



# Wisconsin Department of Revenue

## **TAX BULLETIN**

**August 2012**  
Number 176

If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, [subscribe](#) to the sales and use tax or tax professional electronic mailing list.

### **In This Issue**

	<b>Page</b>
Survey Says .....	1
Frac Sand Mining and Processing in Wisconsin .....	1
50 Years of Sales and Use Tax in Wisconsin .....	2
Index of Reference Material Available .....	2
Customer Notices Redesigned and Improved .....	3
Publication Update .....	3
<i>Sales and Use Tax Report</i> Available .....	4
Wisconsin/Minnesota Sales Tax Seminars .....	4
Tax Releases .....	5

### **Survey Says...**

In April, the Department of Revenue (DOR) launched a *Wisconsin Tax Bulletin* and *Sales and Use Tax Report* readers' survey. Although the responses were mostly positive, concerns were expressed and suggestions offered. The survey results and all comments are being reviewed and, as demonstrated by the new look of the *Wisconsin Tax Bulletin*, have already brought change to the resources and services DOR provides you. Thank you to the over 900 participants who completed the survey!

### **Frac Sand Mining and Processing in Wisconsin**

Wisconsin sand is used for many purposes, including the extraction of oil and gas through a process called "fracking." Sand that goes through or will go through the process of "fracking" is often referred to as "frac sand."

When a company obtains frac sand through the purchase or lease of real property, the company's cost to obtain the frac sand is not subject to Wisconsin sales or use taxes. Receipts from the lease of land that grants the lessee the right to extract frac sand from the property are not subject to Wisconsin sales or use taxes (the leasing of real property is not taxable).

The sale of frac sand **in** Wisconsin is subject to tax. A sale is in Wisconsin if possession is transferred to the purchaser in Wisconsin. When frac sand is extracted in Wisconsin and delivered to a purchaser outside Wisconsin, the sale occurs outside Wisconsin and is not subject to Wisconsin sales tax.

Washing, cleaning, grading and drying of mineral deposits to produce frac sand for sale is "manufacturing." Wisconsin law provides exemptions from sales and use taxes for certain machinery and processing equipment, consumables, and fuel and electricity used in manufacturing.

More information is available in the Department of Revenue's new common questions titled "[Frac Sand Mining and Processing](#)."

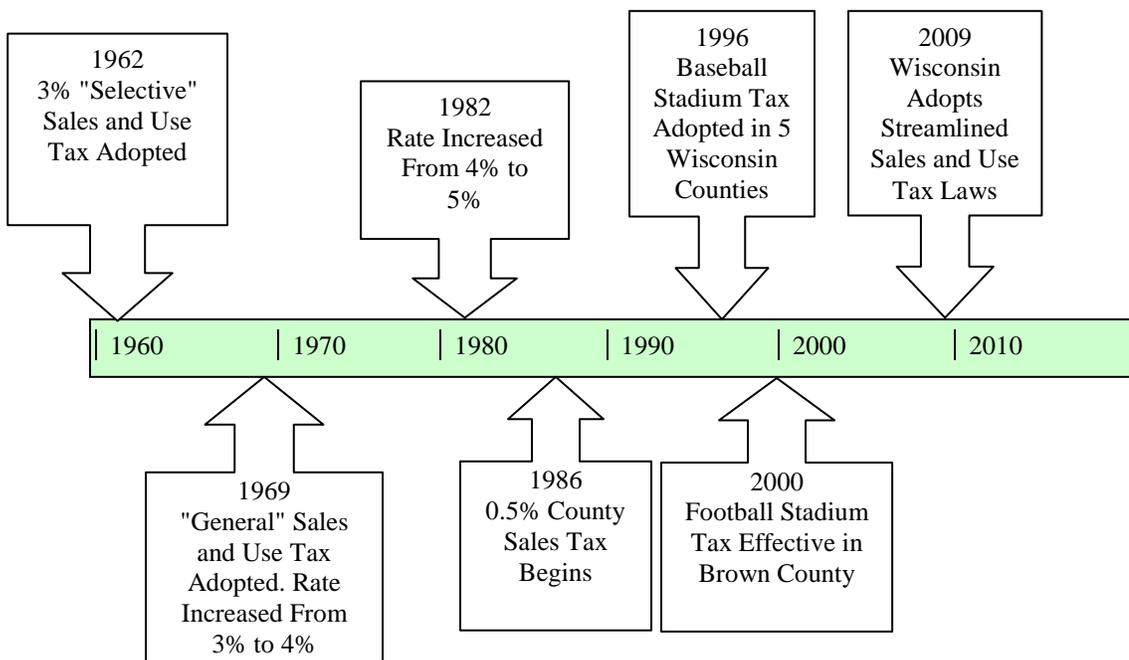
## 50 Years of Sales and Use Tax in Wisconsin

In 1962, John F. Kennedy was president, John Glenn became the first American in orbit, and the Green Bay Packers won the NFL championship. The average yearly income was about \$6,000 and the cost of a new car was about \$3,000.

