



Wisconsin Sales and Use Tax for the Retail Industry

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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

- Topics of Discussion:
 - Wayfair, Fulfillment by Amazon (FBA)
 - Drop Shipments
 - Dealership Sales/Use Tax Issues
 - Hospitality Industry Sales/Use Tax Issues





General Wisconsin Sales and Use Tax

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Sales Tax Nexus/Wayfair

- Physical Nexus was the previous standard
 - Employee in the state
 - Salespeople entering the state
 - Independent contractors
 - Installation service with sale
 - Trucks delivering into a state
 - Inventory (Fulfillment by Amazon)
- Wayfair case 6/21/2018 allows states to impose an economic nexus standard
 - Creates entire new set of audit issues and opportunity for states to expand nexus requirements off economic nexus
 - States felt they were losing revenue due to internet based remote sales
 - Sales thresholds vary by state
 - Aggressively enforced



County and 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; and Village of Sister Bay
- Local Exposition Tax – Milwaukee County (separate return)
 - 2.5% – Basic Room Tax
 - 7% – Additional Room Tax (City of Milwaukee only)
 - 0.5% – Food and Beverage Tax
 - 3% – Rental Car Tax
- 0.5% county tax in nearly all counties (except 4)
- If business holds a Wisconsin Seller's Permit and the sale is subject to tax, all the applicable rates apply based on the ship to address or situs of the sale



Marketplace Facilitator Nexus

- Amazon is the original marketplace
- What is a marketplace?
 - Controls a physical or electronic marketplace and facilitates sale of other's products
 - Collects the payment and transmits payment to the seller
- States taking position that marketplace provider can create nexus for the vendors which sell through the marketplace
- Impose obligation on Marketplace Facilitator to collect sales tax on behalf of sellers
- 44 states plus Puerto Rico have marketplace laws



Sales Through a Marketplace

- Wisconsin – a Marketplace Facilitator with more than \$100,000 in gross revenue from WI sales in the state must collect and remit sales tax on all sales made or facilitated in the state.
- Research and communication with the marketplace may be required
 - **Does marketplace notify the seller?**
 - **What will marketplace charge seller to collect the tax?**
- Economic nexus and facilitated sales
 - **Do the sales count toward the economic nexus thresholds?**



Drop Shipments

- Triangular scenario
 - Retailer (Seller) – State A
 - Customer (End Purchaser) – State B
 - Manufacturer (Drop Shipper) could be any state
- Drop shipper is required to collect sales tax but not the Retailer
- In some states drop shipper is required to collect sales tax on the sale into state B
- Tax Base – Cost or Retail price?
- Can Seller claim exemption for resale if not registered in the state?
- Wisconsin does now allow an out of state drop shipper to accept an out of state resale certificate or resale number





Hospitality Industry Sales and Use Tax

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Hotel Industry – Sales Tax

- Taxable products and services
 - Lodging services less than one month
 - Facility rentals for amusement, entertainment, athletic, or recreational purposes
 - Room services charges
 - Mandatory gratuities – taxable
 - Discretionary gratuities - nontaxable
 - Parking fees
 - Food and beverages sold to employees
 - Rentals of optional equipment (e.g. AV equipment and recreational equipment)
- Lodging packages are taxable on total price as long as more than 10% of the price relates to taxable lodging, products; and services



Hotel Industry – Use Tax

- Taxable products and services
 - Furniture, appliances, artwork, drapes, ice machines
 - Office equipment and furniture, office supplies
 - Room supplies such as hangers, ice buckets, shampoo and toiletries
 - Toiletries given away with lodging are “incidental” and cannot be purchased for resale
 - Linens such as bath mats, bedding, towels
 - Cleaning and maintenance equipment, pool chemicals and supplies, laundry equipment, maid carts
 - Cable and satellite TV, telephone; and internet services
 - Cleaning services, many maintenance and repair services, outsourced laundry and dry cleaning services, landscaping



Exemptions – Hotel Industry

- If the sale of lodging is exempt from Wisconsin sales tax it is also exempt from local room taxes and local expo tax
- Government employee that pays bill with personal credit card:
 - request letter or other proof that employee is traveling on government business.
 - Invoice should indicate that government agency is the customer
- Exemption does not extend to non-employees hired by exempt government
- Lodging furnished to governmental agencies of other states is taxable (including counties, cities, school districts)



Exemptions – Hotel Industry

- Lodging for foreign diplomats is nontaxable if they have a valid exemption card (Office of Foreign Missions)
- Direct Pay permits cannot be used for lodging services
- Full list available WDOR Pub 219



Audit Issues

- Room Rental
- Verification that all the relevant local taxes are collected
- Food and liquor sales
- Non-taxed sales
- Non-taxed room rentals over one month
- Software
- Janitorial services
- Income reconstruction if cash transactions
- Gift shop sales
- Vending machine sales





Bars and Restaurants Sales and Use Tax

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Bars And Restaurants

- Taxable products and services
 - Prepared food sold in heated state or with serving vessels/utensils
 - See WDOR Pub 236 for additional details
 - Alcoholic beverages
 - Beverages sold in heated state or in glasses/cups, soft drinks, flavored water
 - Candy (includes sweetener but not flour)
 - T-shirts, baseball caps, gifts; and souvenirs
 - Mandatory tips, gratuities; and services charges
 - Cover charges and minimum charges (e.g. must purchase at least two drinks)
 - Delivery charges
 - Food and beverages sold to employees



