

## 8 Credit for Wisconsin Sales or Use Tax Paid on Tangible Personal Property Sold at Retail by Contractors

**Statutes:** Section 77.51(2), Wis. Stats. (1991-92)

**Wis. Adm. Code:** Section Tax 11.68(7), December 1992 Register

**Background:** Section 77.51(2), Wis. Stats. (1991-92), provides that a contractor engaged primarily in real property construction activities may use resale certificates only with respect to purchases of property which the contractor has sound reason to believe he will sell to customers for whom the contractor will not perform real property construction activities involving the use of such property.

However, some construction contractors, who also sell construction supplies at retail, do not know when they purchase these supplies whether they will be consumed in real property construction or resold to others. In these instances, sec. Tax 11.68(7), Wis. Adm. Code, provides that a construction contractor may do one of the following at the time of making purchases:

- A. Give a resale certificate to suppliers and purchase the property without Wisconsin sales or use tax. If the contractor later sells the property at retail, the contractor must collect and remit the Wisconsin sales tax on the sales to customers. If the property is used in real property construction, the contractor must pay a Wisconsin use tax on its purchase price of the property.
- B. Pay sales tax to suppliers on all property purchased. If the prop-

erty is later consumed in real property construction, the tax obligation has been satisfied. If the property is sold at retail, the contractor must collect and remit Wisconsin sales tax on these retail sales, but may take as a credit against the sales tax any Wisconsin sales or use tax paid on the purchase of the property.

**Facts and Question 1:** Contractor ABC pays Wisconsin sales tax to suppliers on all property purchased. Contractor ABC files sales and use tax returns on a monthly basis.

In June 1992, Contractor ABC purchased 10,000 feet of electrical wire from a supplier for \$1,000 and paid sales tax of \$50. In June 1992, Contractor ABC sold the 10,000 feet of wire to Company DEF at retail for \$1,500. Contractor ABC charged Wisconsin sales tax of \$75 on the sale of the wire to Company DEF.

Contractor ABC had total gross receipts from sales of tangible personal property of \$20,000 in June 1992. For that same period, Contractor ABC had sales for resale of \$5,000 and sales subject to other exemptions of \$3,000.

How does Contractor ABC claim a credit for the \$50 of sales tax it paid on the purchase of 10,000 feet of wire from its supplier?

**Answer 1:** Contractor ABC must claim the \$1,000 deduction from gross receipts on line 9 of its sales and use tax return (Form ST-12) for the period in which the sale of the wire occurs, regardless of when it purchased the wire. Because the retail sale of the wire occurred in June 1992, Contractor ABC must claim the deduction from gross receipt on its June 1992 Form ST-12.

The computation is made on the June 1992 Form ST-12 as follows:

Gross receipts (line 1)	\$20,000*
Resale certificate sales (line 2)	\$5,000
Exemption certificate sales (line 3)	3,000
Other (line 9)	<u>1,000</u>
Total deductions (line 10)	<u>9,000</u>
State taxable receipts (line 11)	<u>\$11,000</u>

\*includes the \$1,500 sale of wire

**Facts and Question 2:** Contractor XYZ sold wire at retail in June 1992. Contractor XYZ reported the sale on its sales and use tax return for the quarter ending June 30, 1992 (Form ST-12) and remitted the proper sales tax. In August 1992, Contractor XYZ realizes that it paid Wisconsin sales tax on its purchase of the wire that it sold in June 1992.

How does Contractor XYZ claim a credit for the \$50 of sales tax it paid on the purchase of the 10,000 feet of wire it sold at retail in June 1992?

**Answer 2:** Contractor XYZ must amend its Form ST-12 for the quarter ending June 30, 1992, because this is the period in which the retail sale of the wire occurred. Contractor XYZ should include its purchase price of the wire on line 9 of its amended sales and use tax return (Form ST-12X).

**Facts and Question 3:** In March 1992, Contractor GHI purchased 10,000 feet of electrical wire from an out-of-state supplier for \$1,000. The out-of-state supplier did not charge Wisconsin sales or use tax on the sale. Therefore, Contractor GHI reported the purchase price of the wire (\$1,000) on line 17 and use tax

of \$50 on line 21 of its March 1992 sales and use tax return (Form ST-12) for the purchase of the wire.

In June 1992, Contractor GHI sold the 10,000 feet of wire to Company JKL at retail for \$1,500. Contractor GHI charged Wisconsin sales tax of \$75 on the sale of wire to Company JKL.

