



Tax Releases

"Tax releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. 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.

The following tax releases are included:

Individual Income Taxes

1. Taxable Status of Interest Income Received From Certain Securities (p. 14)

Sales and Use Taxes

2. Separate Charges for Packaging Materials Used to Ship Tangible Personal Property to Customers (p. 15)
3. Shipping Materials — No Exemption for In-Transit Bracing Materials (p. 16)
4. Telephone Company's Billing and Collection Services (p. 17)
5. Towing Motor Vehicles (p. 18)

Temporary Recycling Surcharge

6. Application of the Temporary Recycling Surcharge to Partnerships (p. 20)
7. Temporary Recycling Surcharge — Individual Retirement Arrangements (p. 28)

INDIVIDUAL INCOME TAXES

1 Taxable Status of Interest Income Received From Certain Securities

Statutes: Section 71.05(6)(a)1 and (b)1, Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 3.095, June 1991 Register

Background: Section 71.05(6)(a)1, Wis. Stats. (1991-92), provides that interest income which is taxable for Wisconsin purposes, but which is not included in federal adjusted gross income, must be added to federal adjusted gross income in computing Wisconsin taxable income. Therefore, if interest from the securities listed below as taxable was not included in federal adjusted gross income, such interest must be added to federal adjusted gross income in computing Wisconsin taxable income.

Section 71.05(6)(b)1, Wis. Stats. (1991-92), provides that the amount of interest or dividend income which is by federal law exempt from taxation by Wisconsin may be subtracted from federal adjusted gross income in computing Wisconsin taxable income. Therefore, if interest from the securities listed below as nontaxable was included in federal adjusted gross income, such interest may be subtracted from federal adjusted gross income in computing Wisconsin taxable income.

For Wisconsin individual income tax purposes, the taxable status of interest

from the following securities is as indicated below:

	Non-taxable	Taxable
Environmental Financing Authority obligations (33 U.S.C. §1281)		X
General Services Administration Public Building Trust Participation Certificates (31 U.S.C. §3124)	X	
HUD/New Communities Program obligations (42 U.S.C. §4514)		X
Jonathan Development Corporation obligations which are guaranteed under the New Communities Act of 1968 (42 U.S.C. §4514)		X
Panama Canal Zone bonds (31 U.S.C. §§743-745)	X	
Robert F. Kennedy Stadium bonds (D.C. Code §2-1720 et seq.)		X

Note: For additional listings of the taxable status of interest or dividends from government securities, refer to sec. Tax 3.095, Wisconsin Administrative Code, June 1991 Register, and the tax release titled "Interest Received From Resolution Funding Corporation Bonds" in *Wisconsin Tax Bulletin* 71 (April 1991), page 14. □

SALES AND USE TAXES

Note: The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The ½% county sales and use tax may also apply. For information on sales or purchases that are subject to the county sales and use tax, refer to the December 1992 issue of the *Sales and Use Tax Report*. A copy can be found in *Wisconsin Tax Bulletin* 80 (January 1993), page 45.

2 Separate Charges for Packaging Materials Used to Ship Tangible Personal Property to Customers

Statutes: Sections 77.51(4)(a) and (b)2, 77.52(1), and 77.54(2) and (6)(b), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.15(7), March 1991 Register

Background: Section 77.54(6)(b), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales and use tax for gross receipts from the sale of or the storage, use, or consumption of 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.

Section Tax 11.15(7), Wis. Adm. Code, provides that if a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to Wisconsin sales or use tax.

Section 77.51(4)(a), Wis. Stats. (1991-92), defines "gross receipts" for purposes of imposing Wisconsin sales or use tax as the total amount of the sale, lease, or rental from retail sales of tangible personal property or taxable services, valued in money, whether received in money or otherwise.

Facts 1: Company ABC is a manufacturer of desks. Company ABC sells its desks to Company DEF, an insurance company, for use in its offices. The sale of the desks by Company ABC is subject to Wisconsin sales or use tax.

On the invoice, Company ABC separately charges Company DEF for packaging materials (e.g., pallets and separators) used in connection with the shipment of the desks.

Company ABC's shipping policy provides for a partial credit to be given to customers for pallets and separators returned to Company ABC. The credit is equal to 80% of the original packaging material charge.

