

Buyer O has until April 5, 1997, to file a claim for refund with the Department of Revenue for all or part of the \$5,000 of use tax assessed.

Claims for Refund by Buyer — Tax Paid to Seller:

A. *No Field Audit Determination Was Made for Period of the Claim* (sec. 77.59(4)(a), Wis. Stats. (1993-94))

If the transaction in the claim for refund was not in the periods or years included in a prior field audit determination, claims for refund may be filed as follows:

- within 4 years after the unextended due date of the buyer's Wisconsin income or franchise tax return, or,
- if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year.

Example: Buyer J, an individual, overpaid sales tax of \$100 to Seller K in January 1994. The unextended due date of Buyer J's 1994 income tax return is April 15, 1995.

Buyer J has until April 15, 1999 to file a claim for refund for the overpaid sales tax paid to Seller K in January 1994.

B. *Field Audit Determination Was Made for Period of Claim* (sec. 77.59(4)(a), Wis. Stats. (1993-94))

If the transaction occurred during the period or years included in a prior field audit determination, the time

limitations for filing a claim for refund for such transaction are as follows:

1. Field Audit Not Appealed to Department's Appellate Bureau

Buyer has until the earliest of the following to file a claim for refund:

- Four years from the unextended due date of the buyer's income or franchise tax return or if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year (or date extended by waiver under sec. 77.59(3m), Wis. Stats. (1993-94)).
- Date the amount of the notice of determination is paid.
- 60 days after the date the buyer received the notice of determination.

2. Field Audit Determination Appealed to Department's Appellate Bureau, But Not to Wisconsin Tax Appeals Commission

Buyer has until the earliest of the following to file a claim for refund:

- Four years from the unextended due date of the buyer's income or franchise tax return or if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year (or date extended by waiver under sec. 77.59(3m), Wis. Stats. (1993-94)).

- Date the amount of the notice of determination is paid (this does not include deposits of tax under sec. 77.59(6)(c), Wis. Stats. (1993-94), while appeal is pending).

- 60 days after the date the buyer received the Appellate Bureau's notice of redetermination.

3. Buyer Appeals Field Audit Determination to Wisconsin Tax Appeals Commission or Court

Buyer has until the earliest of the following to file a claim for refund:

- Four years from the unextended due date of the buyer's income or franchise tax return or if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year (or date extended by waiver under sec. 77.59(3m), Wis. Stats. (1993-94)).
- Date the amount of the notice of determination is paid (this does not include deposits of tax under sec. 77.59(6)(c), Wis. Stats. (1993-94), while appeal is pending).
- 60 days after the date the buyer received the Appellate Bureau's notice of redetermination, even though the buyer files the appeal with the Wisconsin Tax Appeals Commission before the 60 days have expired. □

11 Use Tax On Building Materials Stored in Wisconsin

Statutes: Sections 77.51(18), 77.53(1) and (2), and 77.54(2), Wis. Stats. (1993-94)

Background:

Law

Section 77.53(1), Wis. Stats. (1993-94), provides:

“An excise tax is levied and imposed on the use or consumption in this state of taxable services under s. 77.52 purchased from any retailer, at the rate of 5% of the sales price of those services; on the storage, use or other consumption in this state of tangible personal property purchased from any retailer, at the rate of 5% of the sales price of that property; and on the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5% of the sales price of that material.”

Section 77.53(2), Wis. Stats. (1993-94), provides, in part, that a receipt with the tax separately stated from a retailer engaged in business in Wisconsin, or authorized by the Department of Revenue to collect the tax, relieves the purchaser from further liability for the tax to which the receipt refers.

Section 77.51(18), Wis. Stats. (1993-94), provides that “storage” includes any keeping or retention in Wisconsin for any purpose except sales in the regular course of business of tangible personal property purchased from a retailer.

Section 77.54(2), Wis. Stats. (1993-94), provides an exemption from sales and use tax for:

“The gross receipts from sales of and the storage, use or other consumption of 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, but this exemption shall not include fuel or electricity.”

