



# Wisconsin Department of Revenue

## TAX BULLETIN

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### New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted the following tax laws:

**Setoffs Against Tax Refunds For Debts Related to Providing Ambulance Services** ([2015 Act 59](#), renumber sec. 71.935(4), amend sec. 71.935(1)(a), and create sec. 71.935(4)(b), effective August 8, 2015.)

Debt that a municipality or county may certify to the department has been expanded to include debt related to providing ambulance services.

For purposes of this provision, a debt owed to an ambulance service provider operating pursuant to a contract with a municipality or county under sec. 59.54(1), 60.565, 61.64, or 62.133, Wis. Stats., is considered a debt owed to the municipality or county, if the debt relates to providing ambulance services to individuals in that municipality or county as a result of responding to requests that originate from a government-operated 911 call center.

Within 30 days after the end of each calendar quarter, each municipality and county that has received amounts during that calendar quarter from the department under this provision shall pay the amounts to the ambulance service provider.

**Income Tax Exemption Created For Interest and Income Received From Obligations of a Municipality Assisting a Local Exposition District** ([2015 Act 60](#), create secs. 71.05(1)(c)6p. and 71.26(1m)(n), effective August 14, 2015.)

An individual and fiduciary income tax exemption is created for interest received on bonds and notes issued by a sponsoring municipality borrowing to assist a local exposition district created under subch. II of ch. 229, Wis. Stats.

A corporate income tax exemption is created for the interest and income from obligations issued by a sponsoring municipality to assist a local exposition district created under subch. II of ch. 229, Wis. Stats.

**Sales and Use Tax Exemption Created For Materials, Supplies, Equipment, and Landscaping Services Used To Build Sports and Entertainment Arena Facilities** ([2015 Act 60](#), amend sec. 229.42(4)(d) and create secs. 77.54(62m) and 229.41(11e) and (11g), effective August 14, 2015.)

A sales and use tax exemption is created for the sale of building materials, supplies, equipment, and landscaping services to; and the storage, use, or other consumption of the same property and services by; owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for, or used solely in, the construction or development of sports and entertainment arena facilities, as defined in sec. 229.41(11g), Wis. Stats. The exemption will no longer apply one year after the Secretary of Administration issues the certification under sec. 229.42(4e)(d), Wis. Stats.

Section 229.41(11e), Wis. Stats., defines "sports and entertainment arena" as the arena structure and the land necessary for its location that is used as the home arena of a professional basketball team and for other sports, recreation, and entertainment activities.

Section 229.41(11g), Wis. Stats., further defines "sports and entertainment arena facilities" as the sports and entertainment arena and structures, including all fixtures, equipment, and tangible personal property that are used primarily to support the operation of the sports and entertainment arena or are functionally related to the sports and entertainment arena, located on land not to exceed 9 contiguous acres in area. Such sports and entertainment arena facilities shall include such land and may include offices of the professional basketball team or its affiliate, parking spaces and garages, storage or loading facilities, access ways, sidewalks, a skywalk, plazas, transportation facilities, and sports team stores located on such land. In addition, "sports and entertainment arena facilities" also includes a parking structure to be constructed by a professional basketball team or its affiliate in conjunction with the construction of the sports and entertainment arena and to be owned by the sponsoring municipality.

**Local Exposition Tax Exemption Created For Sales By Food and Beverage Stores After District's Bonds and Debt Are Retired** ([2015 Act 60](#), amend sec. 77.98(3) and create sec. 77.98(4), effective August 14, 2015.)

The local exposition food and beverage tax will no longer apply to sales by a person engaged in the retail trade as a food and beverage store, as classified under sector 44-45, subsector 445, of the North American Industry Classification System, 1997 edition, beginning the first day of the calendar quarter that is at least 120 days after the date on which the bonds issued by the district under subch. II of ch. 229, Wis. Stats., during the first 60 months after April 26, 1994, and any debt issued to fund or refund those bonds, are retired. The district shall notify the Department of Revenue when such bonds and debt are retired.

Currently, a 0.5% local exposition food and beverage tax applies to sales of candy, soft drinks, and prepared food sold in Milwaukee County. The tax also applies to alcoholic beverages sold for consumption on the seller's premises.

