

SALES & USE TAX ALERT

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HAPPY INDEPENDENCE DAY!

SUTA publishes 22 times per year, with breaks on Jan. 1 and July 1. Enjoy your Independence Day Holiday!

COMING SOON

- New York fraud suit against Internet smokes hawkers fails



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■ NEW RULE NIXED

Texas court stops state from making school fundraising firms collect, remit

The Texas Court of Appeals has affirmed a district court's order granting a brochure-fundraising firm's request for injunctive relief to prevent the Texas Comptroller from implementing a new rule that would require the firm to collect and remit sales tax on products sold through school fundraising activities. In letters dated March 18, 2008, and April 14, 2008, the comptroller announced that henceforth, brochure-fundraising firms would always be regarded as sellers liable for collecting and remitting sales tax, and the schools and other entities would be regarded as the sellers' agents, without regard to individual factors considered under the comptroller's previous guidelines.

In *Combs v. Entertainment Publications Inc.*, Dkt. No. 03-08-00474-CV, the Court of Appeals, Third District, on June 12, 2009, disagreed and held that the statements in the 2008 letters constituted a new rule because they were "generally applicable" statements implementing, interpreting, or prescribing law or policy. Thus, the district court had subject matter jurisdiction to hear the firm's claims. It was undisputed that the comptroller did not comply with the procedural requirements of the Administrative Procedures Act for promulgating agency rules before issuing the March and April 2008 letters. Accordingly, the rule announced by those letters was invalid.

New rule, subject matter jurisdiction

The comptroller contended that the statements in the March and April 2008 letters did not constitute a "rule" that could be challenged under the APA and that the statements were merely advisory opinions and nonbinding instructions on how to enforce the sales tax statutes.

The firm considered its initial sales of fundraising items to school groups as separate from the ultimate sales of the items by the school groups to the end consumers. The firm took the position that its initial sales qualified for exemption, *e.g.*, as sales for resale, and that the school groups were the actual sellers responsible for collecting and remitting any sales tax due on the items.

Temporary injunction

Finally, the Court of Appeals affirmed the district court's temporary injunction enjoining the comptroller from implementing the new rule unless and until the new rule was enacted in compliance with APA procedures.

The firm established that it would likely suffer imminent and irreparable injury if the injunction was not granted and this threat substantially outweighed the harm, if any, that the comptroller would suffer as a result of having to reassess its administrative rule and adopt a rule that complied with the APA. ♦

■ STATES ATTEMPT TO BOOST REVENUES

U.S. judiciary panel eyes halt on cell tax hikes

As a growing number of U.S. households make the switch from landlines to mobile phones, congressional lawmakers are looking at ways to stop state and local governments from using the switch to boost their tax revenues.

At a hearing of the U.S. House Judiciary Subcommittee on Commercial and Administrative Law on June 9, 2009, lawmakers heard support from industry experts for the Cell Tax Fairness Act of 2009 (HR1521). Introduced by Rep. Zoe Lofgren, D-Calif., the bipartisan measure has already drawn 112 cosponsors. Similar legislation was introduced in the U.S. Senate on June 4, 2009.

The bill seeks to stop states from increasing cell phone tax rates above general business tax rates. State and local governments are able to raise cell phone tax rates, the bill's sponsors say, simply because cell phone users are less likely to understand or complain about taxes and other fees that are "hidden" in their monthly bills.

A panel of state experts appearing before the subcommittee made generally favorable remarks about the legislation, but was hard pressed to give examples of other areas that state governments could tax in order to make up revenue foregone as the result of a moratorium on increases in cell phone taxation. However, the experts maintained that cell phone taxes, as they are currently imposed, regressively affect those earning between \$20,000 and \$40,000, who use their phones for Internet access rather than cable or digital subscriber line services.

Wireless services are a necessity and should not be taxed at 18%, like alcohol and tobacco, said Indiana State Rep. Mara Candelaria Reardon.

Counterpoint

Rep. Melvin Watt, D-N.C., said he did not believe that cell phones are being unfairly taxed. He questioned whether the taxation of mobile phones is any different from the taxation of landlines. Simply having different rates between telecommunications services and other general services is not evidence of discriminatory taxation, he said.

