



2021 Wisconsin Tax Update

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WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

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- *This presentation considers guidance provided by the SBA and US Department of the Treasury through April 21, 2021. Additional guidance is being provided on a regular basis, please refer to the US Department of the Treasury website (<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>) for recent updates.*



Agenda

- Welcome
- Wisconsin Developments
- Wayfair Update
- Due Diligence
- Unclaimed Property Update
- Wisconsin Audit Update
- Break out Sessions



Overview of Wisconsin Developments

- COVID-19
 - Adoption of the CARES Act
 - Adoption of the Consolidated Appropriations Act of 2021
 - 2021 WI Act 1
 - Pending considerations American Rescue Plan Act of 2021



Overview of Wisconsin Developments

- Pass-Through Entity Election
 - 2021 WI Act 2
 - Capital Gain Exclusion
 - Capital Loss Limitation
 - Estimated Payments – safe harbor
 - Lessons learned from 2018/2019 filings
 - Ability to Move Payments
 - Formality of Election
 - Treatment of Charitable Contributions



Overview of Wisconsin Developments

- Lessons learned from 2018/2019 filings
 - Credit For Taxes Paid to Other States
 - Tier Partnership Issues
 - Movement of Estimated Payments



Budget Bill Fiscal Years 2021–2022

- State tax increases
 - Manufacturing and Agricultural Credit
 - Capital Gains Tax Increase (Individual Income Tax)
 - Dividends Received Deduction
 - Net Operating Loss Carryback Elimination (Individual Income Tax)



Budget Bill Fiscal Years 2021–2022

- Conformity to Tax Cuts & Jobs Act
 - Loss Limitation for Pass-Through Taxpayers
 - Limitation on the Deduction Business Interest (163j IRC)
 - Accounting Rules for Accrual Based Taxpayers
 - Limitation on Deduction for Highly Paid Individuals
 - Limitation on Employers Deduction for Entertainment
 - Amortization of Research and Development Expenses



Wayfair Update

Wayfair vs SD
background

Sellers of tangible
personal property,
taxable digital goods,
software and taxable
services

Many states base
threshold on gross sales
and still require
registration even if no
taxable sales

Florida enacted
legislation effective
7/1/21 and Missouri is
moving quickly to pass
legislation in 2021

Trend is for states to
drop the transaction
threshold

Audit activity of remote
sellers is ticking up

States are asking
additional questions
upon registration



Marketplace Facilitators

- 45 states plus Puerto Rico have marketplace laws
 - Florida just enacted a marketplace law effective 7/1/21
- **In General:**
 - Controls a physical or electronic marketplace and facilitates sale of other's products
 - Collects the payment and transmits payment to the seller
- **However:**
 - Every state has separate laws – no consistency



Due Diligence

- Recent issues
 - State Nexus issues
 - Income / franchise tax
 - Sales tax
 - Other non-income based taxes
 - Ohio Commercial Activities Tax
 - Oregon Corporate Activities Tax
 - Tennessee Business Gross Receipts Tax
 - Washington Business & Occupational Tax



Due Diligence – Sales and Use Tax

- Sales Tax Exemption Certificates
- Use Tax Accrual Systems
- Remote sellers and economic nexus
- Prior period exposure due to physical presence or economic nexus
- Collected but unremitted sales tax
- Occasional sales or bulk sale rules
 - Licensed vehicles
 - Inventory
 - Sale of division but activity at that address continues



Unclaimed Property Update

**All 50 states and DC have
unclaimed property laws**

**Financial asset that
belongs to someone else**

**Unclaimed property can
include uncashed checks,
customer overpayments,
unidentified remittances**

**Wisconsin excludes B2B
credit balances**

**No formal voluntary
disclosure process in WI**

- WDOR currently allowing reporting of older UCP



Wisconsin Income Tax Audit Update

- Current audit issues
 - COVID-19 impact on audits
 - Sourcing of revenue from services
 - Focus on credits
 - Manufacturing and Agricultural Credit
 - Research and Development Credits
 - WEDC Credit Clawbacks



Wisconsin Sales & Use Tax Audit Update

- New auditors with less training
- Audit focus for in-state businesses is purchases
 - Software as a Service (SAAS)
 - Consulting fees
 - Implementation/Configuration services
 - General consulting related to IT
 - Facility repairs
 - Credit card purchases with no invoices
 - Cash based businesses – income reconstruction audits





Breakout Sessions

- Manufacturing and Distribution (stay in this meeting)
- [Construction](#)
- [Retail](#)
- [Transportation and Logistics](#)





Wisconsin Sales and Use Tax for the Manufacturing Industry

Sarah Evans, State & Local Tax Director

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What is Sales Tax?

