



TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

JUNE, 1976

RETAILER'S 1% DISCOUNT

A recent amendment to s. 77.61 (4) (b), Wis. Stats. (Ch. 186, Laws of 1975) eliminated, effective April 1, 1976, the 1% discount for timely reporting the consumers use tax paid on purchases. Thus, as of April 1, 1976, the 1% discount applies only to taxes paid with respect to retail sales. Prior to that date the 1% discount also applied to consumers use tax reported on purchases made by any person registered with the department as a retailer for sales tax purposes.

MEAT PROCESSORS' SUPPLIES

The custom slaughtering of livestock by meat processors for farmers or other persons is a nontaxable service involving the cutting and wrapping of meat. Although the service is not taxable, effective June 1, 1976 the purchase of wrapping paper, tape, sausage casings, boxes and all other supplies used by the meat processor in providing this service is subject to the 4% sales and use tax.

REALTY VS. PERSONAL PROPERTY

The department has received inquiries from construction contractors and their suppliers asking whether certain transactions are retail sales or construction activities.

A retail sale is the sale of tangible personal property, whereas a construction activity involves an improvement to realty. If a retail sale is involved, the total gross receipts from the sale are taxable. On the other hand, if it is a construction activity, the contractor is the consumer of the tangible personal property used in improving the realty and the 4% tax is imposed on the sale of such property to the contractor.

The sale and dumping of rock, gravel, concrete, road oil, or other construction materials is a taxable retail sale if the material subsequently is spread, tamped, smoothed, or otherwise set in place by another person (not hired by the seller). However, the sale and dumping of construction materials in their final resting place is a construction activity, and the tax is imposed on the sale of such materials to the contractor.

ADVERTISING SIGNS

Technical Information Memorandum S-11.4 entitled "Construction Contractors" indicates that advertising signs (except their underground concrete foundations) retain their character as personal property after installation. Therefore, the gross receipts from the construction, sale, lease or rental of such advertising signs are subject to the 4% sales tax as are the gross receipts from the painting, repair or maintenance of such signs.

Gross receipts from "space sales" or the charge for billboard space where the advertiser has no right of possession of the sign nor any other right therein, except to have its message remain on public display, are receipts from advertising and are not subject to the 4% sales tax.

SUPREME COURT DECISION

On December 19, 1975 the Wisconsin Supreme Court in H. Samuels Company, Inc. v. Department of Revenue held that a scrap processor is a manufacturer for sales tax purposes. A scrap processor uses heavy machinery (e.g. hydraulic shears, hydraulic presses or hammer mills) to transform auto hulks and other waste material into various grades of ferrous metal suitable for use in foundries and steel mills. The process of producing graded metal involves the elimination of all non-ferrous material, increasing density, elimination of impurities, composition of the finished material into the appropriate metallurgical and chemical tolerances, and conformation to the size and form required by foundries and steel mills.

Scrap processors which perform all these operations may purchase machines and specific processing equipment used exclusively and directly in their manufacturing process without tax by furnishing their supplier a properly completed Manufacturer's Exemption Certificate.

It should be noted that a person who operates a junkyard and is engaged in crushing cars so that the cars can be more conveniently hauled on semitrailers is not engaged in manufacturing, and therefore is not entitled to the manufacturers' exemptions.

TIPS AND SERVICE CHARGES ON SALES OF MEALS

A customer tip which is given directly to an employe in cash or which is added by the customer to a bill, which amount is then turned over in full to the employe, is exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer. An amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of meals pursuant to a requirement of the seller furnishing such meals, is part of the selling price of such meals and is subject to the tax. It makes no difference whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to his employes.

Prior to May 5, 1976, certain private clubs' flat percentage service charges added to meals were not taxable because of the Wisconsin Supreme Court's interpretation of the law in Big Foot Country Club v. Department of Revenue (1975), 70 Wis. 2d 871. This interpretation of the law was overturned by new legislation (Chapter 224, Laws of 1975) which became effective May 5, 1976.