Also in 1962, Wisconsin adopted a sales and use tax. It began on February 1, 1962, as a 3% "selective" sales and use tax, meaning the tax only applied to products and services specifically listed in the law. Phonographs, records, and admissions to movie theaters costing more than 75 cents are examples of some of the products and services that were taxable. It was September 1, 1969, when a "general" sales and use tax on tangible personal property (TPP) was adopted, meaning all retail sales of TPP in Wisconsin were taxable unless an exemption applied.

That first year, sales and use tax collections were about \$55 million (compared to current sales and use tax collections of about \$4 billion annually). Things have changed since 1962. The timeline below shows some of the major changes in Wisconsin sales and use taxes over the years.

Although sales and use taxes account for a significant portion of Wisconsin's total general purpose revenue, nearly 32%, Wisconsin's sales and use tax rate is one of the lowest in the country. This helps make Wisconsin a great place to live and do business!



## Index of Reference Material Available

Are you looking for an easy way to locate reference material to research a Wisconsin tax question? The [Wisconsin Topical and Court Case Index](#) may be just what you need. This two-part index will help you find reference material relating to income, franchise, withholding, sales and use, and excise taxes.

The "Topical Index" portion lists by tax type, alphabetically by subject, references to Wisconsin statutes, administrative rules, tax releases, private letter rulings, Wisconsin tax publications, *Sales and Use Tax Reports*, *Withholding Tax Updates*, Attorney General opinions, and *Wisconsin Tax Bulletin* articles. The "Court Case Index" lists by tax type, alphabetically by issue, decisions of the Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court.

## Customer Notices Redesigned and Improved

The Wisconsin Department of Revenue (DOR) launched two redesigned notices this spring, as part of an overall effort to improve service to our customers. The new Notice of Amount Due and Notice of Refund use plain language and a simpler layout to make them easier to understand.

The effort to redesign customer notices began last year with a team of employees who analyzed customer feedback and recommended improvements, including:

- A single, clearly labeled amount due that matches line item detail
- Answers to commonly asked questions on the first page
- Line item detail organized in a table, with written explanations listed below
- More white space, shaded headings, and bullet points
- Revised language that is simple, clear, and easy to understand

Before and after examples of DOR notices are posted on our web site. We will continue to roll out redesigned notices throughout the year.

## Publication Update

### Sales and Use Taxes

- [203](#) Sales and Use Tax Information for Manufacturers (Revised 5/12)
- [205](#) Use Tax Information for Individuals (Discontinued\*)
- [209](#) Sales and Use Tax Information for Wisconsin Counties and Municipalities (Revised 6/12)
- [212](#) Businesses: Do You Owe Use Tax on Imported Goods? (Discontinued\*)
- [213](#) Travelers: Don't Forget About Use Tax (Discontinued\*)
- [214](#) Businesses: Do You Owe Use Tax? (Discontinued\*)
- [221](#) Farm Suppliers and Farmers: How Do Wisconsin Sales and Use Taxes Affect Your Operations? (Revised 7/12)
- [231](#) Sales and Use Tax Treatment of Manufactured and Modular Homes (New 6/12)
- [240](#) Digital Goods: How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods? (Revised 5/12)
- [410](#) Local Exposition Taxes (Revised 6/12)

\* See [Wisconsin Use Tax Fact Sheet](#)

### Excise Taxes

- [MF-106](#) Alternate Fuel Tax Information (Revised 5/12)
- [MF-107](#) Motor Vehicle Fuel Tax Information (Revised 5/12)
- [MF-108](#) General Aviation Fuel Tax Information (Revised 5/12)

All [publications](#) of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue 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 in June. 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 June 2012 *Sales and Use Tax Report* (Issue 2-12). Links provided are to articles in [News for Tax Professionals](#) concerning the same subject matter.

