



Wisconsin TAX BULLETIN

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New Tax Laws

Since the last issue of the Wisconsin Tax Bulletin, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. See page 6 for details.

Emergency Rule Addresses Sales and Use Tax Exemption

On June 29, 2011, the department published an emergency rule that addresses a sales and use tax exemption for certain energy-producing wind, solar, and gas powered products and the electricity or energy they produce. In addition, a proposed permanent rule that will address this exemption is in process.

[Tax 11.10](#) defines the term “product” as it applies to the sales and use tax exemption, provides examples of items that are and are not considered products, and clarifies the exemption requirements and scope. The exemption that is the subject of Tax 11.10 is effective July 1, 2011, and provided for in sec. 77.54(56), Wis. Stats. (2009-10).

Information concerning administrative rules of the Department of Revenue, as well as other state agencies, is available at the State of Wisconsin Administrative Rules [Home Page](#). At this web site you can search for rules, view the status of current rulemaking, view documents associated with rulemaking, submit and view comments on rules, and subscribe to receive notification of rulemaking. [↗](#)

My Tax Account Upgrade

An improved version of [My Tax Account](#) launched last month. Thanks to your feedback, this version is easier to use, understand, and navigate. Changes include self-registration in one easy step, faster filing, fewer screens to navigate, and user-friendly help messages to guide you along the way.

(continued on page 2)

Increased Standard Mileage Rates Apply for Wisconsin

As a result of recent increases in the price of fuel, the Internal Revenue Service has increased the optional standard mileage rate to 55.5¢ per mile for business purposes and 23.5¢ per mile for medical and moving expense purposes. The mileage rate that applies to the deduction for charitable contributions is fixed under § 170(i) of the Internal Revenue Code at 14¢ per mile. The increased rates, which are effective July 1, 2011, also apply for Wisconsin. [↗](#)

IRS/DOR Seminars for 2011

The Internal Revenue Service and Wisconsin Department of Revenue will be sponsoring several seminars around the state this fall. The seminars will cover federal and state tax law updates, the latest requirements for tax preparers, and other topics of interest to tax preparers. All seminars are from 9:00 a.m. to 3:30 p.m., dates and locations are as follows:

October 18 – Menasha – UW Fox Valley

October 19 – Green Bay – UW Green Bay

October 20 – Stevens Point – UW Stevens Point

October 25 – Eau Claire – The Plaza Hotel

October 26 – Verona (Madison area) – Epic Systems Corporation

October 31 – Milwaukee → FULL (Registration Closed)

November 1 – Pewaukee – Waukesha County Technical College

Although all tax preparers are invited to attend, advance registration is required. The registration process, as well as other information concerning the seminars, is available on the department's [web site](#). [↗](#)

In This Issue**Articles –**

Emergency Rule Published	1
<i>My Tax Account</i> Upgrade	1
Increased Mileage Rates	1

IRS/DOR Seminars	1
Customs Project Finds Use Tax	2
Updated Publications	3
<i>Sales and Use Tax Report</i> Available	3

New FAQs: Automated Billings	3
Enforcement Report	4
New Tax Laws	6
Private Letter Rulings	32
Tax Releases	42

My Tax Account* Upgrade(continued from page 1)*

Several helpful tips for using *My Tax Account* are listed below. *My Tax Account* also provides [online training](#), [troubleshooting](#), and answers to [common questions](#).

Web Browsers

To avoid issues with how screens look in *My Tax Account*, use the most current version of your web browser. Visit our web site for recommended versions of widely used browsers.

Navigation and Help

- Look for action items and account information in two places: tabs at the top of the screen (e.g., My Accounts) and left sidebar panel (e.g., View My Profile, Submit).
- Instructions are in the gray boxes on the top and right side of the screen.
- Click on the blue question marks for help messages and hover over red entry fields for a description of the error.

Payment Sources

- Previously entered bank account information was transferred to the new version of *My Tax Account*. A list of available bank accounts to select from is shown on the payment page.
- For each tax type, you can select a bank account as a default. To find out how, read the *My Tax Account* common questions on our web site.

Printable Vouchers

- To avoid a delay in printing a voucher, file and pay electronically – it's the easiest and most secure way to pay. If you choose to print a voucher for sales tax, immediately view and print it from your confirmation page. If you choose to print a voucher for any other tax type, including withholding tax, it will be available the next business day when your return is filed by 4:00 p.m. [↗](#)

Customs Project Finds Unreported Use Tax

As part of the Wisconsin Department of Revenue's efforts to increase use tax compliance, auditors regularly review information received from the U. S. Customs Service relating to shipments from foreign countries to individuals in Wisconsin. The department sends these individuals a mailing consisting of a letter and a Use Tax Worksheet. The letter explains that use tax is due on items that are subject to Wisconsin sales tax but no sales tax was collected at the time of purchase. The Use Tax Worksheet provides the individual with an opportunity to report without penalty any unpaid use tax for the past four years.

As part of this project, the department instructs individuals to report their annual use tax liability on their Wisconsin income tax return. Individuals who do not have a Wisconsin income tax filing requirement report their use tax liability on a Consumer Use Tax Return, Form UT-5.

Additional information concerning use tax is available in Publication 205, *Use Tax Information for Individuals*, and Publication 213, *Travelers: Don't Forget about Use Tax*. [↗](#)

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Wisconsin Department of Revenue
Income, Sales, and Excise Tax Division
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Madison, WI 53708-8933

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

- 600 Wisconsin Taxation of Lottery Winnings (5/11)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (5/11)

Sales and Use Taxes

- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (6/11)
- 203 Sales and Use Tax Information for Manufacturers (5/11)
- 209 Sales and Use Tax Information for Wisconsin Counties and Municipalities (6/11)
- 210 Sales and Use Tax Treatment of Landscaping Services (5/11)
- 216 Filing Claims for Refund of Sales or Use Tax (7/11)
- 221 Farm Suppliers and Farmers: How Do Wisconsin Sales and Use Taxes Affect Your Operations? (5/11)
- 229 Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (6/11)
- 410 Local Exposition Taxes (5/11)

Other Topics

- 400 Wisconsin's Recycling Surcharge (5/11)

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. [☞](#)

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 earlier this month. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the July 2011 *Sales and Use Tax Report* (2-11).

- New Tax Laws
- Reminder – Wind, Solar, and Gas From Agricultural Waste Exemption Becomes Effective July 1, 2011
- *My Tax Account* – Your Way
- Filing a Claim for Refund Just Got Easier!
- Reminder: Changes to Medical-Related Exemptions

In addition, the following topics from [News for Tax Professionals](#) and [FAQs](#) are referenced in the Report:

- [Shipments of Tangible Personal Property – Where Do the Sales Take Place?](#)
- [Credit for Taxes Paid to Other States - Tax on Repair Labor](#)
- [Construction Contractors - Credit for Taxes Paid to Other States](#)
- [Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places](#)
- [New Foreign Diplomat Tax Exemption Card Design!](#)
- [E-Mail Services Provided With Web Hosting](#)
- [Sales and Use Tax Treatment of Liquid Nurse Tanks, Dry Fertilizer Tender Units, and Liquid Fertilizer and Chemical Storage Tanks](#)
- [Is the Sale of a Dishwasher Taxable?](#)
- [Disaster Relief Payments](#) [☞](#)

New FAQs: Automated Billings Based on IRS Adjustments

The Department of Revenue routinely receives information from the Internal Revenue Service (IRS) about adjustments that the IRS made to taxpayers' federal taxable income through audits and its data matching programs. (This information is provided under authorization of section 6103(d) of the Internal Revenue Code.)

Under Wisconsin law, if the IRS changes net income tax payable, and the adjustment also changes net income tax payable to Wisconsin, an amended Wisconsin return must be filed within 90 days after the IRS' final determination. Section 71.76, Wis. Stats. (2009-10), and sec. Tax 2.105, Wis. Adm. Code (November 2010 Register), provide the requirements in more detail.

If a taxpayer's Wisconsin income tax liability is affected by IRS adjustments, but the taxpayer fails to file an amended Wisconsin return, the department may send a bill to the taxpayer for the Wisconsin amount (including interest and possible penalties), up to four years after the date it received the information from the IRS (sec. 71.77(7)(b), Wis. Stats. (2009-10)).

For certain types of adjustments, the department can send automated bills to taxpayers that have not amended their Wisconsin returns. Currently the department is sending some automated bills and plans to expand the program so bills can be sent more quickly to reduce the accumulation of interest.

The department has recently published [frequently asked questions](#) on its web site to address some of the common questions taxpayers ask when receiving an automated bill from the department.

Other Related FAQs:

[IRS Adjustment Notices \(CP 2000s\)](#)

[Amending a Wisconsin Income Tax Return](#)

[Department of Revenue Audits](#) 

Enforcement Report



Couple Convicted of Income Tax Fraud

A Dane County jury found Bryan D. Hoel and Amy L. Hoel guilty of multiple counts of income tax fraud and bail jumping. The verdict was reached on May 26, 2011, after a two day trial.

According to the criminal complaint, from 1997 through 2005 Bryan and Amy Hoel received more than \$400,000 in income. However, they reported total income of \$3,574 or zero on their income tax returns for those years.

The complaint also indicates that the Hoels filed 1997 through 2001 trust returns in one or both of their names. The trust income was reduced to zero or a negative number through deductions. When the Department of Revenue requested supporting documentation, none was provided.

The Hoels were prosecuted by the Dane County District Attorney's office following an investigation by the Wisconsin Department of Revenue.

Sentencing will occur following court-ordered presentence investigations. Bryan Hoel faces up to 36 years in prison and \$60,000 in fines. Amy Hoel faces a maximum of 54 years in prison and \$90,000 in fines.

Milwaukee Man Sentenced for Income Tax Fraud

Algernon J. Thompson was sentenced on June 1, 2011, by Milwaukee County Circuit Court Judge Jean DiMotto for income tax fraud. The 30-year-old Milwaukee man was convicted on March 9, 2011, of income tax fraud and fraudulent writings after a three-day jury trial.

According to the criminal complaint, Thompson was responsible for servicing several automatic teller machines (ATMs). The complaint states that in February 2009, there were discrepancies among various ATM machines on Thompson's route. A subsequent audit of all the machines on his route showed more than \$175,000 missing.

The complaint states that during the course of investigating this 2009 incident, subpoenas were issued for the defendant's bank records. The bank records showed that Thompson maintained three personal bank accounts from 2006 through 2008. An analysis of these bank records indicated Thompson had deposited cash into his bank account which could not be accounted for by paychecks paid to Thompson or his spouse. The Wisconsin Department of Revenue reviewed Thompson's tax returns to determine if cash beyond his earnings was declared. Thompson admitted to filing false 2006, 2007, and 2008 income tax returns.

Thompson received three years in prison, followed by six years of extended supervision, to be completed by an additional three years of probation. All of these sentences will be served consecutively. Thompson was also ordered to reimburse his employer \$183,206 and pay the Wisconsin Department of Revenue a total of \$4,453 in back taxes.

Thompson was prosecuted by the Milwaukee County District Attorney's Office following an investigation by the Greendale and West Allis Police Departments and the Wisconsin Department of Revenue.

Milwaukee Court Commissioner Charged With Tax Fraud

Attorney General J.B. Van Hollen announced on June 8, 2011, that Milwaukee County Court Commissioner Geneva E. McKinley has been charged with two counts of filing false and fraudulent income tax returns. An initial appearance has been scheduled for July in Dane County Circuit Court.

According to the criminal complaint, on May 28, 2008, McKinley filed income tax returns for the 2006 and 2007 tax years. The complaint alleges that McKinley failed to report rental income she received each year on commercial real estate property she owned. It also alleges that McKinley failed to report attorney fees she was paid for private legal work in 2006, prior to becoming a court commissioner. For the two years combined, McKinley reported only \$19,391 in adjusted gross income, when her actual adjusted gross income was over \$135,000.

Each charge of filing false and fraudulent income tax returns is a class H felony, punishable by imprisonment up to 6 years and a \$10,000 fine, or both. Assistant Attorney General David W. Maas is representing the state in this matter. [Ⓜ](#)

New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual income tax, homestead credit, individual and fiduciary income tax, corporation franchise or income tax, recycling surcharge, sales and use tax, alcohol beverages, and other provisions. These provisions are contained in 2011 Acts 10, 18, and 32.

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

	Effective Date	Page
A. <i>Individual Income Taxes (also see “Individual and Fiduciary Income Taxes”)</i>		
1. Earned Income Tax Credit Percentages Revised	Taxable years beginning on or after January 1, 2011	9
2. Subtraction for Contributions to a College Savings Account and Tuition and Expenses Program Revised	Various	9
3. Subtraction for Tuition Expenses Limited	Taxable years beginning on or after January 1, 2011	10
4. Donations to Badger Chapter of the American Red Cross	Taxable years beginning on or after January 1, 2011	10
5. Cancer Research Designations Revised	July 1, 2011	10
6. Campaign Fund Designation Repealed	July 1, 2011	10
B. <i>Homestead Credit</i>		
Homestead Credit Indexing Repealed	Calendar years beginning on or after January 1, 2011	11
C. <i>Individual and Fiduciary Income Taxes</i>		
1. Internal Revenue Code References Updated for 2011 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 2011	11
2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 2011	13
3. Capital Gains Exclusion for Wisconsin-Source Assets	Taxable years beginning on or after January 1, 2016	14
4. Gain Deferred on Sale of Capital Assets	Taxable years beginning on or after January 1, 2011	15
5. Southeastern Regional Transit Authority Bonds	September 28, 2011	16
6. Wisconsin Housing and Economic Development Authority Bonds	July 1, 2011	16
7. Computation of “Modified Taxable Income” Clarified	July 1, 2011	16
8. Certification of Business for Deferral of Gain	July 1, 2011	16
9. Certain Development Zones Statutes Amended	July 1, 2011	16
10. Administration of Development Zones Capital Investment Credit Transferred	July 1, 2011	16

	Effective Date	Page
11. Administration of Development Zones Credit Transferred	July 1, 2011	16
12. Administration of Economic Development Tax Credit Transferred	July 1, 2011	17
13. Administration of Technology Zones Credit Transferred	July 1, 2011	17
14. Dairy Manufacturing Facility Investment Credit Revised	Various	17
15. Jobs Tax Credit Revised	Various	17
16. Administration of Certain Credits Transferred to DATCP	July 1, 2011	18
17. Manufacturing Investment Credit Statutes Amended	July 1, 2011	18
18. Administration of Enterprise Zone Jobs Credit Transferred	July 1, 2011	18
19. Early Stage Seed Investment Credit and Angel Investment Credit Revised	July 1, 2011	18
20. Administration of Film Credits Transferred	July 1, 2011	18
21. Administration of Electronic Medical Records Credit Transferred	July 1, 2011	18
22. Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred	July 1, 2011	19
23. Qualified Production Activities Credit Created	Taxable years beginning on or after January 1, 2013	19

D. Corporation Franchise or Income Taxes

1. Internal Revenue Code References Updated for 2011 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies	Taxable years beginning on or after January 1, 2011	20
2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes	Taxable years beginning before January 1, 2011	20
3. Wisconsin Housing and Economic Development Authority Bonds	July 1, 2011	20
4. Certain Development Zones Statutes Amended	July 1, 2011	20
5. Administration of Development Zones Capital Investment Credit Transferred	July 1, 2011	21
6. Administration of Development Zones Credit Transferred	July 1, 2011	21
7. Administration of Economic Development Tax Credit Transferred	July 1, 2011	21
8. Administration of Technology Zones Credit Transferred	July 1, 2011	21
9. Dairy Manufacturing Facility Investment Credit Revised	Various	21

	Effective Date	Page
10. Jobs Tax Credit Revised	Various	21
11. Controlled Group Election	January 1, 2009	22
12. Sharing Under Combined Reporting of Loss Carry-Forwards Incurred Before 2009	Taxable years beginning after December 31, 2011	22
13. Administration of Certain Credits Transferred to DATCP	July 1, 2011	22
14. Manufacturing Investment Credit Statutes Amended	July 1, 2011	22
15. Administration of Enterprise Zone Jobs Credit Transferred	July 1, 2011	23
16. Early Stage Seed Investment Credit Revised	July 1, 2011	23
17. Administration of Film Credits Transferred	July 1, 2011	23
18. Administration of Electronic Medical Records Credit Transferred	July 1, 2011	23
19. Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred	July 1, 2011	23
20. Qualified Production Activities Credit Created	Taxable years beginning on or after January 1, 2013	23
21. Political Units Revised	September 28, 2011	24
22. Transit Authority Bonds Taxable	September 28, 2011	24
E. Recycling Surcharge		
Recycling Surcharge Revised	July 1, 2011	24
F. Sales and Use Taxes		
1. Discounts Given Equal to the Amount of Sales Tax	June 8, 2011	24
2. Products Provided Free of Charge	September 1, 2011	24
3. Exemption Created for Modular and Manufactured Homes Used in Real Property Construction Activities Outside Wisconsin	September 1, 2011	24
4. Exemption Created for Vegetable Oil or Animal Fat Converted to Motor Vehicle Fuel	September 1, 2011	25
5. Repeal of Regional Transit Authorities	July 10, 2011 and September 28, 2011	25
6. Exemption Created for Advertising and Promotional Direct Mail	July 1, 2013	25
7. Exemption Created for Snowmaking and Snow-Grooming Machines and Equipment	July 1, 2013	25
G. Alcohol Beverages		
1. Definitions of “Primary Source of Supply,” “Wholesaler,” and “Successor Wholesaler” Revised	July 1, 2011	25
2. Wholesalers’ Source of Supply	July 1, 2011	26

	Effective Date	Page
3. Distribution Restrictions on Wholesalers, Brewers, Brewpubs, and Out-of-State Shippers Revised	July 1, 2011	26
4. Restrictions on Movie Theaters Licensed to Sell Alcohol Beverages	July 1, 2011	26
5. Provisions Concerning Fermented Malt Beverage Wholesalers' Licenses and Permits Modified	July 1, 2011	26
6. Provisions Concerning Brewers Modified	July 1, 2011	28
7. Provisions Concerning Out-of-State Shippers' Permits Modified	July 1, 2011	30

H. *Other*

1. Duties of the Department of Revenue Expanded	June 29, 2011	30
2. References to Wisconsin Quality Home Care Authority Eliminated	June 29, 2011	30
3. Persons Qualified to Examine Returns	July 1, 2011	31
4. Definition of "Municipality" Provided	July 1, 2011	31
5. Provisions Related to the Denial, Nonrenewal, Discontinuation, Suspension, or Revocation of a License Based on a Tax Delinquency Revised	July 1, 2011	31

A. *Individual Income Taxes (also see "Individual and Fiduciary Income Taxes")*

1. **Earned Income Tax Credit Percentages Revised** (2011 Act 32, amend sec. 71.07(9e)(af)(intro.) and create sec. 71.07(9e)(aj), effective for taxable years beginning on or after January 1, 2011.)

