

The Summer Camp Operator's Guide to Wisconsin Sales and Use Tax

With a Section Pertaining to: Correcting Misfiled Returns Using the Wisconsin Voluntary Disclosure Program to Eliminate Penalty Charges

This article explains the proper Wisconsin sales and use tax treatment of certain sales and purchases made by summer camps (camps). It also explains what camps should do if they have not been properly collecting and remitting the appropriate Wisconsin sales and use taxes, including how to participate in Wisconsin's voluntary disclosure program.

For purposes of this article, it is assumed that your camp is organized and operated with the expectation of making a profit, regardless of whether a profit is actually realized. It is also assumed that your camp holds or is required to hold a Wisconsin seller's permit.

I. Sales by Camps

A. Taxable sales by camps include (applies both prior to and on or after October 1, 2009):

- Lodging if for a continuous period of less than one month.
- Meals, sandwiches, heated foods and heated beverages, soda fountain items, and candy prior to October 1, 2009 and charges for prepared foods, dietary supplements, candy, and soft drinks on and after October 1, 2009.
- Other tangible personal property such as hats, tee shirts, and souvenirs.
- Any taxable services enumerated in the Wisconsin Statutes including charges for admission to any amusement, athletic, entertainment, or recreational event or place.
- Craft supplies.
- Leases or rentals of canoes, boats, games, or any other tangible personal property.
- Sales of used equipment.

B. Nontaxable or exempt sales by camps include (applies both prior to and on or after October 1, 2009):

- Lessons, instruction, and training.
- Lodging for a continuous period of one month or more.

C. Single, Combined Charge by Camps for Taxable and Nontaxable Property and Services

1. Prior to October 1, 2009

- a. If a single, combined amount is charged to attend a camp and the charge covers all of the privileges extended by the camp including instruction, lessons, meals, and lodging, the camp is required to make an allocation between the taxable and nontaxable items included. If the camp does not

keep adequate records to make this allocation, the entire charge by the camp is subject to Wisconsin sales tax.

1. For purposes of making this allocation:
 - a. The camp may use \$5 per night as the amount subject to tax for lodging; and
 - b. The camp may determine the amount subject to tax as meals by adding 10 percent to the cost of the food, food products, and beverage and labor for preparation to cover the overhead costs.

Example: Private Camp A provides a 5-day (4-night) sports camp. The camp runs from 8:00 a.m. to 9:00 p.m. each day and costs \$500 per participant. The single, combined \$500 charge covers all instruction relating to the sports, as well as meals, lodging, and a tee shirt. Private Camp A's cost of the food and labor to prepare the food provided is \$75 per camp participant. Since a single, combined charge to attend the camp is being made (i.e., no separate charge is being made for the meals and lodging), Private Camp A is required to allocate \$20 of its charge to lodging (4 nights times \$5 per night) and \$82.50 of its charge to meals (\$75 cost of food and preparation times 110%), and collect and remit the appropriate Wisconsin sales and use tax on \$102.50 (\$20 plus \$82.50), of the \$500 charge. The remaining \$397.50 is not subject to Wisconsin sales or use tax since it is related to the instruction provided at the camp. Private Camp A is also required to pay Wisconsin sales or use tax on its purchase of the tee shirts that are provided to each participant because the tee shirts are being provided incidentally to the instruction being offered at the camp.

2. On and After October 1, 2009
 - a. A camp's charge for meals, lodging, and program access for one nonitemized price is not subject to tax because it is presumed that the taxable products included in the price are less than 10% of the total price and the exemption from Wisconsin sales and use tax provided in sec. 77.54 (51), Wis. Stats., as created by 2009 Wis. Act 2, applies.
 - b. The camp is the consumer of all of the property, items, goods, and services provided and must pay Wisconsin sales or use tax on its purchase price of such taxable property, items, goods, and services.

Example: Private Camp B provides a 5-day (4-night) summer sports camp. The camp runs from 8:00 a.m. to 9:00 p.m. each day and costs \$500 per participant. The \$500 charge is one nonitemized price that includes all instruction, meals, lodging, and a tee shirt. The charge by Private Camp B is not subject to Wisconsin sales or use tax and Private Camp B is the consumer of the items it purchases and uses to provide the lodging and meals and the tee shirts.

II. Purchases by Camps

- A. Summer camps are the consumers of any tangible personal property, items, property, and goods under sec. 77.52 (1) (b), (c), and (d), Wis. Stats., as created by 2009 Wis. Act 2, and taxable services they purchase and use in operating the camps and are generally required to pay Wisconsin sales or use tax on their purchases. However, camps may purchase any tangible personal property, items, property, and goods under sec. 77.52 (1) (b), (c), and (d), Wis. Stats., as created by 2009 Wis. Act 2, and taxable services they resell to the persons attending the camps and charge the appropriate sales tax on, without paying Wisconsin sales or use tax. **Note:** As explained in Part I.C.2.b., on and after October 1, 2009, camps are not considered to be reselling the property, items, goods, and services they provide to persons attending the camps for one nonitemized price.
- B. Taxable purchases by camps (applies both prior to and on or after October 1, 2009).

