

SALES AND USE TAX REPORT

1-93

September 1993

I. ADAMS COUNTY ADOPTS COUNTY TAX

Effective January 1, 1994, there will be a 1/2% county sales and use tax in Adams County. Adams County joins 43 other Wisconsin counties who have previously adopted the county tax.

II. DON'T FORGET USE TAX

Failure to report use tax is the most common error on sales and use tax returns. Make sure use tax is correctly reported on lines 17 through 23 of your sales and use tax return (Form ST-12).

The 5% use tax is imposed on the purchase price of tangible personal property or taxable services that are to be used, stored, or consumed within Wisconsin, upon which a sales tax is not imposed.

Common examples involving use tax include:

- Property used in Wisconsin is purchased outside Wisconsin and the property would have been subject to sales tax if purchased in Wisconsin.

Example: A Wisconsin company purchases an office machine from an Illinois seller who does not charge Wisconsin sales or use tax. The machine is used in Wisconsin. The Wisconsin company is liable for Wisconsin use tax on the purchase price of this machine.

- Building materials are purchased by a nonresident contractor from a seller located in a state other than Wisconsin and the seller either does not charge sales tax, or charges a tax at a rate less than 5%. The nonresident contractor uses the materials on a job in Wisconsin.

Example: A contractor located in Illinois purchases building materials in another state and pays that state's 3% sales tax on the materials. The contractor uses the materials in constructing a building in Wisconsin. The contractor owes the 5% Wisconsin use tax on the purchase price of the materials used in Wisconsin. The

contractor is allowed a credit for the sales tax paid to the other state.

- Property is purchased for resale (to sell to others) or for a nontaxable use and then is used by the purchaser in a taxable manner. No sales tax is paid when the property is purchased.

Example: A furniture store buys desks to resell to customers. The furniture store gives the seller a "resale certificate," therefore, no sales tax is charged on the sale of the desks to the furniture store. A desk is then taken from the furniture store's inventory and used by the store bookkeeper. The store owes use tax on the desk.

- Property is purchased outside Wisconsin without payment of the Wisconsin sales tax and is then brought into Wisconsin and given away free.

Example: A store purchases Christmas gifts or grand opening gifts which are distributed free to customers. The store owes use tax on the gifts.

Note: County use tax may also apply.

III. OVER \$17 MILLION FOUND IN UNPAID USE TAX

Over \$17 million of use tax, penalties, and interest was assessed against taxpayers in the fiscal year ending June 30, 1992, as a result of audits.

Auditors found that many businesses do not have a system to keep track of purchases subject to use tax. The preceding article gives examples of when use tax is due.

Purchasers should carefully review their accounting methods to make sure that use tax is properly paid.

IV. NEW SALES AND USE TAX LAWS

The Wisconsin Legislature enacted new sales and use tax laws in 1993 which may affect you. This report explains these new laws. The Wisconsin Act number and the effec-

tive date of each new law is shown in parenthesis after the title.

If you have any questions regarding these new laws, contact any Department of Revenue office.

A. Surrender of Seller's Permit Requirement Eliminated for Occasional Sales Exemption (1993 Act 16, amend sec. 77.51(9)(am), effective August 12, 1993.)

The conditions that must be met for the sale of business assets to qualify as an exempt occasional sale are changed.

Under prior law, the sale of tangible personal property, other than inventory held for sale, previously used by a seller to conduct its business at a location, was exempt from Wisconsin sales or use tax as an occasional sale if both of the following conditions were met:

1. The sale of tangible personal property occurred after the seller ceased actively operating as a seller of tangible personal property or taxable services at that location.
2. The seller delivered its seller's permit to the Department of Revenue for cancellation within 10 days after the last sale at that location of tangible personal property, other than inventory.

The amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92), eliminates the condition that the seller must surrender its seller's permit within 10 days of the last sale (condition "2"). However, condition "1" above still applies.

Note: This amendment applies to all sales of tangible personal property meeting condition 1 above, if the last sale of that property occurs on or after August 12, 1993, regardless of whether the seller ceased actively operating the business before or after August 12, 1993.

Example 1: Company A ceases actively operating as a seller of tangible personal property and taxable services on August 1, 1993 (i.e., prior to the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company A sells its business assets, other than inventory held for sale, on August 30, 1993, (i.e., on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company A does not deliver its Wisconsin seller's permit to the department for cancellation.

Since the sale of business assets by Company A to Company B takes place on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92), it is exempt

from Wisconsin sales and use taxes as an occasional sale.

