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Policies Concerning Unfiled Returns Updated

Effective January 1, 2011, the Department of Revenue's (DOR) policy concerning voluntary disclosure of unfiled returns has been revised. Previously, delinquent interest of 18% was applied to the tax due on late returns filed under voluntary disclosure. Under the new policy, regular interest of 12% will be applied. The complete [policy](#) as revised is available on DOR's web site.

In addition, DOR has adopted a maximum ten year look-back policy for certain unfiled income and franchise tax returns. The article at right provides more information concerning this new policy. [↗](#)

Schedule I Instructions Revised

The 2010 Schedule I [instructions](#) were revised on January 25, 2011, to include an adjustment relating to the deduction for health insurance premiums paid by employers who claim the federal credit for health insurance premiums paid by small employers (see related article on page 4).

The instructions were previously revised on December 28, 2010, to include additional changes to federal law that must be considered when completing Schedule I. These law changes were made by Public Law 111-312 (the Tax Relief Act of 2010), enacted December 17, 2010. [↗](#)

At Your Service: Online Resources

As the hustle and bustle of the tax season quickly reaches a frenzy, don't forget about the many valuable [online resources](#) that are available to you and your clients. We are always working to find new and improved ways to meet your needs. For example:

- Under "new," an [application](#) that allows individuals and their authorized representatives to view 1099-G information online.
- Under "improved," the estimated tax payment inquiry [application](#) now allows you to view any estimated tax payment scheduled for a future date. [↗](#)

Recent Sales and Use Tax Guidance

The department recently published articles on its practitioner web page providing guidance on exemption certificates for propane suppliers and the registration of snowmobiles and ATVs by nonresidents of Wisconsin. For a complete, up-to-date list of topics, see [News for Tax Professionals](#). [↗](#)

Look-Back Policy for Income and Franchise Tax Non-Filers

The Financial Accounting Standards Board requires certain business disclosures in regard to income taxes. In order to make these disclosures, businesses must know the administrative practice of tax agencies in regard to non-filing and nexus determinations.

For Wisconsin tax purposes, when a person (i.e., individual, partnership, corporation, limited liability company, and fiduciary) fails to file required income or franchise tax returns, the Wisconsin Department of Revenue (DOR) may make an assessment of tax at any time and for any taxable year for which a return is due. However, the statutes do not limit the number of years for which an assessment may be made for past due income or franchise tax returns.

DOR has adopted a maximum ten year look-back policy for persons meeting certain conditions. DOR will look back for no more than ten taxable years if the following conditions are met:

- (1) Person currently has nexus in Wisconsin.
- (2) Person timely filed a Wisconsin income or franchise tax return for at least the four most recent taxable years.

The ten year look-back period shall be determined as of the date DOR first contacts the taxpayer in writing about such tax or the initiation of an audit. The ten year look-back period commences with the final day of the most recent taxable year for which the person was required to file a return prior to the written contact by DOR.

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Among the more significant income tax changes for 2010 occurred in the area of [farmland credits](#). The farmland tax relief credit and, for certain claimants, the farmland preservation credit as we've come to know it have come to an end. In their place is a new farmland preservation credit with a new claim form, [Schedule FC-A](#).

Looking ahead to 2011, both beginning and established farmers may be eligible for new income tax [credits](#). A beginning farmer may claim a credit of up to \$500 for amounts paid to enroll in a financial management program. An established farmer who leases farm assets to a beginning farmer may claim a credit equal to 15% of the lease amount. [🔗](#)

Summary of 2010 Addition and Subtraction Modification Codes, Other Information Available

The Department of Revenue (DOR) recently added to its web site a "[cheat sheet](#)" of addition and subtraction modification code numbers for 2010. This information was one of several handouts at the October 2010 Working Together Workshops cosponsored by DOR and the Internal Revenue Service. The handout lists each code number, a brief description of the related addition or subtraction modification, and the corresponding page of the Form 1 instructions where detailed information is available.