See Attachment 1 for the listing of common taxable purchases by camps.

- C. Property, items, goods, and services which may be purchased by camps without paying any Wisconsin sales or use tax if they are resold include (applies both prior to and on or after October 1, 2009):
- Candy (see also Part II.D. for additional information).
 - Soft drinks (see also Part II.D. for additional information).
 - Craft supplies.

Resold means there is a separate charge for the item (i.e., the item is not provided as part of the single, combined charge for lodging, meals, and programs).

Example 1 – Camp A purchases candy which it sells to persons attending the camp. The candy is not included in the charge to attend the camp, but instead may be purchased separately, at each camper's option. Camp A may purchase the candy without tax because it is resold. The sale of the candy by Camp A is subject to sales tax.

Example 2 - Camp B purchases craft supplies which it sells to persons attending the camp. The craft supplies are not included in the charge to attend the camp, but instead may be purchased separately, at each camper's option. Camp B may purchase the craft supplies without tax because they are resold. (Note: In this example, if the craft supplies were included in Camp B's single, combined charge to attend the camp and provided to each camper, Camp B is required to pay Wisconsin sales or use tax on its purchases of the craft supplies.)

- D. Camp's purchases of food, food products, and beverages
1. Prior to October 1, 2009

A camp may purchase the foods, food products, and beverages provided to persons attending the camp without tax for resale. If the camp does not separately state a charge for the meals, foods, food products, and beverages

(i.e., the meals, etc. are included in the single price the camp charges for all of the privileges extended by the camp), the camp is required to allocate a portion of their charge to cover the meals, food, food products, and beverages provided and charge Wisconsin sales or use tax on that amount. See Part I.C.1 to determine how to make this allocation.

2. On and After October 1, 2009

A camp's purchases of candy, soft drinks, dietary supplements, and other prepared foods purchased on and after October 1, 2009, that are included in the single, combined charge to attend the camp are subject to Wisconsin sales or use tax. The camp is the consumer of these items and is required to pay Wisconsin sales or use tax on them, unless an exemption applies.

Example 1 – On or after October 1, 2009, Camp D purchases candy, soft drinks, raw hamburger and hamburger buns for meals provided to persons attending the camp. There is no separate charge for any of these items to the campers. Instead, the items are included in the single, combined charge to attend the camp. Camp D's purchase of the candy and soft drinks are subject to Wisconsin sales or use tax. Camp D's purchase of the raw hamburger and hamburger buns are not subject to Wisconsin sales or use tax because an exemption applies for food and food ingredients contained in sec. 77.54 (20n), Wis. Stats., as created by 2009 Wis. Act 2.

III. What should I do if I have not been properly charging and remitting Wisconsin sales and use tax on these transactions, as described above?

A. Camps Registered for Wisconsin Sales and Use Tax Purposes

If you are currently registered to collect and remit Wisconsin sales and use tax, but after reading this article find that you have been doing some things incorrectly, you should file an amended sales and use tax return as soon as possible to either obtain a refund you are entitled to or to report the additional sales or use tax you owe. Amended returns may be filed any time within 4 years of the unextended due date of the corresponding income or franchise tax return.

Example: Camp A is a corporation that files its sales and use tax returns on a monthly basis and its corporate income tax return on a calendar year basis (due date is March 15 of the following calendar year). Assuming Camp A timely filed its sales and use tax returns, it may file amended sales and use tax returns for periods within the calendar year 2006 until March 15, 2011. For periods within the calendar year 2007, Camp A has until March 15, 2012, for calendar year 2008, until March 15, 2013, and for periods within the calendar year 2009, until March 15, 2014.

If you file amended returns prior to December 31, 2010, to adjust the tax you paid, the Department will waive any penalties related to that tax. However, interest will apply on underpayments as required by the Wisconsin Statutes.

To obtain a waiver of the penalties, please read and follow the instructions in Attachment 2 titled “Voluntary Disclosure – Additional Taxes or Excessive Credits.”

B. Camps Not Registered for Wisconsin Sales and Use Tax Purposes

If you are not and have not been registered to collect and remit Wisconsin sales and use taxes, you may take advantage of the Wisconsin Department of Revenue’s voluntary disclosure program.

Under the voluntary disclosure program, a person making a voluntary disclosure of past noncompliance with Wisconsin sales and use tax laws may be granted a waiver of penalty and/or reduction in the number of periods for which returns are required to be filed. However, to be considered for such treatment, a person must meet certain requirements, provide a written description of its activities in Wisconsin, and enter into a written settlement agreement with the Department of Revenue. For additional information, see Attachment 3 titled “Voluntary Disclosure – Unfiled Returns.”

