



Wisconsin Sales and Use Tax for the Transportation and Logistics Industry

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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

- Nexus Update
- Income Tax Apportionment Update
- Like-Kind Exchanges
- Special Purpose Entities
- Wisconsin Sales/Use Tax Overview
- Sales and Use Tax Issues and Opportunities





Nexus Update



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Nexus – Overview

- General standard – substantial presence
 - Driving through the state can be enough (e.g., IL), often no “de minimis” rule
 - The ATA testified about this before Congress in 2012
- De minimis rule – MTC Rule. Must meet all of the following:
 - Does not own/rent any property in the state, other than mobile property
 - No pick-ups or deliveries in the state, no more than 12 trips into the state
 - **No more than 25,000 miles** or 3% of total miles in-state
- De minimis threshold – other states
 - Some use other thresholds (e.g., PA uses 50,000 miles)



Nexus – Enforcement Trends

- States are still targeting the transportation industry for nexus
 - Nexus Questionnaire / Inquiries
- Quarterly fuel tax records through IFTA
 - Easy to measure 25,000-mile test: e-logs will make this even easier
 - Since June 2019, IL and WI have increased enforcement – IFTA reports
 - Back in 2012, the ATA identified CA, IL, MA, NE, NJ, NY, OH, PA, VA, and WI as highly aggressive
- New Jersey: Agents sit at truck stops/docks and write down names and DOT information of idle tractors and trailers
 - CLA was contacted about this in August 2019: NJ is still at it!





Income Tax Apportionment Update



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Apportionment for Trucking Companies

- MTC Reg. IV.18.(g)
 - “Hauling freight, mail, and express”: use revenue miles
 - Other revenue: use the general method (COP, market sourcing)
 - Applies to interest, dividends, sale of capital assets; service fees (boxing, tagging items); sales of packing boxes, insurance; **sales of trucks/trailers**
 - Freight forwarding/brokerage/logistics? Typically use the general method
- States with no “trucking company” rule
 - Use the general rule (cost of performance/market sourcing)
 - For example, MN uses shipment destination for trucking revenue (TAM 5672); miles used only if can’t tell between interstate/intrastate



Freight Forwarding/Logistics: Overview

- Trucking (miles) appt rules generally inapplicable
- States provide limited industry-specific guidance
 - **Cost of performance:** Source logistics/forwarding revenue to the location of the activity
 - **Market sourcing:** Generally expected to source revenue to the destination of the brokered load
 - See, e.g., BLX, Inc. v. Iowa DOR (December 31, 2018)
 - Watch out for throw-out rules (e.g., AL, IL, KY, LA, MA, NH, TN, VT)
 - Nowhere sales





Like-Kind Exchanges: Issues and Opportunities



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Wisconsin – Like-Kind Exchanges

- TCJA: Repealed like-kind exchanges (LKE) of tangible personal property (TPP) with 100% bonus depreciation
- WI conforms to the TCJA
 - But WI has always added back bonus depreciation
 - Results in a tax increase for all industries who regularly used LKEs for TPP



Multistate – Opportunities from LKE

- Trucking company apportionment
 - Some states = miles; other states = revenue (hauling/other).
- Sales factor impact of truck sales in “revenue” states
 - LKE: disregard. Sell old, expense new: include under MTC.
 - “For example, a truck express company that owns a fleet of trucks and sells its trucks under a regular replacement program the gross receipts from the sale of the trucks would be included in ‘receipts.’”
 - Apportionment dilution opportunity: sell trucks in a “miles” or “exclusion” state (WI), dilute sales in MTC states.