Question 1a: Is the total charge (before 80% credit) by Company ABC to Company DEF for the packaging materials used in connection with the shipment of desks subject to Wisconsin sales or use tax?

Answer 1a: Yes. The charge for the packaging materials used to ship the desks by Company ABC to Company DEF is subject to Wisconsin sales or use tax. The charge for the packaging materials is part of the gross receipts from the sale of the desks, even though separately stated. Since the sale of the desks is subject to Wisconsin sales or use tax, any charge for packaging materials used to ship the desks is also subject to Wisconsin sales or use tax.

Question 1b: Is the sale of the packaging materials by a supplier to Com-

pany ABC subject to Wisconsin sales or use tax?

Answer 1b: No. Company ABC may purchase the shipping materials it transfers to its customers without Wisconsin sales tax under sec. 77.54(6)(b), Wis. Stats. (1991-92), provided it gives its supplier a properly completed exemption certificate.

Question 1c: May Company DEF claim exemption from Wisconsin sales or use tax under sec. 77.54(6)(b), Wis. Stats. (1991-92), on packaging materials transferred to it by Company ABC?

Answer 1c: No. Section 77.54(6)(b), Wis. Stats. (1991-92), provides that in order for the sale of packaging materials to be exempt from Wisconsin sales or use tax, the packaging materials must be used to transfer merchandise to the purchaser's customers. Because Company DEF is not using the packaging materials transferred to it by Company ABC to transfer merchandise to its own customers, the exemption under sec. 77.54(6)(b), Wis. Stats. (1991-92), does not apply.

Question 1d: What are the Wisconsin sales and use tax implications if Company DEF returns to Company ABC the packaging materials used in connection with the shipment of the desks?

Answer 1d: Under sec. 77.51(4)(b)2, Wis. Stats. (1991-92), Company ABC may take a deduction against its gross receipts, on line 8 of its sales and use tax return (Form ST-12), for the amount refunded to Company DEF as a result of the packaging materials being returned, provided Company ABC:

- Originally included such receipts on its sales and use tax return and paid the appropriate sales or use tax on those receipts.

- Returns to Company DEF the tax previously paid by Company DEF on the charge for packaging materials that is refunded.

Facts 2: Company GHI is a manufacturer of automobile parts. Company GHI sells these parts exclusively to automobile manufacturers, including Company XYZ. The sale of the parts by Company GHI is exempt from Wisconsin sales or use tax under sec. 77.54(2), Wis. Stats. (1991-92), as tangible personal property which becomes a component part of tangible personal property destined for sale.

Company GHI separately charges its customers for packaging materials (e.g., pallets and separators) used in connection with the shipment of the automobile parts.

Company GHI's shipping policy provides for a partial credit to be given to customers for pallets and separators returned to Company GHI. The credit is equal to 80% of the original packaging material charge.

Question 2a: Is the total charge (before 80% credit) by Company GHI to Company XYZ for the packaging materials used in connection with the shipment of automobile parts to Company XYZ subject to Wisconsin sales or use tax?

Answer 2a: No. The charge for the packaging materials used to ship the automobile parts by Company GHI to Company XYZ is not subject to Wisconsin sales or use tax. The charge for the packaging materials is part of the gross receipts from the sale of the automobile parts, even though separately stated. Therefore, the exemption for the sale of the automobile parts under sec. 77.54(2), Wis. Stats. (1991-92), applies to the charges for packaging materials used to ship the parts.

Question 2b: Is the sale of the packaging materials by a supplier to Company GHI subject to Wisconsin sales or use tax? •

Answer 2b: No. Company GHI may purchase the packaging materials it transfers to its customers without Wisconsin sales tax under sec. 77.54(6)(b), Wis. Stats. (1991-92), provided it gives its supplier a properly completed exemption certificate.

Question 2c: May Company XYZ claim exemption from Wisconsin sales or use tax under sec. 77.54(6)(b), Wis. Stats. (1991-92), on the charge for packaging materials transferred to it by Company GHI?