- New Publications
- Articles Posted to the Department's Web Site
  - [Are Sales of Eyeglasses Taxable?](#)
  - [Sales of Gift Baskets](#)
  - [Providing Clean Towels and Uniforms](#)
- Top 10 Reasons to Visit the Department of Revenue's (DOR's) Web Site
- Landscaping and Lawn Maintenance Services

### **Wisconsin/Minnesota Sales Tax Seminars**

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in October 2012. The seminars will provide an overview of Minnesota and Wisconsin sales and use tax laws for companies that do business in both states. They are designed for business owners, bookkeepers, purchasing agents and accountants who need a working knowledge of each state's laws and how to meet their obligations. Topics covered will include:

- who needs to register for sales and use taxes in Minnesota, Wisconsin, or both states;
- what cities, counties and other jurisdictions in each state have local taxes;
- what's taxable in each state;
- exceptions to the general taxation rules and exemptions; and
- how and when to use or accept an exemption certificate.

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



# 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. Clean Towel and Uniform Providers .....	5
2. Movable Storage Containers .....	8
3. Sales of Discounted Certificates and Product Vouchers .....	10

## SALES AND USE TAX

### 1 Clean Towel and Uniform Providers

**Statutes:** Sections [77.52\(2\)\(a\)6.](#) and [10.](#), and [77.54\(2\)](#), Wis. Stats. (2009-10).

**Wis. Adm. Code:** Section Tax [11.72\(2\)](#), Wis. Adm. Code (May 2010 Register), and sec. Tax [11.41\(2\)\(a\)15.](#), Wis. Adm. Code (November 2010 Register)

**Introduction:** The tax treatment of services and products provided by clean towel and uniform providers depends on whether (1) the towels or uniforms are owned by the provider, and (2) whether a valid exemption exists. This tax release provides examples of sales by clean towel and uniform providers.

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

The following examples illustrate the tax treatment when the towel and uniform provider owns the towels and uniforms versus when a laundry service is provided to the towels and uniforms.

#### Index to Examples

- *Example 1 – Towel Service Owns Towels, Exempt Rental of Towels (page 6)*
- *Example 2 – Towel Service Owns Towels, Taxable Rental of Towels (page 6)*
- *Example 3 – Towel Service Owns Towels, Purchases Laundry Service to Towels (page 6)*
- *Example 4 – Towel Service Does Not Own Towels, Towel Service Provides Laundry Services (page 6)*
- *Example 5 – Uniform Provider Rents Smocks, Laundry Services Included (page 7)*
- *Example 6 – Uniform Provider Rents Smocks, Separate and Optional Charge for Laundry Services (page 7)*

**Example 1 – Towel Service Owns Towels, Exempt Rental of Towels:**

- Towel Service provides a supply of towels to Manufacturer for a monthly fee. The fee is based on the number of towels that Manufacturer uses.
- Manufacturer's only use of the towels is to clean machinery to prevent contamination of its product during its manufacturing process. The manufactured products (tangible personal property) are sold to Manufacturer's customers.
- Towel Service retains ownership of the towels and makes no use of the towels other than to provide them to Manufacturer.
- It is the responsibility of Towel Service to maintain and provide a supply of clean towels. Towel Service's monthly fee is not reduced if Manufacturer chooses to clean the towels all or some of the time.
- Periodically, Towel Service picks up soiled towels and provides clean towels to Manufacturer.
- Towel Service cleans the soiled towels.
- Towel Service continues to provide the cleaned towels to Manufacturer until the towels can no longer be cleaned.
- The towels are then disposed of by Towel Service.
- Manufacturer is required to return each towel to Towel Service that it receives, even if it is no longer in a usable condition.

**Tax Treatment for Example 1:** Towel Service is renting the towels to Manufacturer and may purchase these towels without tax for resale. Manufacturer may provide a fully completed exemption certificate to Towel Service claiming the exemption for rental of tangible personal property (the towels) that is used exclusively and directly by a manufacturer in manufacturing tangible personal property and is consumed or destroyed in the manufacture of tangible personal property destined for sale (sec. [77.54\(2\)](#), Wis. Stats. (2009-10)).

**Example 2 – Towel Service Owns Towels, Taxable Rental of Towels:** Same as *Example 1*, except that Manufacturer's employees use the towels to clean tools after working on the machinery.

**Tax Treatment for Example 2:** Towel Service is renting the towels to Manufacturer and may purchase these towels without tax for resale. Manufacturer's rental of the towels is subject to tax, and Manufacturer may not provide Towel Service with an exemption certificate.