Another argument raised by Don Stapley, who sits on the Maricopa County (Arizona) Board of Supervisors, was that HR1521 is an example of inappropriate federal preemption of state law. States and localities should be free to adjust their revenues without interference from Congress, he told lawmakers. ♦

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■ INVOICE ONLY FOR REMAINING LIABILITY

Minnesota upholsterer's 'estimate' adequately states charges separately

A drapery and furniture reupholstering business was not liable for Minnesota sales tax on separately stated charges for reupholstering and other repair labor, installation before 2002, trips to install before 2002, or sales for resale for which it timely provided exemption certificates. The business was liable for sales tax on measuring charges, trips to measure charges, a sale for resale for which it did not timely provide an exemption certificate, and bad debts not proven to be wholly worthless. The business was also liable for interest that accrued during the time its appeal was being decided by the Minnesota Commissioner of Revenue.

Time of sale

The main question in the Minnesota Tax Court case *Artistic Drapery Services Inc. v. Commissioner of Revenue*, Dkt. No. 7954 R, June 3, 2009, was whether the business' "estimate and measure sheet," which separately stated all charges for a project, satisfied the requirement that nontaxable goods and services must be separately stated at the time of sale.

When the business was hired for a project, it provided the customer with a written estimate and measure sheet. The estimate and measure sheet was provided after preliminary work on the project, such as initial consultation and measuring, had taken place. When the sheet was given to the customer, the customer gave consideration in the form of a promise to pay the business when the work was completed.

If there were any changes to a project, a new estimate and measure sheet was prepared.

When a project was completed, the business sent the customer an invoice stating the total amount due. The amount due on the invoice exactly matched the amount due on the estimate and measure sheet. The invoice did not separately state the charges.

The Minnesota Tax Court found that the term "estimate" did not accurately describe the function of the business' estimate and measure sheet. The estimate and measure sheet accurately stated the total amount due upon completion of the project and broke down the entire bill into separate charges without approximating the cost.

Furthermore, the invoice was a notice that the project was completed and a request for any payment that had not already been made, but the customer's receipt of the invoice did not necessarily coincide with the timing of any payment due date. Thus, the tax court found that the sale to the purchaser occurred when the customer received the estimate and measure sheet, and the business thus satisfied the requirement of separately stating nontaxable charges at the time of sale.

Service charges

Since the estimate and measure sheet satisfied the requirement that nontaxable charges must be separately stated at the time of sale, charges for reupholstering and other repair labor, installation before 2002, and trips to install before 2002 were exempt if the charges for these services were separately stated on the sheet. The trips to install before 2002 qualified for exemption as installation charges, which were exempt before 2002.

Measuring charges were taxable, even if they were separately stated. Measuring was necessary to complete the sale and, thus, the charges were taxable as services that were part of a sale. Moreover, measuring was categorized as part of the fabrication process, rather than the installation process. Charges for trips to measure were also taxable because the trips occurred before the sale and were necessary to complete the sale.

Resale exemption

The business was entitled to the resale exemption for sales for which it timely provided exemption certificates. The business obtained and provided nine out of 10 exemption certificates within 120 days after an assistant attorney general sent a letter to the business requesting the exemption certificates, and these certificates were timely. One exemption certificate was provided more than 120 days after the assistant attorney general sent the letter, and this certificate was not timely.

Bad debt deduction

While taxpayers may claim a sales and use tax deduction for bad debts, such debts must be wholly worthless before they can be claimed as a deduction. In this case, the business failed to show that it made any efforts to collect the debts, collection efforts were futile, or the debts would not be paid in the future. Thus, the business failed to prove that the debts were wholly worthless and it was not entitled to a bad debt deduction.

Interest

The business was liable for interest that accrued for almost three years while its appeal was being decided by the commissioner. The interest could not be abated because the business retained the benefit of the money that would have been collected, and the business did not have reasonable cause to believe that no tax was due. ♦

Iowa explains changes to room rental tax

A June 11, 2009, notice from the Iowa Dept. of Revenue details changes in the Iowa excise tax and local hotel and motel tax on room rentals.

