

1979 Assembly Bill 976

Date published: May 2, 1980

CHAPTER 174, Laws of 1979

AN ACT to repeal 71.09 (6m) and (7) (g) and (h) 1, 77.51 (7) (e), 77.54 (18) and 77.621; to renumber 71.09 (7) (h) 2 to 4 and 77.58 (2) (a); to renumber and amend 77.58 (2) (intro.); to amend 77.51 (4) (a), (10) (b) and (11) (a) 4 and (c) 5, 77.52 (1) and (2) (intro.), 77.53 (18), 77.54 (9a) and (20) (c) 4, 77.58 (1), 77.59 (4) (a) and 77.61 (4) (b) of the statutes, relating to income and sales and use tax statutes, eliminating obsolete language, correcting cross-references, creating uniform definitions, reconciling conflicts and clarifying language (suggested as remedial legislation by the department of revenue).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.09 (6m) and (7) (g), and (h) 1, as affected by chapter 1, laws of 1979, of the statutes are repealed.

SECTION 2. 71.09 (7) (h) 2 to 4 of the statutes, as affected by chapter 1, laws of 1979, are renumbered 71.09 (7) (h) 1 to 3.

SECTION 3. 77.51 (4) (a), (10) (b) and (11) (a) 4 and (c) 5 of the statutes are amended to read:

77.51 (4) (a) Any sale at an auction in respect to tangible personal property which is sold to a successful bidder ~~at the auction including a sale upon an agreement or understanding at the time of the sale that the property involved either will not be delivered to the successful bidder or that any amount which he may pay for the property pursuant to the sale will be returned to him. The tax shall be computed in such case upon the amount of the successful bid. The proceeds from the sale of property sold at auction which is bid in by the seller and on which title does not pass to a new purchaser shall be deducted from the gross proceeds of the sale and the tax paid only on the net proceeds.~~

(10) (b) Any transfer of all or substantially all the property held or used by a person in the course of ~~such~~ an activity ~~when requiring the holding of a seller's permit, if after such the transfer the real or ultimate ownership of such the property is substantially similar to that which existed before such the transfer.~~ For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity, are regarded as having the "real real or ultimate ownership" ownership of the property of ~~such the~~ corporation or other entity.

(11) (a) 4. Any tax included in or added to the purchase price, including the taxes imposed by ss. ~~78.01, 78.40, 139.02 and, 139.03, including also and 139.31, the federal motor fuel tax and any manufacturers' or importers' excise tax; but not including any tax imposed by the United States, any other tax imposed by this state or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed upon the retailer or the consumer if measured by a stated percentage of sales price or gross receipts or the federal communications tax imposed upon the services set forth in s. 77.52 (2) (a) 3 and 4.~~ For purposes of the sales tax, if a retailer establishes to the satisfaction of the department that the sales tax imposed by this subchapter has been added to the total amount of the sales price and has not been absorbed by ~~him the retailer,~~ the total amount of the sales price shall be ~~deemed to be~~ the amount received exclusive of the sales tax imposed.

(c) 5. If a lessor of tangible personal property ~~purchased such property before or after the change from a selective to a general sales tax law and reimbursed his the vendor for sales tax on the sale of the property by such the vendor to him the lessor, the tax due from such the lessor on his the rental receipts on and after September 1, 1969, may be offset by a credit equal to, but not in excess of exceeding,~~ the tax otherwise due on the rental receipts from ~~such this~~ property for the reporting period. The credit shall expire when the cumulative rental receipts ~~both before, on and after September 1, 1969, equal the sales price upon which his the vendor paid sales taxes to this state. Similarly if~~ If a purchaser of tangible personal property ~~before or after such change has reimbursed his the vendor of the property for sales tax on the sale to him and subsequently, prior to making any use of the property other than retention, demonstration or display while holding it for sale or rental, makes a taxable sale of such the property, the tax due on such the taxable sale may be offset by the tax reimbursed.~~

SECTION 4. 77.51 (7) (e) of the statutes is repealed.

SECTION 5. 77.52 (1) and (2) (intro.) of the statutes are amended to read:

77.52 (1) For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is ~~hereby~~ imposed upon all retailers at the rate of ~~3%~~ 4% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state ~~on~~

~~or after February 1, 1962; but beginning on September 1, 1969 the rate of the tax hereby imposed shall be 4%.~~

(2) (intro.) For the privilege of selling, performing or furnishing the services herein described under par. (a) at retail in this state to consumers or users, a tax is hereby levied and imposed upon all persons selling, performing, or furnishing such the services at the rate of ~~3%~~ 4% of the gross receipts from the sale, performance, or furnishing of such the services ~~on or after February 1, 1962; but beginning on September 1, 1969 the rate of the tax hereby imposed shall be 4%.~~

SECTION 6. 77.53 (18) of the statutes is amended to read:

77.53 (18) This section ~~shall~~ does not apply to the storage, use or other consumption in this state of household goods for personal use, including motor vehicles, purchased by a nondomiciliary of this state outside this state 90 days or more before bringing such the goods into this state in connection with a change of domicile to this state, ~~when such goods are brought into this state on or after September 1, 1969.~~

SECTION 7. 77.54 (9a) of the statutes is amended to read:

77.54 (9a) The gross receipts from sales to, and the storage, use or other consumption of tangible personal property, ~~including accessories, parts and supplies, and taxable services by this:~~

(a) This state or any agency thereof, ~~or any.~~

(b) Any county, municipality as defined in s. 41.02 (4), city, village, town or school district or other political subdivision; any in this state.