Application of Law

One of the effects of the above laws is that persons who store tangible personal property in Wisconsin, and later incorporate the tangible personal property into real property in or outside Wisconsin, are liable for Wisconsin use tax on their purchase price of the tangible personal property (assuming no Wisconsin sales or use tax was paid to a retailer on the purchase of the tangible personal property). The storage of tangible personal property (e.g., raw materials) prior to a manufacturing process and the storage of completed products both constitute “storage” for purposes of determining use tax liability.

The following examples illustrate this.

Example 1: (Storage of Building Materials-Incorporated into Real Property)

- Company A purchases lumber from Supplier B. Supplier B, located outside Wisconsin, does not have nexus in Wisconsin and therefore does not charge Wisconsin sales or use tax.
- Supplier B delivers the lumber via common carrier to Company A's Wisconsin location.

- Company A stores the lumber in Wisconsin, and as the lumber is needed, removes it from storage.
- Company A then uses the lumber in real property construction activities both in Wisconsin and outside Wisconsin.

Company A owes Wisconsin use tax on the lumber it purchased from Supplier B and stored in Wisconsin. The lumber is considered stored in Wisconsin under sec. 77.51(18), Wis. Stats. (1993-94), and therefore is subject to use tax under sec. 77.53(1), Wis. Stats. (1993-94). All of the lumber stored in Wisconsin and incorporated by Company A into real property is subject to Wisconsin use tax, whether used by Company A in Wisconsin or in other states.

Example 2: (Storage of Building Materials-Incorporated into Real Property and Sold at Retail)

- Company E is an electrical contractor engaged in real property construction in and outside Wisconsin.
- Company E purchases 12-2 NM-B indoor copper building wire from Supplier F and stores the wire in Wisconsin.
- Supplier F is located outside Wisconsin, does not have nexus in Wisconsin and therefore does not charge Wisconsin sales or use tax to Company E.
- Company E removes wire purchased from Supplier F from storage as needed, and incorporates some of the wire into real property, both in and outside Wisconsin. Other wire purchased from Supplier F is removed from storage as needed and sold at retail in Wisconsin by Company E to the general public.

- Company E does not know at the time of purchase whether the wire will be sold at retail or incorporated into real property by Company E.

Company E owes Wisconsin use tax on the wire it purchased from Supplier F, stored in Wisconsin and incorporated into real property in or outside Wisconsin. The wire which is incorporated by Company E into real property in and outside Wisconsin is considered stored in Wisconsin under sec. 77.51(18), Wis. Stats. (1993-94), and therefore is subject to use tax under sec. 77.53(1), Wis. Stats. (1993-94). Company E is liable for Wisconsin sales tax on its retail sales of wire to the general public.

Example 3: (Storage of Both (1) Raw Materials Prior to Manufacturing, and (2) Manufactured Products)

- Company C manufactures windows at its Wisconsin plant.
- Company C purchases the raw materials (lumber, glass, etc.) for the windows without tax, using a manufacturer's exemption certificate, from suppliers in Wisconsin, Illinois, and Iowa.
- Company C stores the raw materials for the windows in Wisconsin, and as the raw materials are needed, removes them from storage.
- After manufacturing the windows, Company C stores them in Wisconsin. The windows remain in storage for one day to six months.
- From its inventory of windows in storage, some windows are sold as retail sales to the public. Other windows are incorporated by Company C into real property (i.e. Company C sells windows

and installation to customers) both in Wisconsin and in other states.

Company C owes Wisconsin use tax on its purchase price of the raw materials (lumber, glass, etc.) which it stored and used in manufacturing windows, and incorporated into real property. Materials used for all of the windows which are incorporated by Company C into real property in and outside Wisconsin are considered stored in Wisconsin under sec. 77.51(18), Wis. Stats. (1993-94), and therefore are subject to use tax under sec. 77.53(1), Wis. Stats. (1993-94).

