



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:

Sales and Use Taxes –

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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 0.5% county sales and use tax and the 0.5% football stadium and 0.1% baseball 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*.

1 Charge for Credit Insurance in Connection With a Lease

Wis. Adm. Code: Section Tax 11.79(2)(d), (3), and (4)(a), Wis. Adm. Code (June 1991 Register).

Background: Section Tax 11.79(2)(d) and (3), Wis. Adm. Code (June 1991 Register), provides that a lessor may deduct from gross receipts the cost of public liability insurance furnished by the lessor solely for the protection of the lessee, but not including collision and comprehensive coverage, if:

- The charge is reasonable.
- The charge is separately stated in the lease agreement, billing, or invoice.
- The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the insurance (that is, the insurance is optional).

- The deduction is limited to the lessor’s cost of the insurance.

Section Tax 11.79(4)(a), Wis. Adm. Code (June 1991 Register), provides, in part, that amounts spent for the lessor’s own protection or for the protection of leased property, including collision or other insurance protection, may not be deducted from a lessor’s taxable gross receipts.

Facts:

- Customer A leases an automobile from Lessor B.
- Pursuant to the terms of the lease agreement, Customer A purchases optional credit life and credit accident and health insurance.
- The charge for the insurance is separately stated in the lease agreement.
- The charge is capitalized (that is, it becomes a component of the capitalized cost of the vehicle, which is the base for computing the monthly lease payment).
- The insurance provides that in the event of the death or disability of Customer A, the payments to Lessor B will be made on behalf of Customer A by the insurer. (Lessor B is the first beneficiary under the policy.)

Question: Is Lessor B’s charge for credit life and credit accident and health insurance in connection with the lease to Customer A subject to Wisconsin sales or use tax?

Answer: No, because:

- The charge for the insurance is separately set forth in the lease agreement given by the lessor to the lessee; and
- The credit life and credit accident and health insurance is considered for the protection of the lessee (that is, Customer A), because:

- 1) the insurance company assumes Customer A's lease payments in the event of death or disability, and
- 2) the insurance is purchased by Customer A at Customer A's option, even though Lessor B may be named as the first beneficiary.

Since the credit life and credit accident and health insurance is for the protection of the lessee rather than the lessor, the insurance is not excluded as a deduction from gross receipts under sec. Tax 11.79(4)(a), Wis. Adm. Code (June 1991 Register). [§](#)

2 Trade-ins

Note: This tax release does not include examples of motor vehicle transactions involving trade-ins, which are provided in Wisconsin Publication 202, *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*. However, the statutes and examples listed generally apply to all transactions, including motor vehicles.

Statutes: Sections 77.51(4)(b)3 and (15)(b)4, 77.52(1), and 77.53(1), Wis. Stats. (1999-00)

Wis. Adm. Code: Section Tax 11.32(7), Wis. Adm. Code (August 1999 Register)

Background: Section 77.52(1), Wis. Stats. (1999-00), imposes sales tax on all retailers at the rate of 5% of the gross receipts from the sale, lease, or rental of tangible personal property.

Section 77.51(4)(b)3, Wis. Stats. (1999-00), in defining "gross receipts," provides that in all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, except those transactions involving manufactured buildings where the gross receipts have been reduced under sec. 77.51(4)(b)7, Wis. Stats. (1999-00), the gross receipts shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

Section 77.53(1), Wis. Stats. (1999-00), imposes use tax on the storage, use, or other consumption of tangible personal property in this state at the rate of 5% of the sales price of the tangible personal property.

Section 77.51(15)(b)4, Wis. Stats. (1999-00), in defining "sales price," provides that in all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, except those transactions involving manufactured buildings where the gross receipts have been reduced under sec. 77.51(15)(b)6, Wis. Stats. (1999-00), the sales price shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

Examples: The following examples illustrate whether a trade-in allowance may be used to reduce the gross receipts or sales price from the sale of an article of tangible personal property. In all examples it is presumed that no exemption applies.

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Example 1 - Single transaction: Camper Dealer sells a new camping trailer to Camper for \$5,000. The trailer is not required to be licensed. Camper has an older trailer valued at \$2,000, which Camper Dealer allows Camper to trade in toward the purchase of the new camper.

Camper Dealer's gross receipts subject to sales tax are \$3,000 (\$5,000 selling price less the \$2,000 allowed for the traded camper).

Example 2 - Delayed delivery: Equipment Dealer sells a new machine to Contractor for \$50,000, which

Equipment Dealer agrees to deliver on a specified future date. Contractor has a used machine valued at \$10,000, which Equipment Dealer allows Contractor to trade in toward the purchase of the new machine. Contractor delivers the used machine to Equipment Dealer upon signing the contract. Equipment Dealer later delivers the new equipment on the future date.

