



## 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 in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations in a tax release.)

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### Sales and Use Taxes

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## SALES AND USE TAXES

### 1 Campgrounds’ Purchases of Camping Cabins, Trailers, Campers, Tents, and Related Equipment

**Statutes:** Sections 77.51(5) and 77.52(2)(a)1 and 2 and (2m)(a), Wis. Stats. (1999-00)

**Wis. Adm. Code:** Section Tax 11.65(1)(a) (June 1991 Register)

**Background:** Section 77.52(2)(a)1, Wis. Stats. (1999-00), provides, in part, that sales tax applies to the following types of services:

“The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public ... . In this subdivision, ‘transient’ means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, ‘hotel’ or ‘motel’ means a building or group of buildings in which the public may obtain

accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public ...”

Section 77.52(2)(a)2, Wis. Stats. (1999-00), provides, in part, that sales tax applies to the following types of services:

“The sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs ... and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.”

Section Tax 11.65(1)(a), Wis. Adm. Code (June 1991 Register), provides, in part:

“The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to ... campgrounds ...”

Section 77.52(2m)(a), Wis. Stats. (1999-00), provides:

“With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property if the property transferred by the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par. (b).”

Section 77.51(5), Wis. Stats. (1999-00), provides:

“For purposes of subs. (13)(e) and (f) and (14)(L) and s. 77.52(2m) ‘incidental’ means depending upon

or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service."

**Facts:** A campground provides access to amusement, entertainment, and recreational facilities. All persons wishing to camp at the campground must pay a fee for a campsite.

At the campsite, a person may use his or her trailer, pop-up camper, or tent for shelter. If a person wishing to camp does not have a trailer, pop-up camper, or tent, the campground will offer the person either: (1) a site already equipped with a camping cabin or trailer, or (2) a pop-up camper or tent that the person may rent and place at a campsite.

- If the person chooses to stay in a camping cabin or trailer already at a site, the person must pay a fee for the camping cabin or trailer, in addition to the fee paid for the site.

Neither the camping cabins nor the trailers are permanently affixed to the land. A camping cabin is equipped with beds, electric lights, air conditioning, a heater, a refrigerator, and a microwave oven. Outside of the cabin there is a bench, picnic table, charcoal grill, fire ring, and water spigot. Campers staying in camping cabins generally bring linens, towels, cookware, etc. A trailer is equipped with a stereo system, a TV/VCR, a kitchen with a microwave oven, and other equipment needed to cook and serve a meal. Linens and towels are available for an additional charge to campers staying in a trailer.

- If the person chooses to rent a pop-up camper or tent from the campground, the person must pay a rental fee for the pop-up camper or tent, separate from the fee paid for the campsite. The person camping chooses a campsite where he or she erects the pop-up camper or tent.

No use is made of the camping cabins, trailers, pop-up campers, tents, and related equipment by the campgrounds, other than that described in the facts.

**Question:** Are the campground's purchases of the camping cabins, trailers, pop-up campers, and tents, and the associated items furnished, such as air conditioners, televisions, and microwave ovens, exempt from sales and use tax, because they are for resale?

**Answer and Analysis:** *Purchases of camping cabins and trailers.* The campground's purchases of the camping cabins and trailers **are not** exempt from sales and use tax, because they are not for resale. These items are used by the campground in furnishing lodging to campers. The campground is also liable for tax on its purchases of materials used to construct camping cabins.

The campground is furnishing two things to campers who stay in camping cabins or trailers: (1) access to a recreational facility (subject to tax under sec. 77.52(2)(a)2, Wis. Stats. (1999-00)), and (2) lodging services (subject to tax under sec. 77.52(2)(a)1, Wis. Stats. (1999-00)).

The camping cabins and trailers are incidental to the furnishing of the lodging because the primary objective of the campers is to obtain the lodging. Because the camping cabins and trailers are furnished to campers incidentally with lodging furnished by the campground, the campground is the consumer of the cabins and trailers and is liable for the payment of tax on its purchases of these items.

*Other items furnished to campers with the rental of the cabins and trailers (for example, air conditioners, televisions, microwave ovens, picnic tables, and charcoal grills).* The campground may not purchase these items exempt from sales tax, because they are not for resale. The campground is the consumer of these items, since they are transferred to the campers incidentally with the lodging furnished by the campground.

