

399 and 1989 Act 336, a “retailer engaged in business in this state” (i.e., a retailer who has nexus in Wisconsin for use tax) does not include a foreign corporation that is a publisher of printed materials if its only activities in Wisconsin do not exceed the four activities described below:

1. The storage of the publisher’s raw materials for any length of time in Wisconsin in or on property owned by a person other than the publisher and the delivery of the publisher’s raw materials to another person in Wisconsin if that storage and delivery are for printing by that other person.
2. The purchase from a printer of a printing service or of printed materials in Wisconsin for the publisher.
3. The storage of the printed materials for any length of time in Wisconsin in or on property owned by a person other than the publisher.
4. Maintaining, occupying and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed materials.

**Note:** (a) For a foreign corporation that is a publisher of books and/or periodicals other than catalogs, sec. 77.51(13h), Wis. Stats., is effective January 1, 1980. This includes publishers who publish 1) only books, 2) only periodicals other than catalogs, 3) books and periodicals other than catalogs, 4) either books and/or periodicals other than catalogs, and in addition, other materials (e.g., catalogs, advertising flyers).

(b) For all other publishers that are foreign corporations (other than those included in (a) above), sec. 77.51(13h), Wis. Stats., is effective January 1, 1990.

### C. Definitions

1. “Foreign corporation”, as used in sec. 77.51(13h), Wis. Stats., means any corporation not organized under Wisconsin law.
2. “Raw materials”, as used in sec. 77.51(13h), Wis. Stats., means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.
3. “Publisher”, as used in sec. 77.51(13h), Wis. Stats., means a foreign corporation which publishes printed material for distribution or sale.

**Example 1:** A foreign corporation publishes a monthly magazine which it sells to subscribers. This magazine is printed by another company. This foreign corporation is considered a “publisher” for purposes of sec. 77.51(13h), Wis. Stats.

**Example 2:** A foreign corporation engaged in the mail-order business has its catalogs printed by a printing company. This foreign corporation is considered a “publisher” for purposes of sec. 77.51(13h), Wis. Stats.

**Example 3:** A foreign corporation manufactures auto parts and has advertising flyers printed by another company for distribution to the public. This foreign corporation is considered a “publisher” for purposes of sec. 77.51(13h), Wis. Stats.

4. “Periodical”, as used in sec. 77.51(13h), Wis. Stats., means publications, each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To be a periodical, the publication must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

A periodical does not include books complete in themselves, even those issued at stated intervals (for example, books sold by the Book of the Month Club or similar organizations); paperback books, a new one of which may be issued once a month or some other interval; or so-called “one-shot” magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. Periodical also does not include catalogs, programs, scorecards, handbills, maps, real estate brokers’ listings, price/order books, corporate reports to stockholders, house organs, or advertising materials which become a component part of a periodical.



## COUNTY SALES/USE TAXES

### 1. County Use Tax - Purchaser’s Liability if Seller Fails to Charge Sales Tax

**Statutes:** Sections 77.71 and 77.73(2), Wis. Stats. (1987-88).

**Facts and Question:** A seller engaged in business in County A (which adopted the county tax) sells taxable tangible personal property to a purchaser located in County B (which also adopted the county tax) and delivers that property to the purchaser in County B. County B has jurisdiction to tax the transaction because the seller makes deliveries in its own company-operated vehicles into County B. The seller collects the 5% Wisconsin state sales tax on the transaction, but erroneously does not collect County B’s county sales tax on the sale, even though it is a taxable transaction.

Is the purchaser subject to County B's use tax on this transaction since the seller failed to collect county sales tax?

Answer: Yes. The purchaser is subject to County B's use tax in accordance with sec. 77.71(2), Wis. Stats. (1987-88), because the purchaser does not have a receipt indicating the county sales tax has been paid under sec. 77.71(1), Wis. Stats. (1987-88).

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## 2. County Use Tax - Purchasing From a Wisconsin Seller

Statutes: Section 77.71(2), Wis. Stats. (1987-88).

Facts and Questions: A customer in Dunn County (a county which adopted the county tax) ordered a chair from a seller located in Milwaukee county (which has not adopted the county tax as of April, 1990). The chair was shipped by the seller to Dunn County via

common carrier. The customer uses the chair at his or her place of business in Dunn County. The seller billed the customer for the selling price of the chair plus the 5 percent Wisconsin state sales tax. The Milwaukee County seller does not conduct any nexus activities in Dunn County.

- (A) Is the seller located in Milwaukee County liable for the Dunn County sales tax?
- (B) Is the customer located in Dunn County liable for the Dunn County use tax?

Answers:

- (A) No, because the seller does not have nexus in Dunn County.
- (B) Yes, the customer is subject to the Dunn County use tax under sec. 77.71(2), Wis. Stats. (1987-88).

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