

WISCONSIN TAX BULLETIN

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

SALES TAX

I. Exemption Certificates

A. Certificates Are Required

Under the general sales and use tax law, all gross receipts from sales of tangible personal property are subject to the 4% tax unless a statute exempts the sale. The burden of proving that a sale is exempt is upon the seller, unless that person takes an exemption certificate in an approved form in good faith from the purchaser.

Some sellers, however, are making sales without tax without obtaining exemption certificates from purchasers as required by law. In this situation, the Department must increase the seller's taxable sales by the amount of the unsubstantiated deductions.

If a seller accepts an approved resale or other exemption certificate in good faith, he or she is not liable for the tax. The good faith of the seller will be questioned if the seller accepts a certificate with knowledge which gives rise to the reasonable inference that the purchaser does not intend to resell the property or use it for an exempt purpose. For example, knowledge that a purchaser is not engaged in the business of selling the type of property purchased may indicate that the resale certificate was not accepted in good faith. A certificate cannot be taken in good faith for an exemption which is not provided for by law.

Continuous exemption certificates (including continuous resale certificates) approved by the Department do not allow a purchaser to issue "this time only" pur-

chase orders canceling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for his or her previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to the particular order.

B. Manufacturers Exemption Certificates

A supplier who has accepted a properly completed "Manufacturers Exemption Certificate" (Form S-207m) in good faith, marked for "continuous" use, may make sales to the manufacturer without tax if the property sold qualifies for one of the five exempt uses provided for on the form, and if the seller has no knowledge that any of the property will be used for a non-exempt purpose.

Each order of the manufacturer should refer to the Form S-207m on file, or in some other manner indicate that the purchaser is claiming an exemption for the particular order. It is not necessary for the purchaser to indicate on each purchase order the exact type of exemption claimed for each item or group of items purchased, as long as the purchaser claims the entire order qualifies for exemption from the tax.

II. Household Goods Sales

A recent innovation in the sale of household goods on the premises of the owner is to have a person ("X") handle the sales to the public. In most cases the household goods are disposed of because of the discontinuance of the particular household. Generally, these sales are handled throughout the year by this person in the following manner:

1. Advertising of the two or three day sales event is handled by "X".
2. The goods are inventoried and priced by "X".
3. The owners may be required to be off the premises at the time of the sale, and do not participate in the sale.
4. Payment for the goods is made directly to "X", who retains a fee for making the sales and settles with the owner at a later date.

A person such as "X" is a retailer and is responsible for reporting and remitting the 4%

sales tax on the gross receipts from these sales. See the Joan Hargarten d/b/a Chattel Changers v. Dept. of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977).

III. Loose-Leaf Services

Many loose-leaf services or reports concerning taxes, law, business and other subjects are issued to a subscriber initially in the form of a complete volume or volumes. Supplements containing current information are then regularly issued to the subscriber at average intervals of less than three months. Replacement volumes containing updated material are sometimes issued annually with the renewal of a subscription. The subscriber pays a lump-sum price for both the volumes and the supplements.

The supplements generally are exempt periodicals, but the initial volumes and the replacement volumes are taxable. An allocation of the lump-sum price between the volumes and the supplements may properly be based upon the amount which the publisher charges to replace a lost or destroyed volume.

IV. Monument Dealers

Most monument dealers contract with a purchaser to place a monument with an inscription in position in a cemetery. Such dealers are installing or applying tangible personal property which, when installed or applied, constitutes an addition or capital improvement to real property. Accordingly, they are contractors and must pay the tax on the cost of materials acquired to their suppliers.

V. Towing Service

If towing service is provided customers in conjunction with the repair, other service or maintenance of the property being towed, it is a taxable service. It makes no difference whether the non-towing service is done by the person performing the towing service or someone else.

House moving, relocating mobile homes, tugboat service or pulling a car onto a highway are not taxable services.

Wrecker operators who haul motor vehicles exclusively for others may qualify for an exemption on the purchase of their wrecker, if they are not engaged in servicing or repairing motor vehicles. However, if they accept calls to start vehicles, they are engaged in a private business venture (not exclusively hauling for

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others), and do not qualify for the exemption on the purchase of their wrecker. They must report the 4% tax on the gross receipts from such servicing of motor vehicles along with any other taxable receipts from repairing, maintaining or towing of motor vehicles.

