



Wisconsin TAX BULLETIN

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New Tax Laws; Sales and Use Tax Guidance

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. See page 3 for details.

In addition, this issue contains new sales and use tax guidance on a variety of topics. See page 9. [☞](#)

Reminders for 2011 Wage Statements

With the deadline fast approaching, the following reminders are offered to employers preparing and filing 2011 Forms W-2:

- The treatment of employer-provided health insurance benefits for non-dependent adult children under age 27 has been federalized. Click [here](#) for details.
- Certain wage statements are no longer required to be submitted to the department. Click [here](#) for details. [☞](#)

Final Rules Address Tax Credits and Deductions

The following administrative rules were recently adopted by the Department of Agriculture, Trade and Consumer Protection and Department of Revenue:

[ATCP 166](#) provides relevant definitions and addresses the application process, certification, allocation of credits, notification, and filing of claims for the woody biomass harvesting and processing credit.

[Tax 2.957](#) prescribes methodology and provides examples and limitations for the relocated business credit or deduction.

[Tax 3.05](#) clarifies terminology and eligibility and prescribes methodology for the job creation deduction. [☞](#)

Department of Revenue Reform Bill

On November 16, 2011, Governor Walker signed into law 2011 Wisconsin Act 68, referred to as the Department of Revenue Reform Bill. This law is effective on March 1, 2012.

"This new law advances the goal of good customer service for Wisconsin taxpayers," Revenue Secretary Richard Chandler said in a November 16, 2011 press release. Act 68 includes provisions related to:

- negligence penalties;
- rules and published guidance;
- taxpayer-specific written guidance;
- retraction of published or written guidance; and
- class action lawsuits.

Contrary to information published by several tax services, Act 68 does **not** include a provision related to reliance on past audits. However, Act 68 does include non-statutory language that requires the department to submit as part of its 2013-15 biennial budget a provision that addresses the ability of a taxpayer to rely on a past audit.

A summary of Act 68 is on pages 4 to 9, under "Duties of the Department of Revenue Revised." [☞](#)

Did You Know...

- The department has expanded its treasury offset and state reciprocal collection programs.
- *My Tax Account* has been enhanced with several added features.

Hopefully the answer is a resounding "yes," as these and other topics have recently appeared in [News for Tax Professionals](#). The department strives to make it a valuable resource for the timely and accurate information you need. [☞](#)

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Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's web site in December. 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 December 2011 *Sales and Use Tax Report* (Issue 4-11). Links provided are to articles in [News for Tax Professionals](#) concerning the same subject matter.

- Department of Revenue Reform Bill
- [New "Buy One, Get One Free" Tax Release](#)
- Sales Tax Articles Updated
 - [Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles as defined in sec. 340.01 \(48r\), Wis. Stats., Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft by Persons Who are Not Dealers](#)
 - [Sales-Use Tax Exemption: Property Consumed, Destroyed, or Losing Its Identity In Manufacturing](#)
 - [Reporting Sales Tax on Sales of Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft](#)
- When a Business Closes, When is Its Final Return Due?
- *My Tax Account* Upgrade
- Department of Revenue Web Site Redesign
- Sales of Bullion Coins Are Taxable
- Exemptions from the Local Room Tax
- Are Disaster Relief Payments Taxable?
- Credit Card Purchases – Don't Pay Tax Twice
- Businesses – How to Track Your Use Tax Liability [☞](#)

Individuals May Owe Use Tax

Wisconsin sales and use tax must be reported on taxable purchases from out-of-state firms if 1) sales and use tax was not charged and 2) they were stored, used, or consumed in Wisconsin. Wisconsin sales and use tax must also be reported on taxable purchases from a retailer located in another country, regardless of whether any tax for that country or any duty by the U.S. Customs Service was charged. Click [here](#) to learn more about when use tax is due and how to report it. [☞](#)

Electronic Filing Options for Estates and Trusts Expanded

For the 2011 tax year, Form 2 (Wisconsin Fiduciary Income Tax for Estates or Trusts) and Schedule CC (Request for a Closing Certificate for Fiduciaries) may be filed through the department's **free** Wisconsin e-file application. Preparation is as easy as filling out a paper form, but unlike paper filing most of the math is done for you and with one click the return is submitted directly to the department.

Note: Form 2 and Schedule CC may also be [electronically filed](#) through an approved software vendor. [☞](#)

DATCP Reminder: Claiming 2011 Farmland Preservation Credits

The Department of Agriculture, Trade and Consumer Protection (DATCP) recently posted a [press release](#) concerning claiming farmland preservation credits for 2011. Of particular emphasis is filing the correct schedule with the Wisconsin income tax return, so as to not under-claim the credit. [☞](#)

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New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following are brief descriptions of the major individual income tax, excise tax, and other provisions. These provisions are contained in 2011 Acts 37, 49, 67, 68, 76, and 97.

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

Individual Income Taxes (also see “Individual and Fiduciary Income Taxes”)

Federal Treatment of Medical Benefits for Adult Children Adopted (2011 Act 49, create sec. 71.98(2), effective for taxable years beginning on or after January 1, 2011.)

