

Wisconsin Sales and Use Taxes for Chambers of Commerce

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Introductions



Craig Cooke, Partner, is part of Wipfli LLP's state and local tax group and is the leader of the firm's sales and use tax practice. He brings over 24 years of state and local tax experience to his clients. Former WDOR field auditor.



Daryl Ohland, Director, has over 24 years of experience assisting clients in state tax controversies, developing new planning strategies, and providing state and local technical tax services to Wipfli LLP's clients. Former WDOR field auditor.

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Objectives – Wisconsin Sales and Use Taxes

- Background on Sales and Use Tax Responsibilities
- “Occasional Sale” Exemption
- Alternative Approaches to Prior Exposure
- Detailed Transaction Impact (Revenue and Expenses)
- Sales and Use Tax Planning
- Options for Chambers – Not Filing and Filing Returns



Background on Sales and Use Tax Responsibilities



Sales and Use Tax Responsibilities

All parties making sales of taxable property or services are generally required to hold a seller's permit and collect sales tax from their customers on their sales.



Sales and Use Tax Responsibilities

This applies to

- For profit entities
- Governmental Units
- 501(c)(3) non-profit organizations
- Other 501(c) non-profit organizations



Sales and Use Tax Responsibilities

Sales of tangible personal property are deemed to be taxable unless an exemption certificate is received.

Sales of services are deemed exempt unless specifically enumerated in the statutes [Wisconsin Statutes § 77.52(2)].



Sales and Use Tax Responsibilities

All parties making purchases of taxable property or taxable services are subject to a use tax if no sales tax has been previously charged by the seller.

Exception: 501(c)(3) organization who have secured an ES (Exempt status) number from the Wisconsin Department of Revenue.



Sales and Use Tax Responsibilities

Examples of taxable sales – WDR Fact Sheet

- T-shirts Bumper stickers & buttons
- Printed Materials (e.g. membership directories)
- Equipment rental Prepared food and beverages
- Parking for motor vehicles and boat docking or storage
- Services to tangible personal property (example: car wash)
- Admissions to amusement, athletic, recreational, and entertainment events, facilities, or devices (examples: golf outing, participation fee for races or walks, concerts, cover charges, contests and tournaments)



“Occasional Sales” Exemption



Occasional Sale Exemption – Statute

(7m) Occasional sales of tangible personal property, or items or property under s. [77.52 \(1\) \(b\)](#) or [\(c\)](#), or services, including admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving entertainment for which payment in the aggregate exceeds \$500 for performing or as reimbursement of expenses unless access to the event may be obtained without payment of a direct or indirect admission fee; conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business and is required to have a seller's permit if its sales of tangible personal property, and items, property, and goods under s. [77.52 \(1\) \(b\)](#), [\(c\)](#), and [\(d\)](#), and services, not including sales of tickets to events, and its events occur on more than 20 days during the year, unless its receipts do not exceed \$25,000 during the year. The exemption under this subsection does not apply to the sales price from the sale of bingo supplies to players or to the sale, rental or use of regular bingo cards, extra regular cards and special bingo cards.



Occasional Sale Exemption – Standards

Three Standards:

1. The organization is not engaged in a “trade or business”
2. Entertainment is not involved at an event for which charges by the organization constitute admissions
3. The organization does not have and is not required to have a seller’s permit



Occasional Sale Exemption – Standard 1

The organization is not engaged in a “trade or business”

Two standards:

- A 20 day standard
- A \$25,000 receipts standard

BOTH of the standards must be exceeded before a nonprofit organization is considered to be engaged in a trade or business.



Occasional Sale Exemption – Standard 1

20 Day standard

For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

Receipts standard

Receipts means the sales price from all sales ***in*** Wisconsin of otherwise taxable products (***after allowable exemptions***).



Occasional Sale Exemption – Standard 1

20 Day standard

Examples:

- Chamber takes orders for Christmas wreaths from October 1 through November 1. The wreaths are delivered by the Chamber on December 15 and 16. For purposes of determining whether its events meet the 20-day test, Chamber should use the days of delivery, rather than days orders are taken.
- Chamber holds concert on July 3. Tickets are sold from May 3rd to July 3rd. Only the actual day of the concert is counted not the days of ticket sales



Occasional Sale Exemption – Standard 1

If the nonprofit organization did not anticipate that it would exceed both the \$25,000 standard and the 20-day standard, but both standards were exceeded, only the sales occurring after the standard were exceeded are subject to sales tax.



Occasional Sale Exemption – Standard 2

Entertainment is not involved at an event for which charges constitute admissions.