The exemption in sec. 77.54(2), Wis. Stats. (1993-94), does not apply to Company C's purchases of raw materials for windows which Company C incorporates into real property, because such windows are not destined for sale as tangible personal property.

Company C does not owe Wisconsin use tax on materials used for the windows which are sold by Company C as retail sales to the public. Company C is liable for Wisconsin sales tax on its retail sales of windows.

Example 4: (Storage of Raw Materials Prior to Manufacturing)

- Same facts as in Example 3 above, except that immediately after the windows are manufactured, Company C loads some of the windows onto its trucks and delivers them to job sites in and outside Wisconsin. Company C then incorporates these windows into real property in and outside Wisconsin. The remaining windows are stored by Company C in Wisconsin and later sold as retail sales to the public.

Company C owes Wisconsin use tax on its purchase price of raw materials it uses in manufacturing the windows which it incorporated into real prop-

erty in and outside Wisconsin. Materials used for all of the windows which are incorporated by Company C into real property in and outside Wisconsin are considered stored in Wisconsin under sec. 77.51(18), Wis. Stats. (1993-94), and therefore are subject to use tax under sec. 77.53(1), Wis. Stats. (1993-94). (Note: The materials were stored in Wisconsin prior to the manufacturing process.)

The exemption in sec. 77.54(2), Wis. Stats. (1993-94), does not apply to Company C's purchases of raw materials for windows which Company C incorporated into real property, because such windows are not destined for sale as tangible personal property.

Company C does not owe Wisconsin use tax on materials used for the windows which are sold by Company C as retail sales to the public. Company C is liable for Wisconsin sales tax on its retail sales of windows. □

LOCAL EXPOSITION TAXES

Note: The local exposition taxes apply only to sales of certain lodging, food, and beverages, and to certain rentals of automobiles, in cities and villages located wholly or partially in Milwaukee County.

12 Local Exposition Taxes — Brackets for Collecting Taxes From Customers

Statutes: Sections 66.75(1m)(c), 77.61(3), 77.982, and 77.991, Wis. Stats. (1993-94)

Question: Are there brackets, similar to those provided for Wisconsin state and county sales and use tax purposes, that are used to compute the amount of local exposition taxes from the sale of lodging, food, and beverages and the rental of automobiles?

Answer: No. The law does not authorize the department to set brackets for collecting the local exposition taxes. A mathematical computation rounded to the nearest cent should be used to compute the tax. You can drop amounts under .5¢ and increase amounts from .5¢ to .99¢ to the next cent. For example, 1.4¢ becomes 1¢ and 1.5¢ becomes 2¢.

Example: A grocery store in Milwaukee sells a candy bar for 50¢. The food and beverage tax charged to the customer is zero ($50¢ \times 0.25\% = .125¢$ rounded to the nearest cent, which is zero).

Example: A restaurant in Milwaukee county sells a meal for \$10. The food and beverage tax charged to the customer is 3¢ ($\$10 \times 0.25\% = 2.5¢$ rounded to the nearest cent, which is 3¢). □

13 Local Exposition Taxes — Food and Beverage Tax — Sales of Beer and Liquor

Statutes: Sections 77.54(20)(c)1 to 3 and 77.98, Wis. Stats. (1993-94)

Background: Section 77.98, Wis. Stats. (1993-94), imposes a 0.25% food and beverage tax on the retail sale of the following items subject to Wisconsin sales or use tax under secs. 77.54(20)(c)1 to 3, unless an exemption applies:

1. Meals, food, food products, and beverages sold by any person, organization, or establishment for direct consumption on the premises.

“Premises,” by way of illustration but not limitation, includes the building and parking area of a grocery store, convenience store, restaurant, etc. Sales from vending

machines are presumed to be for on-premises consumption unless records show which sales were for off-premises consumption.

2. Heated food or heated beverages.
3. Soda fountain items such as sundaes, milkshakes, malts, ice cream cones, and sodas.
4. Candy, chewing gum, lozenges, popcorn, and confections.

