



Wisconsin Department of Revenue

TAX BULLETIN

August 2013
Number 181

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

	Page
Unclaimed Property Program	1
Save the Date for 2013 Wisconsin Tax Updates	1
DOR Releases Publication on Statistical Sampling	2
<i>Sales and Use Tax Report</i> Available	2
Report on Litigation	3
Tax Releases	4

Unclaimed Property Program

As of July 2, 2013, the administration of the Unclaimed Property Program has been transferred from the Office of the State Treasurer to the Department of Revenue (DOR). Six fulltime staff members will come to DOR from the Office of the State Treasurer to administer the program.

The Unclaimed Property Program works to reunite citizens with lost property. It also deposits money and proceeds of all property that may accrue to the state by forfeiture or escheat to the Common School Fund, which is used for support and maintenance of common schools in each school district.

Save the Date for 2013 Wisconsin Tax Updates

The Department of Revenue is finalizing plans to provide Wisconsin tax updates in preparation for the 2013 filing season. In October, there will be free, half-day seminars offered at various locations throughout the state. Upon completion of the presentations, a video of the seminar will be posted online for viewing at your convenience.

Please save the date and watch for online registration later this month.

Wisconsin Update Seminar Schedule (9:00 -11:30 a.m.)

October 7, Monday –Madison

October 9, Wednesday – Menasha

October 11, Friday – Pewaukee

October 14, Monday – Eau Claire

October 15, Tuesday – Stevens Point

October 25, Friday – Madison

October 28, Monday – Pewaukee

DOR Releases Publication on Statistical Sampling

The Department of Revenue (DOR) has released a new publication about statistical sampling in field audits of sales and use taxes. [Publication 516](#), *Statistical Sampling*, covers the following topics:

- What statistical sampling is and why it is used
- Conditions where statistical sampling is appropriate
- Data and information needed for statistical samples
- Steps to generate a statistical sample, retrieve, and review records
- How sample results are computed and evaluated
- Common questions and issues
- Projecting sample results forward

The publication includes a checklist that the auditor, DOR computer audit specialist, and taxpayer can use to ensure the sample is conducted as efficiently as possible.

Common issues addressed in the publication include:

- Modifying sample size
- Removing items after the sample is pulled
- Claims for refund
- Reversal entries or adjustments
- Missing invoices
- Availability of data

The DOR also has a similar publication about non-statistical sampling. [Publication 515](#), *Non-Statistical Sampling*, was recently updated to include information about projecting sample results forward.

Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's website in July. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the July 2013 *Sales and Use Tax Report* (Issue 1-13). Links provided are to articles in [News for Tax Professionals](#) concerning the same subject.

- [Sales of Appliances, Including "Built-in" Appliances](#)
- [Non-Motorized Campers Purchased by Nonresidents](#)
- Tax Release on Inspection Services
- [Limousine Fee](#)
- [Credit Card "Swipe" Fees](#)
- Reminder – New Exemptions Effective on July 1, 2013
- *My Tax Account* Webinar
- Buyers: How to Speed Up Your Claim for Refund of Sales or Use Tax
- Diplomatic Tax Exemption Cards May Not be Used to Purchase Motor Vehicles Without Sales or Use Tax
- New Publication for Schools
- New Tax Laws



Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions.

The following decision is included:

Sales and Use Tax

Statute of Limitations for Refund Claim	
<i>Enviro Quip, LLC</i>	3

SALES AND USE TAX

Statute of Limitations for Refund Claim. *Enviro Quip, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 10, 2013).

The issue is whether Enviro Quip, LLC (the taxpayer) is entitled to a refund of sales and use taxes erroneously paid to the Department of Revenue.

The taxpayer filed a seller's claim for refund dated November 2, 2010 with the Department of Revenue for sales taxes, which had previously been remitted to the department, for the periods July 2000 through September 2010. A letter was issued by the department granting the taxpayer's claim for refund for the periods within the statute of limitations (January 2006 through September 2010). The letter also denied the taxpayer's claim for refund for the periods of July 2000 through December 2005, because the claim for refund for those periods was filed outside the statute of limitations.

The statute of limitations deadline for making a claim for refund for the periods of July 2000 through December 2005 was the due date of the taxpayer's 2005 income tax return (April 15, 2006) plus four years, which is April 15, 2010. The taxpayer contends, however, that it was not claiming a refund, but rather asking for reimbursement for "erroneous payments," since they never had the sales tax liability in the first place.

