



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.)

The following tax release is included:

Sales and Use Tax

- | | |
|---|----|
| 1. Tax Treatment of "Buy One, Get One Free" and Similar Promotions..... | 17 |
|---|----|

SALES AND USE TAX

1 Tax Treatment of "Buy One, Get One Free" and Similar Promotions

Statutes: Section 77.51(1f)(intro.), (3pf)(b), (11d), and (15b)(b)1. and (c), Wis. Stats. (2009-10), sec. 77.52(2m), Wis. Stats. (2009-10), and sec. 77.52(21), Wis. Stats. (2009-10), as affected by 2011 Wis. Act 32 effective September 1, 2011.

Background:

Effective September 1, 2011, the Wisconsin sales and use tax law changed with respect to a retailer’s purchases of products that it provides free of charge to its customers with the required purchase of certain other products.

Based on sec. 77.52(21), Wis. Stats. (2009-10), as affected by 2011 Wis. Act 32, a retailer is generally the consumer of the products it provides free of charge in conjunction with the required purchase of another product that is exempt from or not subject to Wisconsin sales or use tax and is required to pay Wisconsin sales or use tax on its purchases of these free products. However, a retailer may generally purchase the “free” product without tax for resale if the retailer provides the “free” product to a person who must purchase another product from that retailer that is subject to the tax imposed under subch. III of Ch. 77, Wis. Stats (i.e., a taxable product). For purposes of this tax release, a “taxable product” is a product for which a retailer’s sale of the product is subject to Wisconsin sales or use tax unless the purchaser provides the retailer with a fully completed exemption certificate (e.g., Form S-211).

Applicable Wisconsin Statutes:

Section 77.51(1f)(intro.), Wis. Stats. (2009-10), defines “bundled transaction” to mean, in part “...the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price...”

Section 77.51(3pf)(b), Wis. Stats. (2009-10), provides that “distinct and identifiable product” does not include “A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.”

Section 77.51(11d), Wis. Stats. (2009-10), provides that “For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52(20) and (21), 77.522, and 77.54(51) and (52), ‘product’ includes tangible personal property, and items, property, and goods under s. 77.52(1)(b), (c), and (d), and services.”

Section 77.51(15b)(b)1., Wis. Stats. (2009-10), provides that “sales price” does not include “Discounts, including cash, terms, or coupons, that are not reimbursed by a 3rd party, except as provided in par. (c); that are allowed by a seller; and that are taken by a purchaser on a sale.”

Section 77.51(15b)(c), Wis. Stats. (2009-10), provides that “sales price” includes consideration received by a seller from a 3rd party, if:

- “1. The seller actually receives consideration from a 3rd party, other than the purchaser, and the consideration is directly related to a price reduction or discount on a sale.
2. The seller is obliged to pass the price reduction or discount to the purchaser.
3. The amount of the consideration that is attributable to the sale is a fixed amount and the seller is able to determine that amount at the time of the sale to the purchaser.
4. One of the following also applies:
 - a. The purchaser presents a coupon, certificate, or other documentation to the seller to claim the price reduction or discount, if the coupon, certificate, or other documentation is authorized, distributed, or granted by the 3rd party with the understanding that the 3rd party will reimburse the seller for the amount of the price reduction or discount.
 - b. The purchaser identifies himself or herself to the seller as a member of a group or organization that may claim the price reduction or discount.
 - c. The seller provides an invoice to the purchaser, or the purchaser presents a coupon, certificate, or other documentation to the seller, that identifies the price reduction or discount as a 3rd-party price reduction or discount.”

Section 77.52(2m)(a), Wis. Stats. (2009-10), provides that “With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property or items, property, or goods under sub. (1)(b), (c), or (d) if the property, items, or goods transferred by the service provider are incidental to the selling, performing or furnishing of the service, except as provided in par. (b).”

Section 77.52(2m)(b), Wis. Stats. (2009-10), provides that “With respect to the services subject to tax under sub. (2)(a)7., 10., 11. and 20., all property or items, property, or goods under s. 77.52(1)(b), (c), or (d) physically transferred, or transferred electronically, to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property or items, property, or goods under s. 77.52(1)(b), (c), or (d) separate from the selling, performing or furnishing of the service.”

