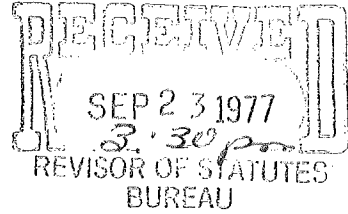


CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN )  
DEPARTMENT OF REVENUE )

TAX 2,11



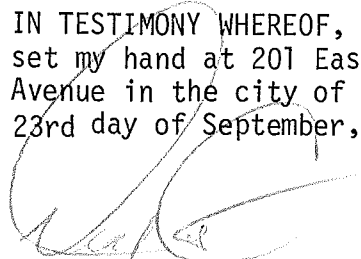
TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Dennis J. Conta, Secretary of the Department of Revenue and custodian of the official records of said Department, do hereby certify that the annexed rules were duly approved and adopted by this Department on September 23, 1977. These rules relate to the following:

- 1) Updating obsolete and outdated rules.
- 2) Withholding tax exemptions (income tax).
- 3) Elementary and secondary schools and related organizations (sales and use tax).
- 4) Warranties (sales and use tax).
- 5) Gifts, advertising specialties, coupons, premiums and trading stamps (sales and use tax).
- 6) Credit sales, bad debts and repossessions (sales and use tax).
- 7) Manufacturing (sales and use tax).
- 8) Exemption of machines and processing equipment (sales and use tax).
- 9) Landlords, hotels and motels (sales and use tax).
- 10) Exemption of property consumed or destroyed in manufacturing (sales and use tax).
- 11) Mailing lists and mailing services (sales and use tax).
- 12) Aircraft (sales and use tax).

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 201 East Washington Avenue in the city of Madison, this 23rd day of September, 1977.

  
\_\_\_\_\_  
Dennis J. Conta

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following 12 rules as shown on the attached copy:

- 1) A revisor-type rule, updating obsolete and outdated rules.
- 2) Section Tax 2.92, "Withholding tax exemptions".
- 3) Section Tax 11.03, "Elementary and secondary schools and related organizations".
- 4) Section Tax 11.27, "Warranties".
- 5) Section Tax 11.28, "Gifts, advertising specialties, coupons, premiums and trading stamps".
- 6) Section Tax 11.30, "Credit sales, bad debts and repossessions".
- 7) Section Tax 11.39, "Manufacturing".
- 8) Section Tax 11.40, "Exemption of machines and processing equipment".
- 9) Section Tax 11.48, "Landlords, hotels and motels".
- 10) Section Tax 11.41, "Exemption of property consumed or destroyed in manufacturing".
- 11) Section Tax 11.82, "Mailing lists and mailing services".
- 12) Section Tax 11.84, "Aircraft".

The rules contained herein shall take effect on November 1, 1977.

Dated this 23rd day of September, 1977.

DEPARTMENT OF REVENUE  
BY:



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Dennis J. Conta  
Secretary of Revenue

REVISOR - TYPE RULE

SECTION 1. Section Tax 2.08(1) of the Wis. Adm. Code is amended to read:

Tax 2.08(1) For the purpose of filing income tax returns, the secretary of revenue has designated the following ~~form~~ forms for the use of persons other than corporations:

(a) Form 1. For all individuals, whether married or single, and for husbands and wives electing to file a combined return.

(b) Form 1A. (Short form).

(c) Form 2. For trustees, ~~executors, administrators~~ personal representatives, and others acting in a fiduciary capacity, but excluding guardians. (Guardians should report on ~~form~~ Form 1).

(d) Form 3. For partnerships and joint ventures.

SECTION 2. Section Tax 2.09 (title), (intro), (2) and (6) (intro) and (a) of the Wis. Adm. Code is amended to read:

Tax 2.09 Reproduction of income tax forms. Subject to ~~the conditions set forth under~~ this rule, the official Wisconsin income tax return forms may be reproduced and the reproductions may be filed with the department in lieu of the corresponding official forms. The department may reject any reproduction which is in whole or in part illegible.

(2) The reproductions must be on paper of substantially the same ~~color,~~ weight and texture, and of quality at least as good as that used in the official forms. Forms printed on colored paper may ~~not, therefore,~~ be reproduced on white paper.

