

Wisconsin TAX BULLETIN

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New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin* (WTB), the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. See page 4 for details. In addition, several bills affecting Wisconsin taxes are pending action by Governor Doyle. Any of these bills that become law will be published in [News for Tax Practitioners](#) and the next issue of the WTB.

New Form For Requesting Waivers From Filing and Paying Electronically

[Form EFT-102](#), *Electronic Filing or Electronic Payment Waiver Request*, has been created to facilitate requests for waiver from filing and paying electronically. This form provides the department with required information concerning the ability to electronically file or pay, as well as steps that are being taken to ensure future filings or payments will be electronic. Form EFT-102 must be submitted at least 60 days prior to the due date of the electronic filing or payment for which a waiver is requested. [🔗](#)

Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's web site in March. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information, including the following important reminders:

- Beginning April 1, 2010, the 0.5% county tax went into effect in Fond du Lac County.
- Many retailers who were not previously required to register to collect and remit the local food and beverage tax may now be required to do so.
- Effective July 1, 2010, the 0.25% local food and beverage tax will be increased to 0.5%. [🔗](#)

Important Changes to Paying Taxes Online

The Department of Revenue (DOR) has changed the way taxes are paid online. Tax return and estimated tax payments may be made for:

- Corporation franchise or income tax
- Excise taxes (motor fuel, cigarette and tobacco, and beer and liquor)
- Fiduciary income tax
- Individual income tax
- Pass through withholding
- Real estate transfer fees
- Utility taxes
- Wage certification

In addition to cost savings for DOR, this comprehensive online payment method provides:

- One payment location
- A single login ID and password for businesses
- Easy access for individuals and fiduciaries

Businesses will pay the above taxes through *My Tax Account* and individuals and fiduciaries have a new, easy-to-use application. Specific instructions and links to make online payments for the above taxes are available at www.revenue.wi.gov/eserv/eft3.html.

Previously, U.S. Bank offered an electronic funds transfer (EFT) web site. Since DOR now hosts one comprehensive page, the U.S. Bank page will not be available after May 22, 2010. A notice has been placed on the U.S. Bank's EFT web site about this change and any individuals going to that web site after May 22 will be redirected to DOR's new online payment page. [🔗](#)

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Since the last issue of the *Wisconsin Tax Bulletin*, the following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have been revised:

Income and Franchise Taxes

102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (2/10)


119 Limited Liability Companies (3/10)

Sales and Use Taxes


229 Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (1/10)

Other Topics

115 2010 Handbook for Federal/State Electronic Filing (2/10)

All of the IS&E Division's publications may be downloaded or ordered online at <http://www.revenue.wi.gov/html/taxpubs.html>. There are over 70 publications available, covering a wide range of topics. 

Reminder: Reporting Wisconsin Withholding on Schedules K-1

When completing Schedules 2K-1, 3K-1, or 5K-1, pass-through entities are reminded to report the Wisconsin withholding computed from column H of Part 2 of [Form PW-1](#) for each beneficiary, member, partner, or shareholder, not the estimated withholding tax payments on the income allocable to the beneficiary, member, partner, or shareholder. Additional information is available in the [instructions](#) for Form PW-1. 

**Enforcement Report****Prisoners Charged with Tax Crimes**

Criminal complaints have been charged against four women who are either current or former prisoners of the Taycheedah Correctional Institution (TCI) for filing fraudulent state homestead credit claims and other related crimes.

Criminal complaints were filed against the four women on February 26, 2010, by the State Attorney General's Office, following a joint investigation by the Wisconsin Capitol Police and the Wisconsin Department of Revenue's Criminal Investigation Section. The Department of Corrections was instrumental in identifying irregularities and participating in the investigation.

Wendy Nelsen, AKA Wendy Eland, 43, formerly of Green Bay and currently incarcerated at the Taycheedah Correctional Institution in Fond du Lac County, was charged with eleven felony counts of preparing fraudulent homestead credit claims.

Kristine Flynn, 51, a TCI inmate formerly of Whitehall, was charged with six felony counts of preparing false homestead credit claims and one count of preparing a false statement related to a claim.

*(continued on page 3)***Wisconsin Tax Bulletin***Published quarterly by:*

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Enforcement Report*(continued from page 2)*

Former TCI inmate Nicole Ousley, 37, of Milwaukee, was charged with two felony counts of preparing false homestead credit claims, two counts of preparing false statements related to those claims, and one count of false swearing.

Former TCI inmate Amy Prelwitz, 29, from Two Rivers and currently incarcerated in the Manitowoc County Jail, was charged with one felony count of preparing a false homestead credit claim and one count of preparing a false statement related to the claim.

The complaints allege that each fraudulent homestead credit claim, with one exception, was filed for a year during which the claimant was incarcerated. Attached to each claim is a rent certificate containing false information about the landlord, rental property address, time actually lived at the rental property, and rent paid.

Bail was set at \$10,000 cash bond for both Nelson and Flynn. Ousley and Prelwitz each had bail set at \$5,000 cash bond.

If convicted, filing a fraudulent homestead credit claim carries a maximum penalty of 6 years in prison and a maximum fine of \$10,000, or both, for each count. Making false statements and false swearing each carry a maximum penalty of 9 months imprisonment and a maximum fine of \$10,000, or both.

Oconomowoc Woman Found Guilty and Sentenced For Tax Crime

Lynette R. Mercier, 43, of Oconomowoc pled guilty in March 2010 in Waukesha County Circuit Court to one count of willful failure to file a Wisconsin income tax return. The charge was brought by the Waukesha County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

According to the criminal complaint, Ms. Mercier failed to file a 2006 income tax return with income of \$53,012. The complaint further states that Ms. Mercier failed to file income tax returns for 2002 through 2005.