Schools, governments

Effective July 1, 2009, contracts made directly with Iowa state and local governmental entities and schools are subject to both the 5% state excise tax and local hotel and motel taxes. From July 1, 2008, through June 30, 2009, such contracts are exempt from both the 5% state excise and local hotel and motel taxes.

Prior to July 1, 2008, such contracts were exempt from the 5% state excise tax, previously sales tax, on room rental, but were not exempt from the local hotel and motel taxes.

Federal government contracts

Contracts made directly with the federal government are exempt from both the state 5% excise tax and the local hotel and motel tax throughout the same time periods.

Exemptions

The following are exempt from state excise and local hotel and motel taxes during all periods:

- room rental contracts for periods of more than 31 consecutive days (to qualify for this exemption, the renter must contract to rent for a single period of more than 31 days and cannot accumulate these days);
- renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in Iowa; and
- renting of a room to the guest of a religious institution located on real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

Banquet rooms

All conference and banquet room rental is exempt from the following Iowa taxes:

- the state 5% excise tax on room rental;
- any local hotel and motel tax that can be imposed at a rate up to 7%; and
- the state 6% sales tax and any local option sales tax (LOST).

These exemptions apply to conference and banquet room rental in hotels and motels, free-standing conference centers, and restaurant banquet rooms.

Other items or services included or associated with the banquet or conference room rental may be subject to the state 6% sales tax plus any applicable LOST.

Examples of taxable items or services that may be included or associated with room rental include prepared foods, alcohol, soft drinks, candy, security services, and the rental of furnishings or equipment.

If the facility bills a lump sum for the room rental and taxable items or services, the state 6% sales tax plus any LOST applies to the entire bill. If taxable items and services are separately stated from the room rental on the invoice, the state 6% sales tax plus any LOST applies only to the sales price of the taxable items and services. ♦

■ CLEAN TECH, MEDICAL DEVICE FIRMS

Colorado creates refunds for certain technology companies

Certain clean technology and medical device firms are eligible to receive refunds on Colorado sales and use taxes paid on the purchase of equipment used in research and development.

Under HB1035 of 2009, effective Aug. 5, 2009, the firms must be headquartered in Colorado and have no more than 50 employees.

Additionally, each taxpayer may not receive more than a \$50,000 refund in any calendar year. Sales tax refunds are effective for sales tax paid on or after Jan. 1, 2009, through June 30, 2014.

Clean technology firms include those engaged in the research and development of renewable energy and/or products that mitigate the impact of humans on the environment. Medical device firms include those engaged in the research and development of a therapeutic

or diagnostic tool used to improve human or animal health. Equipment upon which a refund could be collected includes capital equipment, instruments, apparatus, and supplies used in laboratories, including, but not limited to, microscopes, machines, glassware, chemical reagents, computers, computer software, and technical books and manuals.

Beginning in 2009, if a December Legislative Council Staff revenue forecast indicates insufficient revenue to allow general fund appropriations to increase by 6% during that fiscal year, the refund will not be available for purchases made in that calendar year during which the December forecast is released. However, taxpayers may carry refunds forward and claim them during the first year in which revenue is sufficient to allow the general fund appropriations to increase by 6%. The Dept. of Revenue will post on its Web site, by Jan. 1 of each year, whether the refund will be allowed for a given calendar year.

Refund claim applications must be submitted to the DOR on a form prescribed by the DOR. The claim must be submitted no earlier than Jan. 1 and no later than April 1 following the calendar year for which the refund is claimed. ♦

■ CERTAIN COUNTIES

West Virginia flood exemption extended

West Virginia Gov. Joe Manchin III has announced that the suspension of the collection of state sales and use taxes implemented due to the state of emergency declared in the wake of the May 2009 flooding will be extended through July 10, 2009, unless extended or rescinded.

Previously, the tax suspension was scheduled to end June 10, 2009.

The extended state of emergency and tax suspension only apply to the counties of Calhoun, McDowell, Mercer, Mingo, Raleigh, and Wyoming.

Boone County and Logan County are no longer included in the state of emergency or tax suspension.