Entertainment provided at “admission” event by all persons or groups who are paid in aggregate more than \$500 per event



Occasional Sale Exemption – Standard 2

A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of entertainment, may do the following:

- Obtain a seller’s permit from the Department of Revenue for the day or days of the event involving entertainment
- Pay the sales tax on sales of tangible personal property and taxable services on these days
- Request inactivation of the seller’s permit after the event by contacting the Department of Revenue



Occasional Sale Exemption – Standard 2

Examples:

- An admission event is held where a Chamber pays three different bands \$200 each to perform. Since the aggregate amount paid exceeds \$500, the event is considered an entertainment event.
- An annual awards banquet is held for which an admission is charged. A Chamber member sponsors a group to entertain before and between the various activities. If the amount paid by the sponsor exceeds \$500, the event is considered an entertainment event.



Occasional Sale Exemption – Standard 3

The organization does not have and is not required to have a seller's permit.

A nonprofit organization is not required to hold a seller's permit if its sales are exempt from sales and use tax (that is, it meets Standards 1 and 2).

However, if a nonprofit holds a seller's permit, the exemption for occasional sales does not apply.



Alternative Approaches to Prior Exposure



Alternative Approaches – Background

The Wisconsin Department of Revenue has indicated that they will not pursue sales and use tax from Chambers of Commerce for periods beyond the standard four year statute of limitations.

Generally the Department will also not impose negligence penalties.

The statute of limitations for sales and use tax is the 15th day of the fourth month after the end of the fiscal / calendar year end.

Examples:

Year End	12/31/2009	Statute expires	4/15/2014
	6/30/2010		10/15/2014



Alternative Approaches – Background

Prospective compliance

- + Eliminates future exposure.
- + Tax may be able to be passed on to customer
- If non-filer, may create audit for prior years if current tax liability significant



Alternative Approaches – Background

Retroactive compliance

- + Eliminates past exposure.
- Tax paid from Chamber funds.
- With limited lookback, prior years may close before Wisconsin Department of Revenue initiates a field audit



Alternative Approaches – Background

Voluntary Disclosure

- + Eliminates past exposure.
- + Anonymous until agreement approved by Department
- + Penalty relief
- Tax paid from Chamber funds



QUESTIONS



Detailed Transaction Impact Analysis: Revenue



Taxable Event – Prepared Food

- WDR Examples
 - “Taste of Town” and “wine & cheese tasting”
- Receipts
 - Sale of prepared food is considered a taxable sale
 - All receipts subject to tax
 - Must disclose if sales tax is included in fixed amount
 - “price includes sales tax”
 - Sales Price 4.76 State Tax 0.24 = \$5.00 charge
 - Otherwise, sales tax of \$0.25 due on \$5.00 charge



Taxable Event – Prepared Food

Purchases

- Purchase of food is exempt so provide an exemption certificate to vendor for taxable food items
- If no certificate is given, then “other deduction” can be taken as an offset for the purchase price on which sales tax was paid. Example:
 - \$2,000 sales of food.
 - Sales tax included disclosure provided
 - Purchased food for \$1,000 plus \$50 in state tax
 - Report gross receipts of \$1,904.76
 - Claim other deduction of \$1,000
 - Net Taxable sales of \$904.76



Taxable Event – Admission to Fun Run

- WDR Examples
 - 5K run
- Receipts
 - Sale of admission to athletic event is considered a taxable sale
 - All receipts subject to tax
 - Must disclose if sales tax is included in fixed amount
 - “price includes sales tax”
 - Sales Price 47.62 State Tax 2.38 = \$50.00 charge
 - Otherwise, sales tax of \$2.50 due on \$50.00 charge



Taxable Event – Admission to Fun Run

- Purchases
 - Purchase of t-shirts are taxable because they are considered incidental to sale of admissions
 - If there is an optional separate charge if a participants want a t-shirt, then the purchase of the t-shirt could be purchased for resale



Taxable Event – Golf Outing

- WDR Examples
 - Golf outing and dinner
- Receipts
 - Sale of admission to athletic event is considered a taxable sale
 - All receipts subject to tax
 - Must disclose if sales tax is included in fixed amount
 - “price includes sales tax”
 - Sales Price 95.24 State Tax 4.76 = \$100.00 charge
 - Otherwise, sales tax of \$5.00 due on \$100.00 charge



Taxable Event – Golf Outing

- Purchases
 - Purchase of green fees from golf course are exempt as purchase for resale.
 - Purchase of meals exempt as purchase for resale
 - Purchase of giveaway items like golf balls, tees and towels would remain taxable.
 - If these items are donated by a sponsor, then there is no tax effect to the Chamber.
 - If the donation of the golf balls is traded for a sponsorship valued at \$750, then the transaction is deemed a barter transaction and tax is due on the \$750.



