

Example 6: *Manufactured in Illinois, Dealer Affixes, Wisconsin Site* Modular Home Manufacturer enters into a contract with Dealer to manufacture a modular home for a site in Wisconsin selected by Customer. Materials are delivered by Vendors to Modular Home Manufacturer in Illinois. Modular Home Manufacturer manufactures the modular home in Illinois after the site is selected. Modular Home Manufacturer delivers the modular home in Wisconsin to Dealer. Dealer, who has entered into a contract with Customer for the sale and installation of the modular home, affixes the modular home in Wisconsin for Customer.

Per Amendment to Sec. 77.51(2), Wis. Stats.:

- Sale of materials by Vendors to Modular Home Manufacturer are not subject to Wisconsin use tax. The materials are for resale.
- The sale of the modular home by Modular Home Manufacturer to Dealer is subject to Wisconsin sales or use tax. Modular Home Manufacturer is selling tangible personal property in Wisconsin to Dealer. Dealer is the consumer of the modular home it uses in real property construction activities (i.e., affixing the modular home at the predetermined site).
- The sale of the modular home by Dealer to Customer is not subject to Wisconsin sales or use tax. Dealer is selling to Customer a real property improvement.

Prior Law:

- Sales of materials by Vendors to Modular Home Manufacturer were not subject to Wisconsin sales or use tax. Modular Home Manufacturer was the consumer of the materials it used in real property construction activities (i.e., manufacturing of home for predetermined site). However, storage, use, and consumption of the materials as tangible personal

property took place in Illinois where the modular home was manufactured.

- The sale of the modular home by Modular Home Manufacturer to Dealer was not subject to Wisconsin sales or use tax. Modular Home Manufacturer was selling to Dealer a real property improvement.
- The sale of the modular home by Dealer to Customer was not subject to Wisconsin sales or use tax. Dealer was selling to Customer a real property improvement.

6. Manufactured Buildings — Computing Amount Subject to Tax (1997 Act 27, amend sec. 77.51(4)(b)3. and 77.51(15)(b)4. and create sec. 77.51(4)(b)7. and (15)(b)6., effective for sales of property pursuant to contracts entered into on or after December 1, 1997.)

Gross receipts and sales price from the sale of a “manufactured building,” as defined in sec. 101.71(6), Wis. Stats. (see definition below), that is tangible personal property when sold, may be reduced by one of the following:

Option A: 35% of the sales price.

Option B: An amount equal to the sales price minus the cost of the materials that become an ingredient or component part of the manufactured building.

No credit is allowed for trade-ins under Option A or Option B in computing gross receipts or sales prices subject to tax.

Once a retailer chooses Option A or Option B for the first manufactured building sold under this provision, the retailer must continue to use that option for all sales of manufactured buildings, that are tangible personal property when sold, until such time as the department approves in writing the use of the other option.

“Manufactured building” under sec. 101.71(6), Wis. Stats. (1995-96), means any structure or component thereof which is intended for use as a dwelling and:

- a. is of closed construction and fabricated or assembled on-site or off-site in manufacturing facilities for installation, connection, or assembly and installation, at the building site; or
- b. is a building of open construction which is made or assembled in manufacturing facilities away from the building site for installation, connection, or assembly and installation, on the building site and for which certification is sought by the manufacturer.

“Manufactured building” does not mean a manufactured home or mobile home under sec. 101.91 or any building of open construction which is not subject to b. above.

Example: Building Manufacturer sells a manufactured building, as defined in sec. 101.71(6), Wis. Stats., in Wisconsin to Dealer. Dealer will affix the manufactured building to real property in Wisconsin for Customer under a contract between Dealer and Customer. This is the first manufactured building, as defined in sec. 101.71(6), Wis. Stats., sold by Building Manufacturer pursuant to a contract entered into on or after December 1, 1997. Additional facts are as follows:

- \$40,000 is the cost materials purchased by Building Manufacturer that become an ingredient or component part of the manufactured building.
- \$65,000 is the selling price of the manufactured building by Building Manufacturer to Dealer.

The amount subject to sales tax on the sale of the manufactured building to Dealer is one of the following:

Option A: \$42,250 [\$65,000 selling price - (35% X \$65,000 selling price)].

Option B: \$40,000 [\$65,000 selling price - (\$65,000 selling price - \$40,000 cost of materials)].

If Building Manufacturer chooses Option A for computing gross receipts from the sale of this manufactured building, it must use Option A for computing gross receipts from all future sales of manufactured buildings, until the department approves in writing the use of Option B.

