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Copies of Paper Medical Records No Longer Taxable

As a result of the decision by the Wisconsin Tax Appeals Commission in *Cannon & Dunphy, S.C. vs. Wisconsin Department of Revenue* (August 15, 2015), sales of paper copies of patient health care records (medical records) are no longer subject to Wisconsin sales or use tax if the medical records are sold to the patient or to a person authorized by the patient to receive the medical records. Although the department appealed this decision, the department's appeal was dismissed on procedural grounds.

Sales of electronic copies of patient health care records (medical records) that are transmitted electronically continue to be nontaxable.

For purposes of this change in sales and use tax treatment, the terms "patient," "patient health care records," and "person authorized by the patient" have the same meaning as defined in sec. 146.81(3) through (5), Wis. Stats. (2013-14).

If you paid tax on sales or purchases of paper medical records, you may file a claim for refund with the Department of Revenue:

- Sellers may file a claim for refund for sales tax paid to the Department of Revenue for sales of copies of medical records if the sale took place within the statute of limitations.* **Note:** If a seller files a claim for refund for tax that was collected from buyers, the seller must return the tax and related interest refunded by the department to the buyers from whom the tax was collected.

- Buyers that paid the tax to a seller may request a refund directly from the seller. If the tax was paid to the seller or paid directly to the Department of Revenue, a buyer may file a [Buyer's Claim for Refund](#) with the department within the statute of limitations.*

*The statute of limitations for claiming refunds is generally four years from the unextended due date of the claimant's income or franchise tax return. See [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*, for exceptions and additional information about filing claims.

Change in Tax Treatment of Waterslides in Water Parks

The sale and installation of waterslides in a water park, including the waterslide flumes and the steel support beams that hold up the flumes, are real property improvements. Previously, the department considered waterslide flumes and steel support beams to remain tangible personal property when installed.

The sale of a real property improvement in Wisconsin is not subject to sales tax. A contractor that purchases waterslide materials and installs them in a water park is the consumer of all materials and supplies that it uses in making the real property improvement and is liable for tax on its purchase of such materials and supplies (e.g., flumes, support beams that hold up the flumes, supports, concrete, bolts).

The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of any waterslide remains subject to Wisconsin sales or use tax. The service provider may purchase without tax, for resale, any materials that are physically transferred to the customer in the repair or other service to a waterslide.

Buyers of Installed Waterslides in Water Parks

If a buyer paid tax on its purchase of an installed waterslide in a water park, the buyer may do either of the following:

1. Do nothing. The department will not adjust a buyer's sales and use tax liability for these items.
2. File a claim for refund for purchases made within the statute of limitations:*
 - If the tax was paid to the seller, the buyer may request a refund of the tax from the seller. The seller may reduce the amount of the tax it refunds to the buyer by its use tax liability on its purchase of the materials that were physically transferred to the buyer, or
 - If the tax was paid to the seller or paid directly to the Department of Revenue, the buyer may file a [Buyer's Claim for Refund](#) with the department.

Sellers of Installed Waterslides in Water Parks

Sellers are required to pay sales or use tax on the purchase price of materials that are physically transferred to the customer on the sale and installation of waterslides in water parks that take place on or after October 1, 2015. **Exception:** If, prior to October 1, 2015, a seller entered into an irrevocable contract to sell and install a waterslide in a water park, the sale will be treated as if it took place prior to October 1, 2015.

For sales that take place prior to October 1, 2015 where a seller charged tax on the sale of an installed waterslide at a water park, the seller may do either of the following:

1. Do nothing. The department will not adjust a seller's sales and use tax liability for these items.
2. File a claim for refund for sales tax paid to the Department of Revenue for sales of installed waterslides in water parks if the sale took place within the statute of limitations*. However, the seller will owe Wisconsin use tax based on its purchase price of the materials used in making the real property improvement (e.g., flumes, structural supports).

CAUTION: If tax was collected from buyers, the seller must return the tax and related interest refunded by the department to the buyers from whom the tax was collected. The seller may reduce the refund given to the buyer by the amount of tax and interest due and paid on the seller's purchase of materials that are physically transferred to the buyer in the seller's sale and installation of the waterslide.

