

# SALES AND USE TAX REPORT

1-98

March 1998

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- Seller A is subject to Wisconsin sales or use tax on its \$1,000 charge to Buyer B. Seller A does not include the \$40 charge for transportation in gross receipts subject to Wisconsin sales or use tax because Seller A does not have any gross receipts from transportation.
- Buyer B is not subject to Wisconsin sales or use tax on the \$40 transportation charge because the transportation costs were separately incurred by Buyer B independent of Seller A. This treatment is in accord with the *Rhineland Paper* and *Trierweiler Construction* decisions.

## I. TRANSPORTATION CHARGES PAID BY BUYER

The Circuit Court recently held that transportation costs separately incurred by a buyer from a carrier, independent of a retailer, are not part of the sales price of tangible personal property subject to Wisconsin sales or use tax. (*Rhineland Paper Company, Inc. vs. Wisconsin Department of Revenue* (97 CV 1051, December 18, 1997) and *Trierweiler Construction and Supply Co., Inc. vs. Wisconsin Department of Revenue* (97 CV 1444, December 12, 1997)). The Department of Revenue did not appeal these decisions.

As a result, the treatment of transportation of taxable tangible personal property arranged and paid for by a buyer has changed as explained in the following example (this applies to all periods open to adjustment under the statute of limitations).

**Example:** Seller A charges Buyer B \$1,000 for a taxable product. Buyer B hires a common carrier to pick up the product from Seller A and transport it to Buyer B. The common carrier charges Buyer B \$40 for the transportation.

- The common carrier is not subject to Wisconsin sales or use tax on its \$40 charge to Buyer B for transportation because it is providing a service that is not subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (1995-96).

**Note:** In this example, the carrier is not subject to Wisconsin sales or use tax on its sale of the transportation service, and Seller A's gross receipts subject to Wisconsin sales or use tax do not include the \$40 charge for transportation, regardless of whether the carrier is a common carrier, a contract carrier, or the U.S. Postal Service.

## II. NEW TAXES AND FEES BEGIN APRIL 1

### A. Premier Resort Area Tax

The Wisconsin Legislature enacted a law which permits a municipality or county to impose a 0.5% premier resort area tax if it meets certain conditions and adopts an ordinance. The following municipalities have adopted an ordinance to impose the 0.5% premier resort area tax:

Municipality	Effective Date of Tax
Village of Lake Delton	April 1, 1998
City of Wisconsin Dells	July 1, 1998

**Note:** If other municipalities or counties adopt the premier resort area tax at a future date, the Department of Revenue will notify affected retailers in the premier resort area.

The Wisconsin Department of Revenue is responsible for administering this new tax.

### ***What Products and Services Are Taxable?***

The types of tangible personal property and services that are subject to the 5% Wisconsin state sales tax are also subject to the 0.5% premier resort area tax. If property or services are exempt from the 5% Wisconsin state sales tax, they are also exempt from the 0.5% premier resort area tax.

### ***Who Is Subject to the Premier Resort Area Tax?***

Every retailer making retail sales or rentals of tangible personal property or taxable services that are subject to the 5% Wisconsin state sales tax is also subject to the 0.5% premier resort area tax on such sales or rentals if all three of the following conditions are met:

1. The retailer is "engaged in business" in a premier resort area,
2. The sale or rental has a "situs" in the premier resort area in which the retailer is "engaged in business," and
3. The retailer is classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under one of 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.

**Caution:** Retailers who are not located in a premier resort area may still be subject to the premier resort area tax if they deliver property or perform taxable services in the premier resort area or are in some other way engaged in business in the premier resort area.

Each premier resort area is treated independently of the others. Therefore, a retailer may be engaged in business in one premier resort area, but not another.

### ***Registration***

No permit or registration from the Department of Revenue is required by a person for purposes of collecting and remitting the premier resort area tax.

### ***Filing Returns and Paying the Tax***

The premier resort area tax is reported on the Wisconsin Premier Resort Area Tax Return. There is a separate Wisconsin Premier Resort Area Tax Return for each of the two premier resort areas (i.e., Village of Lake Delton and City of Wisconsin Dells).

