

SALES/USE TAXES

1. Advertising and Related Transactions

Statutes: Sections 77.52(2)(a)11 and 77.54(2), (2m), (6)(b), (15) and (25), Wis. Stats. (1989-90)

Wis. Adm. Code: Section Tax 11.70, July 1987 Register

Background: Sales of tangible personal property in Wisconsin are subject to the Wisconsin sales and use tax. Finished art sold by an advertising agency is tangible personal property and therefore is subject to the Wisconsin sales and use tax, provided a specific exemption doesn't apply. (Section Tax 11.70(2)(a), Wis. Adm. Code.)

Finished art means the final art used for actual reproduction by photomechanical or other processes, or for display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced.

Charges by an advertising agency for providing preliminary art prepared solely for presenting an idea to a client or prospective client is a charge for a nontaxable service. (Section Tax 11.70(1)(f), Wis. Adm. Code.)

However, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are includable in the cost of finished art work and are subject to Wisconsin sales and use tax, provided a specific exemption doesn't apply.

Preliminary art work includes roughs, visualizations, sketches, layouts and comprehensives.

Several exemptions from the Wisconsin sales and use tax may apply to the sale of finished art work. These include:

1. An exemption for property that will be resold by the purchaser.
2. An exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the purchaser for use thereafter solely outside Wisconsin. (Section 77.54(25), Wis. Stats. (1989-90).)
3. An exemption for printing or imprinting of tangible personal property which will be subsequently transported outside Wisconsin for use outside Wisconsin by the consumer for advertising purposes. (Section 77.52(2)(a)11, Wis. Stats. (1989-90).)
4. An exemption for tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any

form destined for sale. (Section 77.54(2), Wis. Stats. (1989-90).)

5. An exemption for tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. This exemption does not apply to advertising supplements that are not newspapers. (Section 77.54(2m), Wis. Stats. (1989-90).)

For purposes of this exemption, shoppers guides, newspapers and periodicals have the meaning under sec. 77.54(15), Wis. Stats. (1989-90).

6. An exemption for containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if such items are used by the purchaser to transfer merchandise to customers. Also exempt are meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packaging, packaging or shipping meat or meat products regardless of whether such items are used to transfer merchandise to customers. (Section 77.54(6)(b), Wis. Stats. (1989-90).)

Examples: The following examples illustrate the Wisconsin sales and use tax application to various advertising and related transactions. All entities are located in Wisconsin unless otherwise indicated.

Example 1: Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art, for an advertising flyer. Company A selects one of the ideas and it is developed into finished art, which is used to produce the flyers.

The charges by the advertising agency for the production of preliminary art for all 10 ideas are subject to tax (provided an exemption doesn't apply to the sale of the finished art) because one idea was selected and was used to produce finished art.

Example 2: Company B contracts with an advertising agency for an ongoing advertising campaign. In February the agency submits several suggestions (in the form of preliminary art) for a spring advertising campaign. These ideas are rejected by Company B. In April the agency submits several suggestions (in the form of preliminary art) for a summer advertising campaign. One of these ideas is accepted by Company B and the advertising agency develops the preliminary art into finished art.

The charges by the advertising agency for preliminary art which was not chosen for further development (the spring advertising campaign) are not subject to tax because the preliminary art was not developed into finished art.

The charges by the advertising agency for preliminary art which was chosen for further development (the summer advertising campaign) are subject to tax (provided an exemption doesn't apply to the sale of the finished art) because the preliminary art was developed into finished art.

Example 3: An advertising agency presents to Company C a new sales campaign for spring fashions. A meeting is held with the Company C and the advertising agency's account executives. During the meeting, the account executives use video tape, audio briefs, roughs and visuals to present several broad avenues of media (such as print, television and radio) to Company C.

The video tapes, audio briefs, roughs and visuals are preliminary art. Company C is billed for the meeting and the bill includes a break out of the costs of the preliminary art. Company C selects an advertising campaign and the agency develops finished art.