A completed Flood Exemption Certificate is required to purchase items exempt from tax, and the tax suspension applies with regard to purchases of mobile homes, construction materials, and supplies necessary for repair and cleaning, according to a June 12, 2009, press release from the Governor's Office.

■ TAXING MORE SERVICES

Maine hikes rate, expands base

Maine Gov. John E. Baldacci has signed tax legislation which both raises the state sales tax rate and broadens the sales tax base.

Effective Jan. 1, 2010, LD1495 (HP1051) of 2009 increases the state sales tax rate for certain sales transactions from 7% to 8.5%.

Transactions subject to the new rate include:

- the sale of liquor in licensed establishments;
- the rental of living quarters in any hotel, rooming house, or tourist or trailer camp; and
- the sale of prepared food.

Additionally, "candy" is newly included in the definition of taxable "prepared food."

The sales tax rate imposed on short-term vehicle rentals increases from 10% to 12.5%, effective Oct. 1, 2009.

Additionally, sales tax at a rate of 7% will be imposed on the value of rental of living quarters in a trailer camp, effective Jan. 1, 2010.

Taxable services expanded

The legislation also broadens the sales tax base by including as taxable services, effective Jan. 1, 2010:

- amusement, entertainment, and recreation services;
- installation, repair, and maintenance services;
- transportation and courier services; and
- personal property services.

Additionally, tax will apply to leases and rentals of tangible personal property with respect to leases that are entered into, extended, or renewed on or after April 1, 2010.

The legislation also contains provisions concerning the accelerated payment of sales taxes on leases and rentals. ♦

■ SERVICE PROVIDER TAX AMENDED, ALSO

Maine creates exemption for nonprofit clinics

Maine legislation creates a service provider tax exemption for certain nonprofit medical clinics, amends sales and use tax exemptions related to interstate transactions involving vehicles and watercraft, and imposes liability for unpaid service provider taxes for certain purchases made for resale.

(Continued on page 8)

STATE UPDATES

ALL STATES

Moratorium on mobile taxes?

States and localities would be prohibited for five years from imposing "a new discriminatory tax" on mobile service, mobile service providers, or mobile service property under legislation introduced in the U.S. Senate on June 4, 2009. The Mobile Wireless Tax Fairness Act of 2009 (S1192) was introduced by Sens. Ron Wyden, D-Ore., and Olympia Snowe, R-Maine, and several co-sponsors. The bill, which has been referred to the Finance Committee, is essentially identical to legislation introduced earlier this year in the U.S. House of Representatives and in the previous Congress. A new discriminatory tax would be one that is not imposed, or is imposed at a lower rate, on services or transactions, businesses, or commercial or industrial property that do not involve mobile services, and was not generally imposed and actually enforced prior to the enactment of this legislation. (S1192)

CALIFORNIA

Partial exemptions of higher rate

Several state regulations are amended to specify that the partial sales and use tax exemptions described or explained in the regulations extend to the recent 1% increase in the General Fund portion of the state sales and use tax that became applicable April 1, 2009. Statutory partial exemptions provide that although sales and purchases of specified property under certain conditions are exempt from the state portion of the sales and use tax, the exemptions do not extend to any tax levied by a county, city, or district pursuant to or in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law. The partial exemptions from the state portion of the sales and use tax extend to all portions of the state sales and use tax, including the new 1% portion. The regulations are in regard to teleproduction or other postproduction service equipment, farm equipment and machinery, diesel fuel used in farming activities or food processing, timber harvesting equipment and machinery, and racehorse breeding stock. (Regs. 1532, 1533.1, 1533.2, 1534, and 1535, State Board of Equalization, effective June 4, 2009)

COLORADO

Waiters' free meals exempt

Free or reduced-price meals provided to employees of restaurants are exempt from

sales and use taxes. The requirement that the meals be considered part of the employees wages in order to be exempt from sales and use taxes has been eliminated. The bill contains conflicting provisions regarding the exemption requirements. Section 1 of the bill eliminates the wage requirement, and retains the free or reduced-price requirement. Section 2 of the bill eliminates both the wage and free or reduced-price requirements. The Legislative Council has confirmed that the bill contains a legislative drafting error, and that it will be corrected in the 2010 legislative session. The council has stated that the Legislature's intent was to eliminate the wage requirement, but to keep the requirement that the meals must be offered free or at a reduced rate. The council has also contacted the Dept. of Revenue and the DOR has stated that it will honor Section 1 of the bill, and disregard Section 2 until the Legislature corrects the error next session. (SB121 of 2009, effective August 4, 2009; CCH phone conversation with Ron Kirk of the Legislative Council, June 8, 2009)