Answer 2c: No. Section 77.54(6)(b), Wis. Stats. (1991-92), provides that in order for the sale of packaging materials to be exempt from Wisconsin sales or use tax, the packaging materials must be used to transfer merchandise to the purchaser's customers. Because Company XYZ is not using the packaging materials transferred to it by Company GHI to transfer merchandise to its own customers, the exemption under sec. 77.54(6)(b), Wis. Stats. (1991-92), does not apply.

Question 2d: What are the Wisconsin sales and use tax implications if Company XYZ returns the packaging materials, used in connection with the shipment of the automobile parts, to Company GHI?

Answer 2d: Under sec. 77.51(4)(b)2, Wis. Stats. (1991-92), a deduction from gross receipts is allowed for returned merchandise. However, since Company GHI did not originally include the charge for packaging materials used to ship the automobile parts to Company XYZ in its receipts subject to Wisconsin sales and use tax, no deduction is allowed from gross receipts subject to sales tax when the packaging materials are

returned by Company XYZ to Company GHI. □

3 Shipping Materials — No Exemption for In-Transit Bracing Materials

Statutes: Section 77.54(6)(b), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.15, March 1991 Register

Background: Section 77.54(6)(b), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of and the storage, use, or consumption of 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. This section also provides an exemption from sales or use tax for gross receipts from the sale of and the storage, use, or consumption of meat casings, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials for use in packing, packaging, or shipping meat or meat products, regardless of whether such items are used to transfer merchandise to customers.

Section Tax 11.15(1)(b), Wis. Adm. Code, provides in part that packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize, or protect contents, such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice, and batting and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, pallets, skids, and mailing tubes.

Section Tax 11.15(2), Wis. Adm. Code, provides in part that gross receipts from sales of the following are not exempt from sales tax under sec. 77.54(6)(b), Wis. Stats. (1991-92):

1. Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers.
2. Lumber or other material used for bracing, blocking, skidding, or shoring items while in transit; and cardboard and paper used to line box cars.
3. Tanks on trucks used to deliver merchandise to customers.

Facts and Question 1: A paper manufacturer uses inflatable air bags along with blocks, pads, and void fillers made of honeycombed paper board to protect its paper products from damage when it ships them by rail car to its customers. When the paper products are removed from the rail car, these shipping materials either remain on the rail car or are discarded.

Do these shipping materials qualify for exemption from sales and use tax under sec. 77.54(6)(b), Wis. Stats. (1991-92)?

Answer 1: No. These shipping materials, while used in conjunction with transporting the merchandise, are not used to transfer merchandise to customers. In other words, the shipping materials remain on the rail cars or are discarded and are not transferred to the customer along with the merchandise.

Facts and Question 2: A food wholesaler uses bunkers charged

with CO₂ inside its trucks to keep foods, other than meat or meat products, frozen during delivery to grocery stores. The bunkers either stay on the trucks or are returned to the trucks after the food is delivered.

Do the bunkers and CO₂ qualify for exemption from sales and use tax under sec. 77.54(6)(b), Wis. Stats. (1991-92)?

Answer 2: No. The bunkers and CO₂, while used in conjunction with transporting the merchandise, are not used to transfer merchandise to customers. In other words, the bunkers and CO₂ remain on or are returned to the trucks and are not transferred to the customer along with the merchandise.

Note: If the bunkers and CO₂ were used for shipping meat or meat products, they would qualify for exemption under sec. 77.54(6)(b), Wis. Stats. (1991-92), because packaging or shipping materials for shipping meat qualify for exemption even if the materials are not used to transfer merchandise to customers. □

4 Telephone Company's Billing and Collection Services

Note: This tax release replaces the tax release by the same title that appeared in *Wisconsin Tax Bulletin 57* (July 1988), page 20.

Statutes: Sections 77.51(21m) and 77.52(2)(a)5, Wis. Stats. (1991-92)

Background: Effective October 1, 1991, 1991 Wisconsin Act 39 amended sec. 77.52(2)(a)5, Wis. Stats. (1989-90), and created sec. 77.51(21m), Wis. Stats., to read as follows:

Section 77.52(2)(a) 5, Wis. Stats.:

"The sale of telecommunications services, not including services paid for by the insertion of coins in a coin-operated telephone, that originate in this state and are charged to a service address in this state, regardless of the location where that charge is billed or paid."