The entire charge by the agency is subject to tax, provided an exemption doesn't apply to the sale of the finished art. The materials used to promote or advance a specific theme for Company C are preliminary art. However, since the preliminary art resulted in the production of finished art, all charges, including meeting expenses, are part of the cost of the finished art.

Example 4: Company D contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company D. Company D approves and the finished art for the shoppers guide advertisement is produced. The preliminary art and finished art charges are billed to Company D for the job. Company D deals directly with the shoppers guide publisher to run the advertisement in a shoppers guide which meets the definition of a shoppers guide under sec. 77.54(15), Wis. Stats. (1989-90). The advertising agency bills Company D, \$1,000 for preliminary art and \$3,000 for finished art.

The total \$4,000 charged is for the production of the finished art, which is subject to Wisconsin sales tax. However, Company D can claim an exemption for the \$4,000 under sec. 77.54(2m), Wis. Stats. (1989-90), by providing the agency with a properly completed certificate of exemption (Form S-207).

Section 77.54(2m), Wis. Stats. (1989-90), provides an exemption for gross receipts from sales of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals.

Example 5: Company E contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company E decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company E. Company E mails the flyers to their Wisconsin customers.

The object of the transaction is to obtain the flyers, therefore, the entire charge to Company E by the advertising agency, which includes the preliminary art, finished art, and the flyers, is subject to Wisconsin sales tax.

Example 6: Same facts as Example 5 except that the flyers are mailed to addresses outside Wisconsin.

The object of the transaction is to obtain the flyers, which occurred in Wisconsin, therefore the entire charge to Company E by the advertising agency is subject to Wisconsin sales tax. However, since the flyers were mailed outside Wisconsin, the sale is exempt under sec. 77.54(25), Wis. Stats. (1989-90). Company E may claim this exemption by providing the agency with a properly completed certificate of exemption (Form S-207).

Section 77.54(25), Wis. Stats. (1989-90), provides that the gross receipts from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise or services is exempt from Wisconsin sales tax if the printed material is transported outside Wisconsin by the purchaser for use outside Wisconsin.

Example 7: Company F contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company F decides on one theme and the finished art is prepared.

Company F takes the finished art to a Wisconsin printer to have 10,000 flyers produced. Company F furnished the printer with the paper on which the flyers were printed. The flyers were mailed by the printer to addresses outside Wisconsin.

The charge to Company F by the advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. Since the flyers are being given away (not sold), the exemption under sec. 77.54(2), Wis. Stats. (1989-90), doesn't apply.

The charge to Company F by the printer for the printing of the flyers is not taxable per sec. 77.52(2)(a)11, Wis. Stats. (1989-90).

Section 77.52(2)(a)11, Wis. Stats. (1989-90), provides that the charge for printing or imprinting of tangible personal property for consideration for consumers who furnish directly or indirectly the materials used in printing or imprinting are not taxable if the tangible personal property is subsequently transported outside Wisconsin for use outside Wisconsin by the consumer for advertising purposes.

Example 8: Company G has an advertising agency produce specification sheets for Company G's products. The specification sheets are included with the products when sold to Company G's customers. The advertising agency produces the finished art and has the printing done. Company G receives an itemized bill from the advertising agency which shows a charge for the finished art and the printing.

The object of the transaction is to obtain the specification sheets. The entire charge by the advertising agency to Company G is subject to Wisconsin sales tax. However, since the specification sheets are included with Company G's products which will be sold to its customers, Company G may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale certificate (Form S-205).

Example 9: An advertising agency produces finished art to be used on Company H's shipping boxes. The boxes are used by Company H to ship its products to its customers. The advertising agency delivers the finished art to a printer who uses the finished art to print and produce the boxes which the advertising agency resells to Company H. Company H is billed \$20,000 for finished art work and \$50,000 for the boxes, totalling \$70,000 on the invoice from the advertising agency.