Section 77.52(21)(a), Wis. Stats. (2009-10), as renumbered and amended by 2011 Wis. Act 32, effective September 1, 2011, provides that “(a) Except as provided in par. (b), a person who provides a product that is not distinct and identifiable because it is provided free of charge, as provided in s. 77.51(3pf)(b), is the consumer of the product that is provided free of charge and shall pay the tax imposed under this subchapter on the purchase price of that product.”

Section 77.52(21)(b), as created by 2011 Wis. Act 32, effective September 1, 2011, provides that “A person who provides a product that is not distinct and identifiable because it is provided free of charge to a purchaser who must also purchase another product that is subject to the tax imposed under this subchapter from that person in the same transaction may purchase the product provided free of charge without tax, for resale.”

Sales and Use Tax Treatment Effective September 1, 2011 and Thereafter:

Note: The information contained in this tax release assumes the product provided free of charge is a taxable product. The Wisconsin sales and use tax treatment of products provided free of charge in transactions that occur prior to September 1, 2011 may be different than the tax treatment on and after September 1, 2011, as indicated in the examples contained in this tax release.

Section 77.52(21), Wis. Stats. (2009-10), as amended and renumbered by 2011 Wis. Act 32, provides that a retailer is the consumer of the products it provides free of charge in conjunction with the required purchase of another product and is required to pay Wisconsin sales or use tax on its purchases of these free products if the other product that is required to be purchased is exempt from or not subject to Wisconsin sales and use tax. However, if the other product that is required to be purchased from the retailer is a “taxable product,” the retailer generally may purchase the products provided free of charge to customers who purchase the required taxable product without paying Wisconsin sales and use tax because they are for resale.

A product is provided free of charge with the required purchase of another product if the customer does not have to pay an additional amount to receive the second product (i.e., the sales price of the transaction does not vary depending upon whether or not the second product is included in the transaction).

The sales and use tax treatment of buy one, get one free and similar promotions is determined by the invoice or receipt provided by the seller to the customer. A product is considered to be provided free of charge if the invoice or receipt shows a sales price for the second product, along with a discount applicable to the second product that reduces the sales price of the second product to zero. This is provided in sec. 77.51(15b)(b)1., Wis. Stats. (2009-10), which states that “sales price” does not include discounts allowed by a seller and taken by a purchaser on a sale.

If the invoice or receipt provided by the seller to the customer indicates that the seller makes a charge to the customer for the second product, and the charge is not discounted or otherwise adjusted to zero, the product is not provided free of charge.

Note: In situations where the required taxable product to be purchased is a service subject to tax under sec. 77.52(2)(a), Wis. Stats. (2009-10), other than a service subject to tax under sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats. (2009-10), sec. 77.52(2m)(a), Wis. Stats. (2009-10), applies and the person selling, performing, or furnishing the taxable service is the consumer of any property, items, or goods it transfers to the purchaser incidentally to the selling, performing, or furnishing of the service. See Examples 21 and 22.

Note: In situations where the taxable product is transferred free of charge in conjunction with the purchase of a service subject to tax under sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats. (2009-10), the service provider may purchase the property, items, or goods transferred free of charge without tax for resale. This is provided in sec. 77.52(2m)(b), Wis. Stats. (2009-10), which states that all property or items, property or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., physically transferred, or transferred electronically, to the customer in conjunction with the selling, performing or furnishing of the service is a sale of tangible personal property or items, property or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., separate from the selling, performing or furnishing of the service. See Example 19.

Examples:

Except where otherwise noted, the examples on pages 21 to 27 illustrate the law change that is in effect for transactions occurring September 1, 2011 and thereafter.

Index to Examples

Example 1: *Taxable Product Given Away with Required Purchase of Nontaxable Product* (page 21)

Example 2: *Taxable Product Given Away with Required Purchase of a Different Taxable Product* (page 21)

Example 3: *Retailer Advertises that a Taxable Product is Included with the Purchase of a Different Taxable Product* (page 21)

Example 4: *Taxable Product Given Away with Required Purchase of Both Taxable and Nontaxable Products* (page 22)

Example 5: *Retailer Advertises “Two for the Price of One;” Second Product Provided Free* (page 22)

Example 6: *Retailer Advertises “Two for the Price of One;” Retailer Charges for Second Product* (page 23)

Example 7: *Retailer Advertises “Buy One, Get One Free;” Discount Applied to Total Sales Price* (page 23)