The new law also gives the district board the authority, by a majority vote of its members, to reimpose the local food and beverage tax on sales by the food and beverage stores described above.

### **Reminder: Football Stadium Tax Ends – Last Day September 30, 2015**

If you make taxable sales in Brown County, the 5.5% sales tax rate you currently charge will change to 5% beginning October 1, 2015. The football stadium tax will not apply to:

- Sales and purchases made after September 30, 2015
- Services billed after September 30, 2015\*

- The lease, rental, or license of taxable products billed after September 30, 2015\*

**\*Special Sunset Rules** - Bills issued on or after October 1, 2015 for services or for the lease, rental, or license of taxable products should not include football stadium tax, regardless of whether the services are furnished or the taxable products are leased, rented, or licensed to the customer before that date.

## 2015 Wisconsin Tax Update Seminars Planned For October and November

This fall, the Department of Revenue (DOR) will sponsor a free, half-day Wisconsin tax update seminar for the upcoming tax filing season. This is the third year that DOR has sponsored a half-day update covering Wisconsin information.

We are finalizing plans to provide seminars in October and November in the cities listed below. We will also post a video of the seminar upon completion of the presentations for those that prefer to view the update at their convenience.

Please save the date and watch for an online registration in late August.

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

**October 16, Friday – Pewaukee**

**October 20, Tuesday – Menasha**

**October 22, Thursday – Madison**

**October 26, Monday – Eau Claire**

**October 27, Tuesday – Stevens Point**

**November 4, Wednesday – Madison**

**November 10, Tuesday – Milwaukee**

## Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in September and October 2015. 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.

Seminar dates, times, and locations, as well as registration information, is available on Wisconsin Department of Revenue's [sales and use tax training web page](#).

## Swimming Pool Cleaning and Maintenance Services Are Taxable

Summertime means that swimming pools are open for a season of splashing good times!

Swimming pools (both in-ground and above-ground) retain their character as tangible personal property for purposes of service, maintenance, and repairs, regardless of the degree to which they are affixed to real property. This means that charges for opening, closing, cleaning, maintenance, repairs, and other services performed to swimming pools are subject to Wisconsin sales tax. Persons in the business of performing such services must have a Wisconsin seller's permit and collect sales tax on the charges for these services performed in Wisconsin.

## **Sales and Use Tax Exemption For Fuel and Electricity Used in Manufacturing**

The sale of fuel and electricity consumed in the process of manufacturing tangible personal property is exempt from sales and use tax. To claim the exemption, manufacturers must provide an exemption certificate, [Form S-211](#), *Wisconsin Sales and Use Tax Exemption Certificate*, to the supplier of the fuel and/or electricity. It may be necessary for the manufacturer to make a proration of the fuel and electricity used and claim exemption from tax on the percentage that is exempt.

Fuel and electricity consumed in manufacturing means only the fuel and electricity used to operate the machinery and equipment that is used directly in the step-by-step manufacturing process. Fuel and electricity used in providing plant heating, cooling, air conditioning, communications, lighting, safety and fire prevention, research and product development, receiving, storage, sales, distribution, warehousing, shipping, or advertising or administrative department activities does not qualify for exemption.

## **Taxable Sales and Services to Seasonal Docks, Floating Piers, Swim Rafts, and Other Similar Property**

Sales and rentals of seasonal piers, floating docks, swim rafts, and similar items that are removed each fall are subject to Wisconsin sales tax. Charges for installing or removing these piers, docks, and rafts are taxable. Charges for repairing, cleaning, maintaining, or providing other services to these items are also taxable. The sale of or service to an anchoring system for one of these items is a real property improvement (not taxable) if the anchoring system is permanently affixed to the real estate (that is, remains installed year-round).

The charge for moving a seasonal pier, floating dock, swim raft, or similar item from one location to another is not taxable if no repair or other service is performed to that item. For example, a seasonal pier is removed from one location, hauled to another location, and reinstalled at the new location and no repair or other service is performed to the pier. The only reason for the removal and reinstallation of the pier is to move it to a different location (that is, the pier is not being removed in the fall and reinstalled in the spring). The charge for moving the pier is not taxable.

