

Wisconsin Tax Bulletin

April 2018 Number 201



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New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, excise tax, and other provisions.

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

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A. Individual and/or Fiduciary Income Taxes

1. Internal Revenue Code References Updated for 2017 for Individuals, Estates, and Trusts

([2017 Wis. Act 231](#), amend sec. 71.01(6)(k)1. and 3., effective for taxable years beginning before January 1, 2018)

Certain changes to the Internal Revenue Code made by Public Law 115-97, [Tax Cuts and Jobs Act of 2017](#), apply for Wisconsin purposes for taxable years beginning before January 1, 2018:

- Section 11024 relating to increase contributions to ABLE accounts
- Section 11025 relating to rollovers to ABLE programs from 529 programs
- Section 13543 relating to the modification of treatment of S Corporation conversions to C Corporations

2. Internal Revenue Code References Updated for 2018 for Individuals, Estates, and Trusts

([2017 Wis. Act 231](#), create sec. 71.01(6)(L), effective for taxable years beginning on or after January 1, 2018)

For taxable years beginning on or after January 1, 2018, for individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2017, except the federal public laws listed in sec. 71.01(6)(L)2., Wis. Stats., do not apply for Wisconsin.

The provisions of federal public laws that directly or indirectly affect the federal Internal Revenue Code adopted for Wisconsin for taxable years beginning on or after January 1, 2018, apply for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 2017, do not apply for Wisconsin.

See [chart](#) on the department's website for federal provisions from the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) that apply and do not apply for Wisconsin purposes for taxable years beginning on or after December 31, 2017.

3. Internal Revenue Code References to Alternative Minimum Tax Updated

([2017 Wis. Act 231](#), amend sec. 71.08(1)(d), effective April 5, 2018)

The reference to the Internal Revenue Code (IRC) for the subtraction for exemption and exemption phase-out amounts has been updated to reference sec. 55 (d), IRC, as affected by the federal Tax Cuts and Jobs Act of 2017. As a result, the Wisconsin exemption and exemption phase-out amounts are the same as federal for taxable years beginning on or after December 31, 2017.

Note: Wisconsin no longer has an alternative minimum tax for taxable years beginning on or after December 31, 2018

4. Internal Revenue Code References for Dependents Updated

([2017 Wis. Act 231](#), amend secs. 71.05(6)(b)28.(intro.) and 49.b., (10)(i)1., and (23)(b)2., effective April 5, 2018)

For the following, the definition of a dependent has been updated to a dependent that is defined under sec. 152, IRC. Previously, a dependent was defined as one who was claimed under sec. 151(c), IRC.

- Tuition and fee expenses subtraction
- Private school tuition subtraction
- Human organ donation subtraction
- Personal exemption amounts

5. Depreciation, Depletion, and Amortization Clarification

([2017 Wis. Act 231](#), amend sec. 71.98(3), effective for taxable years beginning after December 31, 2013)

For purposes of computing depreciation and amortization, the Internal Revenue Code means the Internal Revenue Code in effect for federal purposes on January 1, 2014; and for depletion, the Internal Revenue Code means the Internal Revenue Code in effect for federal purposes for the year the property is placed in service.

In addition, for purposes of computing depreciation and amortization, the following sections of Public Law 115-97 apply at the same times as federal purposes:

- Section 13201(f) relating to increased luxury auto limitation under sec. 280F, IRC
- Section 13203 relating to modifications of treatment of certain farm property
- Section 13204 relating to the applicable recovery period for real property
- Section 13205 relating to the use of alternative depreciation system for electing farming businesses

6. Eligible Expenses for College Savings Account Expanded

([2017 Wis. Act 231](#), amend sec. 224.50(2)(a), effective April 5, 2018)

The list of expenses allowed for establishing a college savings account has been expanded to include tuition expenses in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, as described in sec. 11032 of P.L. 115-97, related to qualified tuition programs under sec. 529, IRC.

7. Limitation on Private School Tuition Subtraction for Amounts Paid from College Savings Account

([2017 Wis. Act 231](#), amend sec. 71.05(6)(b)49.a., and create sec. 71.05(6)(b)49.k., effective for taxable years beginning after December 31, 2017)

No private school tuition subtraction may be claimed for an amount paid for tuition expenses if the source of the payment is an amount withdrawn from a college savings account, as described in sec. 224.50, Wis. Stats.

8. Airline Carrier Bankruptcy Rollover Payments

([2017 Wis. Act 231](#), create sec. 71.98(9), effective April 5, 2018)

For taxable years beginning after December 31, 2011, sec. 1106 of P.L. 112-95, as amended by P.L. 113-243 and sec. 307 of Division Q of P.L. 114-113, apply for Wisconsin purposes and allow qualified airline employees to exclude certain airline bankruptcy rollover payments from their taxable Wisconsin income.

Taxpayers may be eligible to exclude up to 90 percent of qualified airline bankruptcy payments if the payments were rolled into a traditional individual retirement account (IRA) no later than 180 days after receipt or between December 18, 2014, and June 15, 2016.

The law allows taxpayers to file an amended return to claim a refund, by excluding qualified bankruptcy rollover payments that were previously included in Wisconsin taxable income, within four years of the unextended due date of the tax return or October 2, 2018, whichever is later.

Note:

- If a taxpayer paid taxes on qualified airline bankruptcy rollover payments after receiving a notice of amount due or denial of refund from the department, the department will either send the taxpayer a letter requesting additional information or adjust the taxpayer's return and send him or her a refund
- If a taxpayer paid taxes on qualified airline bankruptcy rollover payments without a notification from the department, the taxpayer must file an amended return to claim a refund.

9. Earned Income Tax Credit Pilot and Permanent Program

([2017 Wis. Act 270](#), create secs. 20.835(2)(ff) and 73.03(73), effective April 12, 2018)

If the Internal Revenue Service (IRS) agrees, the department will work with the IRS to undertake a pilot and a permanent program for the earned income tax credit. If the IRS and the department are unable to reach an agreement on how the program will operate, the program will not be enforced. The Program must accomplish all of the following:

- Establishes a two-year pilot program for making monthly payments to eligible claimants of the amounts these claimants would otherwise be eligible to claim under the federal earned income tax credit. The pilot program is for taxable years beginning after December 31, 2018, and before January 1, 2021. The IRS and the department will enter into an agreement describing the responsibilities and duties of each party.
- Under the pilot program, the IRS will determine the amount of earned income tax credit that could likely be claimed by 100 randomly selected Wisconsin residents for taxable years 2019 and 2020 based on criteria selected by the IRS. The department and the IRS must make every effort to ensure that each individual or married couple selected will be eligible to claim the credit for those taxable years, and that the credit amount for which he or she will likely be eligible will be in excess of \$600 each year. At the beginning of each tax year, the IRS will forward to the department the total amount of payments these 100 claimants will likely be eligible to claim for that taxable year, specifying the amounts allotted to each claimant.
- The department will develop a method to disperse the federal credit amount to each claimant on a periodic basis. Each claimant will receive a portion of his or her likely federal credit amount each month except for the month following the month in which the claimant receives the credit claimed

on his or her tax return. The maximum amount that each claimant could receive annually is two-thirds of his or her likely credit amount. Any excess amount of federal and state credit for which the claimant is eligible can be claimed on his or her federal income tax return. The department will also establish a second test group of 100 claimants who are likely eligible to claim the earned income tax credit for taxable years 2019 and 2020, who will receive their earned income tax credit after filing their individual income tax returns, and compare their financial stability to that of the other test group.

- For taxable years 2019 and 2020, the participants in each of the two test groups remain the same.
- The department will develop policies and promulgate rules, if necessary, to ensure that members of each test group can continue to claim the Wisconsin earned income tax credit to the extent that they are eligible.
- For taxable years beginning after December 31, 2020, the department will make the pilot program permanent and applicable to all eligible claimants of the earned income tax credit based on the specifications described above under paragraphs two and three. This does not apply unless the IRS and the department enter into an agreement describing the responsibilities and duties of each party and an agreement on how the permanent program will operate.

B. Corporation Franchise and Income Taxes

1. Internal Revenue Code References Updated for 2017 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies

([2017 Wis. Act 231](#), amend secs. 71.22(4)(k)1. and 3., and (4m)(k)1. and 3., 71.26(2)(b)11.a. and d., 71.34(1g)(k)1. and 3., and 71.42(2)(k)1. and 3., effective for taxable years beginning before January 1, 2018)

Certain provisions of federal laws that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes for taxable years that begin before January 1, 2018. See Item [A.1](#).

2. Internal Revenue Code References Updated for 2018 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies

([2017 Wis. Act 231](#), create secs. 71.22(4)(L) and (4m)(L), 71.26(2)(b)12., 71.34(1g)(L), and 71.42(2)(L), effective for taxable years beginning on or after January 1, 2018)

Certain provisions of federal laws that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes for taxable years that begin on or after January 1, 2018. See Item [A.2](#).

3. Depreciation, Depletion, and Amortization Clarification

([2017 Wis. Act 231](#), amend sec. 71.98(3), effective for taxable years beginning after December 31, 2013)

See Item [A.5](#).

4. Dividend Received Deduction Revised

([2017 Wis. Act 231](#), amend sec. 71.26(3)(j), effective April 5, 2018)

The federal deduction in sec. 245A, IRC, as created by the federal Tax Cuts and Jobs Act of 2017, for foreign source portion of dividends received by domestic corporations from specified 10 percent owned foreign corporations, does not apply for Wisconsin. Section 245A, IRC was added to Wisconsin's dividends received deduction in sec. 71.26(3)(j), Wis. Stats., so that such dividends may be deducted from Wisconsin income only if the requirements for the deduction under Wisconsin law are met.

5. Low-Income Housing Credit Created

([2017 Wis. Act 176](#), amend secs. 71.08(1)(intro.) and 76.67(2), and create secs. 71.07(8b), 71.10(4)(fb), 71.28(8b), 71.30(3)(cs), 71.47(8b), 71.49(1)(cs), 76.639 and 234.45, effective for taxable years beginning after December 31, 2017)

A nonrefundable low-income housing credit is available to claimants through certification by the Wisconsin Housing and Economic Development Authority.

Definitions

"Allocation certificate" means a statement issued by the authority certifying that a qualified development is eligible for a credit and specifying the amount of the credit that the owners of the qualified development may claim.

"Authority" means the Wisconsin Housing and Economic Development Authority.

"Claimant" means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

"Compliance period" means the 15-year period beginning with the first taxable year of the credit period.

"Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. If a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

"Qualified basis" means the qualified basis determined under sec. 42(c)(1), IRC.

"Qualified development" means a qualified low-income housing project under sec. 42(g), IRC, that is financed with tax-exempt bonds, pursuant to sec. 42(i)(2), IRC, and located in this state.

Filing Claims

Claimants may claim a credit against income or franchise tax for the amount certified by the Wisconsin Housing and Economic Development Authority.

Limitations

No person may claim the credit unless the claimant includes with the claimant's return a copy of the allocation certificate issued to the qualified development.

A partnership, limited liability company, or tax-option (S) corporation may not claim the credit. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option (S) corporation may claim the credit based on eligible costs incurred by the partnership, limited liability company, or tax-option (S) corporation. The partnership, limited liability company, or tax-option (S) corporation must calculate the amount of the credit that may be claimed by each partner, member, or shareholder. For shareholders of a tax-option (S) corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company may be claimed in proportion to the ownership interests of the partners or members or allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed. Any partner or member who claims the credit as allocated by a written agreement shall provide a copy of the agreement with the tax return on which the credit is claimed. A person claiming the credit as provided is solely responsible for any tax liability arising from a dispute with the department related to claiming the credit.

Credit Recapture

As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant's tax liability must be increased by the recapture amount determined by using the method under sec. 42(j), IRC.

If the recapture of any credit is required in any taxable year, the taxpayer must include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

Administration

In the case of a change in ownership or business of a corporation, sec. 383, IRC, applies to the carry-over of unused credits.