Ms. Mercier was sentenced in April 2010 to six months in county jail with Huber privileges, stayed. Mercier received one year probation and was ordered to comply with all recommendations of the Department of Revenue, including filing all past tax returns and paying restitution to the state in the amount of \$2,697. As a condition of probation, Mercier must serve 10 days in jail.

Milwaukee Man Arrested For Tax Fraud

Dwayne Green, 49, Milwaukee, was arrested in April 2010 for filing fraudulent tax claims and identity theft. Green was charged in Milwaukee County with nine felonies alleging that he defrauded the State of Wisconsin out of \$79,591.

According to the criminal complaint, between 2005 and 2009, Green filed 44 fraudulent homestead credit claims using stolen identities. The complaint further alleges that between 2004 and 2009 Green was responsible for filing 102 tax returns for other persons in which he claimed fraudulent earned income credits or fraudulent deductions for dependents. The returns showed a pattern of claiming the same persons as dependents on multiple claims.

Green was charged by the Public Integrity Unit of the Milwaukee County District Attorney's Office after an investigation by the Wisconsin Department of Revenue and Wisconsin Department of Justice.

If convicted on all counts, Green faces up to 54 years in prison and \$90,000 in fines. [!\[\]\(84f47badaad7772cd95667a7c387a639_img.jpg\)](#)

New Tax Laws

The The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following are brief descriptions of the major individual and fiduciary income tax, corporation franchise or income tax, and sales and use tax provisions. These provisions are contained in 2009 Acts 161, 180, and 204.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

Individual and Fiduciary Income Taxes and Corporation Franchise or Income Taxes

Certain Federal Laws Adopted for Wisconsin (2009 Act 161, amend secs. 71.01(6)(t), (u), and (um), 71.22(4)(t), (u), and (um), 71.22(4m)(r), (s), and (sm), 71.26(2)(b)20., 21., and 22., 71.34(1g)(t), (u), and (um), and 71.42(2)(s), (t) and (um), various effective dates.)

Certain provisions of the federal Internal Revenue Code have been adopted for Wisconsin tax purposes. The provisions are sec. 512 of Public Law (P.L.) 109-222, sec. 811 of P.L.109-280, and P. L. 110-245, the Heroes Earnings Assistance and Relief Tax Act of 2008 (adopted with certain exceptions).

Section 512 of P.L. 109-222

For federal income tax purposes, taxpayers may convert a traditional, SEP, or SIMPLE IRA or an eligible rollover distribution from a retirement plan to a Roth IRA. As a result of sec. 512 of P.L. 109-222, effective for taxable years beginning in 2010 and thereafter, the conversion may be made even though the taxpayer's modified adjusted gross income exceeds \$100,000. No penalties will apply on the conversion.

Taxpayers who make the conversion in 2010 may postpone payment of tax on the converted amount until they file their 2011 and 2012 income tax returns, or they may elect to report the entire taxable amount on their 2010 returns.

As a result of 2009 Act 161, the 2010 federal provisions relating to converting an IRA or other eligible distribution to a Roth IRA also apply for Wisconsin.

Section 811 of P.L. 109-280

For federal tax purposes, increased contribution limits to IRAs and other retirement plans were to apply through 2010 and then sunset for 2011. Section 811 of P.L. 109-280 made the increased retirement plan and IRA contribution limits permanent.

As a result of 2009 Act 161, the retirement plan and IRA contribution limits that will apply for federal tax purposes for 2011 and thereafter will also apply for Wisconsin.

P.L. 110-245

2009 Act 161 adopted the provisions of federal P.L. 110-245, the Heroes Earnings Assistance and Relief Tax Act of 2008, with three exceptions. The exceptions are: sec. 110, relating to the exclusion of gain from the sale of a principal residence by an individual or spouse serving outside the United States in the Peace Corps; sec. 113, relating to the gain from the sale of a principal residence by specified intelligence community employees; and sec. 301, relating to property of expatriates.

The changes to the Internal Revenue Code made by P.L. 110-245 that were adopted for Wisconsin tax purposes apply at the same time as for federal purposes.

Revisor's Corrections (2009 Act 180, clarify secs. 71.07(3w)(a)6., 71.28(3w)(a)6., and 71.47(3w)(a)6. and 2009 Act 183, amend secs. 71.01(6)(um), 71.22(4)(um) and (4m)(sm), 71.26(2)(b)22., and 71.34(1g)(um), effective March 30, 2010.)

For purposes of the enterprise zone jobs credit, the definition of "zone payroll" was not repealed by 2007 Act 100. "Zone payroll" means the amount of state payroll that is attributable to wages paid to full-time employees for services that are performed in an enterprise zone. "Zone payroll" does not include the amount of wages paid to any full-time employees that exceeds \$100,000.

The definition of "Internal Revenue Code" is clarified to exclude P.L. 110-246.

Sales and Use Taxes

Exemption Expanded to Include Food and Food Ingredients Sold by Child Welfare Facilities (2009 Act 204, amend sec. 77.54(20n)(b), effective May 6, 2010.)

Effective May 6, 2010, food and food ingredients, except soft drinks, sold by any facility certified or licensed under Chapter 48, Wis. Stats., are exempt from Wisconsin sales and use taxes. Such facilities include licensed child placement agencies, residential care centers, foster homes, treatment foster homes, group homes, and shelter care facilities.

