

SALES AND USE TAX REPORT

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In This Issue

| | Page |
|---|------|
| I. New Laws | 1 |
| II. Do You Owe Use Tax? | 3 |
| III. Premier Resort Area Tax and Rental Vehicle Fee Returns Mailed | 3 |
| IV. Sales and Use Tax Publications Available | 3 |
| V. New Exemption Certificate for Rental Vehicle Fee | 4 |
| VI. Wisconsin/Minnesota Sales Tax Seminars | 4 |
| VII. Electronic Payments Seminars Offered | 4 |

I. NEW LAWS

The following new sales and use tax, adult entertainment tax, and rental vehicle fee laws have been enacted. The effective date of each law is shown in parentheses.

A. Define "Meal" and "Sandwich" (effective August 1, 1997)

Sales of meals and sandwiches continue to be subject to Wisconsin sales or use tax. However, "meal" and "sandwich" were previously not defined in the sales and use tax law. This provision, which is effective August 1, 1997, defines "meal" and "sandwich" as follows:

1. "Meal" includes, but is not limited to, a diversified selection of food, food products, or beverages that are customarily consumed as a breakfast, lunch, or dinner, that may not easily be consumed without an article of tableware, and that may not conveniently be consumed while standing or walking.

"Meal" does not include any of the following:

- Frozen items that are sold to a consumer.
- Items that are customarily heated or cooked after the retail sale and before they are consumed.

- A diversified selection of food, food products, and beverages that is packaged together by a person other than the retailer before the sale to the consumer.

This definition of "meal" clarifies that canned soups, frozen TV dinners, and frozen pizzas manufactured by many different parties and sold by grocery and other retail stores for off-premises consumption are not subject to Wisconsin sales or use tax. This definition also reverses the sales and use tax treatment of prepackaged combinations of food as provided in a tax release published in *Wisconsin Tax Bulletin 106* (January 1998), titled "Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals."

2. "Sandwich" means food that consists of a filling, such as meat, cheese, or a savory mixture, that is placed on a slice, or between two slices, of bread or something that takes the place of bread, such as a roll, croissant, or bagel.

"Sandwich" includes, but is not limited to, burritos, tacos, enchiladas, chimichangas, pita sandwiches, gyros, and pocket sandwiches.

"Sandwich" does not include hors d'oeuvres, canapes, egg rolls, cookies, cakes, pies, and similar desserts and pastries, and food that is sold frozen.

B. Provide Exemption for Certain Food Combinations (effective August 1, 1997)

If a combination of food, food products, and beverages are packaged together with other goods by a person other than a retailer before sale to the final consumer, and 50% or more of the sales price of the package is attributable to goods that are exempt from Wisconsin sales or use tax, the total selling price of the combined package is exempt from Wisconsin sales or use tax. If less than 50% of the sales price is attributable to goods that are exempt from Wisconsin sales or use tax, that portion of the selling price attributable to the

taxable items is subject to Wisconsin sales or use tax.

Example 1: A grocery store sells to a consumer a package that contains crackers, meat, cheese, candy, and a fruit drink that is not a fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the meat, cheese, and crackers (exempt items) and \$0.50 is attributable to the candy and fruit drink (taxable items). Since 50% or more of the selling price of the package is attributable to food that is exempt from Wisconsin sales or use tax, the entire \$2 selling price is exempt from Wisconsin sales or use tax.

Example 2: A grocery store sells to a consumer a package that contains a sandwich, pretzels, cookies, and a fruit drink that is not a fruit juice. The grocery store purchased the package from Company A. Of the grocery store's \$2 selling price, \$1.50 is attributable to the sandwich and fruit drink (taxable items) and \$0.50 is attributable to the pretzels and cookies (exempt items). Since less than 50% of the selling price of the package is attributable to food that is exempt from Wisconsin sales or use tax, \$1.50 of the \$2 selling price attributable to taxable items is subject to Wisconsin sales or use tax.

C. Tax Sales of Prepaid Telephone Calling Cards and Authorization Numbers (effective August 1, 1998)

The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and using an access number and authorization code (e.g., prepaid telephone calling cards or prepaid authorization numbers) is subject to Wisconsin sales or use tax.

