

TAX REPORT

2-92

Sales/Use Tax

JUNE 1992

I. NEW SALES AND USE TAX LAWS

The Wisconsin Legislature enacted new sales and use tax laws in 1992 which may affect you. This report explains these new laws. The Wisconsin Act number and the effective date of each new law is shown in parenthesis after the title.

If you have any additional questions regarding these new laws, contact any Department of Revenue office.

1. Clarify That "Tangible Personal Property" Includes Computer Programs, Except Custom Programs (1991 Act 269, amend sec. 77.51(20), effective May 1, 1992.)

This provision amends the definition of "tangible personal property" to include computer programs, except custom computer programs.

Section Tax 11.71(1)(e), Wis. Adm. Code, defines "custom programs" as utility and application software which accommodate the special processing needs of the customer. Criteria used in determining whether a computer program is a custom program are described in sec. Tax 11.71(1)(e)1 through 7, Wis. Adm. Code.

Important: The amendment to sec. 77.51(20), Wis. Stats., does not change the sales and use tax treatment of computer programs. Sales of "custom" programs continue to be nontaxable while "canned" programs are considered to be tangible personal property and taxable.

The tax release titled "Taxability of Computer Software" which appeared in *Wisconsin Tax Bulletin* 72, page 16, (July 1991), includes examples of the Wisconsin sales and use tax treatment of computer software.

2. Revise Computation of Retailer's Discount (1991 Act 269, amend sec. 77.61(4)(c), effective for taxes payable on returns filed for periods that end on or after January 1, 1993.)

For reporting the Wisconsin sales tax and collecting and reporting the use tax imposed on the retailer under sec. 77.53(3), Wis. Stats., a retailer may deduct from the tax imposed, a retailer's discount equal to ½% of the sales and use tax payable on retail sales, if it timely remits the tax to the department. (CAUTION: This ½% discount first applies to returns filed for periods that end on or after January 1, 1993.)

For returns filed for periods that end before January 1, 1993, the retailer's discount is 2% of the first \$10,000 of sales and use tax payable each year, 1% of the second \$10,000 of sales and use tax payable each year,

and ½% of the sales and use tax payable each year exceeding \$20,000.

3. Increase Penalty to 25% on Estimated Assessments (1991 Act 269, amend sec. 77.59(9), effective for returns due on or after July 1, 1992.)

If the department makes an estimated assessment of a person's sales or use tax liability because of that person's failure to file a sales and use tax return, a penalty of 25% of the estimated tax will be added to the tax assessed.

Previously, the penalty was 10%.

4. Increase Negligence Penalty to 50% for Filing Incorrect Sales and Use Tax Return When Registering a Motor Vehicle, Boat, Etc. (1991 Act 269, amend sec. 77.60(3), effective for returns filed on or after May 1, 1992.)

When a person purchases a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle, or aircraft from a nondealer who has not charged Wisconsin sales or use tax, the person purchasing the vehicle is required to report and pay Wisconsin sales or use tax when registering the item in Wisconsin.

The amendment to sec. 77.60(3), Wis. Stats., provides that if the person, due to neglect, files an incorrect return, a penalty shall be imposed equal to 50% of the tax finally determined for that item, exclusive of interest or other penalty.

Previously, the penalty was 25%.

II. NEW DELINQUENT TAX FEE

A new delinquent tax collection fee (DTC fee) becomes effective July 1, 1992. This fee, which was enacted into law by the Wisconsin Legislature, places the cost of delinquent tax collection on the delinquent taxpayer rather than all citizens of the state.

The DTC fee is the greater of \$25 or 4½% of the tax, fees, interest, and penalty owed on each separate delinquency included in your total delinquent balance as of July 1, 1992.

The fee is also imposed at the time each assessment or notice of amount due is referred for delinquent tax collection on or after July 1, 1992. The fee is the greater of \$25 or 4½% of the unpaid balance of tax, interest, fees, and penalty that become subject to delinquent tax collection action.

