

SALES AND USE TAX REPORT

1-97

November 1997

In This Issue

| | |
|--|---|
| I. New Sales and Use Tax Laws | 1 |
| II. Other New Tax Laws | 4 |
| III. Motor Vehicle Dealers' Measure of Use Tax Increased to \$102 | 6 |

I. NEW SALES AND USE TAX LAWS

The following new sales and use tax laws have been enacted. The effective date of each law is shown in parenthesis. See Part II on page 4 for information about other tax law changes that may affect your business.

A. Telephone Message Services Are Taxable (effective for sales on or after December 1, 1997)

Sales and use tax is imposed on services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental, as defined in sec. 77.51(5), Wis. Stats., element of another service that is sold to that purchaser and is not taxable.

B. Telecommunications Services Terminating in Wisconsin and Charged to a Service Address in Wisconsin Are Taxable, Except Certain Services Obtained by Means of a Toll-Free Number (effective for sales on or after December 1, 1997)

Sales and use tax is imposed on telecommunications services that:

- either originate or terminate in Wisconsin, and
- are charged to a service address in Wisconsin, regardless of the location where that charge is billed or paid.

Exception: Services that are obtained by means of a toll-free number, that originate outside Wisconsin and that terminate in Wisconsin, are not taxable.

C. Credit Allowed for Sales Tax Properly Paid to Another State on Interstate Telecommunications Services (effective October 14, 1997)

Any person who is subject to the tax under sec. 77.52(2)(a)5, Wis. Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under sec. 77.52(2)(a)5, Wis. Stats., was passed on an amount equal to the amounts not remitted.

D. Motor Vehicles Used by Dealership — Measure of Use Tax Changed (effective December 1, 1997)

Persons holding an ownership interest in Wisconsin licensed motor vehicle dealerships (e.g., sole proprietors, partners, subchapter S shareholders, LLC members, etc.) who are not subject to withholding for federal income tax purposes, but who actively participate in the day-to-day operation of the dealership, may use \$99* (see the end of this summary for an explanation) per month as the measure of use tax for motor vehicles assigned to them that are used for a purpose, in addition to retention, demonstration, or display, while being held for sale.

"Actively participates" means the person performs services for the dealership, including selling, accounting, managing, and consulting, for more than 500 hours in a taxable year for which the person receives compensation. "Actively participates" does not include services performed only in the capacity of an investor, including studying and reviewing financial statements or reports on the operation of the business, preparing or compiling summaries or analyses of the finances of the business for the investor's own use, or monitoring the finances or operations of the activity in a nonmanagerial capacity.

Previously, motor vehicles assigned to these persons and used for a purpose, in addition to retention, demonstration, or display, while being held for sale were subject to use tax on the lease value computed using the IRS Lease Value Table contained in IRS Reg. § 1.61-21(d)(2).

* \$99 is the amount effective for the period 1/1/97 through 12/31/97. This amount is subject to change effective each January 1 thereafter to account for changes in the Consumer Price Index. See Part III on page 6.

E. “Real Property Construction Activities” — Definition Changed (effective for sales of property pursuant to contracts entered into on or after December 1, 1997)

The definition of “real property construction activities” for purposes of sec. 77.51(2), Wis. Stats., is changed to mean “activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property.” In sec. 77.51(2), Wis. Stats., “real property construction activities” do not include “affixing to real property tangible personal property that remains tangible personal property after it is affixed.”

This change in definition of “real property construction activities” reverses the decision of the Wisconsin Supreme Court in *Wisconsin Department of Revenue v. Sterling Custom Homes* (282 N.W.2d 573 (1979)). Manufacturers of modular homes are no longer considered engaged in real property construction when they manufacture a home for a specific site designated by the purchaser prior to manufacturing. The manufacturer is engaged in real property construction activities when the manufacturer affixes the modular home at the site selected by the purchaser.

F. Manufactured Buildings — Computing Amount Subject to Tax (effective for sales of property pursuant to contracts entered into on or after December 1, 1997)

Gross receipts and sales price from the sale of a “manufactured building,” as defined in sec. 101.71(6), Wis. Stats. (see definition below), that is tangible personal property when sold, may be reduced by one of the following:

Option A: 35% of the sales price.

Option B: An amount equal to the sales price minus the cost of the materials that become an

ingredient or component part of the manufactured building.

No credit is allowed for trade-ins under Option A or Option B in computing gross receipts or sales prices subject to tax.

Once a retailer chooses Option A or Option B for the first manufactured building sold under this provision, the retailer must continue to use that option for all sales of manufactured buildings, that are tangible personal property when sold, until such time as the department approves in writing the use of the other option.