**Example 3 – Towel Service Owns Towels, Purchases Laundry Service to Clean the Towels:** Same as *Example 1*, except that when Towel Service picks up the towels from Manufacturer, Towel Service hires Laundry Service to clean the towels.

**Tax Treatment for Example 3:** The tax treatment is the same as the tax treatment stated in *Example 1*. Towel Service may provide Laundry Service with an exemption certificate claiming resale for its purchase of laundry services to towels that it rents to Manufacturer. The tax on laundry services does not apply to property that is only held for sale or rental (sec. [77.52\(2\)\(a\)6.](#), Wis. Stats. (2009-10)).

**Example 4 – Towel Service Does Not Own Towels, Towel Service Provides Laundry Services:**

- Manufacturer purchases towels from Vendor.
- Manufacturer hires Towel Service to clean the towels for a monthly fee.
- Manufacturer's only use of the towels is to clean machinery to prevent contamination of its product during the manufacturing process. The manufactured products (tangible personal property) are sold to Manufacturer's customers.

- Periodically, Towel Service picks up soiled towels from Manufacturer.
- Towel Service cleans the soiled towels and returns the towels to Manufacturer.
- Towel Service continues to clean the towels owned by Manufacturer until the towels can no longer be cleaned.
- The towels are then disposed of by Towel Service or Manufacturer.

**Tax Treatment for Example 4:** When purchasing the towels, Manufacturer may provide Vendor an exemption certificate claiming the exemption for tangible personal property (the towels) that is consumed or destroyed in the manufacture of tangible personal property destined for sale (sec. [77.54\(2\)](#), Wis. Stats. (2009-10)).

Towel Service's sale of laundry services to Manufacturer's towels is subject to Wisconsin sales or use tax. Manufacturer may not provide Towel Service with an exemption certificate claiming the exemption in sec. [77.54\(2\)](#), Wis. Stats. (2009-10).

Although Manufacturer's purchase of the towels qualifies for exemption, the laundry service to such towels is subject to tax. There is no exemption or exclusion in the law for receipts from laundering services for property (towels) that is exempt (unless the property is exempt for resale).

The imposition of tax on laundry services under sec. [77.52\(2\)\(a\)6](#), Wis. Stats. (2009-10), does not exclude laundry services if the underlying property is exempt. While an exclusion is provided for cleaning services to exempt property under sec. [77.52\(2\)\(a\)10](#), Wis. Stats. (2009-10), there is no similar exclusion for laundry services. Although laundry services are cleaning services, there is a separate, specific imposition of tax on laundry services. Therefore, we must look to this more specific imposition in sec. [77.52\(2\)\(a\)6](#), Wis. Stats. (2009-10), when determining the tax treatment of laundered items.

**Example 5 – Uniform Provider Rents Uniforms, Laundry Services Included:**

- Uniform Provider supplies uniforms to Hotel for a monthly fee. The fee is based on the number of uniforms that Hotel uses.
- Hotel's employees wear the uniforms during their work hours.
- Uniform Provider retains ownership of the uniforms and makes no use of the uniforms other than to provide them to Hotel.
- It is the responsibility of Uniform Provider to maintain and provide a supply of clean uniforms. Uniform Provider's monthly fee is not reduced if Hotel chooses to clean the uniforms all or some of the time.
- Periodically, Uniform Provider picks up soiled uniforms and provides clean uniforms to Hotel.
- Hotel cleans the soiled uniforms.
- Uniform Provider continues to provide the cleaned uniforms to Hotel until the uniforms can no longer be cleaned or are worn out.
- The uniforms are then disposed of by Uniform Provider.
- Hotel is required to return each uniform to Uniform Provider that it receives, even if it is no longer in a usable condition.

**Tax Treatment for Example 5:** Uniform Provider is renting the uniforms to Hotel and may purchase these uniforms without tax for resale. Uniform Provider's charge for renting the uniforms to Hotel is subject to sales tax.

**Example 6 – Uniform Provider Rents Uniforms, Separate and Optional Charge for Laundry Services:** Same as *Example 5*, except that Hotel has the option to clean the uniforms itself and pay a lesser monthly fee for the uniform rental (that is, if Uniform Provider charges a fee for cleaning the uniforms, it is a separate and optional charge).

