

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100202	Sales and Use Tax - Common Questions

State of Wisconsin
Department of Revenue

Sales and Use Tax - Common Questions

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. Am I required to file a Wisconsin Sales and Use Tax Return?
2. How do I report my sales or use tax?
3. What is the deadline for filing my Wisconsin return?
4. Are extensions available if I can't file my Wisconsin return by the due date?
5. How do I amend my sales and use tax return?
6. How do I file a buyer's claim for refund for sales tax paid in error?
7. What records should I keep for Wisconsin tax purposes, and how long should I keep them?
8. Should I notify the Wisconsin Department of Revenue if I close my business?
9. When is selling a Business or Business Assets subject to sales tax?

1. **Am I required to file a Wisconsin Sales and Use Tax Return?**

- o Every individual, partnership, corporation, or other organization making taxable retail sales, licenses, leases, or rentals of taxable products or taxable services in Wisconsin is required to have a Seller's Permit.
 - Prior to October 1, 2018 - A remote seller who is engaged in business in Wisconsin must apply with the Department of Revenue for a Use Tax Certificate and must report Wisconsin use tax on sales to Wisconsin customers. A remote seller who is not engaged in business in Wisconsin may voluntarily register to report and remit use tax on its sales to Wisconsin customers. Such remote sellers must collect use tax from purchasers and pay the tax in the same manner as other retailers engaged in business in Wisconsin.
 - October 1, 2018 and thereafter - Wisconsin requires remote sellers to collect and remit sales or use tax on sales of taxable products and services in Wisconsin. New standards for administering sales tax laws on remote sellers have been developed by rule. The rule is consistent with the Court's decision in *Wayfair*, which approved a small seller exception for sellers who do not have annual sales of products and services into the state of (1) more

than \$100,000, or (2) 200 or more separate transactions. Effective December 16, 2018, Wisconsin sales and use tax statutes were amended (2017 Wis. Act 368) to provide the small seller exception by law, consistent with the Court's decision in *Wayfair* and the rule.

Note: The small seller exception does not apply to sellers with a physical presence in Wisconsin.

For additional information, see the department's web page for [Remote Sellers – Wayfair Decision](#).

- o Every person who regularly has use tax obligations because purchases are made without sales tax use tax being charged by the seller should apply for a [Consumer's Use Tax Certificate](#).

If you hold a [Seller's Permit](#), [Use Tax Certificate](#), or [Consumers Use Tax Certificate](#), you must file for each "reporting period," even if no tax is due for that period. Your reporting period will be either monthly, quarterly, or annually, as determined by the Department of Revenue. For example, if your reporting period is monthly, you must file a return for each month of the year, regardless if any tax is due for the month.

2. How do I report my sales or use tax?

You may electronically file your return by either of the following methods:

- o [My Tax Account](#). The department's online filing and payment system.
 - You will need a username and password
 - See: [Using My Tax Account](#)
- o [Telefile](#). The department's telephone filing and payment system.
 - Call (608) 261-5340 or (414) 227-3895

3. What is the deadline for filing my Wisconsin return?

Returns filed via [My Tax Account](#) or [Telefile](#) and payments made by ACH Debit, must be received by 4:00 p.m. (CST) on the due date.

Returns must be filed by the last day of the month following the end of the reporting period, with one exception. Early monthly sales tax filers are required to file by the 20th of the month following the end of the reporting period. A return must be filed for each period, even if no tax is due for that period.

Example: An early monthly filer's February sales tax return is due March 20, rather than March 31.

Note: When the regular due date falls on a weekend or legal holiday, the due date is extended to the business day immediately following the weekend or legal holiday.

4. Are extensions available if I can't file my Wisconsin return by the due date?

You may request an extension of time to file:

- o Through [My Tax Account](#)
- o By writing:
MS 3-80
Wisconsin Department of Revenue
Registration Unit
PO Box 8902
Madison WI 53708-8902

- Or by faxing your request to the Registration Unit at (608) 264-6884 by the due date

The department may grant you an additional month from the original due date of the return to file the return. The department will notify you if the extension is granted. However, if the tax is not paid by the original due date, the tax will be subject to 1% interest per month during the extension period and 1.5% interest per month thereafter. The retailer's discount is allowed if the taxes are paid on or before the expiration of any extension period, if one has been granted.

5. **How do I amend my sales and use tax return?**

Amend your return online using [My Tax Account](#), the department's online filing system. The department will immediately acknowledge receipt of your amended returns filed electronically.

Additional information regarding filing amended returns can be found in [Publication 216, Filing Claims for Refund of Sales or Use Tax](#).

6. **How do I file a buyer's claim for refund for sales tax paid in error?**

A buyer may submit a claim for refund to the department if (1) the claim for refund totals \$50 or more of tax, (2) the seller has ceased operating business, (3) the buyer is under a field audit, or (4) period covered in the claim for refund are within the statute of limitation for the buyer, but are closed to the seller.

