



# TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

SEPTEMBER 1976

## SALES TO GOVERNMENTAL UNITS AND SCHOOLS

Sales of tangible personal property or taxable services which are purchased directly by and used by the federal or state government, by municipalities or by public schools are not subject to the sales tax, and need not be supported by exemption certificates if a copy of the purchase order received from such exempt entity is retained by the seller. However, sales to employes of these entities are taxable, even though the organization may subsequently reimburse the employe for the expenditure.

## ANTIQUES AND WORKS OF ART

The 4% sales tax applies to the sales of antiques and works of art, such as paintings and sculptures. Persons engaged in the sale of such items should be registered with the department as retailers and report the sales tax on these receipts. This is the case even though the sales of a particular person are made infrequently, such as on some weekends.

## RETAILERS 1% DISCOUNT

As of April 1, 1976 the 1% discount received by retailers for timely reporting and paying sales and use taxes 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.

## SHOPPERS GUIDES AND ADVERTISING SUPPLEMENTS

The legislature recently upheld the Governor's veto of Assembly Bill 559. This bill would have provided a sales and use tax exemption for shoppers guides, a type of local advertising publication distributed without charge to the households in a given area. Therefore, the 4% tax continues to apply to the gross receipts from the sales of shoppers guides (and any other publication designed primarily for advertising purposes) just as it has since September 1, 1969. The sales of catalogs, score cards, handbills, maps, real estate listings, price order books and corporate reports to stockholders are also taxable.

The law provides an exemption for "newspapers and periodicals regularly issued at average intervals not exceeding 3 months". This does not include advertising supplements or inserts purchased from another source which are turned over to a newspaper for distribution with the newspaper. The exemption does apply, however, to magazines classified as second class mail, and controlled circulation publications.

## MAILING LISTS

The sales and use tax applies to the gross receipts from the transfer of title to or possession of mailing lists. This includes the rental of or the granting of a license to use such lists.

Persons engaged in the business of providing mailing lists are deemed the consumers of all tangible personal property used in producing such lists. However, any tangible personal property becoming a component part of actual mailing lists when such mailing lists are physically transferred to the customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives his supplier a properly completed resale certificate.

## CREDIT SALES

If tangible personal property is sold on credit, under a security agreement or otherwise, the entire amount of the retailer's gross receipts from the sale are taxable, and must be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property shall be deemed to have been completed at the time and place where possession is transferred by the seller or his agent to the purchaser or his agent. The law provides that the tax must be reported on taxable gross receipts on the accrual basis, except where the department is satisfied that an undue hardship would exist, in which case some other basis may be authorized.

No deduction is allowable in the event that property sold on credit is repossessed except where the entire consideration paid by the purchaser is refunded to him.

## SALES TAX LIABILITY OF SUCCESSORS

Are you planning to acquire an existing business? A successor can be held liable for the sales tax liability of the prior owner, unless a clearance certificate is obtained from the department stating that no taxes are due from the predecessor. The request for the certificate must be in writing.

You should withhold from the purchase price a sufficient amount to cover any possible sales and use tax liability of the seller until you have received the clearance certificate from the department.

## TAXABLE TRANSPORTATION CHARGES

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

The correct tax computation to be shown on an invoice where the retailer charges the purchaser for delivery of the goods is as follows:

Carton of Merchandise	\$100.00
Delivery Charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 4% (\$110 x 4%)	4.40

A Wisconsin consumer who purchases, for use in Wisconsin, taxable goods without tax, 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.

### SALE OF A BUSINESS OR BUSINESS ASSETS

The department recently issued Technical Information Memorandum S-65 entitled "Sale of a Business or Business Assets". Portions of that memorandum, which should be of general interest to persons in the business community, are reproduced below. If you desire a copy of that memorandum please address your request to the department at 201 East Washington Avenue, Madison, Wisconsin 53702 (Attn: Technical Services Staff).

The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. The tax applies if business assets are sold as a disposition of surplus assets of a continuing business or in a single transaction at the time of termination of the business. It also applies if such assets are sold piecemeal whether as part of a continuing business or upon termination. The tax does not apply to merchandise inventory purchased for the purpose of resale in the regular course of the purchaser's business.

Pursuant to s. 77.51 (10) (a), Wis. Stats., a person holding a seller's permit at the time of disposition of business assets may not claim the "occasional sale" exemption.

A person may qualify for the "occasional sale" exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department since it is contrary to law to continue regular business operations without a permit. A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

1. Registrants may personally deliver their seller's permit to a representative of the department's Income, Sales, Inheritance and Excise Tax Division located in his or her office during regular office hours. The department shall presume the permit was received at 12:01 A.M. on the day it is received.

2. The seller's permit may be mailed to the department (P.O. Box 39, Madison 53701) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, provided the envelope and its contents are actually received by the department. If the retailer wants to be assured that the department has received the permit, it is suggested it be sent by certified mail return receipt requested.

3. If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to send in the actual seller's permit.

Although the permit may be deemed to have been delivered and canceled on the postmark date, cancellation cannot be effective prior to the postmark date.

If the permit is delivered to the department for cancellation, the registrant may immediately qualify for the occasional sale exemption, even though the registrant contemplates a subsequent sale of fixtures or equipment. (See Three Lions Supper Club, Ltd. v. Wisconsin Department of Revenue, (1976), 72 Wis. 2d. 546.) The registrant does not qualify for the occasional sale exemption, however, if he holds or is required to hold another seller's permit for some other sales operation.

The fact that a particular business ceases operations and no longer conducts its day to day business of selling tangible personal property or taxable services does not result in the automatic cancellation of a registrant's permit. A registrant operating as a seller is required by s. 77.52 (12), Wis. Stats., to ". . . forthwith surrender his permit . . ." when he ceases to operate as a seller. If the registrant does not surrender the permit at that time, the person does not qualify for the occasional sale exemption until such time as the permit is surrendered to the department for cancellation.

### FINAL TAX REPORT THIS YEAR

This quarterly newsletter is the last one you will receive in 1976. 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.