VI. Moving Machinery

The dismantling, moving and reinstallation of machines or equipment, which were in a plant previously, are not taxable, if not related to the taxable repair, service or maintenance of such property.

VII. Parking

Section 77.52 (2) (a) 9 imposes tax on the gross receipts from providing parking spaces for motor vehicles. Landlords who charge tenants for parking, or who allow a discount to tenants that do not use parking facilities, must pay a sales tax on their gross receipts from providing parking. If a discount is allowed when parking is not provided, the landlord's taxable gross receipts for parking must include the difference between the discounted price and the amount received when parking facilities are provided.

However, some landlords may qualify for occasional sale treatment (and not have to pay the tax) if they do not have a seller's permit, if their only taxable receipts are derived from the rental or furnishing of not more than three motor vehicle parking spaces, and if the gross receipts from such charges are less than \$500 per calendar year. If either standard is exceeded in a calendar year, the occasional sale exemption does not apply and the landlord must pay the sales tax on parking revenues.

VIII. Royalties

Payments made by a construction contractor to the owner of a gravel pit which are based on the number of tons of gravel removed are subject to the 4% tax.

IX. Taxable Services

A. Delivery and Point of Sale

The imposition of the sales or use tax on taxable services depends upon the place of delivery or use of the property on which the service is performed, and not upon where the taxable service is performed. The following are illustrative examples:

1. A dry cleaner located in Beloit has a pick-up route including territory in Illinois. The receipts from dry cleaning or laundry services of clothing picked up in Illinois and returned to Illinois by the dry cleaner are not subject to the Wisconsin 4% tax, even though the actual service is performed in Wisconsin. In the opposite situation (i.e., Illinois dry cleaner selling in Wisconsin), the charges made to Wisconsin customers for dry cleaning are taxable.
2. An out-of-state customer brings a television set to a Wisconsin repair shop. When the Wisconsin repairman delivers the set out-of-state to the customer it is a non-Wisconsin sale and not taxable. If the set is picked up by the customer in Wisconsin, the Wisconsin 4% tax applies.
3. Assume that an aircraft of a Wisconsin resident requires repairs in a neighboring state which has a 3% tax rate, and in which only the repair parts (not labor) are taxed. The person incurs a 4% Wisconsin use tax on the entire repair charge (including parts and labor) upon returning the aircraft to Wisconsin, against which may be credited the tax paid in the neighboring state. If the repairs are performed in another state with a tax rate that is 4% or more (and only parts are taxed), Wisconsin is entitled to a 4% tax on the repair labor.

EXAMPLE:

	Wis. 4% Tax Rate	Purchases in Other States			
		5% Tax Rate		3% Tax Rate	
		Tax Paid Other State	Additional Wisconsin Tax Due	Tax Paid Other State	Additional Wisconsin Tax Due
Repair part: \$2,000	\$ 80	\$100	\$ -0-	\$60	\$20
Repair labor: \$1,000	40	-0-	40	-0-	40
Totals	<u>\$120</u>	<u>\$100</u>	<u>\$40</u>	<u>\$60</u>	<u>\$60</u>

B. Resale of Taxable Services

Taxable services may be purchased without tax for resale in the same manner as tangible personal property. The following are examples:

1. A used car dealer receives a car as a trade-in which needs a tune-up and minor repairs to make it salable. Not having a repair facility, the dealer has an independent repairman do the work. The dealer may issue a Resale Certificate to the repairman for both parts and labor since the car is to be resold.
2. A motor vehicle dealer periodically takes automobiles in inventory to a car wash facility. The dealer may issue a Resale Certificate to the car wash operator for this service and not pay tax on it.

The resale principle does not apply, however, when the service is performed on property not held for resale. For example, when a motor vehicle dealer's tow truck is damaged in a collision, and the dealer does the repair work, the dealer owes use tax measured by the purchase price of the repair parts. If an outside repairman does the work, the total charge to the dealer (parts and labor) is taxable.