III. USE TAX DUE ON OFFICE SUPPLIES AND EQUIPMENT PURCHASED OUT-OF-STATE

Did you purchase office supplies (such as paper, pens, staples, etc.) or office equipment (such as typewriters, chairs, desks, file cabinets, computers, etc.) from a supplier located outside Wisconsin and then store or use these items in Wisconsin? If the answer is yes, you are required to report and pay Wisconsin use tax on these purchases if Wisconsin sales or use tax was not charged by the supplier.

The amount subject to use tax is the purchase price, including charges for shipping and handling.

The amount subject to use tax is reported on lines 17 through 20, as appropriate, of your sales and use tax return (Form ST-12). The amount of use tax is computed on lines 21 through 23 of Form ST-12.

IV. LANDSCAPING SERVICES ARE TAXABLE

Now that summer has arrived, persons in the landscaping business are very busy. Persons providing or receiving landscaping services should remember that landscaping services, such as mowing and fertilizing lawns, planting trees and shrubs, and installing decorative stone, are subject to Wisconsin sales tax. For more information on taxable landscaping services, contact any Department of Revenue office.

V. FILING LATE IS COSTLY

Sales and use returns mailed to the Department of Revenue must be postmarked by the due date **AND** received by the department within 5 days of the due date. **BOTH** conditions must be met for a return to be timely filed.

Returns filed late are not entitled to the retailer's discount, incur a \$10 late filing fee, and tax not paid when due is subject to interest at the rate of 1½% per month and may be subject to the Delinquent Tax Fee as described in Part II. Also, late returns may be subject to a negligence penalty of 5% of the tax liability for each month or fraction of a month a return is received late, up to 25%.

You can avoid the late filing fee, interest, negligence penalty, and delinquent tax fee by filing and paying your tax due on time.

Need an extension?

If you cannot file by the due date, you may request a one month extension to file your return by writing to the Compliance Bureau, Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902. The request should include your name, address, permit or certificate number, and period covered. It must be postmarked by the due date of the return covering the period for which you are requesting the extension. The request must be in writing; phone calls are not acceptable.

A retailer's discount is allowed for returns filed and tax paid by the extended due date. However, interest of 1% of the tax due applies for the extension period.

VI. AVOID CRIMINAL PENALTY — PAY SALES AND USE TAXES ON TIME

Failure to timely pay sales and use taxes can result in a criminal conviction. You are guilty of theft if you collect state and county sales and use tax moneys from a consumer, user, or purchaser and you —

- intentionally fail or refuse to pay these tax moneys to the Department of Revenue by the due date for payment, or
- fraudulently withhold, appropriate, or use these tax moneys.

If the amount involved is more than \$1,000, the theft is a felony under sec. 943.201, Wis. Stats.

Payment to creditors in preference to the payment of the tax moneys to the Department of Revenue is prima facie evidence of an intent to fraudulently use these tax moneys.

Avoid the problem and pay your taxes by the due date.

VII. LOOKING FOR ANSWERS TO WISCONSIN TAX QUESTIONS?

Consider subscribing to the following:

Wisconsin Tax Bulletin

The *Wisconsin Tax Bulletin* (WTB) provides you with up-to-date information about Wisconsin sales, income, franchise, and other tax laws. It contains articles, summaries of court decisions, private letter rulings, and question and answer discussions of important tax issues you may not find elsewhere.

The WTB, which costs \$7 per year, is published quarterly by the Wisconsin Department of Revenue. In addition, you will receive an annual WTB special issue which explains new tax laws.

Topical and Court Case Index

The *Topical and Court Case Index*, which is published by the Wisconsin Department of Revenue, is a two-part index.

The first part (a Topical Index) will help you find the particular Wisconsin Statute, administrative rule, *Wisconsin Tax Bulletin* tax release and private letter ruling, or Attorney General opinion that deals with your question. The second part (a Court Case Index) will help you find Wisconsin court decisions relating to your questions.

The *Topical and Court Case Index*, which is published annually in December, sells for \$14 (plus sales tax) per copy. That price includes an addendum of updated information which will be provided the following May.

The *Wisconsin Tax Bulletin* and the *Topical and Court Case Index* can be purchased from: Wisconsin Department of Administration, Document Sales, P.O. Box 7840, Madison, WI 53707-7840 (telephone (608)266-3358).