Section 1004(d) of Public Law 111-152 and sec. 105(b) of the Internal Revenue Code, as amended to December 31, 2010, are adopted for Wisconsin income tax purposes. With the adoption of these provisions, the Wisconsin treatment of health insurance benefits for adult children under the age of 27 is the same as the federal treatment.

Donations to Special Olympics (2011 Act 76, amend sec. 20.566(1)(hp) and create secs. 20.255(3)(ge) and 71.10(5k), effective for taxable years beginning on or after January 1, 2012.)

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 Special Olympics Wisconsin, Inc.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the Special Olympics when the individual files the 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 programs for the Special Olympics, the department will 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 will deduct the amount designated on the return for programs for the Special Olympics 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 programs for the Special Olympics (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the Special Olympics 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 Special Olympics, the designation is void.

If a designation for the Special Olympics is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place must be provided on the individual income tax return for designations to the Special Olympics.

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

Excise Taxes

Extended Hours for Retail Liquor Sales (2011 Act 97, amend secs. 125.32(3)(b) and 125.68(4)(b) , effective December 21, 2011.)

The hours during which a Class "A" premises may not sell fermented malt beverages have been changed from between 12 midnight and 8 a.m. to between 12 midnight and 6 a.m.

The hours during which a "Class A" premises may not remain open for the sale of intoxicating liquor have been changed from between the hours of 9 p.m. and 8 a.m. to between the hours of 9 p.m. and 6 a.m. A municipality may, by ordinance, impose more restrictive hours.

Other

Create Development Opportunity Zone in Beloit (2011 Act 37, amend secs. 560.70(7)(b)2. and 560.795(2)(a) and (3)(a)4. and create 560.795(1)(i), (2)(b)9. and (e)3., effective for 60 months beginning on August 1, 2011.)

This Act designates an area in the city of Beloit as a development opportunity zone and authorizes up to \$5,000,000 in tax benefits. "Tax benefits" means the development zone credits under secs. 71.07(2dx), 71.28(1dx), 71.47(1dx), and 76.636, Wis. Stats., and the development zones capital investment credit under secs. 71.07(2dm), 71.28(1dm), and 71.47(1dm), Wis. Stats.

Any person that is conducting or intends to conduct economic activity in a development opportunity zone and that in conjunction with the local governing body of the city in which the development opportunity zone is located, submits a project plan to the Department of Commerce (Wisconsin Economic Development Corporation per Act 32) is entitled to claim tax benefits while the area is designated as a development opportunity zone.

Application Fee for Film Production Services Credit Reduced (2011 Act 67, amend secs. 71.07(5f)(c)6., 71.28(5f)(c)6., and 71.47(5f)(c)6., effective for applications submitted on or after December 2, 2011.)

No film production services credit may be allowed unless the claimant files an application with the Department of Tourism, at the time and in the manner prescribed by the Department of Tourism, and the Department of Tourism approves the application. A fee must be submitted with the application equal to two percent of the claimant's budgeted production expenditures or \$500 (down from \$5,000 under prior law), whichever is less.

Duties of the Department of Revenue Revised (2011 Act 68, amend secs. 71.09(11)(d), 71.78(1m)(a), 71.83(1)(a)1., 1m, 2., 3., and 4., and (3)(a), 72.06, 73.01(4)(e)2., 77.60(2)(intro.), (3), and (4), 77.61(5)(a), 77.76(3), (3m), and (3p), 77.95, 77.982(2) and (3), 77.991(2), 77.9941(5), 77.9951(2), 77.9964(2), 77.9972(2), 78.68(3) and (4), 139.11(4)(a), 139.25(3) and (4), 139.38(6), 139.82(6), 227.12(3), 227.41(1), (3), and (4), 227.483(1), and 803.08 and create secs. 73.015(3), 73.16, 77.61(6), 227.12(4), and 227.41(5), effective March 1, 2012.)

INTEREST AND PENALTIES

- Interest on underpayment of estimated tax does not apply if the Secretary of Revenue determines that the taxpayer retired during the taxable year or during the preceding taxable year after having attained age 62 or becoming disabled. This exception does not apply if the department shows that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause. (sec. 71.09(11)(d), Wis. Stats.)
- In the following situations, prior to amendment by this Act, a penalty applied unless it was shown that such filing or failure to timely file was due to reasonable cause and not due to neglect. Under this Act, the department shall not impose a penalty unless the department shows that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause. This provision first applies to interest on underpayment of estimated tax and penalties imposed on March 1, 2012, regardless of whether the amounts at issue relate to transactions that occurred prior to March 1, 2012.

- Failure to file a return on the due date, including any extension of time for filing, under secs. 71.03 (individual income tax return), 71.24 (corporation income or franchise tax return), 71.44 (insurance company return, or 71.775 (pass-through entity withholding). (sec. 71.83(1)(a)1., Wis. Stats).
- Failure to file information return (sec. 71.83(1)(a)1m., Wis. Stats.)
- Incomplete or incorrect return (sec. 71.83(1)(a)2., Wis. Stats.)
- Incomplete or incorrect deposit or withholding report (sec. 71.83(1)(a)3., Wis. Stats.)
- Late filing of withholding report (sec. 71.83(1)(a)4., Wis. Stats.)
- Late filing of income, franchise, or withholding tax return (sec. 71.83(3)(a), Wis. Stats.)
- Delinquent sales and use tax returns (sec. 77.60(2)(intro.), Wis. Stats.)
- Incorrect sales and use tax return (sec. 77.60(3), Wis. Stats.)
- Failure to file a sales and use tax return (sec. 77.60(4), Wis. Stats.)
- Incorrect motor vehicle fuel tax, general aviation fuel tax, and alternate fuel tax returns (sec. 78.68(3), Wis. Stats.)
- Failure to file a return for motor vehicle fuel tax, alternate fuels tax, or general aviation fuel tax (sec. 78.68(4), Wis. Stats.)
- Incorrect beverage tax return (sec. 139.25(3), Wis. Stats.)
- Failure to file beverage tax return (sec. 139.25(4), Wis. Stats.)

