



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. Eligibility for the Wisconsin Income Tax Exemption for Members of the Wisconsin State Teachers Retirement System 35

Sales and Use Taxes –

2. Motor Vehicles Purchased for Resale 35

INDIVIDUAL INCOME TAXES

Note: See page 6 of this Bulletin for an article relating to tax release #1 below.

1 Eligibility for the Wisconsin Income Tax Exemption for Members of the Wisconsin State Teachers Retirement System

Statutes: Section 71.05(1)(a), Wis. Stats. (1997-98)

The tax release with the above title that was published in *Wisconsin Tax Bulletin* 98 (July 1996), page 30, is hereby revoked, effective for taxable years that begin on or after January 1, 2000.

The tax treatment prescribed for these retirement benefits in *Wisconsin Tax Bulletin* 98 continues to apply for taxable years that began before January 1, 2000. The revocation applies only to taxable years that begin on and after January 1, 2000. [✎](#)

SALES AND USE TAXES

Note: The following tax release interprets the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county and 0.1% stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

2 Motor Vehicles Purchased for Resale

Statutes: Sections 77.51(1), 77.52(15), and 77.54(7), Wis. Stats. (1997-98)

Wis. Adm. Code: Sections Tax 11.14(3) and (4), Tax 11.33(4)(c), and Tax 11.83(3) (August 1999 Register)

Introduction: This tax release explains how the sales and use tax applies to sales of motor vehicles by a seller to a buyer, who will resell the motor vehicle to a third party.

No Liability to Seller if Exemption Certificate Claiming Resale Accepted in Good Faith

Section 77.51(14)(intro.), Wis. Stats. (1997-98), provides, in part, that a retail sale subject to Wisconsin sales or use tax includes the transfer of ownership of, title to, possession of, or enjoyment of tangible personal property for use or consumption, but not for resale.

As proof that a sale is for resale and not subject to Wisconsin sales tax, the seller must take in good faith from the buyer an exemption certificate claiming resale. If the seller accepts the certificate in good faith, the seller is relieved of any liability for Wisconsin sales or use tax on the sale (sec. Tax 11.14(3)(a), Wis. Adm. Code, August 1999 Register).

Note: If no exemption certificate is given to the seller, the sale is subject to Wisconsin sales or use tax.

Buyer May Owe Use Tax

A buyer who gives to a seller an exemption certificate claiming resale may be subject to Wisconsin use tax on the purchase, as provided in sec. 77.52(15), Wis. Stats. (1997-98).

Section 77.52(15), Wis. Stats. (1997-98), provides:

“If a purchaser who gives a resale certificate *makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of the purchaser’s operations, the use shall be taxable to the purchaser* under s. 77.53 as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser shall

be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to the department shall the seller be liable for sales tax with respect to the sale of the property to the purchaser.” [emphasis added]

Summary of Tax Treatment of Sales of Motor Vehicles for Resale

The sales and use tax treatment of a sale of a motor vehicle to a buyer who gives the seller an exemption certificate claiming resale and then sells the motor vehicle to a third party is summarized as follows:

	Buyer* Buys Motor Vehicle for Resale and:	Tax Treatment	
		Purchase of Motor Vehicle By Buyer* From Seller	Sale of Motor Vehicle By Buyer* to Third Party
1.	Does not have a business (may or may not use the motor vehicle before reselling it to third party)	Buyer owes use tax on purchase of motor vehicle.**	Third party will remit use tax when vehicle is registered.**
2.	Has a business and buys and sells the motor vehicle for business purpose:		
	a. Buyer does not use the motor vehicle prior to sale to third party.	Buyer is not subject to use tax on purchase of motor vehicle.	Third party will remit use tax when vehicle is registered.**
	b. Buyer uses the motor vehicle prior to sale to third party.	Buyer owes use tax on purchase of motor vehicle.**	Third party will remit use tax when vehicle is registered.**
3.	Has a business but does not buy and sell the motor vehicle for a business purpose.	Buyer owes use tax on purchase of motor vehicle.**	Third party will remit use tax when vehicle is registered.**

* Buyer is not a motor vehicle dealer.

** Unless an exemption applies (e.g., sale to a Wisconsin governmental unit).

Examples of Tax Treatment of Sales of Motor Vehicles for Resale

The following examples illustrate whether the resale exemption applies to, and whether Wisconsin use tax is imposed on, the sale of a motor vehicle to a buyer who resells the motor vehicle to a third party.

Note: In the following examples, providing the seller with an “exemption certificate claiming resale” means that a customer is claiming a resale exemption on the title/license plate application, Form MV-11, completed by the motor vehicle dealer (seller).

Example 1 — No Business

Facts

- Individual U is a wage earner.
- Individual U does not hold a Wisconsin seller’s permit and is not engaged in a business.
- Auto Dealer Q, a licensed motor vehicle dealer, sells an automobile to Individual U for \$20,000.