7. Exemption Modified for Meals, Food, and Beverages Furnished Under Contract or Agreement by Institutions of Higher Education (1997 Act 27, amend sec. 77.54(20)(c)5, effective for contracts or agreements entered into on or after October 14, 1997.)

The exemption for meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education is modified to apply only if:

- a. The items are furnished to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or
- b. The items are furnished to a National Football League team.

Note: Under prior law, meals, food, food products or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education were exempt from sales and use tax.

8. Exemption Created for Certain Pharmaceutical Samples Furnished Without Charge (1997 Act 27, create sec. 77.54(14)(f), effective October 14, 1997.)

An exemption is created for sales of, and the storage, use or other consumption in Wisconsin of medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist who is licensed under ch. 447, Wis. Stats., podiatrist who is licensed under ch. 448, Wis. Stats., or optometrist who is licensed under ch. 449, Wis. Stats., if the medicine may not be dispensed without a prescription.

- 9. Raw Materials Incorporated in Printed Materials Not Sold — Exemption Created** (1997 Act 27, repeal sec. 77.51(18)(a) and (b); renumber sec. 77.51(18) (intro.) to 77.51(18) and amend as renumbered; amend sec. 77.51 (22)(a); and create sec. 77.54(43), effective December 1, 1997.)

The sale of, and the storage, use, or other consumption of, raw materials used for the processing, fabricating, or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside Wisconsin are exempt from Wisconsin sales or use tax, even if the printed materials are not sold.

Example: Company A, located in Wisconsin, sells paper for \$100,000 to Company B. Company B directs Company A to deliver the paper to Company C in Wisconsin. Company C uses the paper to print Company B's advertising catalog. Company B delivers, without charge, 90% of the catalogs to its customers outside Wisconsin for use solely outside Wisconsin.

Since 90% of the paper is incorporated into printed material (i.e., catalogs) that is transported outside Wisconsin for use solely outside Wisconsin, 90% of the \$100,000 charge by Company A to Company B for the paper (\$90,000) is exempt from Wisconsin sales or use tax. Company B should provide Company A with a properly completed exemption certificate.

Note: The exemption for paper illustrated in the example above is not limited to catalogs, but would also apply to other printed materials (e.g., letterheads, invoices, envelopes, etc.).

- 10. Clarify Exemption for Plastic Bags, Sleeves, and Sheeting Used to Store or Cover Hay or Silage** (1997 Act 27, repeal and recreate sec. 77.54(3m), effective December 1, 1997.)

This provision clarifies that plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage and containers for hay and silage are exempt from sales and use tax if they are used exclusively by the purchaser or user in the business of farming.

This provision also clarifies that for purposes of the exemption for certain items provided in sec. 77.54(3m), Wis. Stats., the business of farming includes custom farming services.

Note: The repeal and recreation of sec. 77.54(3m), Wis. Stats., does not result in any change in the taxability of items used in farming.

- 11. Certain Periodicals Issued in Six-Month Intervals Are Exempt** (1997 Act 27, amend sec. 77.54(15), effective December 1, 1997.)

Sales of periodicals by subscription issued at average intervals not exceeding six months are exempt from Wisconsin sales or use tax if the seller is an educational association or corporation exempt from sales or use tax on its purchases under sec. 77.54(9a)(f), Wis. Stats.

- 12. Exemption Certificates Not Required for Sales of Certain Commodities** (1997 Act 27, amend sec. 77.53(10), effective December 1, 1997.)

No sales and use tax exemption certificate is required for sales of commodities, as defined in 7 United States Code section 2, that are consigned for resale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.

- 13. Authorize Department of Revenue to Enter Into Direct Marketer Agreements** (1997 Act 27, create sec. 73.03(53), effective October 14, 1997.)

The Department of Revenue is authorized to enter into agreements with direct marketers about the collection of state and local sales and use taxes.

- 14. Lac du Flambeau Band to Collect Sales and Use Taxes on All-Terrain Vehicles and Snowmobiles** (1997 Act 27, create secs. 23.33(2g)(e)4 and 350.122(5)(e), effective October 14, 1997.)

For all-terrain vehicles and snowmobiles registered with the Lac du Flambeau Band that are purchased from a person who is not a registered Wisconsin all-terrain vehicle or snowmobile dealer, the Wisconsin sales or use tax due on the purchase is required to be collected by the Lac du Flambeau Band. On or before the 15th day of each month, the Lac du Flambeau Band is required to pay to the Department of Revenue the taxes collected by the Lac du Flambeau Band in the previous month.