Under prior law, food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities, as defined in sec. 50.01(1g), Wis. Stats., and day care centers registered under Chapter 48, Wis. Stats., were exempt from Wisconsin sales and use taxes. These sales continue to be exempt under current law. [Ⓜ](#)



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter rulings are included:

Sales and Use Taxes

Exemption for drugs and medicines (prior to October 1, 2009)

W1009004 (p. 6)

Exemption for drugs and medicines (on and after October 1, 2009)

W1009008 (p. 9)

Construction contracts with exempt entities

W1008005 (p. 13)

Construction contracts with exempt entities

W1008006 (p. 16)

Contract amendment fees

W1009007 (p. 18)

✱ **W1009004** ✱

August 13, 2009

Type Tax: Sales and Use Taxes

Issue: Exemption for drugs and medicines (prior to October 1, 2009)

Statutes: Section 77.54(14) and (14g), Wis. Stats. (2007-08)

This letter responds to your request for a private letter ruling dated December 11, 2008.

Facts, as provided by you:

Company A is a medical device and pharmaceutical company. Company A’s products are used for a range of medical conditions.

I.a. Injectable Tissue Implants

a. Product A

Company A’s core product, Product A, is a tissue filler implant that is injected by a physician or a nurse under supervision of a physician. Product A consists of particles suspended in a water-based gel carrier.

Product A is sold in individually packaged, single dose syringes. Product A packaging carries the following labeling as required by the FDA:

Federal (USA) law restricts this device to sale by or on the order of a physician.

Product A repairs defects in soft tissue of the body by initially replacing lost tissue volume and then stimulating the production of new, long-term natural collagen by the body. Collagen is a fibrous protein that is the chief constituent of the connective tissues in soft tissues of the body, including skin.

Product A is used in the treatment of defective, diseased, traumatized, or aging human tissue to correct a number of soft tissue defects, including moderate to severe facial wrinkles and folds (such as nasolabial folds), restoration and/or correction of the signs of facial fat loss (lipoatrophy) in people with HIV, vocal fold augmentation to treat speech impediments typically caused by stroke or neurological disorder, acne scars, oral and maxillofacial defects, and nipple reconstruction after mastectomy. The U.S. Food and Drug Administration (“FDA”) has issued approvals for Product A to be marketed for the following treatments:

- 2001 Radiographic tissue marking

- 2002 Vocal fold augmentation to treat speech impediments caused typically by stroke or neurological disorder
- 2003 Oral and maxillofacial defects
- 2006 (Dec) Facial lipoatrophy
- 2006 (Dec) Nasolabial folds and marionette lines

Product A is currently most commonly used by doctors in the U.S. for treatment of moderate to severe facial wrinkles and folds (such as nasolabial folds). Company A is working with the FDA on clinical studies covering the use of Product A for additional soft tissue treatments as well as using Product A combined with lidocaine, a prescription anesthetic.

b. Product B

Product B is an injectable implant used as a peri-urethral bulking agent to treat women who have stress urinary incontinence due to poorly functioning urethral sphincter muscles. Product B consists of particles suspended in a gel carrier. The Product B implant is injected into the space around the urethra near the bladder. After injection, the Product B implant bulks the tissue near the urethral sphincter and stimulates the production of new, long-term natural collagen by the body, enabling the sphincter to function more effectively.

The FDA has issued an approval for Product B to be marketed for the following treatment:

- 2005 Peri-urethral bulking agent to treat women who have stress urinary incontinence due to poorly functioning urethral sphincter muscles.

Product B is sold in individually packaged, single dose syringes. Product B packaging carries the following labeling as required by the FDA:

Federal (USA) law restricts this device to sale by or on the order of a physician.

I.b. **Pharmaceutical Drugs**

c. Product C

Veins channel oxygen-depleted blood back toward the heart through one-way valves. If the valves of the veins do not function well, blood does not flow efficiently. The veins become enlarged because they are congested with blood. These enlarged veins are commonly called spider veins or varicose veins. Spider veins are small red, blue or purple veins on the surface of the skin. Varicose veins are larger distended veins that are located somewhat deeper than spider veins. There are several adverse consequences of untreated varicose veins, and their severity will vary from person to person depending on the circumstances.

Sclerotherapy is a common treatment for small (spider) and medium size (reticular) veins. A tiny needle is used to inject the veins with a solution (called a sclerosant) that irritates the lining of the vein. In response, the veins collapse and are reabsorbed. The surface veins are no longer visible. Depending on the size and location of the veins, different types and strengths of sclerosants are used. With this procedure, veins can be dealt with at an early stage, helping to prevent further complications including surgical removal of veins.

Product C is a well recognized worldwide standard of care for venous sclerotherapy (sold under the trade name Drug A outside the U.S.). Such treatment is typically performed by vascular surgeons, phlebologists, and dermatologists. Product C is in a clinical trial in the United States and not yet approved by FDA for use in the U.S. as a treatment for varicose veins and will be sold by Company A only after such approval is received. **The product is classified as a prescription pharmaceutical by the FDA.** The trade name for this product in the United States has not been selected.

II. **Surgical Adhesives**

a. Product D

Product D is a surgical adhesive used in conjunction with sutures and staples in open surgical repair of large vessels, including cardiovascular, vascular, pulmonary and other general surgical applications. It is a sealant which can be used in facial aesthetic applications to create a durable mechanical bond

with full adhesion. It is an attractive alternative to conventional fixation methods such as drilling into the skull for fixation or other suspension methods. Product D is a Class III medical device, subject to the medical device regulatory approval pathway. As a Class III item, it must go through the most stringent of the regulatory processes for devices. Class III devices are usually those that can support or sustain human life, are of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury. (U.S. Food and Drug Administration web site – “Device Advice,” updated August 4, 2004)

Questions:

- I. Are the following injectable tissue implants and pharmaceutical drugs subject to sales and use tax in Wisconsin?
 - a. Product A
 - b. Product B
 - c. Product C?
- II. Is Product D subject to sales and use tax in Wisconsin?

Answers:

Product A, Product B, Product C, and Product D are tangible personal property. Sales of, and the storage, use or other consumption of tangible personal property in Wisconsin are subject to Wisconsin’s sales and use taxes, unless an exemption applies.