(6) A fiduciary or ~~his~~ the fiduciary's agent may use a facsimile signature in filing a tax return on form 2, subject to the following conditions:

(a) Each group of returns forwarded to the department shall be accompanied by a letter signed by the person authorized to sign such returns declaring, under penalties of perjury, that the facsimile signature appearing on the returns is the signature adopted by ~~him~~ the person to sign the returns filed and that such signature was affixed to the returns by him the person or at ~~his~~ the person's direction. The letter shall also list each return by name and identifying number.

NOTE: Section Tax 2.09 (intro) codifies the department's ability to reject any illegible reproduction of a tax return. Subsection (2) is amended to reflect current practice of accepting white reproductions of tax forms on colored paper. Other changes are stylistic or "de-sex" language.

SECTION 3. Section Tax 2.14 of the Wis. Adm. Code is amended to read:

Tax 2.14 Aggregate personal exemptions. The aggregate personal ~~exemption~~ exemptions allowable to a husband and wife pursuant to ~~under~~ section 71.09 (6) (6p)(a) and (b), Wis. Stats., when each files a return, may be divided between them husband and wife according to their choice.

NOTE: The amendment updates a statutory reference and codifies the practice of allowing spouses to divide exemptions for dependents as the spouses chose.

SECTION 4. Section Tax 2.16 of the Wis. Adm. Code is amended to read:

Tax 2.16 Changes in method of accounting for corporations. (section 71.11(8), Wis. Stats.) No change in the method of accounting used in reporting income may be made without first obtaining the written permission of the department of revenue. Applications for such change must set forth clearly the nature of the business, the method of accounting used in keeping the books, and the reasons for changing the method of reporting. In changing from a cash basis of accounting to an accrual basis of accounting, income accrued but not yet collected as of the close of the year of change shall be added to income actually received in cash during the year, and expenses accrued but not yet paid as of the close of the year shall be added to expenses actually paid during the year. A change in the accounting treatment of a material item is considered a change in accounting method in this paragraph.

NOTE: This added sentence codifies the Wisconsin Supreme Court's holding in Ladish Co. v. Department of Revenue (1975), 69 Wis. 2d 723.

SECTION 5. Section Tax 2.40(3m) of the Wis. Adm. Code is adopted to read:

Tax 2.40(3m) Subsections (2) and (3) apply for only the calendar years 1973 and 1974 or corresponding fiscal years.

NOTE: The law was changed to make dividends and interest apportionable income beginning with taxable year 1975. This rule reflects that section Tax 2.40(2) and (3) were thereby restricted to taxable years 1973 and 1974.

SECTION 6. Section Tax 2.41 of the Wis. Adm. Code is amended to read:

Tax 2.41 Separate accounting method. (Section 71.07(2), Wis. Stats.) (1) When the separate accounting method is used, separate records must be kept of sales, cost of sales and expenses for the Wisconsin business as distinct from the remainder of the business. Overhead items of income and expense must then be allocated to the business within and without Wisconsin upon a basis or combination of bases justified by the facts and conditions. For example: ~~The~~ the ratio of Wisconsin sales to total sales usually represents a satisfactory basis for a merchandising business, while the ratio of direct cost of material and labor in Wisconsin to the total gives a more accurate result for a construction business.

(a) Federal income taxes are based upon income and should, therefore, be allocated to Wisconsin business on the basis of income. Federal income taxes are deductible for income years through 1974 only on the cash basis, and the allocation to Wisconsin business for any year, therefore, must be based upon the ratio of income within Wisconsin to the total income of the year on which the federal income taxes are assessed, even though that ratio differs from the ratio of the year in which the taxes are actually paid. Federal income taxes are not deductible for income years 1975 and thereafter.

(a) (b) The relationship of the general overhead items to Wisconsin operations will determine whether the home office income and expense should be allocated to the Wisconsin business. Such Miscellaneous income, such as income from intangibles and income from tangible property used in the business, and such overhead items as officers' salaries, office salaries, office rent and sundry office expenses should ordinarily be included in the allocation.

(2) Rentals Net rentals received from real estate held purely for investment purposes and not used in the operation of the business are not subject to allocation--All but are taxable in full if the property is located in Wisconsin. Gross rentals must be reduced by all expenses connected with the interest, dividends and rentals realized from investments such as the above are not subject to allocation but must be applied against the investment income--The taxability of the net investment income depends upon the situs of the investment property or the residence of the recipient related to such investment property.