For qualified persons, the Wisconsin earned income tax credit is equal to a percentage of the federal earned income tax credit for which the person is eligible. The percentages are:

- If the person has one qualifying child who has the same principal place of abode as the person, 4 percent.
- If the person has two qualifying children who have the same principal place of abode as the person, 11 percent (formerly 14 percent).
- If the person has three or more qualifying children who have the same principal place of abode as the person, 34 percent (formerly 43 percent).

2. **Subtraction for Contributions to a College Savings Account and Tuition and Expenses Program Revised** (2011 Act 32, renumber secs. 14.63(4) to 16.64(4) and 14.64(3)(a)1. to 16.641(3)(a)1. and amend as renumbered and amend sec. 71.05(6)(b)23., 31., 32.(intro.), and 33.(intro.), various effective dates.)

Effective July 1, 2011, the owner of a college savings account or tuition and expenses program (e.g., EdVest or "tomorrow's scholar") may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to purchase tuition units or contribute to the college savings account.

Effective for taxable years beginning on or after January 1, 2011, a subtraction of up to \$3,000 of contributions to the account may be claimed by the owner of the account or by a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary if the beneficiary is one of the following: the claimant; the claimant's child, the claimant's grandchild, the claimant's great-grandchild; or the claimant's niece or nephew.

3. **Subtraction for Tuition Expenses Limited** (2011 Act 32, amend sec. 71.05(6)(b)28h., effective for taxable years beginning on or after January 1, 2011.)

The subtraction for the amount of tuition and mandatory student fees paid may not be claimed if the source of the payment is an amount withdrawn from a college savings account or a college tuition and expenses program (e.g., EdVest or “tomorrow’s scholar”) and if the owner of the account or a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary claimed a subtraction for contributions to the college savings account or the tuition and expenses program.

4. **Donations to Badger Chapter of the American Red Cross** (2011 Act 32, create secs. 20.435(1)(gd) and 71.10(5k), effective for taxable years beginning on or after January 1, 2011.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual for the Badger Chapter of the American Red Cross for its Wisconsin Disaster Relief Fund.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the Badger Chapter when the individual files a tax return.

If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return for the Badger Chapter, the department shall reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction). If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3) and (3m), Wis. Stats.), the department shall deduct the amount designated on the return for the Badger Chapter from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return for the Badger Chapter (after any error correction and deduction for a delinquency or offset), the department shall reduce the designation for the Badger Chapter to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the Badger Chapter, the designation is void. If a designation for the Badger Chapter is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place shall be provided on the individual income tax return for designations to the Badger Chapter.

Amounts designated for the Badger Chapter are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which the taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

5. **Cancer Research Designations Revised** (2011 Act 32, amend secs. 71.10(5f)(i) and (5h)(i), 255.054(1), and 255.055(1), effective July 1, 2011.)

Under prior law, moneys received from designations on the individual income tax returns for breast cancer research and prostate cancer research were divided equally between the Medical College of Wisconsin and the University of Wisconsin Comprehensive Cancer Center. Under this Act, the references to the University of Wisconsin Comprehensive Cancer Center are changed to the University of Wisconsin Carbone Cancer Center.

6. **Campaign Fund Designation Repealed** (2011 Act 32, repeal sec. 71.10(3), effective July 1, 2011.)

The provision allowing individuals to designate \$3 for the Wisconsin election campaign fund and the democracy trust fund is repealed.

B. Homestead Credit

Homestead Credit Indexing Repealed (2011 Act 32, amend sec. 71.54(1)(f)(intro.), (2)(b)3., and (2m) and create sec. 71.54(1)(g) and (2)(b)4., effective for calendar years beginning on or after January 1, 2011.)

The homestead credit indexing provisions are repealed. The threshold household income (\$8,060), maximum property taxes or rent constituting property taxes (\$1,460), maximum household income (\$24,680), and slope (8.785 percent) used in computing the credit will remain unchanged from calendar year 2010.

C. Individual and Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2011 for Individuals, Estates, and Trusts (2011 Act 32, create sec. 71.01(6)(un), effective for taxable years beginning on or after January 1, 2011.)

Certain provisions of federal laws enacted in 2005 through 2010 that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes. For taxable years that begin on or after January 1, 2011, the following provisions of federal law apply for Wisconsin income and franchise tax:

- Section 209 of P.L. 109-222 and section 425 of Division A of P.L. 109-432 relating to loans to continuing care facilities.
- Section 844 of P.L. 109-280 relating to the treatment of annuities and life insurance contracts with a long-term care insurance feature.
- Section 117 of Division A of P.L. 109-432 relating to the extension of Archer medical savings accounts.
- Section 406 of Division A of P.L. 109-432 relating to whistleblower reforms.
- Section 409 of Division A of P.L. 109-432 relating to Superfund settlement funds.
- Section 410 of Division A of P.L. 109-432 relating to the active business test.
- Section 412 of Division A of P.L. 109-432 relating to capital gains treatment for self-created musical works.
- Section 417 of Division A of P.L. 109-432 and section 113 of P.L. 110-245 relating to gain on the sale of residence by members of the intelligence community.
- Section 418 of Division A of P.L. 109-432 relating to sales of property by judicial officers.
- Section 424 of Division A of P.L. 109-432 relating to unrelated business income for charitable remainder trusts.
- Section 403 of Division C of P.L. 109-432 relating to sale of mineral and geothermal rights to tax-exempt entities.
- Section 8215 of P.L. 110-28 relating to husband and wife partnership election.
- Section 8231 of P.L. 110-28 relating to eliminating gains from sales or exchanges of stock or securities from passive investment income of S-corporations.
- Section 8232 of P.L. 110-28 relating to treatment of bank director shares of S-corporation bank stock.
- Section 8234 of P.L. 110-28 relating to sale of interest in qualified subchapter S subsidiary.
- Section 8236 of P.L. 110-28 relating to interest deduction for electing small business trusts.
- P.L. 110-141 relating to payments from the Hokie Spirit Memorial Fund.
- Section 4 of P.L. 110-142 relating to cooperative housing pass-through treatment of interest and real estate taxes.
- Section 7 of P.L. 110-142 relating to the capital gain exclusion on sale of principal residence by surviving spouse.
- P.L. 110-172, except sections 3(b) and 11(b), (e), and (g), relating to technical corrections.

- Section 110 of P.L. 110-245 relating to gain on the sale of residence by Peace Corps volunteers.
- Section 4 of P.L. 110-246 relating to the repeal of P.L. 110-234.
- Sections 15312 – 15314 of P.L. 110-246 relating to Timber Real Estate Investment Trusts.
- Section 15316 of P. L. 110-246 relating to tax credit bonds.
- Section 15342 of P.L. 110-246 relating to the exchange of water rights.
- Sections 3031 – 3033, 3041, 3051, 3052, and 3061 of P.L. 110-289 relating to Real Estate Investment Trust income and asset tests.
- Section 3092 of P.L. 110-289 relating to nonqualified use of a principal residence.
- Section 3093 of P.L. 110-289, section 15 of P.L. 111-92 , and section 551 of P.L. 111-147 relating to delay in application of worldwide allocation of interest.
- Section 9 of P.L. 110-317 relating to the limitation on funeral trusts.
- Sections 116 and 208 of Division B of P.L. 110-343 relating to publicly traded partnership income treatment of alternative fuels.
- Section 211 of Division B of P.L. 110-343 relating to transportation fringe benefit to bicycle commuters.
- Section 301 of Division B of P.L. 110-343 relating to qualified energy conservation bonds.
- Section 313 of Division C of P.L. 110-343 relating to zone academy bonds.
- Section 504 of Division C of P.L. 110-343 relating to Exxon Valdez settlements.
- P.L. 110-351 relating to the uniform definition of a child.
- Sections 1261 and 1262 of Division B of P.L. 111-5 relating to the repeal of Internal Revenue Service Notice 2008-83, which affects section 382 of the Internal Revenue Code.
- Sections 1401, 1402, 1521, 1522, and 1531 of Division B of P.L. 111-5 relating to recovery zone economic development and facility bonds, tribal economic development bonds, school construction bonds, zone academy bonds, and Build America bonds.
- Section 1541 of Division B of P.L. 111-5 relating to the pass through of tax credit bonds by regulated investment companies.
- Section 14 of P.L. 111-92 relating to military base realignment and closure.
- Section 301 of P.L. 111-147 relating to tax credit bonds treated as Build America bonds.
- Sections 531-533 of P.L. 111-147 relating to foreign trusts.
- Section 1322 of P.L. 111-148 relating to non-profit health insurers.
- Section 1515 of P.L. 111-148 relating to qualified health plan benefits under cafeteria plans.
- Section 9003 of P.L. 111-148 relating to disallowing over-the-counter medicine expenses under a flexible spending arrangement.
- Section 9021 of P.L. 111-148 relating to an income exclusion for Indian health care benefits.
- Section 9022 of P.L. 111-148 relating to cafeteria plans of small employers.
- Section 10108 of P.L. 111-148 relating to an income exclusion for free-choice vouchers to purchase a health plan.
- Section 10908 of P.L. 111-148 relating to loan repayments for health care professionals.
- Section 10909 of P.L. 111-148 relating to the income exclusion for employer-provided adoption assistance.

- Section 1407 of P.L. 111-152 relating to delay in effective date for elimination of the deduction of the subsidy for employers who maintain prescription drug coverage for retirees.
- P.L. 111-192 relating to qualified retirement plans.
- Section 1601 of P.L. 111-203 relating to the section 1256 mark-to-market requirements.
- Section 215 of P.L. 111-226 relating to the treatment of foreign subsidiary redemptions.
- Section 217 of P.L. 111-226 relating to the 80/20 rule for interest and dividends paid by a corporation.
- Section 2014 of P.L. 111-240 relating to the recognition period for S-corporation built-in gain tax.
- Section 2043 of P.L. 111-240 relating to documentation for claiming cell phones as a business expense.
- Section 2111 of P.L. 111-240 relating to allowing a section 457(b) plan to add a designated Roth account and allow rollovers to that account.
- Section 2112 of P.L. 111-240 relating to the treatment of rollovers from a section 401(k) or section 403(b) to a designated Roth account.
- Section 2113 of P.L. 111-240 relating to split annuity contracts.
- P.L. 111-325 relating to a Regulated Investment Company.

2. **Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2011 Act 32, amend sec. 71.01(6)(u) and (um), effective for taxable years beginning before January 1, 2011.)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2006, 2008, 2009, and 2010 apply for Wisconsin purposes at the same time as for federal purposes:

- Section 15316 of the Food Conservation and Energy Act of 2008 (P.L. 110-246) relating to tax credit bonds.
- Section 844 of the Pension Protection Act of 2006 (P.L. 109-280) relating to the treatment of annuities and life insurance contracts with a long-term care feature.
- Section 3093 of the Housing Assistance Act of 2008 (P.L. 110-289) relating to the delay in worldwide interest allocation.
- Sections 301 of Division B and 313 of Division C of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343) relating to qualified energy conservation bonds and zone academy bonds.
- The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) relating to the uniform definition of a child.
- Sections 1261 and 1262 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to the repeal of IRS Notice 2008-83, which affects section 382 of the Internal Revenue Code.
- Sections 1401, 1402, 1521, 1522, and 1531 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to recovery zone economic development and facility bonds, tribal economic development bonds, school construction bonds, zone academy bonds, and Build America bonds.
- Section 1541 of Division B of the American Recovery and Reinvestment Tax Act of 2009 (P.L. 111-5) relating to the pass through of tax credit bonds by regulated investment companies.
- Section 301 of the Hiring Incentives to Restore Employment Act of 2010 (P.L. 111-147) relating to Build America bonds.
- The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192) relating to qualified retirement plans.
- Section 1601 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203) relating to section 1256 mark-to-market requirements.

- Section 215 of P.L. 111-226 relating to the treatment of foreign subsidiary redemptions.
- Section 2112 of the Small Business Jobs Act of 2010 (P.L. 111-240) relating to the treatment of rollovers from a section 401(k) or section 403(b) account to a designated Roth account.
- The Regulated Investment Company Modernization Act of 2010 (P.L. 111-325) relating to a Regulated Investment Company.

3. **Capital Gains Exclusion for Wisconsin-Source Assets** (2011 Act 32, amend secs. 71.01(13) and 71.05(8)(b) and create secs. 71.05(25) and 238.145, effective for taxable years beginning on or after January 1, 2016.)

For taxable years beginning on or after January 1, 2016, for a Wisconsin capital asset that is purchased on or after January 1, 2011, and held for at least five years, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts:

- The amount of the claimant's federal net capital gain as reported on Schedule D of the claimant's federal income tax return for the taxable year to which the claim relates, but only if, in that taxable year, the claimant has a qualifying gain, or
- The amount of the claimant's qualifying gain in the year to which the claim relates.

If a claimant excludes the capital gain under this provision, the claimant may not use the gain to claim the 30 percent or 60 percent capital gain exclusion under sec. 71.05(6)(b)9. or 9m., Wis. Stats.

"Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation.

"Qualifying gain" means the gain realized from the sale of any asset which is a Wisconsin capital asset in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years; that is purchased after December 31, 2010; that is held for at least 5 uninterrupted years; and that is treated as a long-term gain under the Internal Revenue Code; except that a qualifying gain may not include any amount for which the claimant deferred gain and claimed a subtraction under sec. 71.05(24)(b) or (26)(b), Wis. Stats. (See Item C.4 for information on the deferral of gain under sec. 71.05(26).)

"Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation (WEDC).

"Wisconsin capital asset" means any of the following:

- Real or tangible personal property that is located in Wisconsin and used in a Wisconsin business.
- Stock or other ownership interest in a Wisconsin business.

The WEDC shall implement a program to certify businesses. A business must submit an application in each calendar year for which the business desires certification.

A business may be certified if, in the taxable year of the business ending immediately before the date of the application, all of the following are true:

- (a) The amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll compensation paid by the business, and
- (b) The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

The WEDC shall compile a list of businesses certified and the taxable years for which the businesses are certified. The list shall be available to the public through the WEDC web site.

The WEDC shall notify the Department of Revenue of every certification issued and the date on which a certification is revoked or expires.

The capital gain exclusion is not allowed when determining modified taxable income when computing a Wisconsin net operating loss carry-forward.

4. **Gain Deferred on Sale of Capital Assets** (2011 Act 32, amend sec. 71.01(13) and create secs. 71.05(26) and 238.146, effective for taxable years beginning on or after January 1, 2011.)

A claimant may subtract from federal adjusted gross income any amount of a long-term capital gain if the claimant does all of the following:

- Deposits the gain into a segregated account in a financial institution,
- Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account in a qualified Wisconsin business, and
- After making the investment, notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain because the claimant has reinvested the capital gain. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

The basis of the investment must be reduced by the deferred gain.

If a claimant defers the payment of income taxes on the capital gain, the claimant may not use the gain to net capital gains and losses. If the gain is deferred under this provision, it may not be deferred under the provisions of sec. 71.05(24), Wis. Stats. Deferred gain is not a "qualifying gain" for purposes of the capital gain exclusion under sec. 71.05(25), Wis. Stats. (See Item C.3 for information on the capital gain exclusion under sec. 71.05(25).)

"Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation.

"Financial institution" means any bank, savings bank, savings and loan association or credit union that is authorized to do business under state or federal laws relating to financial institutions.

"Long-term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code.

"Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation (WEDC) under sec. 238.146, Wis. Stats.

A business desiring certification shall submit an application to the WEDC in each calendar year for which the business desires certification. A business may be certified if, in the taxable year of the business ending immediately before the date of the application, all of the following are true:

- (a) The amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll compensation paid by the business, and
- (b) The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

The WEDC shall compile a list of businesses certified and the taxable years for which the businesses are certified. The list shall be available to the public through the WEDC web site.

The WEDC shall notify the Department of Revenue of every certification issued and the date on which a certification is revoked or expires.

5. **Southeastern Regional Transit Authority Bonds** (2011 Act 32, repeal sec. 71.05(1)(c)9., effective September 28, 2011.)

The exemption for interest received on bonds or notes issued by the Southeastern Regional Transit Authority is repealed.

6. **Wisconsin Housing and Economic Development Authority Bonds** (2011 Act 32, create sec. 71.05(1)(c)12., effective July 1, 2011.)

Interest received on bonds or notes issued by the Wisconsin Housing and Economic Development Authority is exempt if the bonds or notes are issued to provide loans to a public affairs network under sec. 234.75(4), Wis. Stats.

7. **Computation of “Modified Taxable Income” Clarified** (2011 Act 32, amend sec. 71.05(8)(b), effective July 1, 2011.)

A Wisconsin net operating loss may be carried forward and offset against Wisconsin taxable incomes of the next 15 taxable years to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry-forward is claimed. The Wisconsin capital gain exclusion is not allowed when determining modified taxable income. This provision clarifies that both the 30% capital gain exclusion and the 60% capital gain exclusion for farm assets are not allowed when determining modified taxable income.

8. **Certification of Business for Deferral of Gain** (2011 Act 32, renumber sec. 560.2085 to 238.20 and amend as renumbered and amend sec. 71.05(24)(a)4., effective July 1, 2011.)

Section 71.05(24), Wis. Stats., provides that long-term gain on the sale of a capital asset may be deferred if the gain is invested in a qualified new business venture. Under prior law, the Department of Commerce had the responsibility to certify the new business venture. The responsibility for certifying the new business venture is transferred to the Wisconsin Economic Development Corporation.

9. **Certain Development Zones Statutes Amended** (2011 Act 32, amend secs. 71.07(2dd)(b), (2de)(a)(intro.) and 1., (2di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), and (g), (2dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (2dL)(a), (ag), (ar), (bm), and (c), (2dr)(a) and (b), and (2ds)(a)1., (b), and (d)1. and 73.03(35), effective July 1, 2011.)

The statutes relating to certain development zones credits are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes. The affected credits are those that cannot be claimed for taxable years that began on or after January 1, 1998, except that a carryforward of unused credits applies. The affected development zones credits are: day care credit, environmental remediation credit, investment credit, jobs credit, location credit, research credit, and sales tax credit.

10. **Administration of Development Zones Capital Investment Credit Transferred** (2011 Act 32, renumber secs. 560.795 to 238.395, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.07(2dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k) and 73.03(35), effective July 1, 2011.)

The administration of the development zones capital investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

11. **Administration of Development Zones Credit Transferred** (2011 Act 32, repeal sec. 560.70(1), renumber secs. 560.70(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7) to 238.30(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7), 560.765 to 238.365, 560.785 to 238.385, 560.795 to 238.395, 560.797 to 238.397, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered, and amend secs. 71.07(2dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d) and 73.03(35), effective July 1, 2011.)