Section 77.51(21m), Wis. Stats.:

"'Telecommunications services' means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. 'Telecommunications services' does not include sending collect telecommunications that are received outside of the state."

Prior to October 1, 1991, sec. 77.52(2)(a)5, Wis. Stats. (1989-90), provided the following:

"The sale of telecommunication services of whatever nature, not including services paid for by the insertion of coins in a coin-operated telephone but including any services connected with the transmission of voice, sound, vision, information, data or material including connection, move and change charges; whether transmitted by wire,

microwave, satellite or other means; including interstate services originating in this state and charged to a subscriber or telephone located in this state."

"Telecommunications services" was not defined in Chapter 77 of the Statutes prior to October 1, 1991.

Section 77.52(2)(a)5, Wis. Stats. (1989-90), was created by 1989 Wisconsin Act 31, which also repealed sec. 77.52(2)(a)4, Wis. Stats. (1987-88).

Facts and Question: A local telephone company provides billing and collection services for interexchange long-distance telecommunications carriers. This interexchange long-distance service is primarily interstate service, but also involves some intrastate service.

Are the gross receipts received by the local telephone company for providing billing and collection services to an interexchange long-distance telecommunication carrier subject to Wisconsin sales tax under sec. 77.52(2)(a)5, Wis. Stats.?

Answer:

Prior to October 1, 1991

Yes. Gross receipts received by the local telephone company for providing billing and collection services to an interexchange long-distance telecommunication carrier were subject to Wisconsin sales tax under sec. 77.52(2)(a)5, Wis. Stats. (1989-90). Billing and collection services are included within the broad title of "telecommunications services of whatever nature."

October 1, 1991 and Thereafter

No. Gross receipts received by the local telephone company for provid-

ing billing and collection services to an interexchange long-distance telecommunication carrier are not subject to Wisconsin sales tax under sec. 77.52(2)(a)5, Wis. Stats. (1991-92). Billing and collection services are not included in the definition of "telecommunications services" as provided in sec. 77.51(21m), Wis. Stats. (1991-92). □

5 Towing Motor Vehicles

Statutes: Sections 77.52(2)(a)10 and 77.54(5)(a) and (b) and (9a)(b), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.49(1)(c), April 1993 Register and March 1991 Register

Background: Section 77.52(2)(a)10, Wis. Stats. (1991-92), provides that the towing of tangible personal property, including motor vehicles, is subject to Wisconsin sales or use tax, unless the following exception applies. An exception applies if the tangible personal property being towed would be exempt from sales tax if it were sold at the time of towing (e.g., motor vehicles owned by a Wisconsin governmental unit or owned by a common or contract carrier who uses the vehicle exclusively in common or contract carriage). This exception does not apply to motor vehicles or truck bodies sold to nonresidents which are exempt from Wisconsin sales or use tax under sec. 77.54(5)(a), Wis. Stats. (1991-92).

a. *Prior to May 1, 1993*

Prior to May 1, 1993, sec. Tax 11.49(1)(c), Wis. Adm. Code, provided that the towing of motor vehicles was subject to Wisconsin sales or use tax only if the towing was related to the repair, service, or maintenance of the vehicle. The

following towing services were not taxable:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.

b. *May 1, 1993 and Thereafter*

Effective May 1, 1993, sec. Tax 11.49(1)(c), Wis. Adm. Code, is revised to provide that the towing of a motor vehicle is taxable, unless an exemption applies. There are no requirements in sec. 77.52(2)(a), Wis. Stats. (1991-92), that the towing be related to the repair, service, and maintenance of the vehicle in order for the towing to be subject to Wisconsin sales or use tax.

The following examples illustrate the sales and use tax treatment of towing both prior to and on or after May 1, 1993.

Example 1: Company A operates a service station that offers towing service. Company A is contacted by Individual Z who indicates that his motor vehicle will not start. Company A tows Individual Z's motor vehicle to its service station and repairs the motor vehicle. Company A charges \$30 for towing services provided.

a. *Prior to May 1, 1993*

The \$30 towing charge is subject to Wisconsin sales or use tax because it is related to the repair of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The towing charge is subject to Wisconsin sales or use tax.