If a credit computed is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

The department has full power to administer this credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to this credit.

The credit must be claimed within four years of the unextended due date on which the tax return was due.

6. Supplement to Federal Historic Rehabilitation Tax Credit Revised

([2017 Wis. Act 280](#), amended sec. 238.17(2), for historic property certified beginning July 1, 2018)

Beginning July 1, 2018, the Wisconsin Economic Development Corporation may not certify a person to claim more than a total of \$3,500,000 in supplement to the federal historic rehabilitation tax credits for all projects undertaken on the same parcel.

The federal Tax Cuts and Jobs Act (Public Law 115-97) also made changes to the Wisconsin supplement to the federal historic rehabilitation tax credit because Wisconsin's credit must be claimed at the same time as the federal credit ([secs. 71.07\(9m\)\(cm\)](#), [71.28\(6\)\(cm\)](#), and [71.47\(6\)\(cm\)](#), Wis. Stats.). As a result, for qualified rehabilitation expenditures paid or incurred after December 31, 2017, the following will apply for Wisconsin:

- The credit for qualified rehabilitated buildings constructed before 1936 is eliminated.
- The supplement to the federal rehabilitation tax credit must be claimed ratably over a five-year period beginning with the year the building is placed in service; however, there is a transitional rule that allows the full credit to be claimed for qualified rehabilitation expenditures incurred on a building that is owned or leased at all times on or after January 1, 2018, during the taxpayer elected 24- or 60-month period.
- Sellers of the supplement to the federal historic tax credit may only claim 20% of the credit per year for five years, and as a result, they may only transfer the amount eligible to be claimed each year.
- Purchasers of the supplement to the federal historic tax credit are not required to claim the credit over a five-year period.

7. Employee College Savings Account Contribution Credit

([2017 Wis. Act 197](#), amend secs. 71.05(6)(a)15., 71.21(4)(a), 71.26(2)(a)4., 71.34(1k)(g), and 71.45(2)(a)10., and create secs. 71.07(10), 71.10(4)(e), 71.28(10), 71.30(3)(ey), 71.47(10), and 71.49(1)(ey), effective January 1, 2018)

A new nonrefundable credit, employee college savings account contribution credit, is available.

Definitions

"Claimant" means an individual who files an employee college savings account contribution credit claim and who is a partner of a partnership, member of a limited liability company, or shareholder of a tax-option corporation that is an employer and that contributes to an employee's college savings account.

"College savings account" means a college savings account, as described in sec. 224.50, Wis. Stats.

"Employee" means a resident individual who performs or performed services for an employer anywhere or a nonresident individual who performs or performed services in Wisconsin, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of these entities. The term includes an officer of a corporation, an entertainer and an entertainment corporation, but does not include a direct seller who is not treated as an employee under sec. 3508, IRC, or a real estate broker or salesperson who is excluded under sec. 452.38, Wis. Stats.

"Employer" means an employer that is a partnership or a tax-option (S) corporation. A partnership includes limited liability companies and other entities that are treated as partnerships under the IRC, but does not include publicly traded partnerships treated as corporations under sec. 71.22(1k), Wis. Stats. A tax-option (S) corporation means a corporation which is treated as an S corporation under subchapter S of the internal revenue code and has not elected out of tax-option corporation status under sec. 71.365(4)(a), Wis. Stats., for the current taxable year.

Filing Claims

A claimant may claim as a credit against income or franchise tax, for each employee of an employer, the claimant's proportionate share of an amount equal to the amount the employer paid into a college savings account owned by the employee in the taxable year in which the contribution is made.

The maximum amount of the credit per employee that a claimant may claim is the claimant's proportionate share of an amount equal to 25 percent of the amount the employee's employer contributed to the employee's college savings account. This amount may not exceed 25 percent of the maximum amount that an individual contributor may deduct as a contribution into a college savings account under s. 71.05 (6)(b)32.a., Wis. Stats.

Limitations

Partnerships, limited liability companies, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of amounts described above. A partnership, limited liability company, or tax-option (S) corporation must compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interests.

Administration

In the case of a change in ownership or business of a corporation, sec. 383, IRC, applies to the carry-over of unused credits. If a credit computed is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

The department has full power to administer this credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to this credit.

The credit must be claimed within four years of the unextended due date on which the tax return was due.

8. Standard for Proving Transaction Has Economic Substance

([2017 Wis. Act 231](#), amend secs. 71.10(1m)(c), 71.30(2m)(c), and 71.80(1m)(c), effective for taxable years beginning on January 1, 2018)

The economic substance evidentiary standard is changed from clear and convincing to clear and satisfactory. A transaction is presumed to lack economic substance and the taxpayer bears the burden of establishing by clear and satisfactory evidence that the transaction or the series of transactions between the taxpayer and one or more members of the controlled group has economic substance.

9. Statutory Corrections

([2017 Wis. Act 364](#), effective April 18, 2018, and [2017 Wis. Act 366](#), amend secs. 71.07(3y)(a)2., 71.28(3y)(a)2., and 71.47(3y)(a)2., effective April 18, 2018)

Regarding secs. 71.07(3wm)(b)(intro.), (bm), and (d), 71.10(4)(i), 71.26(2)(a)4., 71.28(3wm)(b)(intro.), (bm), and (d), and 71.30(3)(f), Wis. Stats., relating to the electronics and information technology manufacturing zone credit, the treatment by [2017 Wis. Act 58](#) is not repealed by [2017 Wis. Act 59](#). The following treatments still stand:

- The credit may be claimed against the tax imposed under secs. 71.02 or 71.08, Wis. Stats., for individuals, or under sec. 71.23, Wis. Stats., for corporations
- Section 71.28(4)(g) and (h), Wis. Stats., as it applies to the credit under sec. 71.28(4), Wis. Stats., applies to the credit under sec. 71.07(3wm), Wis. Stats.
- Section 71.28(4)(e), (g), and (h), Wis. Stats., as it applies to the credit under sec. 71.28(4), Wis. Stats., applies to the credit under sec. 71.28(3wm), Wis. Stats.
- If the allowable amount of the claim exceeds the taxes otherwise due on the claimant's income under secs. 71.02 or 71.23, Wis. Stats., the amount of the claim that is not used to offset those taxes is refundable
- The electronics and information technology manufacturing zone credit is added to the computation order under secs. 71.10(4)(i) and 71.30(3)(f), Wis. Stats.
- The amount of the electronics and information technology manufacturing credit computed must be added to a corporation's net income

Sections 71.07(3y)(a)2., 71.28(3y)(a)2., and 71.47(3y)(a)2., Wis. Stats., are amended to correct a reference to sec. 238.308(1), Wis. Stats., for purposes of defining an "eligible employee." Previously the reference was to sec. 238.308(1)(a), Wis. Stats., which does not exist.

C. Sales and Use Tax

1. Qualified Child Sales and Use Tax Rebate for 2018

([2017 Wis. Act 367](#), create secs. 20.835(2)(cb) and 77.68, effective April 19, 2018)

A one-time sales and use tax rebate, is available for Wisconsin sales and use tax paid for raising a qualified child in 2017. See the [common questions](#) on the department's website for more information.

Definitions

"Claimant" means an individual who is a full-year resident, nonresident, or part-year resident and who has a qualified child.

"Department" means the Department of Revenue.

"Full-year resident" means an individual who was a resident of Wisconsin for the entire year of 2017.

"Nonresident" means an individual who was not a resident of Wisconsin for any part of 2017.

"Part-year resident" means an individual who was a resident of Wisconsin for some part of 2017.

"Qualified child" means an individual to whom all of the following apply:

- The individual is under 18 years of age for the entire year of 2017
- The individual is the claimant's dependent, as defined under sec. 152, IRC
- The individual is a United States citizen
- The individual was a resident of Wisconsin on December 31, 2017

Filing Claims

Note: The claimant must file a claim for the rebate with the department starting May 15, 2018, and ending July 2, 2018.

A claimant may, as an approximation of the nonbusiness Wisconsin sales or use tax paid in 2017 for raising children, claim a rebate equal to \$100 for each qualified child of the claimant.

An eligible claimant may claim the rebate by submitting an online application, as prescribed by the department. The department may request that the claimant verify the eligibility of the claimant or child by submitting to the department vital records information or any other information requested.

The department will require a nonresident, or a part-year resident who was not a resident on December 31, 2017, to verify his or her nonbusiness Wisconsin sales or use taxes paid in 2017. The verified amount must be at least \$100 for each qualified child of the claim to be eligible to receive the rebate. A qualified child may be claimed for the rebate by only one claimant.

Limitations

After a rebate has been issued, but before the check, share draft, or other draft has been cashed, the spouse of a married claimant may request a separate check, share draft, or other draft for 50 percent of the joint rebate.

If the department is unable to locate an eligible claimant who claimed the rebate by December 31, 2018, or if an eligible claimant who is issued a check, share draft, or other draft does not cash the check, share draft, or other draft by December 31, 2018, the right to the rebate lapses.

If a claimant becomes deceased after he or she files his or her claim for a rebate, the amount of the rebate for which the claimant is eligible will be paid to the claimant's estate.

Administration

The department has full power to administer this rebate and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to this rebate.

2. Sales Tax Holiday in August 2018

([2017 Wis. Act 367](#), amend secs. 77.52(13) and 77.53(10), and create sec. 77.54(67), effective April 19, 2018)

A sales and use tax exemption is created for sales of certain items during a five-day period in August 2018. The temporary exemption period, referred to as a sales tax holiday, will begin at 12:01 a.m. on August 1, 2018, and continue through 11:59 p.m. on Sunday, August 5, 2018.

During the sales tax holiday, the following items are exempt:

- School supplies, if the sales price of any single item is \$75 or less
- Clothing, if the sales price of any single item is \$75 or less
- A computer purchased for the purchaser's personal use, if the sales price of the computer is \$750 or less
- School computer supplies purchased for the purchaser's personal use, if the sales price of any single item is \$250 or less

[Wisconsin's Sales Tax Holiday information](#) is available on the department's website. Resources available include answers to [common questions](#) and printable lists for exempt and taxable items during the sales tax holiday.

3. Exemption for State Veterans Organizations

([2017 Wis. Act 190](#), amend secs. 77.51(11d) and 77.54(9m), and create sec. 77.54(9g), effective July 1, 2018)

An exemption from sales and use tax is created for property and services sold to a state veterans organization, as defined in [sec. 45.41\(1\)\(b\)](#), Wis. Stats. The exemption does not include property and services used primarily in preparing, storing, serving, selling, or delivering food and beverages, that are sold by the veterans organization. Additionally, products and services for cleaning machinery and equipment used for the food and beverages sales are not exempt.

To claim the exemption, the state veterans organization should provide its vendors with a fully completed [Form S-211](#), *Wisconsin Sales and Use Tax Exemption Certificate*, with the following:

- Page 1 - Complete everything above the shaded area that states "Reason for Exemption."
- Page 2 - Under "Other," check the box for "Other purchases exempted by law" and enter "Exempt under sec. 77.54(9g), Wis. Stats." in the space provided. The boxes at the bottom for signature, name, title, and date must also be completed.

Note: The state veterans organization should **not** apply for a Certificate of Exempt Status (CES) number.

See the article, *Expand List of Qualifying Exempt Entities for Building Materials Exemption*, below for information on the changes made to sec. 77.54(9m), Wis. Stats.

4. Exemption for Certain Title Holding Entities

([2017 Wis. Act 231](#), amend sec. 77.54(9m) and create sec. 77.54(9a)(fc), effective retroactively to September 1, 2017)

An exemption from sales and use tax was created for sales to title holding entities organized under sec. 501(c)(2), IRC, and exempt from federal income tax under sec. 501(a), IRC.

To claim the exemption, the entity must apply for a Certificate of Exempt Status (CES) number. See the instructions on page 2 of [Form S-103](#), *Application for Wisconsin Sales and Use Tax Certificate of Exempt Status (CES)*, for how to apply for a CES number.