Contractor GHI files sales and use tax returns on a monthly basis. In June 1992 Contractor GHI had total gross receipts from sales of tangible personal property of \$20,000, sales for resale of \$5,000, and sales subject to other exemptions of \$3,000.

How does Contractor GHI claim a credit for the \$50 of use tax it paid on the purchase of 10,000 feet of wire from its supplier?

**Answer 3:** Contractor GHI must claim a deduction from gross receipts on line 9 of its sales and use tax return (Form ST-12) for the period in which the sale of the wire occurs, regardless of when it purchased the wire. Because the retail sale of the wire occurred in June 1992, Contractor GHI must claim the deduction from gross receipts on its June 1992 Form ST-12.

The computation is made on the June 1992 Form ST-12 as follows:

Gross receipts (line 1)	\$20,000*
Resale certificate sales (line 2)	\$5,000
Exemption certificate sales (line 3)	3,000
Other (line 9)	<u>1,000</u>
Total deductions (line 10)	<u>9,000</u>
State taxable receipts (line 11)	<u>\$11,000</u>

\*includes the \$1,500 sale of wire

## 9 Effect of Motor Fuel Tax Refund on Computation of Gross Receipts and Sales Price

**Statutes:** Section 77.51(4)(a) and (b) and (15)(a) and (b), Wis. Stats. (1991-92)

**Background:** Section 77.51(4)(a), Wis. Stats. (1991-92), provides that gross receipts, for purposes of imposing Wisconsin sales tax, means the total amount of the sale of tangible personal property whether received in money or otherwise. Gross receipts includes the federal and Wisconsin motor fuel taxes.

Section 77.51(4)(b), Wis. Stats. (1991-92), provides that gross receipts does not include such part of the sale price as is refunded in cash or credit as a result of adjustments in the sales price after the sale has been completed.

Section 77.51(15), Wis. Stats. (1991-92), provides that sales price, for purposes of imposing Wisconsin use tax, means the total amount for which tangible personal property is sold, without any deduction for the federal and Wisconsin motor fuel taxes.

There is no provision in the definition of "sales price," the measure used in computing use tax, that allows the purchaser to reduce the sales price subject to use tax by a partial refund.

**Facts and Question 1:** Company A sells motor fuel to Company B. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company A charges Company B Wisconsin sales tax on the total amount of the sale of the motor fuel, including the federal motor fuel tax.

Company B, subsequent to the sale of the motor fuel, files a claim for refund with the Internal Revenue Ser-

vice (IRS) for the federal motor fuel tax it paid to Company A. The claim for refund is made using federal Form 843. Company A becomes aware of the motor fuel tax refund made by the IRS to Company B.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal excise tax refunded by the IRS to Company B?

**Answer 1:** No. The refund of federal motor fuel tax to Company B does not reduce the gross receipts subject to Wisconsin sales tax from the sale of the motor fuel by Company A to Company B.

The definition of gross receipts in sec. 77.51(4)(a) and (b), Wis. Stats. (1991-92), does not provide a reduction in the computation of a retailer's gross receipts for a refund to the purchaser by a third party. The amount received by Company A from the sale of motor fuel to Company B has not changed as a result of the refund by the IRS and, therefore, the gross receipts subject to Wisconsin sales or use tax remain the same.

**Facts and Question 2:** Assume the same facts as in Facts and Question 1, except that Company B claims a credit on its federal corporate income tax return using federal Form 4136 for the federal motor fuel tax it paid to Company A on the purchase of motor fuel.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal motor fuel tax allowed as a credit to Company B?

**Answer 2:** No. The same answer as given to Facts and Question 1 applies.

**Facts and Question 3:** Company A sells motor fuel to Company B. The amount of the sale of the motor fuel includes the Wisconsin motor fuel tax. Company A charges Company B Wisconsin sales tax on the total amount of the sale of the motor fuel, including the Wisconsin motor fuel tax.

Company B, subsequent to the sale of the motor fuel, files a claim for refund with the Wisconsin Department of Revenue for the Wisconsin motor fuel tax it paid to Company A. The claim for refund is made using Wisconsin Form 3, Claim for Motor Fuel Tax Refund. Company A becomes aware of the motor fuel tax refund made by the Wisconsin Department of Revenue to Company B.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the Wisconsin excise tax refunded by the Wisconsin Department of Revenue to Company B?

