

WISCONSIN TAX BULLETIN

An office auditor examines tax returns to verify the accuracy, correctness and completeness of the information being reported. For example, income, deductions, exemptions and credit items are reviewed to see that taxes have not been either underpaid or overpaid. When an office auditor requires additional information to complete the review of a return, the information is typically requested from the taxpayer by letter. In some instances the request may be made by telephone.

In the 1975-76 fiscal year nearly two million corporation and individual income tax returns were office audited. Such audits resulted in approximately 52,500 assessments of additional tax against individuals and 4,600 against corporations. These assessments amount to about \$15 million in additional tax. In addition, this auditing activity generated approximately 26,600 refunds amounting to more than \$5.2 million.

Some of the problem items most frequently involved in office audit adjustments include:

- Refunds of state income taxes previously claimed as an itemized deduction are not reported as income in the year received.
- Incorrect amounts of credit are claimed for estimated tax payments made.
- Incorrect amounts of itemized deductions are claimed for state income taxes and sales taxes paid.
- Insufficient amounts of estimated tax are paid, with the result that penalties are imposed.
- Treatment of capital gain income or loss is incorrectly reported.
- Personal exemption credits allowable are not claimed.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Greycote, Inc. v. Department of Revenue (Wisconsin Tax Appeals Commission, February 9, 1977.) The taxpayer, which

did not have a Seller's Permit, provided background music on the premises of the customer. The taxpayer also sold used equipment during the years 1969, 1970 and 1971.

During 1971 the taxpayer sold its entire Muzak franchise, related equipment and accounts receivable to a new owner. The sales price of the equipment sold in this transaction was \$26,100, and the Department imposed the 4% sales tax on this amount. The taxpayer also had sales of used equipment of \$6,210 during 1971. The Tax Appeals Commission held that the sale of the equipment with the entire business was an exempt occasional sale.

The Department has appealed this decision.

Romain A. Howick v. Department of Revenue (Wisconsin Tax Appeals Commission, March 14, 1977.) The taxpayer sold stocks he purchased prior to establishing his Wisconsin domicile. Stocks from 12 different companies were sold in 1970 and stocks from 3 additional companies were sold in 1973.

The Department assessed gain or loss for each stock sale by using either the stock's market value on the date taxpayer's Wisconsin domicile was established or the stock's federal basis.

There was no individual stock for which the Department assessed gain on any sale for Wisconsin purposes where federal loss actually occurred. The Commission, however, ordered modification of the assessment. The Commission found that the assessment had the ultimate effect of creating artificial gain from actual loss when the sales for the two years in issue were viewed on a net rather than an individual stock sale basis.

The Department has appealed this decision.

Bailey-Bohrman Steel Corporation v. Department of Revenue (Wisconsin Tax Appeals Commission, April 27, 1977.) The sole issue was whether the petitioner was engaged in manufacturing as that term is defined in s. 77.51 (27), Wis. Stats. and thus was entitled to the sales and use tax manufacturing exemption provided for by s. 77.54 (6) (a), Wis. Stats. The Commission held that the petitioner was engaged in manufacturing and was entitled to the exemption claimed.

The petitioner's operation consisted of taking raw coiled steel having a width of up to 48 inches and weighing about 15 tons per coil and, through the use of a rotary slitter,

slitting the steel into narrower widths. The petitioner did not press, stamp or change the thickness of the steel it slit. The Commission, however, concluded that the steel had a different dimension, flatness and configuration after being slit and held the process to be manufacturing.

The Department has appealed this decision.

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. Motor Vehicles and Recreational Vehicles Purchased by Nonresidents

The gross receipts from the sales of motor vehicles or truck bodies to persons who are not residents of this state, and who will immediately remove such motor vehicles or truck bodies from Wisconsin are exempt from the Wisconsin 4% tax. This exemption only applies to self-propelled vehicles designed for and capable of transporting persons or property on a highway. This includes motor homes.

The exemption does not apply to sales of non self-propelled vehicles, such as mobile homes, travel trailers, semi-trailers, recreational trailers, other trailers, nonmotorized vehicles, snowmobiles, slide-in campers, road machinery, construction machinery and forklift trucks. Therefore, if a nonresident accepts delivery of any of these items in Wisconsin, the Wisconsin 4% sales tax applies to the transaction.

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II. Factory-Built Homes and Mobile Homes

The person who is in charge of and responsible for setting a factory-built house or mobile home on a foundation, which is its final resting place, is the contractor-consumer engaged in a construction activity. Such person must pay the tax to his or her suppliers on all purchases of materials to be used in the construction of the home. Such homes include all types of factory-built housing, including panelized units, sectional homes and modular homes installed on a permanent foundation. The person setting such home on a foundation is responsible for the tax whether the factory-built housing is either partially or wholly manufactured off the site on which the housing is attached to the realty.