If you weren't able to attend one of the seven tax practitioner workshops held across the state in October, don't worry. The agenda, power point summaries of presentations, and handouts are all available [online](#). [🔗](#)

New Post Office Box for Informational Returns

Information returns may be transmitted online, delivered to the Wisconsin Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin, or mailed to the appropriate address listed below.

Form 9b or substitute forms (Forms 1099-R and 1099-MISC) and Form 8 should be mailed to:

Wisconsin Department of Revenue
PO Box 8905
Madison WI 53708-8905 [🔗](#)

**Wisconsin/Minnesota Sales Tax Seminars**

The Wisconsin and Minnesota Departments of Revenue will again present a series of free joint sales and use tax seminars in the spring of 2011. The seminars will include information on similarities and differences in the two states' sales and use tax laws. All of the seminars are for general businesses.

The specific dates, times, and locations of the seminars, as well as registration information, is available on the "[Training](#)" page of the Department of Revenue's web site. [🔗](#)

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Look-Back Policy for Income and Franchise Tax Non-Filers *(continued from page 1)*

The ten year look-back policy applies to income and franchise taxes only.

The ten year look-back policy does not apply to any person who has made an intentional misrepresentation of facts to the Wisconsin Department of Revenue.

Example 1: ABC Company timely filed calendar 2005, 2006, 2007, and 2008 franchise tax returns. ABC Company did not file franchise tax returns before 2005. DOR initiated an audit in January 2010 and determined that ABC Company had nexus in years prior to 2005. ABC Company should have filed franchise tax returns in those years. The ten year look-back period begins on December 31, 2009, which is the final day of the most recent taxable year for which ABC Company was required to file a return at the time the audit was initiated. DOR could assess additional taxes back to and including the 2000 taxable year.

Example 2: XYZ Company is a tax-option (Subchapter S) corporation. XYZ Company has filed Wisconsin franchise/income tax returns for 20 years. XYZ Company has a nonresident shareholder who has owned 50% of XYZ Company for the 20 years the company has existed. The nonresident shareholder reported his share of XYZ Company's income on timely filed Wisconsin income tax returns for 2006, 2007, 2008, and 2009. The nonresident shareholder did not file Wisconsin income tax returns for years prior to 2006. An audit of the nonresident shareholder is initiated in June 2010. The ten year look-back period begins on December 31, 2009, which is the final day for the most recent taxable year for which the nonresident shareholder was required to file a return at the time the audit was initiated. DOR could assess additional taxes back to and including the 2000 taxable year. [↗](#)

The Little Things Make a Big Difference: Common E-File Errors

Although errors do not frequently occur when filing Wisconsin income tax returns electronically, they nonetheless do occur. Many of the errors that cause an e-filed return to reject may be avoided simply by making sure the following information is complete and accurate:

- direct deposit/direct withdrawal routing transit number
- tax district information, including the city, village or township name, along with the county name
- spouse's first and last name when the filing status is married filing joint or married, filing as head of household

- rent certificate or property tax bill when filing homestead credit
- Legal Residence Questionnaire when a part-year Wisconsin resident moved out of Wisconsin during 2010
- state postal abbreviation code when a nonresident of Wisconsin

Another common area for errors on e-filed returns is homestead credit. If you prepare homestead credit claims for your clients, it may be well worth your time to review the [instructions and guidelines](#) available online. [↗](#)

Do You Owe Use Tax?

Use tax must be paid on all taxable items purchased from retailers who do not collect Wisconsin sales tax and all taxable items brought into Wisconsin. It applies to purchases made in foreign countries as well as other states. Use tax only applies when Wisconsin sales tax is not charged.

