

# SALES AND USE TAX REPORT

2-04

September 2004

## I. REGISTRATION QUESTIONS

**Q** If I change the legal form of my business (e.g., C corporation to limited liability company) and the Internal Revenue Service does not require a new federal employer identification number, must I do anything regarding my Wisconsin sales or use tax registration?

**A** Yes. You should notify the Department of Revenue of the change in the legal form of your business. As a new legal entity, your business will be assigned a new tax account number and the old account number will be inactivated, with one exception.

**Exception:** A change from a sole proprietorship to a single member limited liability company (LLC) that is disregarded for Wisconsin income tax purposes will result in no change in the tax account number. However, the LLC will be added to the account of the sole proprietor for purposes of issuing a seller's permit or use tax registration certificate if the LLC makes sales of tangible personal property or taxable services subject to Wisconsin sales tax.

You can notify the department about a change in the legal form of your business as follows:

1. Check the "correspondence included" box on page 1 of the sales and use tax return (Form ST-12) and enclose a letter of explanation with the Form ST-12 you file. Be sure to include in the correspondence the following information:
  - Tax account number. Include the business name and address if you have more than one location.
  - Federal employer identification number (FEIN).
  - Effective date of change.
  - Explanation of change to your legal name, if applicable.
2. Complete an Application for Business Tax Registration (Form BTR-101) for the new entity.

Be sure to include the beginning effective date of the new entity and indicate that the prior entity tax account should be inactivated. Mail the Application to the address that appears at the top of the form.

3. Contact a customer service representative at (608) 266-2776 or [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us).

**Q** If I create a limited liability company (LLC) that is disregarded as a separate entity for Wisconsin income tax purposes and the disregarded entity makes sales that are subject to sales tax, how do I register the business?

**A** The LLC is **not** disregarded for Wisconsin sales or use tax purposes. However, the sales tax law does require the owner of the LLC to report sales and use taxes of the LLC. An LLC that is disregarded for income tax purposes is still required to hold a seller's permit or use tax certificate, however, that permit or certificate will be recorded by the department under the owner's tax account number so that receipts and purchases of the LLC can be reported on the owner's sales and use tax return.

If an owner of an LLC that is disregarded for income tax purposes is not registered or required to be registered for Wisconsin sales and use tax purposes, other than for the reporting the disregarded entity's sales and use tax, the department will assign an account number to the owner, however, the seller's permit will be issued in the name of the LLC. If the owner sells tangible personal property or taxable services that are subject to sales tax, the department will register the LLC under the owner's existing tax account number and issue a seller's permit or use tax certificate in the name of the disregarded entity.

This answer also applies to qualified subchapter S subsidiaries (QSSSs) that are disregarded for Wisconsin income tax purposes.

**Note:** While the department makes every effort to follow the procedures above, an Application for Business Tax Registration may not clearly state that the entity registering for a seller's permit or use tax

certificate is disregarded for income tax purposes. If the department incorrectly assigned a disregarded entity its own tax account number, please contact the department at the following and the registration will be corrected: Wisconsin Department of Revenue, Registration Unit, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902 (telephone - (608) 266-2776 or e-mail - [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us)).

## II. REGISTER FOR A SELLER'S PERMIT ON-LINE

Customers will soon be able to apply for a seller's permit, withholding tax number, or use tax certificate using a computer instead of manually filling out an Application for Business Tax Registration (Form BTR-101) and mailing it to the department. The web-based application will be available on the department's web site in a few months.

An overnight process will transfer information a customer enters to the department's registration system. The customer will receive the permit or certificate within five to seven days. The \$20 BTR fee will still apply and the \$10 expedited service option will be still available for an even quicker response.

In addition to registrations, this web-based application will allow customers to add locations and tax types and make name and address changes to their existing accounts.

If you have questions regarding this application, contact the department at (608) 266-2776 or [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us)

## III. MOTOR VEHICLE DEALERS' MEASURE OF USE TAX INCREASED TO \$122

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

**Effective January 1, 2005, the amount subject to use tax is increased from \$118 to \$122 per plate per month.**

Note: The use tax per plate per month is not \$122. Rather, \$122 is multiplied by the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.

The reason for the increase to \$122 per plate is that sec. 77.53(1m)(a), Wis. Stats. (2001-02), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 2003 to June 2004 was 3.27% ( $\$118 \times 1.0327 = \$122$  rounded to the nearest whole dollar).

## IV. SELLER MAY BE LIABLE FOR GRANTING EXEMPTIONS NOT PROVIDED BY LAW

A seller is relieved from collecting and paying Wisconsin sales tax on sales of tangible personal property and taxable services if the seller takes from the purchaser in "good faith" a valid exemption certificate. "Good faith" means that the seller has no reason to believe that the purchaser intends to use the item or service for a purpose other than the exemption claimed on the certificate.

A valid certificate is one which is completely filled in and discloses a specific exemption claim appropriate to the business or activity being conducted by the purchaser. Form S-211, Wisconsin Sales and Use Tax Exemption Certificate, may be used by a purchaser to claim exemption from Wisconsin sales or use tax. Form S-211 is available from any Department of Revenue office or online at <http://www.dor.state.wi.us/forms/sales/s-211.pdf>.

A seller is presumed to be familiar with the laws and rules of the department relating to the business or businesses in which the seller is involved. If a seller takes an exemption certificate from a purchaser, whether continuous or single purchase, the exemption claimed may only be granted for those items that specifically meet the exemption requirements. Items that do not qualify for an exemption claimed, even though on the same invoice or other billing document with exempt items, are subject to sales tax. The seller is liable for collecting and paying such tax.

**Example:** Company A sells industrial supplies and equipment to manufacturers. Company A sells non-prescription safety glasses, machine parts, hand tools, and welding gloves to Company B, a tool and die manufacturer. Company B provides Company A with a properly completed exemption certificate claiming exemptions for (a) machinery and specific processing equipment used exclusively and directly in manufacturing, and (b) items consumed or destroyed in the manufacture of tangible personal property destined for sale.

The sale of the safety glasses and welding gloves by Company A to Company B is subject to Wisconsin sales or use tax. While it is reasonable for Company A to infer that the machine parts and hand tools are exempt from sales or use because they will be used exclusively and directly in manufacturing, the manufacturing exemptions claimed do not extend to non-prescription safety glasses and welding gloves used by employees for their protection while performing manufacturing activities. The exemption certificate taken by Company A, even though it may be continuous, does not relieve Company A from collecting and paying sales tax on nonprescription safety glasses and welding gloves sold to Company B.

**Note:** If a seller fails to collect and pay sales tax on sales of tangible personal property or taxable services for which an exemption does not apply, the purchaser may be held liable for use tax on its purchase of the taxable items.