Question: Is the sale of fermented malt beverages (e.g., beer) and intoxicating liquor subject to the 0.25% food and beverage tax?

Answer: The following lists taxable and nontaxable sales of fermented malt beverages and intoxicating liquor:

Taxable Sales

- Sales of fermented malt beverages and intoxicating liquor for consumption **on** the seller's premises.

Example: A restaurant in Milwaukee County serves beer and liquor with the meals served at the restaurant. The sale of the beer and liquor is subject to the 0.25% food and beverage tax.

Nontaxable Sales

- Sales of fermented malt beverages and intoxicating liquor for consumption **off** the seller's premises.

Example: A liquor store in Milwaukee County sells individual cans and bottles of beer, as well as six-packs, 12-packs, and cases for off-premises consumption. The sale of the beer is not subject to the 0.25% food and beverage tax. □

14 Local Exposition Taxes — Food and Beverage Tax — Sales of Soda

Statutes: Sections 77.54(20)(c)1 to 3 and 77.98, Wis. Stats. (1993-94)

Background: Section 77.98, Wis. Stats. (1993-94), imposes a 0.25% food and beverage tax on the retail sale of the following items subject to Wisconsin sales or use tax under secs. 77.54(20)(c)1 to 3, unless an exemption applies:

1. Meals, food, food products, and beverages sold by any person, organization, or establishment for direct consumption on the premises.

“Premises,” by way of illustration but not limitation, includes the building and parking area of a grocery store, convenience store, restaurant, etc. Sales from vending machines are presumed to be for on-premises consumption unless records show which sales were for off-premises consumption.

2. Heated food or heated beverages.
3. Soda fountain items such as sundaes, milkshakes, malts, ice cream cones, and sodas.
4. Candy, chewing gum, lozenges, popcorn, and confections.

Question: Is the sale of soda subject to the 0.25% food and beverage tax.

Answer: The following lists taxable and nontaxable sales of soda:

Taxable Sales

- Sales of soda for consumption **on** the seller's premises.

Example: A restaurant in Milwaukee County serves soda with the meals served at the restaurant. The sale of the soda is subject to the 0.25% food and beverage tax.

Example: A manufacturer in Milwaukee County has soda vending machines in its employee breakroom. The employee inserts the necessary coins and receives a can of soda from the machine. The sale of the soda is subject to the 0.25% food and beverage tax.

Note: Sales from vending machines are assumed to be for on-premises consumption regardless of where the vending machines are located.

- Sales of soda from a dispenser or soda fountain for consumption **on** or **off** the seller's premises.

Example: A convenience store in Milwaukee County has a self-serve soda dispenser. A customer selects a cup and fills it with soda from the dispenser. The sale of the soda is subject to the 0.25% food and beverage tax.

Nontaxable Sales

- Sales of soda in bottles and cans for consumption **off** the seller's premises, other than sales from vending machines.

Example: A grocery store in Milwaukee County sells individual cans and bottles of soda, as well as six-packs, 12-packs, and cases, for off-premises consumption. Customers select the soda they wish to purchase from shelves or refrigerated display cases. The sale of the soda is not subject to the 0.25% food and beverage tax. □

15 Local Exposition Taxes — Food and Beverage Tax — Off-Premises Consumption

Statutes: Section 77.98, Wis. Stats. (1993-94)

Background: Section 77.98, Wis. Stats. (1993-94), imposes a 0.25% food and beverage tax on the retail sale of products subject to Wisconsin sales tax under sec. 77.54(20)(c)1 to 3, Wis. Stats, unless an exemption applies.

The following information describes items that are subject to the 0.25% local exposition food and beverage tax when sold by grocers, convenience stores, restaurants, etc., for **off-premises** consumption.

"Premises," by way of illustration but not limitation, includes the building and parking area of a grocery store, convenience store, restaurant, etc. Sales from vending machines are presumed to be for on-premises consumption unless records show which sales were for off-premises consumption.