“Manufactured building” under sec. 101.71(6), Wis. Stats. (1995-96), means any structure or component thereof which is intended for use as a dwelling and:

1. is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site; or
2. is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

“Manufactured building” does not mean a manufactured home or mobile home under sec. 101.91 or any building of open construction which is not subject to 2. above.

G. Exemption Modified for Meals, Food, and Beverages Furnished Under Contract or Agreement by Institutions of Higher Education (effective for contracts or agreements entered into on or after October 14, 1997)

The exemption for meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education is modified to apply only if:

1. The items are furnished to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or
2. The items are furnished to a National Football League team.

Note: Under prior law, meals, food, food products or beverages furnished in accordance with any

contract or agreement by a public or private institution of higher education were exempt from sales and use tax.

H. Exemption Created for Certain Pharmaceutical Samples Furnished Without Charge (effective October 14, 1997)

An exemption is created for sales of, and the storage, use or other consumption in Wisconsin of medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist who is licensed under ch. 447, Wis. Stats., podiatrist who is licensed under ch. 448, Wis. Stats., or optometrist who is licensed under ch. 449, Wis. Stats., if the medicine may not be dispensed without a prescription.

I. Raw Materials Incorporated in Printed Materials Not Sold — Exemption Created (effective December 1, 1997)

The sale of, and the storage, use, or other consumption of, raw materials used for the processing, fabricating, or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside Wisconsin are exempt from Wisconsin sales or use tax, even if the printed materials are not sold.

Example: Company A, located in Wisconsin, sells paper for \$100,000 to Company B. Company B directs Company A to deliver the paper to Company C in Wisconsin. Company C uses the paper to print Company B's advertising catalog. Company B delivers, without charge, 90% of the catalogs to its customers outside Wisconsin for use solely outside Wisconsin.

Since 90% of the paper is incorporated into printed material (i.e., catalogs) that is transported outside Wisconsin for use solely outside Wisconsin, 90% of the \$100,000 charge by Company A to Company B for the paper (\$90,000) is exempt from Wisconsin sales or use tax. Company B should provide Company A with a properly completed exemption certificate.

Note: The exemption for paper illustrated in the example above is not limited to catalogs, but would also apply to other printed materials (e.g., letterheads, invoices, envelopes, etc.).

J. Clarify Exemption for Plastic Bags, Sleeves, and Sheeting Used to Store or Cover Hay or Silage (effective December 1, 1997)

This provision clarifies that plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage and containers for hay and silage are

exempt from sales and use tax if they are used exclusively by the purchaser or user in the business of farming.

This provision also clarifies that for purposes of the exemption for certain items provided in sec. 77.54(3m), Wis. Stats., the business of farming includes custom farming services.

Note: This provision does not result in any change in the taxability of items used in farming.

K. Certain Periodicals Issued in Six-Month Intervals Are Exempt (effective December 1, 1997)

Sales of periodicals by subscription issued at average intervals not exceeding six months are exempt from Wisconsin sales or use tax if the seller is an educational association or corporation exempt from sales or use tax on its purchases under sec. 77.54(9a)(f), Wis. Stats.

L. Exemption Certificates Not Required for Sales of Certain Commodities (effective December 1, 1997)

No sales and use tax exemption certificate is required for sales of commodities, as defined in 7 United States Code section 2, that are consigned for resale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to a commodity market regulated by the U.S. commodity futures trading commission if, upon the sale, the commodity is not removed from the warehouse.

M. Authorize Department of Revenue to Enter Into Direct Marketer Agreements (effective October 14, 1997)

The Department of Revenue is authorized to enter into agreements with direct marketers about the collection of state and local sales and use taxes.

N. Lac du Flambeau Band to Collect Sales and Use Taxes on All-Terrain Vehicles and Snowmobiles (effective October 14, 1997)

For all-terrain vehicles and snowmobiles registered with the Lac du Flambeau Band that are purchased from a person who is not a registered Wisconsin all-terrain vehicle or snowmobile dealer, the Wisconsin sales or use tax due on the purchase is required to be collected by the Lac du Flambeau Band. On or before the 15th day of each month, the Lac du Flambeau Band is required to pay to the Department of Revenue the taxes collected by the Lac du Flambeau Band in the previous month.

Under prior law, the sales or use tax on such purchases was collected by the Department of Natural Resources when all-terrain vehicles and snowmobiles were registered with the Department of Natural Resources.