See the article, *Expand List of Qualifying Exempt Entities for Building Materials Exemption*, below for information on the changes made to sec. 77.54(9m), Wis. Stats.

5. Expand List of Qualifying Exempt Entities for Building Materials Exemption

([2017 Wis. Act 190](#), amend sec. 77.54(9m), first applies to contracts entered into on July 1, 2018; [2017 Wis. Act 231](#), amend sec. 77.54(9m), first applies retroactively to contracts entered into on September 1, 2017)

The building materials exemption for contracts with certain exempt entities is expanded to include (a) holding companies that are exempt from federal income tax under sec. 501(c)(2), IRC, and (b) state veterans organizations, as qualifying exempt entities.

[Section 77.54\(9m\)](#), Wis. Stats., provides a sales and use tax exemption for the sale of building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to qualifying exempt entities, if the building materials become part of a facility in Wisconsin owned by the exempt entity. Refer to [Wisconsin Tax Bulletin 192](#) – January 2016, pages 19-21, for more information about this exemption.

Retroactively for contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity includes holding companies which are:

- Described under sec. 501(c)(2), IRC;
- Exempt from federal income tax under sec. 501(a), IRC; AND
- Organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80 (2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation

For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity includes a state veterans organization. "State veterans organization" means the state organization or department of a national veterans organization incorporated by an act of Congress.

Previously, this exemption was expanded to include technical colleges, any institution or campus in the University of Wisconsin System, and the University of Wisconsin-Extension as qualifying exempt entities for contracts entered into on July 1, 2018, and thereafter.

Documentation a contractor must obtain to show that its customer is a qualifying exempt entity for this exemption is as follows:

- Section 501(c)(2), IRC, holding company – Wisconsin Certificate of Exempt Status number issued by the department
- State veterans organization – These organizations will not be issued a Wisconsin Certificate of Exempt Status number. The contractor must document that its contract is with a state veterans organization.
- Technical colleges, any institution or campus in the University of Wisconsin System, and the University of Wisconsin-Extension – The contractor must document that it is a qualifying University of Wisconsin institution or campus

6. Exemption for Services Performed During Disaster Period By Electric Cooperatives or Telecommunications Utilities

([2017 Wis. Act 290](#), create sec. 77.54(68), effective retroactively on January 1, 2017)

A sales and use tax exemption is created for the sale of and the use or other consumption of a service provided by an electric cooperative to another electric cooperative, or by a telecommunications utility to another telecommunications utility, for disaster relief work performed during a disaster period.

Electric cooperatives and telecommunications utilities that purchased services that meet the exemption criteria and were performed between January 1, 2017, and April 17, 2018, upon which sales tax has been remitted to the department, may be eligible for a refund. To submit a claim for refund, purchasers must submit a completed [Form S-220, Buyer's Claim For Refund of Wisconsin State, County and Stadium Sales Taxes](#), or file electronically through [My Tax Account](#) for a Buyer's Claim for Refund directly with the department. (See [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for more information on filing a Buyer's Claim for Refund.)

The claim for refund must substantiate that the purchased services meet the exemption criteria including:

- Purchaser and service provider are qualifying electric cooperatives or telecommunications utilities
- Services purchased were "disaster relief work"
- A "state of emergency" existed:
 - A mutual aid agreement was invoked between cooperatives or utilities; AND
 - At least 20 percent of the electrical or telecommunications system was nonoperational
- Service occurred within a "disaster period" defined below

"Disaster period" means the time that begins 10 days before a state of emergency and ends 60 days after the state of emergency ends.

"Disaster relief work" means work, including repairing, renovating, installing, building, or performing other services or activities, relating to infrastructure in Wisconsin that has been damaged, impaired, or destroyed in connection with a state of emergency.

"Electric cooperative" means a cooperative association organized under ch. [185](#), Wis. Stats., that carries on the business of generating, transmitting or distributing electric energy to its members at wholesale or retail.

"State of emergency" means the time when an electric cooperative wishing to receive services from another electric cooperative or a telecommunications utility wishing to receive services from another telecommunications utility invokes a mutual aid agreement and at least 20 percent of the electrical or telecommunications system is nonoperational.

"Telecommunications utility" means any person, corporation, company, cooperative, unincorporated cooperative association, partnership, association and lessees, trustees or receivers appointed by any court that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public. "Telecommunications utility" does not include a telecommunications carrier.

7. Eliminate Benefit for Sellers That Over-Collect Tax from Consumers

([2017 Wis. Act 324](#), amend sec. 77.51(11d) and create sec. 77.59(5r), first applies to a seller that receives an adjustment or a refund described in the statute on April 18, 2018)

A seller who continues to collect tax erroneously on a product after receiving two or more written notices from the department stating that the product is not taxable is only entitled to an adjustment for, or a refund of, the tax if the seller returns the tax and associated interest to the buyer from whom it was collected within 90 days after the date of the refund. If the seller cannot locate the buyer within 90 days after the date of the adjustment or refund, the seller must submit the taxes and related interest to the department.

If the seller does not submit the taxes and related interest to the department or the buyers within 90 days of the adjustment or refund, the seller is subject to the penalties in subsection (5m).

D. Withholding

1. Truncated Payee Social Security Number

([2017 Wis. Act 324](#), amend secs. 71.65(1)(a)2. and (2)(a), 71.71(1)(a)2. and (2), 71.715(1)(a)2., and (2), effective April 18, 2018)

As a safeguard against identity theft, the department may require a number other than the payee's social security number on Forms W-2 and 1099 the payer furnishes to a payee. This does not apply to statements the payer provides to the department and federal or local governments.

This change is consistent with federal regulations for Forms 1099 and proposed federal regulations for Forms W-2.

E. Alcohol and Tobacco Regulations

1. Applications for Alcohol Beverage Licenses and Permits and for Cigarette and Tobacco Products Retailer Licenses

([2017 Wisconsin Act 289](#), amend sec. 125.04(3)(e)1. and create secs. 125.04(3)(bm) and (j), (6)(g), 134.65(1r) and (5m), effective July 1, 2018)

Current law requires the department to prepare application forms for alcohol beverage licenses and permits and requires the use of these forms when an application is made to the department or municipalities. Current law also requires that applications for alcohol beverage licenses be sworn to by the license applicant.

The Act provides that alcohol beverage license and permit applications may not require:

- The signature of more than one person on behalf of the license or permit applicant
- The application be sworn to
- An applicant's signature be notarized

The Act creates a forfeiture penalty of not more than \$1,000 for any person who knowingly provides materially false information in an application for an alcohol beverage license or permit.

The Act also provides that application forms for cigarette and tobacco products retail licenses (prepared by municipalities or any state agency) may not require an applicant's signature to be notarized, and creates a forfeiture penalty of not more than \$1,000 for a person who knowingly provides materially false information in an application for a cigarette and tobacco products retailer license.

F. Other

1. Unclaimed Property Audits

([2017 Wis. Act 235](#), creates sec. 177.30(6) and (7), effective for contracts or agreements entered into, renewed, or modified after April 4, 2018)

The department is prohibited from entering into a contract or agreement to allow a third-party auditor to conduct an unclaimed property audit on a contingent fee basis.

Exception: If the person being audited is not domiciled in Wisconsin, the department may enter into a contract or agreement with a third-party auditor on a contingent fee basis if the fee does not exceed 12 percent of the total amount of property reportable and deliverable.

The Act also prohibits the department from purchasing information or documents arising from the unclaimed property audit conducted by the third-party auditor, except for information received by the federal government.

The Act also provides that the department may not allow third-party auditors to use statistical sampling during an unclaimed property audit, unless the person being audited consents to the use of an estimate.

2. Relying on Past Audits Revised

([2017 Wis. Act 231](#), amend sec. 73.16(3)(b) and create sec. 73.16(3)(c), effective for audit determinations issued on or after April 5, 2018, regardless of when a prior audit determination was issued)

Taxpayers may not rely on a prior audit to prevent the department from making an adjustment in a current audit, if any of the following apply:

- The department establishes by clear and satisfactory evidence that the taxpayer provided incomplete or false information relevant to the tax issue in the prior audit determination
- The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into before April 5, 2018
- The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into on or after April 5, 2018, and in which the parties acknowledged that the department did not adopt the taxpayer's position on the tax issue

3. Electronic Delivery of Notifications

([2017 Wis. Act 324](#), amend secs. 71.03(2)(i)3. and (4)(b), 71.54(4), 71.74(11) and (14), 71.80(2), (12)(c)2.a. and (16)(b), 71.91(6)(c)2., (6)(f)1., (7)(b) and (7)(h), 73.0301(2)(b)1.b., 73.0302(2), 73.13(2)(c), 77.52(11) and (18)(bm), 77.59(3) and (7), 77.9961(3), 78.65(1), 139.096, 139.77(3) and (4), and 177.24(2); and create sec. 73.03(73m), effective April 18, 2018)

Under current law, the department may serve notice to a taxpayer through mail delivery or by personal service. This Act provides that the department may serve notice to a taxpayer through electronic

transmission if, before the person receives the electronic transmission, the intended recipient consents to receiving such notices electronically.

If the intended recipient of a notice has appointed another person or entity to act on the intended person's behalf as a power or attorney, service to the power of attorney is considered to be service upon the intended recipient.

Income/Franchise Tax Updates and Reminders

Use the Correct Year Voucher When Filing Form 1-ES

When filing Form 1-ES, *Wisconsin Estimated Income Tax Voucher*, confirm you are using the correct year voucher. Do **not** cross out the year on the voucher and replace it with a different year. This results in your payment being credited to the wrong year.

Note: The Form 1-ES for 2018 estimated income tax payments is available on the department's website [here](#).

U.S. Territories and Puerto Rico – Water's Edge Test and Throwback Sales

Sales to Puerto Rico and other U.S. territories are considered foreign source income for the water's edge test, but are considered U.S. sales for determining the apportionment percentage and throwback sales.

Water's Edge Test

For the water's edge test, a foreign corporation is any corporation that is not incorporated, organized, or created in the U.S., nor under the laws of the U.S. or any state ([sec. Tax 2.61\(4\)\(a\), Wis. Adm. Code](#)). As a result, corporations incorporated or organized in Puerto Rico and other U.S. territories are considered foreign corporations, and the income and apportionment factors are not included in the combined group if 80 percent or more of the income is active foreign business income under [sec. 71.255\(2\)\(c\)1., Wis. Stats.](#)

Throwback Sales

A "throwback" sale is the sale of tangible personal property destined for a state where the taxpayer has no nexus (filing requirement), and are included in the numerator of the sales factor as Wisconsin sales. [Section Tax 2.39\(2\)\(f\), Wis. Adm. Code](#), defines "state" as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any United States territory or possession. Therefore, sales to U.S. territories/possessions and Puerto Rico are subject to throwback.

Wisconsin Form 6 - Reconciliation With Federal Consolidated Return

Combined groups must reconcile corporations in the Wisconsin combined group with the corporations in the federal consolidated group(s). This reconciliation is performed on page 2 of Form 6. Tips for accurately entering the information include:

- **Line 1 - Federal Consolidated Return(s)**
 - Enter the income or loss from federal Form 1120, line 28 as filed with the Internal Revenue Service
 - List each federal consolidated return separately
 - Do not make modifications to add or remove members from the Wisconsin combined group

- **Line 2 - Additions to Federal Consolidated Return(s)**

- Include corporations that are part of the Wisconsin combined group, but are not in the federal consolidated return(s) on line 1. Examples include corporations with less than 80% common ownership, foreign corporations, and corporations excluded from the federal consolidated group(s)
- Do not include federal income that was reduced because of provisions of a federal treaty. Enter the amount of income after applying the provisions of the federal treaty.

- **Line 4 - Exclusions from Federal Consolidated Return(s)**

- Include corporations in the federal consolidated return(s) on line 1, but not part of the Wisconsin combined group. Examples include corporations not engaged in the combined group's unitary business, corporations excluded from the combined group under the water's edge rules, and corporations not included in the combined group.
- Do not enter amounts on this line if the controlled group election was made. If the election was made, all corporations in the combined group are considered unitary.