The administration of the development zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

12. **Administration of Economic Development Tax Credit Transferred** (2011 Act 32, renumber secs. 560.701 to 238.301, 560.702 to 238.302, 560.703(title) to 238.303(title), 560.703(1)(a), as affected by 2011 Act 4, to 238.303(1)(a), 560.703(1)(am), as created by 2011 Act 4, to 238.303(1)(am), 560.703(1)(b), (2), and (3) to 238.303(1)(b), (2) and (3), 560.704 to 238.304, 560.705 to 238.305, and 560.706 to 238.306 and amend as renumbered and amend sec. 71.07(2dy)(a), (b), (c)1. and 2., and (d)2., effective July 1, 2011.)

Administration of the economic development tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

13. **Administration of Technology Zones Credit Transferred** (2011 Act 32, renumber sec. 560.96 to 238.23 and amend as renumbered and amend secs. 71.07(3g)(a)(intro.), (b), (e)2., and (f)1. and 2. and 73.03(35m), effective July 1, 2011.)

Administration of the technology zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

14. **Dairy Manufacturing Facility Investment Credit Revised** (2011 Act 32, renumber sec. 560.207 to 93.535 and amend as renumbered and amend sec. 71.07(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6., various effective dates.)

For taxable years beginning on or after January 1, 2011, the aggregate amount of dairy manufacturing facility investment credit is \$200,000 for each of the claimant's dairy manufacturing facilities.

If two or more persons own and operate a dairy manufacturing facility, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the dairy manufacturing facility shall not exceed \$200,000.

Effective July 1, 2011, administration of the dairy manufacturing facility investment credit is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection.

15. **Jobs Tax Credit Revised** (2011 Act 32, renumber sec. 560.2055 to 238.16 and amend as renumbered and amend sec. 71.07(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3., various effective dates.)

Effective July 1, 2011, administration of the jobs tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation (WEDC).

For taxable years beginning before January 1, 2011, an eligible employee must satisfy the wage requirements under sec. 560.2055(3)(a) or (b), 2009 Stats. For taxable years beginning after December 31, 2010, a person who is certified by the WEDC may receive tax benefits if, in each year for which the person claims tax benefits, the person increases net employment in the person's business, and one of the following applies:

- In a tier I county or municipality, an eligible employee for whom the person claims a tax credit will earn at least \$20,000 in wages from the person in the year for which the credit is claimed.
- In a tier II county or municipality, an eligible employee for whom the person claims a tax credit will earn at least \$30,000 in wages from the person in the year for which the credit is claimed.

The WEDC may award to a person who is certified, tax benefits for each eligible employee in an amount equal to 10 percent of the wages paid by the person to that employee or \$10,000, whichever is less, if the employee earned wages in the year for which the tax benefit is claimed equal to one of the following:

- In a tier I county or municipality, at least \$20,000.
- In a tier II county or municipality, at least \$30,000.

16. **Administration of Certain Credits Transferred to DATCP** (2011 Act 32, renumber secs. 560.2056 to 93.54, 560.208 to 93.545, and 560.209 to 93.547 and amend as renumbered and amend sec. 71.07(3r)(b) and (c)3.a. and b. and 6., (3rm)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6., effective July 1, 2011.)

Administration of the following credits is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection:

- Meat processing facility investment credit
- Woody biomass harvesting and processing credit
- Food processing plant and food warehouse investment credit

17. **Manufacturing Investment Credit Statutes Amended** (2011 Act 32, amend sec. 71.07(3t)(b) and (c)1., effective July 1, 2011.)

The statutes relating to the manufacturing investment credit are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes.

18. **Administration of Enterprise Zone Jobs Credit Transferred** (2011 Act 32, renumber sec. 560.799 to 238.399 and amend as renumbered and amend sec. 71.07(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d), effective July 1, 2011.)

The administration of the enterprise zone jobs credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

19. **Early Stage Seed Investment Credit and Angel Investment Credit Revised** (2011 Act 32, renumber sec. 560.205 to 238.15 and amend as renumbered and amend secs. 71.07(5b)(a)2., (b)1. and 2., and (d)3. and (5d)(a)1.(intro.), 2m., and 3., (b)(intro.), 1., and 2., (c)2., and (d)1. and 73.03(63), effective July 1, 2011.)

For purposes of both the early stage seed investment credit and the angel investment credit, for investments made after December 31, 2007, if an investment for which a claimant claims a credit is held by the claimant for less than 3 years, the claimant shall pay to the Department of Revenue, in the manner prescribed by the department, the amount of the credit that the claimant received related to the investment. Under prior law, the repayment applied to calendar years beginning after December 31, 2007.

The administration of the early stage seed investment credit and the angel investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

20. **Administration of Film Credits Transferred** (2011 Act 32, amend sec. 71.07(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4., effective July 1, 2011.)

The administration of the film production services credit and the film production company investment credit is transferred from the Department of Commerce to the Department of Tourism.

21. **Administration of Electronic Medical Records Credit Transferred** (2011 Act 32, repeal sec. 560.204(3), renumber sec. 560.204(title), (1), (2), and (4) to 73.15(title), (1), (2), and (3) and amend as renumbered, and amend sec. 71.07(5i)(c)1., effective July 1, 2011.)

The administration of the electronic medical records credit is transferred from the Department of Commerce to the Department of Revenue.

The Department of Revenue shall implement a program to certify health care providers as eligible for the electronic medical records credit. If the department certifies a health care provider, the department shall determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed \$10,000,000.

The department shall promulgate rules to administer the credit.

22. **Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred** (2011 Act 32, amend secs. 71.07(5j)(a)2d. and 2m. and (c)3. and 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The administration of the ethanol and biodiesel fuel pump credit is transferred from the Department of Commerce to the Department of Safety and Professional Services.

23. **Qualified Production Activities Credit Created** (2011 Act 32, amend secs. 71.05(6)(a)15., 71.21(4), and 77.92(4) and create secs. 71.07(5n) and 71.10(4)(cr), effective for taxable years beginning on or after January 1, 2013.)

A credit may be claimed against the income or franchise tax imposed, up to the amount of the tax, for an amount equal to one of the following percentages of the claimant's eligible qualified production activities income in the taxable year:

- For taxable years beginning after December 31, 2012, and before January 1, 2014, 1.875 percent.
- For taxable years beginning after December 31, 2013, and before January 1, 2015, 3.75 percent.
- For taxable years beginning after December 31, 2014, and before January 1, 2016, 5.526 percent.
- For taxable years beginning after December 31, 2015, 7.5 percent.

"Eligible qualified production activities income" means qualified production activities income that derives from property located in Wisconsin that is assessed as manufacturing property under sec. 70.995, Wis. Stats., or as agricultural property under sec. 70.32(2)(a)4., Wis. Stats.

"Qualified production activities income" means qualified production activities income as defined in 26 USC 199(c).

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their share of the eligible qualified production activities income. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

The amount of the computed credit must be added to income.

No credit may be allowed unless it is claimed within 4 years of the unextended due date of the tax return.

If a credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by the taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

In the case of a change in ownership or business of a corporation, section 383 of the Internal Revenue Code applies to the carry-over of unused credits.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to this credit.

D. Corporation Franchise or Income Taxes

- 1. Internal Revenue Code References Updated for 2011 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies** (2011 Act 32, create secs. 71.22(4)(un) and (4m)(sn), 71.26(2)(b)23., 71.34(1g)(un), and 71.42(2)(tn), effective for taxable years beginning on or after January 1, 2011.)

Certain provisions of federal laws enacted in 2005 through 2010 that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes. For taxable years that begin on or after January 1, 2011, the provisions of federal law listed in Item C.1 apply for Wisconsin income and franchise tax. In addition, the Internal Revenue Code is modified as follows:

- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 2001, depreciation or amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000.
- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- For RICs, REMICs, REITs, and FASITs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

- 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2011 Act 32, amend secs. 71.22(4)(u) and (um) and (4m)(s) and (sm), 71.26(2)(b)21. and 22., 71.34(1g)(u) and (um), 71.42(2)(t) and (tm), and nonstatutory provision, effective for taxable years beginning before January 1, 2011.)

Certain changes to the Internal Revenue Code made by federal laws enacted in 2006, 2008, 2009, and 2010 apply for Wisconsin purposes at the same time as for federal purposes. See Item C.2 for a list of these law changes.

- 3. Wisconsin Housing and Economic Development Authority Bonds** (2011 Act 32, create secs. 71.26(1m)(m) and 71.45(1t)(m), effective July 1, 2011.)

Interest received on bonds or notes issued by the Wisconsin Housing and Economic Development Authority is exempt if the bonds or notes are issued to provide loans to a public affairs network under sec. 234.75(4), Wis. Stats.

- 4. Certain Development Zones Statutes Amended** (2011 Act 32, amend secs. 71.28(1dd)(b) and (e), (1de)(a)(intro.) and 1. and (d), (1di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), (g), and (i), (1dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (1dj)(i), (1dL)(a), (ag), (ar), (bm), (c), and (i), (1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), (1ds)(a)1., (b), (d)1., and (i), and (4)(am)1. and 2., 71.47(1dd)(b), (1de)(a)(intro.) and 1., (1di)(a)(intro.) and 1., (b)2. and 3., (d)1., (f), and (g), (1dj)(am)(intro.), 4.a. and b., 4c., and 4t. and (e)1. and 3.a. and b., (1dL)(a), (ag), (ar), (bm), and (c), (1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), (1ds)(a)1., (b), and (d)1., and (4)(am), and 73.03(35), effective July 1, 2011.)

The statutes relating to certain development zones credits are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes. The affected credits are those that cannot be claimed for taxable years that began on or after January 1, 1998, except that a carryforward of unused credits applies. The affected development zones credits are: day care credit, environmental remediation credit, investment credit, jobs credit, location credit, research credits, and sales tax credit.

5. **Administration of Development Zones Capital Investment Credit Transferred** (2011 Act 32, renumber secs. 560.795 to 238.395, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.28(1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), 71.47(1dm)(a)1., 3., and 4., (f)1. and 2., (i), (j), and (k), and 73.03(35), effective July 1, 2011.)

The administration of the development zones capital investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

6. **Administration of Development Zones Credit Transferred** (2011 Act 32, repeal sec. 560.70(1), renumber secs. 560.70(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7) to 238.30(intro.), (2), (2g), (2m), (3), (4), (4m), (5), (6), and (7), 560.765 to 238.365, 560.785 to 238.385, 560.795 to 238.395, 560.797 to 238.397, 560.798 to 238.398, and 560.7995 to 238.3995 and amend as renumbered and amend secs. 71.28(1dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d), 71.47(1dx)(a)2., (b)(intro.), 2., 3., 4., and 5., (be), (bg), (c), and (d), and 73.03(35), effective July 1, 2011.)

The administration of the development zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

7. **Administration of Economic Development Tax Credit Transferred** (2011 Act 32, renumber secs. 560.701 to 238.301, 560.702 to 238.302, 560.703(title) to 238.303(title), 560.703(1)(a), as affected by 2011 Act 4, to 238.303(1)(a), 560.703(1)(am), as created by 2011 Act 4, to 238.303(1)(am), 560.703(1)(b), (2), and (3) to 238.303(1)(b), (2) and (3), 560.704 to 238.304, 560.705 to 238.305, and 560.706 to 238.306 and amend as renumbered and amend secs. 71.28(1dy)(a), (b), (c)1. and 2., and (d)2. and 71.47(1dy)(a), (b), (c)1. and 2., and (d)2., effective July 1, 2011.)

Administration of the economic development tax credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

8. **Administration of Technology Zones Credit Transferred** (2011 Act 32, renumber sec. 560.96 to 238.23 and amend as renumbered and amend secs. 71.28(3g)(a)(intro.), (b), (e)2., and (f)1. and 2., 71.47(3g)(a)(intro.), (b), (e)2., and (f)1. and 2., and 73.03(35m), effective July 1, 2011.)

Administration of the technology zones credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

9. **Dairy Manufacturing Facility Investment Credit Revised** (2011 Act 32, renumber sec. 560.207 to 93.535 and amend as renumbered and amend secs. 71.28(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6. and 71.47(3p)(b), (c)2., 2m.a., b., and bm., 4., and 6., various effective dates.)

For taxable years beginning on or after January 1, 2011, the aggregate amount of dairy manufacturing facility investment credit is \$200,000 for each of the claimant's dairy manufacturing facilities.

If two or more persons own and operate a dairy manufacturing facility, each person may claim a credit in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the dairy manufacturing facility shall not exceed \$200,000.

Effective July 1, 2011, administration of the dairy manufacturing facility investment credit is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection.

10. **Jobs Tax Credit Revised** (2011 Act 32, renumber sec. 560.2055 to 238.16 and amend as renumbered and amend secs. 71.28(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3. and 71.47(3q)(a)1. and 2., (b)(intro.), 1., and 2., and (c)2. and 3., various effective dates.)

See Item C.15.

11. Controlled Group Election (2011 Act 32, amend sec. 71.255(2m)(d), effective January 1, 2009.)

If a commonly controlled group makes a combined group election, the department may not disregard the tax effect or disallow the election for any controlled group member for any year of the election period.

12. Sharing Under Combined Reporting of Loss Carry-Forwards Incurred Before 2009 (2011 Act 32, renumber secs. 71.26(4) to 71.26(4)(a) and 71.45(4) to 71.45(4)(a) and amend as renumbered, amend sec. 71.255(6)(a), and create secs. 71.255(6)(bm), 71.26(4)(b), and 71.45(4)(b), effective for taxable years beginning after December 31, 2011.)

A corporation that is part of a combined group may offset against its Wisconsin net business income any unused pre-2009 net business loss carryforward for the 20 taxable years that begin after December 31, 2011.

“Pre-2009 net business loss carryforward” means a corporation’s total net Wisconsin business loss carryforward computed under sec. 71.26(4) or 71.45(4), Wis. Stats., as of the beginning of its first taxable year that begins after December 31, 2008, but not used by the corporation in any taxable year beginning before January 1, 2012.

Starting with the first taxable year beginning after December 31, 2011, and for each of the 19 subsequent taxable years, and subject to the limitations provided under sec. 71.26(3)(n), Wis. Stats., for each taxable year that a corporation that is a member of a combined group has a pre-2009 net business loss carryforward, the corporation may, after using the pre-2009 net business loss carryforward to offset its own income for the taxable year, and after using sharable losses to offset its own income for the taxable year, use up to 5 percent of the pre-2009 net business loss carryforward, until used or expired, to offset the Wisconsin income of all other members of the combined group on a proportionate basis, to the extent such income is attributable to the unitary business. If the full 5 percent of the pre-2009 net business loss carryforward cannot be fully used to offset the Wisconsin income of all other members of the combined group in a subsequent year, the remainder may be added to the portion that may offset the Wisconsin income of all other members of the combined group in a subsequent year, until it is completely used or expired, except that unused pre-2009 net business loss carryforwards may not be used in any taxable year that begins after December 31, 2031.

Unless otherwise provided by the department by rule, if the corporation may no longer be included in the combined group the corporation’s pre-2009 net business loss carryforward shall be available only to that corporation.

The department shall promulgate rules to administer these provisions.

13. Administration of Certain Credits Transferred to DATCP (2011 Act 32, renumber secs. 560.2056 to 93.54, 560.208 to 93.545, and 560.209 to 93.547 and amend as renumbered and amend secs. 71.28(3r)(b) and (c)3.a. and b. and 6., (3rm)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6. and 71.47(3r)(b) and (c)3.a. and b. and 6., (3rm)(b) and (c)3., and (3rn)(b) and (c)3.a., b., and c. and 6., effective July 1, 2011.)

Administration of the following credits is transferred from the Department of Commerce to the Department of Agriculture, Trade and Consumer Protection:

- Meat processing facility investment credit
- Woody biomass harvesting and processing credit
- Food processing plant and food warehouse investment credit

14. Manufacturing Investment Credit Statutes Amended (2011 Act 32, amend secs. 71.28(3t)(b) and (c)1. and 71.47(3t)(b) and (c)1., effective July 1, 2011.)

The statutes relating to the manufacturing investment credit are amended to provide that the statutory references to certain sections of ch. 560 are limited to the 2009 statutes.

15. **Administration of Enterprise Zone Jobs Credit Transferred** (2011 Act 32, renumber sec. 560.799 to 238.399 and amend as renumbered and amend secs. 71.28(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d) and 71.47(3w)(a)2., 3., 4., 5d., and 5e., (b)(intro.) and 5., (bm)1., 2., 3., and 4., (c)3., and (d), effective July 1, 2011.)

The administration of the enterprise zone jobs credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

16. **Early Stage Seed Investment Credit Revised** (2011 Act 32, renumber sec. 560.205 to 238.15 and amend as renumbered and amend secs. 71.28(5b)(a)2., (b)1. and 2., and (d)3., 71.47(5b)(a)2., (b)1. and 2., and (d)3., and 73.03(63), effective July 1, 2011.)

For purposes of the early stage seed investment credit, for investments made after December 31, 2007, if an investment for which a claimant claims a credit is held by the claimant for less than 3 years, the claimant shall pay to the Department of Revenue, in the manner prescribed by the department, the amount of the credit that the claimant received related to the investment. Under prior law, the repayment applied to calendar years beginning after December 31, 2007.

The administration of the early stage seed investment credit is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation.

17. **Administration of Film Credits Transferred** (2011 Act 32, amend secs. 71.28(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4. and 71.47(5f)(a)1.(intro.) and 3. and (c)6. and (5h)(c)4., effective July 1, 2011.)

The administration of the film production services credit and the film production company investment credit is transferred from the Department of Commerce to the Department of Tourism.

18. **Administration of Electronic Medical Records Credit Transferred** (2011 Act 32, repeal sec. 560.204(3), renumber sec. 560.204(title), (1), (2), and (4) to 73.15(title), (1), (2), and (3) and amend as renumbered, and amend secs. 71.28(5i)(c)1. and 71.47(5i)(c)1., effective July 1, 2011.)

The administration of the electronic medical records credit is transferred from the Department of Commerce to the Department of Revenue.

The Department of Revenue shall implement a program to certify health care providers as eligible for the electronic medical records credit. If the department certifies a health care provider, the department shall determine the amount of credits to allocate to the health care provider. The total amount of electronic medical records credits allocated to health care providers in any year may not exceed \$10,000,000.

The department shall promulgate rules to administer the credit.

19. **Administration of Ethanol and Biodiesel Fuel Pump Credit Transferred** (2011 Act 32, amend secs. 71.28(5j)(a)2d. and 2m. and (c)3., 71.47(5j)(a)2d. and 2m. and (c)3., and 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The administration of the ethanol and biodiesel fuel pump credit is transferred from the Department of Commerce to the Department of Safety and Professional Services.