NOTE: This amendment reflects the statute changes, beginning with 1975, that (1) no deduction is allowable for federal income taxes paid, and (2) income from intangibles is classified as business income following the situs of the business.

## WITHHOLDING TAX EXEMPTIONS

Section Tax 2.92 of the Wis. Adm. Code is adopted to read:

Tax 2.92 Withholding tax exemptions. (Sections 71.20(9)(e) and (14), Wis. Stats.) (1) An employe may claim the same number of withholding exemptions for Wisconsin as claimed for federal withholding purposes. An employe who elects to have federal withholding exemptions apply for Wisconsin withholding purposes shall notify his or her employer of this election. An employe making this election is not required to complete a Wisconsin withholding exemption certificate, Form WT-4. An employe who claims fewer withholding exemptions for Wisconsin than for federal withholding purposes shall provide his or her employer with a completed Wisconsin withholding exemption certificate, Form WT-4.

(2) An employe who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employe provides his or her employer with a completed Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax"). For this purpose, a tax liability is "incurred" if the employe had for the preceding year or anticipates for the current year a net Wisconsin income tax due (gross tax less personal exemptions on a Wisconsin return). If an employe is married, the net tax of the employe's spouse shall not be considered in determining if the employe may claim this exemption.

Note: Forms WT-4 and WT-4E may be obtained by mail request to Wisconsin Department of Revenue, P.O. Box 58, Madison, Wisconsin 53701.

## ELEMENTARY AND SECONDARY SCHOOLS AND RELATED ORGANIZATIONS

Section Tax 11.03 of the Wis. Adm. Code is adopted to read:

Tax 11.03 Elementary and secondary schools and related organizations.  
(Section 77.54(4), (9) and (9a), Wis. Stats.) (1) DEFINITIONS.

(a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in section 119.30, Wis. Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) and which are educational institutions having a regular curriculum offering courses for at least six months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.

4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, film or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS. Under section 77.54, Wis. Stats., gross receipts from sales to the following organizations are exempt: (a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.



## WARRANTIES

Section Tax 11.27 of the Wis. Adm. Code is adopted to read:

Tax 11.27 Warranties. (Section 77.51(11)(a), Wis. Stats.) (1) RECEIPTS FROM WARRANTIES. The total gross receipts from a sale of taxable personal property by a retailer, who warrants such property and includes a charge for the warranty in the sales price, are taxable.

(2) REPAIRS BY RETAILER. (a) When a retailer does repair work, including supplying parts and services, without charge for a customer under a manufacturer's warranty, the retailer is not subject to tax on either the amount of reimbursement received from the manufacturer for such parts or service or on the value of any part the manufacturer replaces in the retailer's inventory.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a retailer's or manufacturer's warranty are taxable, including gross receipts from the sale of service contracts. (Charges by a manufacturer for service contracts are taxable to the manufacturer).

(c) A retailer who provides free parts or services or both to a customer in order to maintain good customer relations, although not required to do so under the sales agreement, shall report and remit a use tax measured by the retailer's purchase price of any parts used in providing such free service.

(3) REPAIRS NOT BY RETAILER. If a retailer does not repair property under a warranty but instead has another person perform such repairs, that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

GIFTS, ADVERTISING SPECIALTIES, COUPONS PREMIUMS AND TRADING STAMPS

Section Tax 11.28 of the Wis. Adm. Code is adopted to read:

Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps. (Section 77.51(4)(k) and (11)(a), Wis. Stats.)

(1) DEFINITIONS. (a) Section 77.51(4) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property or service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51(11)(a)(intro.) provides:

"'Gross receipts' means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . ."

(2) GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS. Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise.

(a) Grand opening gifts. A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in such volume. In cases where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing such property to the retailer is subject to the use tax on its cost of the property donated.

(b) Gift certificates. The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) Gifts shipped out-of-state. When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) Sales incentive plans. Persons transferring taxable personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of such property.

(3) COUPONS AND PREMIUMS. (a) Coupons for free property issued and redeemable by manufacturer. When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) "Cents-off" coupons redeemable by manufacturers. A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. Such coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon.