For additional information, see the [Form 6 instructions, pages 21-23](#).

Unreimbursed Business Expenses

Unreimbursed business expenses are ordinary and necessary business expenses that are incurred by a partner of a partnership or shareholder of a tax-option (S) corporation. The treatment of the unreimbursed expenses differ for partners and shareholders.

Partners of a Partnership

- Business expenses required to be paid by the partner from their own funds under the partnership agreement are deductible by the partner
- Business expenses are not deductible if the partnership has reimbursed or is required to reimburse the partner
- Deduct the allowable expenses on a separate line of federal Schedule E, Part II, with a description of "UPE" – unreimbursed partnership expenses

Shareholders of a Tax-Option (S) Corporation

- Unreimbursed business expenses are not deductible on federal Schedule E because the shareholders are considered employees when performing services for the tax-option (S) corporation
- If a corporate officer or controlling shareholder pays an allowable business expense of the corporation, it's considered an expense of the tax-option (S) corporation and not deductible by the shareholder
- Under federal law, prior to 2018, unreimbursed business expenses paid by a shareholder with their own funds were deductible as a miscellaneous itemized deduction for the amount that exceeds two percent of adjusted gross income. Wisconsin does not allow miscellaneous itemized deductions in computing the itemized deduction credit.

Sales/Use Tax Updates and Reminders

Village of Sister Bay Adopts Premier Resort Area Tax Effective July 1, 2018

The Village of Sister Bay recently adopted an ordinance that will impose a 0.5% premier resort area tax within the village beginning July 1, 2018.

Sellers, who (1) make taxable sales of products or services within the Village of Sister Bay **and** (2) are classified under one of the Standard Industrial Classification numbers noted in the department's Premier Resort Area Tax [Common Questions](#), must remit premier resort area tax on such sales.

For more information about the premier resort area tax, see [Publication 403](#), *Premier Resort Area Tax*.

If you are required to collect the Village of Sister Bay premier resort area tax, you must register with the department. To register, send us your legal name, address and 15-digit sales tax number by:

- Email: DORRegistration@wisconsin.gov
- Fax: (608) 327-0235, or
- Mail: Wisconsin Department of Revenue
Attn: Registration Unit
PO Box 8902
Madison, WI 53708-8902

Premier resort area tax is filed separately from sales and use tax. Use *My Tax Account* to file premier resort area tax. Those not required to file electronically will use the premier resort area tax return available on the department's website.

If you have questions, contact us at (608) 266-2776.

Construction Contract Exemption

Some contractors sell both real property improvements (not taxable) and tangible personal property (taxable). An exemption applies for certain contracts entered into October 1, 2013, through November 30, 2017, in which the contractor sells both real property improvements and tangible personal property for one price ("lump sum contract exemption"). This exemption has been expanded to certain construction contracts first entered into or extended, modified, or renewed on December 1, 2017 ("construction contract exemption"). This article summarizes the tax treatment of the new exemption. For information about the lump sum contract exemption, see the article titled, [Septic System Installers - Taxable Items Less Than 10% of Total Contract Price](#).

The construction contract exemption first applies to contracts entered into or extended, modified, or renewed on December 1, 2017.

Calculating the 10 Percent Threshold for a Construction Contract

The construction contract exemption applies if the total sales price of all "products" is less than 10 percent of the total amount of the construction contract (including change orders or additional work billed). This calculation is made without regard for any exemptions that may be provided by the customer (e.g., exempt entity, manufacturing, farming, etc.). "Products" includes tangible personal property, and items, property,

and goods under sec. 77.52(1)(b), (c), and (d), Wis. Stats., and both taxable and nontaxable services. The calculation does not include real property construction activities.

If 90 percent or more of the total contract price relates to real property construction activities (including services to real property), the construction contract exemption applies.

For the "Prime Contractor"

If the total selling price of the products of the prime contractor's construction contract are less than 10 percent of the total contract price:

- The prime contractor's sale to its customer is not taxable
- The prime contractor must pay sales or use tax on its purchase of products that are not consumed in real property construction activities. (See Exception, below.)

To purchase products without tax from the subcontractor, the prime contractor must provide an exemption certificate to the subcontractor.

- The exemption certificate's box for "other sales exempted by law" must be checked as the reason the purchase is exempt
- The prime contractor should write "sec. 77.54(60), Wis. Stats." in the space provided
- If no exemption certificate is provided by the "prime contractor" to the subcontractor, the subcontractor must pay tax on its sales of taxable products and services sold to the prime contractor
- The prime contractor must pay sales or use tax on its purchase of materials and supplies relating to the real property improvements

For the "Subcontractor"

The construction contract exemption applies if either of the following applies:

- The prime contractor provides the subcontractor with an exemption certificate claiming the exemption under sec. 77.54(60), Wis. Stats., OR
- The total selling price of the products of the subcontractor's construction contract (includes time and materials jobs) are less than 10 percent of the subcontractor's total contract price

If the construction contract exemption applies to the subcontractor's contract:

- The subcontractor's sale to the prime contractor is not taxable
- The subcontractor must pay sales or use tax on its purchase of products not consumed in real property construction activities. (See Exception, below.)
- The subcontractor must pay sales or use tax on its purchase of materials and supplies relating to the real property improvements

Tax Treatment if Subsequent Contract Changes Affect Applicability of Exemption

The prime contractor must make a determination at the start of the contract whether he/she will be claiming a resale exemption or construction contract exemption, but not both. The liability for tax depends, in part, on whether the prime contractor gives an exemption certificate for its purchases.

- If the prime contractor gives an exemption certificate claiming resale, and the contract qualifies for exemption under sec. 77.54(60), Wis. Stats., the prime contractor is liable for tax on its purchase price of the products and services purchased from the subcontractor
- If the prime contractor gives an exemption certificate claiming the exemption under sec. 77.54(60), Wis. Stats., and the contract does not qualify for the exemption, the prime contractor must collect/remittance tax on the sales price of the taxable products and services sold to the customer
- If the subcontractor receives an exemption certificate from the prime contractor claiming resale, and the prime contractor's contract qualifies for exemption under sec. 77.54(60), Wis. Stats., the subcontractor is not liable for tax on the purchase price of the materials sold as products and services to the prime contractor as a part of the construction contract (the liability rests with the prime contractor). The subcontractor is still liable for tax on its purchase of materials used in real property construction activities.
- If the subcontractor receives an exemption certificate from the prime contractor claiming the exemption under sec. 77.54(60), Wis. Stats., and the contract does not qualify for the exemption, the subcontractor may claim a refund on any tax paid on the purchase of materials sold as products and services to the prime contractor as a part of the construction contract. The claim for refund must substantiate that the prime contractor's contract did not qualify for the construction contract exemption, and that the prime contractor's purchases qualified for the resale exemption. **Note:** The subcontractor may not claim a refund on its purchase of materials used in real property construction activities.

"Construction contract" means a contract to perform real property construction activities and to provide products.

"Prime contractor" means a contractor who enters into a construction contract with an owner or lessee of real property, except for leased property under sec. 77.52(1)(c), Wis. Stats., to perform real property construction activities on the real property.

"Product" includes tangible personal property, and items, property, and goods under sec. 77.52(1)(b), (c), and (d), Wis. Stats., and services.

"Subcontractor" means a contractor who enters into a construction contract with a prime contractor or another subcontractor.

Exception for contracts entered into with entities that are exempt from tax under sec. 77.54(9a), Wis. Stats.: Taxable products and services sold by a contractor as a part of a lump sum contract, or a construction contract with an exempt entity, that are not consumed in a real property construction activity may be purchased by the contractor or subcontractor without tax, for resale. However, materials and supplies that are consumed in a real property construction activity under a lump sum contract or a construction contract with any customer, including an exempt entity, may not be purchased by the contractor or subcontractor without tax unless an exemption applies (e.g., building materials exemption for contracts with exempt entities).

Reporting Short-Term Lodging

Question

I'm offering short-term lodging using a third-party website. Who is responsible for reporting the tax?

Answer

If you furnish short-term lodging in Wisconsin, you must collect/remit Wisconsin sales tax on such sales if you hold a Wisconsin seller's permit or your taxable sales for the calendar year exceed \$2,000.

However, if the third-party website (1) meets the definition of lodging marketplace and (2) has nexus with Wisconsin, the third-party website is required to register with the department for a lodging marketplace license.

Lodging marketplace means an entity that provides a platform through which an unaffiliated third-party offers a short-term residential rental to an occupant and collects the consideration for the rental from the occupant.

In addition to registering for a lodging marketplace license, a lodging marketplace must collect sales and use taxes and any applicable local room taxes from the occupant and forward such taxes to the appropriate taxing authority. The lodging marketplace must notify you that the taxes have been collected and forwarded.

If the third-party website is not required to collect tax, or is required to collect tax and fails to do so, you are responsible for reporting and paying the taxes.

Additional information:

- Department News - [Lodging Marketplace](#)
- Lodging Marketplace License - [Who must register?](#)
- Lodging Marketplace [Common Questions](#)

Homeowners Association Dues May Be Taxable Admissions

A homeowners or condominium association may require association members to pay a mandatory fee for items provided to the members. The sales tax treatment of the fee depends on the type of amenities or services provided to the members. The fee may be used by the association to pay property taxes or certain utilities (e.g., garbage disposal, water) on the property owner's behalf, or it may be used to pay for maintenance of common area facilities in the community, such as building repairs, snow plowing, and lawn maintenance. The fee may also be used to pay for expenses incurred by the association to maintain recreational amenities and facilities in the community, such as swimming pools, tennis courts, golf courses, private beach areas, and basketball courts.

A mandatory association fee that provides members with taxable products or services, including the privilege of having access to or the use of amusement, entertainment, athletic, or recreational amenities or facilities, is subject to Wisconsin sales tax.

If the mandatory association fee provides members with both taxable and nontaxable products and services, the entire fee is subject to Wisconsin sales tax. However, if the association can reasonably allocate the nontaxable and taxable amounts (i.e., based on amount of time spent maintaining common areas, fair market value of the services provided, or some other reasonable method of allocation) and document the basis for the allocation, the association may charge Wisconsin sales tax only on the amount of the fee that relates to the taxable amounts.

Example 1: Condominium Association charges Property Owner a \$4,000 mandatory association member fee per year. The mandatory association fee covers Property Owner's property taxes, certain utilities, common area maintenance, and building repairs. The \$4,000 charge by Condominium

Association to Property Owner is not taxable since the entire fee is for nontaxable products and services.

Example 2: Condominium Association charges Property Owner a \$15,000 mandatory association member fee per year. The mandatory association fee provides the member with an annual membership at a nearby golf course, along with access to an outdoor swimming pool, basketball court, and tennis courts. The \$15,000 charge by Condominium Association to Property Owner is taxable since the entire fee is for taxable admissions.

Example 3: Homeowners Association charges a \$10,000 mandatory association member fee per year to all property owners in the Homeowners Association's community. The mandatory fee provides property owners with taxable admissions, since the owners have access to an outdoor swimming pool, tennis courts, a private beach area, and discounted green fees at a nearby golf course. A portion of the membership fee also covers costs of common area maintenance, including swimming pool repair, snow removal, and lawn maintenance. Homeowners Association is able to reasonably determine the portion of the fee that relates to common area maintenance based on amount of time the maintenance staff spend providing such maintenance. Therefore, Homeowners Association may charge tax only on the portion of the \$10,000 fee that relates to the taxable admissions. **Note:** The Homeowners Association's purchase of certain services, such as swimming pool repair and lawn maintenance are taxable.

Example 4: Same as *Example 3*, except that Homeowners Association is unable to reasonably allocate the amount of the fee that relates to the maintenance charges. In this case, the entire \$10,000 charge by Homeowners Association for the mandatory association member fee is taxable.