The object of the \$70,000 transaction is to obtain the boxes. The entire charge of \$70,000 is subject to sales tax. However, Company H may purchase the boxes (including the finished art element) exempt from sales tax under sec. 77.54(6)(b), Wis. Stats. (1989-90), by providing the agency with a properly completed certificate of exemption (Form S-207).

Section 77.54(6)(b), Wis. Stats. (1989-90), provides that containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials used by the purchaser in packing, packaging or shipping tangible personal property to customers are exempt from tax.

Example 10: Same facts as in Example 9, except that Company H purchases the finished art from the advertising agency in one transaction, delivers it to a printer/box maker who, in the second transaction, produces boxes for Company H. Company H is billed \$20,000 by the advertising agency for the finished art, and \$50,000 by the box maker for the boxes.

Each bill is for the purchase of tangible personal property and is subject to sales tax. However, Company H may purchase, by providing the agency with a properly completed certificate of exemption (Form S-207), the finished art exempt from sales tax under sec. 77.54(2), Wis. Stats. (1989-90). Company H may also purchase, by providing the printer with a properly completed certificate of exemption (Form S-207), the boxes exempt from tax under sec. 77.54(6)(b), Wis. Stats. (1989-90), as explained in Example 9.

Section 77.54(2), Wis. Stats. (1989-90), provides that the gross receipts from sales of tangible personal property which becomes an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacturing of tangible personal property in any form destined for sale is exempt from sales tax. Since the finished art is economically destroyed in the manufacturing of the boxes, which are sold by the box maker to Company H, Company H may purchase the finished art exempt from sales tax.

Example 11: Company I wants advertising flyers produced. It contracts with a full service commercial printer that has its own art department. The printer's art department develops the design for the flyer, but because of its workload, subcontracts out the color separations. The color separator charges the commercial printer for the color separations. The commercial printer then prints the flyers using the color separations and its own paper and ink. Company I sends the flyers to its Wisconsin customers.

The printer's charge to Company I includes all the cost elements of the flyer, including the color separations and its own printing materials charge. This entire charge is for the advertising flyers and is subject to sales tax.

The printer may purchase, by providing the subcontractor with a properly completed manufacturer's exemption certificate (Form S-207m), the color separations exempt from sales tax under sec. 77.54(2), Wis. Stats. (1989-90).

Example 12: Company J wants advertising flyers produced. Company J purchases color separations from a color separator and furnishes them to a commercial printer along with the ink and paper. The flyers are printed and Company J sends the flyers to its Wisconsin customers.

Company J's purchase of the color separations is subject to sales tax. The color separations are tangible personal property. The exemption under sec. 77.54(2), Wis. Stats. (1989-90), doesn't apply since the color separations are not destroyed in the manufacture of property destined for sale (flyers are given away free of charge).

Company J's purchase of the printing service is also subject to sales tax. Since Company J is furnishing the color separations, ink and paper, the printer is providing a printing service to Company J.

Section 77.52(2)(a)11, Wis. Stats. (1989-90), provides that printing or imprinting of tangible personal property for consideration for consumers who furnish directly or indirectly the materials used in printing or imprinting is subject to the sales tax.

Example 13: Company K contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial.

Company K selects one of the jingles and the commercial is produced. The charge by the agency for the demo is subject to sales tax. The demo is preliminary art and since finished art is produced from the preliminary art, the charge is subject to sales tax under sec. Tax. 11.70(1)(f), Wis. Adm. Code, unless a specific exemption on the purchase of the radio commercial can be claimed by Company K.

Example 14: Company L, a producer of tapes, makes "demo" cassettes or tapes for a musician which are used by the musician as an example of the musician's composition or performance ability.

ties. The "demo" tapes are sample productions that do not require the technical resources of a recording studio.

The charge for producing the "demo" tape for the musician who will use that tape to demonstrate or promote his or her composition or performance abilities is a charge for tangible personal property and thus, subject to sales tax.

