



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

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SALES AND USE TAX

1 Temporary Services – Sellers Who Provide Both Nontaxable Temporary Help Services and Taxable Services

Note: This tax release sets forth additional guidance regarding Condition 3, first bullet point, of the tax release titled “Temporary Services,” which was published in *Wisconsin Tax Bulletin 165* (February 2010). See page 8 of *Wisconsin Tax Bulletin 165*.

Statutes: Section 77.51(1f), Wis. Stats., as created by 2009 Wis. Act 2, sec. 77.52(2), Wis. Stats. (2007-08), as affected by 2009 Wis. Acts 2 and 28, and secs. 102.315(1)(f), 108.02(21e), and 108.02(24m), Wis. Stats. (2007-08).

Wis. Adm. Code: Sections Tax 11.67(2), 11.71(2), and 11.86(6), Wis. Adm. Code (May 2010 Register).

Wisconsin Tax Appeals Commission Decision: *Manpower Inc. vs. Wisconsin Department of Revenue* (August 12, 2009) (CCH 401-223).

Background: The tax release titled “Temporary Services,” published in [Wisconsin Tax Bulletin 165](#) (February 2010), pages 6-11, provides information about the sales and use tax treatment of services and provides examples of services that are subject to Wisconsin sales and use taxes. The following excerpt from pages 8 and 9 of the tax release explains the effect of the *Manpower* decision on the services provided by sellers:

How Does the *Manpower* Decision Apply to Other Sellers?

Following are factors that may be used to determine whether a seller’s services are nontaxable temporary help services based on the *Manpower* decision.

Generally, if a person sells, licenses, performs, or furnishes any of the services listed in sec. 77.52(2), Wis. Stats. (2007-08), as amended by 2009 Wis. Acts 2 and 28, the person is liable for sales tax on its sales price from such services. **However, if a seller meets all three of the following criteria (1, 2, and 3), it is considered to be providing nontaxable temporary help services:**

1. The seller meets **any one** of the following:
 - The seller is a “temporary help company” under sec. 108.02(24m) of the Wisconsin Statutes. (see definition above);
 - The seller is an “employee leasing company” under sec. 102.315(1)(f) of the Wisconsin Statutes. (see definition above);
 - or**
 - The seller is a “professional employer organization” under sec. 108.02(21e) of the Wisconsin Statutes (see definition above).
2. The seller meets **any one** of the following:
 - The seller, based on advertising, including website statements and Yellow Pages advertisements, describes its business as a temporary help, employee leasing, professional employer organization, or staff augmentation business;

- The seller is a member of a group or association for temporary help, employee leasing, professional employer organization, or staff augmentation businesses; **or**
 - The seller is classified under the North American Industry Classification System (NAICS), 2002 edition, under industry code 561320, as a temporary help service establishment, or under industry code 561330, as a professional employer organization.
3. The seller meets **all** of the following:
- **The seller does not provide the services its workers perform directly to customers;** [Emphasis added. See additional guidance in the next column for exception.]
 - The seller’s training of its employees is limited to generic training, not specific to the needs of any one of its clients;
 - The seller’s clients furnish the tools or equipment for workers to perform tasks;
 - The seller does not control the employees performing the tasks and does not supervise or direct the activities that its worker perform for its clients;
 - The seller does not define the scope of work of its workers, and is unaware of the specific tasks performed by its workers;
 - The seller does not guarantee a specific or particular result of the work performed and does not contract to provide certain outcomes or results; **and**
 - The seller’s workers do not perform their activities for the seller’s clients at the seller’s location, and the seller does not control the location where the work is performed.

Tax Treatment For a Seller Who Provides Both Nontaxable Temporary Help Services and Taxable Services

A seller is considered to provide nontaxable temporary help services, even though the seller also provides taxable services, under the following conditions:

- For the temporary help services, the seller meets Criteria 1 and 2, above, and also meets the last six requirements listed under Criteria 3 (e.g., the seller’s training of its employees is limited to generic training, the seller’s clients furnish the tools or equipment for workers to perform the tasks, etc.)
- The taxable services provided by the seller are contracted for separately from the nontaxable temporary help services.
- The taxable services provided by the seller are 10% or less of the seller’s business.

Example 1: Company A is a “temporary help company” under sec. 108.02(24m) of the Wisconsin Statutes. Company A advertises itself as a temporary help business on its website and in advertisements. For contracts under which Company A provides temporary help services, Company A meets the last six requirements under Criteria 3 above (i.e., Company A’s training of its employees is limited to generic training, Company A’s clients furnish the tools or equipment for workers to perform the tasks, etc.). However, Company A also provides taxable computer repair services for clients for a fee. With respect to these taxable computer repair services, Company A furnishes the tools for its employees to perform the service, it directs the activities of its employees, it defines the scope of its employees work, and guarantees a satisfactory repair. Company A contracts for these computer repair services separately from the temporary help services. Company A’s gross revenues from providing temporary help services are 90% of its total gross revenues. Company A’s gross revenues from providing taxable computer repair services are 10% of its total gross revenues. Company A is not liable for sales tax on its receipts from the temporary help services it provides, because the taxable repair services are 10% or less of its business, as shown by its gross revenues from providing such services. Company A is liable for sales tax on its sales price of the computer repair services.

Example 2: Same as Example 1, except that Company A's gross revenue from providing taxable computer repair services is 25% of its total gross revenues. Company A is liable for sales tax on its receipts from both the temporary help services and the computer repair services it provides. In this case, the taxable computer repair services performed by Company A are more than 10% of its business.