FLORIDA

Collection fee coming

The Dept. of Revenue will start collecting a 10% administrative collection processing fee on any outstanding debt older than 90 days on Sep. 1, 2009. The fee is equal to 10% of the total amount of tax, penalty, and interest owed, or \$10 for each collection event, whichever is greater. The fee will apply to various taxes and fees including sales and use taxes and motor fuel taxes. The fee was recently imposed by the Florida Legislature. (Tax Information Publication No. 09ADM-02, DOR, June 11, 2009)

KENTUCKY

Development incentives proposed

Gov. Steve Beshear has followed his proposal for special session legislation on horse tracker video lottery terminals that would raise revenue for certain tax relief by proposing a comprehensive package of income tax and sales and use tax incentives to encourage economic development in the state. Most of the governor's proposals were approved by the House of Representatives and the Senate during the 2009 regular legislative session, but failed to move forward for final passage due to timing constraints. In addition to the economic development tax incentives, the governor proposes to exempt qualifying horse events from pari-mutuel tax to improve the state's chances of hosting future Breeders' Cup World

Championships and other major meets. Provisions in the governor's proposed legislation related to sales and use tax incentives include (1) a new sales and use tax reimbursement under the Kentucky Enterprise Initiative Act for expenditures on research and development, construction materials, or electronic processing equipment by companies primarily engaged in manufacturing, service or technology, or tourism that invest at least \$500,000 in an economic development project and, if seeking reimbursement for taxes paid on electronic processing equipment, spend at least \$50,000 on electronic processing equipment; and (2) a sales tax reimbursement for software and technology companies that invest at least \$100 million on a computer and/or communications system installed at a single Kentucky location. In addition, the proposed legislation would impact Signature tax increment financing projects (for which sales and use tax refunds are available on construction costs) by decreasing the minimum capital investment for such projects from \$200 million to \$150 million. (Press release, Governor's Office, June 10, 2009)

MAINE

AG reviews DOR changes

A resolve requires that before the Dept. of Administrative and Financial Services, Bureau of Revenue Services, implements a significant change in policy, practice, or interpretation of state sales and use tax laws that would result in additional revenue, it must consult with the Attorney General's Office before implementing the change in order to ascertain whether the change represents a shift in policy that should be reviewed by a legislative oversight committee. The Attorney General's Office must periodically provide information to the joint standing committee of the Legislature that has jurisdiction over taxation issues related to the consultation process, provide a brief summary of the issues for which consultation was sought, and provide the results of the consultation. The resolve will remain in effect for five years following its effective date. (LD1120 [HP775] of 2009, effective 90 days from adjournment)

Self-produced biodiesel exempt

Gov. John Baldacci has signed legislation that exempts biodiesel fuel produced and used by the same individual or a member of that individual's immediate family from the special fuels tax. The exemption applies to sales made on or after Oct. 1, 2009. (LD1352 [SP487] of 2009, effective 90 days after adjournment)

STATE UPDATES

NEW JERSEY

Grocery tax refund exclusive remedy

Taxpayers' claims of fraud against supermarkets for charging sales tax on the full, regular price of items that were purchased at a discount with store coupons was properly dismissed because, once the money collected by the supermarkets was remitted to the state, the sole remedy available to the taxpayers was a refund claim made to the Div. of Taxation. (*Kawa v. Wakefern Food Corp. party, Superior Court, Appellate Division, Dkt. No. A-4367-07T1, June 8, 2009*)

OHIO

Electronic filing requirement near

The Dept. of Taxation reminds vendors that sales tax returns must be filed electronically. Semi-annual filers must submit their returns by July 23, 2009, using the business gateway, eForms, or telefile system. The notice can be viewed on the department's Web site at http://tax.ohio.gov/online_services/. (*Sales Tax Electronic Filing, DT, June 2009*)