(c) Coupons issued and redeemable by retailers. When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows will be given as a premium to a customer when that customer purchases other property which is not subject to the sales tax (e.g., gasoline and exempt food). If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS. (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. For example, coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of such receipts to the participating retailers.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) TRADING STAMPS. (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

## CREDIT SALES, BAD DEBTS AND REPOSSESSIONS

Section Tax 11.30 of the Wis. Adm. Code is adopted to read:

Tax 11.30 Credit sales, bad debts and repossessions. (Sections 77.51(4)(c), (4r), (11)(b), (c)3 and (d), 77.52(6) and 77.53(4), Wis. Stats.) (1) CREDIT SALES. (a) Sales. If taxable personal property is sold on credit, the entire amount of the retailer's gross receipts from the sale shall be taxable and shall be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The tax shall be reported on taxable gross receipts on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) Repossessions. No deduction from gross receipts shall be made if property sold on credit is repossessed unless the entire consideration paid by the purchaser is refunded or a deduction for worthless accounts is allowable under section 77.51(11)(b)4, Wis. Stats.

(2) BAD DEBTS. (a) Deduction from measure of tax. A retailer is relieved from the liability for sales tax by sections 77.51(11)(b)4 and 77.52(6), Wis. Stats., or from liability to collect and report use tax by section 77.53(4), Wis. Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax to this state on such accounts may claim the bad debt deduction. The deduction shall be taken from the measure of tax in the period in which the account is found to be worthless. That period is defined as any time within the retailer's fiscal or calendar year in which the account is written off. However, if the taxpayer is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last annual information return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property shall be treated in the same manner as other worthless accounts.

(b) Recovery of bad debts charged off. If any accounts found worthless and charged off are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(c) Amount deductible. 1. Nontaxable receipts. If an account found worthless and charged off is comprised in part of nontaxable receipts (such as interest, financing or insurance) and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied ratably against the various charges comprising the amount the purchaser contracted to pay.

2. Expenses of collection. No deduction is allowable for expenses incurred by the retailer in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(d) Special situations. 1. A purchaser of receivables is not entitled to a bad debt deduction for such receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property used to fulfill the construction contract.

4. A retailer permitted to report gross receipts on the cash receipts basis may not claim a bad debt deduction.

(e) REPOSSESSIONS. When property on which a receivable exists is repossessed, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, attributable to the cash sales price of the property, is less than the cash sales price upon which sales or use tax was paid.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

An example of the computation of the net loss described in sub(2)(e) follows: Assume a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$600. A down payment of \$2,000 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totalling \$6,800, the mobile home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the mobile home. The deductible bad debt loss upon repossession of the mobile home is computed as follows:

	<u>Cash Sales Price</u>	<u>Sales Tax</u>	<u>Finance Charge</u>	<u>Total</u>
1. Sales price and tax	\$15,000.00	\$600.00	-	\$15,600.00
2. Down payment allocation (1)	<u>1,923.08</u>	<u>76.92</u>	-	<u>2,000.00</u>
3. Balance to finance	\$13,076.92	\$523.08	-	\$13,600.00
4. Add: Finance charge	_____	_____	<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$13,076.92	\$523.08	\$1,360.00	\$14,960.00
6. Payments on contract (2)	<u>5,944.06</u>	<u>237.76</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$ 7,132.86	\$285.32	\$ 741.82	\$ 8,160.00
8. Wholesale value of repossession (2)	<u>5,244.76</u>	<u>209.79</u>	<u>545.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$1,888.10</u>			\$ 1,888.10
10. Nondeductible loss		<u>\$ 75.53</u>	<u>\$ 196.37</u>	<u>271.90</u>
11. Total loss				<u>\$ 2,160.00</u>
12. Percentage of sales price and tax (Line 1)	96.1538%	3.8462%		100%
13. Percentage of contract balance (Line 5)	87.4126%	3.4965%	9.0909%	100%

(1) The down payment (line 2) is allocated between the total cash sales price of the motor home and the sales tax thereon (line 1) on the basis of the percentage of each to their total (the percentages are shown on line 12).

