



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

SEPTEMBER 1974

CHANGE IN SALES TAX LAW

Effective June 29, 1974, the law was amended to provide that veterinarians are the consumers of animal medicines they purchase. This is the case whether such medicines are furnished by them in performing veterinary services, or resold to customers independent of such veterinary services. Therefore, the suppliers of animal medicines are required to register and pay the 4% sales tax on sales of such medicines to veterinarians. If the tax is not paid by the supplier because he is located out-of-state and is not registered with this department, the veterinarian must report the use tax due on such purchases directly to this department.

SERVICE ENTERPRISES GENERALLY

This department recently issued Technical Information Memorandum S-60 which set forth the standards used to distinguish between the sale of a nontaxable service, and the sale of tangible personal property subject to the 4% sales tax. The text of the memorandum is reproduced below.

A. Basic Consideration

It is sometimes difficult to determine whether a particular transaction involves the sale of tangible personal property or the sale of a service, where the transaction involves the transfer of property along with the performance of a service. The true object sought by the purchaser must be considered in order to determine whether such a transaction is to be treated as a sale of tangible personal property, or the performance of a service with the transfer of property being merely incidental to the performance of that service. If the object sought by the purchaser is the personal property, a taxable sale of that property is involved. However, if the object sought by the purchaser is the service, a sale of a service is involved even though as an incidence to such service, some tangible personal property may be transferred. Thus, a firm which performs business advisory, record keeping, payroll and tax services for small businesses is selling a service. The firm is the consumer of, and not the seller of, property such as forms, binders and the like which it furnishes without separate charge as an incidence to such service.

B. Persons Providing Services

Since persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their service, tax applies to the sale of such property to them. Examples of persons who provide such service include, but are not limited to, physicians, lawyers and accountants.

However, if in addition to rendering a service, a person also sells tangible personal property to consumers, he is a retailer with respect to such sales and the tax applies to the total gross receipts therefrom, without any deduction for the work, labor, skill, thought, time spent or other expense of producing the property.

C. Special Situations

1. Hospitals and Clinics

Hospitals and medical clinics provide nontaxable professional services and are, therefore, the consumers of tangible personal property they use in the rendition of such services. If these hospitals and clinics, apart from rendering their professional services, also sell tangible personal property, they are retailers who must obtain a Seller's Permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital pharmacy are taxable.

2. Original Manuscripts or Musical Arrangements

The transfer to a publisher of an original manuscript or musical arrangement for the purposes of publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's works is a sale of tangible personal property and is subject to the tax, as is the sale of manuscripts where the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property and not the service which went into the same.

3. Artistic Expressions

Tax applies to the sale of works of art such as paintings and sculptures. Tax does not apply, however, to receipts of artists commissioned by customers who have obligated themselves to pay for the artist's services without regard to whether or not they are ultimately satisfied with the artist's work product.

4. Interior Decorator's Fee

An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. Thus, the decorator's fee is taxable when it appears as an amount added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills his client for the full list price of the property and then receives his fee through the supplier who grants him a trade discount, the decorator must pay a tax on the full amount billed without any deduction for his services.

However, if the decorator's fee is solely for designing the decorative scheme, or for advising clients and recommending colors, paints, wallpaper, fabrics, brands, or sources of supply and there is no sale of tangible personal property involved, then the fee is strictly for services rendered and is not subject to the tax.

5. Research and Development

The development of information pursuant to a research and development contract is a sale of a service and not a sale of tangible personal property. Although the information such as plans, designs and the like may be conveyed through the use of paper or other forms of tangible personal property the transfer of such property is deemed incidental to the service and not subject to tax. The party providing the service must, however, pay the tax on his purchases of supplies used in providing the service.

A research and development service contract must be distinguished from a contract for the production of an item of tangible personal property. In the latter situation the research and design of the property, although necessary to its production, is incidental to the primary purpose of the contract which is to produce an item of tangible personal property. The buyer is purchasing property and not the data developed in the course of its production and the entire contract price is subject to the tax.

6. Prototypes and Models

The entire gross receipts from the sale of a prototype or model are taxable if a single contract controls the design, development and fabrication of the prototype or model. If the design contract is separate and if there is no contract for the prototype or model until after the design work is completed, the charge for the design work is not taxable.

7. Architects

Fees paid to architects to design buildings, structures or the like are fees for services performed and are not subject to the tax. If, however, an architect has blueprints made from his original drawings, the sale of such blueprints is subject to the tax.

8. Draftsman's Drawings

Charges made by a self employed commercial draftsman who produces detailed drawings based entirely on specifications and data supplied him by customers (architects, engineers and business firms) are subject to the tax. These charges are taxable because none of the concepts, ideas, specifications or designs depicted in the drawings produced are the draftsman's own determination. He simply applied his ability to the details supplied by the customer for the purpose of putting such details down on paper and thereby produced a drawing for use by the customer.

9. Enuresis Alarms

Charges for bed-wetting alarm systems are taxable charges for the use of tangible personal property, and not payments for personal services. This is true even though the lessor may analyze reports submitted by the child's parents and, upon receipt of the reports, send an appropriate letter back to the parents.

10. Detonating Explosives

Detonating explosives is a nontaxable service. A person engaged in such a service and who furnishes the explosives used in conjunction with the same is the consumer of the explosives so used.

11. Community Antenna Systems (Cable TV)

While services offered by a cable television company are not subject to tax, persons offering such services are consumers of all the tangible personal property they purchase or rent. Thus, sales to these persons are subject to the tax.

12. Taxidermists

A taxidermist is providing a taxable service to tangible personal property and his gross receipts therefrom are subject to the tax.

13. Car Washes

The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. In addition, such persons are the consumers of the tangible personal property they purchase with the exception of the wax that is transferred to a customer's vehicle. Thus, while suppliers may accept a resale certificate when selling wax to such car wash operations, they are liable for the tax on all other sales of supplies to car washes.

QUARTERLY TAX REPORT

This quarterly newsletter is the last one you will receive during 1974. Each year we encounter mailing weight problems in December, and for this reason we do not issue a "Tax Report" during the last quarter of the year.