CONFIDENTIALITY PROVISIONS

- The confidentiality provisions are extended to information derived from a return or claim. No person, except the person who filed the return or claim, may inspect a return or claim, or any information derived from a return or claim, that is filed under Chapter 71, Wis. Stats., unless that person does so in performing the duties of his or her position. (sec. 71.78 (1m)(a), Wis. Stats.)
- The criminal penalty for browsing in records (sec. 71.83(2)(a)3m.) is extended to the dry cleaning fees (Sec. 77.9964(2), Wis. Stats.). A person who violates the browsing prohibition shall, upon conviction, be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than six months or both. (sec. 77.9964(2), Wis. Stats.)
- The provisions relating to confidentiality and browsing in secs. 71.78(1m) and 71.83(2)(a) 3m.(see above) also apply to the following:
 - estate tax. (sec. 72.06, Wis. Stats.)
 - beverage taxes (sec. 139.11(4)(a), Wis. Stats.)
 - cigarette taxes (sec. 139.38(6), Wis. Stats.)
 - tobacco products taxes (sec. 139.82(6), Wis. Stats.)

- For sales and use tax purposes, current law provides that it is unlawful for the department or any person having an administrative duty to make known in any manner the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or to permit any return or copy thereof to be seen or examined by any person. This Act provides that this provision does not prohibit employees or agents of the Department of Revenue from informing a buyer or seller who has filed a claim for a refund that a refund has been paid to a seller or buyer with respect to the same transaction. (sec. 77.61(5)(a), Wis. Stats.)
- For sales and use tax purposes, no person, except the person who filed the return or claim, may inspect a return or claim, or any information derived from a return or claim, unless that person does so in performing the duties of his or her position. Violation by a state employee is grounds for dismissal. Any person who violates this provision shall, upon conviction, be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than six months or both.

If any person is charged with a violation, the Secretary of Revenue shall notify each taxpayer whose return or claim was improperly inspected by that person. Any person who is notified may bring an action for damages in regard to the inspection. (sec. 77.61(6), Wis. Stats., as created by this Act.)

This provision also applies to:

- county, transit authority, and special district sales and use taxes (sec. 77.76(3), Wis. Stats.)
- local professional baseball park district taxes sales and use taxes (sec. 77.76(3m), Wis. Stats.)
- local professional football stadium district sales and use taxes (sec. 77.76(3p), Wis. Stats.)
- local exposition district food and beverage tax (sec. 77.982(2), Wis. Stats., as affected by 2011 Act 18)
- a local exposition district that receives a report along with a payment (sec. 77.982(3), Wis. Stats.)
- local rental car tax (sec. 77.991(2), Wis. Stats., as affected by 2011 Act 18)
- premier resort area tax (sec. 77.9941(5), Wis. Stats.)
- state rental vehicle fee (sec. 77.9951(2), Wis. Stats.)
- southeastern regional transit authority fee (sec. 77.9972(2), Wis. Stats., as affected by 2011 Act 18)
- The criminal penalty for browsing in records (sec. 71.83(2)(a)3m., Wis. Stats.) is extended to the Economic Development Surcharge. A person who violates the browsing prohibition shall, upon conviction, be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than six months or both. (sec. 77.95, Wis. Stats.)

TAX APPEALS COMMISSION

- Where the department chooses not to appeal and to nonacquiesce to a decision or order of the Tax Appeals Commission, the decision or order may be cited by the commission and the courts. This applies to determinations that are issued on March 1, 2012, regardless of whether the amounts at issue relate to transactions that occurred prior to March 1, 2012. (sec. 73.01(4)(e)2., Wis. Stats.)
- Except for decisions and orders in small claims matters, a conclusion of law or other holding in any decision or order of the Tax Appeals Commission may be cited by the commission or the courts as authority unless that conclusion of law or holding has been reversed, overruled, or vacated on the merits on appeal or by a subsequent decision or order of the commission. (sec. 73.015(3), Wis. Stats. as created by this Act)

RELYING ON PUBLISHED GUIDANCE

In the course of any determination, or in the course of any proceeding appealing any determination, the department shall not take a position that is contrary to any rule promulgated by the department that was in effect during the period related to the determination or that is contrary to any guidance published by the department prior to that period and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the Tax Appeals Commission or courts.

In the course of any determination, or in the course of any proceeding appealing a determination, the department shall not take a position that is contrary to any written guidance that was provided to a person who is a party to the determination or the appeal of the determination regarding the same facts as in the determination and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the Tax Appeals Commission or courts.