**Answer 3:** No. The same answer as given to Facts and Question 1 applies.

**Facts and Question 4:** Company C sells motor fuel to Company D. The amount of the sale of the motor fuel includes the federal and Wisconsin motor fuel taxes. Company C does not charge Company D Wisconsin sales tax on the sale of the motor fuel. Company D reports Wisconsin use tax on its Wisconsin sales and use tax return for the purchase of the motor fuel. Company D includes the federal and Wisconsin motor fuel taxes in the amount on which use tax is computed.

Company D, subsequent to reporting Wisconsin use tax on the motor fuel purchased, files claims for refund with the IRS and the Wisconsin Department of Revenue for the federal and Wisconsin motor fuel taxes it

paid to Company C. The claims for refund are made using federal Form 843 and Wisconsin Form 3.

May Company D file a claim for refund of the use tax it paid to the department on that part of the purchase price for the motor fuel that represents the federal and Wisconsin motor fuel taxes refunded by the IRS and the Wisconsin Department of Revenue to Company D?

**Answer 4:** No. The refund of federal and Wisconsin motor fuel taxes to Company D does not reduce the sales price subject to Wisconsin use tax from the sale of the motor fuel by Company C which is stored, used, or consumed in Wisconsin by Company D.

There is no provision in the definition of sales price in sec. 77.51(15)(a) and (b), Wis. Stats. (1991-92), that allows the purchaser to reduce the sales price subject to use tax by a partial refund from the IRS or the department of the federal or state motor fuel taxes paid on the sale.

**Facts and Question 5:** Assume the same facts as in Facts and Question 4, except that Company D claims a credit on its federal corporate income tax return using federal Form 4136 for the federal motor fuel tax it paid to Company C on the purchase of motor fuel.

May Company D file a claim for refund of the use tax it paid to the department on that part of the sales price that represents the federal motor fuel tax allowed as a credit by the IRS on Company D's federal corporate income tax return?

**Answer 5:** No. The same answer as given to Facts and Question 4 applies.

**Facts and Question 6:** Company E sells motor fuel to Company F. The

amount of the sale of the motor fuel includes the federal and Wisconsin motor fuel taxes. Company E does not charge Company F Wisconsin sales tax on the sale of the motor fuel. Company F does not report Wisconsin use tax on its Wisconsin sales and use tax return for the purchase of the motor fuel.

Subsequent to the sale of the motor fuel by Company E, Company F files claims for refund with the IRS and the Wisconsin Department of Revenue for the federal and Wisconsin motor fuel tax it paid on the motor fuel purchased from Company E. The claims for refund are made using federal Form 843 and Wisconsin Form 3.

Company F is audited by the department. It is determined that Company F should have reported Wisconsin use tax on its purchase of motor fuel from Company E.

Is the measure of use tax used in making an assessment the total amount paid to Company E for the motor fuel, including the federal and Wisconsin motor fuel taxes that were later refunded by the IRS and the Wisconsin Department of Revenue to Company F?

**Answer 6:** Yes. The measure of use tax used in making the assessment is the sales price of the motor fuel, which includes the federal and Wisconsin motor fuel taxes.

The definition of sales price in sec. 77.51(15)(a) and (b), Wis. Stats. (1991-92), does not provide a reduction in the computation of sales price for a refund to the purchaser by a third party. The amount received by Company E for the sale of motor fuel to Company F has not changed and, therefore, the sales price subject to Wisconsin use tax remains the same. □

## 10 Machinery and Equipment Used to Convert Used Motor Oil to Heat

**Statutes:** Section 77.54(26m), Wis. Stats. (1991-92)

**Background:** Section 77.54(26m), Wis. Stats. (1991-92), provides a sales and use tax exemption for the gross receipts from the sale of and the storage, use, or other consumption of waste reduction or recycling machinery and equipment which is used exclusively and directly for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

“Solid waste,” for purposes of sec. 77.54(26m), Wis. Stats. (1991-92), is defined as garbage, refuse, sludge, or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid, or contained gaseous materials, or articles resulting from industrial, commercial, mining, or agricultural operations or from domestic use or from public service activities.

**Facts and Question:** Company A purchases a system which burns used motor oil. The resultant heat produced is used to heat a building or to heat water. The system cannot be adapted to burn regular fuel oil. Is the sale of the system to Company A subject to Wisconsin sales or use tax?