**Tax Treatment for Example 6:** Uniform Provider is renting the uniforms to Hotel and may purchase these uniforms without tax for resale. Uniform Provider's charge for renting the uniforms to Hotel is subject to sales tax. Uniform Provider's separate and optional charge for the cleaning of the uniforms is for a taxable laundry service.

**Applicable Statutes and Administrative Code:** Section [77.52\(2\)\(a\)6.](#), Wis. Stats. (2009-10), imposes Wisconsin sales tax, in part, on “[l]aundry, dry cleaning, pressing and dyeing services, except when performed on raw materials or goods in process destined for sale ...”

With certain exceptions, sec. [77.52\(2\)\(a\)10.](#), Wis. Stats. (2009-10), imposes Wisconsin sales tax on certain services, including cleaning, of all items of tangible personal property unless, at the time of such service, a sale of the type of property serviced would have been exempt to the customer, with certain exceptions.

Section [77.54\(2\)](#), Wis. Stats. (2009-10), provides, in part, an exemption from Wisconsin sales and use taxes for the following:

"The sales price from the sales of and the storage, use, or other consumption of tangible personal property ... that is used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property or item or property under s. [77.52 \(1\) \(b\)](#) or [\(c\)](#) that is destined for sale and ... is consumed or destroyed or loses its identity in manufacturing ..."

Section Tax [11.72\(2\)](#), Wis. Adm. Code (May 2010 Register), provides, in part, that tax applies to the sales price "... from leasing, licensing, or renting clothing, including uniforms, towels, linens, or similar items, including cloth diapers, to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled ..."

Section Tax [11.41\(2\)\(a\)15.](#), Wis. Adm. Code (November 2010 Register), provides that the following property is exempt from tax if used exclusively and directly by a manufacturer in manufacturing tangible personal property or items or property under s. [77.52 \(1\) \(b\)](#) or [\(c\)](#), Stats., destined for sale and is consumed, destroyed, or loses its identity in manufacturing the property or item that is destined for sale:

"Gloves and other wearing apparel, including hair nets, beard nets and facemasks used by employees working on the production line to prevent contamination of the product while it is being manufactured."

## 2 Movable Storage Containers

**Statutes:** Section [77.52\(1\)\(a\)](#) and [\(2\)\(a\)](#), Wis. Stats. (2009-10)

**Wis. Adm. Code:** Section Tax [11.29\(5\)\(b\)](#), Wis. Adm. Code (May 2010 Register)

**Background:** Section [77.52\(1\)\(a\)](#), Wis. Stats. (2009-10), imposes tax on the rental of tangible personal property.

Section Tax [11.29\(5\)\(b\)](#), Wis. Adm. Code (May 2010 Register), provides the following:

"If an item of tangible personal property or item, property or good under s. 77.52 (1) (b), (c), or (d), Stats., is provided **along with an operator that only** maintains, inspects, or sets up the tangible personal property or item, property, or good, **the transaction is considered a lease, license, or rental** of the tangible personal property or item, property, or good." (Emphasis added.)

With respect to services, only the services that are specifically listed in sec. [77.52\(2\)\(a\)](#), Wis. Stats. (2009-10), are subject to Wisconsin sales and use taxes. Neither of the services of moving tangible personal property nor storing tangible personal property are specifically listed as taxable services, with the exception of the taxable services of providing parking space for motor vehicles and aircraft and docking or providing storage space for boats.

**Facts:**

- Container Company provides portable storage units to its customers for a fee. The storage units are all one size.
- Container Company delivers the storage unit to the customer for a mandatory fee, which is based on the customer's location.
- The customer is provided with a lock and key for the storage unit, but the customer is not allowed to move the unit.
- The customer is charged the same monthly fee for the storage unit, regardless of which of the following three options the customer chooses:

**Option 1:** The storage container is brought to the customer's location. After the customer has put its property into the container, the container is moved by Container Company to another location, as directed by the customer. For example, the customer is moving from one residence to another.

**Option 2:** The storage container is brought to the customer's location. After the customer has put its property into the container, the container is moved by Container Company to Container Company's warehouse where it is stored. There is no additional fee for storing the container at the warehouse. While the storage container is stored in Container Company's warehouse, the customer may have access to the container upon request and agreement of a date and time.

**Option 3:** The storage container is kept at the customer's home or business location, where the customer uses the container to store its property. For example, the customer is painting the interior of its house and is storing some furniture in the container until the painting project is completed. The storage container may not be retained at the customer's location for more than two months.