20. **Qualified Production Activities Credit Created** (2011 Act 32, amend secs. 71.26(2)(a)4., 71.34(1k)(g), and 71.45(2)(a)10. and create secs. 71.28(5n), 71.30(3)(dn), 71.47(5n), and 71.49(1)(dn), effective for taxable years beginning on or after January 1, 2013.)

See Item C.23.

21. Political Units Revised (2011 Act 32, amend sec. 71.26(1)(b), effective September 28, 2011.)

Transit authorities created under sec. 59.58(7) or 66.1039, Wis. Stats., are removed from the definition of political units.

22. Transit Authority Bonds Taxable (2011 Act 32, repeal secs. 71.26(1m)(j) and 71.45(1t)(j), effective September 28, 2011.)

Transit authority bonds are subject to income tax.

E. Recycling Surcharge**Recycling Surcharge Revised** (2011 Act 32, amend secs. 73.03(27), 77.93(intro.), 77.96(6), and 77.97, effective July 1, 2011.)

The recycling surcharge is changed to the economic development surcharge. All provisions of the former recycling surcharge apply to the economic development surcharge.

The Department of Revenue is to refer to the surcharge as the economic development surcharge. The department is to deposit the surcharge, interest and penalties collected in the economic development fund.

F. Sales and Use Taxes**1. Discounts Given Equal to the Amount of Sales Tax** (2011 Act 18, repeal sec. 77.52(4) and amend secs. 66.0615(1m)(f)2., 77.982(2), 77.991(2), 77.9951(2), and 77.9972(2), effective June 8, 2011.)

The law that prohibited retailers from offering discounts equal to the amount of state and local sales tax has been repealed. Retailers may now offer and advertise such discounts.

Under prior law, retailers were not allowed to advertise that they would absorb or pay the sales tax for their customers. The following advertising statements violated Wisconsin sales and use tax law, even when the retailer paid the correct amount of the sales tax to the Department of Revenue:

“Pay no sales tax!” “We’ll pay your sales tax.” “Receive a discount equal to the sales tax.”

2. Products Provided Free of Charge (2011 Act 32, renumber sec. 77.52(21) to 77.52(21)(a) and amend as renumbered and create sec. 77.52(21)(b), effective September 1, 2011.)

Effective September 1, 2011, if a retailer provides an item free of charge with the required purchase of another **taxable** product, the retailer may purchase the item provided free of charge without tax, for resale.

Currently, a retailer is the consumer of the items it provides free of charge in conjunction with the required purchase of another product and is required to pay Wisconsin sales or use tax on its purchases of these free items. This is true under current law regardless of whether the customer is required to purchase a separate taxable or nontaxable item before getting the free item.

3. Exemption Created for Modular and Manufactured Homes Used in Real Property Construction Activities Outside Wisconsin (2011 Act 32, create sec. 77.54(5)(am), effective September 1, 2011.)

Effective September 1, 2011, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of modular homes, as defined in sec. 101.76, Wis. Stats., and manufactured homes, as defined in sec. 101.91(2), Wis. Stats., that are used in real property construction activities outside Wisconsin.

Currently, the sale of and the storage, use, or other consumption of a modular or manufactured home in Wisconsin that is subsequently used in real property construction activities is subject to Wisconsin sales or use tax, regardless of whether such real property construction activities take place in or outside Wisconsin.

4. **Exemption Created for Vegetable Oil or Animal Fat Converted to Motor Vehicle Fuel** (2011 Act 32, create sec. 77.54(11m), effective September 1, 2011.)

Effective September 1, 2011, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of vegetable oil or animal fat that is converted into motor vehicle fuel that is exempt under sec. 78.01(2n), Wis. Stats., from the taxes imposed under sec. 78.01(1), Wis. Stats.

5. **Repeal of Regional Transit Authorities** (2011 Act 32, among other provisions renumber sec. 77.9973 to 77.9973(1), amend sec. 59.58(7)(e)(intro.), and create secs. 77.708(3) and 77.9973(2), effective July 10, 2011. Repeal sec. 59.58(6), sec. 59.58(7) as affected by Act 32, sec. 66.1039 as affected by Act 32, and sec. 77.708 as affected by Act 32, amend Ch. 77 (title), subch. V (title) of Ch. 77, secs. 77.71, 77.73(2) and (3), 77.75, 77.76(1), (2), (3r), (4), and (5), 77.77(1) and (3), 77.78, subch. XIII (title) of Ch. 77, sec. 77.9971, sec. 77.9972, and sec. 77.9973 as affected by Act 32, effective September 28, 2011.)

The existing Dane County and Southeastern Regional Transit Authorities are terminated. The authorization to create the Chequamegon Bay and Chippewa Valley Regional Transit Authorities is repealed.

6. **Exemption Created for Advertising and Promotional Direct Mail** (2011 Act 32, create sec. 77.54(59), effective July 1, 2013.)

Effective July 1, 2013, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of advertising and promotional direct mail. "Advertising and promotional direct mail" is defined in sec. 77.51(1ag), Wis. Stats., to mean direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization.

"Direct mail" is defined in sec. 77.51(3pd), Wis. Stats., to mean printed material that is delivered or distributed by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property or items, property, or goods under sec. 77.52 (1) (b), (c), or (d), Wis. Stats., included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property, or items, property, or goods under sec. 77.52 (1) (b), (c), or (d), Wis. Stats., provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices, return envelopes, and additional marketing materials. "Direct mail" does not include multiple items of printed material delivered to a single address.

7. **Exemption Created for Snowmaking and Snow-Grooming Machines and Equipment** (2011 Act 32, create sec. 77.54(58), effective July 1, 2013.)

Effective July 1, 2013, an exemption is created for the sales price from the sales of and the storage, use, or other consumption of snowmaking and snow-grooming machines and equipment, including accessories, attachments, and parts for the machines and equipment and the fuel and electricity used to operate such machines and equipment, that are used exclusively and directly for snowmaking and snow grooming at ski hills, ski slopes, and ski trails.

G. Alcohol Beverages

1. **Definitions of "Primary Source of Supply," "Wholesaler," and "Successor Wholesaler" Revised** (2011 Act 32, renumber sec. 125.02(15) to 125.02(15)(intro.) and amend as renumbered, amend secs. 125.02(21) and 125.33(10)(a)3., and create sec. 125.02(15)(a), effective July 1, 2011.)

"Primary source of supply" means any of the following:

- With respect to fermented malt beverages, the brewer or brewpub that manufactured the fermented malt beverages or the exclusive agent designated by this brewer or brewpub.
- With respect to intoxicating liquor, the manufacturer, the rectifier, or the exclusive agent designated by the manufacturer or rectifier.

“Wholesaler” means a person, other than a brewer, brewpub, manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit to sell alcohol beverages at wholesale.

For purposes of compensation for termination of wholesaler distribution rights, “successor wholesaler” means any wholesaler who enters into an agreement, whether oral or written, to obtain a supply of a brand of fermented malt beverages that is a discontinued brand, or otherwise acquires the right to act as a wholesaler for a discontinued brand, from a brewer, brewpub, brewer’s agent, or holder of an out-of-state shipper’s permit for purposes of selling the discontinued brand in a specifically defined territory, if the discontinued brand was sold by a terminated wholesaler in any portion of this same territory at a time immediately before the brand of fermented malt beverages became a discontinued brand.

2. **Wholesalers’ Source of Supply** (2011 Act 32, create sec. 125.33(13), effective July 1, 2011.)

No wholesaler may purchase fermented malt beverages for resale unless the wholesaler purchases them either from the primary source of supply for the brand of fermented malt beverages sought to be sold or from a wholesaler within Wisconsin that holds a wholesaler’s permit. No wholesaler may sell fermented malt beverages purchased by the wholesaler to any other licensee or permittee if the fermented malt beverages have not been purchased by the wholesaler from the primary source of supply or from a wholesaler within Wisconsin holding a wholesaler’s permit.

3. **Distribution Restrictions on Wholesalers, Brewers, Brewpubs, and Out-of-State Shippers Revised** (2011 Act 32, renumber sec. 125.34(2)(a) to 125.34(2) and amend as renumbered, effective July 1, 2011.)

The general restriction on the sale, transportation, or delivery of fermented malt beverages to a retailer is revised to require that once a shipment of fermented malt beverages is unloaded in a wholesaler’s Wisconsin warehouse, the fermented malt beverages shall be physically at rest before being distributed.

4. **Restrictions on Movie Theaters Licensed to Sell Alcohol Beverages** (2011 Act 32, amend secs. 125.07(3)(a)3., 125.32(3)(c), and 125.68(4)(c)4. and create sec. 125.32(3m)(h), effective July 1, 2011.)

The restrictions concerning the presence of underage persons on, the closing hours of, and the conduct of other business at licensed premises do not apply to movie theaters.

5. **Provisions Concerning Fermented Malt Beverage Wholesalers’ Licenses and Permits Modified** (2011 Act 32, repeal secs. 125.25(2)(b)2., 3., and 4., 125.26(2)(b)2.b. and c., 125.275(2)(b)2. and 3., and 125.28(2)(c), renumber secs. 125.26(2)(b)2.a. to 125.26(2)(b)2., 125.275(2)(b)1. to 125.275(2)(b), and 125.34(2)(a) to 125.34(2) and amend as renumbered, amend secs. 125.01, 125.04(12)(a), 125.05(1)(d), 125.10(4), 125.25(2)(b)1. and (3), 125.28(title), (1), (2)(a) and (b)(intro.), 1.b. and c., and 2., (3), and (4), 125.295(2)(a)6.c., 125.33(1)(a), (7)(a)1.a. and b. and (c), and (11), and 125.34(1)(g), and create sec. 125.28(1)(e) and (f), (2)(b)1.f., (d), and (e), and (5), effective July 1, 2011.)

Authority to Issue Wholesalers’ Licenses and Permits

Municipal governing bodies are no longer authorized to issue licenses to wholesalers for the sale of fermented malt beverages from premises within the municipality. The Department of Revenue is authorized to issue permits to wholesalers for the sale of fermented malt beverages from premises within Wisconsin.

Any person holding an unexpired fermented malt beverages wholesaler’s license prior to January 1, 2012, shall be treated as holding a valid wholesaler’s permit until January 1, 2013. On January 1, 2013, all wholesalers’ licenses shall be void.

After January 1, 2012, the Department of Revenue shall issue to each person holding an unexpired wholesaler’s license a wholesaler’s permit if the person does not hold a Class “A” or “B” license or industrial fermented malt beverages, brewpub, brewer’s, or Class “B” permit. The issuance of a wholesaler’s permit shall invalidate any previous wholesaler’s license issued.

The amount of the permit fee shall be established by the Department of Revenue and shall be an amount that is sufficient to fund one special agent position dedicated to alcohol and tobacco enforcement, but the fee may not exceed \$2,500 per year or fractional part thereof. All fees received for wholesalers' permits shall be credited to the Department of Revenue's appropriation account for administration of liquor tax and alcohol beverages enforcement and funding a special agent position.

Wholesalers' Permits

A wholesaler's permit authorizes sales of fermented malt beverages only in original packages or containers to retailers or wholesalers, except as follows:

- If a wholesaler was issued a retail license prior to January 1, 2011, then the wholesaler may, under its wholesaler's permit, continue to sell at retail fermented malt beverages to individuals as was permitted under the retail license.

No wholesaler authorized to make retail sales under this provision may sell a brand of fermented malt beverages to a retail licensee unless the wholesaler has an agreement for general wholesale distribution of that brand with the brewer, brewpub, brewer's agent, brewpub's agent, or holder of an out-of-state shipper's permit supplying that brand.

- A wholesaler's permit authorizes the wholesaler to sell or give fermented malt beverages to its employees. Fermented malt beverages may be consumed on a wholesaler's premises at events not open to the general public.

If a wholesaler does not maintain any warehouse in Wisconsin but is licensed and maintains a warehouse in an adjoining state that allows wholesalers holding a wholesaler's permit in Wisconsin to deliver fermented malt beverages to retailers in the adjoining state without warehousing in that state and that further requires that all fermented malt beverages be first unloaded and physically at rest at, and distributed from, the warehouse of the licensed wholesaler in that state, the wholesaler's permit shall be issued by the Department of Revenue. The permit may be issued to a wholesaler described in this paragraph who is a natural person and not a resident of Wisconsin or that is a corporation or limited liability company and has not appointed an agent in Wisconsin.

No additional license or permit is required for the solicitation of orders for sale to or by wholesalers holding a wholesaler's permit.

Wholesalers holding a wholesaler's permit, employees of such wholesalers, and individuals representing such wholesalers may not provide or participate in providing taste samples on Class "A" premises.

A wholesaler's permit may be issued to any person qualified under the general alcohol beverage licensing requirements of sec. 125.04(5), Wis. Stats., except a person acting as an agent for, or in the employ of, another person. Notwithstanding the requirements of sec. 125.04(5), Wis. Stats., a person is not required to complete a responsible beverage server training course to be qualified for a wholesaler's permit.

A wholesaler's permit may not be issued to a person holding or having a direct or indirect ownership interest in a premises operating under a Class "A" or "B" license or industrial fermented malt beverages, brewpub, brewer's, or Class "B" permit, except as follows:

- A wholesaler that holds an ownership interest in a brewer on July 1, 2011, may continue to hold that interest.
- A wholesaler may have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a Class "B" license or permit for the premises, if the wholesaler's license and the Class "B" license or permit were originally issued to the corporation and to the Class "B" licensee or permittee before June 1, 1981.

Wholesalers' permits shall particularly describe the premises for which issued and are generally not transferable. A wholesaler's permit is subject to revocation for violation of any of its terms or provisions.

If by election a municipality prohibits the retail sale of fermented malt beverages, a condition shall be included on any wholesaler's permit issued for a premises within the municipality that the wholesaler may not sell or deliver fermented malt beverages within the municipality to any person residing therein.

Requirements for Warehouse Facilities, Wholesalers, and Retail Licensees

The following requirements apply to warehouse facilities, wholesalers, and retail licensees:

1. The premises described in a wholesaler's permit shall be capable of warehousing fermented malt beverages. Any fermented malt beverages sold by the wholesaler shall be physically unloaded at the premises described in the permit, or at any warehouse premises for which the wholesaler also holds a wholesaler's permit and alcohol beverage warehouse permit, prior to being delivered to a retail licensee or to another wholesaler.
2. A wholesaler shall annually sell and deliver fermented malt beverages to at least 25 retail licensees or other wholesalers that do not have any direct or indirect interest in each other or in the wholesaler. The Department of Revenue may not issue a wholesaler's permit unless the applicant represents an intention to satisfy this requirement, and may not renew a wholesaler's permit unless the wholesaler demonstrates this requirement has been satisfied.
3. No fermented malt beverages retail licensee or wholesaler may receive a benefit from a violation of 1. or 2. with knowledge of the circumstances giving rise to the violation.

A wholesaler that violates any of the above requirements shall be fined not more than \$10,000. In addition, a court shall order the wholesaler to forfeit an amount equal to any profit gained by the wholesaler or retail licensee that violates 3. above, or by both, resulting from the violation, and the court shall further order that the wholesaler's permit be revoked. A court shall order a retail licensee or wholesaler that violates 3. above to forfeit an amount equal to any profit gained by the retail licensee or wholesaler resulting from the violation, and the court shall further order that the retail license or wholesaler's permit be revoked. This paragraph shall not affect the authority of any municipality or the Department of Revenue to revoke, suspend, or refuse to renew or issue a license or permit.

The Department of Revenue shall promulgate rules to administer and enforce the above requirements. The rules shall ensure coordination between the department's issuance and renewal of wholesalers' permits and its enforcement of the above requirements, and shall require that all applications for issuance or renewal of wholesalers' permits be processed by department personnel generally familiar with activities of fermented malt beverages wholesalers. The department shall establish by rule minimum requirements for warehouse facilities on premises described in wholesalers' permits and for periodic site inspections by the department of such warehouse facilities.

6. **Provisions Concerning Brewers Modified** (2011 Act 32, repeal secs. 125.29(4), 125.31, and 125.34(2)(bg), (bm), and (c), (3)(a)3., and (6)(b) and (c), renumber secs. 125.26(2)(b)2.a. to 125.26(2)(b)2., 125.29(2) to 125.29(2)(a), 125.34(2)(a) to 125.34(2), and 125.34(6)(a) to 125.34(6) and amend as renumbered, amend secs. 125.07(3)(a)13., 125.25(1) and (3), 125.26(1) and (2)(b)1., 125.29(1), 125.33(9) and (12), and 125.34(1)(g), (3)(a)1., (4)(a), and (5), repeal and recreate sec. 125.29(2)(title), (3), and (6), and create sec. 125.29(2)(b) and (3m), effective July 1, 2011.)

Interest Restrictions

No person holding a Class "A" license, Class "B" license or permit, or wholesaler's permit may register as a brewer.

No brewer may hold any ownership interest in any wholesaler, with the following exceptions:

- A brewer may hold an ownership interest of less than 50 percent in a wholesaler if this ownership interest will not occur for more than 3 years.

- If a wholesaler that has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the territory for any reason, including the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer shall be allowed, for a period of not more than one year, to take temporary control and operation of the wholesaler.

Authorized Activities

The Department of Revenue shall issue brewer's permits to eligible applicants authorizing all of the following:

- The manufacture of fermented malt beverages on the brewery premises.
- The bottling, packaging, possession, and storage of fermented malt beverages on the brewery premises.
- The transportation of fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer.
- The sale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewery premises, of fermented malt beverages that have been manufactured by the brewer on those premises or on other premises of the brewer.
- The retail sale of fermented malt beverages that have been manufactured on the brewery premises or on other premises of the brewer for on-premise consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer.
- The retail sale to individuals of fermented malt beverages, in original unopened packages or containers, that have been manufactured on the brewery premises or on other premises of the brewer for off-premise consumption by individuals, if the sale occurs at the brewery premises or an off-site retail outlet established by the brewer.
- The retail sale of fermented malt beverages, for on-premise or off-premise consumption in original unopened packages or containers, that have been manufactured on another brewery premises in Wisconsin if the fermented malt beverages have been purchased by the brewer from a wholesaler holding a wholesaler's permit or from another brewery located in Wisconsin that manufactures 300,000 or less barrels of beer in a calendar year.
- The retail sale of intoxicating liquor, for on-premises consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer, if the brewer held, on June 1, 2011, a license or permit authorizing the retail sale of intoxicating liquor and if the intoxicating liquor has been purchased by the brewer from a wholesaler holding a wholesaler's permit.
- The provision of free taste samples on the brewery premises, at an off-site retail outlet established by the brewer, or on Class "A" premises as authorized under sec. 125.33(12), Wis. Stats.
- The ownership, maintenance, or operation of places for the sale of fermented malt beverages at the State Fair Park or any county fairgrounds located in Wisconsin.

