

**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.

<b>Document Number</b>	<b>Document Title</b>
<b>100200</b>	Sales and Use Tax Exemptions - Common Questions

State of Wisconsin  
Department of Revenue

# Sales and Use Tax Exemptions

**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's exempt?
2. What is the Wisconsin Sales and Use Tax Exemption Certificate?
3. May a seller obtain other information to document an exemption, instead of an exemption certificate?
4. What if a seller does not obtain an exemption certificate within 90 days after the date of the sale and does not capture and maintain the data elements described in Answer 3?
5. When are occasional sales of taxable products and services exempt from sales or use tax?

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## 1. **What's exempt?**

Normally, to purchase taxable products or services in Wisconsin without tax, an exemption certificate must be given to the seller.

However, for retail sales of certain exempt property (for example, food sold by grocery stores that does not meet the definitions of "candy", "soft drinks" or "prepared food"), certificates are not required to be given to the seller. For more information, see [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

## 2. **What is the Wisconsin Sales and Use Tax Exemption Certificate?**



The *Wisconsin Sales and Use Tax Exemption Certificate* [\(Form S-211](#) or the [electronic exemption certificate, S-211E](#)) or *Streamlined Sales and Use Tax Exemption Certificate - Wisconsin version* [\(S-211-SST\)](#) may be used to claim exemption from Wisconsin state, county, baseball stadium and premier resort area sales or use taxes.

- Exemption certificates are signed by purchasers and are given to sellers to verify that a transaction is exempt.
- Sellers should exclude from taxable sales price, the transactions for which they have accepted an exemption certificate from a purchaser as described below.
- Sellers must retain copies of the exemption certificates.

Under Wisconsin law, all sales of taxable products and services are subject to the tax until the contrary is established. However, a seller is relieved of any responsibility for collection or payment of the tax if the seller obtains from the purchaser, within 90 days after the date of the sale, a fully completed exemption certificate which indicates that the purchaser will use the product or service in a manner that is exempt from Wisconsin sales and use tax.

**Exception:** A seller is **not** relieved of its liability to collect and remit the applicable Wisconsin sales or use tax on a sale to a purchaser if any of the following apply:

1. The seller fraudulently fails to collect the sales or use tax.
2. The seller solicits the purchaser to claim an unlawful exemption.
3. The seller accepts an exemption certificate from a purchaser claiming to be an entity that is not subject to sales and use taxes, if both of the following apply:
  - a. The subject of the transaction covered by the exemption certificate is received by the purchaser at the seller's Wisconsin location.
  - b. The exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in Wisconsin.

The seller should be familiar with the various exemption requirements and the instructions for using this certificate. For more information about exemptions see the *Wisconsin Sales and Use Tax Exemption Certificate*  ([Form S-211](#) or the [electronic exemption certificate, S-211E](#)) or *Streamlined Sales and Use Tax Exemption Certificate - Wisconsin version*  ([S-211-SST](#)).

### 3. **May a seller obtain other information to document an exemption, instead of an exemption certificate?**

If the seller did not obtain an exemption certificate as described in Question 2, above, it is not liable for the tax if, no later than 90 days after the sale, the seller captured and maintained all of the following data elements in its accounting system, with respect to the transaction upon which an exemption is being claimed:

- o Name and business address of the purchaser.
- o Purchaser's state tax identification number and state of issue.
  - If the purchaser does not have a state tax identification number then the purchaser's federal employer identification number is needed.
  - If the purchaser does not have a federal employer identification number then the purchaser's personal driver's license number and state of issue is needed.
- o Purchaser's type of business.
- o The reason for the claimed exemption.

### 4. **What if a seller does not obtain an exemption certificate within 90 days after the date of the sale and does not capture and maintain the data elements described in Answer 3?**

If a seller did not obtain an exemption certificate or the relevant information described in Answer 3, the seller may, within 120 days after it is requested by the Department of Revenue to substantiate a claimed exemption, either obtain, in good faith, a fully completed exemption certificate from the purchaser; or by some other means provide proof that the transaction was not subject to Wisconsin sales or use tax. If the seller cannot prove that a transaction was exempt by one of these methods, the seller is not relieved from liability for the tax, interest, or penalties.

A seller accepts an exemption certificate in good faith if the exemption certificate is fully completed and claims an exemption that:

- Was authorized by law on the date of the transaction in the jurisdiction to which the transaction was sourced,
- Could be applicable to the property, item, good, or service being purchased, and
- Is reasonable for the purchaser's type of business.

However, even if a seller obtains an exemption certificate containing the above information, the seller will still be liable for the tax if it is discovered that the seller had knowledge or reason to know the information relating to the exemption was materially false or if the seller knowingly participated in an activity intended to purposefully evade the tax that is properly due on the transaction.

#### 5. **When are occasional sales of taxable products and services exempt from sales or use tax?**

Sales of taxable products and services are not taxable if they are exempt "occasional sales." Some exempt "occasional sales" may include:

- Exempt occasional sales by nonprofit organizations. Sales by neighborhood associations, churches, social clubs, civic clubs, garden clubs, and other nonprofit organizations which conduct one or more fundraising events during the year are exempt if certain conditions are met. These conditions are set forth in [Publication 206](#), *Sales Tax Exemptions for Nonprofit Organizations*.
- Sales by auction. Sales by an auctioneer of personal household goods and personal farm property if the auctioneer has 5 or fewer auctions at that location during the year. Refer to [Publication 217](#), *Auctioneers*, for more information.
- Prior to January 1, 2018 - Sales of taxable products or services by a person not otherwise required to hold a seller's permit, if the person's total taxable receipts from sales of taxable products and taxable services are less than \$1,000 during the calendar year. Additional information is provided in [Publication 228](#), *Temporary Events*, beginning on page 4.
- January 1, 2018 and thereafter - Less than \$2,000 in sales of taxable products or services in a year and the seller does not hold and is not required to hold a seller's permit. A seller is presumed to not be pursuing a vocation, occupation or business as a vendor of taxable products if its sales of taxable products and services are less than \$2,000 per year. CAUTION: If sales exceed the \$2,000 threshold, the seller is liable for tax on all of its sales, including its first \$2,000 of sales.
- General rules and information regarding what other sales may qualify as exempt "occasional sales" is provided in [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 77.52, 77.53, 77.54, 77.73 and 77.9941, Wis. Stats., and secs. Tax 11.14 and 11.92, Wis. Adm. Code.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 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:**

MS 5-77

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