- Sales tax is a tax charged by the seller on the “sales price” of retail sales of taxable services and tangible personal property.
 - Sales tax is a transactional tax; therefore, the seller must look at each transaction to determine its taxability. It is a tax collected by seller from the purchaser.
 - Sales tax is imposed at the state and local levels.
 - State rate in Wisconsin 5%
 - County rate in Wisconsin 0.5% (only 4 counties have not adopted the county tax this includes Manitowoc, Racine, Waukesha, Winnebago)
 - Stadium tax 0.1% (five-county area) Milwaukee, Ozaukee, Racine, Washington and Waukesha discontinued effective 4/1/20



Other Local Taxes

- Premier Resort Area Tax – 0.5% to 1.25% (separate return)
 - City of Wisconsin Dells, Village of Lake Delton, City of Bayfield, City of Eagle River and the Village of Stockholm, City of Rhinelander, Village of Sister Bay (effective 7/1/18)
- Local Exposition Tax – Milwaukee County (separate return)
 - 3% Basic Room Tax (new rate as of 1/1/21)
 - 7% Additional Room Tax (City of Milwaukee only)
 - 0.5% Food and Beverage Tax
 - 3% Rental Car Tax



Where Does a Sale Take Place?

- Where the purchaser or purchaser's designated donee receives the product
 - Take possession of tangible personal property; making first use of services, or take possession or make first use of digital goods
 - Does not include a shipping company taking possession of tangible personal property on a purchaser's behalf
- Sourcing rules – Destination Based Hierarchy
 - Your business location
 - Delivery or shipping address
 - Billing address
 - Other address
 - Location where shipped from



What is Subject to Tax?



Tangible personal property and certain digital goods

Rule of thumb – if the real thing is taxable, the digital version is generally taxable (books, music, pictures, software)

Don't forget sale of scrapped assets and vehicles



Taxable services include:

Admissions to amusement, athletic, entertainment or recreational events

Parking and docking

Laundry services

Photographic services

Facility rentals (if the rental is for amusement, athletic, entertainment or recreational purposes). Think banquet halls, athletic fields, parks and recreation centers.

Landscaping and lawn maintenance



What is Use Tax?



Use tax is the counterpart of sales tax. Use tax must be paid when Wisconsin sales tax is not charged, and no exemption applies.



Use tax is remitted to the state by the purchaser.



Use tax is usually the largest audit exposure.



Thought process:

Is the purchase taxable?

If yes, did the vendor charge sales tax?

If no, use tax must be paid



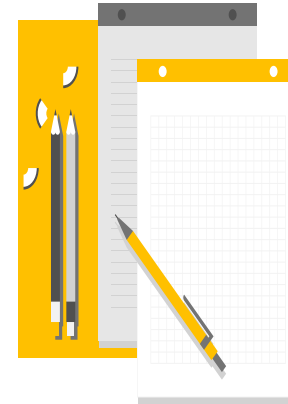
Common Use Tax Situations

- Property purchased from an out-of-state retailer
- Property purchased for resale or for a nontaxable use and then used by the purchaser in a taxable manner
- Property purchased outside Wisconsin without payment of Wisconsin sales tax and brought into Wisconsin and used in a taxable manner
- Pay particular attention to:
 - Internet purchases
 - Capital asset purchases
 - Maintenance and janitorial
 - Administrative purchases
 - Computer software and hardware



What is Taxed on the Invoice?

- Tax is charged on Gross Sales Price which includes:
 - Transportation charges
 - Handling charges
 - Costs associated with sale of personal property
 - Such as labor, travel, meals and lodging
 - Manufacturer's rebates and coupons (the tax is calculated before the coupon is applied)



What Should Not be Taxed on Invoice?

- Gross Sales Price does **not** include:
 - Cash or term discount on sales
 - Coupons – no reimbursement by 3rd party
 - Trade-ins of personal property for personal property – tax the difference
 - Bad debts relating to taxable sales
 - Refunds, returns and allowances of taxable items



Sales Tax Exemptions

- Exemption Certificate is **required** for:
 - Common or contract carrier (LC exemption)
 - Fuel and electricity consumed in manufacturing
 - Manufacturing machinery and equipment
 - Repair of exempt equipment
 - R&D equipment and consumables
 - Packaging and shipping materials
 - Printed advertising materials for out-of-state use
 - Catalogs (bound, stitched, sewed or stapled) and envelopes
 - Waste Treatment (air scrubbers, dust collectors, wastewater treatment)
 - Resale (purchased to be resold in same form)



What is Manufacturing in Wisconsin

Transferring raw material from inventory to the manufacturing process

Transferring work in process from one manufacturing process to another

Transferring final product from manufacturing process to the first point of storage

Testing and inspection throughout the production cycle

Packaging that is part of how product is sold

Storage of WIP in plant where manufacturing occurs



In Wisconsin, Manufacturing is not...

