

TAX REPORT

Sales/Use Tax

SEPTEMBER 1989

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NEW WISCONSIN SALES AND USE TAX LAWS

The Wisconsin Legislature enacted new sales and use tax laws in 1989 which may affect you. This report explains these new laws which were enacted in 1989 Wisconsin Act 31. The effective date of each new law is shown in parenthesis after the title. If you have any additional questions regarding these new laws, contact any Department of Revenue office.

1. **Telecommunication Services** (repeal sec. 77.52(2)(a)3 and 4, amend sec. 77.51(4)(a)4 and (15)(a)4, and create sec. 77.52(2)(a)5, effective October 1, 1989.)

The sale of interstate telecommunication services that originate in Wisconsin and are charged to a telephone or subscriber located in Wisconsin are subject to Wisconsin sales tax. Previously, only interstate services which originated in Wisconsin and were charged to a telephone located in Wisconsin were subject to sales tax.

2. **Time-Share Property** (create sec. 77.51(4)(c)6 and amend sec. 77.52(2)(a)1, effective August 9, 1989.)

The furnishing of rooms or lodging through the sale of a time-share property, as defined in sec. 707.02(32), Wis. Stats., is subject to sales and use tax if the use of the rooms or lodging is not fixed at the time of the sale as to the starting day or the lodging unit, and is for a continuous period of less than one month.

3. **Exempt Elastic Hose** (create sec. 77.54(22)(f), effective October 1, 1989.)

Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer are exempt from sales and use tax.

4. **Exempt Camping Fees in State Parks** (amend secs. 27.01(10)(d)1 to 6 and 77.54(10), effective September 1, 1989.)

Camping fees in Wisconsin state parks are exempt from sales tax.

5. **Exempt Certain Donations From Use Tax** (create sec. 77.56(3), effective August 9, 1989.)

This provision exempts from use tax the donation to an entity specified in sec. 77.54(9a), Wis. Stats., of property that the donating person has purchased tax-free for resale or with a valid exemption certificate.

The following entities are specified in sec. 77.54(9a), Wis. Stats.:

- a. State of Wisconsin or any agency thereof
 - b. Any county, city, village, town, or school district in Wisconsin
 - c. A county-city hospital established under sec. 66.47, Wis. Stats.
 - d. A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
 - e. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin
 - f. Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.
6. **Manufacturing Machinery and Equipment Exemption** (create sec. 77.54(6r), effective October 1, 1989.)

The sales and use tax exemption for manufacturing machinery and equipment under sec. 77.54(6) is to be strictly construed.

7. **Farm Machinery Exemption** (renumber sec. 77.54(3) to 77.54(3)(a) and amend, create sec. 77.54(3)(b) and (c), effective October 1, 1989.)

Exempt from sales and use tax are the gross receipts from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, fuel, and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture, and custom farming services.

This exemption does not include:

- a. Automobiles, trucks, and other motor vehicles for highway use,
- b. Personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property, or

- c. Tangible personal property used or consumed in the erection of buildings or in the alteration, repair or improvement of real property, regardless of any contribution that the personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine.

For purposes of this sales and use tax exemption, the following items retain their character as tangible personal property, regardless of the extent to which they are fastened to, connected to, or built into real property:

- a. Auxiliary power generators
- b. Bale loaders
- c. Barn cleaners and elevators
- d. Conveyors
- e. Feed elevators and augers
- f. Grain dryers and grinders
- g. Milk coolers
- h. Milking machines; including piping, pipeline washers, and compressors
- i. Powered feeders, but not including platforms or troughs constructed from ordinary building materials
- j. Silo unloaders (top and bottom)

For purposes of this sales and use tax exemption, the following definitions apply.

“Building” means any structure that is intended to be a permanent accession to real property; that is designed or used for sheltering people, animals, or plants, for storing property or for working, office, parking, sales, or display space, regardless of any contribution that the structure makes to the production process in it; that in physical appearance is annexed to that real property; that, except for a few structures, is covered by a roof, or encloses space; that is not readily moved or disassembled; and that is commonly known to be a building because of its appearance and because of the materials of which it is constructed.

“Machine” means an assemblage of parts that transmits force, motion, and energy from one part to another in a predetermined manner.

“Used exclusively” means used to the exclusion of all other uses except for other uses not excluding 5% of total use.

(Note: Under prior law (i.e., prior to October 1, 1989), the exemption for farm machinery in sec. 77.54(3) read as follows:

(3) The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for the sales tax under s. 77.57 at the time any more than nominal other use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property.)

8. Penalties for Operators of Swap Meets or Similar Events That Fail to Comply With Reporting Requirements (amend sec. 73.03(38), effective August 9, 1989.)

If any operator of a swap meet, flea market, craft fair, or similar event fails to report to the Department of Revenue the required information on each vendor, the department, after notification to the operator, shall impose a penalty of \$200 for the first failure and \$500 for each subsequent failure.

9. Local Government Licensing Requirements Changed (amend sec. 77.61(11), effective August 9, 1989.)

An official of a city, village, or town may not issue licenses or permits to a person required to hold a seller's permit unless (1) the person in fact has a seller's permit or (2) the official has information from the Department of Revenue that a permit will be issued to that person.

10. Refunds Under “Lemon Law” (repeal sec. 20.835(2)(eq), amend sec. 218.015(2)(c) and (f), and create secs. 73.03(37) and 218.015(2)(f)4, effective August 9, 1989.)

Under prior law governing repair, replacement, and refund under a new motor vehicle warranty (commonly called the “lemon law”), a consumer may return a defective motor vehicle to its manufacturer for a refund of the purchase price, including sales tax. The lemon law also directs the Department of Revenue to refund the sales tax paid on a returned motor vehicle to the manufacturer or, in certain limited cases, the consumer directly. This new provision permits a consumer to collect a sales tax refund directly from the Department of Revenue whenever the manufacturer fails to refund the sales tax.