



## 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 the position of 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 answers in a tax release.)

The following tax release is included:

### Sales and Use Tax; Income and Franchise Tax

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|---|----|
| 1. Customer Charges for Fuel and Electricity Used in Manufacturing..... | 12 |
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### SALES AND USE TAX; INCOME AND FRANCHISE TAX

#### 1 Customer Charges for Fuel and Electricity Used in Manufacturing

**Statutes:** Sections 71.07(3s)(b), 71.28(3)(b), 71.47(3)(b), 77.51(4)(a)2., (15)(a)2., (16), (20), and (23), 77.52(1), and 77.54(30)(a)6., Wis. Stats. (2005-06).

**Background:** Section 77.54(30)(a)6., Wis. Stats. (2005-06), provides a sales and use tax exemption for “The **gross receipts** from the sale of... Fuel and electricity consumed in manufacturing tangible personal property in this state” (Emphasis added). This exemption is effective for sales or purchases made on or after January 1, 2006.

Section 71.28(3)(b), Wis. Stats. (2005-06), provides a corporation income or franchise tax credit for “...an amount equal to the **sales and use tax under ch. 77** paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state...” (Emphasis added). The credit

also exists for individual income taxes and insurance company income or franchise taxes. This credit is available for taxable years beginning before January 1, 2006.

Section 77.51(20), Wis. Stats. (2005-06), defines “tangible personal property” to include electricity.

Section 77.51(4)(a)2., Wis. Stats. (2005-06), provides, in part:

“...‘gross receipts’ means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise, without any deduction on account of the following...The cost of the materials used, labor or service cost, interest paid, losses or any other expense.”

Section 77.51(15)(a)2., Wis. Stats. (2005-06), provides, in part:

“...‘sales price’ means the total amount for which tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following...The cost of the materials used, labor or service cost, losses or any other expenses.”

Section 77.51(16), Wis. Stats. (2005-06), provides:

“ ‘Sales tax’ means the tax imposed by s. 77.52.”

Section 77.51(23), Wis. Stats. (2005-06), provides:

“ ‘Use tax’ means the tax imposed by s. 77.53.”

Section 77.52(1), Wis. Stats. (2005-06), provides:

“For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the **gross receipts** from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state” (Emphasis added).

Section 77.53(1), Wis. Stats. (2005-06), provides, in part:

“...an excise tax is levied and imposed...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...” (Emphasis added).

**Facts:** When selling fuel and electricity to a manufacturer, utilities charge the customer a “facilities,” “customer,” or “fixed” charge. The utility bills this charge separately from amounts charged for fuel and electricity. The charge is not for the rental of equipment by the utility to the customer (in other words, the customer does not have control of the equipment). The charge is mandatory to the customer in that the customer must pay the charge in order to purchase electricity from the utility.

The “facilities,” “customer,” or “fixed” charge is charged by utilities to collect their fixed costs. These fixed costs include a return on the utilities’ investments in its meters, transformers, and other equipment necessary to serve its customers, as well as the average cost of meter reading and billing.

**Question 1:** Does the sales and use tax exemption provided in sec. 77.54(30)(a)6., Wis. Stats. (2005-06), apply to the “facilities,” “customer,” or “fixed” charge, if the fuel and electricity is purchased by the customer on or after January 1, 2006 and is used in manufacturing?

**Answer 1:** Yes. The “facilities,” “customer,” or “fixed” charge is a part of the seller’s gross receipts from the sale of electricity under sec. 77.51(4)(a)2., Wis. Stats. (2005-06), and, for purchases on and after January 1, 2006, such charges are exempt if the fuel and electricity to which the charge relates qualifies for the exemption provided in sec. 77.54(30)(a)6., Wis. Stats. (2005-06).

For sales tax purposes, the exemption provided in sec. 77.54(30)(a)6., Wis. Stats. (2005-06), applies to the **gross receipts** from the sale of fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

For use tax purposes, the exemption provided in sec. 77.54(30)(a)6., Wis. Stats. (2005-06), applies to the **sales price** of fuel and electricity consumed in manufacturing tangible personal property in Wisconsin.

“Gross receipts” is defined in sec. 77.51(4)(c)2., Wis. Stats. (2005-06), to include the “any other expense.” Similarly, “sales price” is defined in sec. 77.51(15)(a)2., Wis. Stats. (2005-06), to include “any other expenses.” The “facilities,” “customer,” or “fixed” charges fall within the definitions of “gross receipts” and “sales price” because they are charges for the seller’s expenses.

**Example:** Manufacturer A consumes 70% of the electricity it purchases from Utility X in manufacturing tangible personal property in Wisconsin. On its billing to Manufacturer A, Utility X charges a “facilities charge.” In order to purchase electricity from Utility X, Manufacturer A must pay the facilities charge. The exemption for electricity consumed in manufacturing applies to 70% of Utility X’s charge for electricity and to 70% of Utility X’s facilities charge.

**Question 2:** May the “facilities,” “customer,” or “fixed” charge be included in the computation of the manufacturer’s sales tax credit, if the fuel and electricity purchased by the customer is used in manufacturing and sales or use tax is paid by the manufacturer in its taxable year beginning before January 1, 2006?

**Answer 2:** Yes. Because the manufacturer’s sales tax credit is based on the sales and use taxes under Chapter 77, the imposition and definition provisions of Chapter 77 apply for purposes of the manufacturer’s sales tax credit.

Because the sales tax is imposed on the **gross receipts** from certain sales and the use tax is imposed on the **sales price** of certain property, the Chapter 77 definitions of these terms apply in determining the amount of sales tax paid which qualifies for the manufacturer’s sales tax credit. “Gross receipts” and “sales price” are defined broadly in sec. 77.51(4)(a)2. and (15)(a)2., Wis. Stats. (2005-06), to include any other expense. The “facilities,” “customer,” or “fixed” charges fall within the definitions of “gross receipts” and “sales price” because they are charges for the seller’s expenses.

**Note:** If the utility’s charge is for the *rental* of facilities, rather than being a mandatory charge for the purchase of fuel or electricity, the charge does not qualify for the sales and use tax exemption provided in sec. 77.54(30)(a)6., Wis. Stats. (2005-06), and may not be included in the computation of the manufacturer’s sales tax credit.