**Answer:** No. The sale of this system is exempt from Wisconsin sales or use tax under sec. 77.54(26m), Wis. Stats. (1991-92). The system is used exclusively in waste reduction or recycling activities which recover energy from solid waste. The used motor oil is solid waste under the definition in sec. 77.54(26m), Wis. Stats. (1991-92). □

## 11 Manufacturing Exemptions As They Apply to Dental Labs

**Statutes:** Section 77.54(2), (6)(a), (6m), and (6r), Wis. Stats. (1991-92)

**Wis. Adm. Code:** Section Tax 11.39(4)(d), July 1987 Register

### Law

Section 77.54(2), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of or the storage, use, or consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

Section 77.54(6)(a), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of and the storage, use, or consumption of machines and specific processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property.

Manufacturing, for purposes of the above exemptions, is defined in sec. 77.54(6m), Wis. Stats. (1991-92), as the production by machinery of a new article with a different form, use, and name from existing materials by a process popularly regarded as manufacturing. This definition is to be strictly construed pursuant to sec. 77.54(6r), Wis. Stats. (1991-92).

### Administrative Rule

Section Tax 11.39, Wis. Adm. Code, provides that dental labs are not manufacturers within the definition of sec. 77.54(6m), Wis. Stats. This position was taken shortly after the enactment of the Wisconsin general

sales and use tax law effective September 1, 1969, and was based on the operation and scope of dental labs at that time.

**Department of Revenue Position** (Effective for all prior years open to adjustment and prospectively)

Based on a review of various dental labs and court decisions addressing whether an operation is manufacturing, the department has determined that a dental lab may be engaged in manufacturing when it produces crowns, bridges, partials, etc. Section Tax 11.39 is being revised to reflect this change in position.

**Caution:** All dental labs are not automatically considered to be manufacturers. Like any other business, to be considered a manufacturer, a dental lab must produce by machinery a new article with a different form, use, and name from existing materials by a process popularly regarded as manufacturing.

Facts and Questions 1 through 3 that follow give examples of dental labs engaged in manufacturing. Facts and Question 4 gives an example of a dental lab that is not engaged in manufacturing.

**Facts and Question 1:** Company ABC is a full-service dental laboratory located in Wisconsin. Company ABC produces crowns, dentures, partials, bridges, and orthodontic appliances for dentists who in turn transfer them to customers in providing dental services.

A summary of the production process of crowns and bridges, in general, is as follows:

- A. An impression of a patient's mouth is received from a dentist, logged in, and sterilized.
- B. A model of the patient's mouth is made from raw materials and is trimmed.

- C. A drilling machine drills holes in the model to enable model parts to be secured to a base.
- D. Pins are glued into the drilled holes. When dry, plastic sleeves are attached to the pins to allow the pins to be removed from the base.
- E. A preformed base is filled with stone and the pinned model is set in the base and the base is trimmed.
- F. A coping saw is used to separate the working dies from the base of the model.
- G. The bite of the working model and opposing model is recreated by applying wax to the working model.
- H. A plaster base, model, and base top are applied to articulators.
- I. The die is marked and undercut to give the technicians the finished line that the doctor has prepared in the patient's mouth.
- J. Molten wax is applied to the working die in various steps.
- K. A wax or plastic vent is attached between the wax pattern and spue base.
- L. The waxed model is put into a stone mold.
- M. The mold is heated to a certain temperature which eliminates the wax, leaving a hollow area.
- N. Molten material, such as gold, is centrifugally cast into the hollow area of the mold.
- O. The item produced is finished by removing bulk, contouring, and shining.

This production of crowns and bridges accounts for 60% of Company ABC's business. Production of the

dentures, partials, and orthodontic appliances is somewhat similar.

In addition to various hand tools, Company ABC uses the following machinery in its production operation:

- A. Saws.
- B. Grinders.
- C. Casting machines.
- D. Ovens.
- E. Gas powered torches.

Company ABC has annual sales of approximately \$2 million and employs 100 people in its production area. The production area is organized in an assembly line manner.

Is Company ABC engaged in manufacturing, as defined in sec. 77.54(6m), Wis. Stats. (1991-92)?

**Answer 1:** Yes. Company ABC's production process, as described above, meets the definition of manufacturing for the following reasons:

- A. Company ABC uses various machinery to produce tangible personal property.
- B. The property produced (dentures, crowns, bridges, partials, and orthodontic appliances) has a different form, name, and use than the raw materials used to produce the tangible personal property (wax, stone, acrylic, metal, glass, stains, etc.).
- C. The production process of Company ABC is considered by the department to be popularly regarded as manufacturing.