Example 8: *Retailer Advertises “Buy One, Get One Free;” Discount Applied Equally to Both Products* (page 23)

Example 9: *Retailer Advertises “Buy One, Get One Free;” Discount Applied to One Product* (page 23)

Example 10: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied to Total Sales Price* (page 23)

Example 11: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied Equally to Both Products* (page 24)

Example 12: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied to One Product* (page 24)

Example 13: *Retailer Advertises “Buy One, Get One for a Penny”* (page 24)

Example 14: *“Buy One, Get One Free;” Retailer Receives Reimbursement from Manufacturer* (page 24)

Example 15: *Restaurant Advertises “Buy One Meal, Get Second Meal Free”* (page 25)

Example 16: *Restaurant Advertises “Buy One Meal, Get Second Meal Free;” Buys Meals from Caterer* (page 25)

Example 17: *Retailer Offers Fourth Tire Free with Purchase of Three Other Tires* (page 26)

Example 18: *Retailer Offers 11th Oil Change Free* (page 26)

Example 19: *Dealer Provides Free Loaner Car with Repair Service* (page 26)

Example 20: *Retailer Offers Free Taxable Products When Customer Redeems Points; Points Received for Buying Nontaxable Services* (page 26)

Example 21: *Taxable Product Provided with Purchase of Admission* (page 27)

Example 22: *Taxable Product Provided with Purchase of Lodging Service* (page 27)

Example 1: Taxable Product Given Away with Required Purchase of Nontaxable Product – Retailer A provides a hat free of charge to any customer that purchases a certain number of gallons of gasoline subject to excise tax under ch. 78, Wis. Stats. (2009-10) (i.e., a nontaxable product). The price of the gasoline does not vary depending on whether the hat is included in the transaction. The receipt given by Retailer A to the customer indicates the sales price of the gasoline but does not mention the hat at all. Since Retailer A is giving a hat at no charge to any customer that purchases the required number of gallons of gasoline (i.e., a nontaxable product), Retailer A is the consumer of these hats, as provided in sec. 77.52(21)(a), Wis. Stats. (2009-10), as renumbered and amended by 2011 Wis. Act 32, and is required to pay Wisconsin sales or use tax on its purchases of the hats.

In Example 1, the Wisconsin sales and use tax treatment of the hats for the period of **October 1, 2009 through August 31, 2011** is the same as the Wisconsin sales and use tax treatment of the hats on and after September 1, 2011. (**Note:** Hats that were purchased without tax for resale prior to October 1, 2009 and that are “given away” between October 1, 2009 and August 31, 2011 do not become subject to use tax solely due to the law change that was effective October 1, 2009.)

For sales made **prior to October 1, 2009**, Retailer A was required to allocate its selling price between the taxable product (i.e., the hat) that was “given away” and the nontaxable product (i.e., the gasoline) that was sold. Retailer A was liable for the sales tax on the portion of its selling price allocated to the taxable product (i.e., the hat) that was “given away.” Retailer A could have purchased the hats without tax for resale and used the cost of the hats to determine the amount that was subject to sales tax. [☞](#)

Example 2: Taxable Product Given Away with Required Purchase of a Different Taxable Product – Retailer B provides a bicycle free of charge to every customer that purchases a new couch (i.e., a taxable product). The price of the couch does not vary depending on whether the bicycle is included in the transaction. The receipt given by Retailer B to the customer indicates that the bicycle is given to the customer for no charge. Although Retailer B is providing a bicycle free of charge, Retailer B may purchase the bicycle without tax for resale since the customer is required to purchase the couch (i.e., a taxable product) in order to receive the bicycle.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the retailer is the consumer of the bicycles and is required to pay Wisconsin sales or use tax on its purchases of these bicycles. (**Note:** Bicycles that were purchased without tax for resale prior to October 1, 2009 and that are “given away” between October 1, 2009 and August 31, 2011 do not become subject to use tax solely due to the change in law effective October 1, 2009. In these situations, Retailer B is liable for Wisconsin sales tax on its sale of the couch, but is not liable for Wisconsin use tax on its purchase of the bicycle.)

