS AND VOUCHER BOOKS

A sales promotional agency will sell coupon books or voucher books to purchasers who will redeem the coupons or vouchers with participating retailers. For example, the coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, admission tickets to movies, free dry-cleaning, free bowling games, etc. The coupon book may contain coupons redeemable by several retailers or it may only contain coupons redeemable by one retailer (e.g. discounts on dry-cleaning services from a specific dry-cleaning establishment). The contract may call for the sales promotional agency to retain all receipts from the sales of coupon books, or it may require the agency to remit some portion of such receipts to the participating retailers.

The sales promotional agency's receipts are not sales of tangible personal property or taxable services. They are performing an advertising service. Therefore, the receipts retained by the agency are not taxable.

The participating retailers owe sales tax on the portion of the receipts, if any, they receive from the sales promotional agency. The retailers also incur use tax liability if any taxable property is transferred without consideration when the coupons are redeemed.

## REALTY VERSUS PERSONAL PROPERTY

We have received inquiries from construction contractors and their suppliers asking whether certain items become part of the realty upon installation, or whether such items remain personal property. If an item becomes part of realty upon annexation, the contractor is the consumer, and the 4% tax is imposed on the sale of the property to him. On the other hand, if an item remains personal property a retail sale is involved and the tax is imposed on the contractor's gross receipts, including the installation charges.

It should be noted that annexation to realty is not the only criteria used to determine whether property is "real" or "personal". In a sales tax case, *Mt. LaCrosse v. Wis. Dept. of Revenue*, decided on July 22, 1969, the Dane County Circuit Court said:

"Property is real if it meets the following criteria: (1) Actual annexation to the realty; (2) Appropriation to the use or purpose to which the realty is put; (3) Intention of the annexor to make the article a permanent accession to the freehold."

Since annexation, appropriation to use and intention must all be considered, certain types of property that have a variety of functions such as boilers, furnaces and stand-by generators may be personal property in some instances and additions to realty in others. When such types of property are installed primarily to provide service to the building or structure, and are essential to the use of the structure, they are realty improvements. However, similar units, when installed in a plant to perform a processing function, may, as machinery, retain their status as personal property.

## INSTALLING OR REPAIRING ELEVATORS

Under the General Sales Tax Law, effective September 1, 1969, the installation of an elevator, escalator or dumb-waiter is a realty improvement and the person installing such items into realty is deemed the consumer who is required to pay the 4% tax on all materials used in this activity. The charge for installing such items is not subject to the tax nor is the repair, service or maintenance of such items a taxable service.

## UTILITY TRANSMISSION AND DISTRIBUTION LINES

The definition of "tangible personal property" in Section 77.51(5), Wisconsin Statutes, includes water, sewer, telephone and telegraph lines, electrical and gas transmission and distribution lines, and the poles, transformers, towers, pipes, conduit or other property by which they are supported or in which they are contained, if erected or installed under easement or license on **land owned by others**, (including authorizations under Section 86.16 and 182.017, Wisconsin Statutes). Underground utility lines are deemed personal property to the same extent overhead lines are personal property, provided the utility line is installed under easement or license on land owned by others.

The sale, lease or rental, and the repair, service, maintenance and installation of such personal property is subject to the 4% Wisconsin sales and use tax. Accordingly, the gross receipts received by a contractor from the construction and installation of a fabricated line, or a portion thereof, and the receipts received from a transfer "in place" of a transmission or distribution system are taxable.

Although a contractor performing a lump sum contract for the construction of a new utility line may have expenses such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing right-of-way, unloading and hauling materials, etc. these are costs of performing the job, and they do not affect the taxability of the gross receipts from the installation of a new utility line on land used under easement or license. However, if the contractor receives a separate contract for tree trimming and line clearing, that contract would not involve a taxable service.

The concrete foundations for utility towers are deemed to be part of the realty. Accordingly, the construction of such foundations is a construction activity and the contractor's purchases of materials used in the construction of such foundations are taxable, while that part of the contractor's gross receipts which are attributable to the construction of the foundations is not taxable. Installing crushed rock backfill and anchors are also deemed realty improvements. The contractor must make a reasonable approximation of the portion of his gross receipts derived from building concrete foundations, and installing crushed rock backfill and anchors.

Where substations are built on the utility's own land, the grading, graveling, fencing and foundations become part of the realty. Poles and lines on the company's property are also realty additions. The transformers, circuit breakers and other equipment installed at the substation to manipulate the flow of the electricity remain personal property after installation.

(Note: This is a portion of Technical Information Memorandum S-46.1. If you desire a copy of that memorandum, or have other related questions, please let us know.)

## QUARTERLY TAX REPORT

This quarterly newsletter is the last one you will receive during 1972. Each year in December we encounter mailing weight problems when we attempt to send out the quarterly newsletter along with the current tax return and the annual information return. For this reason there will not be a December 1972 "Tax Report".

We suggest that you keep these quarterly "Tax Reports" for future reference purposes. We are finding that the answers to many current questions we are asked by retailers are often found in one of the prior issues of this publication. Therefore, your retention of these reports may save you time and expense in contacting this department, and, in turn, it will also contribute towards lower governmental administrative costs.