* The statute of limitations for claiming refunds is generally four years from the unextended due date of the claimant's income or franchise tax return. See [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*, for exceptions and additional information about filing claims.

Fall Farm Events May Be Subject to Sales Tax

Charges for admission to an amusement, athletic, recreational, or entertainment event or place or for access to or the use of an amusement, athletic, recreational, or entertainment device or facility are taxable.

Examples of taxable charges for admission include fees for:

- The right to access land to hunt wild animals
- The right to hunt on a game farm
- The right to access horse riding trails
- Riding a horse
- Hayrides
- Attending a Halloween "fright night" event
- Access to a corn maze
- Access to playground equipment
- Access to petting zoos
- The right to use a campsite
- The use of a facility to hold a wedding dance/reception or birthday party

The sale of tangible personal property is also taxable, including sales of the following:

- Flowers, holiday trees, and other decorative trees, plants, or shrubs
- Food and food ingredients for human consumption that are candy, soft drinks, dietary supplements, or prepared food
- Farm produce that is not intended to be consumed by humans (e.g., items sold for pet or animal food) and food items that have been decorated, such as painted gourds or pumpkins
- Alcoholic beverages (more than 0.5% alcohol by volume), such as hard ciders and wine
- Pumpkin carving kits

Sales of the following products are not taxable:

- Unprocessed farm produce for human consumption (e.g., pumpkins, potatoes, squash, onions, apples, pears, popcorn, raw nuts)
- Uncooked meats and poultry sold for human consumption
- Other food or food ingredients that are not candy, dietary supplements, soft drinks, or prepared food

Winterizing (Dewinterizing) Vacation Homes, Cabins, and RVs

Winterizing services for a vacation home or cabin that consist of the following are not taxable (this list is not all inclusive):

- Draining water from a water heater.
- Opening water faucets to allow water to drain.

- Blowing air through the water lines and drain pipes to drain the water.
- Putting antifreeze in water lines, drain pipes, and toilets to prevent freezing of water left behind after draining.
- Installing temporary storm windows or plastic sheeting on the windows.
- Cleaning gutters.

Although some of the services listed above are performed to tangible personal property, the primary purpose of the winterizing or dewinterizing service is to ensure that no water is left in the pipes within the plumbing system (real property) that could cause damage to the vacation home or cabin. Because the service is to real property, it is not subject to Wisconsin sales and use tax. Other types of winterizing services may be taxable. For example, raking leaves and trimming bushes and plants are taxable landscaping services.

The tax treatment above also applies to manufactured homes. "Manufactured home" means a structure that is designed to be used as a dwelling with or without a permanent foundation and that is certified by the federal Department of Housing and Urban Development as complying with the standard established under 42 USC 5401 to 5425.

Recreational vehicles (RVs) are tangible personal property. Therefore, winterizing and dewinterizing services to RVs are subject to tax.

Holiday Tree Sales

Sales of holiday trees and wreaths, whether live, cut, or artificial, are subject to sales tax, unless an exemption applies. A nursery or person in the business of tree farming may purchase the seedlings or trees without tax, for resale, by providing the vendor with a fully completed exemption certificate (e.g., Form S-211).

Are the sales of holiday trees subject to sales tax?

Yes, sales of holiday trees are taxable sales of tangible personal property, unless an exemption applies.

Are the sales of wreaths, boughs, and garland subject to sales tax?

Yes, sales of wreaths, boughs, and garland are taxable sales of tangible personal property, unless an exemption applies.

What reasons could the sale be exempt from tax?

- The sale is made to a nonprofit organization holding a valid Certificate of Exempt Status (CES) number issued by the Department of Revenue.
- The sale is made to another type of exempt entity (i.e., Wisconsin governmental agency).
- The sale is made to another retailer for resale.
- Seller qualifies for the occasional sale exemption. Information about the occasional sale exemption for nonprofit organizations can be found in [Fact Sheet 2106](#). The occasional sale exemption for other sellers is explained in Part II.G.3. of [Publication 228](#).

Is the seller's purchase of the trees taxable?