The sale of, and the storage, use or other consumption of Product A, Product B, Product C, and Product D are exempt from Wisconsin sales and use taxes as a medicine, when Product A, Product B, Product C, or Product D is sold or used in a manner described in sec. 77.54(14), Wis. Stats. (2007-08).

Product A, Product B, Product C, and Product D, when used as described by you, each individually meets the definition of a “medicine” as defined in sec. 77.54(14g), Wis. Stats. (2007-08), for purposes of sec. 77.54(14), Wis. Stats. (2007-08).

Sales of, and the storage, use or other consumption of medicines in Wisconsin are exempt from Wisconsin sales and use taxes under any one of the following circumstances prescribed by sec. 77.54(14), Wis. Stats. (2007-08):

- (a) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.
- (b) Furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient for treatment of the patient.
- (c) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist, or dentist.
- (d) Sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being.
- (e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being.
- (f) Furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.
- (g) Furnished without charge to any of the following if the medicine may not be dispensed without a prescription:
 1. A physician.
 2. A surgeon.
 3. A nurse anesthetist.
 4. An advanced practice nurse.
 5. An osteopath.
 6. A dentist who is licensed under ch. 447, Wis. Stats.
 7. A podiatrist who is licensed under ch. 448, Wis. Stats.
 8. An optometrist who is licensed under ch. 449, Wis. Stats.

Analysis:

Section 77.54(14), Wis. Stats. (2007-08), provides that: “ ‘Medicines,’ as used in sub. (14), means any substance or preparation that is intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and that is commonly recognized as a substance or preparation intended for such use; but ‘medicines’ do not include any of the following:

- (a) Any auditory, prosthetic, ophthalmic, or ocular device or appliance.
- (b) Articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or articles, or the component parts or accessories thereof.
- (c) Any alcohol beverage the manufacture, sale, purchase, possession, or transportation of which is licensed or regulated under the laws of this state.”

Product A, Product B, Product C, and Product D each individually meet the definition of “medicine” because:

- 1. each is a substance or preparation that is intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease, and is commonly recognized as a substance or preparation intended for such uses, and
- 2. none of the products are otherwise identified in sec. 77.54(14g)(a), (b) or (c), Wis. Stats. (2007-08), which would result in the product being excluded from the term “medicine” for purposes of sec. 77.54(14), Wis. Stats., (2007-08).

NOTE: This letter ruling does not apply to the sales of, and the storage use or other consumption of Product A, Product B, Product C, or Product D, occurring on or after October 1, 2009. Section 77.54(14), Wis. Stats. (2007-08) is modified by 2009 Wis. Act 2, effective October 1, 2009. Section 77.54(14g), Wis. Stats. (2007-08), is repealed by 2009 Wis. Act 2, effective October 1, 2009.

✱ **W1009008** ✱

December 7, 2009

Type Tax: Sales and Use Taxes

Issue: Exemption for drugs and medicines (on and after October 1, 2009)

Statutes: Section 77.54(14), Wis. Stats. (2007-2008), as amended by 2009 Wis. Act 2 and secs. 77.51(3pj) and (11m) and 77.54(22b), Wis. Stats., as created by 2009 Wis. Act 2.

This letter responds to your request for a private letter ruling dated December 11, 2008.

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I.b. Pharmaceutical Drugs

c. Product C

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Product C is a well recognized worldwide standard of care for venous sclerotherapy (sold under the trade name Drug A outside the U.S.). Such treatment is typically performed by vascular surgeons, phlebologists, and dermatologists. Product C is in a clinical trial in the United States and not yet approved by FDA for use in the U.S. as a treatment for

varicose veins and will be sold by Company A only after such approval is received. **The product is classified as a prescription pharmaceutical by the FDA.** The trade name for this product in the United States has not been selected.

II. Surgical Adhesives

a. Product D

Product D is a surgical adhesive used in conjunction with sutures and staples in open surgical repair of large vessels, including cardiovascular, vascular, pulmonary and other general surgical applications. It is a sealant which can be used in facial aesthetic applications to create a durable mechanical bond with full adhesion. It is an attractive alternative to conventional fixation methods such as drilling into the skull for fixation or other suspension methods. Product D is a Class III medical device, subject to the medical device regulatory approval pathway. As a Class III item, it must go through the most stringent of the regulatory processes for devices. Class III devices are usually those that can support or sustain human life, are of substantial importance in preventing impairment of human health, or which present a potential, unreasonable risk of illness or injury. (U.S. Food and Drug Administration web site – “Device Advice,” updated August 4, 2004)

Questions:

- I. Are the following injectable tissue implants and pharmaceutical drugs subject to sales and use tax in Wisconsin?
 - a. Product A
 - b. Product B
 - c. Product C?
- II. Is Product D subject to sales and use tax in Wisconsin?

Answers:

Note: These answers apply to sales of, and the storage, use, or other consumption of the products indicated, on and after October 1, 2009.

- I. Product A, Product B, and Product C are tangible personal property. Sales of, and the storage, use or other consumption of tangible personal property in Wisconsin are subject to Wisconsin’s sales and use taxes, unless an exemption applies.

The sale of, and the storage, use or other consumption of Product A, Product B, and Product C are exempt from Wisconsin sales and use taxes as drugs, when Product A, Product B, or Product C is sold or used in a manner described in sec. 77.54(14), Wis. Stats. (2007-08), including those portions of this section as amended by 2009 Wis. Act 2.

Product A, Product B, and Product C, when used as described by you, each individually meets the definition of a “drug” as defined in sec. 77.51(3pj), Wis. Stats., as created by 2009 Wis. Act 2.