(2) The payments on the contract (line 6) and the wholesale value on the date of repossession of the property repossessed (line 8) are allocated to the cash sales price, sales tax and finance charges on the basis of the percentage of the contract balance of each to the total contract balance (after allocation of the down payment). The contract balances are shown on line 5 and the percentages thereof are shown on line 13.

## MANUFACTURING

Section Tax 11.39 of the Wis. Adm. Code is adopted to read:

Tax 11.39 Manufacturing. (Sections 77.51(27) and 77.54(2) and (6)(a), Wis. Stats.) (1) DEFINITION. Manufacturing means an operation at a fixed location complete in itself, or one of a series of operations each at a fixed location, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) SCOPE OF MANUFACTURING. (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

- (3) MANUFACTURERS. Manufacturers ordinarily include the following:
- (a) Asphalt plants.
  - (b) Bakeries.
  - (c) Battery makers.
  - (d) Breweries and soda water bottling plants.
  - (e) Candy Factories.
  - (f) Cement and concrete plants (but not concrete mixing units mounted on trucks).
  - (g) Chemical processing plants.
  - (h) Concrete block and tile producers.
  - (i) Creameries and instant milk producers.
  - (j) Dairies.
  - (k) Electric generating companies.
  - (l) Flour and feed mills (but not mobile units).
  - (m) Food processing plants (canning and freezing).
  - (n) Foundries.
  - (o) Glass making plants.
  - (p) Limestone calcination plants.
  - (q) Machine and equipment producers.
  - (r) Malting plants.
  - (s) Meat packing and processing plants.
  - (t) Motor vehicle and aircraft factories.
  - (u) Oil refineries.
  - (v) Paint factories.
  - (w) Paper making plants.
  - (x) Printers.
  - (y) Sawmills.



- (z) Scrap processors.
- (aa) Shoe and clothing factories.
- (bb) Smelting and steel mills.
- (cc) Tanneries.
- (dd) Tool and die making plants.

(4) NONMANUFACTURERS. Examples of nonmanufacturers are:

- (a) Automobile and auto parts rebuilders.
- (b) Contractors.
- (c) Creosoting plants.
- (d) Dental labs.
- (e) Farmers.
- (f) Fish hatcheries.
- (g) Freezer and locker plants.
- (h) Highway truckers.
- (i) Hotels.
- (j) Junk and scrap dealers.
- (k) Key shops.
- (l) Laundries and dry cleaners.
- (m) Repairmen.
- (n) Restaurants.
- (o) Television and radio stations.
- (p) Sand and gravel pit operators.
- (q) Tire retreaders.
- (r) Persons engaged in:

1. Corn shelling.
2. Performing custom work to the individual order of household consumers.
3. Experimental and development activities.
4. Grain drying.
5. Logging and forestry operations.
6. Mining.
7. Paper recycling.
8. Photography.
9. Popping popcorn.
10. Quarrying and rock crushing operations.
11. The business of raising and breeding animals.
12. Real property construction activities.
13. Typesetting.
14. Vending machine operations.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

## EXEMPTION OF MACHINES AND PROCESSING EQUIPMENT

Section Tax 11.40 of the Wis. Adm. Code is adopted to read:

Tax 11.40 Exemption of machines and processing equipment. (Sections 77.51(27) and 77.54(6)(a), Wis. Stats.) (1) GENERAL. (a) Section 77.54(6)(a) exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

(b) Section 77.51(27) provides "For purposes of s. 77.54(6)(a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

(2) CONDITIONS FOR EXEMPTION AND EXAMPLES. This exemption shall apply if all the following conditions are met: (a) Machines and processing equipment shall be used by a manufacturer in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.

(b) Machines and processing equipment shall be used exclusively in manufacturing. The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities. For example, a forklift truck used partially on a production line to move products from machine to machine and used in a warehouse to move and stack finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used directly in manufacturing. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such machines and equipment are indirectly related to the step-by-step processes. For example, machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications, lighting, safety, fire protection or prevention; research; storage; delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing. Machine foundations are real property improvements rather than personal property.

(3) OTHER EXAMPLES OF THE EXEMPTION. Other examples of application of the exemption are as follows: (a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if such items are used partially or totally for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn, are used by such manufacturer to produce tangible personal property for sale. For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press is used partially to print advertising materials and office forms, it is not exempt.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment).

