



# TAX REPORT

SALES / USE TAX

WISCONSIN DEPARTMENT of REVENUE

MARCH, 1980

## SALES BY GOVERNMENTAL UNITS

Sales of tangible personal property or taxable services by the State of Wisconsin, any agency thereof, and governmental units within this state are generally subject to the Wisconsin sales tax. However, sales by the United States Government or any agency thereof are not taxable.

Taxable receipts of governmental units located in Wisconsin include, but are not limited to, gross receipts from the following:

- (a) Admissions to recreational facilities (e.g., green fees, camp-ground fees, swimming fees, ice skating fees and park shelter house fees).
- (b) Food and gift stand sales.
- (c) Sales or rental of recreational equipment and supplies.
- (d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums. This includes league entry fees collected from amateur athletic teams, when the fees are used to pay umpires and scorekeepers.
- (e) Sales of electricity, gas and steam by municipal utilities. However the following sales are exempt:
  1. Water delivered through mains.
  2. Electricity and gas for residential use, and electricity for farm use, sold during the months of November through April each year.
  3. Steam used for fuel in a person's permanent residence is exempt all twelve months of the year.
- (f) Sales of maps, plat books, photocopies or other printed material.
- (g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employees. Governmental units should not collect tax on their sales of motor vehicles. Instead, the purchaser should pay the tax to the Wisconsin Department of Transportation when the motor vehicle is registered.
- (h) Sales of buildings or timber when the purchaser acquires such property for removal.
- (i) Rental of lodging facilities to any person residing for a continuous period of less than one month. However, tax does not apply to such rental receipts of colleges, universities, or other educational institutions.
- (j) Receipts from vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.
- (k) Sales of soda water beverages and beer.
- (l) Charges for meals to "Huber" law prisoners.
- (m) Sales of books and supplies, including sales by vocational, technical and adult education schools. Sales of books and supplies by elementary and secondary schools are exempt.
- (n) Sales of craft supplies for playground craft programs.
- (o) Auction sales of tangible personal property, but excluding motor vehicles (see (g) above).
- (p) Sales of impounded animals, even though the amount received may be designated as a placement fee.
- (q) Sales and delivery of trees, shrubs or gravel to private purchasers, if the governmental unit does not plant the trees or shrubs, or spread the gravel for the customer in its final resting place. The sale and dumping of gravel is a taxable retail sale, if the gravel subsequently is spread, tamped, smoothed or otherwise set in place by another person.

(r) Sales of so-called "free" meals which require the recipient to make a donation. If the operator of a social service program posts signs, prints tickets or makes suggestions indicating an amount is expected to be paid by meal customers, then a taxable sale takes place. For example, a sign posted, such as "Donation \$1.00," creates a taxable transaction; although a sign, such as "Donations accepted to support this program," will not create a taxable transaction.

## PURCHASES BY GOVERNMENTAL UNITS

The gross receipts from sales to Wisconsin governmental units are exempt from the sales and use tax. However, this exemption does not apply to sales to governmental units located in other states.

A Wisconsin governmental unit does not have to give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;
2. The seller bills the governmental unit directly; and
3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

Rule Tax 11.05 provides other information which may be of interest to representatives of governmental units. If you desire a copy of this rule, write the department's Technical Services Staff, P.O. Box 8910, Madison 53708.

## GARAGE DOORS AND GARAGE DOOR OPENING EQUIPMENT

A retailer's sale and installation of garage doors and garage door opening equipment in a building is considered a realty improvement for sales tax purposes. The retailer's gross receipts from this transaction are not subject to the 4% tax, but the supplier's sales of the building materials (doors, door opening equipment and other tangible personal property used in the installation) to the retailer, who installs these items in the realty, are subject to the tax.

The gross receipts from the service and repair of doors and door opening equipment which are installed in the building are not subject to the sales tax, if the work is done on the customer's premises. However, the sales of the repair materials to the person making the repair are taxable. If the doors or controls are removed from the building and taken back to the retailer's shop for service or repair, the gross receipts from such service or repair are subject to the 4% sales tax.

The gross receipts from the servicing or repairing of remote garage door control units which are placed in motor vehicles are subject to the tax, as is the specific charge for the sale of such units. However, if this remote unit (minor in cost in relation to the total amount of the realty improvement contract) is sold as part of a larger contract which includes the installation of the garage doors and opening equipment in a

building, and no separate charge is made for such remote unit, the installer's cost of all the property used in the contract (including the remote unit) is used as the measure of the tax.

### **TIPS COLLECTED IN RESTAURANTS**

Section 77.51(11)(c)2, Wis. Stats., provides that the taxable gross receipts of a retailer includes: "any services that are a part of the sale of tangible personal property, including any fee, service charge, labor charge or other addition to the price charged the customer by the retailer which represents or is in lieu of a tip or gratuity." Therefore, a flat amount or flat percentage, whether designated by the restaurant as a tip or service charge, that is added to the price of a meal pursuant to the customer's arrangement with the seller, is part of the selling price of the meal which is subject to tax, even though the amount received by the seller is subsequently paid over in whole or in part by the seller to its employes.

A tip which is given directly to an employe by a customer in cash, or which is added by a customer to the bill, which amount is then turned over in full to the employe, is exempt from the tax, provided: (1) the amount of such tip is wholly in the discretion or judgement of the customer, and (2) the customer does not make the payment pursuant to an arrangement made with the seller or due to the seller's requirements, suggestion or influence.

### **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 (i.e., if the contractor's installed price

to a customer is \$1,000 and the cost of materials used in the job is \$600, tax is payable on 4% of \$600, or \$24).

### **GIFTS AND ADVERTISING SPECIALTIES**

Subsection (2) of rule Tax 11.28, which is part of the Wisconsin Administrative Code, contains information which may be of special interest to pharmaceutical and other manufacturers and tavern operators. The introduction to this subsection of the rule is entitled "Gifts, Gift Certificates, Advertising Specialties and Sales Incentive Plans" and reads as follows:

"Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise."

For example, a printer of books purchases display racks (cardboard or other materials) which are sent along with its books to Wisconsin customers. The printer may purchase display racks without tax "for resale" if they are provided in package deals in which the printer is contractually obligated to furnish such display racks to its customers. If the printer advertises that a display rack will be furnished with every 100 books purchased, it is contractually obligated to furnish such display racks. However, if a customer is only provided a display rack upon request, or at the discretion of the printer, the printer may not purchase these display racks without tax because the purchases were not "for resale."