With regard to any position taken by the department as described above, if the department retracts, alters, or amends previously published or previously issued written guidance for any purpose other than to implement a legislative act or final and conclusive decision of the Tax Appeals Commission or courts, the department shall apply the retraction, alteration, or amendment prospectively only, unless the change is to a taxpayer's benefit, in which case, the department shall apply the retraction, alteration, or amendment retroactively. A retroactive change in any previously published or previously issued written guidance related to implementing a legislative act or final and conclusive decision of the Tax Appeals Commission or courts may take effect no earlier than the act's effective date or the date on which the decision became final and conclusive unless otherwise prescribed by the legislature or ordered by the courts.

The department may retroactively apply any rule change that is related to implementing a legislative act or a final and conclusive decision of the Tax Appeals Commission or the courts to take effect no earlier than the act's effective date or the date on which the decision became final and conclusive, unless otherwise prescribed by the legislature, Tax Appeals Commission, or court, and only if the department submits the rule's scope statement to the governor for approval no later than 18 months after the latter of the legislative act's publication date, effective date, or initial applicability date, or the date on which the decision becomes final and conclusive. A retroactive application of a rule change not described in this paragraph shall be subject to approval under sec. 227.185, Wis. Stats.

Definitions:

"Person who is a party to the determination" means a person who requests a determination for that person's benefit, files a claim for refund, or is assessed by the department, but not including any of the following: (1) a person who, on behalf of another person, requests a determination or a claim for a refund or appeals a determination, (2) a shareholder of a tax-option corporation, a member of a limited liability company, or a partner of a partnership, unless such an individual is named or identified in the determination, claim for a refund, or assessment, (3) an anonymous person who requests a determination.

"Published" means prepared and issued for public distribution and does not include guidance on a private matter or issue.

"Written guidance" means a written statement made by an employee of the department acting in an official capacity regarding a Wisconsin tax question to the person or the person's representative.

These provisions apply to all taxes and fees administered by the department.

The provisions first apply to determinations that are issued on or after March 1, 2012, regardless of whether the amounts at issue relate to transactions that occurred prior to March 1, 2012. (sec. 73.16(1), (2), and (5), Wis. Stats., as created by this Act)

PETITION FOR RULES

If a petition to the department establishes that the department has established a standard by which it is construing a state tax statute, but has not promulgated a rule to adopt the standard or published the standard in a manner that is available to the public, the department shall submit a statement of the scope of the proposed rule to the governor no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, the department shall submit the proposed rule in final draft form to the governor for the governor's approval. At the department's request, the governor may, at any time prior to the expiration of any deadline, extend the time for submitting the statement or proposed rule in draft form for any period not to exceed 60 days. The governor may grant more than one extension, but the total period for all such extensions may not exceed 120 days. The rule need not adhere to the standard established by the department, but shall address the same circumstances as the standard addresses.

If the department fails to comply, any of the petitioners may commence an action in circuit court to compel the department's compliance. If an action is commenced, the court may compel the department to provide information to the court related to the degree to which the department is enforcing the standard, except that the information provided by the department shall not disclose the identity of any person who is not a party to the action. (sec. 227.12(4), Wis. Stats., as created by this Act)

DECLARATORY RULINGS

The Department of Revenue shall, on petition by any interested person, or any group or association of interested persons, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by it. The department may issue a declaratory ruling on the facts contained in the petition. If the department does not deny the petition or issue a declaratory ruling on the facts contained in the petition, the department shall hold a hearing, as provided under sec. 227.44, Wis. Stats., and shall afford all interested parties an opportunity to participate in the hearing. A declaratory ruling shall bind the department and all parties to the proceedings on the statement of facts contained in the ruling, unless it is altered or set aside by the Tax Appeals Commission or a court or the applicable rule or statute is repealed or materially amended. A ruling, including the denial of the petition, shall be subject to review by the Tax Appeals Commission.

A petition shall conform to the following requirements and be filed with the Secretary of Revenue:

- (a) The petition shall be in writing and its caption shall include the name of the agency and a reference to the nature of the petition.
- (b) The petition shall contain a reference to the rule or statute with respect to which the declaratory ruling is requested, a concise statement of facts describing the situation as to which the declaratory ruling is requested, the reasons for the requested ruling, and the names and addresses of persons other than the petitioner, if any, upon whom it is sought to make the declaratory ruling binding.
- (c) The petition shall be signed by one or more persons, with each signer's address set forth opposite the signer's name, and shall be verified by at least one of the signers. If a person signs on behalf of a corporation, limited liability company or association, that fact also shall be indicated opposite that person's name.

No later than 30 days after the day that the Secretary receives a petition, the department shall deny the petition in writing, issue a notice that it will issue a declaratory ruling on the facts contained in the petition, in which case the department shall issue the ruling no later than 90 days after issuing the notice, or schedule the matter for a hearing.

The department may deny the petition only if the petition fails to comply with the requirements in (a) through (c) above or it is not filed with the Secretary of Revenue, or if the department determines that the petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or the ruling would substitute for other procedures available to the parties for resolution of the dispute. If the department denies the petition, it shall promptly notify the person who filed the petition of its decision and include with the notice a brief statement of the reasons for denying the petition. The department may not deny a petition for lack of a justiciable controversy solely because the only parties to the matter are the petitioner and the department.