For sales made **prior to October 1, 2009**, since both the product that was being purchased (i.e., the couch) and the product that was being “given away” (i.e., the bicycle) were taxable products, no specific allocation between the selling prices of the products would have been made (i.e., Retailer B would have charged sales tax on the entire selling price, regardless of any allocation of the selling price between the two products). Retailer B could have purchased the bicycles without tax for resale. [☞](#)

Example 3: Retailer Advertises that a Taxable Product is Included with the Purchase of a Different Taxable Product – Same as Example 2, except that Retailer B advertises that the bicycle is included with the purchase of the couch. The receipt given by Retailer B to the customer indicates that the bicycle is given to the customer for no charge. Although Retailer B is providing a bicycle free of charge to every customer that purchases a couch (i.e., a taxable product), Retailer B may purchase the bicycles without tax for resale since the customer is required to purchase the couch (i.e., a taxable product) in order to receive the bicycle.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the bicycle is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the bicycle is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 4: Taxable Product Given Away with Required Purchase of Both Taxable and Nontaxable Products – Retailer C provides a soft drink free of charge to every customer that purchases \$20 worth of products. The sales prices of the products in the required purchase do not vary depending on whether the soft drink is included in the transaction and the products that are purchased by the customer may or may not be subject to Wisconsin sales or use tax. The receipt given by Retailer C to the customer indicates that the soft drink is given to the customer for no charge.

If the customer purchases at least \$20 worth of taxable products, Retailer C may purchase the soft drinks it gives away without tax for resale. If the customer purchases only products that are exempt from or not subject to tax, Retailer C must pay Wisconsin sales or use tax on its purchase of the soft drinks it gives away.

If the customer purchases some, but less than \$20 worth of taxable products and the balance of the minimum \$20 worth of required purchases is made up of nontaxable products, Retailer C may determine the percentage of the \$20 worth of required purchases that are made up of products that are exempt from or not subject to tax and only owes use tax on that percentage of its purchase price of the soft drinks that are given away for free. **Note:** If Retailer C does not want to calculate the percentage of the \$20 of required purchases that are made up of products that are exempt from or not subject to tax, Retailer C may pay tax on its purchase price of the soft drinks that are given away for free.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the soft drinks is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, Retailer C would have made an allocation of the selling price between the taxable product that was “given away” (i.e., the soft drink) and the taxable and nontaxable products that were sold. Retailer C would have been required to charge sales tax on the total amount allocated to the taxable products (which would include the taxable product that was “given away”). This allocation could have been computed by determining the ratio of the overall cost of all of the taxable products (including the taxable product that was “given away”) to the overall cost of all of the products in the transaction (including the cost of the taxable product that was “given away”) and then multiplying that ratio times the total selling price charged to the customer to arrive at the amount subject to Wisconsin sales tax. Alternatively, Retailer C could have used its cost of the soft drinks to determine the amount subject to sales tax. [☞](#)

Example 5: Retailer Advertises “Two for the Price of One;” Second Product Provided Free – Retailer D has a promotion in which it advertises that a customer may buy two candy bars for the price of one. A customer may buy one candy bar (i.e., taxable product) for \$1.00 and receive a second candy bar at no additional charge. If the customer wants only one candy bar, the customer will still have to pay \$1.00. The receipt given by Retailer D to the customer indicates that the second candy bar is given to the customer for no charge. Although Retailer D is providing a candy bar free of charge, Retailer D may still purchase without tax for resale the candy bars it provides for free to the customers who were required to purchase another candy bar.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the candy bar is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the candy bar is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 6: *Retailer Advertises “Two for the Price of One;” Retailer Charges for Second Product* – Retailer E has a promotion in which it advertises that a customer may buy two candy bars for the price of one. If a customer buys a candy bar at the regular price of \$1.00, the customer may receive a second candy bar free of charge. However, if a customer buys only one candy bar, the price of the candy bar is \$0.79. The receipt given by Retailer E to the customer indicates a sales price of \$0.79 for the first candy bar and a sales price of \$0.21 for the second candy bar. Since a customer must pay an additional amount to receive the second candy bar, the second candy bar is not given away for free. Retailer D may purchase the candy bars that it provides to its customers in this promotion without tax for resale.

The answer provided in Example 6 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 7: *Retailer Advertises “Buy One, Get One Free;” Discount Applied to Total Sales Price* – Retailer F has a promotion in which it advertises that a customer may buy one shirt (i.e., a taxable product) at the regular price of \$30, and receive the second shirt free. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, and a \$30 discount (i.e., 50% discount) applied against the \$60 total sales price for the two shirts. Retailer F may purchase both shirts without tax for resale.