Example 15: Company M decides to have a radio advertising campaign and contracts with an advertising agency. The advertising agency produces several advertising jingles on a "demo" tape and Company M selects one jingle. The advertising agency then produces a master tape at its Wisconsin sound production studio. The master tape remains at the studio and 10 copies or "dubs" are produced. One dub is given to Company M and the other 9 dubs are mailed by the advertising agency directly to various Wisconsin radio stations. The air time has been arranged by Company M. The advertising agency bills Company M \$20,000 for the production of the master tape and dubs.

The entire \$20,000 is subject to sales tax because the object of the transaction is to obtain tapes to be broadcast on the radio stations.

Example 16: Same facts as Example 15 except that 5 of the dubs are mailed to radio stations in Illinois and Iowa.

Since 5 of the 10 dubs were delivered outside of Wisconsin, the gross receipts from the sale of those dubs is not subject to Wisconsin sales tax. Therefore, only one-half of the \$20,000, which represents the 5 dubs used in Wisconsin, is subject to the sales tax.

Example 17: A Wisconsin television station produces a commercial tape for Company N. The master tape remains at the TV station in Wisconsin. Copies of the commercial (dubs) are sent by the TV station to various other television stations in Wisconsin at the direction of Company N. The TV station bills Company N for producing the commercial tape plus air time to run the commercial. The itemized bill shows \$1,000 for charges related to the production and \$5,000 for the air time.

The object of this transaction is two-fold. One object is to obtain tangible personal property (master and dubs) and the other is to obtain TV air time.

The \$1,000 charge related to the production of the tapes is subject to sales tax. The \$5,000 charge for air time is not subject to sales tax.



2. Charge for Disposal of Tangible Personal Property

Statutes: Sections 77.51(4)(c)2 and 77.52(1) and (2)(a), Wis. Stats. (1989-90)

Wis. Adm. Code: Section Tax 11.32(2), April 1990 Register

Facts and Question 1: Customer A wants to dispose of old tires. For a fee of \$10, Retailer B agrees to take the old tires and deliver them to a local landfill where they will be picked up by a manufacturer which will use them as fuel in its manufacturing operation.

Is the charge to Customer A for the disposal of the tires subject to Wisconsin sales tax?

Answer 1: No. Retailer B is providing a service that is not subject to sales tax under sec. 77.52(2)(a), Wis. Stats. (1989-90).

Facts and Question 2: Customer A purchases new tires from Retailer B. Retailer B removes the old tires from Customer A's vehicle and installs the new tires. Retailer B agrees to dispose of the old tires for Customer A for an additional charge. The invoice to Customer A includes the following:

Sale and installation of new tires and disposal of old tires	\$150
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Is the entire \$150 charge to Customer A subject to Wisconsin sales tax?

Answer 2: Yes. The entire charge of \$150 to Customer A is subject to sales tax. Section Tax 11.32(2), Wis. Adm. Code, provides that a retailer's gross receipts from charges for handling or other services (e.g., disposal of tires) related to retail sales shall be included in gross receipts derived from the sale of tangible personal property or taxable services.

Facts and Question 3: Assume the same facts as in Facts and Question 2 except that the invoice to Customer A reads as follows:

Sales price of new tires	\$100
Labor to install new tires	40
Charge to dispose of old tires	<u>10</u>
Total	\$150

Is the entire \$150 charge to Customer A subject to Wisconsin sales tax?

Answer 3: Yes. The entire charge is included in Retailer B's gross receipts for purposes of imposing Wisconsin sales tax under sec. Tax 11.32, Wis. Adm. Code, even though the disposal fee is separately stated.

Facts and Question 4: Retailer A is a plumbing contractor. Customer C contracts with Retailer A to install a new water heater at his residence. Retailer A will also remove the old water heater for a charge of \$25. The invoice to Customer C reads as follows:

Sale of new water heater	\$300
Installation	100
Disposal of old water heater	<u>25</u>
Total	\$425

Is any of the charge to Customer C subject to Wisconsin sales tax?