If the department does not deny the petition, or issue a notice that it will issue a declaratory ruling based on the facts contained in the petition, the department shall hold a hearing and determine, no later than 180 days after the Secretary receives the petition, whether the petitioner has presented sufficient facts from which to issue a declaratory ruling. The department, petitioner, and other parties may take and preserve evidence prior to and during the hearing using the methods allowed to parties under sec. 227.45, Wis. Stats. With the agreement of the parties, the department may rule on the petition based on facts stipulated by the parties.

If the department determines that it does not have sufficient facts from which to issue a declaratory ruling, the department may deny the petition. If the department determines that it has sufficient facts from which to issue a declaratory ruling, the department shall issue a ruling on the merits of the petition no later than 180 days after the determination, unless the deadline is extended by written agreement of all parties. The ruling may deny the petition on the grounds that petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or that the ruling would substitute for other procedures available to the parties for resolution of the dispute.

These provisions first apply to petitions filed on March 1, 2012. (sec. 227.41(5), as created by this Act).

If a hearing examiner or the Tax Appeals Commission finds, at any time during the proceeding, that an administrative hearing commenced or continued by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner or Tax Appeals Commission shall award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the frivolous petition, claim, or defense. This provision in sec. 227.483(1) was amended to add the reference to the Tax Appeals Commission. The amendment first applies to determinations that are issued on March 1, 2012, regardless of whether the amounts at issue relate to transactions that occurred prior to March 1, 2012.

CLASS ACTIONS

- Effective for lawsuits that are commenced on or after March 1, 2012, when the question before the court is one of a common or general interest of many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole, except that no claim may be maintained against the state or any other party if the relief sought includes the refund of or damages associated with a tax administered by the state (sec. 803.08, Wis. Stats.). [☞](#)

Sales and Use Tax Guidance

Pages 10 to 14 provide explanations and examples concerning the following topics:

- The treatment of sales and purchases of ingredients, equipment, and supplies used in the home brewing of beer for personal consumption (page 10).
- The sale and installation of walk-in bathtubs (page 11).
- How county and stadium sales and use taxes apply to sales of boats and trailers, both when sold as a package and separately (page 11).
- Charges for remote deposit capture services (RDACS) provided by financial institutions, and the purchases of the necessary equipment and prewritten computer software provided by the financial institutions to customers using the RDACS (page 12).
- Charges for fuel made by a rental car company together with the rental of a motor vehicle (page 13).
- Collecting sales or use tax on advertising and promotional direct mail (page 13).

Home Beer Brewing Ingredients, Equipment, and Supplies

Ingredients

Certain products used to make beer are a “food or food ingredient” and qualify for exemption from Wisconsin sales and use tax. Examples of items exempt from Wisconsin sales and use tax when used in the home brewing of beer for personal consumption include:

- Malts - extracts, powders, grains
- Unmalted grains - corn, rice, barley, rye, wheat, oats
- Adjuncts - corn and rice powders or syrups, honey
- Hops - leaf, pellets, frozen, and extracts
- Maltodextrine
- Priming sugars - corn sugar, cane sugar, and "candi" sugars, except "candi" sugars sold in the form of bars, drops, or pieces, which are taxable as the sale of a food or food ingredient that is "candy"
- Flavorings - extracts, herbs, and botanicals
- Lactose
- Brewing yeast - liquid or dried
- Distilled water
- Fruit juice - must be more than 50% fruit juice by volume to be exempt. If less than 50% fruit juice by volume, it is taxable as a soft drink.
- Water chemicals - calcium carbonate, Epsom salts, gypsum, non-iodized salt, burtonisation salts, phosphoric acid, lactic acid. If the product is labeled for sale with a "supplement (al) facts box" on the packaging, it is taxable as a food or food ingredient that is a "dietary supplement."

For additional information relating to the exemption for food and food ingredients, see [Publication 220, Grocers](#).

Equipment and Supplies

Sales of equipment and supplies such as brewing pots, plastic buckets, carboys, fermentation locks, thermometers, wort chillers, siphon tubes, plastic hoses, bottles, bottle caps, bottle cappers, and beer labels are taxable. Supplies used or consumed in making and storing the beer, such as cleaners, sanitizers are also taxable.

Clarifiers and fining agents such as Irish moss, bentonite, and polyclar that are used to filter the beer during the home brewing process are also taxable. Although some clarifiers and fining agents may be ingested or chewed, they do not qualify for the exemption from Wisconsin sales and use tax for food and food ingredients because they are not ingested or chewed for their taste or nutritional value.

Home Beer Brewing Kits

Home beer brewing kits that contain a combination of taxable and nontaxable products (i.e., equipment and supplies and food and food ingredients) and sold for a single non-itemized price are subject to Wisconsin sales and use tax if more than 50% of the sales price and purchase price of the products contained in the kit relates to the taxable products. If 50% or less of the sales price or purchase price of the products contained in the kit relates to the taxable products, the entire selling price of the home beer brewing kit is exempt from Wisconsin sales and use tax. See [sec. Tax 11.985, Wis. Adm. Code \(November 2010 Register\)](#), for additional information on "bundled transactions."