As part of its efforts to obtain compliance with Wisconsin use tax laws, Department of Revenue auditors have consistently assessed between 30 and 40 million dollars of use tax annually. If you want to help avoid an audit of yourself and your clients, a good start would be to [learn more](#) about use tax and how to keep track of and pay it. [↗](#)

Credit for Small Employer Health Insurance Premiums

For federal tax purposes, sec. 1421 of Public Law 111-148, *The Patient Protection and Affordable Care Act*, created a credit for health insurance premiums paid by small employers. This section also provided that the employer may not claim a deduction for the portion of the premiums for health insurance paid by the employer that is equal to the credit.

The provisions of Public Law 111-148 have not been adopted for Wisconsin income and franchise tax purposes. As a result, the employer is not required to reduce the deduction for the health insurance premiums paid by the amount of the federal credit.

Individuals who claim the federal credit for health insurance premiums paid by small employers should adjust for the difference between the federal and Wisconsin deduction for health insurance premiums paid on Wisconsin Schedule I, *Adjustments to Convert 2010 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*. (**Note:** This adjustment was inadvertently omitted from the 2010 instructions for Schedule I. The instructions have since been revised, see article on page 1.)

Corporations that file Form 4 or 5 would adjust for the difference between the federal and Wisconsin amounts on Schedule W, Wisconsin Subtractions from Federal Income.

Partnerships and tax-option (S) corporations report such differences in column c of Schedule 3K or 5K. [↗](#)

Sales and Use Tax Report Available

Listed below are the articles in the December 2010 [Sales and Use Tax Report](#) (4-10). Links provided are to articles in [News for Tax Professionals](#) concerning the same subject matter.

- [Rhinelander Office Closing](#)
- [Reminder: Local Exposition Basic Room Tax Rate Increase](#)
- [“Buy One, Get One Free” and Similar Promotions](#)
- [Did You Know? Ice Cream Cakes May Be Taxable](#)
- [Hot Air Balloon Rides – Tax Treatment Changed](#)
- [Septic System Installers – Taxable Items Minor in Comparison to Total Contract Price](#)
- [Electronic Exemption Certificates are Acceptable in Wisconsin](#)

- [Landscaping Services and Snow Removal Services](#)
 - [Flags and Flag Kits](#)
 - [Are Your Sales Subject to the Police and Fire Protection Fee?](#)
 - [Sales Tax Audits Include Reconciliation of Gross Receipts](#)
 - [Truck Owner-Operators – Tax Treatment Changed](#)
 - [Sales-Use Tax Exemption: Property Consumed, Destroyed, or Losing Its Identity in Manufacturing](#)
 - [Reporting Sales Tax on Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft](#) [↗](#)
-

Reminder: Local Exposition Basic Room Tax Rate Increased

Effective January 1, 2011, the 2.0% local exposition basic room tax was increased to 2.5%. The sale of lodging is subject to the local exposition room tax when furnished in Milwaukee County to a person for a continuous period of less than one month. If the lodging is furnished in the City of Milwaukee, it is subject to the local exposition basic room tax and a 7% additional room tax.

[Publication 410](#), *Local Exposition Taxes*, provides additional information about the local exposition taxes. This publication will be updated in the near future to reflect the basic room tax increase.

You are encouraged to file your Local Exposition Tax Return (Form EX-12) electronically through “[My Tax Account](#)” if you are not already filing in this manner. “My Tax Account” is the department’s free online business tax service that allows businesses to access their accounts to view current account status, file and amend returns, make payments, and manage and update account information. [↗](#)

Updated Publications

The following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have recently been revised:

Income and Franchise Taxes

- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/10)
- 104 Wisconsin Taxation of Military Personnel (11/10)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2010 (12/10)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/10)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2010 (11/10)
- 125 Credit for Tax Paid to Another State (11/10)

- 126 How Your Retirement Benefits are Taxed (11/10)

Sales and Use Taxes

- 201 Wisconsin Sales and Use Tax Information (11/10)
- 205 Use Tax Information For Individuals (11/10)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (11/10)
- 213 Travelers: Don't Forget About Use Tax (11/10)
- 214 Businesses: Do You Owe Use Tax? (11/10)

Other Topics

- 115 2010 Handbook for Federal/State Electronic Filing (12/10)

All of the IS&E Division's publications may be downloaded or ordered [online](#). There are over 70 publications available, covering a wide range of topics. [↗](#)



Enforcement Report

Madison Man Charged With Tobacco Tax Evasion

Salamah S. Awadalla, Madison, has been charged in Dane County Circuit Court with dealing in untaxed tobacco and acting as a tobacco products distributor without a Wisconsin permit.