Note: A homeowners or condominium association may be organized as a nonprofit organization. A nonprofit homeowners or condominium association is required to charge Wisconsin sales tax on sales of taxable products and services, unless such sales are exempt occasional sales. Information for nonprofit organizations about the occasional sales exemption is provided in [Publication 206, Sales Tax Exemptions for Nonprofit Organizations](#).

Purchasers of a Business Beware - Don't Get Stuck With "Successor Liability"

A purchaser of a business should be aware of "successor liability," under which they become responsible for any unpaid sales and use taxes of the seller. To avoid successor liability, the purchaser may hold a sufficient amount of the purchase price in escrow until the department issues a "clearance certificate." A clearance certificate is requested by the purchaser of a business after the sale is completed and it ensures the seller has filed all sales and use tax returns and paid all sales and use taxes due.

Additional information is available on the department's [Clearance Certificates and Successor Liability](#) and [Sales and Use Tax Buying a Business - Successor's Liability](#) common questions pages.

Other Updates and Reminders

My Tax Account - NAICS Code Update

Starting in May, the department will require *My Tax Account* users to update the North American Industry Classification System (NAICS) code associated with a business.

We need Wisconsin businesses to update their NAICS codes so we can better communicate directly with business sectors on tax law or filing changes and correctly estimate the fiscal impact of tax law changes.

The United States Office of Management and Budget regularly updates the codes, so we may not have correct codes for some businesses.

The first *My Tax Account* user to log in for a business, including a third-party, will be prompted to update its six-digit NAICS code. The user must either confirm the current NAICS code, if available, or select a different code using the search feature available. Once the code is updated for a business, no other users will be prompted to do the update.

The NAICS is a six-digit code system used by businesses and governments to classify and measure economic activity in the United States, Canada, and Mexico. For more information, go to <https://www.naics.com/search/>.

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.)

Sales and Use Tax

Bundled Transactions

Statutes: [Sections 77.51\(1f\)](#), [\(3pf\)](#), [\(9p\)](#), [\(12m\)\(a\)](#), and [\(15b\)\(a\)](#); [77.52\(20\)](#) to [\(23\)](#); and [77.54\(51\)](#) and [\(52\)](#). Wis. Stats. (2015-16)

Wis. Adm. Code: Sections [Tax 11.67\(2\)\(c\)](#) and [Tax 11.985](#), Wis. Adm. Code (November 2010 Register)

Introduction:

This tax release explains the tax treatment of bundled transactions. For purposes of this tax release:

- "Products" means tangible personal property; items, property, and goods listed in [sec. 77.52\(1\)\(b\)](#), [\(c\)](#), and [\(d\)](#), Wis. Stats. (certain coins and stamps, certain leased property affixed to real estate, and certain digital goods)
- "Products" does not include services

Definitions:

"Distinct and identifiable" products and/or services do not include either of the following:

- Packaging, including containers, boxes, sacks, bags, bottles, and envelopes; and other materials, including wrapping, labels, tags, and instruction guides; that accompany, and are incidental or immaterial to, the retail sale of any product and/or service
- A product and/or services that is provided free of charge to the consumer in conjunction with the required purchase of another product and/or service, if the sales price of the other product and/or

service does not vary depending on whether the product and/or service provided free of charge is included in the transaction

"Distinct and identifiable" products and/or services also do not include any items included in the definitions of "purchase price" or "sales price." ([Section 77.51\(12m\)\(a\)](#) or [\(15b\)\(a\)](#), Wis. Stats., respectively)

"**One non-itemized price**" does not include a price that is separately identified by product on a binding sales document, or other sales-related document, that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card, or a price list.

What Is a Bundled Transaction?

A "bundled transaction" is the retail sale of two or more products and/or services, not including real property and services to real property, if the products and/or services are distinct and identifiable and sold for one non-itemized price.

Certain exceptions apply. See "Tax Treatment for Transaction That Are Not Bundled Transactions," below.

Tax Treatment for Bundled Transactions

Bundled Transactions Are Taxable. If at least one of the products and/or services sold in a "bundled transaction" is subject to tax, the entire sales price of the bundled transaction is subject to tax. In some cases, the retailer has the option to collect and pay tax on only the taxable portion of the non-itemized sales price.

Retailer Has Option to Collect and Pay Tax on Taxable Portion. When a retailer identifies (by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business) the portion of the sales price attributable to products and/or services that are not subject to the tax, the retailer may collect and pay tax on only the portion of the sales price attributable to the taxable products and/or services. This option does not apply to a bundled transaction that contains food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies.

Tax Treatment for Transactions That Are Not Bundled Transactions

The definition of "bundled transaction" provides specific situations in which a transaction is **not** a "bundled transaction," even if it is the sale of two or more distinct and identifiable products that are sold for one nonitemized price and does not include real property or services to real property. The tax treatment of these situations is described, below.

1. ***Price Varies or Is Negotiable Based on Purchaser's Selection of Products and/or Services - The sale of any products and/or services for which the sales price varies or is negotiable based on the purchaser's selection of the products and/or services included in the transaction. (NOT a bundled transaction)***

TAX TREATMENT: The sales and use tax treatment of the transaction follows the tax treatment of the product(s) and/or services being sold. The tax treatment of the products and/or services sold is not affected by the bundled transaction provisions.

Example: Information Technology and Data Processing Services Provided for Fee Negotiated Based on Products Selected (Price Varies Based on Purchaser's Selection of Products and/or Services)

Company enters into a multi-year contract with its customer to provide information technology services which include:

- Software installation
- Data processing
- Help desk support
- Web hosting

Help desk support includes (a) telephone support where customer fixes problems while receiving instructions from a person on the telephone, and (b) remote access support where a person at the help desk remotely accesses customer's software/hardware and fixes the problem. Through negotiation, Company and its customer agree on the services to be provided and the price. The price is based on the mix of services to be provided. Company bills one non-itemized price on its invoice to its customer.

The taxable products include help desk support where a person at the help desk remotely accesses customer's software/hardware and fixes the problem and software installation. The nontaxable products include help desk support where the support person provides directions, by telephone, to the customer so that the customer can fix the problem. Other nontaxable products are data processing and web hosting. Because the price of products and/or services being sold varied or was negotiated as a result of the selection by the customer of the products and/or services included in the transaction, the sale is not a bundled transaction.

If taxable and nontaxable products and/or services are provided, Company may make a reasonable allocation of the total sales price and collect and remit tax based on the amount allocated to the taxable products and/or services sold. If no allocation is made, the entire charge is subject to tax, as provided in [sec. Tax 11.67\(2\)\(c\)1.](#), Wis. Adm. Code (November 2010 Register).

2. *Product Provided With Service and True Objective Is Service* - The retail sale of a service and taxable products; if ALL of the following apply:

- *The taxable product is essential to the use of the service*
- *The taxable product is provided exclusively in connection with the service*
- *The true object of the transaction is the service*

(NOT a bundled transaction)

TAX TREATMENT: The sales and use tax treatment of the transaction follows the tax treatment of the service provided. The service provider is required to pay tax on its purchase of the taxable products that are essential to the use or receipt of the service.

Exception: If the service provided is subject to tax under sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats., the service provider may purchase the products without tax, for resale, that are provided with the service.

Example – Training Manual with Educational Services (Product Is Provided with Service and True Objective Is Service)

Educational Provider offers a one-day live educational seminar with a comprehensive training manual for \$400. Educational Provider does not sell either the educational seminar or the training manual separately. Since the manual is (1) essential to the educational service, (b) provided exclusively in connection with the educational service, and (c) the true object of the transaction is to receive the educational service, the sale is not a bundled transaction.

The \$400 fee is not subject to tax. Educational Provider's purchase of the training manual is subject to tax. ([Section 77.52\(22\)](#), Wis. Stats.)

3. Two or More Services and True Objective Is Primary Service - The retail sale of services, if both of the following apply:

- One of the services is essential to the use or receipt of a primary service, and is provided exclusively in connection with the primary service
- The true object of the transaction is the primary service
(NOT a bundled transaction)

TAX TREATMENT: The tax treatment of the transaction follows the tax treatment of the primary service that is being provided, unless the department determines that allocation more accurately reflects the tax. The service provider is required to pay the applicable tax on its purchase of the service that is essential to the use or receipt of the second service.

Exception: If the service being provided is subject to tax under sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats., the service provider may purchase the products without tax, for resale, that are provided with the service.

Example – Parking Provided Exclusively with Educational Service (Two or More Services and True Objective Is Primary Service)

Educational Provider holds a workshop at an exhibition hall. Educational Provider rents the hall from one party for \$5,000 and rents the nearby parking lot from another party for \$1,000 for the day of the workshop. Attendees are charged \$500 to attend the workshop, regardless of whether or not the attendee uses the parking lot. No one other than workshop attendees may park in the parking lot on the day of the workshop. Since the parking is (1) essential to the educational service, (b) provided exclusively in connection with the educational service, and (c) the true object of the transaction is to receive the educational service, the sale is not a bundled transaction.

The \$500 workshop fee is not subject to tax. Educational Provider's rental of the hall that is used for the workshop is not taxable. However, Educational Provider's rental of the parking lot is subject to sales or use tax, since Educational Provider is purchasing taxable parking services that it uses in providing its educational services. ([Section 77.52\(23\)](#), Wis. Stats.)

4. 10% or Less of Price Relates to Taxable Products and Services - A transaction that includes taxable and nontaxable products and/or services, if the seller's total purchase price or sales price of the taxable products and/or services is not greater than 10% of the seller's total purchase price or sales price of all the bundled products and/or services. The seller must determine this percentage using

either the seller's purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract. (NOT a bundled transaction)

TAX TREATMENT: The transaction is not subject to sales or use tax. However, the first person combining the products and/or services is required to pay the applicable Wisconsin sales or use tax on its purchase price of the taxable products and/or services included in the transaction.

Note: This tax treatment does not apply if the transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies. See #5, below.

Example 1: Website and Social Media Management Services (10% or Less of Price Relates to Taxable Products and Services)

Company sells website and social media management services for \$1,500 per month. Company will store and maintain a customer website and database on its server.

Company will post updates on the customer's website and develop and post a new "Satisfied Customer Video" on the website each month. Company will also perform data processing services to the database that include making address and other account information changes and subscriber deletions. The customer's social media website will be maintained by Company, and Company will post daily notices on the social media website.

Company's sale of the monthly "Satisfied Customer Video" is the sale of a digital audiovisual work, which is taxable as an additional digital good. Company's services of storing and maintaining the website and database, posting of updates to the customer's website, and performing data processing services are not subject to tax. Assuming that the taxable product does not account for more than 10% of the seller's sales price or purchase price, Company's sale of the website and social media management services is not a bundled transaction.

Company's \$1,500 monthly charge for database and social media management services is not subject to tax. Company must pay tax on its purchase of any taxable products or services used to provide its products and services.

Example 2: Flag Kit (10% or Less of the Products Are Taxable and First Person Combining the Products Owes Tax on Purchases)

Company manufactures various components of a flag kit and buys some components for the flag kit from third parties. Company packages the components into a flag kit, which is sold as a single unit. The flag kit includes a United States flag and related accessories, such as a mounting bracket, a flagpole, a cord, and instructions on the display of the flag. Company's purchase price and sales price of the taxable products included in the flag kit are not greater than 10% of Company's total purchase price or sales price of all of the products in the flag kit.

Company sells the flag kits to Retailer, who gives Company an exemption certificate claiming the resale exemption. Retailer sells the flag kits to customers who use the flag kits. Company's sale of the flag kit to Retailer is not a retail sale (i.e., it is a sale for resale).

Retailer's sale of the flag kit is not subject to tax. Since Retailer was not "the first person combining the products," Retailer is not liable for tax on the flag kit that it purchased from Company without tax, for resale. Since Company's sale of the flag kit was not a retail sale (i.e., it was a sale to Retailer

for resale), no use tax liability is incurred by Company on its purchase of the components of the flag kit.