Sales of, and the storage, use or other consumption of drugs in Wisconsin are exempt from Wisconsin sales and use taxes under any one of the following circumstances prescribed by sec. 77.54(14), Wis. Stats. (2007-08), including those portions as amended by 2009 Wis. Act 2:

- (a) Prescribed for the treatment of a human being by a person authorized to prescribe the drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law (this paragraph was amended by 2009 Wis. Act 2).
- (b) Furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient who is a human being for treatment of the patient (this paragraph was amended by 2009 Wis. Act 2).
- (c) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist, or dentist.
- (d) Sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being.
- (e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being.
- (f) Furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(g) Furnished without charge to any of the following if the drug may not be dispensed without a prescription:

1. A physician.
2. A surgeon.
3. A nurse anesthetist.
4. An advanced practice nurse.
5. An osteopath.
6. A dentist who is licensed under ch. 447, Wis. Stats.
7. A podiatrist who is licensed under ch. 448, Wis. Stats.
8. An optometrist who is licensed under ch. 449, Wis. Stats.

II. Product D is tangible personal property. Sales of, and the storage, use or other consumption of tangible personal property in Wisconsin are subject to Wisconsin's sales and use taxes, unless an exemption applies.

The sale of, and the storage, use or other consumption of Product D is exempt from Wisconsin sales and use taxes as drugs, when Product D is sold or used in a manner described in sec. 77.54(14), Wis. Stats. (2007-08), including those portions amended by 2009 Wis. Act 2.

Analysis:

Section 77.51(3pj), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2, provides that: “ ‘Drug’ means a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

(a) It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.

(b) It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

(c) It is intended to affect a function or structure of the body.”

Section 77.51(11m), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2, defines “prosthetic device” to mean: “a device, including the repair and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.”

Section 77.54(22b), Wis. Stats., (2007-08), as created by 2009 Wis. Act 2, provides, in part, an exemption from Wisconsin sales and use taxes for: “The sales price from the sale of and the storage, use, or other consumption of...prosthetic devices, and accessories for such equipment or devices, if the equipment or devices are used for a human being.”

The Streamlined Sales and Use Tax Governing Board has classified “staples, sutures, and suture alternatives” as a “prosthetic device” in its *Health Care Item List Addendum*, revision date: January 29, 2007. You may access this document by using the following URL:

http://www.streamlinedsalestax.org/DOCUMENTS/Rules%20and%20Procedures_RP/Appendix/index_rules_and_procedure_appendicies.html

I. Product A, Product B, and Product C each individually meet the definition of “drug” under sec. 77.51(3pj), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2, because:

- (1) each is a substance or preparation that is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease, and
- (2) none of the products are food and food ingredients, dietary supplements, or alcoholic beverages.

Provided Product A, Product B, or Product C is sold or used in one or more of the manners prescribed in sec. 77.54(14), Wis. Stats. (2007-08), including those portions amended by 2009 Wis. Act 2, the sale of, and the storage, use or other consumption of Product A, Product B, or Product C in Wisconsin is exempt from Wisconsin sales and use taxes.

II. Product D, when used as a surgical adhesive in conjunction with sutures and staples in open surgical repair of large vessels, including cardiovascular, vascular, pulmonary and other general surgical applications, meets the definition of a “prosthetic device” as defined in sec. 77.51(11m), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2. When used as a surgical adhesive in conjunction with sutures and staples in open surgical repair of large vessels, including cardiovascular, vascular, pulmonary and other general surgical applications in the treatment of a human being, the sale of or storage, use, or other consumption of Product D in Wisconsin qualifies for exemption under sec. 77.54(22b), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2, as a prosthetic device used for a human being.

Product D, when used in facial aesthetic applications to create a durable mechanical bond with full adhesion as alternative to conventional fixation methods such as drilling into the skull for fixation or other suspension methods, meets the definition of a “prosthetic device” as defined in sec. 77.51(11m), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2. When used in facial aesthetic applications to create a durable mechanical bond with full adhesion as alternative to conventional fixation methods such as drilling into the skull for fixation or other suspension methods in the treatment of a human being, the sale or storage, use, or other consumption of Product D in Wisconsin qualifies for exemption under sec. 77.54(22b), Wis. Stats. (2007-08), as created by 2009 Wis. Act 2, as a prosthetic device used for a human being.

* **W1008005** *

December 1, 2009

Type Tax: Sales and Use Taxes

Issue: Construction contracts with exempt entities

Statutes: Section 77.51(10), Wis. Stats. (2007-2008), as amended by 2009 Wis. Act 28 and sec. 77.61(19m)(a), Wis. Stats. (2007-08), as created by 2009 Wis. Act 28.

This letter responds to your request for a private letter ruling dated July 29, 2009. In your letter, you request clarification of the sales and use tax treatment of transactions relating to Company A and Company B.

Facts, as provided in your letter dated July 29, 2009:

Company A and Company B have been operating in reliance on a Wisconsin Department of Revenue letter, dated April 10, 1998 (1998 DOR Letter), relative to the purchase and resale of materials to exempt entities by Company B, which materials are then used by Company A in completing its construction contract with the exempt entity.

Company A is a member of the AGC of Wisconsin and as such received a copy of the Wisconsin Department of Revenue letter, dated July 15, 2009 (2009 DOR Letter), relating to a change in the Wisconsin sales and use tax law, effective July 1, 2009. Company B serves the same functions as LLC B in Example 1 of the 2009 WDOR Letter.