O. Motor Fuel Tax Refunds Excluded From Measure of Sales and Use Taxes (effective December 1, 1997)

The gross receipts or sales price from the sale of motor fuel subject to Wisconsin sales or use tax do not include Wisconsin and federal motor fuel taxes that have been refunded.

Example: Company C sells motor fuel to Company D. The selling price includes the federal and Wisconsin motor fuel taxes. Company C does not charge Company D Wisconsin sales tax on the sale of the motor fuel because the sale is exempt from sales tax under sec. 77.54(11), Wis. Stats. (1995-96).

After the sale, Company D files claims for refund with the Wisconsin Department of Revenue and Internal Revenue Service for the federal and Wisconsin motor fuel taxes it paid on the fuel purchased from Company C because the fuel was used off-highway. As a result of the refund of Wisconsin motor fuel taxes, Company D's purchase of the motor fuel is subject to use tax.

The amount subject to use tax is the total amount of the sale of the fuel by Company C to Company D, less the federal and Wisconsin motor fuel taxes that were subsequently refunded.

P. Allow Use of Temporary Permit After Revocation, Suspension, or Expiration (effective January 1, 1998)

A person who operates as a seller in Wisconsin after a permit has been suspended, revoked or has expired is guilty of a misdemeanor, unless the person has a temporary permit as provided in sec. 77.52(11), Wis. Stats.

Q. Change Requirement to Qualify for Direct Pay Permit (effective January 1, 1998)

Rather than being required to hold a business tax registration certificate, in order for a person to qualify for a direct pay permit from the department, the person must either:

1. hold a permit provided for under sec. 77.52(9), Wis. Stats., or

2. be registered with the department as required by sec. 77.53(9), Wis. Stats.

R. Federal "Check-the-Box" Regulations Adopted (effective October 14, 1997)

If a single-owner entity is disregarded as a separate entity under IRC sec. 7701, the owner:

- must obtain any required business tax registration certificate.
- shall include the information from the entity on the owner's sales and use tax returns.

II. OTHER NEW TAX LAWS

The following new taxes and fees will be administered by the Department of Revenue and may affect persons registered for Wisconsin sales and use tax purposes. Additional information will be sent to selected retailers prior to imposition of these taxes or fees.

A. Authorize Creation of Premier Resort Area and Imposition of Premier Resort Area Tax (effective October 14, 1997)

A municipality or a county, all of which is included in a "premier resort area" under sec. 66.307, Wis. Stats., may, by ordinance, impose a premier resort area tax of 0.5% of the gross receipts from the sale, lease or rental of goods or services that are: (a) made within the premier resort area, (b) taxable under subch. III. and (c) made by businesses that are classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under the following industry numbers:

- 5331 - Variety stores.
- 5399 - Miscellaneous general merchandise stores.
- 5441 - Candy, nut, and confectionary stores.
- 5451 - Dairy product stores.
- 5461 - Retail bakeries.
- 5541 - Gasoline service stations.
- 5812 - Eating places.
- 5813 - Drinking places.
- 5912 - Drug stores and proprietary stores.
- 5921 - Liquor stores.
- 5941 - Sporting goods stores and bicycle shops.
- 5946 - Camera and photographic supply stores.
- 5947 - Gift, novelty, and souvenir shops.
- 7011 - Hotels and motels.
- 7032 - Sporting and recreational camps.
- 7033 - Recreational vehicle parks and campsites.
- 7948 - Racing, including track operation.
- 7992 - Public golf courses.
- 7993 - Coin-operated amusement devices.

7996 - Amusement parks.

7999 - Amusement and recreational services, not elsewhere classified.

B. Impose Tax on “Adult Entertainment Products and Services” (effective April 1, 1998)

A tax is imposed at the rate of 5% of the gross receipts, as defined in sec. 77.51(4), Wis. Stats., from the retail sale of “adult entertainment products and services.”

“Adult entertainment products and services” are defined to mean “products and services, not including magazines and motion pictures but including admission to a strip club, that are harmful to children, as defined in s. 948.11(1)(b).”

The Department of Revenue is responsible for promulgating permanent rules which specify the products and services which are subject to this tax.

C. Impose Various Environmental Response Fund Fees on Dry Cleaners (effective October 14, 1997)

1. *Dry Cleaning Facility License Fee*

A fee of 1.8% of the previous year’s gross receipts from dry cleaning is required to be paid to the Wisconsin Department of Revenue by any person operating a dry cleaning facility in Wisconsin. The fee shall be paid on or before January 15 of each year.

The department will issue a license, which is valid through December 31, to each person who pays the fee and submits the form. The holder of the license shall display it prominently in the facility to which it applies. If a dry cleaning facility is sold, the seller may transfer the license to the buyer. A penalty of \$5 per day will be imposed on any person who operates a dry cleaning facility without a license.