**Question 1:** Is Container Company's charge for the movable storage container in *Option 1* subject to tax?

**Answer 1:** No. The charge for a movable storage container, including delivery fee, that is picked up from the customer's location and delivered to another location, as directed by the customer, is not taxable. The charge is for a nontaxable moving service.

**Example 1:** Container Company delivers a portable storage container to its customer's residence for \$30. When the storage container is filled by the customer, Container Company picks up the storage container and brings it to the customer's new residence. Container Company charges its customer a one month container fee of \$50. The total \$80 charge for providing a moving service is not subject to tax.

**Question 2:** Is Container Company's charge for the movable storage container in *Option 2* subject to tax?

**Answer 2:** No. The charge for a movable storage container, including delivery fee, that is stored in Container Company's warehouse facility is not taxable. The charge is for a nontaxable storage service.

**Example 2:** Container Company delivers a portable storage container to its customer's residence for \$30. When the storage container is filled by the customer, Container Company picks up the storage container and brings it to its warehouse, where Container Company stores the property of its customer. The storage container remains at Container Company's warehouse for one month. Container Company charges its customer a one month container fee of \$50. The total \$80 charge for providing a storage service is not subject to tax.

**Question 3:** Is Container Company's charge for the movable storage container in *Option 3* subject to tax?

**Answer 3:** Yes. The charge for a movable storage container, including delivery fee, that a customer uses at its home or business location is subject to tax. The charge is for the rental of tangible personal property, the storage container.

**Example 3:** Container Company delivers a portable storage container to its customer's residence for \$30. The storage container remains with the customer for one month. Container Company charges its customer a one month container fee of \$50. At the end of the month, Container Company picks up the empty portable storage container from its customer. The total \$80 charge for renting the portable storage container is subject to tax.

#### **Analysis for Options 1 and 2:**

When the seller is providing a moving service or warehouse storage space, rather than the rental of a storage container, no part of the seller's charge is subject to tax (see *Exception* below). If the seller is renting the portable storage container, rather than providing a moving service or warehouse storage space, its charge, including delivery, is subject to tax.

**Exception:** Parking or providing parking space for motor vehicles and aircraft for a consideration and docking or providing storage space for boats for a consideration is taxable.

The rental of real property, for example the rental of a mini warehouse, is not subject to tax.

#### **Analysis for Option 3:**

The rental of tangible personal property (for example, moveable storage containers), including the delivery charge for the tangible personal property, is subject to tax. This is provided in sec. [77.52\(1\)\(a\)](#), Wis. Stats. (2009-10).

In *Option 3*, the movable storage unit is delivered and only set up by Container Company. The set-up by Container Company, alone, does not constitute the provision of a storage service, as provided in sec. Tax [11.29\(5\)\(b\)](#), Wis. Adm. Code (May 2010 Register).

Therefore, when Container Company delivers a storage unit to the customer's location for use only at the customer's location, the charge is for the rental of the storage unit, rather than for the provision of a storage service.

## **3 Sales of Discounted Certificates and Product Vouchers**

### **Background:**

This tax release explains that sales of discounted certificates and product vouchers ("vouchers") are not subject to Wisconsin sales or use taxes at the time the certificate or voucher is sold. Wisconsin sales and use taxes apply when the certificate or voucher is redeemed by the merchant providing the goods or services. (Note: This tax release does not apply to sales of digital codes as defined in sec. [77.51\(3pc\)](#), Wis. Stats. (2009-10), admissions to time-sensitive events (i.e., sporting events, concerts, etc.) or gift certificates sold directly by the retailer.)

A merchant enters into an agreement with a promotional company: (1) to have that promotional company sell, at a discount from face value, certificates that may be redeemed for the face value of the certificate when purchasing goods or services from that merchant or (2) to have that promotional company sell vouchers that may be redeemed for a particular good or service that is furnished by the merchant to the holder of the voucher. In either situation, the retailer can identify the amount for which the certificate or voucher was sold to the customer.

These certificates and vouchers: (1) are commonly advertised on various web sites, (2) are e-mailed to persons who have agreed to receive such e-mails, and (3) are often referred to as "deal of the day" certificates or vouchers. A person desiring to purchase the certificate or voucher does so by contacting and paying the promotional company and not the issuing merchant. The purchaser then presents the certificate or voucher to the issuing merchant in exchange for goods or services from that merchant, as indicated on the certificate or voucher.

