

- f. Sales by any public or private elementary or secondary schools exempt from Wisconsin income or franchise taxes under ch. 71, Wis. Stats., including school districts (sec. 77.54(4), Wis. Stats.)
- g. Occasional sales as defined in sec. 77.51(9), Wis. Stats. (sec. 77.54(7)(a), Wis. Stats.)
- h. Occasional sales by a neighborhood association, church, civic group, garden club, social club, or similar nonprofit organization not involving "entertainment," if the organization is not engaged in a trade or business and is not required to have a seller's permit (sec. 77.54(7m), Wis. Stats.)
- i. Sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes (sec. 77.54(9), Wis. Stats.)
- j. Sales to persons under sec. 77.54(9a), Wis. Stats. For a list of these persons, see Part F.3., Exemptions From Room Tax, Item c on page 21.

#### *Situs*

For purposes of imposing the food and beverage tax, all retail sales of food and beverages are completed at the time when, and place where, the seller or the seller's agent transfers possession to the buyer or the buyer's agent. When determining situs, a common carrier or the U.S. Postal Service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

5. **Rental Car Tax** (1993 Act 263, create sec. 77.99).

#### *Effective Date of Rental Car Tax*

The effective date of the rental car tax is determined by the local exposition district in an

enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the rental car tax.

#### *Imposition*

A local exposition district tax of 3% may be imposed on the gross receipts received by a lessor or renter from the rental, for 30 days or less, of Type 1 automobiles without drivers within the district's jurisdiction. The renter shall collect the rental car tax from the person to whom the passenger car is rented.

A "Type 1 automobile" is defined in sec. 340.01(4)(a), Wis. Stats., as a motor vehicle designed and used primarily for carrying persons but which does not come within the definition of motor bus, motorcycle, moped, or motor bicycle.

**Note:** A majority of the district's authorized board of directors may vote to increase the tax rate to 4% if the state makes a payment to restore the district's special debt service reserve fund under sec. 229.50(7), Wis. Stats.

#### *Exemptions From Rental Car Tax*

The following are exempt from the rental car tax:

- a. Rerentals
- b. Rentals of service or repair replacement vehicles
- c. Rentals that Wisconsin is prohibited from taxing under the constitution or laws of the United States or the constitution of Wisconsin (sec. 77.54(1), Wis. Stats.)
- d. Rentals by any public or private elementary or secondary schools exempt from Wisconsin income or franchise taxes under ch. 71, Wis. Stats., including school districts (sec. 77.54(4), Wis. Stats.)
- e. Occasional sales as defined in sec. 77.51(9), Wis. Stats. (sec. 77.54(7)(a), Wis. Stats.)

- f. Occasional sales by a neighborhood association, church, civic group, garden club, social club, or similar nonprofit organization not involving "entertainment," if the organization is not engaged in a trade or business and is not required to have a seller's permit (sec. 77.54(7m), Wis. Stats.)
- g. Sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes (sec. 77.54(9), Wis. Stats.)
- h. Sales to persons under sec. 77.54(9a), Wis. Stats. For a list of these persons, see Part F.3., Exemptions From Room Tax, Item c on page 21.

#### *Situs*

**Rentals of Less Than One Month** For purposes of imposing the rental car tax, the lease or rental of a Type 1 automobile is considered to take place at the location where the automobile comes into the lessee's possession. Therefore, if a lessee takes possession of the automobile in a local exposition district, the lease or rental is subject to the local rental car tax for that district.

**Rentals of One Month or More (but not more than 30 days)** For purposes of imposing the rental car tax, the lease or rental of a Type 1 automobile is considered to take place at the location where the automobile will be customarily kept. Therefore, if a lessee will customarily keep the automobile in a local exposition district, the lease or rental is subject to the local rental car tax for that district.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

- 6. **Refunds of Local Exposition District Taxes** (1993 Act 263, create secs. 66.75(1m)(c)3, 77.982(3), and 77.991(3), effective April 26, 1994).

Refunds of the local exposition district taxes will be paid at the rate of 9% per year.

- 7. **Registering to Collect Local Exposition District Taxes** (1993 Act 263, create secs. 66.75(1m)(c)5, 77.982(4), and 77.991(4)).