Special Purpose Entities Transportation Company



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Wisconsin – Special Purpose Entity

- Captive Transportation Company Model
 - Disregarded Entity Structure (no longer viable)
 - Qualified Sub-Chapter S Subsidiary
 - Single Member Limited Liability Company
 - Must be a regarded entity
 - S-Corporation
 - Multi-Member Limited Liability Company
 - Partnership



Wisconsin – Special Purpose Entity

- Remediation
 - Disregarded Entity Structure
 - Single Member Limited Liability Company - determine tax efficient way to create multi-member limited liability company
 - Qualified Subchapter S Subsidiary – potential restructuring opportunity to create a separate tax filing entity.
 - Determination of sales / use tax exposure





Wisconsin Sales and Use Tax Overview



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General Introduction Wisconsin Sales and Use Tax

- Sales tax
 - 5% tax on the sale, license, lease or rental of tangible personal property and certain services
 - Collected by retailers from purchasers
- Use tax
 - 5% tax on the storage, use or other consumption of tangible personal property or services subject to sales tax that is purchased from any retailer
 - Tax that is due from a purchaser when a sales tax has not been collected by a Wisconsin retailer



General Introduction

- Sales 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 about installment sales?
 - Wisconsin requires reporting once possession has been transferred



General Introduction

- Exempt sales (Exemption Certificate required)
 - **Common or contract carrier (LC exemption)**
 - **Farming**
 - Fuel and electricity
 - **Manufacturing**
 - **Nonprofit organization**
 - Packaging and shipping materials
 - Printed advertising materials
 - Printed materials
 - **Resale**
 - **Waste reduction or recycling**
 - **Wisconsin and Federal governmental units**



General Introduction

- Use Tax on purchases
 - Applies when Wisconsin sales tax has not been previously paid and an exemption does not apply
 - 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
 - Property delivered to one county and used in another