A permanently-installed dock or pier is a nontaxable real property improvement (that is, a dock or pier that is affixed to the real estate and is intended to remain installed year-round, rather than be removed at the end of the season, is a real property improvement). The seller must pay sales or use tax on its purchase of the pier and other materials and supplies used in making the real property improvement.

Charges to use a pier for boat docking are taxable.

## **Sales of Watercraft, Such as Boats and Jet Skis**

Wisconsin sales and rentals of watercraft, such as boats and jet skis, are subject to Wisconsin sales taxes. When a watercraft is stored or docked in Wisconsin, use tax is due on the purchase price of the watercraft. This applies to both new and used watercraft.

### ***Sales of Watercraft by Dealers and Other Retailers***

A Wisconsin retailer is required to collect sales or use tax on its sale of a watercraft when the purchaser takes possession of the watercraft in Wisconsin (for example, the purchaser picks up the watercraft at the dealer's Wisconsin business location or the seller delivers the watercraft to the Wisconsin location designated by the purchaser). Wisconsin tax is due, even if the purchaser takes the watercraft to a location outside Wisconsin.

If the retailer does not collect the tax (for example, an out-of-state retailer ships the watercraft to a purchaser in Wisconsin), the purchaser will pay the tax at the time the watercraft is registered in Wisconsin. If no registration is required for the watercraft, use tax is due. Use tax can be paid on an individual's Wisconsin income tax return.

### ***Sales of Watercraft by a Private Party***

An individual is not required to collect sales or use taxes when selling his or her personal watercraft. Sales or use taxes are paid at the time the watercraft is registered in Wisconsin. If no registration is required for the watercraft, the purchaser owes use tax.

The rental of a watercraft is also taxable, including mandatory charges for fuel.

**Note:** Separate and optional charges for fuel by a watercraft rental company to a person who rents a watercraft are not subject to Wisconsin sales and use tax if the excise taxes were paid by the watercraft rental company to the fuel supplier. However, if no excise taxes were paid on the fuel (that is, the fuel was purchased for off-road use without paying the excise taxes), the watercraft rental company may purchase the fuel without tax, for resale, but its separate and optional charge for the fuel to the renter of the watercraft is taxable. See [Publication 222](#), *Motor Vehicle Fuel Users: Do you Owe Use Tax?*, for additional information.

Charges for storage and boat docking in Wisconsin are subject to tax. The repair or other maintenance to a watercraft is also a taxable service.

### ***Sales and Use Tax Reports Available***

The latest issues of the *Sales and Use Tax Report* became available on the Department of Revenue's website in June and 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 [June 2015 Sales and Use Tax Report](#) (Issue 2-15). Links provided are to recent articles in [News for Tax Professionals](#) concerning the same subject matter.

- [Brown County Football Stadium District Sales Tax Ends September 30, 2015](#)
- [Car Wash Services – New Fact Sheet](#)
- [Spring Cleaning is Here! Carpet and Upholstery Cleaning is Taxable](#)
- [Entry Fees for Runs, Walks, and Races Are Taxable](#)
- [Masonry and Paving Contractors](#)
- [Pet Boarding is Taxable](#)
- [Horse Boarding and Other Related Activities](#)

The [July 2015 Sales and Use Tax Report](#) (Special Edition) provides a summary of each of the new Wisconsin sales and use tax laws enacted in the Governor's 2015-2017 Budget Bill (2015 Act 55).

### ***Withholding Calculator***

Use our free withholding calculator (download the [Department of Revenue Mobile App](#)) to help you complete Wisconsin [Form WT-4](#), *Employee Withholding Exemption Certificate*. Employees give Form WT-4 to their employers to identify withholding status and claim the number of withholding exemptions. Employers use this information to calculate the amount of Wisconsin income tax to be withheld from the employee's wages.

This calculator will estimate the amount of Wisconsin income tax to be withheld by your employer based on the number of withholding exemptions you claim, your withholding status, and pay information. If you want to change the amount your employer is withholding, submit a new Form WT-4 to your employer.