1998 ruling:

All material facts recited in the 1998 DOR Letter remain true today. The facts, as detailed in the 1998 DOR Letter are as follows:

- Company A is a Wisconsin corporation which is engaged in business as a general contractor.
- Company B is a Wisconsin corporation which is engaged in the business of providing construction project management services and purchasing materials for use by Company A in construction projects for exempt entities. Company B sells the materials directly to the exempt entity.
- Company A and Company B are separate legal entities, but the shareholders of Company B are also the shareholders of Company A. In addition, Company B is a shareholder of Company A.
- Company A contracts with Wisconsin exempt entities to provide construction services.
- Company B purchases materials to be used by Company A in these construction activities and resells these materials to the exempt entities.
- The exempt entities issue purchase orders to Company B and pay Company B for the materials.

- Company B has the materials delivered to the site at which Company A is providing construction services for the exempt entity.
- The contract between Company A and the exempt entity is only for the providing of construction services (i.e., labor only, no materials). Company A does not and the contract does not require that Company A furnish any of the materials necessary to complete the construction activities (i.e., the contract between Company A and the exempt entity is for labor only).

The following was determined on April 10, 1998:

1. Company B's sales of tangible personal property to the exempt entities are not subject to Wisconsin sales and use tax provided Company B obtains and keeps either (a) a properly completed Certificate of Exemption from the exempt entity, or (b) the exempt entity's Certificate of Exempt Status (CES) number and records this number on the copy of the invoice retained by Company B.
2. Company A's use of the exempt entity's materials in completing Company A's labor only contract with the exempt entity will not result in the exempt entity's materials becoming subject to Wisconsin sales or use tax, as long as Company A was not also the supplier of those materials to the exempt entity.
3. Company B should provide its suppliers of materials which it will resell as tangible personal property with a Wisconsin Resale Certificate to purchase these items without paying Wisconsin sales and use tax. Since Company B does not and is not required to hold a Wisconsin seller's permit, Company B should write "Exempt Sales Only" in the area on the certificate where a seller's permit number would be entered if Company B held a Wisconsin seller's permit. This will permit Company B to purchase the materials which it will resell as tangible personal property to exempt entities without paying Wisconsin sales and use tax.

If Company B's suppliers do not accept a resale certificate completed as described above, Company B should either provide them with a copy of the (1998 DOR) letter authorizing Company B to make these types of purchases without paying Wisconsin sales and use tax or have the vendor call (the Department of Revenue).

Update to 1998 facts:

The following factual items are noted to update and clarify the contextual facts recited in the 1998 DOR Letter:

- Company B is now a wholly owned subsidiary, not a sister corporation of Company A, and Company B currently owns no stock of Company A.
- At the current time, Company B provides no construction services to others.
- The Company A contracts with exempt entities are labor-only relative to all materials sold to the exempt entities by Company B; there are other materials which are furnished by Company A which are fully taxable when purchased by Company A.
- Not all materials sold to exempt entities by Company B are used by Company A; some materials sold to exempt entities by Company B are used by sub and sub-subcontractors of Company A and by others contracting directly with the exempt entities.

Current facts, as updated:

The following facts recited in the 1998 DOR Letter, modified to reflect the aforementioned updates and clarifications, are true today:

- Company A is a Wisconsin corporation which is engaged in business as a general contractor.
- Company B is a Wisconsin corporation which is engaged in the business of purchasing materials for use by Company A in construction projects for exempt entities. Company B sells the materials directly to the exempt entity.
- Company A and Company B are separate legal entities.
- Company A contracts with Wisconsin exempt entities to provide construction services.
- Company B purchases materials to be used by Company A in these construction activities and resells these materials to the exempt entities.
- The exempt entities issue purchase orders to Company B and pay Company B for the materials.

- Company B has the materials delivered to the site at which Company A and others are providing construction services for the exempt entity.
- The contract between Company A and the exempt entity is only for the providing of construction services (i.e., labor only) relative to materials purchased by the exempt entity from Company B. Company A furnishes other materials necessary to complete the construction activities which are taxable when purchased by Company A.
- The following additional facts apply, effective July 1, 2009:
 - Company A is and has for many years been taxed as an S Corporation for state and federal income tax purposes.
 - For several years prior to July 1, 2009, Company B, having elected the status of a qualified S corporation subsidiary ("QSSS"), had been a disregarded entity of Company A for state and federal income tax purposes.
 - Company B revoked its QSSS election effective July 1, 2009. As a consequence, from and after July 1, 2009, Company B is no longer a disregarded entity of Company A (or any other entity) but will now be reporting separately as a C Corporation for federal and state income tax purposes.
 - For authorities governing S corporations generally, the election by their subsidiaries for QSSS status, and revocation of such election, see IRC § 1361 and Treas. Reg. 1.1361-5(b)(1)(i); for authorities incorporating the foregoing rules into the Wisconsin income and franchise tax system (secs. 71.22(1k) and 71.365(7), Wis. Stats.).
 - Company B remains a wholly-owned subsidiary of Company A.

REQUEST: Company A and Company B conclude that (1) because from and after July 1, 2009, Company B is no longer a disregarded entity of Company A, the rulings of the 1998 DOR Letter are not altered by the change in law described in the 2009 DOR Letter; and (2) there is nothing in the facts as updated and clarified herein which would alter the rulings of the 1998 DOR Letter which, therefore, remain valid and reliable going forward. Company A and Company B request that the

Wisconsin Department of Revenue confirm these conclusions.

ANSWER: Your conclusions are correct.

Analysis:

Effective July 1, 2009, 2009 Wis. Act 28 provides that a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes ("disregarded entity") is disregarded as a separate entity for purposes of Wisconsin sales and use taxes (sec. 77.61(19m)(a), Wis. Stats. (2007-08), as created in 2009 Wis. Act 28). The Act also removes the owner of a single-owner entity that is disregarded as a separate entity under Chapter 71 of the Wisconsin Statutes from the definition of "person" for purposes of Chapter 77 (sec. 77.51(10), Wis. Stats. (2007-08), as amended by 2009 Wis. Act 28).