Sales to Retailers

No brewer may sell fermented malt beverages to a retail licensee, with the following exceptions:

- A brewer that manufactures 300,000 or less barrels of fermented malt beverages in a calendar year from all locations may sell, ship, transport and deliver to retailers, from the brewery premises, fermented malt beverages, in original unopened packages and containers, that have been manufactured on the brewery premises, if the brewer complies with the requirements in sec. 125.33, Wis. Stats. (restrictions on dealings between brewers, brewpubs, wholesalers, and retailers), and sec. 125.34, Wis. Stats. (distribution restrictions), as applicable, to the same extent as if the brewer were a wholesaler.

- If a wholesaler that has been granted distribution rights by a brewer for a brand in a designated sales territory is unable to service the territory for any reason, including the discontinuation of the wholesaler's distribution rights, bankruptcy, or criminal prosecution of the wholesaler in connection with operation of the wholesaler, and the reason is not the result of an action by the brewer, then a brewer shall be allowed, for a period of not more than one year, to sell or ship any brand of fermented malt beverages to retailers located in the wholesaler's designated sales territory.

Restaurants

A brewer may operate a restaurant on the brewery premises and at an off-site retail outlet established by the brewer. A brewer may not hold a restaurant permit for the operation of a restaurant at any other location except that a brewer may possess or hold an indirect interest in a Class "B" license for not more than 20 restaurants in each of which the sale of alcohol beverages accounts for less than 60 percent of the restaurant's gross receipts if no fermented malt beverages manufactured by the brewer are offered for sale in any of these restaurants.

7. **Provisions Concerning Out-of-State Shippers' Permits Modified** (2011 Act 32, repeal sec. 125.34(6)(b) and (c), renumber sec. 125.34(2)(a) to 125.34(2) and 125.34(6)(a) to 125.34(6) and amend as renumbered, amend secs. 125.25(1), 125.26(1), 125.30(1) and (3), 125.33(9), and 125.34(1)(g) and (5), and create sec. 125.30(4), effective July 1, 2011.)

Requirements for Shipments to Wholesalers

Once a shipment of fermented malt beverages is unloaded in a wholesaler's Wisconsin warehouse, the fermented malt beverages shall be physically at rest before being distributed.

Permit Restrictions Expanded

Out-of-state shippers' permits may be issued only to a person who does not maintain an office or street address in Wisconsin, and who is the primary source of supply for the brand of fermented malt beverages. An out-of-state shipper's permit may not be issued to a person determined by the Department of Revenue to be primarily engaged in wholesale or retail sales in another state.

Out-of-State Brewers

An out-of-state brewer that manufactures 300,000 barrels or less of fermented malt beverages in a calendar year from all locations and that holds an out-of-state shipper's permit may sell and ship fermented malt beverages directly to retail licensees if the out-of-state brewer registers with the Department of Revenue, files required periodic reports with the department, and complies with the requirements in sec. 125.33, Wis. Stats. (restrictions on dealings between brewers, brewpubs, wholesalers, and retailers), and sec. 125.34, Wis. Stats. (distribution restrictions), as applicable, to the same extent as if the out-of-state brewer were a wholesaler holding a wholesaler's permit.

H. Other

1. **Duties of the Department of Revenue Expanded** (2011 Act 10, create sec. 73.03(68), effective June 29, 2011.)

At the request of the Wisconsin Employment Relations Commission, the department shall determine the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the request.

2. **References to Wisconsin Quality Home Care Authority Eliminated** (2011 Act 10, amend secs. 71.26(1)(be) and 77.54(9a)(a), effective June 29, 2011.)

References to the "Wisconsin Quality Home Care Authority" are eliminated.

3. **Persons Qualified to Examine Returns** (2011 Act 32, amend sec. 71.78(4)(m), effective July 1, 2011.)

Under prior law, the Secretary of Commerce and employees of that department were qualified to examine returns, claims, schedules, exhibits, writings or audit reports pertaining to the returns or claims to the extent necessary to administer the development zone program.

The administration of the development zone program is transferred from the Department of Commerce to the Wisconsin Economic Development Corporation (WEDC). This Act deletes the reference to the Secretary of Commerce and employees of that department and provides that the chief executive officer of WEDC and employees of the corporation may examine those documents for the purpose of administering the development zone program.

4. **Definition of “Municipality” Provided** (2011 Act 32, create sec. 71.935(1)(cr), effective July 1, 2011.)

For purposes of setoffs for debts to municipalities and counties, “municipality” means any city, village, or town, and includes any entity providing consolidated services among cities, villages, and towns.

5. **Provisions Related to the Denial, Nonrenewal, Discontinuation, Suspension, or Revocation of a License Based on a Tax Delinquency Revised** (2011 Act 32, amend sec. 73.0301(1)(b) and (e) and (2)(a)1. and 2. and (b)1.a. and b., 2., 3., and 4., effective July 1, 2011.)

The definition of “licensing department” is revised to exclude the Department of Commerce.

References to the “department of regulation and licensing” are changed to “department of safety and professional services.” [!\[\]\(8bba887393ca45b761e5cb49e755e762_img.jpg\)](#)



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

Sales price of discounted items
W1113001 (p. 32)

Crane rentals and services
W1113002 (p. 33)

✱ W1113001 ✱

March 30, 2011

Type Tax: Sales and Use Taxes

Issue: Sales price of discounted items

Statutes: Section 77.51(12m) and (15b), Wis. Stats. (2009-10)

Administrative Code: Section Tax 11.32(3)(a), Wis. Adm. Code (November 2010 Register)

This letter responds to your company’s original request for a private letter ruling dated May 18, 2010, and your December 7, 2010 letter, in which you provided the additional information requested by the Department of Revenue in its August 3, 2010 letter. In your letters, you request clarification of the sales and use tax treatment of transactions relating to Company A.

Facts, as provided in your letters

- Company A, a direct seller of products, is an LLC that is headquartered in the State of California.
- Company A utilizes a network of independent sales consultants who facilitate orders of product to consumers.
- The products are shipped directly via a common carrier from Company A’s California warehouse to its customers located in Wisconsin.
- Company A’s sales representatives never own the product nor do they take delivery of the product.
- Company A collects sales taxes on behalf of its consultants and remits the tax directly to the State of Wisconsin.
- Independent sales consultants solicit persons to host a party. At the party, the sales consultant will display the merchandise and take orders from those who attend the party and desire to make purchases. All orders are processed at and shipped from Company A’s warehouse in California.
- Company A provides an incentive for the hostess to host the party. The incentive is a price reduction on a certain number of items. The number of items that are eligible to be purchased at a reduced price is dependent upon the total amount of sales for the overall party. The higher the dollar volume of sales, the more items the hostess may purchase at a discount.
- Company A does not provide coupons nor does it provide a manufacturer’s rebate. It simply provides a discount to the hostess at the point of sale. The discount is for each item purchased. The number of items that can be purchased at a discount depends upon the total sales at the party. If a hostess wishes to purchase an item that is not eligible for the discount, the item is purchased at the full retail purchase price. All items must be purchased at the party. Discounts do not apply if items are purchased at a later date.

Question: What is the proper sales price in which to assess the sales tax on merchandise sold to a hostess?

Answer: The sales price that is subject to Wisconsin sales or use tax is the total amount that Company A receives for the sale of the merchandise, which includes charges for shipping and handling, but does not include the amount of the discount provided to the customer. This assumes that Company A is not reimbursed by any other party for the amount of the discount given to the customer.

Analysis

The amount to which Wisconsin sales and use tax rate is applied is the "sales price" for sales tax and the "purchase price" for use tax. Both "sales price" and "purchase price" mean the total amount of the consideration for the retail sale, license, lease or rental of tangible personal property or items, property, or goods under sec. [77.52 \(1\) \(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2009-10), or taxable services, valued in money, whether received in money or otherwise.

"Sales price" and "purchase price" are defined in sec. 77.51(15b)(a)3. and 4. and (12m)(a)3. and 4., Wis. Stats. (2009-10), respectively, to include services necessary to complete the sale, as well as delivery charges. Section 77.51(15b)(b)1. and (12m)(b)1., Wis. Stats. (2009-10), provides that "sales price" and "purchase price" do not include discounts that are not reimbursed by a third-party, that are allowed by a seller, and that are taken by a purchaser on a sale.

The law is explained in sec. Tax 11.32(3)(a), Wis. Adm. Code (November 2010 Register), which provides the following:

"Cash **discounts**, term discounts and coupons **that are not reimbursed by a third party and which are allowed by a retailer directly to customers reduce the sales price subject to the tax**. The customer must receive the discount for the retailer to exclude it from the sales price." (Emphasis added.)

Since Company A is not being reimbursed by a third-party for the amount of the discount that it provides to the customer, the proper sales price or purchase price subject to Wisconsin sales or use tax is the discounted price of the item sold to the hostess at the party.

Note: When a seller receives consideration from someone other than the purchaser, this consideration may or may not be included in the "sales price" or "purchase

price" (sec. 77.51(12m)(c) and (15b)(c), Wis. Stats. (2009-10)). Since Company A is not receiving consideration from a third-party, this provision does not apply to Company A's sales.

* **W1113002** *

April 1, 2011

Type Tax: Sales and Use Taxes

Issue: Crane rentals and services

Statutes: Sections 77.51(7) and 77.52(2)(a)9. and 10., Wis. Stats. (2009-10)

This letter responds to your request for a private letter ruling dated June 24, 2009.

In your letter, you request the Wisconsin Department of Revenue's opinion regarding the Wisconsin sales and use tax treatment of ten examples **pursuant to the law changes that became effective on October 1, 2009**. In addition, you amended your ruling request by adding Example 11.

Facts as provided by you

Example 1:

Company #1 calls and requests a job whereby Company B would pick up two transformers and related equipment at one location, load them onto a Company B truck, haul to another location and use a crane, operator and rigger (Company B's employees) to rig and place the transformers at the new location. Personnel from Company #1 identified the transformers at the first location but did not assist in the loading. Personnel from Company #1 gave direction as to where the transformers were to be placed at the second location, but were not on site to oversee the placement of the transformers. They also did not assist in the rigging or placement of the transformers. Company B's personnel on site consisted of a rigger, driver and a crane operator.

Question 1:

a.) What is the Wisconsin sales tax treatment of the amounts billed to Company #1 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Company #1's personnel gave direction in the form of hand signals to Com-

pany B's crane operator as to where to land the transformers?

Example 2:

Company #2 calls and requests a job whereby Company B would move a machining center within their plant. The machining center must be loaded onto Company B's trailer at one door entrance, moved to a different door, and unloaded and placed at the new location. Company #2's personnel showed the machining center to Company B's foreman in its present location and also showed Company B's foreman where the machining center needed to be moved to. No other assistance or direction was received from Company #2 personnel. Company B's personnel, using hand tools, a forklift and a crane, moved the machining center out of the plant, loaded it onto Company B's trailer, moved the machining center to a different door, unloaded the machining center and then placed it at the location desired per initial instructions from Company #2 personnel. Company B's personnel on site included a foreman, rigger, driver, forklift operator and a crane operator.

Question 2:

a.) What is the Wisconsin sales tax treatment of the amounts billed to Company #2 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Company #2's personnel told Company B's employees not only where to place the machining center, but also how to do the job and thus supervised Company B's personnel?

Example 3:

Company #3 calls and requests a job whereby Company B would load a large manufactured piece onto a carrier's trailer from a plant. Company #3 personnel pointed to a piece that needed to be loaded and the third party carrier was waiting for loading when Company B arrived. Company B had done similar jobs for this company many times, so no explanation of what needed to be done was needed. Company B's two riggers rigged the piece and Company B's crane and operator hoisted the piece and with the assistance of Company B's two riggers, loaded the piece onto the carrier's trailer. No other assistance was received from Company #3 personnel.

Question 3:

a.) What is the sales tax treatment of the amounts billed to Company #3 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Company #3's personnel assisted Company B's riggers with two employees of their own?

Example 4:

Company #4 calls and requests a move of a printing press within a plant. Company B's machinery moving salesman surveyed the job and scheduled it accordingly. When Company B arrived on site, Company B's employees were shown by Company #4's personnel where the printing press was and where it needed to be moved to. Company B's personnel, using hand tools and a fork truck moved the printing press. Company B's personnel on site included a foreman, a rigger, a driver and a fork truck operator. No other assistance was received from Company #4 personnel.

Question 4:

a.) What is the sales tax treatment of the amounts billed to Company #4 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Company #4's personnel gave other assistance such as technical assistance as to the best place to rig the printing press so as not to cause damage to the press?

Example 5:

Company #5 calls and requests a job whereby Company B would bring a crane, operator and riggers to the site of a ten-story building that needed a new 10,000-pound air conditioning unit placed on the roof. Company #5 has no experience in the rigging and placement of air conditioning unit(s) of this size. Company #5's personnel simply acknowledged that the third-party carrier had shown up with the air conditioning unit on its flatbed and also went to the roof to show Company B's personnel where the air conditioning unit was to be landed and placed. Company B's personnel perform the job with no assistance from Company #5's personnel.

Question 5:

a.) What is the sales tax treatment of the amounts billed to Company #5 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Company #5's personnel worked alongside of Company B's personnel and helped land and place the air conditioning unit on the roof?

Example 6:

Company #6 calls and requests Company B to just send a crane and operator to a job site. The crane and operator are working at the direction of Company #6 personnel to hoist and place roof top (HVAC) units on top of a building. Other than to set up the crane, Company B's crane operator does not get out of the crane. Company #6's personnel do all the rigging, direct the crane and operator with hand signals and also land and place the HVAC units.

Question 6:

a.) What is the sales tax treatment of the amounts billed to Company #6 for the above described services performed by Company B?

b.) Would the tax treatment change based on what was being hoisted, i.e. real or personal property? For example:

- 10,000-pound tank from carrier to carrier?
- Drywall through a fourth floor window?
- Set roof trusses?
- Place a pre-fabricated swimming pool into the ground?

Example 7:

Individual #7 calls and requests Company B to send just a crane and operator to place a sailboat in the water. The sailboat is brought to the dock by a third party carrier. Individual #7 has no experience in rigging a sailboat to be lifted and set into the water. The crane operator sets up his crane and then rigs the sailboat for lifting into the water. The crane operator lifts the boat into the water and Individual #7 removes the rigging from the sailboat.

Question 7:

a.) What is the sales tax treatment of the amounts billed to Individual #7 for the above described services performed by Company B?

b.) Would the tax treatment change if the above facts were modified so that Individual #7 performed all of the rigging work?

Example 8:

Company #8 calls and requests Company B to send a 300-ton crane with its counterweight to a site to erect a large silo. Company B dispatches its 300-ton crane, operator, oiler and three tractor-trailer drivers hauling counterweight to the building site. The crane, operator, oiler and counterweight drivers work to set up the crane (this would likely be invoiced as a counterweight or mobilization charge). The crane, operator and oiler then erect the silo over a period of three days at the direction of Company #8's personnel. At the end of the job the counterweight drivers return to break down and demobilize the crane.

(Note: In your phone conversation with the department on January 11, 2010, you clarified that Company B's personnel simply move the pieces of the silo before assembly or after disassembly from one place to another using the Company B supplied crane, and that Company B's personnel are not responsible for the actual installation or disassembly of the various pieces of the silo. These activities are performed by a third party hired by the customer.)

Question 8:

a.) Are the charges for mobilization and demobilization of the crane subject to sales tax?

b.) Is the crane, operator and oiler hourly charge subject to sales tax?

c.) Would the sales tax treatment change if items a.) and b.) were invoiced on the same or separate invoices?

Example 9:

Company #9 calls and requests Company B to send a 300-ton crane with its counterweight as well as a job foreman and ironworkers (riggers) to a site to erect Company #9's tower crane. Company B dispatches its 300-ton crane, operator, oiler, three tractor-trailer drivers hauling counterweight to the erection site as well as a job foreman and riggers to erect the tower crane. The crane, operator, oiler and counterweight drivers work to set up the 300-ton crane (this would likely be invoiced as a counterweight or mobilization charge). Company B's crane, operator, oiler and riggers then work to erect the tower crane. Company #9's personnel are not assisting or directing with the erection of the tower crane. At the end of the job the counterweight drivers return to break down and demobilize the 300-ton crane.

(Note: In your phone conversation with the department on January 20, 2010, you clarified that Company B's

personnel are the persons who are responsible for putting the crane together and taking it apart.)

Question 9:

a.) Are the charges for mobilization and demobilization of the crane subject to sales tax?

b.) Is the charge to erect the tower crane subject to sales tax?

c.) Would the sales tax treatment change if items a.) and b.) were invoiced on the same or separate invoices?

Example 10:

Company #10 calls and requests a crane to be dispatched to its construction site. The crane is to be used for real property improvement work such as installing trusses, moving equipment, hoisting HVAC units, etc. Since the work is likely to be sporadic in nature and the crane is not conducive to traveling back and forth each day, Company #10 asks for a monthly rate to essentially rent the crane by itself, and thus leave the crane on site for its exclusive use.

Company B's personnel operate the crane at the direction of Company #10's personnel anywhere from 0 to 40 hours per week for four weeks (one month). Company #10's personnel do not operate the crane.

Question 10:

a.) Is the monthly rental rate to leave the crane on site subject to sales tax?

b.) Is the operator charge to operate the crane subject to sales tax?

c.) What are the Wisconsin sales tax consequences if Company #10's personnel will operate the crane themselves? (In a phone conversation on January 11, 2010, you clarified that this means that personnel of Company #10 will exclusively operate the crane during the entire period the crane is rented to Company #10. Company B's personnel will not be operating the crane at any time during the period.)

Example 11:

(**Note:** In your phone conversation with the department on January 20, 2010, you indicated that you would like to add another example in which Company B performs services similar to Example #9, except that the tower crane is owned by Company B and operated by Company B's personnel while it is on-site)

Company #11 requests that Company B supply its tower crane with an operator at a job site. The crane is to be used for real property improvement work such as installing trusses, moving equipment, hoisting HVAC units, etc. However, Company B is not responsible for or involved in the actual installation of any of the property being moved. The crane will be used to move building materials around the job site in the construction of a new building. Company B dispatches its 300-ton crane, operator, oiler, three tractor-trailer drivers hauling counterweight to the erection site, as well as a job foreman and riggers to erect the tower crane. The 300-ton crane, its operator, the oiler, and counterweight drivers work to set up the tower crane (this would likely be invoiced as a counterweight or mobilization charge). Company B's crane, operator, oiler and riggers then work to erect the tower crane. Company #11's personnel are not assisting or directing with the erection of the tower crane. While Company B's tower crane is at Customer #11's job site, only Company B's personnel will operate the crane. The crane will be used in the erection of a new building. Company B's crane and operator will be involved moving property from one location to another. At the end of the job, the counterweight drivers return to break down and demobilize the crane.