According to the criminal complaint, Awadalla operates Saricakes, LLC, located in Madison, Wisconsin. Awadalla is alleged to have delivered untaxed tobacco products to gas stations and convenience stores in the Dane County area since November of 2008.

Awadalla was charged by the Dane County District Attorney's office following an investigation by the Wisconsin Department of Revenue.

If convicted on both counts, Awadalla could face up to \$11,000 in fines, one year in prison, or both.

According to the criminal complaint, Sidhu operates the Mobil 22 under the company name Sooch, Inc. Sooch, Inc., is alleged to have obtained untaxed tobacco products from an out-of-state company and sold these products through the store, along with selling intoxicating liquor without holding a retail liquor license. The complaint states that 670 packages of cigars, little cigars, moist snuff, and other tobacco products, along with 125 bottles of intoxicating liquor, were seized during an investigation in May 2009.

Sidhu was charged by the Oconto County District Attorney's Office following an investigation by the Wisconsin Department of Revenue.

If convicted on all counts, Sidhu could face up to 12 months in jail, \$11,000 in fines, or both. [↗](#)

Oconto Falls Woman Charged With Alcohol and Tobacco Violations

Maninder Kaur Sidhu, who operates the Mobil 22 in Oconto Falls, has been charged with dealing in untaxed tobacco and selling liquor without the proper licenses.



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 releases are included:

Sales and Use Tax

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SALES AND USE TAX

1 Application of the Exempt Status of an Owner that Qualifies for Exemption Under sec. 77.54(9a)(f), Wis. Stats., to Purchases Made By its Disregarded Entity

Statutes: Section 77.54(9a)(f), Wis. Stats. (2007-08); Section 77.61(19m), Wis. Stats., as created effective July 1, 2009 by 2009 Wis. Act 28.

Background: Section 77.54(9a)(f), Wis. Stats. (2007-08), provides an exemption from Wisconsin sales and use tax for sales to “[a]ny corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.”

So that retailers can identify the organizations that qualify for this exemption, the Department of Revenue issues a qualifying organization a Certificate of Exempt Status (“CES”) number. All purchases made by an organization properly holding a Wisconsin CES number are exempt from Wisconsin sales and use taxes.

The Wisconsin Legislature passed 2009 Wis. Act 28 (effective July 1, 2009), which 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. Prior to July 1, 2009, a single-owner entity that was disregarded as a separate entity for purposes of Chapter 71 was treated as an entity separate from its owner for purposes of Chapter 77, except for reporting purposes.

Question: Are the purchases by a disregarded entity exempt from Wisconsin sales and use tax by virtue of the exempt status of its owner (i.e., the owner qualifies for exemption under sec. 77.54(9a)(f), Wis. Stats.)?

Answer: If the owner is properly classified as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code, the Wisconsin CES number of the owner may be used by the disregarded entity to make purchases that are exempt from Wisconsin sales and use taxes.

Note: Prior to July 1, 2009, the disregarded entity was required to qualify for and obtain its own Wisconsin CES number in order to make purchases exempt from Wisconsin sales and use taxes.

Example 1 – Owner and Disregarded Entity Both Non-profit: Nonprofit Organization A is properly classified as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code and sec. 77.54(9a)(f), Wis. Stats. (2007-08). Nonprofit Organization A holds a Wisconsin CES number. Nonprofit Organization A is the single owner of Limited Liability Company B, a disregarded entity. Limited Liability Company B would qualify, in its own right, as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code.