Under prior law, the sales or use tax on such purchases was collected by the Department of Natural Resources when all-terrain vehicles and snowmobiles were registered with the Department of Natural Resources.

- 15. Motor Fuel Tax Refunds Excluded From Measure of Sales and Use Taxes** (1997 Act 27, amend sec. 77.51(4)(a)4 and (15)(a)4, effective December 1, 1997.)

The gross receipts or sales price from the sale of motor fuel subject to Wisconsin sales or use tax do not include Wisconsin and federal motor fuel taxes that have been refunded.

Example: Company C sells motor fuel to Company D. The selling price includes the federal and Wisconsin motor fuel taxes. Company C does not charge Company D Wisconsin sales tax on the sale of the motor

fuel because the sale is exempt from sales tax under sec. 77.54(11), Wis. Stats. (1995-96).

After the sale, Company D files claims for refund with the Wisconsin Department of Revenue and Internal Revenue Service for the federal and Wisconsin motor fuel taxes it paid on the fuel purchased from Company C because the fuel was used off-highway. As a result of the refund of Wisconsin motor fuel taxes, Company D's purchase of the motor fuel is subject to use tax.

The amount subject to use tax is the total amount of the sale of the fuel by Company C to Company D, less the federal and Wisconsin motor fuel taxes that were subsequently refunded.

- 16. Clarify Registration Provisions** (1997 Act 27, create sec. 77.52(7), repeal and recreate sec. 77.52(9) and amend sec. 77.53(9m), effective January 1, 1998.)

It is clarified that:

- Every person desiring to operate as a seller within Wisconsin and who holds a valid certificate under sec. 73.03(50), Wis. Stats., is required to file an application for permit for each place of operations.
- The application for a permit shall set forth the name under which the applicant intends to operate, the location of the operations, and any other information that the department requires.
- The application must be signed by the owner if a sole proprietor and, in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers.
- A nonprofit organization that has taxable gross receipts under sec. 77.54(7m), Wis. Stats., shall obtain a seller's permit and pay taxes under this subchapter on taxable gross receipts received after it is

required to obtain the permit. The non-profit organization may surrender the permit if it later becomes eligible for the exemption under sec. 77.54(7m), Wis. Stats.

- Once the seller has filed the application for permit and fulfilled the requirements of sec. 77.61(2), Wis. Stats., the department shall issue the applicant a separate permit for each place of operations within Wisconsin. This permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of operations at the place designated in it. The permit must be conspicuously displayed at the place for which it was issued.
- A person who is not required to collect Wisconsin sales or use tax is only required to obtain a valid certificate under sec. 73.03(50), Wis. Stats., if that person is voluntarily registering to collect Wisconsin sales or use tax.

17. Allow Use of Temporary Permit After Revocation, Suspension, or Expiration (1997 Act 27, amend sec. 77.52(12), effective January 1, 1998.)

A person who operates as a seller in Wisconsin after a permit has been suspended, revoked or has expired is guilty of a misdemeanor, unless the person has a temporary permit as provided in sec. 77.52(11), Wis. Stats.

18. Change Requirement to Qualify for Direct Pay Permit (1997 Act 27, amend sec. 77.52(17m)(b)7, effective January 1, 1998.)

Rather than being required to hold a business tax registration certificate, in order for a person to qualify for a direct pay permit from the department, the person must either:

- a. hold a permit provided for under sec. 77.52(9), Wis. Stats., or
- b. be registered with the department as required by sec. 77.53(9), Wis. Stats.

19. Require Retailers to Register With the Department and to Provide Standard Industrial Classification Code for Each Location (1997 Act 27, amend sec. 77.53(9), effective October 14, 1997; amend sec. 77.53(9), as affected by 1997 Act 27, effective January 1, 1998.)

A retailer selling tangible personal property or taxable services for storage, use, or other consumption in Wisconsin is required to:

- a. Effective October 14, 1997, provide the standard industrial classification code for each place of business in Wisconsin.
- b. Effective January 1, 1998, register with the department.

E. Premier Resort Area Tax

1. Authorize Creation of Premier Resort Area and Imposition of Premier Resort Area Tax (1997 Act 27, create sec. 66.307, subch. X of ch. 77, effective October 14, 1997.)