No, the seller may provide a fully completed *Wisconsin Sales and Use Tax Exemption Certificate* (Form S-211) to the nursery or tree provider claiming resale. However, if the seller makes any use of a tree other than to sell it, the seller owes use tax on its purchase price. For example, rather than selling a tree, the seller takes a tree out of inventory for her own home. The seller owes use tax on her purchase price of the tree that was used, rather than sold.

Fishing and Hunting Guide Services

Fishing and hunting guide services are subject to Wisconsin sales tax when the guide provides equipment or access to land or a waterway that the customer would not otherwise have access to. Guide services, by themselves, are not taxable.

The guide must pay tax on his or her purchase of equipment used in providing the guide services. If the guide pays another party for admission to hunting land and the guide's *only* use of the land is to provide guide services for a fee, the guide may provide the owner of the hunting land with a fully completed exemption certificate (Form S-211) claiming resale. If the guide also uses the land for his or her own hunting, the exemption does not apply.

Example 1 – Guide Services Only Provided

Hunting Guide is hired by Customer for \$200 to share his expertise in hunting on public hunting land. Hunting Guide does not provide Customer with any equipment. There is no fee to access the public hunting land. Hunting Guide shows Customer good hunting locations and gives Customer hunting tips.

Hunting Guide's \$200 charge for providing guides services only is not taxable.

Example 2 – Guide Services - Equipment Provided By Guide, Land Owned by Guide

Hunting Guide is hired by Customer for \$200 to share his expertise in hunting and allow Customer to hunt on Hunting Guide's land. Hunting Guide provides equipment, and Customer would not otherwise have access to this hunting land.

Hunting Guide's \$200 charge is taxable.

Example 3 – Guide Services - Equipment Provided By Guide, Guide Purchases Access to Land

Hunting Guide is hired by Customer for \$200 to share his expertise in hunting and allow Customer to hunt on specific land. Hunting Guide pays land owner \$50 for the right to use the hunting land during this time. Hunting Guide provides equipment, and Customer would not otherwise have access to this hunting land.

Hunting Guide's \$200 charge is taxable. Hunting Guide may purchase access to the land without tax for resale by giving the land owner a fully completed exemption certificate claiming resale.

Example 4 – Fishing Guide Services – Boat and Equipment Provided By Guide

Fishing Guide is retained for \$500 to take Customer and his family on Lake Michigan to catch salmon using one of Fishing Guide's boats. Fishing Guide will provide all the bait and tackle that is needed.

Fishing Guide's \$500 charge is taxable.

Example 5 – Guide Services and Lodging Package

Hunting Guide offers a package for \$1,000 that includes hunting guide services for four hunters, lodging for four hunters, transportation to and from the lodge to the hunting land, and access to the hunting land for each of the four hunters. The hunters will use their own equipment to hunt.

Hunting Guide's \$1,000 charge is taxable. *Note:* If Hunting Guide purchased lodging services, Hunting Guide may purchase the lodging without tax for resale by giving the lodging provider a fully completed exemption certificate claiming resale.

Homeowners and Individuals Providing Short-Term Lodging

Homeowners or other individuals who make rooms or lodging available to the public for periods less than one month, must report and pay Wisconsin sales tax on such rentals. This includes the short-term rental of a home, room, apartment, cabin, inn, motel, or any other building in which accommodations are made available to the public. "One

month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of rental.

The sales tax rate charged is based on the location where the lodging is furnished. A basic room tax, an additional room tax and a municipal room tax may also apply, depending on the location of the lodging.

For example, lodging furnished in Milwaukee County is subject to 5.6% sales tax (5% state, .5% county, and .1% stadium) plus a 2.5% basic room tax. If the sale occurs in the City of Milwaukee, an additional 7.0% room tax applies.

If you are furnishing short-term lodging, you should apply for a seller's permit at tap.revenue.wi.gov/btr.

Exception: If a seller's taxable sales are less than \$1,000 in a calendar year, an occasional sale exemption may apply to the sales. See the article titled "Occasional Sale Exemption in Section 77.54(7)(a), Wis. Stats.: When Does it Apply?" that was published in [Wisconsin Tax Bulletin #122](#) (October 2000).