If a person manufactures factory-built housing (in Wisconsin or out-of-state), and then installs a home on a foundation in Wisconsin, such manufacturer's tax liability will be satisfied by the payment of the 4% use tax measured by the cost of materials in the unit. If the home sells for \$25,000 and the cost of materials is \$12,000, the tax is 4% of \$12,000.

If this same home is sold by the manufacturer to a local contractor for \$18,000 and the local contractor installs the home on the foundation, the tax liability is 4% of the material costs of \$18,000. The sale by the manufacturer to the local contractor is generally subject to the tax. However, when the manufacturer accepts in good faith a properly completed Resale Certificate from a contractor who is a consumer of and retailer of such homes, the local contractor is responsible for reporting the tax on the contractor's material costs at the time the materials are committed to the construction job. The contractor's subsequent mark up on the home and the labor charges for erecting a home or placing it on a foundation are not subject to the 4% sales tax.

Mobile Homes

Mobile homes receive the same sales tax treatment as other factory-built homes when the seller of a mobile home permanently affixes the mobile home to land owned by the purchaser. Such mobile home becomes a realty improvement. To be considered permanently affixed to the land, a mobile home must be on a foundation and be connected to utilities. A unit is on a foundation when it is off wheels and setting on cement blocks or other building materials.

However, if the mobile home is installed in a mobile home park or other place where the land is owned by someone other than the mobile home's purchaser, the mobile

home remains personal property. The total gross receipts of the seller from this type of sale and installation of mobile homes on such property are subject to the 4% sales tax. The rental of such a mobile home is also taxable.

There is no provision in the law for a person who installs a mobile home on land owned by the purchaser to charge sales tax to the purchaser. The sale of the mobile home to the contractor-installer is the taxable sale, and the 4% tax on the sale merely increases the installer's cost of the home and related building materials. To compensate for such tax, the contractor-installer may increase the bid price of the complete unit in an amount sufficient to recover this additional cost.

III. Service Enterprises

A. Telephone Services

There are motels, hotels and certain clubs which operate their own telephone switchboards and charge their customers for this telephone service. The Wisconsin Public Service Commission by law considers these organizations consumers of the telephone service provided by the telephone company, rather than retailers of the incidental telephone services they provide their customers. The charge by the telephone company to the motel, hotel or club is the taxable transaction. The charge by the hotel, motel or club to its customer is not taxable.

B. Research and Development Contracts

The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the research and development company (researcher) may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher. Such services are not taxable.

In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since they are used to compile the data, designs, drawings, and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, this is not considered the sale of tangible personal property.

A research and development contract must be distinguished from a contract for the production of an item after the research and development has been completed. All charges relating to the production of such an item involve the sale of tangible personal property

and as such are subject to the tax.

C. Interior Decorator Fees

If no sale of tangible personal property is involved with an interior decorator's work, the service is not subject to the sales tax. This will occur when a decorator's fee is solely for designing an interior or exterior decorative scheme, or for advising clients and recommending colors, paints, wallpaper, fabrics, brands or sources of supply.

An interior decorator's fee is taxable as a part of the "gross receipts" of a retailer under s. 77.51 (11) (c) 2, Wis. Stats., when the decorator's services are a part of the sale of tangible personal property. When the fee is paid in the form of a trade discount, such as when a supplier grants a decorator a trade discount and the decorator in turn bills a client for the full list price, the decorator's total gross receipts are taxable. The decorator's fee is also taxable when it appears as an amount added to a client's bill for tangible personal property on a cost-plus basis.

In some instances a decorator receives a fixed sum which is not in any way contingent upon the sale of tangible personal property and, in another transaction, the decorator sells tangible personal property to the same client. This decorator's fee is not considered as part of the selling price of the property if there is no connection between the two transactions. The decorator has the burden of showing that the fee is unrelated to the sale of the property.

If the decorator's client reimburses the decorator for the payroll cost of personnel of the decorator assigned to a specific project, the duties performed by such employees determine whether or not this charge is taxable. For example, if the employees are engaged in painting murals on walls (a nontaxable service), the charge made for their services is exempt. However, if the employees fabricate tangible personal property (a taxable service), such as bedspreads or draperies, the charge for their services is taxable.