Creation of Premier Resort Area

The governing body of a political subdivision, by a two-thirds vote of the members of the governing body who are present when the vote is taken, may enact an ordinance or adopt a resolution declaring itself to be a "premier resort area" if at least 40% of the equalized assessed value of the taxable property within such political subdivision is used by tourism-related retailers.

"Political subdivision" means a city, village, town, or county.

"Premier resort area" means a political subdivision whose governing body enacts an ordinance or adopts a resolution declaring itself to be a "premier resort area."

"Tourism related retailers" means those retailers that are classified in the Standard Industrial Classification Manual, 1987 Edi-

tion, published by the U.S. Office of Management and Budget, under the following industry numbers:

- 5331 - Variety stores.
- 5399 - Miscellaneous general merchandise stores.
- 5441 - Candy, nut, and confectionary stores.
- 5451 - Dairy product stores.
- 5461 - Retail bakeries.
- 5541 - Gasoline service stations.
- 5812 - Eating places.
- 5813 - Drinking places.
- 5912 - Drug stores and proprietary stores.
- 5921 - Liquor stores.
- 5941 - Sporting goods stores and bicycle shops.
- 5946 - Camera and photographic supply stores.
- 5947 - Gift, novelty, and souvenir shops.
- 7011 - Hotels and motels.
- 7032 - Sporting and recreational camps.
- 7033 - Recreational vehicle parks and campsites.
- 7948 - Racing, including track operation.
- 7992 - Public golf courses.
- 7993 - Coin-operated amusement devices.
- 7996 - Amusement parks.
- 7999 - Amusement and recreational services, not elsewhere classified.

Jurisdiction of Premier Resort Area

A premier resort area's jurisdiction is coterminous with the boundaries of the political subdivision whose governing body enacts an ordinance or adopts a resolution declaring itself to be a "premier resort area." If two or more contiguous political subdivisions enter into a contract to cooperate in paying for the infrastructure expenses, the jurisdiction of the premier resort area is coterminous with the boundaries of those two or more political subdivisions.

Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in a premier resort area are doing busi-

ness in that premier resort area, and that premier resort area has jurisdiction to impose the taxes under this subchapter on them.

A premier resort area does not have jurisdiction to impose the premier resort area tax in regard to tangible personal property purchased in a sale that is consummated at a location in this state that does not have in effect an ordinance or resolution imposing a premier resort area tax and later brought by the buyer into the premier resort area that does impose this tax.

Authority to Impose Premier Resort Area Tax

A political subdivision that is a premier resort area may impose the premier resort area tax. The proceeds from the imposition of the tax may only be used to pay for infrastructure expenses within the jurisdiction of the premier resort area.

To impose the premier resort area tax, the municipality or county enacting the ordinance must deliver a certified copy of the ordinance to the secretary of revenue at least 120 days before its effective date. Either a county or a municipality within the county, but not both, may impose the premier resort area tax.

Two or more contiguous political subdivisions that are each premier resort areas and each impose the premier resort area tax may enter into a contract to cooperate in paying for the infrastructure expenses.

"Infrastructure expenses" are defined to mean the costs of purchasing, constructing or improving parking lots; access ways; transportation facilities, including roads and bridges; sewer and water facilities; parks, boat ramps, beaches and other recreational facilities; fire fighting equipment; police vehicles; ambulances; and other equipment or materials dedicated to public safety or public works.

Tax Rate and Effective Date

The tax is imposed at a rate of 0.5% and is effective on January 1, April 1, July 1 or October 1.

Imposition of Tax

A municipality or a county, all of which is included in a "premier resort area" under sec. 66.307, Wis. Stats., may, by ordinance, impose a premier resort area tax of 0.5% of the gross receipts from the sale, lease or rental of goods or services that are: (a) made within the premier resort area, (b) taxable under subch. III. and (c) made by businesses that are classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under the following industry numbers:

- 5331 - Variety stores.
- 5399 - Miscellaneous general merchandise stores.
- 5441 - Candy, nut, and confectionary stores.
- 5451 - Dairy product stores.
- 5461 - Retail bakeries.
- 5541 - Gasoline service stations.
- 5812 - Eating places.
- 5813 - Drinking places.
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- 7033 - Recreational vehicle parks and campsites.
- 7948 - Racing, including track operation.
- 7992 - Public golf courses.
- 7993 - Coin-operated amusement devices.
- 7996 - Amusement parks.
- 7999 - Amusement and recreational services, not elsewhere classified.