Additional information about providing lodging services is available in [Publication 219, Hotels, Motels, and Other Lodging Providers](#).

Donated Property

Property that is purchased without tax for resale and later used in a taxable manner is subject to Wisconsin use tax. The business is the consumer of such property that it uses, rather than sells. The use tax is based on the purchase price of the property.

Example 1: Grocery Store purchases floor wax without tax, for resale, that it will hold in inventory for sale. Grocery Store takes a bottle of floor wax out of inventory to wax Grocery Store's floor. Grocery Store is the consumer of the floor wax that it uses in a taxable manner and must pay use tax on its purchase price of the floor wax.

Exception: A donor business does not owe use tax if the property is purchased without tax for resale and later donated to a tax exempt organization listed in sec. 77.54(9a), Wis. Stats. If the exempt organization is not a governmental unit, the donor business should obtain the exempt organization's certificate of exempt status number to document this exemption.

Example 2: Retailer sells athletic wear. Retailer takes a football jersey out of stock and donates it to Exempt Organization, who will use the jersey as a prize in its raffle. Retailer does not incur a use tax liability, since the jersey is donated to a qualifying tax exempt organization.

This exemption only applies to donations to qualifying organizations (i.e., organizations listed in sec. 77.54(9a), Wis. Stats.). A fundraiser may be held to benefit an individual. Property that is taken out of inventory and donated to a fundraiser for an individual does not qualify for exemption from use tax, since the funds raised benefit an individual and not a qualifying organization. The donor is liable for use tax on its purchase price of taxable products donated in this manner.

Example 3: Individual has incurred medical expenses that are not covered by insurance. Individual's friends and neighbors organize a silent auction, with the proceeds being used to defray Individual's medical expenses. Retailer takes a football jersey out of inventory and donates it to the auction. Retailer is the consumer of the jersey that it uses in a taxable manner and must pay use tax on its purchase of the jersey. The exemption for property purchased without tax for resale and donated does not apply, since the property is being donated to a nonqualifying person or organization.

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 September. 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 September 2015 *Sales and Use*

Tax Report (Issue 3-15). Links provided are to recent articles in [News for Tax Professionals](#) concerning the same subject matter.

- No Change to Motor Vehicle Dealers' Measure of Use Tax for 2016
- Reminder: Football Stadium Tax Ends September 30, 2015
- Wisconsin/Minnesota Sales Tax Seminars
- New Tax Laws
- Change in Tax Treatment of Waterslides in Water Parks
- [Swimming Pool Cleaning and Maintenance Services Are Taxable](#)
- [Taxable Sales and Services to Seasonal Docks, Floating Piers, Swim Rafts and Other Similar Property](#)
- [Sales of Watercraft, Such as Boats and Jet Skis](#)
- [Sales and Use Tax Exemption for Fuel and Electricity Used in Manufacturing](#)

Question and Answer

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

Sales of Holiday Dinners

Q When a grocery store sells a prepared holiday dinner (e.g., turkey, stuffing, mashed potatoes, gravy, green bean casserole, and rolls), is the grocery store's sale of the holiday dinner taxable?

A Yes, the grocery store's sale of a prepared holiday dinner is subject to sales tax. Tax applies to sales of prepared food.

Furnace Inspections

Q Are annual furnace inspection services subject to sales tax?

A Yes, services to furnaces, including inspection services, are subject to tax. The law treats a furnace as tangible personal property for purposes of repair and other services. The repair or other service to tangible personal property is taxable. *Note:* The inspection or cleaning of general ductwork is not taxable, since heating ducts are real property. Services to real property are not taxable.

Credit For Taxes Paid to Other States

Q How should a Wisconsin resident member of a partnership or tax-option (S) corporation document tax paid to another state for purposes of the credit for taxes paid to other states if the partnership or tax-option (S) corporation is not required to file a Wisconsin return?

A The Wisconsin resident must attach a letter provided by the partnership or tax-option (S) corporation on which is shown the individual's proportionate share of the items of income taxable by the other state, the adjusted gross income, and the net tax paid (sec. Tax [2.955\(4\)\(d\)](#), Wis. Adm. Code (May 2015 Register)).