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. For example, sweeping compounds are factory supplies rather than processing equipment. Gloves, shoes, coveralls and similar items are personal apparel rather than processing equipment.

(4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

## LANDLORDS, HOTELS AND MOTELS

Section Tax 11.48 of the Wis. Adm. Code is adopted to read:

Tax 11.48 Landlords, hotels and motels. (Sections 77.51(7)(n) and (24) and 77.52(2)(a)1 and 9, Wis. Stats.) (1) LANDLORDS. (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all such items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the two similar units is taxable as a charge for parking, docking or storage.

(2) HOTELS AND MOTELS. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employes for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) MOTELS LEASED TO OPERATORS. (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio

resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in par. (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings, equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ( $\frac{\$100,000}{\$100,000 + \$500,000}$ ) to the gross lease receipts for each sales tax reporting period.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

## EXEMPTION OF PROPERTY CONSUMED OR DESTROYED IN MANUFACTURING

Section Tax 11.41 of the Wis. Adm. Code is adopted to read:

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (Sections 77.54(2) and 77.54(6)(a), Wis. Stats.)

(1) GENERAL. (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in section 77.54(2), Wis. Stats., "manufacture" shall conform to the definition of "manufacturing" in section 77.51(27), Wis. Stats..

(2) RELATIONSHIP OF SECTIONS 77.54(2) and 77.54(6)(a). In construing the exemption provided in section 77.54(2), it is necessary to refer to another exemption provided in section 77.54(6)(a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54(2) and 77.54(6)(a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by section 77.54(6)(a) and if they are not, cannot be within the exemption provided by section 77.54(2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN SECTION 77.54(2) EXEMPTION.

(a) The following property is within the exemption provided by section 77.54(2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.
2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) EXAMPLES OF PERSONAL PROPERTY NOT WITHIN SECTION 77.54(2) EXEMPTION. The following property is not within the exemption provided by section 77.54(2), although such property may be exempt under section 77.54(6)(a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in rule Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters.
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel.

(5) FUEL AND ELECTRICITY. Fuel and electricity are specifically excluded from the exemption provided by section 77.54(2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. Since "fuel" is not defined in section 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

(a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.

## MAILING LISTS AND MAILING SERVICES

Section Tax 11.82 of the Wis. Adm. Code is adopted to read:

Tax 11.82 Mailing lists and mailing services. (Sections 77.51(5), 77.52(1), 77.53(1) and 77.54(2), Wis. Stats.) (T) MAILING LISTS. (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists, including the rental of or the granting of a license to use such lists.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing such services. Consequently, they must pay the tax when purchasing such property.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.



## AIRCRAFT

Section Tax 11.84 of the Wis. Adm. Code is adopted to read:

Tax 11.84 Aircraft. (Sections 77.52(2)(a)9, 77.54(5)(a) and (7) and 77.61(1)) (1) GENERAL. (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and
3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61(1)(a), Wis. Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin Department of Transportation, Division of Aeronautics. The tax applies to aircraft registered or customarily hangared or both in this state, even though such aircraft also may be used out-of-state.

(2) TAXABLE SALES. (a) Aircraft, supplies and repairs. Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale of aircraft jet fuel, oil, equipment, parts and supplies sold and delivered in Wisconsin for operation of aircraft, regardless of where the aircraft is flown or used. Federal fuel taxes are part of the "sales price" of jet fuel subject to the sales tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) Parking. 1. Section 77.52(2)(a)9, Wis. Stats., imposes the tax on "Parking or providing parking space for aircraft for a consideration... except when provided by a governmental unit." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable, except when provided directly by a governmental unit to the owner of the aircraft. The gross receipts of a nongovernmental operator of a hangar from the rental of hangar space for aircraft are subject to the sales tax whether or not such operator leases the hangar from a governmental unit.

(c) Other taxable receipts. The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

(3) EXEMPT SALES OF AIRCRAFT. Section 77.54(5)(a), Wis. Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use such aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption.

(4) NONTAXABLE SERVICES. Gross receipts from the following services or fees shall not be taxable: (a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for such instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in this business may purchase weed killers, fertilizer and seed without tax for resale, if these items are separately itemized on the invoice to the farmer.

(f) Landing fees.

NOTE: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969.