Plant lighting
and heating

Plant
maintenance

Scrap disposal

Raw material
storage

Finished goods
storage

Delivery to or
from the plant

Research &
Development

Testing of raw
materials

Testing of
finished goods



M&E Exemption

- Manufacturing Machines and Equipment
 - Must be used exclusively and directly in manufacturing TPP
 - Includes safety attachments to machines
 - Includes repair and replacement parts
 - Can include small tools or hand tools if not also for machine repair or general maintenance



Scope of Manufacturing – Cheese Plant

- Begins after stop valve on milk holding tank
 - Does not include raw milk intake testing
 - Does not matter if raw milk is cooled or agitated
- Includes separation of milk from cream
- Cooling and pasteurization
- Addition of starters and bacteria
- Vats and reactors for flavoring cultures and agitation
- Curd wash tanks, curd stirring
- In process inspection
- Unloading systems, whey pumping systems, whey separators
- High towers and vacuum skids for knitting cheese
- Cheese cubing, cutting, shredding, slicing, marination (e.g. wine or other flavor) and cheese aging
- Metal detection
- Vacuum sealing and seal check
- Material handling equipment for step-by-step process
- Palletizers and other packaging lines if prior to the point of first storage



Scope of Manufacturing – Micro Brewery

- System to transport barley from silo into milling machine
- Conveyance to brew kettle
- Cooling of wort, addition of oxygen and piping of brewed mixture to fermentation tanks
- Addition of yeast and release of carbon dioxide during fermentation for 10-30 days
- Piping of beer to filter machine and filtering process
- Storage tank for filtered beer
- Packaging into kegs to be delivered to wholesalers



Scope of Manufacturing – Printers

- Typesetting, composition and producing print-ready art when performed by the printing company to be incorporated into manufactured product
- Pre-flight check if printer performed the step above
- Prepress operations which includes computer and software used to convert the printed image onto a plate, cylinder or screen
- Plate notching, hole punching and bending equipment, plate coating, material handling carts for plates
- Compressed air system and piping to pump ink from storage tank into print process
- M&E used to convey large paper rolls into the process
- Printing presses including cameras, scanners, computers and software
- Ovens and chillers to set the ink
- Cleaning the press to remove paper, ink and other residues
- Conveyors, folding, binding, finishing and stacking machines
- Packaging machines if before point of first storage



Exclusive Use Requirement



Used in the step-by-step manufacturing process



Exemption is not invalidated by infrequent or sporadic non-manufacturing use



WDOR has generally allowed 5% non-manufacturing use



Hot button audit issues include overhead cranes, forklifts, tools, QC equipment



Directly Used Requirement

- Used directly in the step-by-step process
- Can be a gray and contentious audit issue
- Hot button audit issues include catwalks, worktables, software, hardware, temperature and humidity control equipment
- Direct use does **not** include:
 - Equipment used to clean manufacturing M&E or plant
 - Tools used to repair machines
 - Grinding wheels to sharpen blades or knives
 - Computers and software used to design product or process
 - Water softening equipment (but RO or other water purifying system can be directly used)
 - Clean in place equipment (WDOR will always tax it)



Consumable Exemption

- The manufactured product must be destined for sale
- The purchased item must be consumed, destroyed or lose its identity in the manufacturing process
- Does not apply to fuel or electricity (separate exemption)
- Catalysts, chemical solvents, greases, lubricating compounds, wearing apparel for the protection of the product
- Cleaning supplies for exempt equipment including foam, chemicals, sprays, etc.



Fuel and Electricity Exemption

- The WDOR does not require a third-party utility study. However, manufacturers must have supporting documentation for the percentage exempted.
- Internal or third-party studies should be updated periodically to account for additions and deletions of the M&E, plant expansions, etc.
- Fuel for steam boilers is always exempt even if only to heat building
- Electricity for cheese aging cooler if temperature is outside the human comfort zone (generally 60 degrees)
- Humidity control if proper moisture levels are needed for food product. Note – if needed for metal products not allowed by WDOR
- Temperature control if maintenance of certain temperatures are required by USDA or reason other than employee comfort – does not include raw material or finished goods storage
 - Ammonia systems and evaporation units
- If audited, this issue is guaranteed to come up.