**Note:** Do not report the premier resort area tax on a Wisconsin sales and use tax return, Form ST-12.

### ***Publication Available***

A new publication titled "Premier Resort Area Tax" (Publication 403) contains additional information about the tax. (See "Any Questions" in Part D., page 3, to obtain a copy.)

### ***Information Mailed in March***

Information about the premier resort area tax, including Publication 403, was mailed in March, 1998 to selected retailers in the Village of Lake Delton premier resort area. The same information will be mailed to selected retailers in the City of Wisconsin Dells premier resort area at a later date. **Important:** If you are subject to the Village of Lake Delton premier resort area tax, but did not receive this information from the Department of Revenue, call (608) 266-2776 to obtain the information.

## **B. Rental Vehicle and Limousine Fees**

### ***Rental Vehicle Fee***

Beginning April 1, 1998, a 3% fee is imposed on the rental of the following vehicles in Wisconsin

for a period of 30 days or less by establishments primarily engaged in the short-term rental of vehicles without drivers:

- 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.

#### ***Limousine Fee***

Beginning April 1, 1998, a 5% fee is imposed on the rental of limousines with drivers.

“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 regular 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 vehicle fee:

- Rerentals
- Rentals as a service or repair replacement vehicle

The following exemptions apply to both the rental vehicle fee and the limousine fee:

- Rentals to the federal government
- Rentals to organizations under sec. 77.54(9a), Wis. Stats., including a Wisconsin state agency, county, city, village, town, public school, or school district and 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 and limousine fees.

#### ***Registration***

A registration form was sent with sales and use tax returns to monthly filers in January, 1998 and quarterly filers in March, 1998 asking that affected registrants return the form to the department with their sales and use tax return. **Important:** If you are subject to rental vehicle or limousine fee, but did not receive this information from the department call (608) 266-2776 to obtain the form.

No new permit or registration will be issued by the Department of Revenue to persons subject to the rental vehicle or limousine fee.

#### ***Filing Returns and Paying the Tax***

The rental vehicle and limousine fees are reported on the Wisconsin Rental Vehicle Fee Return (Form RV-012) **Note:** Do **not** report the rental vehicle and limousine fees on a Wisconsin sales and use tax return, Form ST-12.

### **D. Any Questions?**

If you have questions about the taxes and fees described in Part II or want Publication 403, write

to the Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, call (608) 266-2776, or contact any department office.

### III. 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 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 in real property construction 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.

### IV. WISCONSIN/MINNESOTA SALES TAX SEMINARS

The Wisconsin and Minnesota Departments of Revenue are presenting a series of joint sales and use tax seminars. The seminars will include information about Wisconsin sales taxes and differences between the two states' laws. These half-day seminars are open to the public without charge:

Date	Location
April 21, 1998	Onalaska, WI (General Businesses)
May 5, 1998	Duluth, MN (General Businesses)
May 5, 1998	Winona, MN (Contractors)

To register or for more information, call 1-800-888-6231.

### V. SALES AND USE TAX RETURN REVISED

The Wisconsin Sales and Use Tax Return (Form ST-12) has been revised. The revised form will first be used by registrants for reporting periods ending in April, 1998 (e.g., an April 1998 monthly return due in May 1998).

The revised form should be easier for registrants to complete and the department to process. The revisions are as follows:

1. Deductions from gross receipts have been combined, resulting in five less lines. Read the instructions for these lines to insure that deductions are reported on the proper lines.
2. Lines for itemizing purchases subject to use tax have been eliminated. Total purchases subject to state, county, and stadium use tax must be entered in the spaces provided on lines 11a, 11b, and 11c.
3. The **stadium tax** schedule on the back of the return for itemizing sales and purchases by county has been eliminated. However, stadium sales and use tax must still be reported on lines 7c and 11c on the front of the return.

**Important:** You should use the preprinted sales and use tax returns that the department mails to you. Submitting forms other than those sent to you can result in additional handling by the department and delay the processing of your return.