IV. Coupons Issued by Manufacturers

Manufacturers frequently mail coupons to consumers which are redeemable for taxable merchandise (e.g. soap or paper products) or which may be used to purchase such merchandise at an amount less than the sales price at any retail store. The transfer of a bar of "free" soap or "discounted" soap to a customer by a retailer in exchange for such coupon is considered a sale. The consideration for the sale upon which the sales tax is imposed is the amount the manufacturer reimburses the retailer plus the amount (if any) that the consumer pays when redeeming the coupon. This consideration constitutes taxable gross receipts of the retailer.

A retailer may reimburse itself for the tax by collecting it from the person using the cou-

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pon based on the total amount received for the item. For example, if a customer uses a 15 ¢ coupon and 54 ¢ cash to purchase a 69 ¢ item, the retailer may charge the customer 3 ¢ tax because the retailer must pay 3 ¢ tax on gross receipts of 69 ¢.

V. Flea Markets, Rummage Sales and Swap Meets

Persons who regularly sell new or used items at flea markets, rummage sales or swap meets have gross receipts from a business or part-time business which are subject to the 4% sales tax. Such persons are required to have a Seller's Permit and pay the 4% sales tax on their gross receipts.

VI. Sales of Meals to Employees

Sales of meals by an employer to its employees for a specific charge are taxable. A specific charge has been made for meals if any one of the following conditions is satisfied:

- A. Employee pays cash for meals consumed.
- B. A charge for meals is deducted from employee's wages.
- C. Employee receives meals in lieu of cash to bring compensation up to legal minimum wage.
- D. Employee has the option to receive cash for meals not consumed.

VII. Sales of Groceries

The sales and use tax law exempts the basic food items for human consumption purchased for home preparation of meals.

Some items included within the exemption are: bakery goods, certo and other peccins for canning, chip dip, coffee and coffee substitutes, chips (potato, corn, and others), frozen dinners, ice cream or yogurt (cups, pints or larger), pure fruit juices, malted milk powder, meritene, nuts, pretzels, seasonings and sweeteners.

Some taxable items commonly found in food stores are: anti-acid products, aspirin, barbeque supplies, beauty aids, beer, breath mints, candied fruits, candy apples, canning supplies, cocktail mixes, cold remedies, coloring extracts, cough drops, cracker jacks, Eskimo pies, flowers and seeds, ginseng, gum, heated foods and beverages, health and beauty aids, ice, ice cream or yogurt bars and cones, kool-aid, life savers, lozenges, nursery stock, nuts (chocolate coated), pet food and supplies, popcorn (raw or popped), popsicles, salt for water softeners, sandwiches (hot or cold), soft drinks, taffy apples, tobacco products, vitamins, water (spring and distilled) and wine-making supplies. Additional information on this subject is contained in Technical Information Memorandum S-9.2, en-

titled "Grocer's Guidelist". A copy may be obtained by writing the Technical Services Staff, Department of Revenue, 201 East Washington Avenue, Madison, Wisconsin 53702.

VIII. Recording Studios

When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. The law does not permit any deduction from gross receipts for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

IX. Ambulances

The sale of an ambulance to a volunteer ambulance service or volunteer fire department is subject to the tax. The exemption in s. 77.54 (16) for fire fighting equipment does not apply to this sale.

X. Railway Purchases of Ties

A Wisconsin lumber company may sell ties to railroads which are to be shipped and used out-of-state. The sale may be made under two factual situations.

A. A railway that does not have a siding at Wisconsin retailer's shipping point. These sales are not taxable if the ties are hauled by another common carrier to an out-of-state destination, and possession is transferred to the purchasing railway at destination (see s. 77.51 (4r)). The retailer must have a copy of the bill of lading as evidence of out-of-state delivery.

B. A railway that has siding at Wisconsin retailer's shipping point. The use tax exemption in s. 77.55 (2) applies if a retailer obtains a properly executed bill of lading and certificate of exemption from the purchasing carrier. The bill does not have to show any freight charge, but should indicate the goods are consigned to a destination outside this state. The certificate should state the goods are to be shipped to a specified out-of-state destination for use by the carrier out-of-state, and will not be put to use, storage or other consumption in this state prior to their arrival at the out-of-state destination. Interruption of the shipment for processing (such as creosoting), storing or drying the railway ties in Wisconsin invalidates the exemption.

XI. Gasoline Service Station Equipment

The following items of gasoline service station equipment are deemed to be personal property for sales tax purposes, whether the owner of the item leases the realty or owns the realty on which they are installed:

- Gasoline pumps.
- Lifts.
- Air compressors.
- Car wash facilities.
- Signs.
- Island lights and shelters.
- Above ground tanks, but not underground tanks.

The gross receipts from the repair, service, maintenance, installation, sale, lease and rental of tangible personal property are subject to the 4% sales and use tax.