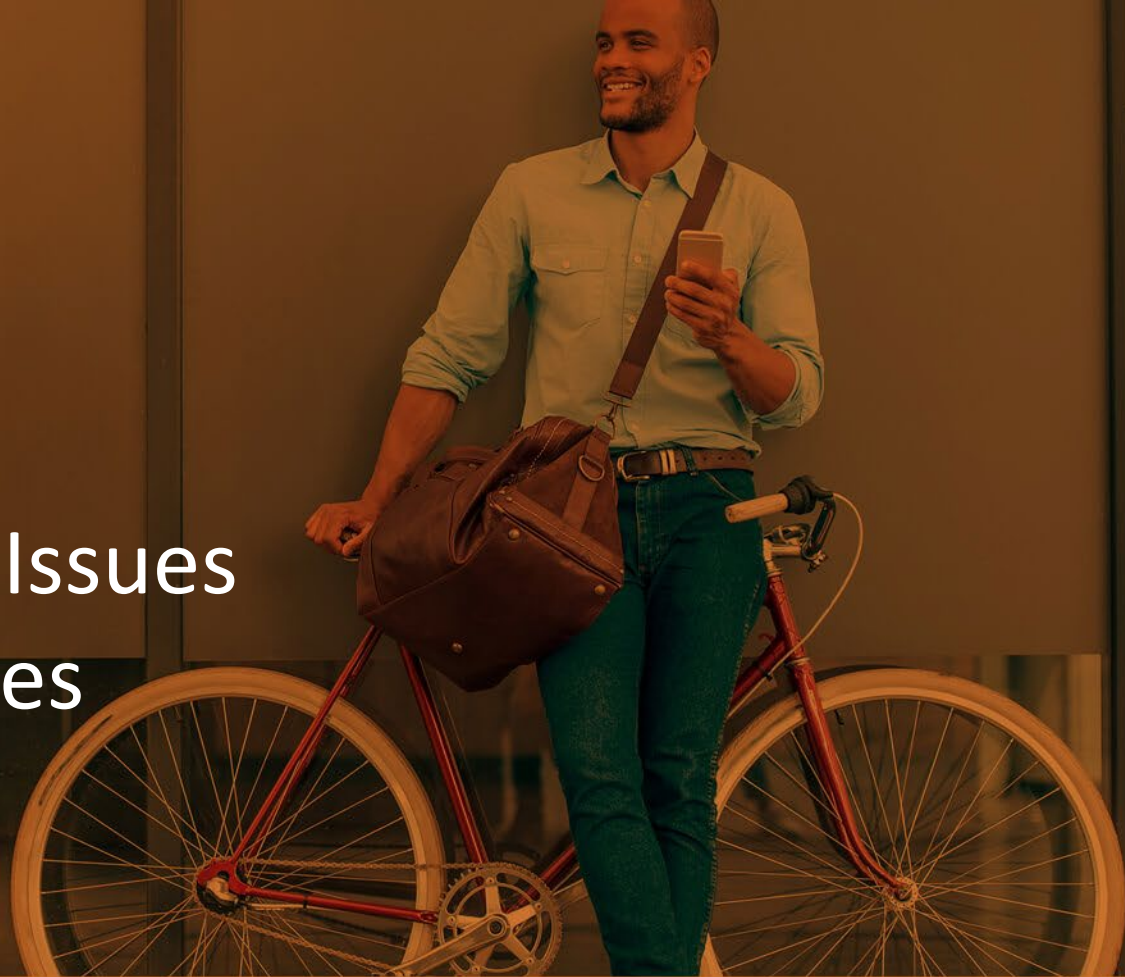
General Introduction

- Examples of purchases subject to use tax
 - Computer and telephone equipment
 - Office furniture
 - Warehouse equipment
 - Office supplies
 - Books
 - Pre-written computer software
 - Digital goods





Sales/Use Tax – Issues and Opportunities



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Base Plating – International Registration Plan (IRP)

- IRP – cooperative agreement between member states and Canadian provinces (all U.S. States except HI and AL)
- Simplify annual registration fees
- Qualified motor vehicle
 - Two axles and registered gross vehicle weight > 26,000 lbs.
 - Vehicle operate in two or more jurisdictions
- Reporting period July 1 to June 30
- Allocated to each state-based percentage of mileage driven (should match IFTA filings)
- Pay fees to base state and base state will allocate to each state driven through



How to Determine Base Jurisdiction

- Can declare any state as base jurisdiction and this is where IRP and IFTA will be filed
- Typically, base jurisdiction is where terminal and/or main office is located
- Requirements vary by state
 - MN has detailed requirements
 - Physical structure
 - Street address (not a post office box)
 - WI is more vague
 - Maintain operational control and operational records
 - Established place of business
- Strategy where to locate base jurisdiction



Transportation Companies – Sales Tax Benefit

- Applies to private trucking fleets
- Primary benefit is to allow trucking fleet to be categorized as interstate motor carrier
- Utilize sales tax exemptions specific to interstate motor carrier
 - Apportioned tax based on mileage driven in state
 - Up front exemption
- Benefits vary based on base jurisdiction
- Need to consider whether required to back-haul or continue carrying the identical goods



Interstate Motor Carrier – Sales Tax Exemptions

- Wisconsin
 - Broad upfront exemption on entire purchase of vehicles repair parts and supplies
 - WI is aggressively going after the WI percentage of miles for the purchase price and the replacement parts for MN based trucks
 - We are filing appeal as the truck is only taxable in the based plate jurisdiction state
 - May need to go to Tax Court
 - “We are Wisconsin” is what the Auditor says
 - Separate Entity Treatment



Fuel Tax Refund Opportunities

- Off-Road Fuel
 - Mining Companies
 - Construction
- Off-Road in terms of PTO's or Reefer Units
 - Federal – Quarterly refunds Form 720 filed with federal income tax
 - State – Quarterly or Annual MF-001 filing



Wisconsin Audit Issues

- Continued Use of Disregarded Entities
 - Transfer Pricing
- Software as a Service
 - Devices used to monitor the cabs
 - Messaging services
- Common Carrier Exemption Issues
 - What Qualifies as attachments
 - Shop supplies and tools
 - Electronic Logging Devices
 - Is this Telecommunications?



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 grey long-sleeved shirt. They are on a paved path that stretches into the distance, with houses and trees in the background. The sun is low on the horizon, creating a warm, golden glow and long shadows.

THANK YOU! Questions?

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