Sales and Use Tax Treatment of Summer Camps Revised to Reflect 2009 Wisconsin Act 2.....

The Wisconsin sales and use tax treatment of summer camps was affected by 2009 Wisconsin Act 2, effective October 1, 2009. See the attached article titled "Summer Camps," for information explaining the proper Wisconsin sales and use tax treatment of sales and purchases by summer camps both prior to and on or after October 1, 2009.

Sales Prior to October 1, 2009

For sales occurring prior to October 1, 2009, the proper amount of Wisconsin sales and use tax must be paid to the department based on the information provided in the attached article.

Sales From October 1, 2009 Through November 30, 2010

The Department of Revenue has found that many summer camps were not aware of how 2009 Wis. Act 2 affected the Wisconsin sales and use tax due on their sales and purchases. This may have resulted in the summer camp collecting and remitting more sales tax on their charges to campers to attend the camps than was due and/or paying less Wisconsin sales or use tax on their purchases than what was due. As a result of this, the Department of Revenue is providing the following guidelines that summer camps may follow with respect to their sales and purchases made between October 1, 2009 and November 30, 2010.

If you treated your sales and purchases from October 1, 2009 through November 30, 2010 in a manner consistent with how summer camps were supposed to treat their sales and purchases prior to October 1, 2009, as described in the attached article, you have two options:

1. Do nothing. The department will not adjust your sales and use tax liability for these items as long as both your sales and purchases were treated consistently with these provisions.
2. File a claim for refund for the amount of tax you may have charged your customer in error. However, you would owe Wisconsin use tax based on your purchase price of the taxable property, items, goods, and services you used in operating your summer camp (i.e., your purchases of candy, soft drinks, etc.).

Caution: If you collected the sales tax for which you are requesting a refund from your buyers, you must return the tax and related interest refunded by the Department of Revenue to the buyers from whom the tax was collected, except that you can reduce the taxes and interest you are required to return to the buyer for the amount of tax subsequently due and owing on your purchases of the property, items, goods, and services you transferred to the buyers. If are unable to return the tax and interest to the buyer, you must return the tax and interest to the department.

If you did not tax any part of the charges to attend to your summer camp from October 1, 2009 through November 30, 2010 and paid Wisconsin sales or use tax on your purchases of the property, items, and goods used to operate your camp, you do not have to do anything since you treated the items consistent with the law changes that were made effective October 1, 2009.

Example 1 — In June of 2010, Summer Camp A charged Camp Attendee B \$4,000 for a 4-week (28 nights) camp program. The \$4,000 charge included the camp program and all meals and lodging. The cost of the food, food products, and beverages and labor to make the meals was

\$200. Summer Camp A charged Camp Attendee B Wisconsin sales tax on \$140 relating to the lodging they provided (28 nights times \$5 per night) and \$220 related to the meals they provided (\$200 cost plus 10 percent (\$20)). Summer Camp A did not pay any Wisconsin sales or use tax on its purchases of the food, food products, and beverages used to make the meals.

Since Summer Camp A treated their charge to Camp Attendee B and related purchases consistent with the information provided in the attached article for sales and purchases occurring prior to October 1, 2009, Summer Camp A may either:

1. Do nothing. The Department of Revenue will not assess use tax on Summer Camp A's purchases of taxable food and food ingredients since they charged Camp Attendee B sales tax on these products; or
2. File a refund claim for the \$18 of sales tax (\$360 times 5 percent tax equals \$18) charged in error to Camp Attendee B. However, if Summer Camp A files a claim for refund on its sale of the lodging and meals to Camp Attendee B, Summer Camp A is deemed the consumer of the food and food ingredients used to provide the meals and would owe Wisconsin use tax on its cost of the taxable food and food ingredients. In addition, Summer Camp A would be required to refund the net sales tax along with the related interest refunded to them to Camp Attendee B. If they could not return the tax and interest to Camp Attendee B, they would be required to return it to the Department of Revenue.

Example 2 — Same as Example 1, except that Summer Camp A did not charge Wisconsin sales tax on any part of the \$4,000 charge to Camp Attendee B and Summer Camp A properly paid Wisconsin sales or use tax on its purchases of taxable food and food products.

Since Summer Camp A treated the transaction in a manner consistent with the law changes effective October 1, 2009, Summer Camp A does not have to do anything.

Sales On or After December 1, 2010

For sales occurring on or after December 1, 2010, the proper amount of Wisconsin sales and use tax must be paid to the department based on the information contained in the attached article. In particular, see sections I.C.2. and II.D.2. of the attached article.

If you have any questions concerning this information, please contact Robert Kennedy by e-mail at robert.kennedy@revenue.wi.gov or telephone at (608) 261-5167.