What's Taxable — Sales for Off-Premises Consumption: A 0.25% local exposition food and beverage tax is imposed on sales of the following items for **off-premises** consumption (assuming the sales take place in cities and villages located wholly or partially in Milwaukee County):

1. Meals and sandwiches, whether heated or not.

A "meal" usually consists of a diversified selection of foods which are not capable of being eaten in the absence of at least some articles of tableware and which are not conveniently eaten while one is standing or walking.

A "sandwich" is a slice of bread or roll covered with a filling such as meat, cheese, fish, or various mixtures which is usually covered with another slice of bread or roll.

2. Heated food and heated beverages.

"Heated food and heated beverages" means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

3. Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas.
4. Candy, chewing gum, lozenges, popcorn, and confections.

Examples of Taxable Sales for Off-Premises Consumption: Administrative Rule Tax 11.51 lists various items sold by grocers, convenience stores, restaurants, etc., that are taxable or exempt for Wisconsin sales tax purposes. A copy of this rule appears on pages 44 to 48 of this Bulletin (*Wisconsin Tax Bulletin* 91, April 1995).

Of all the items listed in Rule Tax 11.51(2)(a) and (b), **only** the following items are subject to the 0.25% local exposition food and beverage tax when sold for **off-premises** consumption (assuming the sale takes place in a city or village located wholly or partially in Milwaukee County):

- Breath mints
- Candied fruit
- Candy
- Candy apples

- Carbonated beverages, only when sold from a dispenser

(Note: Sales of carbonated beverage in cans or bottles, other than from vending machines or dispensers, are **not** subject to the 0.25% food and beverage tax.)

- Chewing gum
- Cold remedies in lozenge form
- Confections
- Cough drops
- Deli items

(Note: Deli sales for off-premises consumption sold by a weight or measure, such as by the pound or the dozen, and not at a stated price for any particular combination of the separate ingredients which can be designated as either a meal or sandwich, are exempt. Deli sales for off-premises consumption sold in a heated state or sold at a stated price for a combination of the separate ingredients designated as either a meal or sandwich are taxable. Sales of sandwiches are taxable.)

Examples: 1) A grocer's deli sells potato salad, fruit salad, cheese, ham, coleslaw, corned beef, and fresh rolls at room temperature. These items are sold by the pound or dozen. The sale of these items is not subject to the 0.25% food and beverage tax.

2) A grocer's deli sells a serving of each of the following for \$3.59: potato salad, fruit salad, cheese, ham, coleslaw, corned beef, and fresh roll. Because the sale is at a stated price for a particular combination of ingredients which can be considered a meal, the sale is subject to the 0.25% food and beverage tax.

3) A grocer's deli sells party trays in an unheated condition. The price varies based on the size of the tray. The types of party trays include shrimp and sauce, meats, fresh vegetables, fresh fruits, cheeses, or cookies. The trays do not include combinations of items which could be considered a meal or sandwich. The sale of these party trays is not subject to the 0.25% food and beverage tax.

- Drug sundries in lozenge form
- Fruit drinks that are carbonated and sold from a dispenser
- Granola bars that are candy or yogurt coated
- Gum
- Heated foods and beverages
- Ice cream bars and similar products
- Ice cream in cones
- Internal remedies in lozenge form (e.g., throat lozenges)
- Lozenges
- Medicinal preparations in lozenge form
- Mineral tablets in lozenge form
- Nuts that are candy or yogurt coated
- Peanuts that are candy or yogurt coated
- Popcorn, raw or popped
- Raisins that are candy or yogurt coated
- Root beer that is carbonated and sold from a dispenser

(Note: Sales of carbonated root beer in cans or bottles, other than from vending machines or dispensers, are **not** subject to the 0.25% food and beverage tax.)

- Sandwiches, hot or cold
- Soda water beverages that are sold from a dispenser

(Note: Sales of soda water beverages in cans or bottles, other than from vending machines or dispensers, are **not** subject to the 0.25% food and beverage tax.)

- Soft drinks that are carbonated and sold from a dispenser

(Note: Sales of carbonated soft drinks in cans or bottles, other than from vending machines or dispensers, are **not** subject to the 0.25% food and beverage tax.)