Contractors and Construction Projects

- When a contractor is performing real property construction activities, they will pay sales tax on the purchase of their materials and include the tax in the contract price.
 - You won't see a separate line item on the invoice, but it is assumed that the tax is built into the price they charge
- When a contractor sells, services or installs tangible personal property they must charge sales tax unless an exemption applies
- WDOR Publication 207 Appendix A and B are an excellent resource
- Examples: Boilers, Coolers, HVAC, Security Cameras



Appendix A example

Sales and Use Tax Information for Contractors

Publication 207

Item	Residential		Commercial			
	Install (1)	Repair (2)	Real Estate Function Install (3)	Repair (4)	Process Function Install (5)	Repair (6)
Garbage Disposals	RE	P	RE	P	P	P
Gas and Electric Logs	P	P	P	P	P	P
Gasoline Pumps	RE	RE	N/A	N/A	P	P
General Lighting *in offices, business facilities, schools, and hospitals	RE	RE	RE	P*	N/A	N/A
General Electrical Wiring	RE	RE	RE	RE	P	P
Generators (See Stand-by Generators)						
Grain Bins	N/A	N/A	RE	RE	N/A	N/A
Grain Elevators (building portion)	N/A	N/A	RE	RE	N/A	N/A
Grain Handling Equipment Within the Build- ing and Grain Elevator Legs	N/A	N/A	N/A	N/A	P	P
Grills and Rotisseries	RE	P	N/A	N/A	P	P
Heating, Cooling, and Vent. System Units	RE	P	RE	P	P	P

What if You are the Contractor?



When no outside contractor is hired, but your business purchases items to improve, repair or service the facilities, you must either pay sales tax or accrue use tax.



Example: the purchase of electrical or plumbing supplies may be taxable when your employees do the work or purchase the supplies for another company to do the work.



Example: the purchase of paint by maintenance department to paint window trim.



Recent Hot Topics

- Dock and dock levelers – treated as real property for installation and repair. Who is doing the work?
- IT service – design of screens, forms, reports or menus are all nontaxable services.
- Cyber attack risk assessment – nontaxable IT services in Wisconsin include “network assessment services that consist of network analysis and evaluation unrelated to a specific hardware or software problem and unrelated to the sale of computer hardware or computer software”.
- Palletizer – if after point of first storage, taxable. If part of packaging before point of first storage, then exempt. Stretch wrap is a consumable so could be partially exempt.
- Software as a Service “SaaS” or Cloud based software – unless used directly and exclusively in manufacturing, WDOR will likely treat as taxable telecommunications or real-time information service
- Marketing services – real-time product and customer information



Recent Hot Topics

- Silos and tanks – is there a “process” happening? Is it on the plant floor holding WIP?
- “Lab” purchases – specifics are needed
- Waste air and wastewater treatment
- Catwalks and platforms to access equipment
- Safety attachments to manufacturing M&E
- Trucks and trailers that haul product between plants or exclusively for the manufacturer if not in a separate entity that files own tax return
- Wearing apparel for the protection of employee
- Cardboard compactors
- McMaster, Fastenal, and other “bin” suppliers
- Internal purchases
- Repair and warranty work on products
- Sales tax refund claims



Sales and Use Tax Audits

- Ticking up in Wisconsin and other states
- Know where you have responsibility to collect sales tax
- Review purchases on a regular basis
- Have a process for review of invoices and sales tax
- Know why you are providing an exemption cert and whether it is applicable to the purchase
- The process starts with the purchase requisition
- Wisconsin charges 12% interest on audit liability
- 25% penalty is added most of the time





Resources

WDOR Publication 201 – General

WDOR Publication 203 - Manufacturing

WDOR Publication 207 – Contractors

Shipments of TPP – Where Do the Sales Tax Place?

<https://www.revenue.wi.gov/Pages/TaxPro/2014/news-2014-140707d.aspx>

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A man in a light blue shirt and dark pants is helping a young child on a yellow bicycle. The child is wearing a light green helmet and a light-colored long-sleeved shirt. They are on a paved path that leads towards a bright sunset. The sun is low on the horizon, creating a strong lens flare and casting long shadows. The background shows some trees and buildings in a suburban setting.

THANK YOU! Questions?

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