**Facts and Question 2:** Assume the same facts as in Facts and Question 1, except that:

- A. Company ABC is not a full service dental lab. Company ABC produces only bridges, porcelains, and crowns.

B. Company ABC employs 14 people in its dental laboratory who perform the same activities as provided in items A through O of Facts and Question 1.

C. Company ABC's facility is about 1/10 the size of the facility described in Facts and Question 1.

D. Company ABC's equipment is not as sophisticated as described in Facts and Question 1; however, the equipment performs the same operations.

Is Company ABC engaged in manufacturing, as defined in sec. 77.54(6m), Wis. Stats. (1991-92)?

**Answer 2:** Yes. Company ABC's production process, as described above, meets the definition of manufacturing for the following reasons:

- A. Company ABC uses various machinery to produce tangible personal property.
- B. The property produced (crowns, porcelains, and bridges) has a different form, name, and use than the raw materials used to produce the tangible personal property (wax, stone, metal, stains, etc.).
- C. The production process of Company ABC is considered by the department to be popularly regarded as manufacturing.

**Facts and Question 3:** Assume the same facts as in Facts and Question 1, except that:

- A. Company ABC is not a full service dental lab. Company ABC produces only crowns and porcelains.
- B. Company ABC employs 5 people in its dental laboratory who perform the same activities as provided in items A through O of Facts and Question 1.

C. Company ABC's facility is about 1/20 the size of the facility described in Facts and Question 1.

D. Company ABC's equipment is not as sophisticated as described in Facts and Question 1; however, the equipment performs the same operations.

Is Company ABC engaged in manufacturing, as defined in sec. 77.54(6m), Wis. Stats. (1991-92)?

**Answer 3:** Yes. Company ABC's production process, as described above, meets the definition of manufacturing for the following reasons:

- A. Company ABC uses various machinery to produce tangible personal property.
- B. The property produced (crowns and porcelains) has a different form, name, and use than the raw materials used to produce the tangible personal property (wax, stone, metal, stains, etc.).
- C. The production process of Company ABC is considered by the department to be popularly regarded as manufacturing.

**Facts and Question 4:** Company DEF is a dental laboratory. Company DEF produces only dentures. Company DEF employs one person part-time. Company DEF uses primarily hand tools, rather than machinery.

The process of producing dentures includes receiving a model from the dentist and making a bite rim from the model which is sent back to the dentist for a more accurate model to be made. Wax is molded into the bite plate received from the dentist. The wax from the resulting mold is boiled away and replaced with acrylic by using a hand press. Teeth purchased from a supplier are inserted into the acrylic while still pliable and fixed into a position considering the fit to

the patient's mouth. Most of the activities are performed by the same person.

Is Company DEF engaged in manufacturing, as defined in sec. 77.54(6m), Wis. Stats. (1991-92)?

**Answer 4:** No. Company DEF is not engaged in a process popularly regarded as manufacturing for the following reasons:

- A. Company DEF does not use an assembly line process typically used by manufacturers.
- B. The scope of the operation, which includes primarily hand held tools, one part-time employe, and a small number of items produced daily, does not resemble what is popularly thought of as a manufacturing operation.

**Question 5:** What are items that Company ABC in Facts and Questions 1 through 3 may purchase without Wisconsin sales or use tax because it is engaged in manufacturing?

**Answer 5:** Company ABC may purchase without Wisconsin sales or use tax the following, **provided it gives its supplier a properly completed manufacturer's exemption certificate:**

- A. Machinery and equipment used exclusively and directly in manufacturing (sec. 77.54(6)(a), Wis. Stats. (1991-92)).

"Manufacturing" includes all of the following:

1. Conveyance of raw materials from inventory to the work point.
2. Assembly of finished units, including testing or inspection throughout the production cycle.

3. Packaging when the package or container becomes a component part of the tangible personal property as such unit is customarily offered for sale.

4. Conveyance of finished products to the point of first storage at the business location.

Examples of machinery and equipment that qualify for exemption when used exclusively and directly in manufacturing by a dental lab include (this list is not all-inclusive):

- Hand tools
- Stain brushes
- Casting machines
- Ovens
- Grinding machines and grinding wheels
- Drills and drill bits
- Saws

- B. Tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in manufacturing tangible personal property destined for sale (sec. 77.54(2), Wis. Stats. (1991-92)).

Examples of tangible personal property that can qualify for this exemption include (this list is not all-inclusive):

- Clay
- Acrylic
- Wax
- Hardener
- Metal
- Stone
- Glass
- Stains

□