Question 11:

a.) Are the charges for mobilization and demobilization of the crane subject to sales tax?

b.) Is the charge to erect the tower crane subject to sales tax?

c.) Would the sales tax treatment change if items a.), b.), and c.) were invoiced on the same or separate invoices?

Answers and Analysis:

For purposes of the answers provided, it is assumed that, in performing the services by Company B as described in this request, Company B is not also involved in the sales of or providing to any of its customers, the property being moved, erected or installed.

Applicable Wisconsin Statutes

Effective October 1, 2009 and thereafter:

Section 77.51(7), Wis. Stats., as repealed and recreated by 2009 Wis. Act 2, provides:

“(a) ‘Lease or rental’ means any transfer of possession or control of tangible personal property or items, prop-

erty, or goods under s. 77.52 (1) (b), (c), or (d) for a fixed or indeterminate term and for consideration and includes:

1. A transfer that includes future options to purchase or extend.

2. Agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

(b) ‘Lease or rental’ does not include any of the following:

1. A transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) after making all required payments.

2. A transfer of possession or control of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) under any agreement that requires transferring title to the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) after making all required payments and after paying an option price that does not exceed the greater of \$100 or 1 percent of the total amount of the required payments.

3. Providing tangible personal property or items, property, or goods under s. 77.52 (1)

(b), (c), or (d) along with an operator, if the operator is necessary for the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d).

(c) 1. Transfers described under par. (a) are considered a lease or rental, regardless of whether such transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

2. Transfers described under par. (b) are not considered a lease or rental, regardless of whether such

transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.”

Section 77.52(2)(a)9., Wis. Stats. (2007-08), imposes the sales tax on the sales price a retailer receives from: “Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration.”

Section 77.52(2)(a)10., Wis. Stats., as amended by 2009 Wis. Acts 2 and 28, provides that, “Except for services provided by veterinarians and except for installing or applying tangible personal property that, subject to par. (ag), when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d), unless, at the time of that repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property, item, or good repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.522 or unless the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance is provided under a contract that is subject to tax under subd. 13m. the tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in par. (ag), regardless of whether the installation or application of tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in par. (ag), if that installation or replacement is a real property construction activity under s. 77.51 (2).”

Moving Services

A retailer’s receipts from providing the moving or transportation of tangible personal property, or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., are not subject to tax under sec. 77.52(2)(a)10., Wis. Stats., as amended by 2009 Wis. Acts 2 and 28, or specifically subject to tax under

any other provision under sec. 77.52(2)(a), Wis. Stats., in effect as of October 1, 2009.

Answer 1:

(Note: This answer assumes that Company B does not in any way install, attach or affix the transformers at the location where Company B delivers the transformers.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #1 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #1 are for providing a moving service (moving the transformers from one location to another location). Company B's charges for providing moving services are not subject to tax.

(b) No. The tax treatment in answer 1(a) will not change if the facts are modified so that Company #1's personnel give direction in the form of hand signals to Company B's crane operator as to where to land the transformers. The fact that personnel of Company #1 give hand signals to Company B's crane operator as to where to land the transformers:

(1) will not result in Company B renting or leasing tangible personal property to Company #1, since Company B is providing tangible personal property with an operator who does more than maintain, inspect, or set up the property, and therefore is not leasing or renting the property as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service, and

(2) does not alter the outcome that Company B is providing a nontaxable moving service for Company #1.

Answer 2:

(Note: This answer assumes that Company B does not in any way install, attach or affix the "machining center" at the new location where Company B delivers it.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #2 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #2 are for providing a moving service (moving the machining center from one location at Company #2's plant to another location within the same plant). Company B's charges for providing a moving service are not subject to tax.

(b) No. The tax treatment described in answer 2(a) will not change based on the fact that Company #2 provides personnel that tell Company B's employees not only where to place the machining center, but also how to do the job. The fact that personnel of Company #2 tell Company B's employees not only where to place the machining center, but also how to do the job:

(1) will not result in Company B renting or leasing tangible personal property to Company #2, since Company B is providing tangible personal property with an operator who does more than maintain, inspect, or set up the property, and is therefore not leasing or renting the property as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service, and

(2) does not alter the outcome that Company B is providing a nontaxable moving service for Company #2.

Answer 3:

(Note: This answer assumes that Company B does not in any way install, attach or affix the "manufactured piece" at the location where Company B delivers it.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #3 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #3 are for providing a moving service (moving the property from one location at Customer #3's plant onto a trailer of a carrier). Company B's charges for providing a moving service are not subject to tax.

(b) No. The tax treatment in answer 3(a) will not change based on the fact that two employees of Company #3 assist Company B's riggers in rigging the property. Even though Company #3's employees will assist Company B's riggers this fact:

(1) will not result in Company B renting or leasing tangible personal property to Company #3, since Company B is providing tangible personal property with an operator who does more than maintain, inspect, or set up the property, and is therefore not leasing or renting the property as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service, and

(2) does not alter the outcome that Company B is providing a nontaxable moving service for Company #3.

Answer 4:

(Note: This answer assumes that Company B does not in any way install, attach or affix the printing press at the location where Company B moves it.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #4 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #4 are for providing a moving service (moving the printing press from one location at Company #4's plant to another location within the same plant). Company B's charges for providing a moving service are not subject to tax.

(b) No. The tax treatment provided in answer 4(a) will not change if the facts are modified so that Company #4's personnel gave other assistance such as technical assistance as to the best place to rig the printing press so as not to cause damage to the press. Even though Company #4's personnel will assist Company B's personnel by providing technical assistance such as providing the best place to rig the printing press so as not to cause damage to the press, this fact:

(1) will not result in Company B renting or leasing tangible personal property to Company #4, since Company B is providing tangible personal property with an operator who does more than maintain, inspect, or set up the property, and is therefore not leasing or renting the property as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service, and

(2) does not alter the outcome that Company B is providing a nontaxable moving service for Company #4 (moving the printing press from one location to another location). Company B's charges for providing moving services are not subject to tax.

Answer 5:

(Note: This answer assumes that Company B and its personnel are not involved in installing the air conditioning unit, other than moving it from the trailer to the rooftop location prescribed by the customer.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #5 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #5 are for providing a moving service (moving the air conditioning unit from a flatbed trailer to the top of a roof). Company B's charges for providing a moving service are not subject to tax.

(b) No. The fact that Company #5's personnel work alongside of Company B's personnel and help to place and land the air conditioning unit on the roof:

(1) will not result in Company B renting or leasing tangible personal property to Company #5, since Company B is providing tangible personal property with an operator who does more than maintain, inspect, or set up the property, and is therefore not leasing or renting the property as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service, and

(2) does not alter the outcome that Company B is providing a nontaxable moving service for Company #5.

Answer 6:

(Note: This answer assumes that Company B does not in any way install, attach or affix the HVAC units at the location where Company B delivers them.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Company #6 are not subject to Wisconsin sales or use taxes. The charges by Company B to Company #6 are for providing a moving service (moving the rigged HVAC units to the top of a roof). Company B's charges for providing a moving service are not subject to tax.

(b) No. The type of property will not affect the tax treatment. In all cases, Company #6's personnel do all of the rigging, direct the crane operator with hand signals, and also land and place the property in question. Company B is providing a nontaxable moving service regardless of the type (i.e., real or personal) of property being transported.

Answer 7:

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

(a) Company B's charges to Individual #7 are for a nontaxable moving service. Company B's charges for providing the service of moving the sailboat are not subject to tax.

(b) No. The tax treatment will not change if Individual #7 performed all of the rigging work. Company B is still performing a moving service.

Answer 8:

(Note: This answer is based on the fact that Company B's personnel are not responsible for the actual assembly and/or disassembly of the silo, and that Company B's responsibility is limited to supplying a crane and operator to move the pieces to be assembled or that have been disassembled by another party to a location determined by the customer.)

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service. Company B's charges for providing a moving service are not subject to tax.

(a) Company B's charges to Company #8 for mobilization and demobilization of the crane are part of the sales price Company B receives from Company #8 for performing the service of moving the pieces of the silo to be assembled or that have been disassembled. Company B's charges for providing a moving service, including charges for mobilization and demobilization of the crane, are not subject to tax.

(b) Company B's hourly charges to Company #8 for the crane, operator and oiler are part of the sales price Company B receives from Company #8 from performing the service of moving pieces of the silo to be

assembled or that have been disassembled, and are not subject to tax.

(c) No. The entire charge by Company B to Company #8 is for the service of moving tangible personal property. It does not matter if the charge is a single charge or a number of separately stated charges for this service.

Answer 9:

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service.

Company B is responsible for the actual assembly and disassembly of Company #9's crane. As such, Company B is supplying its crane with an operator in order to perform its assembly and disassembly services to Company #9's crane. Company B's assembly and disassembly services to Company #9's crane are taxable services to tangible personal property pursuant to sec. 77.52(2)(a)10., Wis. Stats., unless an exemption applies.

(a) Yes. Company B's charges to Company #9 for mobilization and demobilization of its crane are part of the sales price Company B receives from Company #9 from performing the taxable services of assembling and disassembling Company #9's crane. Company B's charges for assembling and disassembling Company #9's crane are subject to tax.

(b) Yes. Company B's charges to Company #9 for erecting Company #9's tower crane are part of the sales price Company B receives from Company #9 from performing the taxable services of assembling Company #9's crane.

(c) No. All charges by Company B to Company #9 are part of Company B's sales price for performing taxable services to tangible personal property pursuant to sec. 77.52(2)(a)10., Stats. It does not matter if the charge is a single charge or a number of separately stated charges for these services.

Answer 10:

In (a) and (b), Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service. In (c), Com-

pany B is renting or leasing the crane, as the Company B supplied operator does not do more than set up, inspect, and/or maintain the crane.

(a) No. The charges by Company B to Company #10 are for providing moving services (moving various types of property from one place to another at the direction of Company #10). Company B's charges for providing moving services are not subject to tax.

(b) No. The operator supplied by Company B does more than maintain, inspect, or set up the crane, and the operator is necessary for the crane to perform in the manner for which it is designed. Company B's charges for the operator in this case are part of its receipts from providing the services described in answer 10(a).

(c) When personnel of Company #10 operate the crane themselves, Company B is renting or leasing the crane to Company #10. The charges by Company B to Company #10 are charges for the lease or rental of the crane, and are subject to tax, unless an exemption applies. This includes any charges by Company B for an operator supplied by Company B who only maintains, inspects, and/or sets up the crane.

Answer 11:

Company B is providing equipment with an operator who does more than maintain, inspect, or set up the equipment, and is therefore not leasing or renting the equipment as provided in sec. 77.51(7)(b)3., Wis. Stats., but is instead providing a service. The service provided by Company B to Company #11 is a moving service. Company B's charges for providing a moving service are not subject to tax.

(a) No. Company B's charges to Company #11 for mobilization and demobilization of the crane are part of the sales price Company B receives from Company #11 from performing the service of moving tangible personal property. Company B's charges for providing a moving service are not subject to tax.

(b) No. Company B's charges to Company #11 for erecting Company B's tower crane are part of the sales price Company B receives from Company #11 from performing the service of moving tangible personal property.

(c) No. Company B's charges to Company #11 for use of the crane, including the Company B supplied crane operator, in erecting the building are charges for the service of moving tangible personal property.

(d) No. The entire charge by Company B to Company #11 is for the service of moving tangible personal property. It does not matter if the charge is a single charge or a number of separately stated charges for this service.



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

1. Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places42
2. E-Mail Services Provided With Web Hosting56
3. Sales and Use Tax Treatment of Liquid Nurse Tanks, Dry Fertilizer Tender Units, and Liquid Fertilizer and Chemical Storage Tanks.....58

SALES AND USE TAX

1 Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places

Introduction: This tax release applies to all sales and purchases of admissions made on and after October 1, 2009. For the proper Wisconsin sales and use tax treatment of sales and purchases of admissions prior to October 1, 2009, see the tax release that was published in *Wisconsin Tax Bulletin* 114 (July 1999). This tax release explains who is responsible for remitting Wisconsin tax on sales of admissions to amusement, athletic, entertainment, or recreational events and places, and when and where the sales of admissions take place.

Statutes: Sections 77.51(1f), (13g), and (14)(intro.), 77.52(2)(a)2.a. and (20), 77.522, and 77.53(3), Wis. Stats. (2009-10)

Wis. Adm. Code: Sections Tax 11.65, 11.945, 11.97, and 11.985 Wis. Adm. Code (November 2010 Register)

Background: Section 77.52(20), Wis. Stats. (2009-10), imposes Wisconsin sales tax on the entire sales price of a "bundled transaction," with certain exceptions. (See Exception, below.)

Section 77.51(1f), Wis. Stats. (2009-10), defines a bundled transaction to mean the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price. However a "bundled transaction" does not include, among other things:

(a) The sale of any products for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction.

(b) A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10 percent of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both.

EXCEPTION: If the retailer can identify by reasonable and verifiable standards using the retailer's books and records that are kept in the ordinary course of the retailer's business for other purposes, the portion of the price that is attributable to products that are not subject to tax, that portion of the sales price is not taxable. This exception does not apply to a transaction that includes, among other products, food or food ingredients.

Section 77.51(13g), Wis. Stats. (2009-10), provides in part that a "retailer engaged in business in this state" includes any retailer owning any real property in this state, renting out any tangible personal property located in this state, maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state. It also includes any retailer who has any representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, deliver-

ing, or taking orders for tangible personal property or taxable services, as well as any person who has an affiliate in this state, if the person is related to the affiliate and if the affiliate uses facilities or employees in this state to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in this state or for providing services to the related person's purchasers in this state, including accepting returns of purchases or resolving customer complaints.

Section 77.51(14)(intro.), Wis. Stats. (2009-10), provides that the definition of "sale" includes the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption, but not for resale.

Section 77.52(2)(a)2.a., Wis. Stats. (2009-10), imposes Wisconsin sales tax on the "...sale of admissions to amusement, athletic, entertainment or recreational events or places..."

Section 77.522, Wis. Stats. (2009-10), provides the general rules for determining where a sale is sourced (i.e., where the sale takes place). Services, including the sale of admissions to amusement, athletic, entertainment or recreational events or places, are sourced to the location where the purchaser makes first use of the service.

Section 77.53(3), Wis. Stats. (2009-10), imposes Wisconsin use tax on every retailer engaged in business in Wisconsin who makes sales of tangible personal property or taxable services that are sourced to Wisconsin under sec. 77.522, Wis. Stats. (2009-10).

"Event" and "place" as used in this tax release mean an amusement, athletic, entertainment, or recreational event or place.

Who is the Retailer?

Generally, the retailer responsible for remitting Wisconsin sales tax on sales of admissions is the person engaged in the business of selling admissions to the "consumer." A "consumer" is a person who purchases an admission from a retailer. A "consumer" will generally use that admission to obtain admittance to the event. A "consumer" does not include a person who purchases an admission and then resells the admission in the regular course of the person's business. Therefore, a retailer of admissions may include not only the person who sponsors the event, but also ticket brokers, travel agents, and other persons engaged in the business of selling admissions to consumers. (**Note:** A retailer that is responsible for remitting the tax on the sale of an admission is responsible for remitting all of the state

and local taxes that apply to that sale based on the location to which the sale is sourced (i.e., the location of the event to which the admission applies).)

Example: Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the ticket window. The individuals who purchase the admissions from Football Team A do not resell the admissions, but use them to enter the game. Football Team A receives the proceeds from the sales of the admissions to such persons and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with fully completed exemption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents then resell the admissions to consumers.

Sales by Football Team A:

Football Team A is the retailer responsible for remitting the applicable Wisconsin state and local sales taxes on its sales of admissions to individuals (i.e., consumers). Football Team A is not responsible for remitting Wisconsin sales tax on its sales of admissions to ticket brokers and travel agents engaged in the business of selling admissions, because Football Team A received fully completed exemption certificates from the ticket brokers and travel agents.

Sales by Ticket Brokers and Travel Agents:

The ticket brokers and travel agents are the retailers responsible for remitting sales tax on their sales of admissions to consumers. (**Note:** Ticket brokers, travel agents, and other retailers that are not registered and are not required to be registered to collect Wisconsin sales or use tax are not required to collect Wisconsin sales or use tax on sales of admissions to events in Wisconsin.)

When and Where Do Sales of Admissions Take Place?

When does the sale take place?

The sale of an admission takes place at the time the retailer agrees to sell the admission to the consumer. Examples 1 to 20 illustrate when the retailer agrees to sell the admission to the consumer.

Where does the sale take place?

The location of the sale of an admission to an amusement, athletic, entertainment, or recreational event and the tax rate that applies is based on the location where the event takes place, since that is where the purchaser will make first use of the admission. (**Note:** Admissions to events or places located outside of Wisconsin are not subject to Wisconsin sales tax.)

Example: Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the ticket window. The individuals do not resell the admissions purchased from Football Team A, but use them to enter the game. Football Team A receives the proceeds from the sales of these admissions and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with exemption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents resell the admissions they purchased from Football Team A. The admissions are sold to various individuals (i.e., consumers) from the ticket brokers' and travel agents' locations in Milwaukee, Wisconsin.

Sales by Football Team A:

Football Team A is the retailer responsible for remitting sales tax on its sales of admissions to individuals (i.e., consumers). These sales are sourced to the location of XYZ Stadium in Madison, Wisconsin, since that is where the purchaser will make first use of the admission (i.e., where the purchaser will use the ticket to be admitted to the event).

This sale takes place at the time Football Team A agrees to sell the admissions to the individuals.

Sales by Ticket Brokers and Travel Agents:

The ticket brokers and travel agents are the retailers responsible for remitting the Wisconsin sales tax on their sales of admissions to consumers. These sales are sourced to the location of XYZ Stadium in Madison, Wisconsin, since that is where the purchaser will make first use of the admission (i.e., where the purchaser will use the ticket to be admitted to the event) and take place at the time the ticket broker or travel agent agrees to sell the admission.

What Amount is Taxable?

Tax is owed on the "retailer's" selling price of the admission to the consumer.

Example: Football Team A sells an admission for \$25 to Ticket Broker B. Ticket Broker B gives Football Team A a fully completed exemption certificate claiming the resale exemption on its purchase of the admission. Ticket Broker B resells the admission to Individual C for \$40.

Football Team A is not responsible for remitting Wisconsin sales tax on its sale of the admission to Ticket Broker B for \$25, since Ticket Broker B provided Football Team A with a fully completed exemption certificate. Ticket Broker B is the retailer and is responsible for remitting sales tax to the Department of Revenue on the \$40 sale of the admission to Individual C.