PENNSYLVANIA

Bulk sale assessment invalid

A restaurant (the taxpayer) that used the previous owner's restaurant equipment was not liable for sales tax owed by the previous owner because the taxpayer did not acquire the assets as a result of a bulk sale. The previous owner abandoned the restaurant following a divorce. His ex-wife formed a new corporation to operate the restaurant, obtained a new sales tax license, and negotiated a new lease with the landlord. The plain language of the bulk sale statute imposes bulk sale liability for unpaid taxes on a "purchaser" who fails to obtain a clearance certificate from a transferor. Because the taxpayer paid no consideration, it was not a purchaser, and the bulk sale provision did not apply. The court rejected the Dept. of Revenue's argument that the term "purchaser" should apply to any recipient of assets, including donees or users. Further, there was no evidence that the previous owner transferred any of the restaurant equipment to the taxpayer, nor that the taxpayer had any title or right to the equipment. The taxpayer leased the premises "as is" from the landlord, which suggested that the restaurant equip-

ment was leased to the taxpayer by the landlord. (*Pizzutti Inc. v. Pennsylvania, Commonwealth Court, Dkt. No. 306 F.R. 2007, June 8, 2009*)

VERMONT

Tax holidays enacted

Gov. Jim Douglas has signed legislation that provides for two sales tax holidays that will take place on Aug. 22, 2009, and March 6, 2010. On these dates, no sales and use tax or local option sales tax may be imposed or collected on sales to individuals for personal use of items of tangible personal property at a sales price of \$2,000 or less. Vendors in good standing are entitled to claim reimbursement for limited amounts of expenditures for reprogramming their cash registers and computer equipment in use at their place of business on and after the holidays. Reimbursement claims must be filed within 60 days of the date of the respective holiday with receipts or other documentation required by the Dept. of Taxes. The amount of reimbursement to each vendor may not exceed the least of the three following amounts: (1) the actual cost to the vendor of reprogramming its cash registers and computer equipment; (2) \$50; or (3) \$10,000 divided by the number of qualified vendor applicants. Municipalities will be reimbursed for revenues lost as a result of the holidays. (*HB442 of 2009, effective June 9, 2009*)

VIRGINIA

Foodstuff exemption explained

The Dept. of Taxation has issued a bulletin providing information regarding previously enacted legislation that changes the retail sales and use tax treatment of charges for the fabrication of meats, grains, fruits, vegetables and other foodstuffs. Effective July 1, 2009, the retail sales and use tax will not apply to the fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his or her family; (ii) is an exempt organization under IRC §501(c)(3) or (c)(4); or (iii) donates the foodstuffs to an exempt organization under IRC §501(c)(3) or (c)(4). Due to this law change, on and after July 1, 2009, 23 VAC 10-210-560 will no longer be applicable to charges for the fabrication of foodstuffs that qualify for the new exemption. The regulation will be revised to address the legislation. This law

change does not affect situations where butchers, slaughterhouses, and other processors of agricultural products process meat or other agricultural products that will be resold. Such transactions will continue to qualify for the "sale for resale" exemption. The department will issue a new exemption certificate, Form ST-24, for exempt charges for the fabrication of foodstuffs. Charges for the fabrication of foodstuffs are subject to tax unless the fabricator receives a properly executed retail sales and use tax exemption certificate from the purchaser. Purchasers qualifying for the new exemption must present Form ST-24. Purchasers qualifying for the "sale for resale" exemption may present Form ST-24, or the resale exemption certificate, Form ST-10. (*Tax Bulletin 09-92, DT, June 9, 2009*)

WASHINGTON

Property tax charge taxable

The Dept. of Revenue has released a notice that explains that persons leasing tangible personal property subject to property tax are also liable for retail sales tax on the property tax charge. Personal property taxes are a nondeductible portion of the gross proceeds of sales. The notice can be viewed on the DOR's Web site. (*Tax Topics, DOR, June 9, 2009*)