The situs of the sale of the rights to purchase telecommunications services is as follows:

- If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.
- If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services (e.g., calling card) is shipped, the situs of the sale is the customer's shipping address.
- If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications

services is shipped, the situs of the sale is the customer's billing address.

Under prior law, the sale of a prepaid telephone calling card or authorization number was not taxable.

D. Exempt Sales of Admissions to County Fairs (effective August 1, 1998)

Sales of admissions to county fairs are exempt from Wisconsin sales or use tax.

E. Exempt Sales to Joint Local Water Authorities (effective May 12, 1998)

A sales and use tax exemption is provided for sales of tangible personal property and taxable services to any joint local water authority created under sec. 66.0735, Wis. Stats.

F. Revise Who Is a Responsible Person (effective June 17, 1998)

A person required to collect, account for, or pay sales or use taxes, who willfully fails to collect, account for, or pay those taxes to the Department of Revenue, is personally liable for such taxes, including interest and penalties, if that person's principal is unable to pay such amounts to the department. Under prior law, only a person who was required to pay, and who willfully failed to pay, sales and use taxes when due to the Department of Revenue could be held personally liable for those taxes, including interest and penalties, if that person's principal was unable to pay such amounts to the department.

This change reverses the Wisconsin Tax Appeals Commission decision in the case of *Frank A. Calarco vs. Wisconsin Department of Revenue* (Docket #96-S-550, March 12, 1998). The Commission held that a person who resigned at the end of a month, but prior to the due date for payment of sales taxes for that month, could not be a responsible person under sec. 77.60(9), Wis. Stats., for the unpaid taxes for that month.

G. Revise Exemption Certificate Requirements for Sales of Commodities (effective June 17, 1998)

In 1997 Wisconsin Act 27, the law regarding exemption certificates was changed to provide that exemption certificates were not required for sales of certain commodities that are resold. The amendment provides that:

- The commodities are consigned for "sale," rather than "resale."

- The commodities must be deliverable on a contract for future delivery subject to rules of a regulated commodities market.
- The exemption certificate requirements apply to sales tax, in addition to use tax.

H. Rentals of Certain Vehicles Not Subject to Rental Vehicle Fee (effective August 1, 1998)

Motor trucks, road tractors, truck tractors, semi-trailers, trailers, and motor buses are not subject to the rental vehicle fee.

I. Adult Entertainment Tax Repealed (effective June 17, 1998)

The adult entertainment tax that was to take effect April 1, 1998, but was postponed, is repealed.

II. DO YOU OWE USE TAX?

If you were audited tomorrow, do you know what is the most likely error? Use Tax!

Most businesses make purchases subject to use tax. Perhaps you buy office equipment or supplies from out-of-state sellers. Or, you own a retail business, buy inventory for resale, and then occasionally use inventory items in your business.

You are required to pay Wisconsin use tax on these purchases if the seller did not charge you Wisconsin sales tax. Failure to pay use tax may result in the imposition of penalties and interest, in addition to the tax.

III. PREMIER RESORT AREA TAX AND RENTAL VEHICLE FEE RETURNS MAILED

Returns for the premier resort area tax and rental vehicle fee, that became effective April 1, 1998, were mailed in late June to persons registered for the (1) premier resort area tax in Lake Delton and (2) the rental vehicle fee.

If you are subject to the premier resort area tax in Lake Delton or the rental vehicle fee and you did not receive returns, please call (608) 266-2772 to request that returns be mailed to you. Do **not** report the premier resort area tax or rental vehicle fee on your sales and use tax return (Form ST-12).

Note: Returns for the premier resort area tax that becomes effective July 1, 1998, in Wisconsin Dells will be mailed in late September.