Persons who are subject to the local exposition district taxes shall register with the Department of Revenue. A person who fails to register, including any person authorized to act on behalf of a corporation, partnership, or other person who is required to register, is guilty of a misdemeanor.

- 8. **Discontinuation of Local Exposition District Taxes** (1993 Act 263, create secs. 66.75(1m)(c)4, 77.983, and 77.992).

Retailers and the Department of Revenue may not collect the local exposition district taxes for any district:

- a. After the calendar quarter during which all bonds issued by the district under subch. II of ch. 229, Wis. Stats., during the first 60 months after April 26, 1994, and any debt issued to fund or refund those bonds are retired, or
- b. For more than 2 years if bonds have not been issued during that time.

However, the Department of Revenue may collect from retailers taxes that accrued before that calendar quarter, or before the end of that 2-year period, and interest and penalties that relate to those taxes.

If taxes are collected and no bonds are issued, the district may use the revenue for any lawful purpose.

- 9. **Certain Sales and Use Tax Provisions Apply for Local Exposition District Taxes** (1993 Act 263, create secs. 66.75(1m)(c)2, 77.982(2), and 77.991(2)).

The chart on pages 25 and 26 shows the various Wisconsin Statutes that apply to some or all of the local exposition district taxes. After the statutory citation is a brief description of the provision. The chart indicates whether the Wisconsin statute applies (yes) or does not apply (no) to the particular local exposition district tax.

Wisconsin Statute	Relating to	Does Statute Apply?		
		Room Tax	Food/Bev. Tax	Rental Car Tax
77.51(4)(a)	Definition of gross receipts	no	yes	yes
77.51(4)(b)1, 2, and 4	Amounts not included in gross receipts	no	yes	yes
77.51(4)(c)1 to 3	Amounts included in gross receipts	no	yes	yes
77.51(4)(d)	Use of accrual method for reporting gross receipts	no	yes	yes
77.51(14)(a)	Sale at retail includes sale at an auction	no	yes	yes
77.51(14)(b)	Sale at retail includes sales by social clubs and fraternal organizations to their members or others	no	yes	yes
77.51(14)(c)	Sale at retail includes transfer of property where seller retains the title as security for the payment of the price	yes	yes	yes
77.51(14)(d)	Sale at retail includes drop shipments	no	yes	yes
77.51(14)(f)	Sale at retail includes furnishing, preparing, or serving of food, meals, confections, or drinks for consideration.	yes	yes	yes
77.51(14)(j)	Sale at retail includes leases	yes	yes	yes
77.51(14)(k)	Sale at retail includes sale to a purchaser of property used or consumed by some other person that was transferred without valuable consideration	no	yes	yes
77.51(14g)	Transactions which are not sales	yes	no	no
77.52(3)	Collecting tax from consumer or user	yes	yes	no
77.52(4)	Retailer cannot advertise that it will assume or absorb tax	yes	no	yes
77.52(6)	Liability for sales tax on worthless accounts	yes	yes	yes
77.52(13)	Burden of proof on seller if no exemption certificate taken in good faith	no	yes	yes
77.52(14)	Effect and content of exemption certificates	no	yes	yes
77.52(18)	Successor's liability	yes	yes	yes
77.52(19)	Authorizing department to promulgate rules regarding temporary sales and sales from a mobile location	no	yes	no
77.58(1) to (5)	Filing returns, due dates, and payment of tax due	yes	yes	yes
77.58(7)	Extension of time to file	yes	yes	yes
77.59	Authority to audit, statute of limitations for making determinations of tax liability and filing claims for refund, offsets of refunds against tax due, appeals, and authority to issue estimated assessments	yes	yes	yes
77.60	Interest and penalties and officer liability	yes	yes	yes
77.61(2)	Authority to require security in connection with holding a permit	yes	yes	yes
77.61(5)	Confidentiality of sales and use tax information	yes	yes	yes