If you claim the maximum number of exemptions to which you are entitled and your withholding still exceeds your expected income tax liability, you may use [Form WT-4A](#) to reduce the amount withheld.

## Federal and Wisconsin Tax Treatment of Identity Protection Services Provided to Data Breach Victims

The Internal Revenue Service (IRS) recently issued an announcement concerning identity protection services provided to data breach victims. The federal income tax treatment described below applies for Wisconsin income tax purposes.

[IRS Announcement 2015-22](#) states that the IRS will not assert that an individual whose personal information may have been compromised in a data breach must include in gross income the value of the identity protection services provided by the organization that experienced the data breach.

Additionally, the IRS will not assert that an employer providing identity protection services to employees whose personal information may have been compromised in a data breach of the employer's (or employer's agent or service provider's) recordkeeping system must include the value of the identity protection services in the employees' gross income and wages.

Announcement 2015-22 will be in Internal Revenue Bulletin 2015-35, dated August 31, 2015.

## Question and Answer – Credit For Taxes Paid to Illinois

*Caution: The answer in this article reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of the date of this Bulletin. It may be subject to change based on laws enacted after that date, new administrative rules, and court decisions.*

As amended by [Illinois House Bill 3157](#), the Illinois Income Tax Act provides that a nonresident of Illinois who has had Illinois income tax withheld by a partnership or Subchapter S corporation is not required to file an Illinois income tax return if the nonresident's income tax liability is paid in full after taking into account the withholding. Although the individual is not required to file an Illinois income tax return, the individual may file such return with Illinois.

**Q** How should a Wisconsin resident document tax paid to Illinois for purposes of the credit for taxes paid to other states if the individual is not required to file an Illinois nonresident or composite income tax return?

**A** As the pass-through withholding payments paid by a partnership or tax-option (S) corporation on its Illinois replacement tax return is the total of each nonresident partner's or shareholder's income tax on their proportionate share of Illinois income, the return filed by the partnership or tax-option (S) corporation is considered a combined or composite return filed on behalf of its nonresident partners or shareholders. Therefore, a Wisconsin resident must attach a copy of the 3K-1 or 5K-1 on which is shown the share of tax paid to Illinois, as required under sec. [Tax 2.955\(4\)\(b\)2.](#), Wis. Adm. Code (May 2015 Register).

## Reminder: Apportioning Compensation of Nonresident Members of Professional Athletic Teams

Nonresident members of professional athletic teams (for example, players, coaches, managers, and trainers) are subject to Wisconsin tax on the portion of compensation received for services performed in Wisconsin (compensation includes salaries, wages, and certain performance or signing bonuses). The amount of compensation subject to Wisconsin tax is determined by multiplying the total compensation for services performed by the ratio of duty days spent in Wisconsin performing services to total duty days spent both in and outside Wisconsin.

Duty days are the days from the start of the team's official pre-season training through the last game the team competes or is scheduled to compete in, plus any days outside that period on which services are performed for the team (for example, participating in an instructional league, promotional event, or all-star game for the team).

[Section Tax 2.31](#), Wis. Adm. Code (May 2015 Register), describes in more detail the allocation and apportionment of compensation received by nonresident members of professional athletic teams.

## Reminder: Apportioning Income of Interstate Professional Sports Clubs and Teams

Professional sports clubs and teams engaged in business in and outside of Wisconsin during the year must determine the amount of income subject to Wisconsin tax. The amount of income subject to Wisconsin tax is determined by multiplying the total income earned everywhere by the sales factor. The sales factor is a ratio consisting of sales in Wisconsin to total sales everywhere.

Items included in the sales factor:

- **Gate receipts.** Gate receipts are included in the sales factor as the ratio of gate receipts from games played in Wisconsin to total gate receipts received from games played.
- **Radio and television receipts.** Radio and television receipts received from a league or association contract with the major communications networks, or from local television and radio networks, are included in the numerator of the sales factor based on the number of games played in Wisconsin to the total games played that are covered by the contract. The denominator of the sales factor includes all income from these sources.
- **Concession income and miscellaneous income.** Concession and miscellaneous income, such as parking lot, advertising, and other similar income, are included in the sales factor as the ratio of income from activities conducted in Wisconsin to income from activities conducted everywhere.
- **Player contracts, franchise fees, and similar income sources.** These income sources are excluded from the sales factor.