Mobility-Enhancing Equipment - Walk-In Bathtubs

Walk-in bathtubs are "mobility-enhancing equipment" and are exempt from Wisconsin sales and use taxes if they are generally not used by a person who has normal mobility.

The sale and installation of a walk-in bathtub in an individual's home is a real property construction activity and is not subject to Wisconsin sales or use tax. The sale of the walk-in bathtub to the contractor is exempt from Wisconsin sales and use taxes as long as the tub is generally not used by a person who has normal mobility.

Example: Individual A has limited mobility and cannot get into a standard bathtub. Individual A hires Contractor B to provide and install a walk-in bathtub for \$7,000. Contractor B purchases the walk-in bathtub from Supplier C for \$4,000. The \$7,000 charge by Contractor B to Individual A for the sale and installation of the walk-in bathtub is not subject to Wisconsin sales or use tax since this is a real property construction activity. The \$4,000 charge from Supplier C to the contractor is not subject to Wisconsin sales or use tax since the walk-in tub is mobility-enhancing equipment. (**Note:** If in this example the walk-in bathtub was generally used by a person who has normal mobility, the purchase of the walk-in bathtub by the contractor would be subject to Wisconsin sales or use tax.)

Boats and Trailers: Determining Which County and Stadium Taxes Apply

This information applies to sales of boats and trailers on and after October 1, 2009.

Sales of Boats and Accessories

For a boat that must be registered or titled in Wisconsin, county and stadium sales and use taxes are imposed based on where the boat is customarily kept. The 'boat' subject to the tax includes all accessories affixed or attached to the boat when in use. Anchors, boat cushions, marine radios, radar equipment, and other similar accessories are included as part of the sale of the boat.

Sales of Trailers

For trailers, county and stadium tax is first imposed based on the location where the sale of the trailer takes place. If the sale of the trailer is not subject to county or stadium tax based on where the sale takes place, then the county and/or stadium use tax is imposed based on where the trailer is stored or used.

Sales of Boat Packages

For boat packages, for example, boat, motor and other accessories, and trailer sold for a single price, the sales price of the package must be assigned reasonably between (1) the boat, motor and other accessories, and (2) the trailer. County and stadium sales and use tax on the boat, motor, and other accessories is imposed based on where the boat, motor, and other accessories will be customarily kept, and county and stadium sales and use tax on the trailer will be imposed based first on where the sale of the trailer takes place and then on where the trailer is stored or used. Additional information regarding the sourcing of boats and trailers is provided in [Publication 201](#), Appendix I.

Example 1: Boat Dealer X is located in Dane County. Dane County has adopted the 0.5% county sales and use tax. Boat Dealer X sells a boat and trailer to Individual Y. Boat Dealer X charges \$5,000 for the boat and \$750 for the trailer. Individual Y picks up the boat and trailer at Boat Dealer X's location in Dane County. The boat and trailer will be customarily kept in Rock County. Rock County has also adopted the 0.5% county sales and use tax. Boat Dealer X must collect the 0.5% Rock County sales and use tax on the \$5,000 sale of the boat since that is where the boat is customarily kept and the 0.5% Dane County sales and use tax on the \$750 sale of the trailer since Individual Y picked up the trailer at Boat Dealer X's location in Dane County. (**Note:** Although the trailer will also be stored in Rock County, since Individual Y was first required to pay the 0.5% Dane County sales tax on the trailer, no Rock County use tax is due on the trailer.)

Example 2: Boat Dealer F is located in Winnebago County. Winnebago County has **not** adopted the 0.5% county sales and use tax. Boat Dealer F sells a boat and trailer to Individual O. Boat Dealer F charges \$8,000 for the boat and \$1,000 for the trailer. Individual O picks up the boat and trailer at Boat Dealer F's location in Winnebago County. The boat and trailer will be customarily kept in Shawano County. Shawano County has also adopted the 0.5% county sales and use tax. Boat Dealer F must collect the 0.5% Shawano County sales and use tax on the \$8,000 sale of the boat since that is where the boat is customarily kept. Boat Dealer F is not required to collect any county sales or use tax on the sale of the trailer in this example since Individual O picked up the trailer at Boat Dealer F's location in Winnebago County and Winnebago County has not adopted the 0.5% county sales and use tax. (**Note:** Boat Dealer F may choose to collect the 0.5% Shawano County use tax due on the \$1,000 sale of the trailer for the convenience of Individual O. If Boat Dealer F does not collect the 0.5% Shawano County use tax, Individual O is required to remit the 0.5% Shawano County tax directly to the state since Individual O stored, used, or consumed the trailer in Shawano County.)

Example 3: Boat Dealer A is located in Dane County. Dane County has adopted the 0.5% county sales and use tax. Customer B purchases a boat package that includes a boat, motor, fish finder, and trailer for \$20,000. The amounts for the boat, motor, fish finder, and trailer are not separately stated on the invoice provided to the customer. Customer B picks up boat, motor, fish finder, and trailer at Boat Dealer A's location in Dane County and brings them to Brown County, where they are customarily kept. Brown County has adopted the 0.5% football stadium tax.