Bars and Restaurants

- Other sales tax issues
 - Discounted meals to employees are taxable based on discounted amount paid
 - Free meals to employees not subject to sales tax and no use tax due on the food provided at no cost to employee
 - Coupons offered by establishment offset the taxable price
 - Coupons and discounts offered by 3rd parties are taken off after sales tax is calculated.
 - Gift certificates for specific dollar value – treated like cash and not taxable when sold.
 - Discounts and vouchers sold by 3rd party (e.g. Groupon). Sales tax is on the amount customer paid for “Groupon” plus any additional amount paid.
 - Vending machine sales where business is the “operator”
 - Video games, amusement devices, video gambling machines (NOTE not legal) where business is the “operator”



“Groupon” Examples

- Discounted certificate
- Restaurant in Milwaukee contracts with “Groupon”
 - Certificates have face value of \$50, customer purchases for \$30.
 - Customer buys \$99.99 food/beverage and presents \$50 coupon

Sales price of food and beverage	\$99.99
Less: Discount on certificate	<u>- \$20.00</u>
Taxable receipts	\$79.77
6.1% sales tax (state, cnty, stad, expo)	<u>\$4.88</u>
Subtotal	\$84.87
Less: Face value of certificate	<u>- \$50.00</u>
Amount due from Customer	\$34.87



Restaurants and Bars – Use Tax

- Some purchases do not require an exemption certificate because they are exempt as food and food ingredients
- Disposable products transferred to customers with food or beverages can be purchased for resale including take-out and to-go containers, eating utensils, coffee stirrers
- Items used in the operating of the facility are taxable including employee uniforms, kitchen equipment and supplies, linens, etc.
- Furniture, office supplies, janitorial supplies, etc. are taxable
- Promotional items given away
- Amounts paid to entertainment are nontaxable



Audit Issues

- Liquor pours
- Sales tax on sales to employees
- Non-taxed customers
- Income reconstruction for cash transactions
- Volume of records being requested
- Reconciliation of bank deposits, income tax returns and sales tax reported
- Use Tax on purchases
 - Office equipment
 - Restaurant equipment is not considered manufacturing
- Room rental, i.e. events, receptions



Sales and Use Tax Recent Trends

- Hotel industry – reservation system fees from franchisor
- Hotel and restaurants – franchisor fees for taxable services
- Lodging providers – deemed consumers of telecommunications, internet and cable TV services
- Lodging marketplaces – must register to collect sales tax and local room taxes
- Restaurants, bars and cash-based businesses – income reconstruction audits





Automobile Dealerships Sales and Use Tax

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Automobile Dealership Sales Tax Issues

- Sale of automobile is subject to 5% state sales tax
- Includes sales of attachments, parts, supplies and materials
- Applies to sale of self-propelled vehicles intended to be operated primarily for transporting persons or property and to be operated on the highway
- The sales tax includes the charges for delivery, handling, preparation, warranty, equipment or accessories and their installation
 - Other taxable services – towing and hauling by a tow truck
- Trade in allowance provided if trade in is performed in one transaction



Lease of Motor Vehicle

- Lease is subject to state and local sales tax
- Lease is sourced to where vehicle will be customarily kept or garaged
- Taxable receipts include (Wisconsin DOR Tax Publication No. 202 05/01/2017)
 - Early termination fees
 - Charges for excess wear and tear
 - Positive Equity
 - Cash Down payment by buyer
 - Does not include credit insurance (a portion may be included in the down payment)



Repairs

- Repair labor is taxable even if separately stated
- All parts that transferred to the customer are subject to sales tax.
- Carry tax free inventory of repair parts
- Warranty repairs – parts not taxable to customer
 - Manufacturer warranty – no use tax
 - Extended warranty
 - No use tax on parts.
 - However, the sale of the extended warranty is taxable
 - Any customer deductible is taxable



Dealer Cars/Loaner Cars

- Dealer Plates – No sales tax due on vehicles held for resale
 - Must be held in inventory
 - Wisconsin Buyer's guide or Monroney label must be displayed
 - If employee or family member is using the dealer vehicle, the vehicle must be available for sale and on display during dealership business hours
- Use tax due on vehicles removed from inventory
 - Free Loaner vehicles
 - Not available for sale during business hours
- Sales tax must be collected on the rental of dealership vehicles



Audit Issues

- Lease calculation
- Loaner Vehicles
- Sales of parts
- Asset Disposition
- On-line sales (new audit risk issue with Wayfair)
- Documentation of non-taxed sales
 - Exempt organization customer
 - Sales to municipalities
 - Non-resident customer
- Use tax on out of state purchases
 - Office furniture/supplies
 - Shop supplies
- Cloud based software (SaaS)
- Sales of motor vehicles for non-highway (off road) use



How CLA Can Help

- Audit Defense
 - Manage complete audit on site with Auditor
 - Review completed audit
 - Consult on issues as they arise with Auditor
 - Manage all negotiations
 - File appeal with WI DOR and through entire administrative appeal process
- Sales Tax Refunds
 - File refund claims with State or through the vendor
 - Refund opportunities in Hospitality, Restaurants and Dealerships



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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