Example 2: Company C ceases actively operating as a seller of tangible personal property or taxable services on May 31, 1993. Company C sells its business assets, other than inventory held for sale, to various companies over a period of 3 months, the last sale occurring on August 30, 1993 (i.e., on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company C does not deliver its Wisconsin seller's permit to the department for cancellation.

Since the last sale of business assets by Company C takes place on or after August 12, 1993, the sales of business assets during the period of June 1, 1993, to August 30, 1993, are exempt from Wisconsin sales or use tax as occasional sales.

B. Impose Use Tax on Tangible Personal Property Manufactured, Processed, or Otherwise Altered In or Outside Wisconsin and Used in Wisconsin (1993 Act 16, repeal and recreate sec. 77.53(1), effective August 12, 1993.)

Use tax is imposed on the storage, use, or other consumption of tangible personal property manufactured, processed, or otherwise altered in or outside Wisconsin, by the person who stores, uses, or consumes it, from material purchased from any retailer.

This provision reverses the effect of the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (February 10, 1992).

The following examples illustrate the application of use tax under this provision:

Example 1: Company A, located in Minnesota, has its own print shop. Company A has nexus in Wisconsin. All paper and ink used by Company A to print advertising brochures are transferred from a supplier to Company A in Minnesota. No Wisconsin or Minnesota sales or use tax is paid on the paper and ink transferred from the supplier to Company A. After printing, the advertising brochures are mailed by Company A to its customers in Wisconsin.

The paper and ink used to print the advertising brochures that are mailed to Wisconsin customers are subject to Wisconsin use tax.

Example 2: Company B, a manufacturer of office furniture, is headquartered in Wisconsin. Company B has 10 desks, which were manufactured in its plant in Texas, delivered to its headquarters in Wisconsin for use by its employees. The raw materials (e.g., steel, laminate, etc.) used to manufacture the desks were transferred by suppliers to Company B outside Wisconsin.

The raw materials used to manufacture the desks that are used by Company B in Wisconsin are subject to Wisconsin use tax.

Example 3: Company C, located in Michigan, manufactures automobiles. Employees of Company C who are located in Wisconsin are provided, for business use, automobiles manufactured by Company C. The raw materials (e.g., tires, engines, steel, etc.) used in manufacturing these automobiles were transferred from suppliers to Company C in Michigan.

The raw materials used to manufacture automobiles that are used by Company C employees in Wisconsin are subject to Wisconsin use tax.

Example 4: Company D, located in Illinois, is a producer of modular homes. Raw materials (lumber, trusses, hardware, etc.) used to produce its modular homes were transferred from suppliers to Company D in Illinois without Wisconsin or Illinois sales or use tax. Company D erects the modular homes in Wisconsin.

The raw materials used by Company D to produce the modular homes which are erected in Wisconsin are subject to Wisconsin use tax.

Example 5: Company E is an asphalt contractor located in Iowa. Raw materials used in manufacturing asphalt outside Wisconsin are transferred from suppliers to Company E outside Wisconsin without sales or use tax. Company E uses the asphalt in road construction in Wisconsin.

The raw materials used by Company E to manufacture asphalt used in road construction in Wisconsin are subject to Wisconsin use tax.

Example 6: Company F, located in Illinois, sells and erects silos in Wisconsin. Steel rods, used in erecting the silos, are bent at Company F's plant located in Illinois. The rods are transferred from suppliers to Company F outside Wisconsin without sales or use tax.

The rods bent by Company F outside Wisconsin and used in real property construction in Wisconsin are subject to Wisconsin use tax.

C. Definition of Storage and Use Revised for Raw Materials Incorporated Into Printed Materials (1993 Act 16, amend sec. 77.51(22)(a) and repeal and recreate sec. 77.51(18), effective for materials purchased and first stored in Wisconsin on or after October 1, 1993.)

"Storage" and "use" for purposes of imposing Wisconsin use tax under sec. 77.53(1), Wis. Stats. (1991-92), do not include the keeping, retaining, or exercising any right or power over raw materials by a publisher or printer of printed materials for process-

ing, fabricating, or manufacturing into, attachment to, or incorporation into printed materials to be transported outside Wisconsin, and thereafter used solely outside Wisconsin.

Example: Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A, on October 1, 1993, purchases paper from an out-of-state company which does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer on October 4, 1993, who prints the catalogs for Company A. The catalogs are subsequently shipped outside Wisconsin for use solely outside Wisconsin.

