



TAX REPORT

SALES/USE TAX

WISCONSIN DEPARTMENT OF REVENUE

285

NEW SALES AND USE TAX LAWS

The 1983-85 budget bill (1983 Wisconsin Act 27) enacted into law by the legislature in July, 1983 contains new sales and use tax provisions. This Report explains these provisions, with the effective date shown in parenthesis after the title.

1. Raffle Contest Tickets are Taxable (effective September 1, 1983.)

Sales of raffle contest tickets are taxable. Also, the occasional sales exemption (s. 77.51(10)(a) and s. 77.54(7)) does not apply to the sale of raffle contest tickets.

2. Non-Subscription Sales of Periodicals are Taxable (effective September 1, 1983.)

All sales of periodicals not sold by subscription are taxable, regardless of the interval with which they are issued. For example, magazines sold from the magazine rack of a store are now taxable, regardless of whether they are issued at weekly, monthly, quarterly or other time intervals.

The tax treatment of periodicals sold by subscription has not changed, that is, such sales are taxable only if the periodicals are regularly issued at average intervals of more than 3 months.

3. Exempt Sales of Oxygen Equipment (effective September 1, 1983.)

Equipment used to administer oxygen for medical purposes is exempt from tax, if the person using the equipment has a written prescription for oxygen.

4. Definition of "Enjoyment" (effective for property shipped into Wisconsin on or after September 1, 1983.)

Since 1969 a use tax has been imposed on the storage, use or other consumption in Wisconsin of tangible personal property or taxable services. "Use" includes "the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services ..." (s. 77.51(15)).

The new law defines "enjoyment" to include a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into Wisconsin by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities of the purchaser of the printed material or printing service. (s. 77.51(15)(b))

Example: A Wisconsin department store contracts for \$100,000 with an out-of-state printer to have the printer produce catalogs and advertising flyers. The printer will mail the catalogs and flyers directly to Wisconsin residents, based upon a mailing list furnished by the Wisconsin department store. As a result of the new law, the Wisconsin department store will be liable for Wisconsin use tax of \$5,000 on the payment of \$100,000 to the out-of-state printer (\$100,000 x 5% = \$5,000 tax).

5. Definition of "Manufacturing" Changed (effective for machines, specific processing equipment and repair or replacement of such machines and equipment acquired on and after September 1, 1983.)

Since 1969 the sales/use tax law has provided various exemptions for manufacturing machinery, equipment, etc. "Manufacturing" is now specified in the law to include:

- Crushing, washing, grading and blending sand, rock, gravel and other minerals.
- Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by floatation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.
- Mixing and processing if performed in mobile units mounted on trucks or trailers.

6. Exempt Ingredients and Components of Shoppers Guides, Newspapers and Periodicals (effective July 2, 1983.)

An exemption is provided for tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals, or that are consumed or lose their identity in manufacturing shoppers guides, newspapers or periodicals. This exemption does not apply to advertising supplements printed by printers other than the newspaper in which they are inserted.

Example: Publisher A publishes a shoppers guide. It buys paper for \$200 which it gives to Printer B who will print the shoppers guide for \$400 on Publisher A's paper. The \$200 purchase of paper now is exempt from tax (taxable under prior law). The printing service of \$400 by Printer B, which was a taxable service under prior law, also now is exempt.

7. Occasional Sale Standard Changed (effective July 2, 1983.)

Sales of admissions or tickets to events by neighborhood associations, churches, civic groups, garden clubs, social groups and similar organizations are exempt from sales/ use tax as occasional sales if certain standards are met. The standard changed by the new law is that the events may not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year.

Section 77.51(10)(c), Wis. Stats., which provides an exemption for occasional sales, now reads as follows: "Sales of admissions or tickets by a neighborhood association, church, civic group, garden club, social club or similar organization to an event, including a meal, not involving professional entertainment, conducted by such organization, when such organization is not engaged in a trade or business and not otherwise required to have a seller's permit, and when no more than 3 such events were conducted by the organization in the previous calendar year and no more than 3 are anticipated during the current calendar year and such events do not fall on more than 9 different days or 9 consecutive 24-hour periods within the calendar year."

8. Service Providers - Purchasing Property as a Consumer or for Resale (effective September 1, 1983.)

(a) Treatment of the Following Services Which are Taxable (Statutory references below are the statutes which impose a tax on the services.)