[Section Tax 2.505](#), Wis. Adm. Code (May 2015 Register), provides further information on this topic.

## New Matching Program For Returning Unclaimed Property to its Owner

Beginning June 15, 2015, the Department of Revenue (DOR) began notifying some individuals that they are owners of unclaimed property.

By the end of the year, DOR anticipates it will return approximately \$13.6 million in unclaimed property to more than 97,000 owners, after offsetting taxes or other debts owed.

### How the Matching Program Works

DOR identifies owners of unclaimed property from its income tax records. If there is a match between an individual and an unclaimed property, DOR first offsets any debts before paying a refund on the unclaimed property. Then DOR mails one of two different notices to the individual depending on the value of unclaimed property payable.

#### Notice of Claim Refund – Unclaimed Property if the amount payable is \$2,000 or less

- A check is attached at the bottom of page 1 when there is a refund payable
- The notice may include:
  - an itemized list of the property being refunded to the owner
  - any interest paid and the specific property to which the interest relates
  - the amount and type of debts, if any, that were paid from the proceeds of the unclaimed property
  - contact information for questions

**Notice of Unclaimed Property if the amount payable is more than \$2,000**

- The notice lists items and amounts of unclaimed property
- The owner must follow the instructions in the notice to file a claim for the property
- Upon approval of the claim, DOR sends the refund to the owner as described above for *Notice of Claim Refund- Unclaimed Property if the amount payable is \$2,000 or less*

**DOR Contact Information**

Persons receiving one of these notices are encouraged to go to [revenue.wi.gov](http://revenue.wi.gov) and visit the *Unclaimed Property* page to search for additional unclaimed property they may have.

**Call:** (608) 264-4594 ( Mon-Fri, 7:45 a.m. - 4:30 p.m.)

**Email:** [DORUnclaimedProperty@revenue.wi.gov](mailto:DORUnclaimedProperty@revenue.wi.gov)





## Report on Litigation

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

The following decisions are included:

<b>Sales and Use Tax</b>	
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### SALES AND USE TAX

**Medical record copies.** *Cannon & Dunphy, S.C. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 30, 2015).

This case involves two issues: (1) whether the cost of obtaining copies of medical records from health care providers on behalf of clients is subject to Wisconsin use tax, and (2) whether Wisconsin sales tax has been paid on the firm's purchase of a granite counter top.

The Commission found that the true objective of a patient's request for the production of medical records is to obtain medical information. The transaction, it stated, primarily involves the nontaxable professional services of providing medical care and the required production of the information relating to that care.

The Commission sided with the department on the second issue. The taxpayer purchased a granite countertop which should have been subject to sales tax, but the seller neglected to charge sales tax.

The department filed a petition for rehearing, which the Commission denied on August 19, 2015. The department has until September 18, 2015, to appeal this decision.

**Taxable services – processing tangible personal property.** *Tetra Tech EC, Inc., and Lower Fox River Remediation LLC vs. Wisconsin Department of Revenue* (Circuit Court for Brown County, August 20, 2015).

This is a judicial review of a Wisconsin Tax Appeals Commission decision dated December 30, 2014. See *Wisconsin Tax Bulletin* 187 (January 2015), pages 9 and 10, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue in this case is whether certain services provided to Tetra Tech EC, Inc. ("Tetra Tech") and Lower Fox River Remediation LLC ("LLC") by Stuyvesant Dredging, Inc. ("SDI") are subject to Wisconsin sales and use tax. On November 13, 2007, the U.S. Environmental Protection Agency issued an order directing certain paper companies operating in Wisconsin to implement remedial action at the Lower Fox River and Green Bay Superfund site. The pa-

per companies were directed to submit work plans and progress reports and to hire a contractor. The contractor they hired was Tetra Tech, a Delaware corporation. Tetra Tech engaged subcontractors to perform certain tasks related to clean up. One subcontractor was SDI, whose activities are at issue in this case. SDI was tasked with separating the sand out of the polluted sediment it received and preparing it to be reused in addition to dewatering the remaining polluted sediment. The parties agree that the sediment dredged from the Fox River during the period under review, that was the subject of SDI's services, is tangible personal property as defined in sec. 77.51(20), Wis. Stats.