The department requested a Motion to Dismiss.

The Wisconsin Tax Appeals Commission granted the department's Motion to Dismiss, because the claim for refund with the department was outside of the statute of limitations provided in Wisconsin law. Therefore, the Commission lacked jurisdiction to review the taxpayer's grievances.

The Commission stated that the department's denial of the refund claim of November 2, 2010, for the periods from July 2000 through July 2005, was correct, as the claim was barred by the statute of limitations.



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. Home Warranty Contracts.....	4
2. Newspaper Advertising Supplements	7

SALES AND USE TAX

1 Home Warranty Contracts

Statutes: [Section 77.52\(2\)\(a\)10.](#), [\(a\)13m.](#), and [\(ag\)](#), Wis. Stats. (2011-12)

Wis. Adm. Code: Section [Tax 11.27\(5\)](#), Wis. Adm. Code (May 2010 Register)
Section [Tax 11.67\(2\)\(c\)1.](#), Wis. Adm. Code (November 2010 Register)

Background: Home *sellers* may purchase a home warranty contract to increase the marketability of their home. Home *buyers* may also purchase a contract to secure peace of mind against unexpected appliance or systems failure in the home. A home warranty contract is typically written for a term of one year and may be renewable. A month-to-month contract may also be sold. Home warranty contracts may be sold directly to home *owners*. Home "warranty" contracts may also be referred to as home "service" contracts.

The model definition of a "home service contract" provided by the National Home Service Contract Association is:

“Home service contract” or “home warranty” means a contract or agreement for a separately stated consideration for any duration to perform the service, repair, replacement, or maintenance of property or indemnification for service, repair, replacement, or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. Home service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide for leak or repair coverage to house roofing systems. Home service contracts are not insurance in this state or otherwise regulated under the insurance code.

A home warranty contract provides service, repair or replacement for specifically identified home systems and appliances for a periodic fee. Property covered may include a home’s electrical, heating and air-conditioning systems and related property such as ductwork. It may also cover interior plumbing, built-in dishwasher, range, cook-top, garbage disposer, water heater, garage-door opener, built-in microwaves, trash compactors, and ceiling fans. Most home warranty contract providers offer a list of optional property that may be added, such as swimming pools, hot tub and spa equipment, free-standing appliances, septic systems, and well pumps.

The seller of a home warranty contract generally does not perform the repair or other services covered by the contract. The home warranty provider establishes a network of local, independent service technicians, plumbers, and electricians to provide the services to homeowners.

This tax release provides the Wisconsin sales and use tax treatment of the sale of home warranty contracts, as well as the tax treatment of persons performing repairs or other service under such contracts.

Tax Treatment: [Section 77.52\(2\)\(a\)10.](#), Wis. Stats. (2011-12), imposes tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property unless, at the time of such service, a sale of the property being serviced would have been exempt to the customer from sales tax.

Services to real property are not subject to tax. However, for purposes of repair, service, etc., certain items are considered to be tangible personal property, regardless of the extent to which the item is fastened to, connected with, or built into real property. These items that are considered to be tangible personal property are listed in [sec. 77.52\(2\)\(ag\)](#), Wis. Stats. (2011-12), and include furnaces, heaters, air conditioners, water heaters, bathroom fixtures, sinks, swimming pools, burglar and fire alarm fixtures. Tax applies to the repair, service, etc. of these items, even if their installation or complete replacement was a nontaxable service to real property, as provided in [sec. 77.52\(2\)\(a\)10.](#), Wis. Stats. (2011-12).

Exception: The repair, service, etc. is not taxable if the service is performed to an item that, if purchased at the time of the service, would have been exempt to the customer from sales tax.

The sale of contracts (including service contracts) and maintenance agreements that provide for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property are subject to Wisconsin sales or use tax, unless a sale of the property to which the contract relates is or was exempt, to the purchaser of the contract, from sales and use taxes. ([Section 77.52\(2\)\(a\)13m.](#), Wis. Stats. (2011-12))

Section [Tax 11.67\(2\)\(c\)1.](#), Wis. Adm. Code (November 2010 Register), provides that if there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax.