5. Food or Medical Products – 50% or Less of Price Relates to Taxable Products - The retail sale of products; if ALL of the following apply:

- The transaction includes both taxable and exempt products and no services
- The transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies
- The seller's purchase price or sales price of the taxable products is not greater than 50% of the seller's total purchase price or sales price, respectively, of all the products included in what would otherwise be a bundled transaction. The seller must determine this percentage using either the seller's purchase price or sales price, but not a combination of both

(NOT a bundled transaction)

TAX TREATMENT: The transaction is not subject to sales or use tax. The person combining the products is not required to pay Wisconsin sales or use tax on its purchase price of the taxable products included in the transaction.

Exception: If the service being provided is subject to tax under sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats., the service provider may purchase the products without tax, for resale, that are provided with the service.

Example – Gift Basket (Food or Medical Products –50% or Less of Price Relates to Taxable Products)

Retailer sells a gift basket for \$30.00 that includes a basket, fresh fruit, a package of hot cocoa mix, and a bag of candy. Retailer's books and records show the purchase price and selling price of each of the products as follows:

| Item | Cost | Selling Price |
|-------------|-----------------|-----------------|
| Basket | \$ 1.00 | \$ 3.00 |
| Fresh Fruit | \$ 6.00 | \$ 15.00 |
| Cocoa Mix | \$ 3.00 | \$ 7.00 |
| Candy | \$ <u>2.00</u> | \$ <u>5.00</u> |
| Totals | \$ <u>12.00</u> | \$ <u>30.00</u> |

The fresh fruit and cocoa mix are products that are not subject to tax. The basket and candy are products that are subject to tax. The taxable products (i.e., basket and candy) are 50% or less of Retailer's total purchase price and sales price, respectively, of all the products included in the gift basket.

The sale is not a bundled transaction. The non-itemized charge of \$30.00 is not subject to tax. Retailer's purchase of the basket and everything in basket is exempt from tax under [sec. 77.54\(52\)](#), Wis. Stats.

See the following articles for similar examples:

- [Gift Baskets That Contain a Combination of Taxable and Nontaxable Products](#)
- [Home Beer Brewing Ingredients, Equipment, and Supplies](#)

6. **Products Provided Free of Charge With Required Purchase** - Products and/or services are not distinct and identifiable when the product and/or service is provided free of charge to the consumer in conjunction with the required purchase of another product and/or service, and the sales price of the other product and/or service does not vary depending on whether the product and/or service provided free of charge is included in the transaction. (NOT a bundled transaction)

TAX TREATMENT: The tax treatment of the entire sales price is based on whether the other product (non-free product) is a taxable or nontaxable product. The person providing the product and/or service free of charge is required to pay sales or use tax on its purchase price of the product and/or service.

Exception: If the person receiving the free product and/or service must also purchase another **taxable product and/or taxable service** in the same transaction to receive the free product and/or service, the person providing the product and/or service in the same transaction may purchase the product and/or service provided free of charge without tax, for resale, unless the free product and/or service is transferred incidentally with a taxable service, as provided in [sec. 77.52\(2m\)\(a\)](#), Wis. Stats.

Example – Free Hat with Purchase of Gasoline (Products Provided Free of Charge with Required Purchase)

Retailer provides a hat free of charge to any customer that purchases a certain number of gallons of gasoline. Since the gasoline is subject to excise tax under ch. 78, Wis. Stats., the gasoline is exempt from sales and use taxes. The price of the gasoline does not vary depending on whether the hat is included in the transaction. Since the hat is provided free of charge, it is not a "distinct and identifiable product." Only one distinct and identifiable product (i.e., the gasoline) is sold in this transaction.

The transaction is not a bundled transaction. Retailer is the consumer of these hats and is required to pay Wisconsin sales or use tax on its purchases of the hats.

See the tax release titled "[Buy One, Get One Free](#)" and [Similar Promotions](#), which was published in [Wisconsin Tax Bulletin #174](#) (January 2012), for other examples of products provided free with the required purchase of another product.

7. **Real Property** - A transaction that includes real property or service to real property. (NOT a bundled transaction)

TAX TREATMENT: For the tax treatment of real property construction activities, see Part 12 of [Publication 201](#), *Wisconsin Sales and Use Tax Information*, and [Publication 207](#), *Sales Tax Information for Contractors*.

Example – Sale of Appliance Package (Real Property)

Appliance Store sells an appliance package that includes a stove, refrigerator, and dishwasher for one non-itemized price. The appliances may not be purchased individually. Appliance Store delivers and installs the appliances. The dishwasher is a built-in appliance and is a real property improvement when sold installed. The stove and refrigerator are tangible personal property when installed. Since the transaction includes real property, the sale is not a bundled transaction.

Appliance Store must make an allocation for the taxable and nontaxable products:

- Appliance Store's sale of the installed dishwasher is not subject to tax, since the sale of a real property improvement is not taxable.
- Appliance Store is the consumer of the dishwasher and is required to pay Wisconsin sales or use tax on its purchase of the dishwasher.
- Appliance Store's sale of the installed stove and refrigerator is subject to tax, since the sale of tangible personal property is taxable.
- Appliance Store may purchase the stove and refrigerator without tax, for resale.

Bundled Transaction Flowchart

A flowchart to aid in determining whether a transaction is a bundled transaction is included at the end of this tax release.

Bundled Transactions Examples

- Example 1 – Subscription Fee
- Example 2 – Gift Basket - Contains Food and More Than 50% of Products Are Taxable
- Example 3 – Contact Lens Travel Kit - Contains Drug and More Than 50% of Products Are Taxable
- Example 4 – Handicap Accessible Equipment Sold With Motor Vehicle - Contains Exempt Mobility Enhancing Equipment and 10% or Less of Sales Price Relates to Exempt Mobility Enhancing Equipment
- Example 5 – Self-Study Review Course Package - More Than 10% of Price Relates to Taxable Products and/or Services
- Example 6 – Travel Package - More Than 10% of Price Relates to Taxable Products and/or Services
- Example 7 – Flag Kit - Example to Illustrate How to Use the Bundled Transaction Flowchart at the End of this Tax Release

Example 1 – Subscription Fee

For a single monthly subscription fee of \$300, Company provides the following information and services relating to commodities in a given industry:

1. Access to real-time prices on Company's website
2. Ability to view live feeds of different commodities exchanges
3. Ability to receive text messages on prices from different commodities exchanges

4. Ability to receive price alerts related to changes in prices in the different commodities exchanges
5. Access to daily commentaries from trading floors of the exchanges
6. Ability to use prewritten computer software, which is owned and maintained by the seller, to calculate commodity values*
7. Access to database containing historical information for research purposes
8. Access to archived news articles

* The use of the software is a nontaxable data processing service.

The taxable products and/or services in this example are items 1 - 5 (i.e., the real-time prices, the live feeds, the text messages, the price alerts, and the daily commentaries). The nontaxable products and/or services are items 6 - 8 (i.e., the ability to use the software, the ability to review historical data, and the access to the news archives).

Company's purchase price of items 1 - 5 is more than 10% of its total sales price of all the items listed above. Company's sales price of items 1 – 5 is also more than 10% of its total sales price of all of the items listed above.

The sale is a bundled transaction. The \$300 non-itemized charge for the subscription to the information and services is subject to Wisconsin sales or use tax.

Note: If Company can identify, by reasonable and verifiable standards from Company's books and records, the portion of the sales price that is attributable to the products and/or services that are not subject to tax, Company is only required to charge Wisconsin sales tax on the taxable products and/or services.

Example 2 – Gift Basket (Contains Food and More Than 50% of Products Are Taxable)

Retailer sells a gift basket for a non-itemized price of \$30 that includes a basket, three oranges, two apples, and a box of candy. Retailer's books and records show the cost and selling price of each of the products included in the basket as follows:

| Item | Cost | Selling Price |
|---------|-----------------|-----------------|
| Basket | \$ 1.00 | \$ 3.00 |
| Oranges | \$ 3.00 | \$ 4.00 |
| Apples | \$ 2.00 | \$ 4.00 |
| Candy | \$ <u>12.00</u> | \$ <u>19.00</u> |
| Totals | \$ <u>18.00</u> | \$ <u>30.00</u> |

The oranges and apples are products that are not subject to tax. The basket and candy are products that are subject to tax. The taxable products (i.e., basket and candy) are 50% or more of Retailer's total purchase price and sales price, respectively, of all the products included in the gift basket.

The sale is a bundled transaction. The non-itemized charge of \$30.00 is subject to tax. Retailer may purchase the basket and all of the products included in the gift basket without tax.

Note: Since the transaction includes food, Retailer does not have the option to collect and remit sales tax only on the portion of the sales price that is attributable to taxable products. Retailer's entire sales price is subject to tax.

See the following articles for similar examples:

- [Gift Baskets That Contain a Combination of Taxable and Nontaxable Products](#)
- [Home Beer Brewing Ingredients, Equipment, and Supplies](#)

Example 3 – Contact Lens Travel Kit (Contains Drug and More Than 50% of Products Are Taxable)

Retailer sells contact lens travel kits for a \$10.00 non-itemized price that contain both taxable (contact lens solution) and nontaxable (contact lens case, travel case) products. The contact solution is a drug. Retailer's books and records show the purchase price and selling price of each of the products as follows:

| Item | Cost | Selling Price |
|-----------------------|-----------------------|------------------------|
| Contact Lens Case | \$ 0.75 | \$ 2.50 |
| Travel Case | \$ 0.75 | \$ 2.50 |
| Contact Lens Solution | \$ <u>2.00</u> | \$ <u>5.00</u> |
| Totals | \$ <u><u>3.75</u></u> | \$ <u><u>10.00</u></u> |

The contact lens case and travel case are products not subject to tax. The contact lens solution is a product subject to tax, and the contact lens solution is a drug. The sales price of the taxable product (i.e., contact lens solution) is 50% or more of Retailer's total purchase price and sales price, respectively, of all the products included in the gift basket.

The sale is a bundled transaction. The \$10.00 non-itemized price is subject to tax.

Retailer may purchase all of the products included in the contact lens travel kit without tax.

Note: Since the transaction includes drugs, Retailer does not have the option to collect and remit sales tax only on the portion of the sales price that is attributable to taxable products. Retailer's entire sales price is subject to tax.

Example 4 – Handicap Accessible Equipment Sold With Motor Vehicle (Contains Exempt Mobility Enhancing Equipment and 10% or Less of Sales Price Relates to Exempt Mobility Enhancing Equipment)

Individual A purchased a van and handicap accessible equipment five years ago and paid \$50,000 for the van and \$20,000 for the handicap accessible equipment. The current value of the van is \$20,000 and the current value of the handicap accessible equipment is \$10,000. Individual A sells the van and equipment to Individual B for one non-itemized price of \$30,000.

The handicap accessible equipment is exempt from sales and use tax as mobility-enhancing equipment, while the van is taxable. The taxable product (i.e., the van) is more than 50% of the seller's purchase price and sales price, respectively, for the van and the mobility-enhancing equipment.

The sale is a bundled transaction. The \$30,000 non-itemized charge is subject to tax.

Note: If the seller separately states the amount of the mobility-enhancing equipment, the amount charged for the mobility-enhancing equipment is not subject to tax. In order to separately state the portion of the selling price allocable to the mobility-enhancing equipment, the seller may use the following method:

1. Selling price of a used vehicle which contains the mobility-enhancing equipment \$ XX,XXX
2. Selling price of the same year, make, and model of used vehicle not containing the mobility-enhancing equipment \$ YY,YYY
3. Subtract line 2 from line 1. This is the portion of the selling price equipment that the which is attributable to the mobility-enhancing seller may separately state as exempt from sales and use taxes \$ ZZ,ZZZ

Example 5 – Self-Study Review Course Package (More Than 10% of Price Relates to Taxable Products and/or Services)

School charges \$300 for a self-study review package that customers purchase in preparation for an upcoming professional credentialing exam. The self-study review package includes a study manual, flashcards, and videos on DVDs. The package also includes online access using the Internet and a password to databases of frequently asked questions and questions from previous exams, archived video lectures, an interactive blog where the customer can communicate with other customers and where various tips are posted relating to the exam, and an email address for sending questions. The purchaser is not required to take any tests that are scored to show that he or she completed the review course. The price for each individual item is not stated separately and the price cannot be reduced based on individual items not used.