In its decision, the Commission concluded that the services provided by SDI were taxable as "processing" under sec. 77.52(2)(a)11., Wis. Stats. The Circuit Court affirmed the Commission's decision, for the following reasons.

SDI's service falls under the definition of "processing." SDI receives the untreated water from the Fox River and puts it through the steps of a prescribed procedure, which prepares the product into separate groups for eventual reuse or disposal.

Just because "processing" can cover a wide range of activities does not mean the Court should not apply the correct definition and plain meaning of the term. Based on the plain language of the statute, the Court found that the Commission appropriately determined that SDI's activities were taxable as "processing."

The department was not foreclosed from asserting that SDI's activities were taxable under sec. 77.52(2)(a)11., Wis. Stats., simply because it cited sec. 77.52(2)(a)10., Wis. Stats., as the basis for the adjustments in the notices.

At the time of publication it is not known whether the taxpayers will appeal this decision.

## CORPORATION FRANCHISE AND INCOME TAX

**Income-producing activity – taxable years beginning before January 1, 2009.** *Skechers USA, Inc. II vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 31, 2015). The key issues in this case are:

- what the income-producing activity of Skechers USA, Inc. II ("SUI") was during the years at issue (2000-2003); and
- whether any of SUI's income-producing activity occurred in Wisconsin for purposes of apportioning SUI's royalty income from the license of patents, trademarks, and copyrights.

During the years at issue SUI licensed patents, trademarks, and copyrights to Skechers and unrelated licensees. SUI had no offices, employees, or representatives in Wisconsin. SUI owned no real or tangible personal property in Wisconsin. The licensing agreements were negotiated and executed outside Wisconsin. All activity engaged in by SUI relating to the designing, developing, and marketing of "Skechers" brand footwear, and all work to increase the number of patents and trademarks related to "Skechers" brand footwear, took place outside Wisconsin. Consistent with the terms of the license agreement, Skechers, and not SUI, controlled how and where the patents, trademarks, and copyrights were to be used.

SUI argued that, given the above facts, it engaged in no income-producing activity in Wisconsin and, as such, had no income apportionable to Wisconsin. The department asserted that, because SUI's royalty income was generated directly from Skechers' sale of Skechers shoes in Wisconsin and elsewhere, the relevant income-producing activity was the sale of shoes. As a result, the department argued SUI's royalty income was apportionable to Wisconsin.

The Commission looked to the decisions in *Hearst* and *Ameritech*, in which it was determined income-producing activity was performed in Wisconsin. Ancillary services may have been performed outside Wisconsin, however it was broadcasting (in the case of *Hearst*) and the distribution of phone directories (in the case of *Ameritech*) that were the services contracted and paid for. By contrast, SUI had no employees or property in Wisconsin and did not directly engage in any activities in Wisconsin. The Commission determined that, while the sale of shoes is an income-producing activity, it was an activity of Skechers and not SUI.

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The Commission concluded that:

1. SUI's income-producing activity during the years at issue consisted of the licensing of patents, trademarks, and copyrights to Skechers and unrelated third parties, and related activities, and not the sale of shoes; and
2. under the law in effect during the years at issue (sec. 71.25(5), Wis. Stats. (2001-02)), SUI's income-producing activity occurred completely outside Wisconsin and, thus, SUI's sales factor under sec. 71.25(9)(d), Wis. Stats. (2001-02), was zero.

The department has not appealed this decision.



## Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

### Sales and Use Tax

Durable medical equipment  
W1529006 (p. 12)

✱ **W1529006** ✱

**April 22, 2015**

**Type Tax:** Sales and Use Tax

**Issue:** Durable medical equipment

**Statutes:** Sections [77.51\(3pm\)](#) and [77.54\(22b\)](#), Wis. Stats. (2013-14)

**Administrative Code:** Section Tax 11.08(2)(c), Wis. Adm. Code (August 2014 Register)

Thank you for your letter dated December 18, 2014, requesting a private letter ruling.