(c) A county-city hospital established under s. 66.47.

(d) A sewerage commission organized under s. 144.07 (4) or a metropolitan sewerage district organized under ss. 66.20 to 66.26.

(e) Any other unit of government in this state or any agency or instrumentality of 2 or more units of government in this state.

(f) Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

SECTION 8. 77.54 (18) of the statutes is repealed.

SECTION 9. 77.54 (20) (c) 4 of the statutes is amended to read:

77.54 (20) (c) 4. Taxable sales ~~shall do~~ not include meals, food, food products or beverages sold by hospitals, sanatoriums, nursing homes, retirement homes, ~~or day care centers registered under ch. 48, nor to such items when furnished by a public or private institution of higher education in accordance with any contract or agreement made or executed on or before October 1, 1969.~~ In this subdivision "retirement home" means a nonprofit residential facility where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents. ~~Neither shall taxable~~ Taxable sales do not include meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

SECTION 10. 77.58 (1) of the statutes is amended to read:

77.58 (1) The taxes imposed by this subchapter ~~for the months of January, February and March 1964, and for each calendar quarter thereafter~~ are due and payable on the last day of the month next succeeding the calendar quarter for which imposed except that ~~effective July 1, 1967, if:~~

(a) If the amount of tax for any calendar quarter ~~ended before or after such date exceeded~~ exceeds \$500, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in ~~such the~~ notice are due and payable on the last day of the month next succeeding the calendar month for which imposed.

(b) If the amount of tax for any calendar quarter ~~exceeded~~ exceeds \$3,000, the department may require by written notice to the taxpayer that the taxes imposed on and after the date specified in ~~such the~~ notice are due and payable on the 20th day of the month next succeeding the calendar month for which imposed.

SECTION 11. 77.58 (2) (intro.) of the statutes is renumbered 77.58 (2) (a) and amended to read:

77.58 (2) (a) ~~On or before April 30, 1964, a return shall be filed with the department for January, February and March 1964, and a A return shall be filed thereafter~~ by the last day of the month next succeeding each calendar quarter for taxes imposed for the preceding calendar quarter: except that:

1. If payments are required to be made monthly and are due and payable on the last day of the month next succeeding the calendar month for which imposed ~~due~~ under sub. (1) (a), a return shall be filed by the last day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

2. If payments are required to be made monthly and are due and payable on the 20th day of the month next succeeding the calendar month for which imposed under sub. (1) (b), a return shall be filed by the 20th day of the month next succeeding each calendar month for taxes imposed for the preceding calendar month.

SECTION 12. 77.58 (2) (a) of the statutes is renumbered 77.58 (2) (b).

SECTION 13. 77.59 (4) (a) of the statutes is amended to read:

77.59 (4) (a) A claim for refund may be made within 2 years of the determination of a tax assessed by office audit ~~on or after January 1, 1975, provided such if~~ the tax was not protested by the filing of a petition for redetermination and the reporting period had not been closed by field audit prior to the filing of ~~such the~~ claim. No claim may be allowed under this paragraph for any tax self-assessed by the taxpayer.

SECTION 14. 77.61 (4) (b) of the statutes is amended to read:

77.61 (4) (b) For reporting the sales tax and collecting and reporting the use tax imposed on the retailer under s. 77.53 (3) and the accounting connected therewith, retailers may deduct ~~2% one percent~~ of the total of ~~such~~ sales and use tax payable each reporting period as ~~partial sales and use tax~~ administration expenses, provided if the payment of ~~such the~~ taxes is not delinquent. ~~Such deductions shall be limited to one percent of such total sales and use tax paid or payable on or after January 1, 1972.~~

SECTION 15. 77.621 of the statutes is repealed.

SECTION 16. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
71.02 (2)(gp) 5	71.09 (6m) and (6p)	71.09 (6m), 1977 stats., or s. 71.09 (6p)
71.08 (4)	71.09 (6m) and (6p)	71.09 (6p)
71.09 (7)(a) 8, as affected by chapters 1, 32 and 34, laws of 1979	pars. (g) to (gp)	pars. (gn) to (gp)
71.20 (9)(c)	71.09 (6m) and (6p)	71.09 (6p)
71.20 (9)(d)	71.09 (6m) and (6p)	71.09 (6p)