Prior to July 1, 2009, a single-owner entity disregarded as a separate entity for purposes of Chapter 71, is treated as an entity separate from its owner for purposes of Chapter 77, except for reporting purposes.

Company B revoked its QSSS election effective July 1, 2009. Company B is no longer a disregarded entity of Company A (or any other entity) but will now be reporting separately as a C Corporation for federal and state income tax purposes. Therefore, Company A and Company B are treated as separate entities for purposes of Wisconsin sales and use taxes. As separate entities, the following tax treatment continues to apply (as it did under the entities' structures prior to July 1, 2009):

1. Company B's sales of tangible personal property to the exempt entities are not subject to Wisconsin sales and use tax provided Company B obtains and keeps either (a) a properly completed Certificate of Exemption from the exempt entity, or (b) the exempt entity's Certificate of Exempt Status (CES) number and records this number on the copy of the invoice retained by Company B.
2. Company A's use of the exempt entity's materials in completing Company A's labor only contract with the exempt entity will not result in the exempt entity's materials becoming subject to Wisconsin sales or use tax, as long as Company A was not also the supplier of those materials to the exempt entity.

3. Company B should provide its suppliers of materials which it will resell as tangible personal property with a Wisconsin Resale Certificate to purchase these items without Wisconsin sales and use tax. Since Company B does not and is not required to hold a Wisconsin seller's permit, Company B should write "Exempt Sales Only" in the area on the certificate where a seller's permit number would be entered if Company B held a Wisconsin seller's permit. This will permit Company B to purchase the materials which it will resell as tangible personal property to exempt entities without paying Wisconsin sales and use tax.

If Company B's suppliers do not accept a resale certificate completed as described above, Company B should either provide them with a copy of this letter authorizing Company B to make these types of purchases without paying Wisconsin sales and use tax or have the vendor call (the Department of Revenue).

* **W1008006** *

December 1, 2009

Type Tax: Sales and Use Taxes

Issue: Construction contracts with exempt entities

Statutes: Sections 77.61(19m), Wis. Stats. (2007-2008), as created by 2009 Wis. Act 28.

This letter responds to your request for a private letter ruling dated August 19, 2009.

Facts, as provided by you:

In June, the Wisconsin Legislature passed 2009 Wis. Act 28 effective July 1, 2009 which made the sales and use tax treatment of disregarded entities consistent with the tax treatment for income tax purposes. Prior to that date a single owner entity was treated as a separate entity for sales use tax purposes. The above Act changed that treatment.

Company A is a Wisconsin contractor providing construction of real property (commercial, institutional, etc.) in Wisconsin.

Company B was formed February 2003 as a single member LLC of which Company A was the single member. As such, it was treated as a disregarded entity for income tax purposes but as a separate entity for sales and use tax purposes. Company B currently shares the same sellers permit number as Company A but Company B has requested, via separate correspondence to the Wisconsin Department of Revenue, direction as to how to proceed to obtain a separate sellers permit.

In general, Company B primarily engages in purchasing construction materials for resale without tax and resells them to the following:

- a. Company A - with sales tax and profit markup when incorporated as part of construction that Company A performs.
- b. Company C - with sales tax and profit markup when incorporated as part of construction that Company C performs.
- c. To tax exempt clients of Company B, without sales tax when incorporated into construction projects and installed by Company A, Company C or various subcontractors. Appropriate tax exempt certificates are obtained from the tax exempt clients as applicable. Company B does not perform any installation or construction labor.

Effective July 1, 2009 Company B changed from a single member LLC to a partnership as follows: (a) Company B changed its operating agreement to permit the transfer of membership to another entity and (b) Company B sold a 5% membership interest in Company B to another entity, Company D.

As a result of the above change, the ownership of Company B is a partnership and effective July 1, 2009 is structured as follows:

95% owned by Company A and 5% owned by Company D.

In turn, Company A is owned approx 39% by Individual E, 39% by Individual F and the remainder by various minor shareholders.

Company D is owned 50% by Individual E and 50% by Individual F.

Company B occupies the same premises as Company A. Company B does not have any direct employees. Company B will continue to procure and pay for hourly accounting and administrative services, the rental of space and other related costs from Company A under a services agreement using market rates.

Company B has its own vendors, checking account, federal ID#, books and records.

Company B has elected to file its own federal income tax return as a partnership.

Rulings requested by you:

Under the procedures and facts discussed above, you request the following rulings:

1. That the Wisconsin Department of Revenue recognizes the sovereignty of Company B as a standalone entity, separate from its partners, and a sovereign reseller of materials based on the above stated facts.
2. That the purchase of building materials from various suppliers by Company B will not be subject to Wisconsin sales or use tax under Company B's reseller's number and no Wisconsin sales or use tax is due as a result of Company B selling those materials to a tax exempt client who provides a valid tax exempt certificate or who holds a valid tax exempt status when those materials are used by Company A, Company C, or other subcontractors in real property construction contracts as set forth above.

Rulings:

1. Company B is recognized, for purposes of Wisconsin sales and use tax laws in effect as of July 1, 2009, as an entity that is separate from its owners.
2. As of July 1, 2009, Company B may purchase building materials and other tangible personal property that it will resell to customers in the ordinary course of its business as a seller of tangible personal property without Wisconsin sales or use taxes as purchases for resale. No Wisconsin sales or use tax will be due when Company B sells such building materials or other tangible personal property as tangible personal property to a tax exempt client who holds a Certificate of Exempt Status (CES) issued by the Wisconsin Department of Revenue and provides Company B with a properly completed exemption certificate or its CES number. This is the case, even though one or more of the owners of

Company B may subsequently install the building materials or other tangible personal property purchased by the exempt entity from Company B in fulfillment of a real property construction activity for that exempt entity.

