

**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 |
|------------------------|---|
| 100042 | Successor Liability and Clearance Certificates - Common Questions |

State of Wisconsin
Department of Revenue

Successor Liability and Clearance Certificates

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. What is meant by successor liability?
2. If I am responsible for successor liability, what do I have to pay?
3. If I buy an existing business, will I be liable for any unpaid sales and use taxes of the seller for that business?
4. If I buy most of the assets of a business (e.g., equipment, furniture, inventory) but not the entire business, could I be held personally liable for the unpaid taxes of that business?
5. I am in the process of purchasing a business. Can the department provide me the seller's sales and use tax information so I know how much to withhold from the sale to cover the liabilities?
6. If I am taking over a business and there is no purchase price, am I still subject to successor liability?
7. The seller of a business has several locations. I have purchased only one location. Am I responsible for what is owed at all locations?
8. Am I still responsible for successor liability if the seller and I write up a contract that says that the seller will pay all liabilities?
9. What is a clearance certificate?
10. What is needed in a request to obtain a clearance certificate?
11. How long will it take to receive the clearance certificate once the request has been submitted?
12. Will I receive a clearance certificate once all sales and use tax returns are filed and sales and use tax is paid?
13. Who will receive a copy of the clearance certificate when it is issued?
14. I haven't sold my business yet but I would like a certificate stating that all of my state taxes are paid. Can I still get a clearance certificate?
15. If I buy an existing business, will I need a new seller's permit?

1. What is meant by successor liability?

The purchaser of a business or a stock of goods (including furniture, fixtures, equipment, inventory, leases, licenses, and good will) of any retailer liable for sales or use tax shall be personally liable for the payment of the seller's sales or use tax if the purchaser fails to withhold a sufficient amount of the purchase price to cover the taxes due.

2. If I am responsible for successor liability, what do I have to pay?

A successor is responsible for the amount of the sales and use tax liability only. No penalties or interest are assessed and no interest accrues.

3. If I buy an existing business, will I be liable for any unpaid sales and use taxes of the seller for that business?

Yes. The purchaser of a business (the successor) is liable for any unpaid sales and use taxes of the seller for that business. The purchaser should withhold a sufficient amount from the purchase price to cover any unpaid sales and use taxes of the seller. After the sale has taken place, the purchaser may request a "Sales and Use Tax Clearance Certificate" indicating that all Wisconsin sales and use tax liabilities of the seller for that business are satisfied.

4. If I buy most of the assets of a business (e.g., equipment, furniture, inventory), but not the entire business, could I be held personally liable for the unpaid taxes of that business?

Yes. The purchaser of a stock of goods (including furniture, fixtures, equipment, etc.) from a business (the successor) may be liable for any unpaid sales and use taxes for that business. The purchaser should withhold a sufficient amount from the purchase price to cover any unpaid sales and use taxes of the seller and immediately upon completion of the sale, request a clearance certificate from the department.

5. I am in the process of purchasing a business. Can the department provide me the seller's sales and use tax information so I know how much to withhold from the sale to cover the liabilities?

Yes. The department can provide a potential purchaser the seller's sales and use tax information if satisfactory evidence of a potential sale is provided. The department may provide:

- a. Summary of sales and use tax returns, including missing and/or estimated periods
- b. Summary of sales and use tax balances due

All requests must be in writing and include the seller's business name, address, federal employer identification number (FEIN) or Wisconsin tax account number, purchaser's business name, and address. The request must also include one of the following:

- a. An offer to purchase, copy of purchase agreement, or letter of intent to purchase or sell the business. This must be signed by both the seller and purchaser.
- b. A letter that acknowledges the purchaser or potential purchaser and that is signed by the seller.

Note: A copy of the information will be provided to both the seller and the purchaser.

6. If I am taking over a business and there is no purchase price, am I still subject to successor liability?

Yes. If you assume debt in place of money exchanging hands, successor liability may be assessed.

7. The seller of a business has several locations. I have purchased only one location. Am I responsible for what is owed at all locations?