Equipment Dealer's gross receipts subject to sales tax are \$40,000 (\$50,000 selling price less the \$10,000 trade-in allowance). The delayed delivery does not affect the allowance of the trade-in because it is still part of the same transaction.

Example 3 - Two transactions: Cyclist sells a used bicycle to a friend for \$200. Cyclist immediately applies the \$200 toward the \$500 purchase of a new bicycle from Bicycle Shop.

Bicycle Shop's gross receipts subject to sales tax are \$500. The two sales (i.e., Cyclist's sale to a friend and Bicycle Shop's sale to Cyclist) are separate transactions and do not qualify as a trade-in.

Example 4 - Two transactions – delayed delivery: Computer Dealer sells a computer to Business A for \$10,000. Business A has a used computer valued at \$2,000, which Computer Dealer allows Business A to trade in and use as a deposit toward the purchase of the new computer. The new computer is not available for immediate delivery by Computer Dealer to Business A. Business A delivers the used computer, but no other payment, to Computer Dealer upon signing the contract. Because of production delays, Computer Dealer later determines it cannot confirm a delivery date for the new computer. Computer Dealer issues a check to Business A for the \$2,000 value of the used computer, along with an exemption certificate claiming resale on Computer Dealer's purchase of the used computer. The new computer is later delivered to Business A for \$10,000.

Computer Dealer's gross receipts subject to sales tax are \$10,000, because this constitutes a new second transaction. When Computer Dealer made payment of \$2,000 for the used computer, the first transaction was completed. The two sales (i.e., Computer Dealer's delayed sale to Business A and Business A's sale of the used computer to Computer Dealer) are separate transactions and do not qualify as a trade-in.

Example 5 - Replacement discount: Cellular Dealer sells a cellular telephone to Customer A, for \$300. Cellular Dealer allows a "replacement discount" of \$100 to

Customer A, because Customer A is replacing an existing cellular telephone. In order to receive the "replacement discount," Customer A is required to provide Cellular Dealer with the handset from the "old" cellular telephone being replaced. Cellular Dealer is not reimbursed by a third party for the replacement discount given to Customer A (i.e., the \$100 "replacement discount" is not considered a rebate).

Cellular Dealer's gross receipts subject to the tax are \$200 (\$300 selling price less the \$100 "replacement discount" allowed as a trade-in).

Example 6 - Even trade: Electronics Dealer sells a new digital telephone to Customer B for \$500. Customer B has a used computer valued at \$500, which Electronics Dealer allows Customer B to trade in toward the purchase of the digital telephone.

Electronics Dealer has zero gross receipts from the sale (\$500 less the \$500 allowed for the traded computer).

Example 7 - Tangible personal property traded for real property: Company A sells and installs a new furnace for Customer C, for \$2,000. Company A allows Customer C to trade in a used lawn mower valued at \$900. Customer C does not make any other sales of tangible personal property or taxable services.

Company A's gross receipts from the sale to Customer C are not subject to tax because Company A is selling a real property improvement. Company A's cost of materials used in the furnace installation may not be reduced by the \$900 allowed as a trade-in, because the transaction involves a real property improvement rather than a sale of tangible personal property. Customer C's transfer of the lawn mower to Company A is an exempt occasional sale under sec. 77.54(7), Wis. Stats. (1999-00), because Customer C does not make any other sales of tangible personal property or taxable services.

Example 8 - Debt assumed: Boat Dealer sells a new boat to Customer D, for \$14,000. Customer D owns a used boat valued at \$9,000. Boat Dealer assumes a \$4,000 outstanding debt owed by Customer D on the used boat. Because Boat Dealer assumed the debt, Boat Dealer allows Customer D a \$5,000 trade-in toward the purchase of the new boat rather than allowing a \$9,000 trade-in.

Boat Dealer's gross receipts subject to the tax are \$9,000 (\$14,000 selling price less \$5,000 allowed for the used boat traded in). The \$4,000 of debt assumed by

Boat Dealer is not taken into account in determining the gross receipts (even though it is considered by Boat Dealer in determining the amount of the trade-in).

Example 9 - Trade down: Music Dealer is selling a musical instrument to Musician for \$500. Musician, who is not a retailer, owns a used musical instrument valued at \$600. Music Dealer allows Musician to trade in the used instrument toward the purchase of the new instrument and pays Musician \$100. Musician does not make any other sales of tangible personal property or taxable services.

Music Dealer's gross receipts as a result of the transaction are zero (\$500 selling price less the \$600 trade-in). The trade-in by Musician is actually a sale of the used instrument to Music Dealer resulting in gross receipts of \$100. Since Musician does not make any other sales of tangible personal property or taxable services, the sale to Music Dealer is an exempt occasional sale under sec. 77.54(7), Wis. Stats. (1999-00). Music Dealer could also have issued an exemption certificate to Musician claiming resale.