Examples of Sales of Admissions

The following examples illustrate (1) who is the retailer responsible for remitting the Wisconsin sales and use tax on sales of admissions; (2) when the sale takes place; (3) where the sale takes place; and (4) the amount subject to Wisconsin sales or use tax. (**Note:** In each of the following examples, if the retailer does not charge the proper Wisconsin sales tax to the purchaser, the purchaser is liable for remitting the applicable Wisconsin use tax to the Department of Revenue.)

"Ticket," as used throughout the following examples, means the piece of paper which is generally given to a person by the retailer as evidence that the person has purchased an admission to attend the event.

Index to Examples

- | | |
|-----------|---|
| Example 1 | Sale of Ticket by Event Provider at Ticket Window |
| Example 2 | Telephone Call to Event Provider to Order Ticket |
| Example 3 | Order Blank for Tickets Sent to Event Provider |
| Example 4 | Person Purchases Ticket to Game, But Does Not Attend Game (No-Shows) |
| Example 5 | Sale by Person Who is Not Event Provider |
| Example 6 | Sale by Person Not Engaged in Business in Wisconsin |
| Example 7 | Sale by Person Located Outside Wisconsin and Engaged in Business in Wisconsin |

- Example 8 Event Provider Sells Ticket to Individual Who is Not Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Different Individual
- Example 9 Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Individual
- Example 10 Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Individual
- Example 11 Event Provider Sells Ticket to Ticket Broker, Who Sells Ticket to Different Ticket Broker, Who Sells to Individual
- Example 12 Individual Calls Event Provider's Toll-Free Number and Places Order With Operator (Who May or May Not be in Wisconsin) for the Ticket
- Example 13 Individual Logs Onto Event Provider's Web Site and Provides Credit Card Number Via the Internet
- Example 14 Event Takes Place Outside of Wisconsin
- Example 15 Sale of a "Package Deal" Which Includes Lodging, Ticket to Event, and Transportation
- Example 16 Sale of a "Package Deal" Which Includes Lodging, Meals, Ticket to Event, and Transportation
- Example 17 Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer
- Example 18 Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer. Tickets Delivered Using Will Call
- Example 19 Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer, But Does Not Have Possession of Tickets
- Example 20 Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer and Takes Possession of Tickets

Example 1 - Sale of Ticket by Event Provider at Ticket Window

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Individual A goes to a ticket window in Milwaukee.
- At the ticket window, Baseball Team B accepts the \$20 payment from Individual A and hands Individual A a ticket to the game.
- On the day of the game, Individual A gives the ticket to Baseball Team B in Milwaukee to obtain admittance to the game.

Who is the retailer?	Baseball Team B
When does the sale take place?	At the time Baseball Team B accepts \$20 payment from Individual A
Where does the sale take place?	At the baseball stadium in Milwaukee
What amount is taxable?	\$20

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

Example 2 - Telephone Call to Event Provider to Order Ticket

- Individual A wants to attend a rock concert in Madison, Wisconsin.
- Individual A calls Concert Provider B in Milwaukee and orders a ticket to the concert for \$20.
- In Milwaukee, Concert Provider B charges the ticket to Individual A's credit card account and tells Individual A to go to the "Will Call" window in Madison to pick up the ticket.
- In addition to the \$20 for the ticket, Concert Provider B adds a \$5 convenience fee to the price of the ticket for allowing Individual A to purchase the ticket over the telephone and holding the ticket at the "Will Call" window.
- On the day of the concert, Individual A picks up the ticket at the "Will Call" window and uses the ticket to obtain admittance to the concert.

Who is the retailer?	Concert Provider B
When does the sale take place?	At the time Concert Provider B charges the \$25 to Individual A's credit card account
Where does the sale take place?	At the location of the concert in Madison
What amount is taxable?	\$25 (the \$5 convenience fee is part of the sales price of the ticket)

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A.

Example 3 - Order Blank for Tickets Sent to Event Provider

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In addition to the \$20 charge for each ticket, Football Team B also charges Individual A a \$4 per ticket shipping and handling fee to have the tickets mailed to Individual A's home.
- In Waukesha, Football Team B reviews the order blank, charges the \$24 for the ticket and the shipping and handling fee to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B charges the \$24 to Individual A's credit card account
Where does the sale take place?	At the location where the football game will be played in Madison
What amount is taxable?	\$24 (the \$4 shipping and handling fee is part of the sales price of the ticket)

Note: In this example, the answers would still be the same if Individual A obtains the ticket at a later date, such as at the "Will Call" window on the day of the game.

Example 4 - Person Purchases Ticket to Game, But Does Not Attend Game (No-Shows)

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In addition to the \$20 charge for each ticket, Football Team B also charges Individual A a \$4 per ticket shipping and handling fee to have the tickets mailed to Individual A's home.
- In Waukesha, Football Team B reviews the order blank, charges \$24 to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- Individual A is sick and cannot attend the game.

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B charges the \$24 to Individual A's credit card account
Where does the sale take place?	At the location where the football game will be played in Madison
What amount is taxable?	\$24 (the \$4 shipping and handling fee is part of the sales price of the ticket)

Note: Even though Individual A did not attend the game, the sale of the admission is still subject to Wisconsin sales tax.

Example 5 - Sale by Person Who is Not Event Provider

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Janesville, Wisconsin is engaged in the business of buying and selling tickets.

- Ticket Broker B goes to Soccer Team C in Milwaukee, pays \$25 to Soccer Team C, provides Soccer Team C with a fully completed exemption certificate claiming resale, and is handed a ticket to the game.
- Individual A goes to Ticket Broker B in Janesville, pays \$50 to Ticket Broker B, and is handed a ticket to the game.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Soccer Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the soccer game in Milwaukee
What amount is taxable?	\$50

Note: In the above example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

Example 6 - Sale by Person Not Engaged in Business in Wisconsin

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets, but **is not** engaged in business in Wisconsin (i.e., does not have nexus in Wisconsin for sales and use taxes).

- Ticket Broker B purchases a ticket for \$25 from Baseball Team C and provides Baseball Team C with a fully completed exemption certificate claiming resale.
- The ticket is then sent to Ticket Broker B in Chicago.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed a ticket to the game.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Baseball Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Baseball Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B *
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the baseball game in Milwaukee
What amount is taxable?	\$50 *

* Since Ticket Broker B **is not** engaged in business in Wisconsin, Ticket Broker B would not be required to remit Wisconsin sales or use tax on the sale to Individual A. Individual A owes Wisconsin use tax on the \$50 because Individual A used the ticket in Wisconsin to obtain admittance to the game. Credit would only be allowed for the sales or use tax properly paid on the sale from Ticket Broker B to Individual A.

Note: In this example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

Example 7 - Sale by Person Located Outside Wisconsin and Engaged in Business in Wisconsin

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets.
- Ticket Broker B is engaged in business in Wisconsin (i.e., has nexus in Wisconsin for sales and use taxes).
- Ticket Broker B purchases a ticket for \$25 from Soccer Team C and provides Soccer Team C with a fully completed exemption certificate, claiming resale.
- The ticket is then sent to Ticket Broker B in Chicago.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed the ticket.
- On the day of the game, Individual A uses the ticket to obtain admittance to the game.

In this example, there are two separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

Transaction 1 - Sale from Soccer Team C to Ticket Broker B

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker B to Individual A

Who is the retailer?	Ticket Broker B
When does the sale take place?	At the time Ticket Broker B accepts the \$50 payment from Individual A
Where does the sale take place?	At the location of the soccer game in Milwaukee
What amount is taxable?	\$50 *

* See first Note at top of next column

Notes: (1) Since Ticket Broker B is engaged in business in Wisconsin and the game takes place in Wisconsin, Ticket Broker B would be required to remit **Wisconsin** tax on the sale to Individual A.

(2) In this example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

Example 8 - Event Provider Sells Ticket to Individual Who is Not Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Different Individual

- Individual A wants to attend a football game which will be played in Green Bay, Wisconsin.
- Individual A goes to Football Team B's ticket window in Green Bay and pays \$25 for the ticket.
- Football Team B accepts the \$25 payment and mails the ticket to Individual A in Waukesha, Wisconsin.
- Individual A later determines she cannot attend the game.
- Individual A, who is not engaged in any trade or business requiring the holding of a seller's permit, sells her ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets and holds a Wisconsin seller's permit.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In addition to the \$75 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.
- In Milwaukee, Ticket Broker C charges \$80 to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are three separate transactions to consider: (1) the sale from Football Team B to Individual A for \$25; (2) the sale from Individual A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$75 plus the \$5 shipping and handling fee.

Transaction 1 - Sale from Football Team B to Individual A

Who is the retailer?	Football Team B *
When does the sale take place?	At the time Football Team B accepts the \$25 payment from Individual A
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$25

* Football Team B is required to collect sales tax on the sale of the ticket to Individual A assuming Individual A did not provide a fully completed exemption certificate to Football Team B.

Transaction 2 - Sale from Individual A to Ticket Broker C

This sale is exempt from Wisconsin sales and use tax because Individual A is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. **Note:** If Individual A held or was required to hold a seller's permit, the sale to Ticket Broker C would still not be taxable if Ticket Broker C provides a fully completed exemption certificate to Individual A claiming resale. Ticket Broker C could provide an exemption certificate claiming resale since Ticket Broker C is reselling the ticket to Individual D.

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C charges \$80 to Individual D's credit card account
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$80 * (the \$5 shipping and handling fee is part of the sales price of the ticket)

* Since Ticket Broker C holds a Wisconsin seller's permit and the game takes place in Wisconsin, Ticket Broker C is required to remit Wisconsin tax on the sale to Individual D.

Example 9 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Individual

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a fully completed exemption certificate claiming resale.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a Wisconsin seller's permit, sells its ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets and provides Company A with a fully completed exemption certificate claiming resale.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In addition to the \$75 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.
- In Milwaukee, Ticket Broker C charges \$80 to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are three separate transactions to consider: (1) the sale from Football Team B to Company A for \$25; (2) the sale from Company A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$80 (\$75 plus the \$5 shipping and handling fee).

Transaction 1 - Sale from Football Team B to Company A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Company A to Ticket Broker C

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 1 - Sale from Football Team B to Company A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C charges the \$80 to Individual D's credit card account
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$80 (the \$5 shipping and handling fee is part of the sales price of the ticket)

Transaction 2 - Sale from Company A to Individual C

Who is the retailer?	Company A *
When does the sale take place?	At the time Company A accepts the \$40 payment from Individual C
Where does the sale take place?	At the location of the football game in Green Bay
What amount is taxable?	\$40 *

* Since Company A is engaged in a trade or business requiring the holding of a seller's permit at the time Company A sells the ticket to Individual C, Company A is required to remit Wisconsin sales tax on the \$40 sale of the ticket.

Example 10 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Individual

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a fully completed exemption certificate claiming resale.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a seller's permit, sells its ticket to Individual C for \$40 at Company A's headquarters in Waukesha.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Company A for \$25 and (2) the sale from Company A to Individual C for \$40.

Example 11 - Event Provider Sells Ticket to Ticket Broker, Who Sells Ticket to Different Ticket Broker, Who Sells to Individual

- Concert Provider B is selling tickets for a concert which will be held in La Crosse, Wisconsin.
- Ticket Broker A is in the business of buying and selling tickets.
- At Concert Provider B's location in La Crosse, Ticket Broker A pays \$30 to Concert Provider B, provides Concert Provider B with a fully completed exemption certificate claiming resale, and is handed a ticket for the concert.
- In Madison, Wisconsin, Ticket Broker C pays \$50 to Ticket Broker A, provides Ticket Broker A with a fully completed exemption certificate claiming resale, and is handed the ticket for the concert.
- Ticket Broker C is also engaged in the business of buying and selling tickets.
- In addition to the \$150 charge for the ticket, Ticket Broker C charges Individual D a \$5 shipping and handling fee to have the ticket mailed to Individual D's home.

- In Milwaukee, Individual D pays \$155 to Ticket Broker C. Ticket Broker C accepts the \$155 payment and mails the ticket to Individual D in Madison.
- On the day of the concert, Individual D uses the ticket to obtain admittance to the concert.

In this example, there are three separate transactions to consider: (1) the sale from Concert Provider B to Ticket Broker A for \$30; (2) the sale from Ticket Broker A to Ticket Broker C for \$50; and (3) the sale from Ticket Broker C to Individual D for \$155 (\$150 plus the \$5 shipping and handling fee).

Transaction 1 - Sale from Concert Provider B to Ticket Broker A

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 2 - Sale from Ticket Broker A to Ticket Broker C

Who is the retailer?	This sale is not a retail sale subject to tax. It is a sale for resale.
When does the sale take place?	
Where does the sale take place?	
What amount is taxable?	

Transaction 3 - Sale from Ticket Broker C to Individual D

Who is the retailer?	Ticket Broker C
When does the sale take place?	At the time Ticket Broker C accepts the \$155 payment from Individual D
Where does the sale take place?	At the location of the concert in LaCrosse
What amount is taxable?	\$155 (the \$5 shipping and handling fee is part of the sales price of the ticket)

Example 12 - Individual Calls Event Provider's Toll-Free Number and Places Order With Operator (Who May or May Not be in Wisconsin) for the Ticket

- Individual A wants to attend a concert in Madison, Wisconsin.
- Individual A calls a toll-free number of Concert Provider B, which is received by an employee of Concert Provider B, to purchase a ticket to the concert in Madison.
- The operator who receives the telephone call may be located anywhere in the United States.
- Concert Provider B is engaged in business in Wisconsin.
- The operator has authority to accept the order and bind Concert Provider B to selling the \$50 ticket to the concert to Individual A.
- In addition to the \$50 charge for the ticket, Concert Provider B charges Individual A a \$5 shipping and handling fee to have the ticket mailed to Individual A's home.
- The operator charges \$55 to Individual A's credit card account and mails the ticket to Individual A in Madison.
- On the day of the concert, Individual A uses the ticket to obtain admittance to the concert.

Who is the retailer?	Concert Provider B *
When does the sale take place?	At the time Concert Provider B charges \$55 to Individual A's credit card account
Where does the sale take place?	At the location of the concert in Madison
What amount is taxable?	\$55 (the \$5 shipping and handling fee is part of the sales price of the ticket)

* Since Concert Provider B is engaged in business in Wisconsin and the concert takes place in Wisconsin, Concert Provider B is required to remit **Wisconsin** tax on the sale to Individual A, regardless of the location of the operator.

Example 13 - Individual Logs Onto Event Provider's Web Site and Provides Credit Card Number Via the Internet

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.

- Individual A logs onto the Internet homepage of Baseball Team B, orders a \$20 ticket to the game via the Internet, selects "will call" as the ticket delivery method, and provides his credit card account number.
- In addition to the \$20 for the ticket, Baseball Team B adds a \$5 convenience fee to the price of the ticket for allowing Individual A to purchase the ticket over the Internet, charging it to his credit card, and holding the ticket at the "Will Call" window.
- Individual A is notified via e-mail from Baseball Team B located in Milwaukee that his order has been received, \$25 has been charged to his credit card account, and the ticket is to be picked up at the "Will Call" window in Milwaukee on the day of the game.
- On the day of the game, Individual A picks up the ticket at the "Will Call" window and uses the ticket to obtain admittance to the game in Milwaukee.

Who is the retailer?	Baseball Team B
When does the sale take place?	At the time Baseball Team B charges \$25 to Individual A's credit card account
Where does the sale take place?	At the location of the baseball game in Milwaukee
What amount is taxable?	\$25 (the \$5 convenience fee is part of the sales price of the ticket)

Example 14 - Event Takes Place Outside of Wisconsin

- Individual A wants to attend a football game in San Diego, California.
- Individual A contacts Ticket Broker B in Milwaukee, Wisconsin, to obtain a ticket to the game.
- Ticket Broker B is engaged in the business of buying and selling tickets.
- Ticket Broker B calls Football Team C in California, who agrees to sell the ticket to the game to Ticket Broker B for \$50.
- Ticket Broker B provides Football Team C in California with its credit card account number, and Football Team C charges the \$50 ticket to the account and mails the ticket to Ticket Broker B in Milwaukee.

- Individual A goes to Ticket Broker B's location in Milwaukee, gives Ticket Broker B \$100, and Ticket Broker B hands Individual A a ticket to the game.

Since the game takes place outside of Wisconsin, neither of the sales of the ticket to the game is subject to Wisconsin sales or use tax.

Example 15 - Sale of a "Package Deal" Which Includes Lodging, Ticket to Event, and Transportation

- Individual A wants to attend a football game in Green Bay, Wisconsin.
- Individual A contacts Travel Agent B, located in Wisconsin, who is offering a "game day package" for \$300.
- The "game day package" includes one ticket to the game, one night of lodging at a Green Bay hotel, and transportation from the hotel to the game and back to the hotel. The \$300 sales price of the "game day package" is not itemized for the amount relating to the ticket, lodging, or transportation.
- The sales price of the "game day package" does not vary and is not negotiable based on a customer's selection of the products included in the transaction.
- Travel Agent B purchases the ticket to the game from Football Team C for \$75, the lodging from Hotel D for \$50, and the transportation to and from the game from Transporter F for \$25.
- Travel Agent B provides Football Team C and Hotel D with fully completed exemption certificates claiming resale.

Since (1) the "game day package" consists of two or more distinct and identifiable products sold for one non-itemized price, and (2) more than 10 percent of the purchase price or selling price of the package is related to taxable products (admission and lodging), the transaction is a bundled transaction as defined in sec. 77.51(1f), Wis. Stats. (2009-10), and the entire selling price is subject to Wisconsin sales or use tax. **Note:** In this example, if Travel Agent B, through reasonable and verifiable standards using its books and records, can determine the portion of the sales price of the package that is attributable to nontaxable products (the transportation to and from the game), Travel Agent B has the option to collect and remit Wisconsin sales tax only on the portion of the sales price attributable to the taxable products (admission and lodging), as provided in sec. 77.52(20)(b), Wis. Stats. (2009-10).

Example 16 - Sale of a "Package Deal" Which Includes Lodging, Meals, Ticket to Event, and Transportation

- Individual A wants to attend a football game in Green Bay, Wisconsin.
- Individual A contacts Travel Agent B, located in Wisconsin, who is offering a "game day package" for \$400.
- The "game day package" includes one ticket to the game, meals at a Green Bay restaurant, one night of lodging at a Green Bay hotel, and transportation from the hotel to the game and back to the hotel after the game. The \$400 sales price of the "game day package" is not itemized for the amount relating to the ticket, meals, lodging, or transportation.
- The sales price of the "game day package" does not vary and is not negotiable based on a customer's selection of the products included in the transaction.
- Travel Agent B purchases the ticket to the game from Football Team C for \$75, the meals from Restaurant E for \$50, the lodging from Hotel D for \$50, and the transportation to the game from Transporter F for \$25.
- Travel Agent B provides Football Team C, Restaurant E, and Hotel D with a fully completed exemption certificate claiming resale.