Taxable Event – Silent Auction

- WDR Examples
 - Silent Auction – gift certificate for specific value
 - Silent Auction – gift certificate for specific item
 - Silent Auction – taxable product (whether purchased or donated)
- Receipts
 - Sale of gift certificate for specific value is exempt as the sale of an intangible
 - Sale of gift certificate for specific item is based upon the taxability of the item
 - cheese / sausage platter - exempt food items
 - Packer ticket – taxable admission



Taxable Event – Silent Auction

- Purchases
 - Purchase of gift certificates or property are exempt as purchase for resale.
 - Donation of gift certificate or property is exempt since no consideration



Exempt Event Sponsorship

- WDR Examples
 - Golf Hole sponsorship
- Receipts
 - Exempt sale
- Purchases
 - Purchase of printed signage by Chamber is taxable



Exempt Business Event

- WDR Examples
 - Business Seminar
- Receipts
 - Exempt sale of service
- Purchases
 - Purchase of printed materials by Chamber is taxable



Exempt Business Event

- WDR Examples
 - Business event w/ dinner and speaker
 - Business event w/ dinner and presentations
- Receipts
 - Exempt unless value of dinner exceeds 50% of the admission charge
- Purchases
 - Purchase of dinner by Chamber is taxable



Taxable Business Event

- WDR Examples
 - Business event w/ dinner and speaker
 - Business event w/ dinner and presentations
 - Entertainment event
- Receipts
 - Taxable if value of dinner exceeds 50% of the admission charge (presumption)
- Purchases
 - Purchase of dinner by Chamber is exempt



Taxable Business Event

Example Wording

“Kick off Breakfast, XXX Area Chamber of Commerce & Tourism Center Share:

Name: Kick Off Breakfast, XX Chamber of Commerce Awards / Annual Meeting

Date/Time Information:

7:30 registration & Networking, 7:50 Welcome & Breakfast Buffet, 8:10 Guest Speaker, 8:40 Awards & Presentation of Board of Directors 9:00 Adjourn

Fees/Admission: \$15 per person



Business Event vs Social Event

- WDR Examples
 - Business after hours – Social
 - Business after hours – Member presentation
- Receipts
 - Taxable if deemed social or entertainment event
 - How do you determine ???
 - Word choice in newsletter or email blast critical
 - List any planned activities
 - Host tour and presentation
 - Use of host facilities and equipment (amusement facility)



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Business Event vs Social Event

Example wording

“One of the many things we hear is that after hours networking events are difficult due to family obligations. Well we listened. This family focused event will give you an opportunity to network with chamber members and *still have an evening of fun with your family.*”

Cost is \$5/Person (*Pre-registration is available, but not required*)

Includes: *2 hour play card, unlimited attractions and video games, even the new Laser Maze. Come hungry! Pizza and appetizers are included!* ”



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Entertainment Event vs Social Event

- WDR Examples
 - Paid admission to musical performance
- Receipts
 - Taxable
- Purchases
 - Payment to band / entertainer is exempt from sales tax
 - Potential non-resident withholding on payments exceeding \$3200



Trade Show

- WDR Examples
 - Booth rental
 - Booth rental with electricity
 - Booth rental – separately stated charges
- Receipts
 - Generally exempt
 - Taxable for charges for personal property rentals or electrical hookup
- Purchases
 - If property rented by Chamber and provided at no cost, then Chamber owes use tax
 - If property rented and Chamber separately charges, the Chamber purchases for resale



Business Surveys

- WDR Examples
 - Participant charge
 - Non-participant charge
- Receipts
 - Both considered taxable regardless of whether in hardcopy or digital format
- Purchases
 - Printed surveys can be considered purchase for resale



Membership Dues

- Receipts
 - Generally considered exempt
 - If different levels and taxable property of admissions received for higher level membership, incremental cost may be deemed taxable
- Documentation
 - How are memberships solicited on website or printed materials
 - Be careful with wording and listing of enumerated benefits



Detailed Transaction Impact Analysis: Expenses



Advertising Costs

- Website design and website hosting services are exempt
- Email blast service is taxable
- Design costs (brochures, logos, newsletters, etc.) is taxable
 - regardless of whether received on disc or electronically



Advertising Costs

- Printed materials
 - Distributed to a Wisconsin location are taxable
 - Distributed to a location outside are not taxable
 - May be taxable in other state
 - Likely no nexus (requirement for chamber to file returns) in other state
 - Vendor may be registered
- Advertising and Promotional Direct Mail
 - Exempt if qualified regardless of where sent
 - Charges for printing and distribution from same party



Advertising Costs

- Printed materials – catalog
 - “Catalog” means a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified.
 - Exempt regardless of whether distributed inside of outside Wisconsin



Advertising Costs

- Promotional items
 - Novelty items like pens, pencils, stress balls
 - Apparel
 - Golf balls / mouse pads
 - Taxable if received in Wisconsin and not directly sold



Office Supplies

- Purchases of paper supplies or office supplies
 - Watch for online purchases / credit card purchases
- Canned software



Leased Property

- Same taxability as owned property
- Property tax reimbursement to lessor is subject to sales tax if the item is taxable
- If property is self-reported on Chamber's property tax filing, then no sales tax due on property tax amount



Sales and Use Tax Planning



Being Proactive – Sales Tax

- Understanding the types of events your Chamber holds in a year (at the beginning of the year)
- Where do you charge and collect sales tax?
- An event with multiple parties/organizations – determine who is the retailer.
- Do you need a sales tax permit for the entire year?
- Determine if sales tax included or added to the selling price?
- If sales tax is included, how will you disclose this to buyer?