Photographic services (s. 77.52(2)(a)7)

Repair, alteration, fitting, cleaning, painting, etc. of tangible personal property (s. 77.52(2)(a)10)

Fabricating, processing, printing or imprinting (s. 77.52(2)(a)11)

Landscaping and lawn maintenance services (s. 77.52(2)(a)20)

All tangible personal property physically transferred to the customer in conjunction with the selling, performing or furnishing these services is considered a sale of tangible personal property. This means that such property can be purchased for resale by these service providers. However, the total charge for the service, including the charge related to tangible personal property transferred to the customer, is taxable.

Examples:

- Person X repairs a furnace for Person Y for \$50, which includes the replacement of a furnace part. Person X may purchase the furnace part tax-free by giving a resale certificate to the seller of the part because the part is physically transferred to the customer. The total charge of \$50 by Person X to Person Y is subject to the 5% tax (\$2.50 tax) including any charge related to the furnace part.
- A photographer purchases mounts, frames and paper for use in finished photographs which are transferred to customers. Such mounts, frames and paper may be purchased without tax for resale by the photographer.
- An operator of a landscaping service delivers and levels topsoil, then installs sod on the topsoil for a customer in providing a taxable landscaping service. This person may purchase the topsoil and sod without tax for resale.

(b) Treatment of Other Services Which Are Taxable (Statutory references below are the statutes which impose a tax on the services.)

Lodging (s. 77.52(2)(a)1)

Admissions to amusement, athletic, entertainment, or recreational events (s. 77.52(2)(a)2)

Telegraph and telephone services (s. 77.52(2)(a)3 and 4)

Laundry and dry cleaning (s. 77.52(2)(a)6)

Parking (s. 77.52(2)(a)9)

Cable television services (s. 77.52(2)(a)12)

If the tangible personal property transferred by the service provider to the customer is "incidental" to selling, performing or furnishing the service, the service provider is the consumer of such property transferred to the customer ("incidental" is defined in Part (e) below).

Examples:

- The operator of a motel or hotel is subject to tax on its purchases of beds, dressers, tables, linens, soap and other items purchased for use in rooms provided to customers since the customers' main purpose is to obtain access to the room.
- A baseball team purchases tickets to admit its customers to games and promotional items to be given to certain ticket-holders for specific games. The tax applies to these purchases of tickets and promotional items because the ticket-holders' main purpose is to attend the ball game.
- A telephone company purchases telephone books which it distributes to its customers. These purchases by the telephone company are subject to the tax since the customers' main purpose is to obtain telephone service.

If the property transferred to the customer in conjunction with the service is not "incidental" to selling, performing or furnishing the service, the service provider is not the consumer of such property, but rather, the property transferred is considered a sale of tangible personal property separate from the sale of the service.

(c) Services which are not taxable: If the tangible personal property transferred in conjunction with selling, performing or furnishing the service is "incidental" to the service, the service provider is considered the consumer of such property transferred to the customer.

Examples:

- A person providing accounting services transfers documents, reports, forms and binders to clients in the course of setting up an accounting system for the client. Purchases of paper, forms and binders by the service provider are taxable since the clients' main purpose is to obtain the accounting service.
- An engineer's purchase of specialized paper, which is used to produce drawings transferred to customers, is subject to the tax because the customers' main purpose is to obtain the engineer's drafting services.
- A physician purchases tape which is used in providing non-taxable medical services. Such tape purchases by the physician are subject to the tax because the patients' main purpose is to obtain the medical service.
- A mover's purchases of containers and packing materials used in providing household goods moving services are subject to the tax because the customers' main purpose is to obtain the moving service.

If the property transferred to the customer in conjunction with the service is not "incidental" to the selling, performing or furnishing of the service, the service provider is not the consumer of such property, but rather, the property transferred is considered a sale of tangible personal property separate from the sale of the service.

(d) Contractors and subcontractors: Except as explained in (a), (b) and (c) above, contractors and subcontractors are still considered the consumers of tangible personal property used by them in real property construction activities (s. 77.51(18)).

Example: A contractor purchases insulation, which is installed by the contractor in the ceiling of a person's plant to reduce heat loss, and topsoil for leveling the plant yard. The contractor's purchases of insulation are taxable; however, it may purchase the topsoil without tax for resale because this is used in providing a taxable landscaping service as described under (a) above.

(e) Definition of "incidental": 'Incidental' as used in (b) and (c) above, is defined in the law as "depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service." This definition of incidental is found in s. 77.51(29), Wis. Stats.

Questions About New Laws: If you have any questions about the new sales/use tax laws, visit or phone any department office. If you write, address your letter to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708.