WASTE TREATMENT FACILITIES

Under the current law which provides property and sales tax exemptions for industrial waste treatment facilities, the Department of Revenue must approve the facility before the exemptions apply. Requests for approvals should be directed to the Department of Revenue, Bureau of Property and Utility Taxes, 4th Floor, 201 East Washington Avenue, Madison, Wisconsin 53702.

AUTOMATIC DATA PROCESSING

The department recently issued Technical Information Memorandum S-38.1 entitled "Automatic Data Processing". It contains a considerable amount of new information, including a section defining the terms used in data processing. Because of the length of the new memorandum, it is not possible to completely reproduce it in this quarterly newsletter; however, portions of the memorandum which contain information which may be of general interest to persons in the business community are reproduced below.

The following information describes taxable gross receipts and is taken in part from Section III of the memorandum entitled "Taxable Sales, Rentals and Services".

1. Sales of new or used data processing equipment, including installation charges thereof, and charges for the service and maintenance of this equipment are subject to the tax.
2. Rental or leasing of equipment is taxable. Subleasing receipts are taxable without any deduction or credit for tax paid by the original lessee to his lessor, if the original lessee uses the property in addition to subleasing it. Use of equipment on a time sharing basis, where access to the equipment is only by means of remote facilities, is not a taxable leasing of such equipment.
3. The tax applies to sales of pre-written (canned) programs whether title to the tape or other property upon which the program is coded, punched or otherwise recorded, passes to the customer, or the program is recorded on tape or other property furnished by the customer. The temporary transfer of possession of a program, for a consideration, for the purpose of direct use or to be recorded by the customer, is a lease of tangible personal property and the tax applies. Where the consideration consists of license fees or royalty payments, all license fees or royalty payments, present or future, whether for a minimum use or for extended periods, are includable in the measure of tax.

Charges for assembler, compiler, utility and other pre-written programs provided to those who lease or purchase automatic processing equipment are subject to tax whether the charges are billed separately or are included in the lease or purchase price of the equipment.

4. Agreements providing (a) solely for keypunching; (b) keypunching and keystroke verification; or (c) keypunching, providing a proof list and/or verifying of data, are regarded as contracts for the fabrication of punched cards and sales of proof lists. Charges therefor are taxable, whether the cards are furnished by the customer or by the person providing the service. Data from source documents may also be recorded directly on magnetic tape (off-line). This operation may include keystroke verifying and/or proof listing of data and is comparable to the punch card operation. Charges for this operation are taxable whether the magnetic tapes are furnished by the customer or by the person providing the service. Tax also applies to charges for the imprinting of characters on a document to be used as the input medium in an optical character recognition system. The tax application would be the same even though paper tape or other media were used in the operation.

5. Custom programs are those which are prepared to the special order of a customer. Tax does not apply to the transfer of these custom programs in the form of written procedures, such as program instructions listed on coding sheets. However, tax applies to the sale of custom programs transferred to the customer on and after July 1, 1976 in the form of punched cards or in tape, disc, drum or similar form, or in the form of typed or printed sheets to be used as input media in an optical character recognition system.
6. Training materials, such as books, furnished to trainees, or others for a specific charge are taxable.
7. Generally tax applies to the conversion of customer-furnished data from one physical form of recordation to another. For example, if all or some data in punched cards is duplicated into another set of cards, charges for this service are taxable.
8. When additional copies of records, reports, or tabulations are provided, tax applies to the charges made for the additional copies.
9. Sales of mailing lists (including listings in the form of mailing labels produced as a result of a computer run) are taxable.

Processing a client's data is not a taxable service. "Processing a client's data" means the developing of original information from raw data furnished by the customer. Examples of automatic data processing operations which result in original information are summarizing, computing, extracting, sorting and sequencing.

If you desire more information on this subject, write to the department and ask for a copy of Technical Information Memorandum S-38.1. Address your request to the department at 201 East Washington Avenue, Madison, Wisconsin 53702 (Attention: Technical Services Staff).