The taxable products include the study manual, flashcards, video DVDs, online access to archived lectures, use of the interactive blog, and email account. The nontaxable products include online access to databases of frequently asked questions and questions from previous exams. The taxable products are more than 10% of School's sales price and purchase price.

The sale of the self-study review course package is a bundled transaction. The non-itemized charge of \$300 is subject to tax. School may purchase the study manual, flashcards, video DVDs, and archived video lectures (if purchased) without tax, for resale.

Note: If School can identify, by reasonable and verifiable standards from School's books and records, that portion of the sales price that is attributable to the nontaxable products and services, School is only required to charge Wisconsin sales tax on the taxable products and/or services.

Example 6 – Travel Package (More Than 10% of Price Relates to Taxable Products and/or Services)

Travel Agent sells a package for a single non-itemized price of \$400. The package includes one ticket to a professional sporting event in Milwaukee, one night lodging at a Milwaukee hotel, and round-trip transportation to the sporting event from Wausau. The sales price of the package does not vary and is not negotiable based on a customer's selection of the products in the package. Travel Agent purchases the ticket directly from Event Provider, the lodging directly from Hotel, and the transportation directly from Transportation Company. The taxable services (i.e., the admission ticket and the lodging) are more than 10% of Travel Agent's sales price and purchase price.

Travel Agent's sale of the package is a bundled transaction. The non-itemized charge of \$400 is subject to tax. Travel Agent may purchase the ticket and lodging without tax, for resale.

Note: If Travel Agent can identify, by reasonable and verifiable standards from Travel Agent 's books and records, that portion of the sales price that is attributable to the services that are not subject to tax, Travel Agent is only required to charge Wisconsin sales tax on the taxable services.

Additional information about travel packages is provided in *Examples 15 and 16* of the tax release titled "[Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places.](#)"

Example 7 – Flag Kit (Example to Illustrate How to Use the Bundled Transaction Flowchart at the End of this Tax Release)

Retailer sells an eight-foot sectional “flag kit” consisting of a two-piece pole with an eagle affixed to the top, a cord, an attaching bracket and screws, and a U.S. flag, all enclosed in a package with a single Universal Product Code (UPC). Retailer sells the “flag kit” to its customer, without installation, for a single non-itemized price of \$50. Of the products that make up the “flag kit,” the flag is exempt from Wisconsin sales and use tax, and the pole with eagle, cord, bracket, and screws are taxable.

| Flag Kit | Retailer's Purchase Price |
|----------------------|---------------------------|
| Flag | \$ 10.00 |
| Pole with eagle | 8.00 |
| Cord | 1.00 |
| Bracket | 1.50 |
| Screws | <u>0.50</u> |
| Total Purchase Price | \$ <u>21.00</u> |

Taxable Portion - \$11.00

Taxable Percentage - 52.38%

Since the retailer's purchase price of the taxable products is significantly higher than 10% of its total purchase price of all of the products in the flag kit, it can be presumed that the retailer's sales price of the taxable products in the flag kit are also more than 10% of the sales price of all of the products in the flag kit.

Using the Bundled Transaction Flowchart:

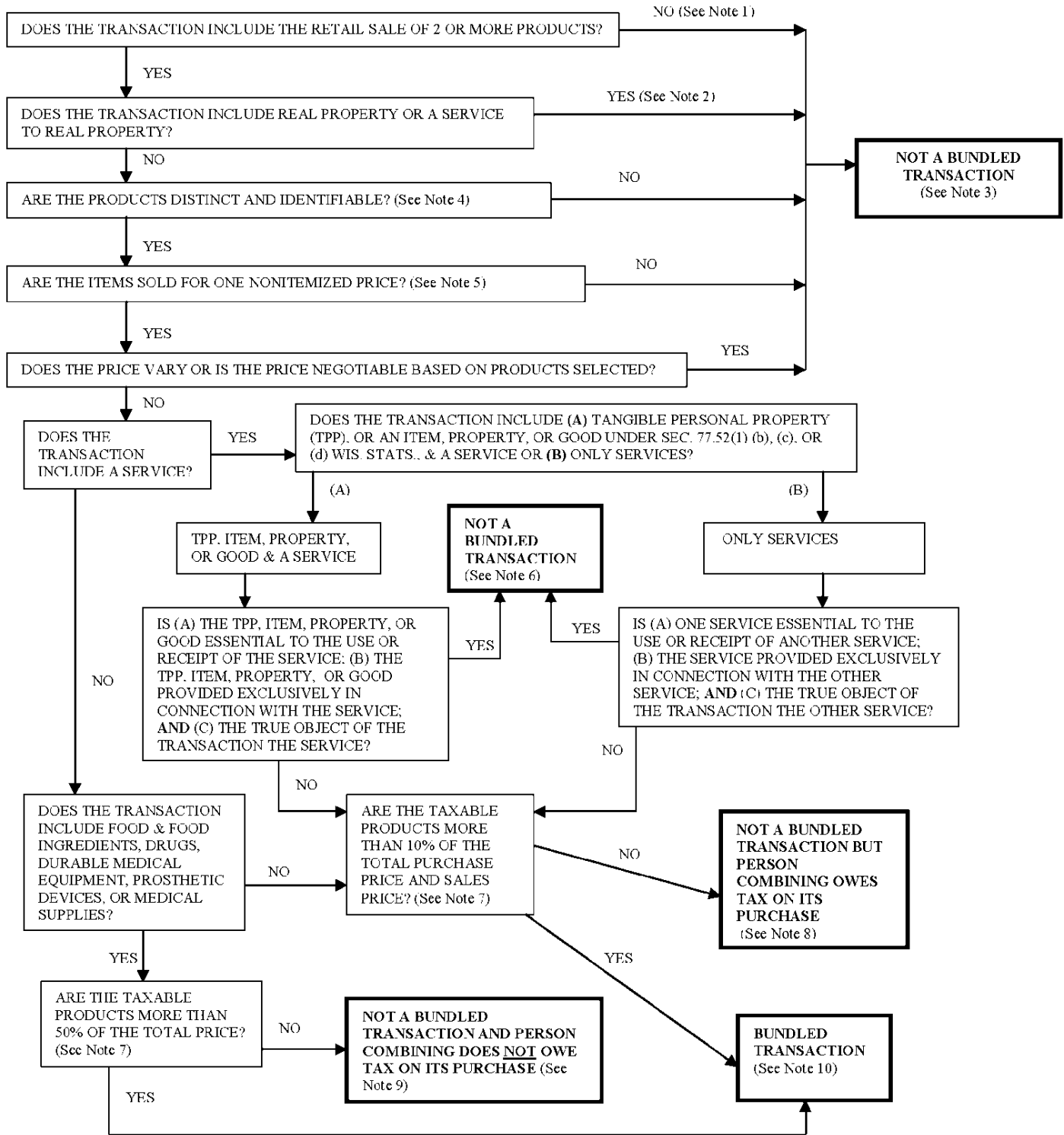
- Does the transaction include the retail sale of 2 or more products? Yes
- Does the transaction include real property or a service to real property? No
- Are the products distinct and identifiable? Yes
- Are the products sold for one non-itemized price? Yes
- Does the price vary or is the price negotiable based on products selected? No
- Does the transaction include a service? No
- Does the transaction include food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies? No
- Are the taxable products more than 10% of the total price? Yes

The sale is a bundled transaction. The \$50.00 non-itemized price is subject to tax.

Note: Retailer may, at its option, collect and remit tax only on the taxable portion of the sale if Retailer can identify, by reasonable and verifiable standards from its books and records that are kept in the ordinary course of its business, the portion of the sales price that is attributable to products that are not subject to tax (e.g., selling price of \$50.00 x 52.38% = \$26.19 subject to tax).

BUNDLED TRANSACTION FLOWCHART

TO DETERMINE IF THE RETAIL SALE OF 2 OR MORE PRODUCTS IS A BUNDLED TRANSACTION



Notes To Bundled Transaction Flowchart

- 1 If a transaction does not contain the retail sale of 2 or more products, the transaction is not a bundled transaction and the tax treatment of the transaction follows the tax treatment of the individual product being sold.

“Retail Sale” means any sale, license, lease or rental for any purpose other than resale, sublease, or subrent, regardless of whether the product sold is taxable or nontaxable.

“Product” includes tangible personal property, and items, property, and goods under sec. 77.52(1) (b), (c), and (d), Wis. Stats., and services.
- 2 A transaction that includes real property or services to real property is specifically excluded from the definition of a bundled transaction. See secs. Tax 11.67 and 11.68, Wis. Adm. Code, to determine the tax treatment of these transactions.
- 3 The tax treatment of the transaction follows the tax treatment of the individual product(s) being sold.
- 4 “Distinct and identifiable product” does not include (a) packaging, including containers, boxes, sacks, bags, bottles, and envelopes and other materials, including wrapping, labels, tags and instructional guides that accompany and are incidental or immaterial to the retail sale of any product, and (b) a product that is provided free of charge to the consumer in conjunction with the required purchase of another product if the sales price does not vary depending on whether the product provided free of charge is included in the transaction. (Note: If a transaction is not a bundled transaction because one product is provided free of charge with the required purchase of another product, the person providing the free product is the consumer of the free product and is required to pay the applicable Wisconsin sales or use tax on his or her purchase price of that product.)
- 5 “One nonitemized price” does not include a price that is separately identified by product on a binding sales document or other sales-related document that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list. (Note: If the products are not sold for one nonitemized price, the transaction is not a bundled transaction and the tax treatment of the price associated with each of the products follows the tax treatment of each individual product being sold.)
- 6 The tax treatment of the transaction depends on the service being provided. However, in either case, the service provider is the consumer of the tangible personal property, items, property, or good under sec. 77.52 (1) (b), (c), or (d), Wis. Stats., or other service provided that is not the true objective of the transaction and is required to pay the applicable Wisconsin sales or use tax on his or her purchase price of that property, item, good, or service.
- 7 The percentage of taxable items included in a transaction is computed by the seller using either the seller’s purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract.
- 8 The transaction is not subject to Wisconsin sales or use tax per sec. 77.54 (51), Wis. Stats. However, the first person combining the products is required to pay the applicable Wisconsin sales or use tax on his or her purchase price of the taxable products included in the transaction.
- 9 The transaction is not subject to Wisconsin sales or use tax per sec. 77.54 (52), Wis. Stats., and the first person combining the products is NOT required to pay Wisconsin sales or use tax on his or her purchase price of the taxable products included in the transaction.
- 10 The entire sales price is subject to Wisconsin sales or use tax. Exception: If the retailer can identify, by reasonable and verifiable standards from its books and records that are kept in the ordinary course of its business, the portion of the sales price that is attributable to products that are not subject to Wisconsin sales or use tax, the retailer may, at its option, not charge Wisconsin sales or use tax on that portion of the transaction. However, the retailer does not have this option if the transaction contains food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies.

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.”

Sales and Use Tax

Non-Transplantable Human Tissue

Ruling Number: W1811001

December 22, 2017

Facts as Provided

During the past decade, with advancements in medicine and medical technology, there has been a growing need for non-transplantable human tissue. Company is able to meet this essential need by educating the public about the social and medical research related benefits of whole body donation, and receives these donations from donors at a variety of venues including hospitals, funeral homes, and hospices. These donations are subject to legal consent and authorization from the donor and/or their next of kin. By donating to Company, donors and their families are able to meet their own or loved ones' wishes to help support and further the advancement of scientific and medical research.