**Applicable Wisconsin Statutes:**

Section [77.51\(13\)\(a\)](#), Wis. Stats. (2009-10), provides that "retailer" includes every seller who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property, or items, property, or goods under sec. [77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2009-10), or a service under sec. [77.52\(2\)\(a\)](#), Wis. Stats. (2009-10).

Section [77.51\(14\)\(intro\)](#), Wis. Stats. (2009-10), provides, in part, that "sale" includes any of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property, or items, property, or goods under sec. [77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2009-10), or services.

Section [77.51\(15b\)\(a\)2.](#), Wis. Stats. (2009-10), provides that "sales price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, or items, property, or goods under sec. [77.52\(1\)\(b\)](#), [\(c\)](#), or [\(d\)](#), Wis. Stats. (2009-10), or services are sold, licensed, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.

Section [77.51\(15b\)\(b\)1.](#), Wis. Stats. (2009-10), provides, in part, that "sales price" does not include discounts, including cash, terms, or coupons, that are not reimbursed by a 3rd party,...; that are allowed by a seller; and that are taken by a purchaser on a sale.

Section [77.52\(1\)](#), Wis. Stats. (2009-10), imposes the sales tax on a retailer's receipts from sales of the following:

- (a) For the privilege of selling, licensing, leasing, or renting tangible personal property at retail a tax is imposed upon all retailers at the rate of 5% of the sales price from the sale, license, lease or rental of tangible personal property sold, licensed, leased or rented at retail in this state, as determined under sec. [77.522](#), Wis. Stats. (2009-10).
- (b) For the privilege of selling, licensing, leasing, or renting at retail coins and stamps of the United States that are sold, licensed, leased, rented, or traded as collectors' items above their face value, a tax is imposed on all retailers at the rate of 5 percent of the sales price from the sale, license, lease, or rental of such coins and stamps.
- (c) For the privilege of leasing property that is affixed to real property, a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease of such property, if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed.
- (d) A tax is imposed on all retailers at the rate of 5 percent of the sales price from the sale, lease, license, or rental of specified digital goods and additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

[Section 77.52\(2\)](#), Wis. Stats. (2009-10), imposes the sales tax on a retailer's receipts from selling, performing, or furnishing any of the services specified in sec. [77.52\(2\)\(a\)](#), Wis. Stats. (2009-10).

**Question 1:** How do Wisconsin sales and use taxes apply to the sales and redemption of the discounted certificates?

**Answer 1:** The promotional company's sale of the certificate is not subject to Wisconsin sales or use taxes, as the sale of the certificate is the sale of an intangible right. Sales of intangible rights are not subject to Wisconsin sales tax under either sec. [77.52\(1\)](#) or [\(2\)](#), Wis. Stats. (2009-10). The merchant who accepts the certificate in exchange for goods or services has receipts from the sale of such goods or services in an amount equal to the amount for which the certificate was sold by the promotional company, plus any additional amounts it receives from the person using the certificate as payment for the goods or services purchased.

The merchant is the retailer of the goods or services sold since the merchant is the person actually transferring the ownership of, title to, possession of, or enjoyment of the goods or services to the purchaser, as provided in sec. [77.51\(14\)\(intro\)](#), Wis. Stats. (2009-10).

The merchant's sales price of the goods or services includes all consideration received by the merchant for the sale, without deduction for any expenses incurred by the merchant and paid to the promotional company for its services of advertising and selling the certificates, as provided in sec. [77.51\(15b\)\(a\)2](#), Wis. Stats. (2009-10).

The merchant's sales price of the goods or services does not include the difference between the face value of the certificate and the amount the purchaser paid the promotional company for the certificate. This amount is specifically excluded from the retailer's sales price under sec. [77.51\(15b\)\(b\)1](#), Wis. Stats.(2009-10), as a discount allowed by the seller and taken by the purchaser, assuming the difference is not reimbursed or paid to the seller by a third party.

**Example:** Merchant operates a retail store located in Milwaukee, Wisconsin. Promotional Company has entered into a contract with Merchant to advertise and sell certificates. The certificates each have a stated value of \$50 that may be used by the certificate holder towards the purchase of goods or services from Merchant.

Promotional Company sells a certificate with a face value of \$50 to Customer for \$30. Under the terms of the agreement between Merchant and Promotional Company, Promotional Company is obligated to remit \$15 of the \$30 it collected from Customer to Merchant. Promotional Company keeps the remaining \$15 in return for the advertising and promotional services it provides to Merchant under the agreement. Customer goes to Merchant's store and selects clothing with a retail selling price of \$99.99. Customer pays for the clothing by presenting the \$50 certificate and using a credit card to pay \$49.99.