- **Buyer's** Claim for Refund -- for refund of tax paid to a seller
 - If you have filed a buyer's claim in the past -- Use [My Tax Account](#)
 - If you have not filed a buyer's claim in the past, file electronically -- Use [My Tax Account](#)
 - File a buyer's claim on paper -- Complete both [Form S-220](#) and [Form S-220A \(Schedule P\)](#).
- **Buyer's** Claim for Refund - for refund of tax paid to another state agency (ex. tax paid with vehicle registration).
 - See Part 4 of [Publication 216, Filing Claims for Refund of Sales or Use Tax](#).
- **Seller's** Claim for Refund - for refund of tax reported on your *Sales and Use Tax Return*
 - Amend *Sales and Use Tax Return* electronically using [My Tax Account](#)
 - If you have received a waiver from electronic filing - use [Form ST-12](#) (check amended form box). Provide an explanation of changes and supporting documents **OR**
 - A letter requesting a refund will be accepted. Provide an explanation of changes and supporting documents.
- The department will immediately acknowledge receipt of a refund claim filed electronically.
- The department will acknowledge receipt of a paper filed refund request normally within 6 weeks.

7. **What records should I keep for Wisconsin tax purposes, and how long should I keep them?**

You must keep adequate records of business transactions to enable you and the Department of Revenue to determine the correct tax due. This includes records of beginning and ending inventories, purchases, sales, canceled checks, receipts, invoices, bills of lading, and all other documents and books of account pertaining to your business.

If you make retail sales and at the same time are engaged in some other nontaxable business, occupation, or profession, you must keep records to show separately the transactions used in determining the sales and use tax due. If separate records are not kept, the tax may be imposed upon the total receipts from all of your business operations. Additional information regarding record keeping requirements is contained in [sec. Tax 11.92, Wis. Adm. Code](#) and [Part 9](#) of Publication 201, *Wisconsin Sales and Use Tax Information*.

If you claim that part or all of your retail sales of taxable products and taxable services are exempt from sales and use tax, you are required to keep a record of the:

- name and address of the person to whom the exempt sale was made
- the date of sale
- the article sold
- the amount of exemption, and
- the reason that the sale was exempt from tax

Sales and use tax law provides that all sales are taxable until the contrary is established. The seller has the burden of proving that a sale of taxable products or taxable services is exempt, unless the seller takes a fully completed exemption certificate which indicates that the property or service being purchased is for resale or otherwise exempt. Additional information regarding exemption certificates is contained in [sec. Tax 11.14, Wis. Adm. Code](#).

Records shall be preserved and retained for the 4-year period open to audit under [sec. 77.59\(3\), Wis. Stats.](#) If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer to the department and if the taxpayer files a petition for re-determination, the records for the periods covered by the notice of the tax determination shall be preserved and retained until the tax re-determination has been finally resolved.

8. **Should I notify the Wisconsin Department of Revenue if I close my business?**

Yes. When you (1) close your business, (2) no longer have a sales tax liability, or (3) need a new Wisconsin sales tax number as the result of a change in business entity, you must notify the department using one of the following methods:

- Complete the Request to Close Account in [My Tax Account](#)
- Email DORSalesandUse@wisconsin.gov
- Call (608) 266-2776

Be sure to provide the last date of sales, your account number, location(s) of your business, and federal employer identification number. Your account will be closed based on the information you provide.

Note: You must file a final sales tax return **within 30 days** of the account cease date.

9. **When is selling a Business or Business Assets subject to sales tax?**

The sale of business assets consisting of tangible personal property is subject to sales tax if you hold are required to hold a seller's permit at the time of sale, except that the sale is exempt if both of the following conditions are met:

- The sale is of personal property (other than inventory held for sale) previously used by the seller to conduct its trade or business at a location, and
- The sale occurs after the seller ceased operating the business at that location.

A sale meeting the above two conditions is exempt from sales and use taxes even though the seller holds a seller's permit for one or more *other* locations.

The sale of business or business assets which are subject to tax include:

- Selling surplus assets of a continuing business
- Sales of motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semi-trailers, all-terrain vehicles, or aircraft

Note: Tax does not apply to merchandise inventory sold to another retailer who purchases it for resale and sells it in the regular course of that retailer's business.

For additional information see [sec. Tax 11.34, Wis. Adm. Code](#)

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of April 6, 2020: Sections 73.03, 77.51, 77.52, 77.53, 77.54, 77.58, 77.59, 77.60, 77.61, 77.75 and 990.001 Wis. Stats., and secs. Tax 1.12, 11.01, 11.002, 11.14, 11.34, 11.88, 11.92, 11.93 and 11.95, Wis. Adm. Code.

Laws enacted and in effect after April 6, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to April 6, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

555-77

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Email additional questions to DORSalesandUse@wisconsin.gov

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