Company is a non-transplantable human tissue bank that provides services associated with the processing, storage, preparation, and transportation of tissue specimen to clients for medical research and training purposes. Company's customers include medical facilities, hospitals, universities, academic medical centers, medical training organizations and medical device manufacturers, amongst others. Company receives donated human bodies shortly after the time of death in order to provide the medical community with either complete, intact cadavers, or portions of the human tissue according to its customers' specific needs associated with their training and research requirements. Company makes no payments to a donor's estate or their family for the donated remains. Highly skilled experts are used to remove parts in such a way as to preserve the integrity and usefulness of those bodies and requested tissue for specific training and research purposes. Any tissues that are not recovered for a qualified use are cremated and either disposed of or returned to the next of kin upon request.

In general, public policy and social norms rule out establishing a marketplace for the sale of vital human organs and body tissue. Commodifying the human body and its organs, thereby transforming what should be an act of altruism into a commercial transaction, is viewed as contrary to our basic social values (*Public Policy and the Sale of Human Organs*, Cynthia B. Cohen, Kennedy Institute of Ethics Journal, Vol 12, #1 (2002)). This has resulted in federal and state statutes and regulations outlawing the sale of human tissue. Specifically, the National Organ Transplant Act (“NOTA”) of 1984 bans the sale of human organs and tissue for transplant, but allows tissue banks to charge fees for tissue and services associated with

procuring and preparing tissue. In addition, 42 U.S. Code sec. 274e(a) states that "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce." Further, the federal Public Health Service Act prohibits the sale of human fetal tissue as stated in 42 U.S. Code section 289g-2(a), "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human tissue for valuable consideration if the transfer affects interstate commerce." Additionally, the Uniform Anatomical Gift Act governs both tissue for transplantation into living patients as well as the making of anatomical gifts for the advancement of science. Section 16 of the Uniform Anatomical Gift Act (2006) states that "A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part."

These legal parameters have helped the manner in which human bodies are gathered and then, in whole or in part, distributed, with no distinction on whether the parts are used for purposes of research or transplanting. As is customary for the industry, Company charges fees to its customers in order to recover the costs associated with the acquisition, storage, preservation, preparation and distribution of tissue. Cost-plus pricing, rather than supply-demand metrics, establishes the service charges invoiced to Company's customers. There are no charges for human tissue. Company is properly following the various longstanding nationwide legal and social norms which provide that there can be no sale of a human body or vital body parts. The fees which Company lists and charges are an aggregate reflection of the services it provides related to its tissue removal, processing, preservation, storage, transportation and disposal.

Ruling Requested by You

Question: Is Company's charge to its customers for non-transplantable human tissue used for research and training subject to Wisconsin sales and use tax?

Answer: Company's charge for non-transplantable human tissue to its customer is a retail sale of tangible personal property and is subject to Wisconsin sales and use tax, unless Company receives a fully completed exemption certificate (Form S-211) from its customer. Company's entire sales price is subject to tax, including charges for processing, storage, preparation, and transportation of the tissue.

Analysis

The tissue, as described, meets the definition of tangible personal property. The sale of tangible personal property, including tissue, is subject to Wisconsin sales or use tax. Whether the sale of tangible personal property is illegal under federal or state law has no bearing on whether the property is subject to sales tax.

The taxable sales price of the tissue includes all amounts received by Company for its sale of the tissue, without any deduction for services necessary to complete the sale, such as charges for tissue removal, processing, preservation, storage, transportation and disposal.

Applicable Statutes

Section 77.52(1)(a), Wis. Stats. (2015-16), imposes sales tax on the sale, license, lease, or rental of retail sales of tangible personal property.

"Tangible personal property" is defined in sec. 77.51(20), Wis. Stats., and provides in part, that it means "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses..."

"Retailer" is defined in s. 77.51(13)(a), Wis. Stats., to include, "[e]very seller who makes any sale, regardless of whether the sale is mercantile in nature, of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a)."

Under sec. 77.51(17), a "seller" includes:

...every person selling, licensing, leasing, or renting tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) or selling, performing, or furnishing services of a kind the sales price from the sale, license, lease, rental, performance, or furnishing of which is required to be included in the measure of the sales tax, regardless of all of the following:

- (a) Whether the transaction is mercantile in nature.
- (b) Whether the seller sells smaller quantities from inventory.
- (c) Whether the seller makes or intends to make a profit on the sale.
- (d) Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
- (e) The percentage of the seller's total sales that the sale represents.
- (f) Any activities other than those described in sub. (13)(a) to (o) in which the seller is engaged.

Section 77.51(14) defines "sale" to include:

...the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services for use or consumption but not for resale as tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services and includes ...

(m) A transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable.

(n) All activities described in this subsection regardless of all of the following:

- 1. Whether the transaction is mercantile in nature.
- 2. Whether the seller sells smaller quantities from inventory.
- 3. Whether the seller makes or intends to make a profit on the sale.
- 4. Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
- 5. The percentage of the seller's total sales that the sale represents.
- 6. Any activities other than those described in sub. (13) (a) to (o) in which the seller is engaged.

Section 77.51(15b)(a), Wis. Stats., defines "sales price" to mean:

...the total amount of consideration, including cash, credit, property, and services, for which tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) or services are sold, licensed, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following ...

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, except as provided in par. (b) 3m. and 3s., and any other expense of the seller.
3. Charges by the seller for any services necessary to complete a sale, not including delivery and installation charges.
- 4.a. Delivery charges, except as provided in par. (b) 4... (Emphasis added)

Sales and Use Tax Exempt on Materials Purchased by Construction Contractors Who Incorporate Such Materials into Sanitary Sewer System Located in Wisconsin

Ruling Number: W1814002

January 2, 2018

Facts As Provided

- Company is a metropolitan sewerage district organized under Chapter 200 of the Wisconsin Statutes.
- Company contracts with construction contractors to build sanitary sewer systems for Company.
- These interceptor sewer systems take waste water and excrement from member municipalities' sewer systems and convey it toward Company's treatment plants located in .
- As part of the construction contract for these sewer systems, the contractor may purchase materials that are incorporated into the sewer system, including, but not limited to, the following materials:
 - Pipes,
 - Pipe liner material,
 - Manhole structures,
 - Manhole covers,
 - Manhole liners,
 - Manhole coatings,
 - Backfill material for pipes and manholes,
 - Landscaping (soil or stone cover, trees and shrubs, seeding) to be placed over the sewer construction area when construction is finished.

When Company solicits bids from contractors for a sewer system construction project, contractors have reached differing conclusions regarding the scope and applicability of the exemption described in sec. 77.54(9m), Wis. Stats. (2015-16), as it relates to the purchase of materials that will be incorporated into Company's sewer systems. The competitiveness of a contractor's bid depends in part on the contractor's conclusion as to whether this exemption applies to materials that will be purchased by the contractor.

Question

Is the purchase by a construction contractor of materials which are transferred to Company in fulfillment of a construction contract with Company and which become component parts of a sanitary sewer system owned by Company exempt from sales and use tax under sec. 77.54(9m), Wis. Stats., provided that the construction contractor provides the seller with a valid exemption certificate?

Answer and Analysis

With respect to the exemption provided by sec. 77.54(9m), Wis. Stats., Company is a qualifying entity and a sanitary sewer system is a qualifying facility owned by Company. However, only the sale of and the storage, use, or other consumption of tangible personal property sold to a construction contractor who, ***in fulfillment of a real property construction activity***, transfers the tangible personal property to Company, ***if such tangible personal property becomes a component of a "facility"*** in this state that is owned by Company.

This particular exemption does not apply to all materials purchased by the contractor. The materials must be used in real property construction activity and must become a component of property within the meaning of "facility."

"Real property construction activities," as defined by rule sec. Tax 11.68(1), Wis. Adm. Code (August 2014 Register), means activities that occur at a site where taxable products are applied or adapted to the use or purpose to which real property is devoted are affixed to that real property, if the intent of the person who affixes the product is to make a permanent accession to real property. "Real property construction activities" do not include affixing to real property tangible personal property that remains tangible personal property after it is affixed.

As provided in sec. 77.54(9m), Wis. Stats., "Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road.

Pipes, pipe liner material, manhole structures, manhole covers, manhole liners, and manhole coatings qualify for the exemption, because they are real property when installed, and become a component part of the sewer system (i.e., a qualifying "facility").

Materials that become a component part of the road, curb, gutters, or sidewalk (black top, cement, road base materials) do not qualify for the exemption, because "facility" does not include a highway, street, or road. Materials that become a component part of a storm sewer or the materials necessary to stabilize those items (piping, fittings, gravel or other fill necessary to bury the piping to protect it from the road) do qualify for the exemption. Please note that any fill used above this point (e.g., to bring the road to elevation), the road base, and the road surface is not part of the sewer or water system and does not qualify for the exemption.

As stated above, the materials must be used in real property construction activity to qualify for the exemption under Wis. Stat. sec 77.54(9m). Landscaping is a taxable service and not treated as a real property construction activity for purposes of that exemption. The landscaper may purchase materials without tax, for resale, that it physically transfers to its customer with the provision of landscaping services.

However, the landscaper's charge for landscaping services is subject to tax, unless one of the following applies:

- A contractor may purchase landscaping services without tax, for resale, that it sells to an exempt entity. The contractor must provide the landscaper with a fully completed exemption certificate claiming resale. The contractor's sale of landscaping services are exempt from tax (i.e., sale to an exempt entity).
- If a landscaper sells landscaping services directly to the exempt entity, its sale is exempt from tax. The landscaper must receive a purchase order or other documentation from the exempt entity, all

invoices must be made out in the exempt entity's name, and all payments must be received directly from the exempt entity.

Another exemption that may apply to some of the construction work for Company is provided in sec. 77.54(26), Wis. Stats., which is an exemption for a contractor's purchases of materials that become a component part of a municipal waste treatment facility. This exemption applies to installation, repair, or replacement of the fence and items "within the fence." Although your question relates to materials that qualify for exemption under sec. 77.54(9m), Wis. Stats., some items that do not qualify under (9m) may qualify under sec. 77.54(26), Wis. Stats.

Report on Litigation

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

Sales and Use Tax

Industrial Waste Treatment Facility Exemption – Fuel and Electricity Consumed by Air Makeup Unit. *PMFC Holding, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 29, 2018).

The issue in this case is whether the exemption for industrial waste treatment facilities applies to the PMFC Holding, LLC's (taxpayer) purchase of fuel and electricity consumed in air makeup units.

The taxpayer is a holding company that owns and conducts its business through its wholly-owned subsidiary, Pioneer Metal Finishing, LLC, which is a disregarded entity for both Wisconsin income tax and sales and use tax purposes. During the period at issue, the taxpayer provided metal finishing services to its customers, including anodizing, painting, powder coating, metal plating, pretreating metals, and mechanically finishing metals. These metal finishing operations released fumes, vapors, mists, and dusts into the air. The taxpayer was required, by law, to clean or scrub certain contaminants from the air before releasing it into the environment.

Wisconsin provides an exemption in sec 77.54(26), Wis. Stats., for the sale of, storage, use, or other consumption of tangible personal property that becomes a component part of an industrial waste treatment facility that is exempt from property tax under sec. 70.11(21), Wis. Stats. Section 70.11(21), Wis. Stats., requires the equipment to be used exclusively for removing contaminants from the air. The sales and use tax exemption also applies to chemicals and supplies used or consumed in operating an industrial waste treatment facility, including fuel and electricity.

There is no disagreement that the taxpayer's air scrubbers qualify for the sales and use tax exemption. However, the department argued that air makeup units that were not physically connected to the air scrubbers were not part of the air scrubbers/industrial waste treatment facility and that the air makeup units were not used directly or exclusively in removing air contaminants. Therefore, the fuel and electricity used in the air makeup units did not qualify for exemption.

The Wisconsin Tax Appeals Commission concluded that the air makeup units qualified as components of the industrial waste treatment facility. The fuel and electricity consumed by the air makeup units, therefore, qualified for the exemption.

The department has appealed this decision to the Circuit Court.