WEST VIRGINIA

Electronic filing of special excises

State regulations have been adopted requiring the electronic filing of returns and payments for county and municipal special district excise taxes, and sales taxes collected within an economic opportunity development district. Under the regulations, all such taxes must be filed electronically and payment must be made by electronic funds transfer, regardless of the amount due. (*Reg. Secs. 110-39-1 through 110-39-5, effective June 1, 2009*)

WISCONSIN

Field audit appeals info updated

For purposes of sales and use, excise, and certain other taxes, the Dept. of Revenue has issued an updated publication regarding taxpayers' appeal rights with respect to field audit adjustments. Updates include changes in mailing addresses for excise tax refund claims and assessment appeals. (*Publication No. 506, DOR, June 2009*)

Maine clinics *(Continued from page 5)*

LD1401 (HP980) of 2009 is effective 90 days from adjournment.

Service provider tax liability, exemptions

The legislation imposes liability upon a service provider that purchases a service that is subject to the service provider tax from another service provider under a resale certificate, and then later uses the service rather than reselling it. The purchaser becomes liable for any unpaid service provider tax on the date that it uses the service.

Additionally, an exemption from the service provider tax is created for sales to incorporated nonprofit medical clinics having a sole mission of providing free medical care to the indigent or uninsured.

Interstate sales of rolling stock, vehicles

The legislation amends the sales and use tax exemption for the sale of railroad rolling stock or a vehicle, aircraft, or watercraft which is placed in use by the purchaser as an instrumentality of interstate or foreign commerce within 30 days of the sale, and which is used by the purchaser not less than 80% of the time for the next two years as an instrumentality of interstate or foreign commerce. Applicable retroactively to Jan. 1, 2008, such property is not considered in use as an instrumentality of interstate or foreign commerce when carrying only cargo that both originates and terminates within Maine. Applicable retroactively to June 15, 2001, the exemption is not limited to instrumentalities otherwise required to be exempt under the U.S. Constitution.

Amendments are also made to the sales and use tax exemption for the sale to a nonresident of a watercraft (or watercraft construction materials or repair services) when the watercraft is intended to be sailed or transported outside Maine immediately upon delivery by the seller. The legislation changes the requirement that the watercraft be intended to be sailed or transported outside the state immediately upon delivery, to the requirement that the watercraft be sailed or transported outside the state within 30 days of delivery. ♦

■ 4 SEPARATE TAXES

Florida targets timeshares

Under recently enacted Florida legislation, local option tourist development tax, tourist impact tax, transient rentals tax, and convention development tax is imposed on certain timeshare resort products.

Chap. 133 (HB61) of 2009 is effective July 1, 2009.

The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multi-site timeshare plan, or an exchange transaction in an exchange program, as defined, by the owner of a timeshare interest or such owner's guest, where the guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under these provisions.

A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit, but only provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program, is a service charge and is not subject to taxation.

According to language in the bill, this legislation is intended to be clarifying and remedial in nature and does not provide a basis for assessments of tax or refunds of tax for periods prior to July 1, 2009. ♦

■ Colorado grants partial refund on truck tractors

New legislation allows a portion of Colorado sales and use taxes paid on truck tractors to be refunded based on the proration of annual specific ownership taxes paid on the vehicles.

The refund is limited to model year 2010 or newer Class A vehicles weighing greater than 26,000 pounds.

HB1298 of 2009 is effective June 4, 2009.

The refund is available starting on Jan. 1, 2011, and can be claimed as follows:

- 10% in the calendar year in which the truck tractor is purchased, stored, or used;
- 15% in the second year after the truck tractor was purchased, stored, or used;
- 25% in the third year after the truck tractor was purchased, stored, or used;
- 25% in the fourth year after the truck tractor was purchased, stored, or used; and
- 25% in the fifth year after the truck tractor was purchased, stored, or used.

To claim a refund, the taxpayer must submit a refund application to the Dept. of Revenue on a prescribed form. Proof of payment of Colorado sales and use tax by the taxpayer must accompany the application, as well as any additional information that the DOR requires by regulation.

The refund program, however, will only take effect if a sustainable source of revenue has been identified. ♦