Section [Tax 11.27\(5\)](#), Wis. Adm. Code (May 2010 Register), explains the following:

- Charges by a retailer to a customer for taxable repair parts or taxable services performed under a maintenance contract or warranty (e.g., a deductible) are taxable.
- A reimbursement to a retailer from a manufacturer or other person (e.g., home warranty company) is not taxable.
- A retailer who provides parts or performs taxable repair services to tangible personal property under a maintenance contract or warranty may purchase, without tax for resale, the parts that it transfers to the customer.
- A person who repairs real property under a maintenance contract or warranty is the consumer of the tangible personal property that it transfers to the customer as a part of the repair to real property and is subject to sales or use tax on the purchase of such property.

Example 1: Home Buyer purchased a home from Home Seller and also purchased a home warranty contract from Home Warranty Company. The contract covers repairs to the home, including the roof, furnace, air conditioning system, plumbing, in-wall electrical wiring, water heater, and free-standing and built-in appliances. Home Buyer's roof is leaking, so Home Buyer calls Home Warranty Company. Home Warranty Company hires Roofer to fix Homebuyer's leaking roof. The total amount of Roofer's repair charge is \$800: Roofer charges Home Buyer a \$100 deductible and charges Home Warranty Company \$700.

- The sale of the home warranty contract is not subject to Wisconsin sales or use tax, since the primary purpose of the home warranty contract is to cover property that, when purchased, was exempt to the purchaser.
- Roofer's charge to Home Buyer for the \$100 deductible is not taxable, since Roofer is performing a service to real property.
- Roofer's charge to Home Warranty Company for \$700 is not taxable, since Roofer is performing a service to real property.
- Roofer is liable for sales or use tax on its purchase of materials that it uses in performing a service to real property.

Example 2: Same as *Example 1*, except that Home Buyer has a furnace problem (rather than a roof problem). Home Warranty Company hires HVAC Company to repair Home Buyer's furnace.

- The sale of the home warranty contract is not subject to Wisconsin sales or use tax, since the primary purpose of the home warranty contract is to cover property that, when purchased, was exempt to the purchaser.
- HVAC Company's charge to Home Buyer for the \$100 deductible is taxable, since charges by a retailer to a customer for taxable repair parts or taxable services performed under a maintenance contract or warranty (e.g., a deductible) are taxable.
- HVAC Company's charge to Home Warranty Company for \$700 is not taxable, since the reimbursement to a retailer from a manufacturer or other person (e.g., home warranty company) is not taxable.
- HVAC Company may purchase parts without tax for resale that it physically transfers to Homebuyer in its repair of property that is considered tangible personal property for purposes of repair, since HVAC Company is a retailer providing parts or performing taxable repair services to tangible personal property under a maintenance contract or warranty.

Example 3: Home Owner purchased a home warranty contract from Home Warranty Company. The contract covers repairs to the home, including the roof, furnace, air conditioning system, plumbing, in-wall electrical wiring, water heater, and built-in appliances. For a separate and optional fee, Home Owner purchases a supplemental contract that covers all free-standing appliances in the house. Home Owner's refrigerator is not working, so Home Owner calls Home Warranty Company. Home Warranty Company hires Appliance Repair Company to fix Home Owner's refrigerator. The total amount of Appliance Repair Company's repair charge is \$400: Appliance Repair Company charges Homebuyer a \$75 deductible and charges Home Warranty Company \$325.

- The sale of the home warranty contract is not subject to Wisconsin sales or use tax, since the primary purpose of the home warranty contract is to cover property that, when purchased, was exempt to the purchaser.
- The sale of the supplemental warranty that relates only to tangible personal property (i.e., free-standing appliances) is subject to tax.
- Appliance Repair Company's charge to Homebuyer for the \$75 deductible is taxable, since charges by a retailer to a customer for taxable repair parts or taxable services performed under a maintenance contract or warranty (e.g., a deductible) are taxable.
- Appliance Repair Company's charge to Home Warranty Company for \$325 is not taxable, since the reimbursement to a retailer from a manufacturer or other person (e.g., Home Warranty Company) is not taxable.
- Appliance Repair Company may purchase parts without tax for resale that it physically transfers to Home Owner in its repair of tangible personal property, since Appliance Repair Company is a retailer providing parts or performing taxable repair services to tangible personal property under a maintenance contract or warranty.

