
United States

United States: Streamlined sales tax- amnesty, significant changes and planning opportunities

In 2009, Wisconsin became the 23rd state to enact legislation conforming to the Streamlined Sales and Use Tax Agreement (SSUTA). Wisconsin referred to this legislation as the Main Street Equity Act.

Effective October 1, 2009, this legislation made significant and widespread changes to Wisconsin's sales and use tax law. This article addresses the temporary amnesty Wisconsin is offering as an incentive for businesses to register to collect sales tax and other significant changes and planning opportunities.

I. Amnesty available only until September 30, 2010

Wisconsin is offering an amnesty program for businesses not currently registered to collect sales tax in Wisconsin (other limitations apply). Under this amnesty program, businesses must voluntarily register to collect and remit sales tax for at least three years in all twenty-three states that have adopted the SSUTA. The amnesty period began on July 1, 2009 and is available only through September 30, 2010.

A business that registers under the amnesty program faces an increased administrative burden, but obtains a significant benefit, as the business will not be liable for any Wisconsin sales tax on sales made prior to registration. The amnesty program provides an increased benefit over Wisconsin's Voluntary Disclosure Program, in which businesses must generally pay the tax and interest for the prior four-year period to obtain the benefit of restricting the businesses' liability for sales and use taxes and penalties.

Note that the amnesty program applies solely to sales tax and does not cover use tax. To limit both sales and use tax liabilities, businesses should consider registering to collect sales tax under the amnesty program and disclosing use tax liability under the Voluntary Disclosure Program (assuming certain qualifications are met).

II. Use caution in buy one, get one free sales promotions

Businesses should use caution when entering into promotions that offer consumers an item free of charge on the condition that the consumer makes a required purchase of another product. Under prior law, retailers were allowed to purchase the free item without tax for resale. However, retailers are now required to pay Wisconsin sales/use tax on the purchase of the free item.

This new legislation provides planning opportunities for retailers engaging in this type of promotion.

Retailers should consider alternative promotions, such as allocating a percentage of the purchase price to both items to ensure use of the resale exemption.

III Sales/Use tax exemption on in-home medical equipment

Sales/use tax exemption is provided for durable medical equipment for in-home use. This exemption applies to the purchase of medical equipment by an individual living in a nursing home or assisted living centre, but does not apply if the nursing home or assisted living centre itself purchases the equipment for use by its residents.

IV. Sales/Use tax exemption broadened on sales of food by hospitals (and other specified entities)

Sales of food and food ingredients by hospitals, sanatoriums, nursing homes, retirement homes and day care centres are now exempt from sales/use tax, regardless of whether the food is served on or off the premises.

V. Sales/Use tax imposed on numerous digital products

Sales/use tax is now imposed on the sale, lease, license, rental of and storage, use or consumption of specified digital goods. This is a broad and all encompassing tax that applies to numerous digital goods including music, movies, newsletters and books purchased electronically.

VI. Sales/Use tax applies to all pre-written computer software

In a significant change to sales and use tax outside of the SSUTA context, the Wisconsin legislature effectively reversed the Wisconsin Supreme Court's decision in the 2008 *Menasha* case by amending the statutes to impose sales/use tax on all pre-written computer software, regardless of how it is delivered to the purchaser. Under prior law, "custom computer programs" were not subject to Wisconsin sales/use tax.

There is an exception to this new law for modifications or enhancements to pre-written software that are designed to the specifications of a specific purchaser (if there is a reasonable, separately stated charge or invoice for such modification or enhancement). This provides a planning opportunity for businesses to allocate between the taxable cost of the pre-written computer software and the non-taxable modifications or enhancements to the software.

Margaret Derus, Kristina Somers, John Austin and Don Millis
Reinhart Boerner Van Deuren SC

mderus@reinhartlaw.com, ksomers@reinhartlaw.com
jaustin@reinhartlaw.com and dmillis@reinhartlaw.com