Effective July 1, 2009, Limited Liability Company B should use Nonprofit Organization A's Wisconsin CES number to make purchases that are exempt from Wisconsin sales and use taxes. Prior to July 1, 2009, Nonprofit Organization A and Limited Liability Company B needed separate Wisconsin CES numbers to make purchases exempt from Wisconsin sales and use taxes. **Note:** If Limited Liability Company B holds a Wisconsin CES number, Limited Liability Company B should contact the Department of Revenue to inactivate its Wisconsin CES number.

Example 2 – Owner is Nonprofit, but Disregarded Entity is For-Profit: Nonprofit Organization C is properly classified as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code and sec. 77.54(9a)(f), Wis. Stats. (2007-08). Nonprofit Organization C holds a Wisconsin CES number. Nonprofit Organization C is the single-owner of Limited Liability Company D, a disregarded entity. Limited Liability Company D has income from a trade or business and **would not** qualify, in its own right, as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code.

Effective July 1, 2009, Limited Liability Company D may use Nonprofit Organization C's Wisconsin CES number to make purchases that are exempt from Wisconsin sales and use taxes as long as Nonprofit Organization C continues to be properly classified as an exempt entity under sec. 501(c)(3) of the Internal Revenue Code and sec. 77.54(9a)(f), Wis. Stats. (2007-08). Prior to July 1, 2009, Nonprofit Organization C and Limited Liability Company D were separate entities for Wisconsin sales and use tax purposes; therefore, each entity needed to qualify in its own right for a Wisconsin CES number. Since Limited Liability Company D did not qualify for exemption, as provided in sec. 77.54(9)(a)(f), Wis. Stats., Limited Liability Company D was not eligible for a CES number.

Example 3 – Owner is For-Profit, but Disregarded Entity is Nonprofit: Company X is a for-profit business. Company X is the single owner of Limited Liability Company Y, a disregarded entity. Limited Liability Company Y is organized and operated exclusively for charitable purposes; however, Limited Liability Company Y does not qualify as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code and sec. 77.54(9a)(f), Wis. Stats. (2007-08).

Effective July 1, 2009, neither Limited Liability Company Y nor Company X qualifies for a Wisconsin CES number, since Limited Liability Company Y and Company X are deemed to be a single entity and this single entity is not organized and operated exclusively for an

exempt purpose, as required by sec. 77.54(9)(a), Wis. Stats. **Note:** If Limited Liability Company Y still holds a Wisconsin CES number after the July 1, 2009 law change, Limited Liability Company Y should contact the Department of Revenue to inactivate its Wisconsin CES number.

Prior to July 1, 2009, Limited Liability Company Y qualified for a Wisconsin CES number to make purchases exempt from Wisconsin sales and use taxes, even though it did not qualify as a nonprofit organization under sec. 501(c)(3) of the Internal Revenue Code due to the for-profit status of its owner. Company X did not qualify for a Wisconsin CES number.

2 Exemption for United States Flags and Wisconsin State Flags

Note: This tax release supersedes the tax release titled "Exemption for United States Flags and Wisconsin State Flags," which was published in [Wisconsin Tax Bulletin 127](#) (October 2001), beginning on page 28.

Statutes: Sections 77.51(1f) and 77.52(20)(a), Wis. Stats., as created by 2009 Wis. Act 2; Section 77.54(46), Wis. Stats. (2007-08), as amended by 2009 Wis. Act 2.

Wisconsin Administrative Code: Section Tax 11.985, Wis. Adm. Code (May 2010 Register).

Background: Section 77.54(46), Wis. Stats. (2007-08), as amended by 2009 Wis. Act 2, provides an exemption from Wisconsin sales and use taxes for the sales price from the sale of and the storage, use, or other consumption of the U.S. flag or the Wisconsin state flag. The exemption does not apply to a representation of the U.S. flag or the Wisconsin state flag.