Answer 4: No. The charge to Customer C is not subject to Wisconsin sales tax. Retailer A is providing a real property improvement which is not subject to tax. The disposal fee is not subject to tax because it does not relate to the sale of tangible personal property as required by sec. Tax 11.32(2), Wis. Adm. Code.

Facts and Question 5: Retailer E is in the business of selling and installing washers and dryers. Customer F purchases a washer and dryer from Retailer E and has Retailer E hook them up in his home. Customer F agrees to pay an additional amount to Retailer E for disposal of his old washer and dryer. The invoice to Customer F reads as follows:

Sale of washer and dryer	\$800
Installation	50
Disposal of old washer and dryer	<u>50</u>
Total	\$900

Is the entire \$900 charge to Customer F subject to Wisconsin sales tax?

Answer 5: Yes. The \$900 charge to Customer F is subject to Wisconsin sales tax. Retailer F is selling tangible personal property which is subject to tax. Any handling charge (i.e., disposal of old washer and dryer) associated with the sale of tangible personal property is also subject to sales tax under sec. Tax 11.32(2), Wis. Adm. Code.



3. Donation vs. Sale at Retail

Statutes: Sections 77.51(4)(a)(intro.) and (14)(b) and 77.52(1), Wis. Stats. (1989-90)

Wis. Adm. Code: Section Tax 11.65(4), July 1987 Register

Note: For purposes of this Tax Release, it is assumed that the organization does not qualify for the occasional sales exemption under sec. 77.54(7m), Wis. Stats. (1989-90).

Background: For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers at a rate of 5% of the gross receipts from the sale of tangible personal property in this state.

Section 77.51(14)(b), Wis. Stats. (1989-90), provides that a sale at retail includes the furnishing or distributing of tangible personal property for a consideration by a social club or fraternal organization to its members or others.

Section 77.51(4)(a)(intro.), Wis. Stats. (1989-90), provides that gross receipts means the total amount of the sale from a sale at retail of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

Section Tax 11.65(4)(a), Wis. Adm. Code, provides that receipts are not taxable if they are donations. To qualify as a donation, a payment must be totally voluntary and no restriction whatsoever may be placed on the person making the donation.

Section Tax 11.65(4)(b), Wis. Adm. Code, provides that when a charge to a patron bears little or no relationship to the actual value received, the tax may be based on reasonable value of the tangible personal property and taxable services received.

Facts and Question 1: A nonprofit organization distributes coats to persons in need. The person who receives the coat may make a donation to the nonprofit organization for the coat, although a donation is not required.

Are the gross receipts from the donations for the coats subject to Wisconsin sales tax?

Answer 1: No. The transfer of the coat for the donation is not considered a sale at retail for purposes of imposing Wisconsin sales or use tax because the decision to make the donation is totally voluntary and there are no restrictions placed on the person making the donation.

Facts and Question 2: A nonprofit organization places boxes of candy bars in numerous establishments throughout the state. To obtain a candy bar, a customer is required to make a donation of 50 cents to the nonprofit organization. The fair market value of the candy bar is 50 cents.

Are the gross receipts from the donations for candy bars (50 cents per candy bar) subject to Wisconsin sales tax?

Answer 2: Yes. The transfer of a candy bar for a required donation is a sale for purposes of imposing Wisconsin sales tax. Gross receipts for purposes of imposing Wisconsin sales tax are 50 cents per candy bar, the reasonable value of the tangible personal property received.

Facts and Question 3: A nonprofit organization sponsors a dinner for which the required donation is \$175 a plate. The fair market value of the dinner is \$10.

Are gross receipts from the required donation (\$175 per plate) subject to Wisconsin sales or use tax?

Answer 3: Only \$10 of the \$175 required donation is considered gross receipts subject to Wisconsin sales tax. Gross receipts for purposes of imposing Wisconsin sales or use tax is the reasonable value of the tangible personal property received by the customer.

Facts and Question 4: A veteran's group (nonprofit organization) locates various members of its organization at local retail establishments. The member gives a poppy to every person leaving the retail establishment. Those persons receiving a poppy may make a donation, but are not required to do so.