DOR No Longer Providing Copies of Federal Income Tax Returns

The Department of Revenue (DOR) is no longer providing copies of federal income tax returns when Wisconsin income tax return copies are requested. Copies or transcripts of federal income tax returns should be requested from the [Internal Revenue Service](#) (IRS).

Most federal returns received by DOR cannot be printed in a useable format. A federal return viewer that previously enabled DOR to print federal income tax returns is no longer supported by the IRS.

Reminders: Nexus Determinations for Income and Franchise Tax

Filing a Return in Another State Does Not Create Nexus

Voluntarily filing an income or franchise tax return in another state, or obtaining a certificate of authority to transact business in another state, does not by itself give rise to nexus in that state. For nexus to be established, the entity must have business activity not protected by Federal Public Law 86-272 in that state.

Nexus is Determined on an Annual Basis

Section Tax 2.82, Wis. Adm. Code (May 2015 Register), describes generally the kind of activity which, when conducted in Wisconsin, creates nexus for income and franchise tax purposes. Section 71.22(1r), Wis. Stats. (2013-14), defines “doing business in this state” (that is, nexus). A taxpayer doing business in Wisconsin for any part of a taxable year is considered to be doing business in Wisconsin for the entire taxable year.

Nexus for a Member of a Combined Group

Nexus is determined for the unitary business as a whole, as provided in sec. 71.255(5)(a), Wis. Stats. (2013-14). If a member of a combined group has nexus in Wisconsin and that nexus is attributable to the combined group’s unitary business, all members of the combined group have nexus in Wisconsin. If any member of a combined group has nexus in another state attributable to the combined group’s unitary business, all members of the combined group have nexus in that state.

Nexus When Returns Are Filed on a Separate Entity Basis

Nexus is determined on a separate entity basis for taxpayers not filing as part of a combined group.

Common Income and Franchise Tax Filing Errors

Nonapportionable Income

Taxpayers engaged in business both in and outside of Wisconsin are required to apportion their income to Wisconsin. The majority of income received from Wisconsin sources is apportionable income; however, there are specific items that are nonapportionable and must be specifically allocated to the location of the property on Form N.

The income, gain, or loss from the sale of the following are nonapportionable income:

- Nonbusiness real property
- Nonbusiness tangible personal property
- Rental of nonbusiness real property
- Rental of nonbusiness tangible personal property
- Royalties from nonbusiness real property
- Royalties from nonbusiness tangible personal property

Interest and Dividends

- **Shareholders of Tax-Option (S) Corporations:** Income a nonresident individual receives from a tax-option (S) corporation which is engaged in business in and outside Wisconsin is taxable to the shareholder based on

their proportionate share of income that is received from business transacted and property located in Wisconsin. Failure to apportion and allocate interest and dividends to shareholders is a common error when preparing Schedule 5K-1.

- **Apportionment Sales Factor:** Interest (except interest on trade accounts and notes) and dividends are not considered sales for purposes of computing the Wisconsin sales factor. As a result, they are not included in the numerator or denominator of the sales factor computed on Form A-1.
- **Economic Development Surcharge:** The economic development surcharge applies to corporations that have gross receipts from all activities of \$4 million or more. Interest and dividends are included in the definition of gross receipts for purposes of computing the economic development surcharge.

Reminder: Source of Funds Used to Pay Tuition and Fees May Limit Subtraction

A subtraction may be claimed for up to \$6,943 (per student) of the amount paid during 2015 for tuition and mandatory student fees. When determining if a subtraction is allowed, an important consideration is the source of funds used to pay the tuition and fees.

A subtraction may not be claimed for tuition and fees paid with certain tax-free funds (for example, tuition paid with tax-free scholarships or Pell grants or amounts paid or reimbursed to you by your employer). A subtraction may be claimed for tuition and fees paid from loans, gifts, inheritances, and personal savings.

In addition, a subtraction may not be claimed if the source of the payment is an amount withdrawn from a Wisconsin state-sponsored college savings program or college tuition and expenses program (for example, Edvest). This limitation applies only if the owner of the account or other person who contributed to the account (for example, parent, grandparent, aunt, or uncle) previously claimed a subtraction for contributions to these programs.