2 Newspaper Advertising Supplements

Statutes: [Sections 77.51\(1fr\)](#) and [\(8\)](#) and [77.54\(15\)](#) and [\(25m\)](#), Wis. Stats. (2011-12)

Wis. Adm. Code: Section [Tax 11.19\(3\)\(a\)](#), Wis. Adm. Code (November 2010 Register)

Background: The sale of newspapers is exempt from sales and use tax, as provided in [sec. 77.54\(15\)](#), Wis. Stats. (2011-12).

"Newspaper" is defined in [sec. 77.51\(8\)](#), Wis. Stats. (2011-12), to mean:

"...those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. [985.03 \(1\)](#) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

Sales of catalogs and their mailing envelopes are exempt from tax if they are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms. ([Section 77.54\(25m\)](#), Wis. Stats. (2011-12))

"Catalog" is defined in [sec. 77.51\(1fr\)](#), Wis. Stats. (2011-12), as "a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified."

Tax Treatment: An advertising supplement that is distributed as a component part of one of the newspaper's publications is an exempt "newspaper" if either one of the following apply:

Criteria 1- The advertising supplement is printed by the newspaper, or

Criteria 2- The advertising supplement is printed by a newspaper or commercial printer and sold to a newspaper for inclusion in that newspaper.

In order to meet the second criteria, above, the advertising supplement must be *sold to the newspaper*. When the newspaper merely bills and pays the printer (or other newspaper) on behalf of its customer for the advertising supplements, the advertising supplements are not considered to be *sold to the newspaper*.

Example 1: Customer contracts with Newspaper for advertising services. Newspaper will print an advertising supplement and insert it into its newspaper prior to distribution. Newspaper is selling advertising services to Customer and Newspaper's charge for the advertising services is not taxable.

Example 2: Customer contracts with Newspaper for advertising services. Newspaper independently contracts with Printer to print and deliver advertising supplements to Newspaper. Newspaper will insert the advertising supplement into its newspaper prior to distribution. Newspaper is selling advertising services to Customer and Newspaper's charge for the advertising services is not taxable. The advertising supplements that Newspaper purchases from Printer are a component part of the newspaper and are sold to the newspaper; therefore, the advertising supplements meet the definition of "newspaper" and are exempt from tax.

Example 3: Customer contracts with Newspaper for advertising services. Customer contracts with Printer to print advertising supplements and send them directly to Newspaper. Newspaper will insert the supplements into its newspaper prior to distribution. Newspaper is selling advertising services to Customer and Newspaper's charge for the advertising services is not taxable. The advertising supplements that Customer purchases from Printer do not meet the definition of "newspaper" since neither Criteria 1 nor Criteria 2, above, apply. Therefore, the advertising supplements do not qualify for exemption, unless some other exemption applies.

Example 4: Customer contracts with Newspaper for advertising services. Customer selects a Printer to print advertising supplements and negotiates a price with Printer. Printer sends the advertising supplement directly to Newspaper and sends an invoice to Newspaper for the advertising supplements. Newspaper pays the invoice, which is reflected in Newspaper's charge to Customer for the advertising services. If Newspaper did not pay the invoice, Customer would have the ultimate responsibility to pay the invoiced amount. Newspaper will insert the supplements into its newspaper prior to distribution. Newspaper is selling advertising services to Customer and the portion of Newspaper's charge related to the advertising services (but not the advertising supplements) is not taxable. Although Newspaper is paying Printer for the advertising inserts and being reimbursed for the advertising inserts by Customer, it is Customer (rather than Newspaper) that is purchasing the advertising inserts from Printer. The advertising supplements that Customer purchases from Printer do not meet the definition of "newspaper" since neither Criteria 1 nor Criteria 2, above, apply. Therefore, the advertising supplements do not qualify for exemption, unless some other exemption applies.

One possible exemption that may apply to advertising supplements that do not meet the definition of "newspaper" is the exemption for catalogs that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms.

A "catalog" is a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.

Note: The exemptions for (1) advertising and promotional direct mail (effective July 1, 2013), and (2) printed advertising materials for use solely outside Wisconsin, would not apply to advertising supplements sold for inclusion in a newspaper.

For additional information about exemptions for printed materials, see Part VI.B. of [Publication 235, Advertising Companies](#).