Since (1) the "game day package" consists of two or more distinct and identifiable products sold for one non-itemized price, (2) the package includes services and food or food ingredients, and (3) more than 10 percent of the purchase price or selling price of the package is related to taxable products (admission, lodging, and meals), the transaction is a bundled transaction as defined in sec. 77.51(1f), Wis. Stats. (2009-10), and the entire selling price is subject to Wisconsin sales or use tax. **Note:** In this example, since the transaction includes food or food ingredients, Travel Agent B does **not** have the option to collect and remit sales tax only on the portion of the sales price attributable to the taxable products, as provided in sec. 77.52(20)(b), Wis. Stats. (2009-10).

Example 17 - Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer

- Football Team B sells admissions to football games that take place in Eau Claire, Wisconsin.

Football Team B is engaged in business in Wisconsin.

- Customer A has purchased and received season tickets for football games of Football Team B that take place in Eau Claire, Wisconsin.
- Football Team B sells each ticket purchased by Customer A for \$40.
- Football Team B charged Wisconsin sales tax on its sales of these tickets to Customer A.
- Football Team B maintains a web site that allows its season ticket holders to list any of their tickets for sale to other persons.
- Customer A lists one ticket for sale on this web site for \$40.
- Individual X wants to attend a football game in Eau Claire, Wisconsin.
- Individual X logs onto the Internet homepage of Football Team B, purchases this ticket for \$40 plus a required order fee of \$7 and a service fee of \$8.
- Individual X pays Football Team B \$55 (\$40 + \$8 + \$7) for the ticket.
- Football Team B voids the ticket which is in Customer A's possession, and issues a new ticket to Individual X.
- Football Team B issues a check to Customer A for \$32 (the \$40 selling price of the ticket, less the required service fee of \$8 payable to Football Team B).
- Football Team B does not disclose either the identity of the season ticket holder to the purchaser or the identity of the purchaser to the season ticket holder.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Customer A for \$40 and (2) the sale from Football Team B to Individual X for \$55.

Transaction 1 - Sale from Football Team B to Customer A

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts the \$40 payment from Customer A
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$40 *

Transaction 2 - Sale from Football Team B to Individual X

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts payment from Individual X
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$55

* Since Football Team B previously sold the ticket to Customer A for \$40 and assuming Football Team B properly reported the Wisconsin state and local sales taxes on that sale, Football Team B should refund the sales tax to Customer A based on the amount of the original ticket price refunded (\$32), along with the \$32. Football Team B may also claim a deduction on its sales and use tax return for the amount refunded (\$32) to Customer A. If Football Team B does not also refund the sales tax on the amount that it pays Customer A, Football Team B may not claim that deduction (\$32) on its sales and use tax return.

Transaction 2 - Sale from Football Team B to Individual X

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts payment from Individual X
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$58 (\$40 + \$8 + \$7 + \$3)

* Since Football Team B previously sold the ticket to Customer A for \$40 and assuming Football Team B properly reported the Wisconsin state and local sales taxes on that sale, Football Team B should refund the sales tax to Customer A based on the amount of the original ticket price refunded (\$32), along with the \$32. Football Team B may claim a deduction on its sales and use tax return for the amount refunded (\$32) to Customer A. If Football Team B does not refund the sales tax on the amount that it pays Customer A, Football Team B may not claim that deduction (\$32) on its sales and use tax return.

Example 18 - Sale of Ticket Holder's Tickets Using Football Team B's Web Site - Football Team B is Retailer. Tickets Delivered Using Will Call.

- Same facts as in Example 17, except that Individual X selects a "will call" delivery option that allows him to pick up the tickets on game day at the stadium.
- Football Team B charges an additional fee of \$3 for this option.

In this example, there are two separate transactions to consider: (1) the sale from Football Team B to Customer A for \$40 and (2) the sale from Football Team B to Individual X for \$58.

Transaction 1 - Sale from Football Team B to Customer A

Who is the retailer?	Football Team B
When does the sale take place?	At the time Football Team B accepts the \$40 payment from Customer A
Where does the sale take place?	At the location of the football game in Eau Claire, Wisconsin
What amount is taxable?	\$40 *

Example 19 - Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer, But Does Not Have Possession of Tickets

- Ticket Holder gives Ticket Broker the right to sell tickets on Ticket Broker's web site.
- Ticket Broker does not obtain possession of the tickets and the Ticket Holder is responsible for shipping the tickets to the purchaser at the Ticket Broker's direction.
- Ticket Holder sets the selling price of the tickets.
- When a ticket is sold, Ticket Broker sends a check to Ticket Holder for the selling price of the ticket sold, less a \$15 commission.
- Ticket Holder purchased season tickets to football games taking place in Green Bay, Wisconsin from Football Team C.
- Ticket Holder paid \$75 for each ticket.
- Football Team C charged Ticket Holder Wisconsin sales tax on its sales of the tickets.
- Ticket Holder is not in the business of selling tickets for admission to amusement, athletic, recreational, or entertainment events or places and does not hold and is not required to hold a seller's permit.
- Ticket Holder lists one ticket for a game for sale on Ticket Broker's web site.

- Ticket Holder sets the selling price of the ticket at \$100.00.
- Individual D purchases this ticket. In addition to the \$100 price of the ticket, Individual D is required to pay service fees of \$10.00 and shipping costs of \$14.95 to Ticket Broker, for a total purchase price of \$124.95.
- Ticket Broker e-mails Ticket Holder that the ticket has sold.
- Ticket Holder then accesses his or her account on Ticket Broker's web site and (1) confirms that he or she will ship the ticket and (2) accesses a pre-paid and preaddressed shipping label for Delivery Service Q that Ticket Holder prints on his or her own printer.
- Ticket Holder then ships the ticket to Individual D using Delivery Service Q.
- Ticket Broker charges Individual D's credit card for \$124.95, and issues a check to Ticket Holder for \$85.00, which is the selling price of the ticket set by Ticket Holder less the required \$15 commission.
- Ticket Broker does not disclose the identity of Ticket Holder to Individual D, but discloses the identity of Individual D to Ticket Holder when Ticket Holder prints the prepaid shipping label.

In this example, there are three separate transactions to consider: (1) the sale from Football Team C to Ticket Holder for \$75; (2) the sale from Ticket Holder to Ticket Broker for \$85; and (3) the sale from Ticket Broker to Individual D for \$124.95.

Transaction 1 - Sale from Football Team C to Ticket Holder

Who is the retailer?	Football Team C
When does the sale take place?	At the time Football Team C accepts the \$75 payment from Ticket Holder
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$75

Transaction 2 - Sale from Ticket Holder to Ticket Broker

This sale is exempt from Wisconsin sales and use tax because Ticket Holder is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. (**Note:** If

Ticket Holder held or was required to hold a seller's permit, the sale to Ticket Broker would still not be taxable if Ticket Broker provides a fully completed exemption certificate to Ticket Holder claiming resale. Ticket Broker could provide an exemption certificate claiming resale since Ticket Broker is reselling the ticket to Individual D.)

Transaction 3 - Sale from Ticket Broker to Individual D

Who is the retailer?	Ticket Broker
When does the sale take place?	At the time Ticket Broker accepts payment from Individual D
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$124.95 *

* No credit for the Wisconsin state and local sales tax paid by Ticket Holder may be claimed by Ticket Broker and used to reduce the amount of Wisconsin state and local sales tax due on the selling price of the ticket from Ticket Broker to Individual D since Ticket Broker was not the person that paid the sales tax to Football Team C.

Example 20 - Sale of Ticket Holder's Tickets Using Ticket Broker's Web Site - Ticket Broker is Retailer and Takes Possession of Tickets

- Ticket Holder gives Ticket Broker the right to sell tickets on Ticket Broker's web site.
- Ticket Broker receives possession of the tickets from Ticket Holder. The tickets could be in paper form or in a form that can be transmitted electronically.
- Ticket Broker is responsible for delivery of the tickets to the purchaser.
- Ticket Holder sets the selling price of the tickets.
- When a ticket is sold, Ticket Broker sends a check to Ticket Holder for the selling price less a \$15 commission.
- Ticket Holder purchased season tickets to football games taking place in Green Bay, Wisconsin from Football Team C.
- Ticket Holder paid \$75 per ticket and Football Team C charged the appropriate Wisconsin state and local sales tax on the sale.
- Ticket Holder is not in the business of selling tickets for admission to amusement, athletic, recreational, or entertainment events or places and

does not hold and is not required to hold a seller's permit.

- Ticket Holder lists one ticket for a game for sale on Ticket Broker's web site.
- Ticket Holder sets the selling price of the ticket at \$100.00.
- Individual D purchases this ticket. In addition to the \$100 price for the ticket, Individual D is required to pay service fees of \$10.00 and delivery charges of \$14.95 to Ticket Broker, for a total purchase price of \$124.95.
- Ticket Broker delivers the ticket to Individual D. Delivery may be made by mailing Individual D a paper ticket or by using an electronic transmission.
- Ticket Broker charges Individual D's credit card for \$124.95 and issues a check to Ticket Holder for \$85.00, which is the selling price of the ticket set by Ticket Holder less the required \$15 commission.
- Ticket Broker does not disclose the identity of Ticket Holder to Individual D, nor does Ticket Broker disclose the identity of Individual D to Ticket Holder.

In this example, there are three separate transactions to consider: (1) the sale from Football Team C to Ticket Holder for \$75; (2) the sale from Ticket Holder to Ticket Broker for \$85; and (3) the sale from Ticket Broker to Individual D for \$124.95.

Transaction 1 - Sale from Football Team C to Ticket Holder

Who is the retailer?	Football Team C
When does the sale take place?	At the time Football Team C accepts the \$75 payment from Ticket Holder
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$75

Transaction 2 - Sale by Ticket Holder to Ticket Broker

This sale is exempt from Wisconsin sales and use tax because Ticket Holder is not engaged in a trade or business requiring the holding of a seller's permit and the sale qualifies as an exempt occasional sale. (**Note:** If Ticket Holder held or was required to hold a seller's permit, the sale to Ticket Broker would still not be tax-

able if Ticket Broker provides a fully completed exemption certificate to Ticket Holder claiming resale. Ticket Broker could provide an exemption certificate claiming resale since Ticket Broker is reselling the ticket to Individual D.)

Transaction 3 - Sale by Ticket Broker to Individual D

Who is the retailer?	Ticket Broker
When does the sale take place?	At the time Ticket Broker accepts payment from Individual D
Where does the sale take place?	At the location of the football game in Green Bay, Wisconsin
What amount is taxable?	\$124.95 *

* No credit for the Wisconsin state and local sales tax paid by Ticket Holder may be claimed by Ticket Broker and used to reduce the amount of Wisconsin state and local sales tax due on the selling price of the ticket from Ticket Broker to Individual D since Ticket Broker was not the person that paid the sales tax to Football Team C.

2 E-Mail Services Provided With Web Hosting

Statutes: Sections 77.51(1f) and (5) and 77.52(2)(a)5m. and (20), Wis. Stats. (2009-10)

Wis. Adm. Code: Section Tax 11.66(2)(d)3. (November 2010 Register)

Applicable Wisconsin Statutes:

Section 77.52(2)(a)5m., Wis. Stats. (2009-10), imposes sales and use tax on:

"The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including services that are taxable under subd. 5. or services that are incidental, as defined in s. 77.51 (5), to another service that is not taxable under this subchapter and sold to the purchaser of the incidental service."

Section 77.51(5), Wis. Stats. (2009-10), provides:

"For purposes of subs. (13) (e) and (f) and (15a) and s. 77.52 (2m), "incidental" means depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; or something

incidental to the main purpose of the service. Tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, items, or goods, even though the property, items, or goods may be necessary or essential to providing the service."

Facts:

Taxpayer provides a web hosting service and a telecommunications message service for one price of \$25. For \$25, the customer gets web hosting of their web site on one server and if the customer chooses, they can receive one to ten e-mail accounts hosted on a separate server. The taxpayer does not provide the Internet access for the e-mail, but does provide storage of e-mail messages on a server and the ability for customers to send and receive e-mail messages.

The \$25 fee includes the following:

- 25 megabytes storage, including regular back up
- Up to 10 user e-mail accounts
- 0-5 gigs of bandwidth usage for data transfer
- Domain hosting
- Web server
- E-mail server
- Various (intranet information for online web hit statistics, web-based e-mail access and administration, technical support, telephone support)

Some customers do not use the e-mail accounts available to them and some customers use more than ten e-mail accounts. Usage or non-usage of the one to ten e-mail accounts does not change the price of the web hosting fee of \$25. If a customer uses more than ten e-mail accounts, the customer gets charged \$1 for each e-mail account over ten.

Wisconsin sales and use tax treatment:

No part of the \$25 hosting charge is subject to Wisconsin sales or use tax. The additional charge of \$1 for each e-mail account over ten is subject to Wisconsin sales or use tax.

Analysis:

Web hosting services are not subject to Wisconsin sales or use tax because they are not among the services listed as taxable in sec. 77.52(2)(a), Wis. Stats. (2009-10).

Section 77.52(2)(a)5m., Wis. Stats. (2009-10), imposes sales and use tax on:

"The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, **but not including** services that are taxable under subd. 5. or **services that are incidental, as defined in s. 77.51 (5), to another service that is not taxable under this subchapter and sold to the purchaser of the incidental service.**" (Emphasis added)

Section Tax 11.66(2)(d)3., Wis. Adm. Code (November 2010 Register), provides that telecommunications message services include electronic mail services.

As provided in sec. 77.51(5), Wis. Stats. (2009-10), "incidental" means, in part: "depending upon or appertaining to something else as primary ... or something incidental to the main purpose of the service." The e-mail hosting services described above meet the definition of "incidental" because the primary objective of the customers is to receive the web hosting services, not the e-mail account(s) that are included for the \$25 charge.

Section 77.52(2)(a)5m., Wis. Stats., does not apply to the e-mail hosting services because the e-mail hosting services are incidental to the nontaxable web hosting services. As a result, no part of the taxpayer's \$25 charge is taxable. However, the additional charge of \$1 for each e-mail account over ten represents a charge for a telecommunications message service sold separately from the web hosting services, and is subject to Wisconsin sales and use tax, as provided in sec. 77.52(2)(a)5m., Wis. Stats. (2009-10).

Notes: (1) The \$25 charge is not subject to tax as a charge for a "bundled transaction" because neither the web hosting service nor the e-mail hosting service is a taxable service. The definition of "bundled transaction" is provided in sec. 77.51(1f), Wis. Stats. (2009-10), and tax is imposed on "bundled transactions" in sec. 77.52(20), Wis. Stats. (2009-10).

(2) The tax treatment described in this tax release applies to periods both before and after October 1, 2009, the effective date of the legislation passed to conform Wisconsin's sales and use tax laws to the requirements of the Streamlined Sales and Use Tax Agreement.

3 Sales and Use Tax Treatment of Liquid Nurse Tanks, Dry Fertilizer Tender Units, and Liquid Fertilizer and Chemical Storage Tanks

Note: This tax release supersedes any previous rulings on this topic.

Statutes: Sections 77.52(1)(a) and 77.54(3)(a) and (5)(d), Wis. Stats. (2009-10)

Wis. Adm. Code: Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register)

Applicable Wisconsin Statutes:

Section 77.52(1)(a), Wis. Stats. (2009-10), imposes Wisconsin sales and use taxes, in part, on "...the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state..."

Section 77.54(3)(a), Wis. Stats. (2009-10), provides a sales and use tax exemption for, in part:

"The sales price from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property...that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services..."

Section 77.54(5)(d), Wis. Stats. (2009-10), provides a sales and use tax exemption for the sales price from the sale of and the storage, use or other consumption of:

"Mobile units used for mixing and processing and the motor vehicle or trailer on which the unit is mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units."

Applicable Wisconsin Administrative Code:

Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register), provides that personal property which becomes a part of realty includes storage tanks constructed on site.

Facts:

Liquid nurse tank. Liquid nurse tanks are purchased by retailers to deliver liquid products to farmers. These units are manufactured with a recirculation pump built into the tank that serves to keep the solution blended

during transport and while waiting to load the sprayer/applicator. Because each chemical in the tank has different densities, heavier materials sink to the bottom of the tank, unless the product is continually mixed, both while the product is in route and after it gets to the site. This mixing prevents the product from separating and becoming unusable. The blending pump in the tank has a dual purpose-blending and mixing the product as well as pumping it out of the tank.

The unit is mounted on a trailer and the retailers tow it behind their trucks to farms and back to the retail business location.

Dry fertilizer tender unit. The dry fertilizer tender unit is used only to transport dry fertilizer from the mixing plant (retailer's business location) to the farms for application. The product is blended at the mixing plant, and is put in the hopper of the tender unit. During transport, the product separates as a result of mechanical sorting due to movement and shaking of the load. The hopper on the tender unit is equipped with an auger which serves to remix the product and to expel product at the time of delivery. This mixing is necessary because the larger particles of fertilizer settle to the bottom of the hopper.

Liquid fertilizer & chemical storage tank. These are stationary tanks, used by retailers to store fertilizer and chemicals before delivering them to farms for application. The tanks are constructed before delivery to the site. The retailers have a series of these tanks at their business locations. Each of the tanks in the series has different chemical and liquid fertilizers stored in them. The retailers use material from the tanks to make a blend that fits a particular farmer's needs. This blended product is put in a nurse tank to deliver it to the farmer.

Wisconsin sales and use tax treatment:

Liquid nurse tanks and dry fertilizer tender units. A retailer's purchase of a liquid nurse tank or dry fertilizer tender unit, as described above, is exempt from sales and use taxes under sec. 77.54(5)(d), Wis. Stats. (2009-10). This exemption applies because the liquid nurse tanks and dry fertilizer tender units are mobile units and are used for mixing and processing.

Liquid fertilizer & chemical storage tanks. A retailer's purchase of the liquid fertilizer and chemical storage tank described above is subject to Wisconsin sales or use tax.

Section 77.52(1)(a), Wis. Stats. (2009-10), imposes tax on retail sales of tangible personal property, unless an exemption applies.

Section Tax 11.68(6)(j), Wis. Adm. Code (November 2010 Register), provides that storage tanks constructed on site become a part of real property. Since the tanks are **not** constructed on site, the tanks remain tangible personal property after the delivery and installation.

A retailer's purchase of a liquid fertilizer or chemical storage tank described above is subject to sales or use tax as a purchase of tangible personal property. The exemption for mobile units discussed above (sec. 77.54(5)(d), Wis. Stats. (2009-10)) does not apply to the purchase because the storage tanks are not mobile, and are not "accessories, attachments, parts, supplies and materials" for mobile units. (**Note:** This answer assumes that the retailer does not use the storage tank exclusively in providing custom farming services for farmers. Custom farming services would include applying fertilizer and chemicals on farm fields for farmers for a fee, but does not include delivering fertilizer and chemicals to farmers for the farmer's application.)