- Taffy apples
- Water that is carbonated and sold from a dispenser

(Note: Sales of carbonated water in cans or bottles, other than from vending machines or dispensers, are **not** subject to the 0.25% food and beverage tax.)

- Yogurt bars, cones, and sundaes

Caution: The list of items in Rule Tax 11.51(2)(a) is not all-inclusive. Therefore, there may be items which are not included in Rule Tax 11.51(2)(a) which are subject to Wisconsin sales tax and the 0.25% food and beverage tax. □

16 Local Exposition Taxes — Food and Beverage Tax — Gift Baskets

Statutes: Sections 77.54(20)(c)2.d., and 77.98, Wis. Stats. (1993-94)

Background: Section 77.98, Wis. Stats. (1993-94), imposes a 0.25% food and beverage tax on the retail sale of items subject to Wisconsin sales or use tax under sec. 77.54(20)(c)1 to 3, Wis. Stats., unless an

exemption applies. Items subject to tax include candy, chewing gum, lozenges, popcorn, and confections.

Question: Is the sale of candy, that is included in a gift basket containing nontaxable food, subject to the 0.25% food and beverage tax?

Answer: Yes. The sale of candy is subject to the 0.25% food and beverage tax, even though sold with nontaxable food items. The seller should allocate the selling price between taxable and nontaxable items and impose the 0.25% tax on the taxable items.

Example: A grocery store located in Milwaukee County sells gift baskets which contain the following: Fruit, cheese, sausage, and candy. The baskets sell for \$20. The store's cost of the nontaxable items (fruit, cheese, and sausage) is \$10 and the cost of the candy is \$6.

The 0.25% food and beverage tax may be computed as follows:

Cost of candy	\$	6
Divide by cost of all items in the basket	÷	16
		.375
Multiply by selling price	×	20
Amount subject to tax	\$	7.50
Multiply by 0.25% tax	×	0.0025
Food and beverage tax due	\$.02*

* 1.88¢ rounded to the nearest cent, which is 2¢



17 Local Exposition Taxes — Rental Car Tax — Rental of Service or Replacement Vehicles

Statutes: Sections 77.52(13) and (14), 77.99 and 77.991(2), Wis. Stats. (1993-94)

Background: Section 77.99, Wis. Stats. (1993-94), provides, in part, that a 3% rental car tax is imposed on the rental, but not for rental as a service or repair replacement vehicle, of Type 1 automobiles, as defined in sec. 340.01(4)(a), Wis. Stats. (1993-94), by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less.

Section 77.991(2), Wis. Stats. (1993-94), provides, in part, that the provision of sec. 77.52(13) and (14), Wis. Stats., as it applies to sales and use taxes, also applies for purposes of administering the local exposition rental car tax.

Section 77.52(13) and (14), Wis. Stats. (1993-94), provides in part that a seller must take from the purchaser an exemption certificate to prove that a sale is exempt from tax. If a certificate is not taken by the seller, the burden of proving that the sale is exempt from tax is on the seller.

Question 1: Is a lessor's rental of a car to a customer subject to the 3%

rental car tax if the customer's car is being serviced or repaired when 1) the lessor does the service or repair, or 2) someone other than the lessor does the service or repair?

Answer 1: The lessor's rental of a car to a customer is not subject to the 3% rental car tax if the customer's car is being serviced or repaired, regardless of who does the service or repair.

Question 2: If the rental of a car is not subject to the 3% rental car tax because the customer's car is being serviced or repaired, must any records be kept by the lessor to show that the rental was exempt from the 3% tax?

Answer 2: Yes. The lessor must obtain an exemption certificate (Form EX-207) or similar document from the customer. If a document other than Form EX-207 is used, the document must contain all of the following:

- Signature of the customer.
- Name and address of the customer.
- Basis for the claimed exemption (e.g., customer is renting this car while his or her car is being repaired or serviced by [fill in company's name]).