The answer provided in Example 7 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 8: *Retailer Advertises “Buy One, Get One Free;” Discount Applied Equally to Both Products* – Retailer F has a promotion in which it advertises that a customer may buy one shirt (i.e., a taxable product) at the regular price of \$30, and receive the second shirt free. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, a \$15 discount (i.e., 50% discount) applied to the sales price of the first shirt and a \$15 discount (i.e., 50% discount) applied to the sales price of the second shirt. Retailer F may purchase both shirts without tax for resale.

The answer provided in Example 8 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 9: *Retailer Advertises “Buy One, Get One Free;” Discount Applied to One Product* – Retailer F has a promotion in which it advertises that a customer may buy one shirt (i.e., a taxable product) at the regular price of \$30, and receive the second shirt free. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, and a \$30 discount applied against the sales price of the second shirt. Although the receipt given by Retailer F to the customer reduces the sales price of the second shirt to zero, Retailer F may still purchase the second shirt without tax for resale since the customer is required to purchase the first shirt (i.e., a taxable product) in order to receive the second shirt free of charge.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the shirt is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the shirt is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 10: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied to Total Sales Price* – Retailer F has a promotion in which it advertises that a customer may buy two shirts (i.e., taxable products) that have a regular price of \$30 each, and receive half off the total sales price of the two shirts. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, and a \$30 discount (i.e., 50% discount) applied against the \$60 total sales price for the two shirts. Retailer F may purchase both shirts without tax for resale.

The answer provided in Example 10 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 11: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied Equally to Both Products* – Retailer F has a promotion in which it advertises that a customer may buy two shirts (i.e., taxable products) that have a regular price of \$30 each, and receive half off the total sales price of the two shirts. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, a \$15 discount (i.e., 50% discount) applied to the sales price of the first shirt and a \$15 discount (i.e., 50% discount) applied to the sales price of the second shirt. Retailer F may purchase both shirts without tax for resale.

The answer provided in Example 11 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 12: *Retailer Advertises “Buy Two, Get Half Off;” Discount Applied to One Product* – Retailer F has a promotion in which it advertises that a customer may buy two shirts (i.e., taxable products) that have a regular price of \$30 each, and receive half off the total sales price of the two shirts. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt, a sales price of \$30 for the second shirt, and a \$30 discount applied against the sales price of the second shirt. Although the receipt given by Retailer F to the customer reduces the sales price of the second shirt to zero, Retailer F may still purchase the second shirt without tax for resale since the customer is required to purchase the first shirt (i.e., a taxable product) in order to receive the second shirt free of charge.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the shirt is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the shirt is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 13: *Retailer Advertises “Buy One, Get One for a Penny”* – Retailer F has a promotion in which it advertises that a customer may buy one shirt (i.e., a taxable product) that has a regular price of \$30 and receive a second shirt for a penny. The receipt given by Retailer F to the customer indicates a sales price of \$30 for the first shirt and a sales price of \$0.01 for the second shirt. Since a customer must pay an additional amount to receive the second shirt, the second shirt is not given away for free and Retailer F may purchase the shirts that it sells to its customers in this promotion without tax for resale.

The answer provided in Example 13 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 14: *“Buy One, Get One Free;” Retailer Receives Reimbursement from Manufacturer* – Battery Manufacturer G offers a promotion to Retailer H in which Retailer H will receive \$1.00 for every package of batteries (i.e., a taxable product) it gives away free in a buy one, get one free promotion. The receipt given by Retailer H to its customer indicates that one of the packages of batteries is given to the customer for no charge. None of the conditions in sec. 77.51(15b)(c)4.a. to c., Wis. Stats., apply to the sale of the batteries by Retailer H to its customer:

- Retailer H’s customer does not present a coupon, certificate, or other documentation to Retailer H to receive the free package of batteries,
- Retailer H’s customer does not represent himself or herself to Retailer H as a member of a group or organization that may receive the free package of batteries, and

- Retailer H does not provide an invoice to its customer, and its customer does not present a coupon, certificate, or other documentation to Retailer H, that identifies the price reduction or discount as a 3rd-party price reduction or discount.