Merchant's taxable receipts from this sale are \$79.99 (\$30.00, the amount for which Customer purchased the certificate, plus \$49.99, the additional amount Customer paid Merchant), and Merchant is liable for Wisconsin state, Milwaukee County, and baseball stadium sales tax of \$4.48 ( $\$79.99 \times 5.6\%$ ). The \$20 difference between the face value of the certificate (\$50) and the \$30 Customer paid for the certificate is a discount allowed by Merchant and is not included in the measure subject to Wisconsin sales or use tax.

Promotional Company's receipts (\$30) from its sale of the certificate to Customer are not subject to Wisconsin sales or use taxes.

**Question 2:** How do Wisconsin sales and use taxes apply to the sales and redemption of product vouchers?

**Answer 2:** The promotional company's sale of the product voucher is not subject to Wisconsin sales or use taxes, as the sale of the voucher is the sale of an intangible right. Sales of intangible rights are not subject to Wisconsin sales tax under either sec. [77.52\(1\)](#) or [\(2\)](#), Wis. Stats. (2009-10).

When the customer redeems the voucher for particular goods or services, a sale of those goods or services has occurred and Wisconsin sales or use taxes will apply to the sales price of the voucher if the goods or services being sold are taxable.

The merchant accepting the voucher is the retailer of the goods or services since the merchant is the person actually transferring ownership of, title to, possession of, or enjoyment of the goods or services to the purchaser, as provided in sec. [77.51\(14\)\(intro\)](#), Wis. Stats. (2009-10).

The merchant is liable for Wisconsin sales or use taxes based on the sales price of the voucher, provided the product (i.e., good or service) represented by the voucher is subject to Wisconsin sales or use taxes.

The merchant's sales price of the goods or services sold using the voucher includes all consideration received by the merchant for the sale, without deduction for any expenses incurred by the merchant and paid to the promotional company for its services of advertising and selling the vouchers, under sec. [77.51\(15b\)\(a\)2](#), Wis. Stats. (2009-10).

**Example 1:** Merchant operates a hotel at a location in Outagamie County, Wisconsin. Promotional Company is a business that has entered into an agreement with Merchant to sell vouchers that are good for two nights of lodging at Merchant's hotel. Promotional Company sells a voucher to Customer for \$100. Under the terms of the agreement between Merchant and Promotional Company, Promotional Company is obligated to remit \$60 to Merchant relating to Promotional Company's sale of the voucher to Customer and Merchant's obligation to redeem the voucher and furnish the lodging to the voucher holder. Under the terms of its agreement, Promotional Company retains the remaining \$40 in return for the advertising and promotional services it provides to Merchant.

At the time Customer redeems the voucher for the lodging services, Merchant has taxable receipts of \$100 from its sale of the lodging services, unless an exemption applies. Receipts from the selling, performing, or furnishing of lodging to transients are subject to Wisconsin sales tax. The lodging services are to be received in Outagamie County, Wisconsin, and Merchant is liable for Wisconsin state sales tax of \$5 ( $\$100 \times 5\%$ ) on its receipts from the sale of the lodging services. (Outagamie County does not impose a county sales and use tax and is not a part of a special district imposing a tax so no county or special district tax is due on this transaction.)

**Example 2:** Restaurant contracts with Promotional Company to issue vouchers that may be redeemed by the voucher holder for 2 dinners at Restaurant at its location in Waukesha County, Wisconsin. The sales price of the voucher is \$25. Promotional Company advertises the vouchers to subscribers of its "daily deal" offers by sending e-mail messages to subscribers, alerting them to the offer. Individual purchases one voucher and pays Company \$25. Under the terms of its agreement, Promotional Company remits \$13 to Restaurant and keeps the remaining \$12 as compensation for the advertising and promotional services provided to Restaurant.

Restaurant has taxable receipts of \$25. Restaurant's sale of the dinners is a sale of prepared food and is subject to Wisconsin sales tax, unless an exemption applies. Since the meals are received in Waukesha County, Wisconsin by the person redeeming the voucher, Restaurant is liable for Wisconsin state and baseball stadium sales tax of \$1.28 ( $\$25 \times 5.1\%$ ) on the sale of the dinners (i.e., prepared food).