- Individual U provides Auto Dealer Q with an exemption certificate claiming resale.
- Auto Dealer Q has no reason to believe that Individual U is not reselling the automobile.
- Individual U titles the automobile in her name.
- Individual U immediately resells the automobile to her friend, Individual Z, for \$20,000.
- Individual Z does not claim exemption on her purchase of the automobile.

Tax Treatment

1. Auto Dealer Q may accept an exemption certificate claiming resale from Individual U in good faith.
2. Individual U owes Wisconsin use tax on her purchase of the automobile because she is not holding it for sale as part of a business.

3. The sale of the automobile by Individual U to Individual Z is subject to Wisconsin use tax. Because Individual U is not a licensed motor vehicle dealer, Individual U does not collect tax on the sale of the automobile to Individual Z. Individual Z is required to remit the Wisconsin use tax on her purchase of the automobile to the Department of Transportation at the time she registers the automobile.

Example 2 — Business, Business Purpose, No Use Before Resale

Facts

- Auto Dealer S is a licensed motor vehicle dealer that holds a Wisconsin seller's permit.
- Individual I operates an auto body shop as a sole proprietor for which he holds a seller's permit. Individual I occasionally sells motor vehicles but is not a licensed motor vehicle dealer.
- Auto Dealer S sells a used automobile to Individual I for \$10,000.
- Individual I provides Auto Dealer S with an exemption certificate claiming resale.
- Auto Dealer S has no reason to believe that Individual I is not reselling the automobile.
- Individual I fixes up the automobile for sale through the auto body shop business.
- Individual I makes no use the automobile, other than fixing it up for sale, before selling it for \$15,000 to Customer X.
- Customer X does not provide Individual I with an exemption certificate.

Tax Treatment

1. Auto Dealer S may accept an exemption certificate claiming resale from Individual I in good faith.
2. Individual I does not owe Wisconsin use tax on its purchase of the automobile. Individual I is selling the automobile as part of its business, for a business purpose. Individual I also makes no use of the automobile other than retention, demonstration, or display while holding it for sale.

3. The sale of the automobile by Individual I to Customer X is subject to Wisconsin use tax. Because Individual I is not a licensed motor vehicle dealer, Individual I does not collect tax on the sale of the automobile to Customer X. Customer X is required to remit the Wisconsin use tax on his purchase of the automobile to the Department of Transportation at the time he registers the automobile.

Example 3 — Business, Business Purpose, Use Before Resale

Facts

- Lessor S is a licensed motor vehicle dealer that holds a Wisconsin seller's permit.
- Individual I operates a hardware store as a sole proprietor, for which he holds a seller's permit.
- Individual I leases an automobile from Lessor S which Individual I uses for personal and business use. The automobile was registered in the name of Lessor S and Individual I.
- At the end of the lease, Lessor S sells the automobile to Individual I for \$10,000.
- Individual I provides Lessor S with an exemption certificate claiming resale.
- Individual I immediately sells the automobile for \$10,000 to Individual X, a friend.
- Individual X does not claim exemption on his purchase of the automobile.

Tax Treatment

1. Lessor S may not accept an exemption certificate claiming resale from Individual I in good faith, because Lessor S knows Individual I has used the vehicle during the lease period, in addition to holding it for sale as part of its business and for a business purpose.

Lessor S is subject to Wisconsin sales tax on the sale of the motor vehicle to Individual I. If Lessor S fails to charge Wisconsin sales or use tax, Individual I is subject to Wisconsin use tax on his purchase of the vehicle.

2. The sale of the automobile by Individual I to Customer X is subject to Wisconsin use tax. Since Individual I is not a licensed motor vehicle dealer, Individual I does not collect tax on the sale of the automobile to Customer X. Customer X must remit the Wisconsin use tax to the Department of Transportation when he registers the automobile.

Example 4 — Business, No Business Purpose

Facts

- Auto Dealer S is a licensed motor vehicle dealer that holds a Wisconsin seller's permit.
- Individual I operates a hardware store as a sole proprietor for which he holds a seller's permit.
- Auto Dealer S sells an automobile to Individual I for \$20,000.
- Individual I purchases the automobile with funds from the hardware store and titles the automobile in his name.
- Individual I purchased the automobile at the request of his father, Individual K, who is not involved in the business.

- Individual I provides Auto Dealer S with an exemption certificate claiming resale.
- Auto Dealer S has no reason to believe that Individual I is not reselling the automobile.
- Without making any use of the automobile, Individual I sells the automobile for \$20,000 to Individual K.

Tax Treatment

1. Auto Dealer S may accept an exemption certificate claiming resale from Individual I in good faith.
2. Individual I owes Wisconsin use tax on his purchase of the automobile. Although Individual I is selling the automobile purchased by his business, there is no business purpose for the purchase and sale.
3. The sale of the automobile by Individual I to Individual K is exempt from Wisconsin use tax. Section 77.54(7)(b), Wis. Stats. (1997-98), provides an exemption from Wisconsin sales or use tax for the transfer of a motor vehicle by a child to a parent if the child is not in the business of selling motor vehicles. [§](#)