The Department of Revenue may prepare rules determining the classifications of businesses. If there is a dispute as to the proper classification of a business, the Department of Revenue's decision is final.

Situs

All retail sales of tangible personal property are completed at the time when, and the 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. Rentals and leases of property, except moving property, have a situs at the location of that property.

Leased or rented motor vehicles and other equipment used principally on the highway at normal highway speeds are located in the premier resort area if that is where the item is customarily kept, except that drive-it-yourself motor vehicles and equipment used principally on the highway at normal highway speeds, if those vehicles or that equipment are used for one-way trips or leased for less than one month, are located in the premier resort area if that is where they come into the lessee's possession.

Services have a situs at the location where they are furnished.

Transitional Provisions

If the services subject to tax under sec. 77.52(2), Wis. Stats. are billed to the customer and paid for before the effective date of the premier resort area ordinance or rate increase, the gross receipts from those services are not subject to the premier resort area tax, and the incremental amount of tax caused by a rate increase applicable to those services is not due, regardless of whether the service is furnished to the customer before or after that date.

Lease or rental receipts from tangible personal property that the lessor is obligated to furnish at a fixed price under a contract entered into before the effective date of an ordinance or resolution are subject to this tax on the effective date of the ordinance or resolution, as provided for the state sales tax under sec. 77.54 (18), Wis. Stats.

Administering and Distributing the Premier Resort Area Tax

The Wisconsin Department of Revenue is responsible for administering and distributing the premier resort area tax. The Department of

Revenue has the power to levy, enforce, and collect the premier resort area tax and may take any action, conduct any proceeding, impose interest and penalties, and in all respects proceed as it is authorized to proceed for the taxes imposed by subch. III of ch. 77, Wis. Stats. (state sales and use taxes).

Judicial and administrative review of departmental determinations shall be as provided in subch. III of ch. 77, Wis. Stats., for state sales and use taxes, and no premier resort area may intervene in any matter related to the levy, enforcement, and collection of the premier resort area tax.

Every person subject to the premier resort area tax shall, for each reporting period, record that person's sales made in the premier resort area that has imposed the tax separately from sales made elsewhere in this state and report the measure of the premier resort area sales taxes and the tax due thereon separately to the Department of Revenue on forms to be provided by the department.

Ninety-seven percent of the taxes collected by the Department of Revenue from the premier resort area tax, minus the county's or municipality's portion of the retailer's discount will be distributed to the municipality or county which has imposed the tax. Three percent of the taxes collected will be retained by the Department of Revenue to cover the costs incurred in administering, enforcing, and collecting this tax.

Any municipality or county receiving a report from the Department of Revenue relating to the premier resort area tax is subject to the duties of confidentiality to which the Department of Revenue is subject to under sec. 77.61(5), Wis. Stats.

Repealing the Premier Resort Area Tax

To repeal the premier resort area tax, the municipality or county that passed the ordinance to impose the tax, must deliver a certified copy of the repeal ordinance to the Secretary of Revenue at least 60 days before its effective date. The repeal of the ordinance to impose the tax is effective on December 31.

F. Adult Entertainment Tax

1. Impose Tax on Certain Adult Entertainment Products and Services (1997 Act 27, create subch. XIII of ch. 77 and a nonstatutory provision, effective April 1, 1998.)

A tax is imposed at the rate of 5% of the gross receipts, as defined in sec. 77.51(4), Wis. Stats., from the retail sale of "adult entertainment products and services."

"Adult entertainment products and services" are defined to mean "products and services, not including magazines and motion pictures but including admission to a strip club, that are harmful to children, as defined in s. 948.11(1)(b)."

The Department of Revenue is responsible for administering the tax and for promulgating permanent rules which specify the products and services which are subject to this tax.

G. Dry Cleaners Fees

1. Impose Various Environmental Response Fund Fees on Dry Cleaners (1997 Act 27, create subch. XII of ch. 77, effective October 14, 1997.)

a. Dry Cleaning Facility License Fee

A fee of 1.8% of the previous year's gross receipts from dry cleaning is required to be paid to the Wisconsin Department of Revenue by any person operating a dry cleaning facility in Wisconsin. The fee shall be paid on or before January 15 of each year.

The department will issue a license, which is valid through December 31, to each person who pays the fee and submits the form. The holder of the license shall display it prominently in the facility to which it applies. If a dry cleaning facility is sold, the seller may transfer the license to the buyer. A penalty of \$5 per day will be imposed on any person who operates a dry cleaning facility without a license.