



## 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).