Since the customer is required to purchase a package of batteries (i.e., a taxable product) in order to receive a second package of batteries for no additional charge, Retailer H may purchase all of the packages of batteries that it provides to its customers in this promotion without tax for resale.

For sales made during the period of **October 1, 2009 through August 31, 2011**, Retailer H must pay sales or use tax on its purchase of the packages of batteries that it gives to its customers. The amount subject to sales or use tax is the amount of Retailer H's initial purchase price of the package of batteries less the \$1.00 reimbursement from Battery Manufacturer G.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the batteries is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 15: *Restaurant Advertises “Buy One Meal, Get Second Meal Free”* – Restaurant I runs a promotion in which a customer may buy one meal (i.e., a taxable product) and receive a second meal free. No additional charge is made for the second meal, and the price of the first meal does not vary if the second meal is received. The receipt given by Restaurant I to the customer indicates that the second meal is given to the customer for no charge. Restaurant I buys the ingredients for the meals and prepares the meals itself. Although Restaurant I is providing a meal free of charge to customers that buy a meal, Restaurant I may still purchase the ingredients it uses to prepare the meals it provides free of charge without tax for resale since the customer is required to purchase the first meal (i.e., a taxable product) in order to receive the second meal. Most of the ingredients Restaurant I purchases to prepare the meals qualify for the exemption for food and food ingredients, and Restaurant I does not owe sales or use tax on its purchases of these products. However, to the extent that Restaurant I buys taxable products, and gives them to customers as a part of the meals it gives away for free during this promotion, Restaurant I may still purchase those taxable products without tax for resale. Examples of ingredients Restaurant I may buy without tax as exempt food products include meats, vegetables, bread, milk, and fruit. Examples of taxable products Restaurant I may purchase without tax for resale if they are given to customers as part of this promotion include soft drinks, alcoholic beverages, and candy.

For sales made during the period of **October 1, 2009 through August 31, 2011**, Restaurant I is the consumer of the ingredients it uses to prepare the meals it provides free of charge and must pay sales or use tax on its purchase of the taxable ingredients (i.e., those ingredients that do not qualify for the exemption for food and food ingredients).

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the taxable ingredients is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 16: *Restaurant Advertises “Buy One Meal, Get Second Meal Free;” Buys Meals from Caterer* – Same as Example 15, except that Restaurant I does not prepare the meals that it gives away for free. Instead, Restaurant I buys these meals from Caterer J. The meals, as purchased by Restaurant I from Caterer J, are “prepared food” (i.e., a taxable product). Restaurant I may purchase these meals that it provides to its customers for free without tax for resale since the customer is required to purchase the first meal (i.e., a taxable product) in order to receive the second meal.

For sales made during the period of **October 1, 2009 through August 31, 2011**, Restaurant I owes sales or use tax on its purchases of the prepared food from the caterer that it gives away for free with the required purchase of another meal.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the taxable meals is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 17: Retailer Advertises Fourth Tire Free with Purchase of Three Other Tires – Retailer K operates an automotive repair facility. Retailer K offers a promotion in which a customer is provided a free tire if the customer purchases three other tires (i.e., taxable products). If the customer does not want the free tire, the sales price of the other three tires does not change. The receipt given by Retailer K to the customer indicates that the fourth tire is given to the customer for no charge. Although Retailer K is providing a tire free of charge to every customer that purchases three other tires (i.e., taxable products), Retailer K may still purchase the tires provided free of charge for this promotion without tax for resale since the customer is required to purchase the three other tires (i.e., taxable products) in order to receive the free tire.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the tire is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the tire is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 18: Retailer Offers 11th Oil Change Free – Retailer L operates an automotive oil change shop. Retailer L offers customers a punch-card which states that upon the purchase of the tenth oil change (i.e., a taxable product), the customer may redeem the punch-card for a free oil change. Although Retailer L is providing a free oil change to a customer that has previously purchased ten other oil changes, Retailer L may still purchase the oil and filter used to provide the free oil change without tax for resale since the customer is required to purchase the tenth oil change (i.e., a taxable product) in order to receive the free oil change.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the oil and filter is the same as that described for the bicycle in Example 2 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the oil and filter is the same as that described for the bicycle in Example 2 for the period prior to October 1, 2009. [☞](#)