No. A successor's liability is limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold will be determined and will be the amount for which the successor may be held liable.

8. Am I still responsible for successor liability if the seller and I write up a contract that says that the seller will pay all liabilities?

Yes. Successor liability is determined by law and shall not be altered by agreements and contracts between a buyer and seller.

9. What is a clearance certificate?

A clearance certificate is requested by the **purchaser** of a business or their representative **after** the sale is complete to ensure that the seller has filed all sales and use tax returns and paid all sales and use taxes due. The clearance certificate protects the purchaser from incurring successor liability. A clearance certificate is **ONLY** for Sales & Use Tax.

10. What is needed in a request to obtain a clearance certificate?

Requests for a clearance certificate must include the following:

- o Legal name of seller
- o Business name of the seller
- o Tax account number if known
- o Seller's current mailing address
- o Name of the purchaser
- o Purchaser's tax account number
- o Purchaser's mailing address
- o Date of sale
- o Sale price

The request must be made by the purchaser **AFTER** the sale has taken place.

Requests for clearance certificates may be mailed, emailed, or faxed by the purchaser to:

Wisconsin Department of Revenue
Clearance Certificates
PO Box 8901 Mail Stop 4-CMP-W
Madison, WI 53708-8901

FAX: (608) 224-5700

Email additional questions to DORSpecialProcedures@wisconsin.gov

11. How long will it take to receive the clearance certificate once the request has been submitted?

The department must act on the request by either issuing the clearance certificate or issuing a notice of successor liability within 90 days of receiving the completed request for the clearance certificate. If the department does not respond within 90 days, the purchaser is relieved from any liability.

12. **Will I receive a clearance certificate once all sales and use tax returns are filed and sales and use tax is paid?**

Yes, if one has been requested.

13. **Who will receive a copy of the clearance certificate when it is issued?**

The seller and purchaser will both receive clearance certificates. In addition, the representatives of the purchaser may receive a copy if a [Power of Attorney](#) form was submitted with the initial request for the clearance certificate.

14. **I haven't sold my business yet but I would like a certificate stating that all of my state taxes are paid. Can I still get a clearance certificate?**

No, a clearance certificate is only issued after a sale has taken place.

However, you can request, in writing, a certificate relating to delinquent taxes. A letter from the seller requesting this certificate must be signed by the owner, corporate officer or a person with a power of attorney. The letter can be mailed, emailed or faxed to:

Wisconsin Department of Revenue
Certificate Relating to Delinquent Taxes
PO Box 8901 Mail Stop 4-CMP-W
Madison, WI 53708-8901
FAX: (608)-224-5700
Email: DORSpecialProcedures@wisconsin.gov

Please provide the Federal Employer Identification Number (FEIN) for the individual, partnership, or corporation requesting the certificate.

15. **If I buy an existing business will I need a new seller's permit?**

Yes, a seller's permit is required for every individual, partnership, corporation or other organization making *taxable* sales, or providing *taxable* services in Wisconsin, unless all sales by the seller are exempt from sales and use tax. A seller's permit cannot be transferred; therefore, you must apply for a new seller's permit. You can [register online](#) or use [Form BTR-101](#).

For additional information about which sales and services are taxable, see [What Is Taxable](#)

For additional information, see [Sales and Use Tax Permits](#)

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 30, 2019: Sections 73.03, 77.52, 77.58 and 77.61, Wis. Stats., and secs. Tax 11.002 and 11.91, Wis. Adm. Code.

Laws enacted and in effect after December 30, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 30, 2019, 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:

WISCONSIN DEPARTMENT OF REVENUE

Successor Liability Assistance

PO Box 8901 Mail Stop 4-CMP-W

Madison, WI 53708-8901

Phone: (608) 267-0833

Fax: (608) 224-5700

Email additional questions to DORSpecialProcedures@wisconsin.gov

Guidance Document Certification: <https://www.revenue.wi.gov/Pages/Certification-Statement.aspx>

Guidance Document Number: 100042

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