In this example, Boat Dealer A must make a reasonable assignment of the \$20,000 sales price of the boat package between (1) the boat, motor, and fish finder and (2) the trailer. Boat Dealer A must collect Brown County's 0.5% football stadium sales and use tax on the amount assigned to the boat, motor, and fish finder since that is where the boat, motor, and fish finder are customarily kept and must collect Dane County's 0.5% county sales and use tax on the trailer since that is where Customer B picked up the trailer (i.e. that is where the sale of the trailer is sourced).

Example 4: Boat Dealer X is located in Dane County. Dane County has adopted the 0.5% county sales and use tax. Boat Dealer X sells a boat and trailer to Individual Y. Individual Y is a resident of Illinois and will keep the boat and trailer at a location outside Wisconsin. Boat Dealer X charges \$5,000 for the boat and \$750 for the trailer. Individual Y picks up the boat and trailer at Boat Dealer X's location in Dane County. Boat Dealer X must collect the 5% Wisconsin state tax on the entire \$5,750 and must also collect the 0.5% Dane County sales and use tax on the \$750 sale of the trailer since Individual Y picked up the trailer at Boat Dealer X's location in Dane County. No county or stadium tax will be collect on the sale of the boat since the boat is customarily kept outside Wisconsin.

Remote Deposit Capture Services (RDCS)

"Remote deposit capture service," as used in this article, is the electronic capturing of a check image at a remote location for deposit into an account at a financial institution. Merchants using RDCS scan checks they receive at their location and then send the scanned images to the financial institution providing the RDCS, for posting and clearing.

The financial institution offering the service purchases equipment, such as a check scanner, and certain prewritten computer software that it provides to its customers that use the RDCS. The financial institution requires any customer that uses their RDCS to obtain the necessary equipment and software from them. In return for providing the equipment and software necessary to use the RDCS, the financial institution charges the customer a monthly fee for the use of the scanner, prewritten computer software, and system support, in addition to a per item charge for each check and a deposit charge for each deposit captured remotely.

The objective of the financial institution's customer is to obtain the RDCS and not to obtain the scanner and prewritten computer software that was provided by the financial institution. Therefore, the entire transaction is considered the sale of a nontaxable service and the scanner and prewritten computer software are furnished to the customer incidentally to the service.

The monthly charges by the financial institution for the use of the scanner, prewritten computer software, system support, per item check charge and per deposit charge are not subject to Wisconsin sales or use tax. However, the financial institution is required to pay Wisconsin sales or use tax on its purchases of the scanners and prewritten computer software it furnishes to its customers who are using the RDCS.

The charge by the financial institution to the customer for the use of the equipment and software is subject to Wisconsin sales or use tax if the charge is separate and optional from the RDCS. The financial institution may purchase the equipment and software without tax for resale.

Fuel Charges Related to Rental Cars

Separate and optional charges for motor vehicle fuel by a rental car company to a person who rented a motor vehicle are not subject to Wisconsin sales and use tax if the proper excise taxes were paid by the rental car company to the motor vehicle fuel supplier.

Example 1: ABC Car Rental is a short-term car rental provider. ABC charges Customer XYZ for the use of a rental car. If Customer XYZ returns the car with a full tank of gas, ABC does not charge Customer XYZ for any motor vehicle fuel. However, if Customer XYZ doesn't return the car with a full tank of gas, ABC fills up the tank and charges Customer XYZ \$6 per gallon for each gallon of fuel needed. This charge covers ABC's cost of the fuel, mark-up on the fuel and any related overhead costs. ABC pays the appropriate motor vehicle excise taxes on the fuel when ABC purchases it from its supplier. The \$6 per gallon charge by ABC is not subject to Wisconsin sales or use tax since this was a separate and optional charge made by ABC (i.e., the customer chose to pay this fee rather than fill up the car with gas) and because ABC paid the appropriate motor vehicle excise tax when it purchased the motor vehicle fuel.

Example 2: Same as Example 1, except that ABC offers Customer XYZ the option of "prepaying" for a full tank of gas and then not having to worry about filling up the car with gas before returning it to ABC. This charge is a flat \$35 fee. The \$35 fee charged by ABC is not subject to Wisconsin sales or use tax since this is a separate and optional charge made by ABC specifically for fuel.

Collecting Sales or Use Tax on Advertising and Promotional Direct Mail

A seller of advertising and promotional direct mail is required to collect sales or use tax based on the location from which it was shipped unless:

- The purchaser gives an exemption certificate claiming direct mail. The seller will collect no Wisconsin sales or use tax. The purchaser is responsible for remitting Wisconsin state, county and stadium use tax based on the recipient's tax jurisdiction (county).
- The purchaser provides each recipient's tax jurisdiction information (i.e., county). The seller will collect Wisconsin, state, county and stadium tax based on the recipient's tax jurisdiction.

Question: What Wisconsin sales or use tax does a seller of advertising and promotional direct mail collect if recipients' addresses are provided as jurisdiction information and that information is insufficient to determine the correct county of the recipient, for example, only the 5-digit zip code is provided as part of the mailing address?

Answer: The seller should collect and remit **Wisconsin state** sales or use tax on sales of advertising and promotional direct mail to recipients with Wisconsin addresses. Since insufficient information is provided for the seller to collect the correct county and stadium tax, the seller should collect and remit county and stadium sales or use tax based on the county from which the advertising and promotional direct mail was shipped (assuming it is a Wisconsin county).