Example 19: Dealer Provides Free Loaner Car with Repair Service – Motor Vehicle Dealer M takes a vehicle out of its inventory and provides it free to customers who are having repair services performed on their vehicles. Motor Vehicle Dealer M does not owe use tax on its purchase of the vehicle that it took out of inventory and used as a loaner vehicle, assuming that this is the only use, other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of its business, that Motor Vehicle Dealer M makes of the loaner vehicle. The repair service that Motor Vehicle Dealer M is performing on its customers' vehicles is a service that is identified in sec. 77.52(2)(a)10., Wis. Stats. (2009-10). Thus, sec. 77.52(2m)(b), Wis. Stats. (2009-10), allows Motor Vehicle Dealer M to purchase the loaner vehicle without tax for resale, since it is considered to be sold separately from the selling, performing, or furnishing of the repair service.

Note: If Motor Vehicle Dealer M uses the vehicle that it removes from inventory for any other purpose (other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of its business), such as picking up and dropping off customers, running for parts, etc., the vehicle is subject to use tax as described in secs. 77.53(1) and (1m), Wis. Stats. (2009-10).

The answer provided in Example 19 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 20: Retailer Offers Free Taxable Products When Customer Redeems Points; Points Received for Buying Nontaxable Services – Retailer N operates a hair salon. Retailer N's customers may accumulate points by purchasing various services (i.e., nontaxable products). Retailer N offers customers free bottles of shampoo and conditioner (i.e., taxable products) after accumulating a specified number of points. The receipt given by Retailer N to the customer indicates that the bottles of shampoo and conditioner are given to the customer for no charge.

Retailer N is the consumer of the shampoo and conditioner that it provides to customers for free, as provided in sec. 77.52 (21)(a), Wis. Stats. (2009-10) as renumbered and amended by 2011 Wis. Act 32, and is required to pay Wisconsin sales or use tax on its purchases of such shampoo and conditioner.

For sales made during the period of **October 1, 2009 through August 31, 2011**, the sales tax treatment of the shampoo and conditioner is the same as that described for the hat in Example 1 for the period of October 1, 2009 through August 31, 2011.

For sales made **prior to October 1, 2009**, the Wisconsin sales tax treatment of the shampoo and conditioner is the same as that described for the hat in Example 1 for the period prior to October 1, 2009. [☞](#)

Example 21: *Taxable Product Provided with Purchase of Admission* – Retailer O sells admissions to a baseball game. Each person who attends a baseball game on a particular day receives a free seat cushion. The price of the admission does not vary depending on whether the seat cushion is included in the transaction. Since the admission is subject to Wisconsin sales tax under sec. 77.52(2), Wis. Stats. (2009-10), but is not a service described in sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats. (2009-10), sec. 77.52(2m)(a), Wis. Stats. (2009-10), applies and provides that no part of the charge for the admission may be deemed a sale or rental of the tangible personal property when the tangible personal property is transferred incidentally to the selling, performing or furnishing of the service. In this example, the seat cushion is transferred incidentally to the selling, performing, or furnishing of the admission to the baseball game. Therefore, Retailer O is required to pay Wisconsin sales or use tax on its purchases of the seat cushions it gives away.

The answer provided in Example 21 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)

Example 22: *Taxable Product Provided with Purchase of Lodging Service* – Retailer P provides lodging services subject to tax under sec. 77.52(2)(a)1., Wis. Stats. (2009-10). As part of the lodging service, Retailer P provides, soap, shampoo, and towels to each customer. The price of the lodging service does not vary depending on whether the soap, shampoo, or towels are included. Since the lodging service is subject to Wisconsin sales tax under sec. 77.52(2), Wis. Stats. (2009-10), but is not a service described in sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats. (2009-10), sec. 77.52(2m)(a), Wis. Stats. (2009-10), applies and provides that no part of the charge for the lodging service may be deemed a sale or rental of the tangible personal property (i.e., the soap, shampoo, or towels) when the tangible personal property is transferred incidentally to the selling, performing, or furnishing of the service. In this example, the soap, shampoo, and towels furnished by the hotel to the customer are incidental to the lodging service. Therefore, Retailer P is required to pay Wisconsin sales or use tax on its purchases of the soap, shampoo, and towels that are included with the lodging service.

The answer provided in Example 22 applies to transactions both on and after and prior to September 1, 2011 (which includes periods prior to October 1, 2009). [☞](#)