The paper is not "stored" or "used" in Wisconsin and, therefore, is not subject to Wisconsin use tax.

Note: If the paper was purchased and delivered to Wisconsin prior to October 1, 1993, the effective date of this provision, the paper would be subject to Wisconsin use tax.

D. Exemption Created for Certain Items Sold by Department of Agriculture, Trade, and Consumer Protection (1993 Act 16, create sec. 77.54(42), effective October 1, 1993.)

Sales of the following items by the Wisconsin Department of Agriculture, Trade, and Consumer Protection are exempt from Wisconsin sales or use tax:

- Animal identification tags to persons who are required or authorized to use those identification tags.
- Standard samples representing product or commodity grades.

V. TAX TREATMENT OF TOWING CHANGED

Effective May 1, 1993, all towing of tangible personal property is subject to Wisconsin sales or use tax, unless an exemption applies. Previously, towing tangible personal property was subject to Wisconsin sales or use tax only if it was related to the repair, service, or maintenance of the property being towed.

For more information, contact any Department of Revenue office.

VI. FEDERAL EMPLOYER IDENTIFICATION NUMBER REQUIRED

Your Wisconsin sales and use tax return (Form ST-12) contains a space at the top for your federal identification number (FEIN). If your return does not contain your FEIN, enter the number in the space provided.

Entering your FEIN allows the department to more accurately bring together all tax accounts you have with the department.

If you have obtained a new FEIN, you must apply for a new seller's permit or use tax registration certificate with the Department of Revenue. Application can be made using Form A-101, Application for Permit.

VII. ADDRESS AND OWNERSHIP CHANGES

Beginning in January 1994, your Wisconsin sales and use tax return (Form ST-12), will no longer include space to note changes in mailing or business address or changes in ownership of your business. This change will speed up the processing of returns.

To make sure that your account information is correct, you must notify the department of any changes in address or ownership in one of the following ways:

- A. Use the tear-off stub on your Wisconsin seller's permit to indicate the new information and send it to the department. Permits currently being issued by the department contain this stub. Within 2 years, all permits will contain this stub since seller's permits are renewable every 2 years.
- B. Write to the department indicating the address or ownership changes. Be sure to include in the correspondence all of the following:
 1. Seller's permit or use tax registration certificate number. Include the suffix of the number if you have more than one location.
 2. Federal employer identification number (FEIN).
 3. Effective date of the changes.
 4. Explanation for any change in your legal name.

Whatever method you choose for notifying the department of address or ownership changes, the information should be sent to the Registration Unit, Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

VIII. PUBLICATIONS MAY ANSWER YOUR QUESTIONS

Answers to your sales and use tax questions may be found in one of the Department of Revenue publications. You can obtain the following sales and use tax publications from any Department of Revenue office or by writing to the Wisconsin Department of Revenue, Shipping and Mailing Section, P.O. Box 8903, Madison, WI 53708-8903.

No.	Title
200	Sales and Use Tax Information for Electrical Contractors
201	Wisconsin State and County Sales and Use Tax Information
202	Sales and Use Tax Information: Motor Vehicle Sales, Leases and Repairs
203	Sales and Use Tax Information for Manufacturers
204	Sales and Use Tax Information for Colleges, Universities, and Vocational Schools
205	Do You Owe Wisconsin Use Tax? (Individuals)
206	Sales Tax Exemption for Nonprofit Organizations
207	Sales and Use Tax Information for Contractors
210	Sales and Use Tax Treatment of Landscaping
211	Sales and Use Tax Information for Cemetery Monument Dealers
212	Businesses: Don't Forget About Use Tax
213	Travelers: Don't Forget About Use Tax
214	Do You Owe Wisconsin Use Tax? (Businesses)

INDEX TO WISCONSIN TAX INFORMATION AVAILABLE

An index published by the Wisconsin Department of Revenue may help you find information pertaining to Wisconsin tax questions. The *Topical and Court Case Index* is a two-part index, a topical index that will help you find a particular Wisconsin Statute, administrative rule, *Wisconsin Tax Bulletin* tax release and private letter ruling, or Attorney General Opinion and a court case index that will help you find a Wisconsin court decision relating to your questions.

The *Topical and Court Case Index* is published annually in December and costs \$14 (plus sales tax) per year. An addendum of updated information is provided the following May without charge. Copies can be purchased from: Wisconsin Department of Administration, Document Sales, P.O. Box 7840, Madison, WI 53707-7840 (telephone (608) 266-3358).