IV. SALES AND USE TAX PUBLICATIONS AVAILABLE

Following is a list of sales and use tax publications available from the Department of Revenue. The date the publication was last revised appears in parentheses after the title. Several publications have recently been revised to reflect new laws, court decisions, and other changes.

| No. | Title |
|------------|---|
| 200 | Electrical Contractors (3/98) |
| 201 | Wisconsin Sales and Use Tax Information (12/97) |
| 202 | Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (4/98) |
| 203 | Sales and Use Tax Information for Manufacturers (12/94) |
| 205 | Use Tax Information for Individuals (2/97) |
| 206 | Sales Tax Exemption for Nonprofit Organizations (9/90) |
| 207 | Sales and Use Tax Information for Contractors (3/98) |
| 210 | Sales and Use Tax Treatment of Landscaping (5/94) |
| 211 | Cemetery Monument Dealers (3/97) |
| 212 | Businesses: Do You Owe Use Tax on Imported Goods? (2/97) |
| 213 | Travelers: Don't Forget About Use Tax (2/97) |
| 214 | Businesses: Do You Owe Use Tax? (2/97) |
| 216 | Filing Claims for Refund of Sales or Use Tax (9/95) |
| 217 | Auctioneers (3/96) |
| 219 | Hotels, Motels, and Other Lodging Providers (6/96) |
| 220 | Grocers (8/96) |
| 221 | Farm Suppliers and Farmers (4/97) |
| 222 | Motor Vehicle Fuel Users (4/98) |
| 223 | Bakeries (2/98) |
| 403 | Premier Resort Area Tax (2/98) |
| 410 | Local Exposition Taxes (11/94) |

Copies are available at any department office or by mail, fax, or (in some cases) the Internet.

By Mail

Write to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903; call (608) 266-1961; or fax a request to (608) 261-6239.

Via Fax

Use the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone and enter the retrieval code "10" plus the publication number.

Via Internet

Access the department's World Wide Web site at <http://www.dor.state.wi.us>, and click on "Forms and Publications."

V. NEW EXEMPTION CERTIFICATE FOR RENTAL VEHICLE FEE

Rentals of service or replacement vehicles used while a vehicle is being serviced or repaired are exempt from the rental vehicle fee that became effective April 1, 1998.

Use Form RV-207, Certificate of Exemption for Rental Vehicles, to claim the rental vehicle fee exemption for service or replacement vehicles. Form RV-207 is available from any Department of Revenue office.

Note: Form RV-207 may also be used to claim the service or replacement vehicle exemption that applies for the local exposition rental car tax in Milwaukee County.

VI. WISCONSIN/MINNESOTA SALES TAX SEMINARS

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars this fall. The seminars will include information on differences between the two states' laws as they apply to general businesses. (**Note:** Seminars for contractors will likely be scheduled in the spring of 1999.)

You are invited to attend any of the following seminars, free of charge. All seminars are from 9:00 a.m. to 12:30 p.m. at the locations indicated. To register or for more information, call the Minnesota Department of Revenue at 1-800-888-6231.

October 6, 1998 — Duluth, MN
Minnesota Department of Revenue Office
2711 West Superior Street

October 13, 1998 — Hudson, WI
Hudson House
1616 Crestview Drive

October 20, 1998 — Winona MN
St. Mary's University
700 Terrace Heights Drive

VII. ELECTRONIC PAYMENTS SEMINARS OFFERED

Find out how 1999 electronic payment initiatives will affect you and your business by attending one of the free seminars offered by the Wisconsin Department of Revenue and the Wisconsin Automated Clearing House Association (WACHA).

Each two hour seminar will address the following:

- What is electronic funds transfer?
- Wisconsin's new electronic tax payment system and requirements
- National direct deposit campaign
- Hot topics in electronic payments

1998 Dates & Locations

August 11 Appleton, WI
August 19 Brookfield, WI
August 26 Madison, WI
September 9 Wausau, WI
October 15 Eau Claire, WI
October 29 La Crosse, WI

Time: All seminars begin at 2:00 p.m. and end by 4:00 p.m.

To register for these free seminars, fax WACHA at (414) 796-0272, or mail to WACHA, 16655 West Bluemound Rd., Suite 370, Brookfield, WI 53005, the following information:

- Company name
- Address
- Name(s) of person(s) attending
- Date and place of seminar you wish to attend
- Telephone and fax numbers

If you have questions about the seminar or registering, call (414) 796-0252.