Example 1: Printer D, who holds a Wisconsin seller's permit, sells advertising and promotional direct mail to Business A. Ten percent (10%) of the advertising and promotional direct mail is delivered to recipients in Wisconsin. Business A gives Printer D a completed exemption certificate claiming the direct mail exemption. Printer D should not collect and remit Wisconsin state, county, or stadium sales and use taxes on its sale of the advertising and promotional direct mail to Business A.

Business A is subject to Wisconsin state, county and stadium use tax on 10% of the advertising and promotional direct mail delivered to recipients in Wisconsin. Business A is responsible for determining the correct county where each piece of direct mail was delivered.

Example 2: Printer S, who holds a Wisconsin seller's permit, sells 50,000 pieces of advertising and promotional direct mail to Company O. Printer S ships the direct mail from its printing plant in Minnesota to recipients both in and outside Wisconsin.

Company O provides Printer S with a list of 5-digit zip codes and number of mail pieces to be delivered to each zip code. Based on this information, Printer S determines that 40% of the advertising and promotional direct mail is to be delivered to recipients in Wisconsin, but the information is not sufficient to determine the county where each piece is delivered. A nine-digit zip code is necessary to determine the correct county.

Printer S should collect **Wisconsin state** sales and use tax on 40% of the advertising and promotional direct mail sold to Company O.

Example 3: Printer K sells 50,000 pieces of advertising and promotional direct mail to Company T. Printer K ships the direct mail from its printing plant in Waukesha County to a U.S. Post Office in Milwaukee County for mailing to recipients both in and outside Wisconsin.

Company T provides Printer K with a list of 5-digit zip codes and number of mail pieces to be delivered to each zip code. Based on this information, Printer K determines that 40% of the advertising and promotional direct mail is to be delivered to recipients in Wisconsin, but the information is not sufficient to determine the county where each piece is delivered. A nine-digit zip code is necessary to determine the correct county.

Printer K should collect **Wisconsin state and baseball stadium** sales and use tax on 40% of the advertising and promotional direct mail sold to Company T. Printer K shipped the advertising and promotional direct mail from Waukesha County. Waukesha County has no county sales and use tax, but it is a part of the baseball stadium district.

Example 4: Printer P, who holds a Wisconsin seller's permit, sell's 100,000 pieces of advertising and promotional direct mail to Company Z. Printer P prints and ships the direct mail from its plant in La Crosse County.

Company Z provides Printer P a list of all Wisconsin counties, and the number of mail pieces to be delivered to recipients in each county (35,000 total), along with a statement that all of the remaining flyers (65,000) be delivered to recipients outside Wisconsin.

Printer P should collect and remit **Wisconsin state, county and stadium** sales or use tax on 35,000 pieces of direct mail, as applicable, based on the county list provided by Company Z. [☞](#)

Recently Updated Publications

Income and Franchise Taxes

- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (12/11)
- 104 Wisconsin Taxation of Military Personnel (11/11)
- 106 Wisconsin Tax Information for Retirees (12/11)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2011 (12/11)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (12/11)
- 119 Limited Liability Companies (LLCs) (12/11)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (12/11)
- 121 Reciprocity (12/11)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin (12/11)
- 123 Business Tax Credits (12/11)
- 125 Credit for Tax Paid to Another State (12/11)
- 126 How Your Retirement Benefits are Taxed (12/11)
- 127 Wisconsin Homestead Credit Situations and Solutions (12/11)
- 503 Wisconsin Farmland Preservation Credit (12/11)

Sales and Use Taxes

- 204 Sales and Use Tax Information for Colleges, Universities, and Technical Colleges (12/11)
- 206 Golf Courses – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (12/11)

Other Topics

- 115 Handbook for Federal/State Electronic Filing (1/12)
- 117 Guide to Wisconsin Information Returns (11/11)
- 509 Filing Wage Statements and Information Returns Electronically (11/11)

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. [↗](#)

Withholding Tax Update Available

The 2011 [Withholding Tax Update](#) was posted to the department's web site in December. Articles in the update are listed below.

- Current Withholding Rates to Apply for 2012
- Recent Legislation Relating to Health Care Benefits for Adult Children under 27
- Filing Frequency Changes
- Reminder – Use Your Withholding Tax Account Number
- 2011 Treatment of Health Savings Accounts
- Withholding Deposit Report (WT-6) Filing Options
- Annual Reconciliation (WT-7) Form Changes
- Annual Reconciliation (WT-7) Filing Options
- Form W-2 Electronic Filing
- Federal Wage Statements and Information Returns
- Transit Pass & Commuter Fringe Benefits
- Wisconsin/Minnesota Income Tax Reciprocity Study
- New! Job Creation Deduction
- New! Relocated Business Credit or Deduction
- *My Tax Account* Update – Upgrade in December!
- Employees Claiming Exemption from Withholding (Forms W-4 and WT-4)
- New Hire Reporting Requirement
- Reminder Relating to Third Party Sick Pay
- Pass-Through Entities: Quarterly Estimated Payments
- Reminder Relating to Professional Employer Organizations
- Withholding Tax Electronic Mailing List
- Request a Withholding Appeal
- Where to Direct Questions [↗](#)