*Pop-up campers and tents.* The campground's purchases of these items **are** exempt from sales and use tax because they are for resale. These items are provided to persons in a transaction separate from providing admissions to campsites. They are not transferred to campers incidentally with the furnishing of lodging or admission to amusement, entertainment, athletic, or recreational facilities. [☞](#)

## 2 Manufacturing - Small Tools Purchased by Employees of Manufacturers

**Statutes:** Sections 77.51(14), 77.52(1), 77.54(6)(a), and 77.57, Wis. Stats. (1999-00)

**Wis. Adm. Code:** Section Tax 11.40(1) and (3)(a) (April 1994 Register)

**Background:** Section 77.52(1), Wis. Stats. (1999-00), imposes the Wisconsin sales or use tax on the sale of tangible personal property by retailers in Wisconsin.

Section 77.51(14), Wis. Stats. (1999-00), provides that a “retail sale” includes the transfer of ownership, title, possession, or enjoyment of tangible personal property for use or consumption, but not for resale.

Section 77.54(6)(a), Wis. Stats. (1999-00), provides an exemption from the tax for “Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment.”

Section 77.57, Wis. Stats. (1999-00), provides that if a purchaser gives an exemption certificate to a seller for property to be used in an exempt manner, and later uses the property in a manner other than the exempt purpose, the purchaser owes the sales tax on either the original sales price of the property, or the fair market value of the property if the taxable use first occurs more than 6 months after the initial purchase of the property, whichever is less.

Section 11.40(3)(a), Wis. Adm. Code (April 1994 Register), provides that small tools such as hand tools, drills, saws, etc., used exclusively and directly in the manufacturing process, qualify as “processing equipment.”

Some manufacturers require an employee to provide his or her own small tools for use in manufacturing for the employer. The employee may or may not be reimbursed by the employer for the cost of the tools.

**Question:** Is an employee of a manufacturer allowed to purchase exempt from Wisconsin sales or use tax small tools used exclusively and directly in a manufacturing process?

**Answer:** Yes. The exemption in sec. 77.54(6)(a), Wis. Stats. (1999-00), does not require the processing equipment to be purchased by the manufacturer, but rather used by the manufacturer. Because the employee is working on behalf of the manufacturer when using the tools, the manufacturer is using the tools in manufac-

turing in the same manner as if the manufacturer had purchased the tools and given the tools to the employee to use.

In the event the tools are not used exclusively and directly in manufacturing (for example, the employee also uses the tools for repairs or personal purposes), or if the tools are later converted to a use other than exclusively and directly in manufacturing, the exemption under sec. 77.54(6)(a), Wis. Stats. (1999-00), no longer applies.

**Example 1:** Employees of Manufacturer A are required to have their own small tools on the manufacturing line. The employees purchase the tools from a third party when they begin employment with Manufacturer A. The tools are used by the employees on the assembly line, exclusively and directly in the manufacturing process. The employees’ purchases of the tools are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 2:** Manufacturer B purchases hand tools it sells to employees for use exclusively and directly in manufacturing for Manufacturer B. Manufacturer B may purchase the hand tools sold to employees without Wisconsin sales or use tax because they are for resale. The sales of the tools by Manufacturer B to employees for use exclusively and directly in manufacturing are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 3:** Assume the same facts as in Example 1, except the employees use the same tools on a regular basis to (1) repair machines on the manufacturing line, and (2) install and repair items at their homes. Such use is approximately 15% of total use. The tools purchased by the employees are used other than exclusively and directly in a manufacturing process and, therefore, do not qualify for the exemption from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 4:** Assume the same facts as in Example 1. In addition, more than six months after purchasing the tools, an employee transfers to a new position in the plant that is not manufacturing. The employee keeps the hand tools and uses them at home for installations and repairs around the home. The employee’s initial purchase of the tools used exclusively and directly in manufacturing is exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00). The employee owes sales tax on either the original sales price of the hand tools or the fair market value, whichever is less, at the time the tools are first used after the transfer to the non-manufacturing position. [☞](#)