Analysis:

As of July 1, 2009, a single-owner entity that is disregarded as a separate entity for purposes of Wisconsin income or franchise taxes under Chapter 71, Wis. Stats., is disregarded for purposes of Wisconsin sales and use taxes under Chapter 77, Wis. Stats., pursuant to sec. 77.61(19m), Wis. Stats. (2007-08), as created by 2009 Wis. Act 28.

The following facts have been stipulated:

- Company B, as of July 1, 2009, is owned 95% by Company A and 5% by Company D.
- Company B will occupy the same premises as Company A.
- Company B does not have any direct employees.
- Company B will continue to procure and pay for hourly accounting and administrative services, the rental of space and other related costs from Company A under a services agreement using market rates.
- Company B has its own vendors, checking account, federal ID#, books and records.
- Company B has elected to file its own federal income tax return as a partnership.

Company B, as of July 1, 2009, is no longer a single-owner entity that is disregarded for purposes of Chapter 71 of the Wisconsin Statutes. Rather, as of July 1, 2009, Company B is an entity that is owned by two members, and cannot be treated as a single-owner entity that is disregarded for purposes of Chapter 71 of the Wisconsin Statutes.

Since Company B is treated as a separate entity for purposes of Wisconsin sales and use taxes as of July 1, 2009, Company B may purchase building materials and other tangible personal property that it will resell to customers in the ordinary course of its business as a seller of tangible personal property without Wisconsin sales or

use taxes as purchases for resale, provided that Company B does not also install such building materials or other tangible personal property sold to its customer in fulfillment of a real property construction activity for such customer. This includes its sales to sales and use tax exempt entities who will purchase building materials or other tangible personal property from Company B for projects where and the installation of such building materials or other tangible personal property for the exempt entity will be performed by Company A, Company C, or other subcontractors in real property construction contracts Company A, Company C, or the other subcontractors have with that exempt entity.

* **W1009007** *

December 4, 2009

Type Tax: Sales and Use Taxes

Issue: Contract amendment fees

Statutes: Sections 77.51, 77.52, 77.522, and 77.54(8), Wis. Stats. (2007-08)

This letter responds to your request for a private letter ruling dated July 23, 2009.

Facts, as provided by you:

Company A finances the purchase of automobiles. It enters into consumer installment sales contracts with auto buyers. Often the amount owed on the sales contract is more than the value of the car in the short term, so that if the customer has an accident and totals the car, his or her insurance will pay book value. However, the note might be somewhat larger than the payoff. This difference, for which the customer is responsible, is known as the Gap. There are insurance policies available to cover the Gap, and such products are known as "Gap Insurance" and sales tax is not due on the sale of that product per the General Exemption to Sales and Use Tax found in Wis. Stat. § 77.54(8).

Section 77.54(8) reads "[there are exempted from the taxes imposed by this subchapter] (8) [c]harges for interest, financing or insurance where such charges are separately set forth upon the invoice given by the seller to the purchaser." On Oct. 1, 2009 the following provision will become effective: "[there are exempted from the taxes imposed by this subchapter] (8) [c]harges for insurance, not including contracts under s. 77.52(2)(a)13m, where such charges are separately set

forth upon the invoice given by the seller to the purchaser."

Company A offers something similar to Gap Coverage Insurance, but it is not an insurance product. Rather, it is a contractual modification to the purchase Contract which provides that if there is a Gap, Company A will cancel the amount on the Note up to a certain amount. The customer pays a fee for the contract amendment.

The addendum is described above. It is simply a contract modification that the consumer and Company A agree to. That addendum provides debt cancellation in the event the car is totaled and at the time of the accident is worth less than the amount of the note to Company A for the purchase of the vehicle.

This is not a step transaction. All documents are signed at the time of closing and there are no additional steps before or after this, other than in the ordinary course of trying to collect the debt.

Additional information that you have furnished to me and is a part of this ruling request is that Company A provides financing to the person purchasing the automobile and does not purchase or sell the automobiles being acquired by its customers.

Question:

Are the receipts that Company A receives from the purchaser of the automobile from Company A's separately stated charges to its customer for Company A providing the services described in the "Debt Cancellation Addendum" agreement provided with request for a ruling, subject to Wisconsin sales and use taxes?

Answer:

No.

Analysis:

Through September 30, 2009, Wisconsin's sales and use taxes apply to a retailer's gross receipts, as defined in sec. 77.51(4), Wis. Stats. (2007-08), from the retailer's sales of tangible personal property and the retailer's sales of those services specified by statute as being subject to the tax, and sold, performed or furnished in Wisconsin, unless an exemption applies. Gross receipts that Company A receives through September 30, 2009 from its customer, from a separately stated charge for

providing the benefits under the “Debt Cancellation Addendum,” do not constitute either gross receipts from a sale of tangible personal property or gross receipts from the sale of a service that is specifically identified in the statutes as being subject to the tax.

Effective October 1, 2009 and thereafter, Wisconsin sales taxes apply to the sales price, as defined in sec. 77.51(15b), Wis. Stats. (2007-08), that a retailer receives from its sales of tangible personal property, items, property, and goods under sec. 77.52(1)(b), (c), and (d), Wis. Stats., (2007-08), and the retailer’s sales of those services specified by statute as being subject to the tax, that are sourced to Wisconsin as provided in sec. 77.522, Wis. Stats. (2007-08), unless an exemption applies. The sales price that Company A receives, on or after October 1, 2009, from its customer, from a separately stated charge for providing the benefits under the “Debt Cancellation Addendum,” is not a sales price received from a sale of tangible personal property; a sales price received from a sale of an item, property, or good under sec. 77.52(1)(b), (c), or (d); or the sales price received from the sale of a service that is specifically identified in the statutes as being subject to the tax.