Wisconsin Statute	Relating to	Does Statute Apply?		
		Room Tax	Food/Bev. Tax	Rental Car Tax
77.61(8)	Refunds of less than \$2	yes	yes	yes
77.61(9)	Keeping adequate records	yes	yes	yes
77.61(12)	Testifying and producing records	yes	yes	yes
77.61(13)	Staying proceedings for assessments or collection of taxes	yes	yes	yes
77.61(14)	Timely service of documents and payments	yes	yes	yes
77.62	Collection of delinquent taxes	yes	yes	yes
77.72(1)	Situs for property in general	no	yes	yes
77.72(2)(a)	Situs for leased or rented moving property	no	no	yes
77.73	Jurisdiction to tax	no	yes	yes

## G. Other

1. **Claim for Refund or Credit Required to be Filed on Form Prescribed by Department** (1993 Act 205, amend sec. 71.75(6), effective for claims for refund or credit filed on or after November 1, 1994.)

A claim for refund or credit of income taxes, franchise taxes or surtaxes must be filed with the Department of Revenue in the manner, and on a form, prescribed or approved by the department.

2. **Retention of Machine Readable Records** (1993 Act 205, amend secs. 71.80(9) and 77.61(4)(a), see effective dates below.)

For taxable years beginning on or after January 1, 1994, the Department of Revenue may require any person who keeps records in machine-readable form for federal income tax purposes to keep those records in the same form for Wisconsin income and franchise tax purposes.

Effective April 21, 1994, the department may also require sales and use tax records to be kept in machine-readable form.

3. **Service of Assessment Via Publication** (1993 Act 205, amend sec. 71.74(11), effective April 21, 1994.)

If the taxpayer is a corporation and the Department of Revenue is unable to notify the taxpayer personally or by mail of additional assessment, the department may serve the notice of additional assessment by publication in the official state newspaper.

Under prior law, notice was required to be served by publication in a *local* newspaper.

4. **Notice Requirements Modified for Continuous Levies** (1993 Act 205, amend sec. 71.91(6)(f)1, effective for a levy served on or after day after April 21, 1994.)

In the case of a continuous levy on commissions, wages, or salaries, the Department of Revenue may mail the notice of seizure to the taxpayer's last known address.

Under prior law, notice regarding seizure was required to be personally served on the taxpayer.

- 5. Refund Setoff Provisions Expanded** (1993 Act 437, renumber sec. 71.93(1)(a) to 71.93(1)(a)(intro.) and amend as renumbered, amend sec. 71.93(2) and create sec. 71.93(1)(a)3, effective May 10, 1994.)

The Wisconsin Department of Health and Social Services may certify certain public assistance overpayments to the Department of Revenue for setoff against state tax refunds, even though such overpayments have not been reduced to a judgment. Previously, only amounts which had been reduced to a judgment by a court could be certified for setoff.

This change applies to the following types of public assistance overpayments:

- a. General relief overpayments.
- b. Overpayments arising from an overissuance of food coupons under the food stamp program.
- c. Overpayments of aid to families with dependent children.
- d. Incorrect medical assistance payments.

- 6. Department Permitted to Enter Into Contracts to Collect Delinquent Taxes** (1993 Act 205, amend secs. 20.566(1)(hm), 25.40(1)(b), and 73.03(28), effective April 21, 1994.)

The Department of Revenue is permitted to enter into contracts to collect delinquent Wisconsin

taxes owed by residents and nonresidents. Under prior law, the department could enter into contracts only to collect delinquent taxes from nonresidents.

- 7. Affidavit Requirement Modified Upon Transfer of Decedent's Property** (1993 Act 205, amend sec. 867.03(2), effective for transfers because of deaths occurring on or after January 1, 1992.)

When property of decedents is transferred by affidavit, a copy of the affidavit is no longer required to be sent to the Department of Revenue.

- 8. Enrollment Cards and Medicare Assignment Information** (1993 Act 205, amend secs. 16.009(2)(k) and (m), 16.009(2)(n)1 as affected by 1993 Act 16, and 71.55(10)(b)1.b. and (c)2, effective April 21, 1994.)

The Department of Revenue is required to issue enrollment cards and information about voluntary acceptance of Medicare assignment to persons age 65 or older who are eligible for homestead credit. Because the maximum income limitation for homestead credit is increased periodically, the cross-references to the homestead credit law are changed to a general statute provision so that the cross-references will not need to be changed every time the maximum income limitation for homestead credit is increased.