Section 77.52(20)(a), Wis. Stats., as created by 2009 Wis. Act 2, provides that the entire sales price of a bundled transaction is subject to Wisconsin sales or use tax, except as follows:

When a retailer is able to identify (by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business) the portion of the sales price that is attributable to products that are not subject to the tax, the retailer may choose to tax only the portion attributable to the taxable products. **Exception:** This option does not apply to a bundled transaction that contains food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies.

A “bundled transaction” is the retail sale of two or more products, not including real property and services to real property, if the products are distinct and identifiable and sold for one nonitemized price.* “Products” includes tangible personal property; items, property, and goods under sec. 77.52(1)(b) to (d), Wis. Stats., as created by 2009 Wis. Act 2; and services.

*Certain exceptions apply. These exceptions are listed in [sec. Tax 11.985](#), Wis. Adm. Code, “Bundled transactions,” along with definitions of “distinct and identifiable product” and “one nonitemized price.”

Question: What is covered by the exemption for flags?

Answer: The exemption applies to sales of the United States flag or the Wisconsin state flag. A flag, for purposes of this exemption, is considered to include the staff to which the flag is permanently mounted when sold by the retailer.

Example: Retailer A sells hand-held U.S. flags permanently mounted with staples to a wood or plastic staff. The sale of the flag (i.e., the fabric and staff to which the fabric is mounted) is exempt from Wisconsin sales or use tax.

This exemption does **not** apply to:

- Flag accessories, except as described above.

Example 1: Retailer C sells an 8-foot sectional flagpole. The sale of the flagpole is not exempt from Wisconsin sales or use tax under this exemption.

Example 2: Retailer D sells 40-foot sectional flagpoles, hardware for flags, U.S. flags, and Wisconsin state flags. All are for sale individually. The sale of the flagpoles and hardware are taxable, even if Retailer D sells these items in a single transaction along with the sale of a U.S. flag or a Wisconsin state flag.

- A representation of the United States flag or Wisconsin state flag (e.g., stickers, magnets, lapel pins, photographs, and clothing).

A sale of a “flag kit” sold as a single unit, which includes a United States flag or Wisconsin state flag and related accessories, such as a mounting bracket, a flagpole, a cord, and instructions on the display of the flag, is a “bundled transaction” if the taxable products included in the “flag kit” are more than 10% of the seller’s purchase price

or sales price, but not a combination of both. The entire sales price of a bundled transaction is subject to tax. However, if the taxable products included in the “flag kit” (i.e., mounting bracket, flagpole, cord, and instructions on the display of the flag) are 10% or less of the seller’s purchase price or sales price, but not a combination of both, then the “flag kit” is not taxable.

Exception: The retailer may, at its option, collect and remit tax only on the taxable portion of the sale if the retailer can identify, by reasonable and verifiable standards from its books and records that are kept in the ordinary course of its business, the portion of the sales prices that is attributable to products that are not subject to tax.

Prior to October 1, 2009, a “flag kit,” sold as a single unit, was exempt from tax if the “flag kit” included a United States flag or Wisconsin state flag and related accessories, such as a mounting bracket, a flagpole, a cord, and instructions on the display of the flag and was sold as one product (e.g., all items were enclosed in a package with a single Universal Product Code (UPC)). A “flag kit” did not include flag-related accessories that are available for sale individually, even if such items were sold in a single transaction along with a U.S. flag or Wisconsin state flag.

For additional information about bundled transactions, please see Part X.C., page 40, of [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

3 Online Seminars

Statutes: Sections 77.51(3p), (17x), 77.52(1)(a) and (d), and 77.54(50), Wis. Stats.

Introduction: Section 77.52(1)(d), Wis. Stats., as created by 2009 Wis. Act 2, imposes the sales tax, in part, on a retailer’s sales price from the sale, license, lease, or rental of specified digital goods at retail for the right to use the specified digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

Section 77.52(1)(a), Wis. Stats., as affected by 2009 Wis. Act 2, imposes the sales tax on a retailer’s sales price it receives from the retail sale, license, lease, and rental of tangible personal property.