Being Proactive – Sales Tax

- Maintaining business records to support transactions
 - Statute of limitations is 4 years when filing returns
- How you describe an event may impact sales tax treatment



Being Proactive – Sales Tax

- What can be purchased exempt for resale?
 - Items physically transferred in connect with taxable sale
 - Beer for event Food for taxable event
- What cannot be purchased exempt for resale
 - Shirts given away in connection with event
 - Raffle prizes (if purchased not donated)
 - Food purchased for event not considered taxable admission
- Be careful when issuing certificates to vendors who sell both exempt and taxable items
 - Either use single purchase exemption,
 - Or you must self assess on taxable purchases
 - Consider setting up two separate accounts (one for taxable purchases and other for exempt)



Being Proactive – Use Tax

- What is use tax and when does it apply?
 - Purchase of tangible personal property
 - Purchase of taxable services
- Performing a self-review of payable transactions
- Maintaining records to determine liability
- Putting procedures in place to review payable invoices from both WI and non-WI vendors
 - Situations might happen where WI seller automatically believes a Chamber is exempt from tax
- Issuing exemption certificates
- Filing consumer use tax returns



Importance of Sales and Use Tax

- Purchases by a Chamber are subject to sales and use tax but a Chamber Foundation may be exempt if a Certificate of Exempt Status is secured.
- A Certificate of Exempt status number from the WDOR allows purchasers to buy products and services exempt from Wisconsin sales and use tax.
- Both organizations have potential sales tax collection responsibilities on receipts.



Importance of Sales and Use Tax

- Handling of purchase transactions for a Chamber versus a Chamber Foundation. There is a difference!
 - Chamber is a 501(c)(6) (association/business)
 - Activities are directed at the improvement of business conditions in one or more lines of business.
 - Foundation is a 501(c)(3) (charitable organization)
 - Activities are directed toward the fulfillment of one or more charitable organizations.
- A not-for-profit organization that receives status as a 501(c)(3) from the IRS can apply and receive a Certificate of Exempt Status number from the WDOR.



Importance of Sales and Use Tax

- If not properly managed, it can result in assessment of additional tax, interest, and potential negligence penalties:
 - Assessment Interest = 12% per annum
 - Delinquent Interest = 18% per annum
 - Negligence Penalty = 25% of tax due
- Mishandling of revenues for sales tax purposes can significantly impact a Chamber's budget. Manage the process and the impact on your budget.



Options for Chamber if Not Currently Filing Sales and Use Tax Returns



Options

- Review records and transactions to determine potential tax exposure
- Consider options:
 - Do nothing
 - File and register prospectively (past years would remain open; new registration might trigger an audit??)
 - Voluntary disclosure
- Voluntary Disclosure
 - A VDA is a program available to entities who are not registered and filing sales or use tax returns with the WDOR, and which have not been contacted by WI regarding a past due liability.
 - Reduced interest from 18% to 12%
 - No negligence penalties
 - Use of a third party to initiate the process



Options for Chamber if Currently Filing Sales and Use Tax Returns



Options

- Determine if activities fall under the occasional sales standards.
- If you do not exceed the day and sales standards, you can deactivate your permit.
- If you have an event that does not qualify for the exemption, you can secure a temporary permit solely for that event.
- If you are registered and determine that you did not report the proper taxable receipts on past returns, you should consider filing amended returns.



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Temporary Permit Option: BTR-101

“Nonprofit Organizations at a Temporary Event Fill in the month and day your taxable temporary event starts if:

- You are a nonprofit organization applying for a seller’s permit at a temporary event with entertainment, **and**
- Your sales otherwise qualify for the occasional sales exemption, except for the involvement of entertainment

Entertainment means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than \$500 per event by all persons for performing, for reimbursement of expenses or for prize money.

We will issue you a seller’s permit effective on your event’s start date and will deactivate the permit on the end date of your event. This allows you to claim the occasional sales exemption on your other sales throughout the year.

You must contact us for each event with entertainment where you will make taxable sales. We will reactivate your seller’s permit for the dates of the event.



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In Conclusion...



Summary Discussion Points

- Registration and filing sales and use tax returns
- System in place to calculate and remit tax
- Determining taxable versus non-taxable sales
- Determining if there are ways to inactivate permit based on type of events held during the year



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Questions



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