



SERVICES VS. RENTALS OF HIGHWAY MOTOR VEHICLES

A. Rentals in General

A person who uses his or her own equipment to perform a job, and who assumes the responsibility for the satisfactory completion thereof, is considered to be performing a service. Conversely, a person who furnishes equipment with an operator to perform a job which the lessee will supervise and be responsible for the satisfactory completion of, is considered a lessor renting such equipment. If it is customary or mandatory that the lessee take the operator with the leased equipment, the entire charge is subject to the sales tax. However, the operator's services are not taxable if billed separately AND the lessor customarily gives lessees the option of taking the equipment without the operator.

B. Highway Motor Vehicle Rentals

Charges for the use of motor trucks are taxable rental charges, except where drivers are provided by the truck's owner to operate the truck and the Wisconsin Public Service Commission or the Department of Transportation's Division of Motor Vehicles considers the arrangement a transportation service under the regulations issued by those agencies.

The Public Service Commission's definition of "for hire" hauling in s. 194.01 (15), Wis. Stats., provides in part: "The lease or rental of a motor vehicle to a person for transportation of such person's property which lease or rental directly or indirectly includes the lessor's services as a driver shall be presumed to be transportation for hire and not private carriage, except under arrangements approved by the Public Service Commission and the Division of Motor Vehicles."

Wisconsin Administrative Rule Section MVD 12.02, entitled "Lease of motor vehicles", provides in subsections (1) and (2) that a lease for use of a motor vehicle must comply with the following requirements:

"(1) Shall be in writing and signed by the parties thereto or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements."

"(2) Shall provide for the exclusive possession, control and use of motor vehicle involved, by the lessee, and the complete assumption by such lessee of full responsibility to the public and all regulatory agencies having jurisdiction during the entire period of the agreement. This provision shall not prohibit the lessor from obtaining possession of the motor vehicle for purposes of maintenance, repairs, or because of violation of the lease agreement."

Where trucks are furnished with drivers, the arrangement in many cases is presumed to be a transportation service (and not a rental) by the Public Service Commission or the Division of Motor Vehicles. When this occurs, the arrangement is also considered a transportation service for sales tax purposes.

TAXABLE FABRICATION AND PROCESSING

Sales tax applies to charges for fabricating or processing tangible personal property for consideration to consumers, whether or not the consumers furnish directly or indirectly the materials used in the producing, fabricating or processing operation. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of tangible personal property, except sales for resale.

Taxable fabrication (except sales for resale) includes charges for the following:

1. Printing and imprinting
2. Tailoring a suit
3. Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.
4. Making curtains, drapes, slip covers or other household furnishings
5. Making a fur coat from pelts, gloves or a jacket from a hide.
6. Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "millending")
7. Bookbinding
8. Heat treating or plating
9. Firing of ceramics or china
10. Assembling kits to produce a complete article
11. Production of a sound recording or a motion picture
12. Threading pipe, or welding pipe
13. Tanning hides
14. Bending glass tubing into neon signs
15. Laminating identification cards

Taxable processing (except sales for resale) includes charges for the following:

1. A caterer's preparation of food for consumption on or off the premises
2. Dyeing or fireproofing fabric

3. Cutting or crushing stones, gravel or other construction materials
4. Retreading tires
5. Drying, planing or ripping lumber
6. Cleaning used oil
7. Application of coating to pipe

Sales or use tax does not apply to charges for fabricating or processing in many cases because the customer is a manufacturer or other business entitled to issue a valid resale certificate to the producer, fabricator or processor. Such customer purchases the service "for resale" without tax.

The Department adopted rule Tax 11.38, entitled "Fabricating and Processing" effective November 1, 1976. This article contains the same information found in that rule.

Rules of the Department of Revenue are part of the Wisconsin Administrative Code, and are available on a subscription basis as described in the last article in this newsletter.

CARPET AND FLOOR TILE INSTALLATION

Contractors and subcontractors are 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 the seller's employees or by an independent subcontractor hired by the seller, 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, and not by gross receipts received from the customer for the price of the carpet or tile and its installation.

LAUNDRIES AND DRY CLEANERS

Laundries and dry cleaners are the consumers of solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. The tax applies to the sale of these items to the laundry or dry cleaner. If the tax is not imposed on the sale to the laundry or dry cleaner (e.g., the items are purchased from an out-of-state source) the purchaser must report and pay the 4% use tax directly to the state on line 7 of its Sales and Use Tax Return.

Laundries and dry cleaners may purchase the following items without tax (by using a Resale Certificate), provided these items are transferred to customers with the clean clothes: hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. Manufacturers may not, however, purchase laundry, uniform or towel service without tax.

MEDICARE - MEDICAID

Tax Rule 11.45 (4) provides as follows:

"MEDICARE CLAIMS. The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States."

Retailers should treat Medicaid claims in the same manner as Medicare claims for sales tax purposes. As long as the provider of a taxable item bills the administrator of Medicaid directly, the sale is an exempt sale to the governmental units which provided the funds.

SUBSCRIPTIONS TO TIMS AND ADMINISTRATIVE RULES

Technical Information Memorandums (TIMs) reflect the Department's interpretation of the laws and clarify complex areas of the tax laws. They are available on subscription basis at a cost of \$2 per year. If you also desire the back issues, send in a total of \$6. Persons who subscribe to the TIMs also receive this newsletter, which is sent to all sales tax registrants at the end of March, June and September, and a new publication entitled "Wisconsin Tax Bulletin".

Administrative rules of the Department of Revenue are part of the Wisconsin Administrative Code. They have been adopted by a formal procedure established by statute to clarify the statutes and have the effect of law. Rules are also available on a subscription basis. The charge for a booklet containing current Department rules is \$1.20, and the annual calendar year subscription service to keep the booklet up to date is \$1.20.

Subscriptions to the TIMs or rules may be obtained by sending a request and the appropriate sum to the Department of Administration, Document Sales Section, 202 South Thornton Avenue, Madison, Wisconsin 53702.