Under sec. 77.51(17x), Wis. Stats., as created by 2009 Wis. Act 2 and amended by 2009 Wis. Act 28, “specified digital goods” includes digital audio works and digital audiovisual works.

“Digital audiovisual work” is defined by sec. 77.51(3p), Wis. Stats., as created by 2009 Wis. Act 2, to mean: “a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, and that are transferred electronically. ‘Digital audiovisual works’ includes motion pictures, musical videos, news and entertainment programs, and live events, but does not include video greeting cards or video or electronic games.”

Section 77.54(50), Wis. Stats., as created by 2009 Wis. Act 2 and amended by 2009 Wis. Act 28, provides an exemption for: “The sales price from the sale of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from, or not subject to, taxation under this subchapter.”

Facts (1): Company A is providing a seminar that is primarily educational. The seminar is a one-day event held in a meeting room at a hotel located in Wisconsin. In order to attend the event at the hotel, each attendee is required to pay a fee of \$350. The \$350 fee to attend the seminar is not subject to Wisconsin sales and use taxes, since the service of providing an educational seminar is not one of the services specifically enumerated in sec. 77.52(2), Wis. Stats., as a service that is subject to Wisconsin sales or use taxes. As an alternative to attending the event in person, an individual may pay a fee of \$375 and watch and listen to the seminar by way of a live video stream of the event. The person choosing this option must have a suitable computer, monitor, and Internet access to view the video stream of the seminar. Company A does not provide any interactive capability with the live video stream option. That is, Company A does not provide the viewer with the capability to interact with the speaker, other persons subscribing to the video stream, or with persons attending the seminar in person at the hotel.

Question (1): Is Company A liable for Wisconsin sales or use tax relating to its receipts from selling the right to listen to and view a live video stream of the seminar as receipts it receives from the sale, license, lease, or rental of a digital audiovisual work?

Answer (1): No. Company A is not liable for Wisconsin sales or use taxes relating to its receipts from selling the right to listen to and view the seminar as a digital audiovisual work. Although Company A’s receipts are from its sale of the right to use a digital audiovisual work, as defined in sec. 77.51(17x), Wis. Stats., on a permanent or less than permanent basis, the exemption in sec. 77.54(50), Wis. Stats., applies, since the sale of the right to view and listen to the seminar in its “tangible” form (i.e., at the hotel), is not subject to Wisconsin sales or use taxes.

Facts (2): Same facts as (1). In addition, Company A makes a video recording of the seminar. For \$100, a purchaser may order and receive a recorded version of the seminar. The purchaser has the option to order the recorded version of the seminar as a DVD or may elect to download the recorded seminar using the Internet and record the copy of the seminar to their computer hard drive.

Question (2): Is Company A liable for Wisconsin sales or use tax on its sales of the recorded seminar?

Answer (2): Yes. Company A is liable for Wisconsin sales and use taxes on its sales of the recorded version of the seminar, whether sold as a DVD or as an electronic download.

The \$100 Company A receives from its sale of the recorded seminar as a DVD is from a sale of tangible personal property subject to tax under sec. 77.52(1)(a), Wis. Stats.

The \$100 Company A receives from its sale of the recorded seminar as an electronic download using the Internet is from a sale of a digital audiovisual work (a specified digital good) subject to tax under sec. 77.52(1)(d), Wis. Stats. The exemption under sec. 77.54(50), Wis. Stats., does not apply to the sale of this digital good, since the recorded version of the seminar sold in a tangible form (i.e., on a DVD), is subject to Wisconsin sales and use taxes.

Note: Answer 2 assumes that the sale of the recorded seminar as a DVD or as an electronic download is sourced to (i.e., takes place in) Wisconsin, as determined under [sec. Tax 11.945\(2\), Wis. Adm. Code](#) (November 2010 Register).