### **Facts, as provided by you:**

Company A sells bed frames, mattresses, and related products and accessories at retail in Wisconsin. Company A's product lines include conventional bed frames and mattresses, adjustable bed frames and foam mattresses, furniture, and accessories such as mattress pads and pillows.

Company A's adjustable bed frames have motors built into the frames which allow them to be adjusted to various raised or elevated positions at both the head and foot of the bed. The adjustable bed frames and mattresses provide the same functionality as traditional hospital beds and are marketed for home use to retail consumers.

In some cases, medical professionals will prescribe, instruct, or recommend a patient/customer to purchase an adjustable bed frame and mattress. These products are sold to patients/customers suffering from general discomfort, back problems, sleep apnea, chronic snoring, or improper circulation, among other conditions. Another example is "Fowler's position," which in the medical field generally refers to a position in which the patient's head is raised and the legs or feet are elevated.

Customers can purchase the adjustable bed frame from Company A with or without a mattress. Only foam mattresses can be used with an adjustable bed frame because the foam contours to the frame when it is being raised. Spring mattresses cannot be used because they are not able to contour when the frame is being raised and will slide or snap out of place. Accordingly, Company A only recommends foam mattresses for adjustable bed frames, but will sell just the adjustable bed frame to customers. Most customers purchase the adjustable bed frame together with a foam mattress and Company A's sales invoice lists the adjustable bed frame and foam mattress separately.

Company A is registered with the Wisconsin Department of Revenue and currently collects and remits Wisconsin sales tax on adjustable bed frames and mattresses. However, Company A's retail customers have been challenging store sales personnel about charging sales tax on adjustable bed frames and foam mattresses because of the exemption for "hospital beds and mattresses" under Wisconsin law.

Wisconsin exempts from sales tax "durable medical equipment that is for use in a person's home." Wis. Stat. § 77.54(22b). Wisconsin provides that "durable medical equipment means equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used for a medical purpose related to a person that can stand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body." Wis. Stat. § 77.51(3pm).

Several examples of durable medical equipment are provided by state regulation. Wis. Adm. Code Tax 11.08, "Durable medical equipment, mobility-enhancing equipment, and prosthetic devices." Pursuant to Regulation 11.08(1), " 'durable medical equipment' is exempt only when purchased for use by a human being in a person's home." Regulation 11.08(2)(c) also contains examples for qualifying durable medical equipment, including "hospital beds and mattresses."

### **Ruling Requested by You**

Company A is requesting a ruling that the adjustable bed frames and foam mattresses sold on the same invoice to retail customers for home use will qualify as exempt durable medical equipment.

### **Ruling**

The adjustable beds described in the facts do not qualify for exemption from Wisconsin sales and use taxes as durable medical equipment under sec. 77.54(22b), Wis. Stats. (2013-14). In addition, a mattress for this bed does not qualify for exemption either, since the mattress is not an accessory for "durable medical equipment."

"Durable medical equipment " is defined in sec. 77.51(3pm), Wis. Stats. (2013-14), as "*...equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility-enhancing equipment.*"

While these beds may be used primarily for a medical purpose related to certain persons, these beds are not customarily used for a medical purpose related to a person and these beds are generally useful to a person who is not ill or injured. As such, the beds fail to meet the definition of "durable medical equipment," and are not exempt under sec. 77.54(22b), Stats. A mattress for this bed is also not exempt as it cannot be an accessory for "durable medical equipment."

Section 11.08(2)(c), Wis. Adm. Code (August 2014 Register), does list "hospital beds and mattresses" as qualifying for exemption as durable medical equipment. The listing of "hospital beds and mattresses" as being exempt is consistent with these items being identified as "durable medical equipment" in Appendix L of the Rules to the Streamlined Sales and Use Tax Agreement. In Appendix L, a "hospital bed" is described as "a single bed with a frame in 3 sections so the head middle or foot can be raised as required." Wisconsin is a member of the Streamlined Sales and Use Tax Governing Board and follows the Streamlined Sales and Use Tax Agreement and Rules.