Example 10 - Insurance proceeds: Claimant has a video recorder stolen during a burglary. Claimant's insurance company reimburses Claimant \$200 for the stolen video recorder. Claimant immediately applies the \$200 insurance reimbursement toward the \$400 purchase of a new video recorder.

Since no article of tangible personal property is traded in to the seller of the new video recorder, the seller's gross receipts subject to sales tax are \$400.

Example 11 - Different types of tangible personal property traded: Clean Linen Company rents linens to Restaurant for a \$200 monthly fee. For its rent, Clean Linen Company receives \$100 cash plus meals at Restaurant each month valued at \$100.

Clean Linen Company's gross receipts subject to the sales tax are \$100. Clean Linen Company is considered to be renting tangible personal property in the form of linens. However, the gross receipts are reduced by the value of meals provided by Restaurant. Restaurant is subject to use tax on the food products used in preparing the meals traded to Clean Linen Company for which an exemption does not apply (e.g., soda water beverages). There is no requirement for the properties sold, rented, or traded in to be the same type of property, as long as they are tangible personal property.

Example 12 - Property with a service contract: RV Dealer sells Customer E a new travel trailer priced at \$6,000, plus a separately stated service contract priced at \$600, for a total price of \$6,600. RV Dealer allows Customer E an even trade-in for Customer E's used trailer.

RV Dealer's gross receipts subject to the sales tax are \$600. The trade-in allowance does not apply to the service contract because it is a sale of a service, not tangible personal property. There is no provision that allows a trade-in to reduce gross receipts from services.

Example 13 - Leased property: Office Company sells Manufacturer a copier for \$7,000. Manufacturer has been leasing a copier from Lessor, which Office Company allows Manufacturer to trade in toward the purchase of the new copier. The current leased copier is valued at \$3,000. The pay-off of the lease is \$4,000. Office Company pays Lessor \$4,000 for the leased copier giving Lessor an exemption certificate claiming resale. Manufacturer pays Office Company \$7,000 for the new copier, plus \$1,000 for the difference between the value of the leased copier and the pay-off of the leased copier.

Lessor is not subject to sales tax on the sale of the leased copier to Office Company, because Office Company gave Lessor an exemption certificate claiming resale. Office Company is subject to sales tax on the sale of the new copier to Manufacturer, which Office Company may collect from Manufacturer. Office Company has gross receipts subject to sales tax of \$8,000 (\$7,000 selling price of new copier plus the \$1,000 paid by Manufacturer for the difference between the value of the leased copier and the payoff of the leased copier).

Additional examples of transactions involving *leased property* can be found in Wisconsin Publication 202.

Example 14 - Services traded for property: Material Supplier sells topsoil to Architect for \$1,000. Material Supplier dumps the topsoil, and Architect spreads it in its final resting place. In exchange for the topsoil, Material Supplier receives architectural services valued at \$500 from Architect and \$500 cash.

Material Supplier's gross receipts subject to the sales tax are \$1,000. No reduction in taxable receipts is allowed for the trade-in of a service.

Example 15 - Intangible traded for property: Lighting Company sells light fixtures (uninstalled) to Software Company for \$20,000. Lighting Company receives

custom computer programs valued at \$10,000 and \$10,000 cash from Software Company for the light fixtures.

Lighting Company's gross receipts subject to sales tax are \$20,000. No reduction in gross receipts is allowed for the trade-in of intangible property.

Example 16 - Property taken from inventory and traded – use tax due: Building Supply Company sells ceiling tile (uninstalled) to Carpet Company for \$5,000. Building Supply Company needs carpeting for its offices, so Carpet Company removes from inventory and trades carpeting (uninstalled) worth \$5,000 for the ceiling tile. Building Supply Company had originally purchased the ceiling tile without tax, for resale. Carpet Company had originally purchased the carpeting without tax, for resale.

Building Supply Company has zero gross receipts and Carpet Company has zero gross receipts from this transaction because it is an even trade. However, Building Supply Company owes use tax on its purchase price of the ceiling tile traded, and Carpet Company owes use tax on its purchase price of the carpeting traded.

Example 17 - Multiple items: Outboard Motor Dealer sells a new motor to Boater for \$1,000. Boater owns two used motors valued at \$500. Outboard Motor Dealer allows Boater to trade in the two used motors toward the purchase of the new motor.

Outboard Motor Dealer has gross receipts subject to sales tax of \$500 (\$1,000 selling price of the new motor less the \$500 allowed for the two used motors traded in). [↩](#)