A “dry cleaning facility” means a facility that dry cleans apparel or household fabrics for the general public other than:

- a. Coin-operated facilities.
- b. Facilities located on U.S. military installations.
- c. Industrial laundries.
- d. Commercial laundries.
- e. Linen supply facilities.
- f. Facilities located at a prison or other penal institution.
- g. Facilities located at a nonprofit hospital or at a nonprofit health care institution.

h. Facilities located on property owned by the U.S. government or by Wisconsin.

2. *Dry Cleaning Solvents Fee*

A fee of \$5 per gallon of perchloroethylene sold, and \$0.75 per gallon of a hydrocarbon-based solvent sold, is imposed on each person who sells a dry cleaning solvent to a dry cleaning facility. The fees for the previous three months are due on January 25, April 25, July 25, and October 25 of each year.

3. *Inventory Fee*

A fee of \$5 per gallon of perchloroethylene, and \$0.75 per gallon of a hydrocarbon-based solvent, possessed on October 14, 1997 is imposed on each dry cleaning facility. The fee is due November 13, 1997.

The fees collected under subch. XII will all be deposited by the department in the “dry cleaner environmental response fund” established under sec. 25.48, Wis. Stats. Subchapter XII does not apply after June 30, 2032.

D. State Rental Vehicle Fee Created (effective April 1, 1998)

General Imposition

1. A 3% fee is imposed on the rental of the following, by establishments primarily engaged in the short-term rental of vehicles without drivers, for a period of 30 days or less:

- Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats.
- Station wagons, as defined in sec. 340.01(61), Wis. Stats.
- Motor trucks, as defined in sec. 340.01(34), Wis. Stats.
- Road tractors, as defined in sec. 340.01(53), Wis. Stats.
- Truck tractors, as defined in sec. 340.01(73), Wis. Stats.
- Semitrailers, as defined in sec. 340.01(57), Wis. Stats.
- Trailers, as defined in sec. 340.01(71), Wis. Stats.
- Motor buses, as defined in sec. 340.01(31), Wis. Stats.
- Mobile homes, as defined in sec. 340.01(29), Wis. Stats.
- Motor homes, as defined in sec. 340.01(33m), Wis. Stats.
- Camping trailers, as defined in sec. 340.01(6m), Wis. Stats.

2. A 5% fee is imposed on the rental of limousines.

“Limousine” means a passenger automobile that has a capacity of 10 or fewer persons, excluding the driver, that has a minimum of 5 seats behind the driver; that is operated for hire on an hourly basis under a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person who hires the vehicle and not over a defined route.

“Limousine” does not include taxicabs, hotel or airport shuttles or buses, buses employed solely in transporting school children or teachers, vehicles owned and operated without charge or remuneration by a business entity for its own purposes, vehicles used in car pools or van pools, public agency vehicles that are not operated as a commercial venture, vehicles operated as part of the employment transit assistance program under sec. 106.26, Wis. Stats., ambulances, or any vehicle that is used exclusively in the business of funeral directing.

Exemptions

The following exemptions apply to the rental of items listed in Part 1. of “General Imposition” above:

- Rerentals
- Rentals as a service or repair replacement vehicle

The following exemptions apply to the rental of items listed in both Parts 1. and 2. of “General Imposition” above:

- Rentals to the federal government
- Rentals to a Wisconsin governmental unit, including a Wisconsin county, city, village, town, public school, or school district
- Rentals to nonprofit organizations that hold a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue

- Rentals by any public or private elementary or secondary school exempt from Wisconsin income or franchise taxes, including school districts

Note: Exemptions, other than those listed above, that apply for Wisconsin sales or use tax purposes (e.g., common or contract carriage) do not apply for the rental vehicle fee.

E. Local Exposition District Tax — Exemption From Food and Beverage Tax if Liability Is Less Than \$5 for Year (effective January 1, 1998)

Any retailer whose liability for the tax under subch. VIII (local food and beverage tax) is less than \$5 for the year, is exempt from that tax for that year.

Note: As of October 22, 1997, the only tax this provision applies to is the local exposition food and beverage tax imposed in Milwaukee County.

III. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$102

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees.

Effective January 1, 1998, the amount subject to use tax is increased from \$99 to \$102 per plate per month. (Note: The use tax per plate per month is not \$102. Rather, \$102 is multiplied by the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the increase to \$102 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1995-96), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Customers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 1996 to June 1997 was 2.9% ($\$99 \times 1.029 = \102 rounded to the nearest whole dollar).