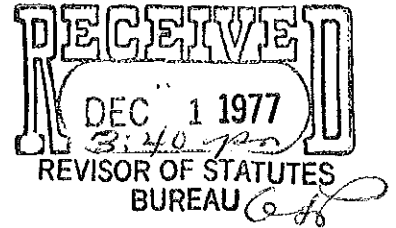


TAX II

CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN )  
DEPARTMENT OF REVENUE )



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 December 1, 1977. These rules relate to the following:

- 1) Revisor-type rule (sales and use tax).
- 2) Definitions and use of terms (sales and use tax).
- 3) Service station and fuel oil dealers (sales and use tax).
- 4) Auctions (sales and use tax).
- 5) Coin-operated vending machines and amusement devices (sales and use tax).
- 6) Admissions (sales and use tax).
- 7) Service enterprises (sales and use tax).
- 8) Wisconsin sales and taxable transportation charges (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 1st day of December, 1977.

A large, stylized handwritten signature in black ink, appearing to be "Dennis J. Conta".

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

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

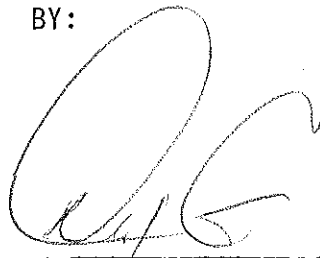
Pursuant to the authority vested in the Department of Revenue by s. 227.014(2), Wis. Stats., the Department hereby adopts the following 8 rules as shown on the attached copy:

- 1) Revisor-type rule, updating obsolete and outdated rules.
- 2) Section Tax 11.001, "Definitions and use of terms".
- 3) Section Tax 11.49, "Service station and fuel oil dealers".
- 4) Section Tax 11.50, "Auctions".
- 5) Section Tax 11.52, "Coin-operated vending machines and amusement devices".
- 6) Section Tax 11.65, "Admissions".
- 7) Section Tax 11.67, "Service enterprises".
- 8) Section Tax 11.94, "Wisconsin sales and taxable transportation charges".

The rules contained herein shall take effect on February 1, 1978.

Dated this 1st day of December.

DEPARTMENT OF REVENUE  
BY:



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Dennis J. Conta  
Secretary of Revenue

REVISOR-TYPE RULE

SECTION 1. Section Tax 11.01 of the Wis. Adm. Code is renumbered 11.53.

SECTION 2. Section Tax 11.02 of the Wis. Adm. Code is renumbered 11.54.

SECTION 3. Section Tax 11.61 (2) (a) of the Wis. Adm. Code is amended to read:

Tax 11.61 (2) (a) Sales to veterinarians of medicines for animals and ~~items~~ sales of other tangible personal property to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax. Prior to June 24, 1974 sales to veterinarians of medicine for animals were taxable if the medicine was to be used or furnished by a veterinarian in the performance of services, but were exempt if they were purchased for resale independent of the performance of such service.

## SALES AND USE TAX DEFINITIONS AND USE OF TERMS

Section Tax 11.001 of the Wis. Adm. Code is adopted to read:

Tax 11.001 Definitions and use of terms. In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(5) "Department" means the Wisconsin department of revenue.

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

(a) Obtaining a seller's permit for each place of business in this state;

(b) Filing tax returns and paying tax;

(c) Collecting use tax when applicable and remitting the tax with returns; and

(d) Keeping proper records. (See Rule Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "                     (specific tangible personal property or a specific service) is/are taxable", or "the purchase of                      (specific tangible personal property or a specific service) is taxable", means that: (a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

## SERVICE STATIONS AND FUEL OIL DEALERS

Section Tax 11.49 of the Wis. Adm. Code is adopted to read:

Tax 11.49 Service station and fuel oil dealers (Sections 77.52(2)(a)10 and 77.54(3), (5), (9a) and (11), Wis. Stats.) (1) TAXABLE SALES. Sales by service station operators and fuel oil dealers subject to the sales tax include the following: (a) The sale of furnace or heating fuel to residential, industrial or commercial customers.

(b) The repair, service, cleaning, painting, towing, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor.

(c) The towing of motor vehicles if the towing is related to the repair, service or maintenance of the vehicle. The following services are not considered taxable towing services:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.
3. House moving or relocating a mobile home.

(d) Retail sales of tangible personal property (e.g., motor oil, antifreeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks) by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(2) EXEMPT SALES. Sales by service station operators and fuel oil dealers not subject to the sales tax include the following: (a) Sales of gasoline and special fuel (e.g., diesel and L.P. fuel) which are subject to the Wisconsin motor vehicle fuel taxes under Chapter 78, Wis. Stats.. The holder of a Wisconsin special fuel license may issue an exemption certificate (Form S-207) to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee must report and pay the special fuel tax. On special fuel sold or used for off-highway purposes, the licensee is required to pay the sales or use tax, unless the fuel is used in farm tractors or farm machines used directly in farming.

(b) Sales made directly to governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes. Sales to employes of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in section 71.18(2)(a), Wis. Stats.. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of fuel, parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales of aircraft fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce. Sales of jet fuel to persons who are not certified or licensed carriers are subject to the sales or use tax, but their purchases of aviation gasoline shall be exempt under par. (a).

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase without tax ("for resale") repair parts and materials used in such work which are physically transferred to their customers (e.g., auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods).

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

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

## AUCTIONS

Section Tax 11.50 of the Wis. Adm. Code is adopted to read:

Tax 11.50 Auctions. (Sections 77.51(4)(intro.) and (a), (7)(b) and (e) and (10)(e), Wis. Stats.) (1) STATUTE. Section 77.51(7)(b), Wis. Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51(4)(a), Wis. Stats., includes any sale at an auction.

(2) THE RETAILER. If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are responsible for reporting the sales tax on auction receipts even if the owner of the property has a Seller's Permit.

(3) TAXABLE AUCTION RECEIPTS. Taxable receipts from auctions include gross receipts from:

(a) Auction sales held regularly at an established place of business, such as an auction house or auction barn. The household goods exemption does not apply to such sales.

(b) Auctions held regularly on radio, television, or CATV. The household goods exemption does not apply to such auctions.

(c) Auctions sponsored on an annual or other regular basis by nonprofit organizations or others. The household goods exemption does not apply to such auctions.

(d) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors and service enterprises. The household goods exemption does not apply to such sales.

(e) Auction sales of antiques (effective on and after July 31, 1975) and works of art except when sold with other household goods of which they were a part.

(f) Auction sales of professional or business inventories or equipment even though they may consist of household goods.

(g) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(h) All other auction sales not specifically exempt under the law.

(4) EXEMPT AUCTION RECEIPTS. Gross receipts from the following auction sales are exempt: (a) Auction sales of personal farm property or household goods which are not held at regular intervals. Such auctions are generally held on the property owner's premises.

1. Household goods. "Household goods" includes tangible personal property which is associated with maintaining a household and is for family use. For example, household goods includes furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus, auction sales of goods removed from a family home (such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars) are not taxable. Items which are not considered "household goods" include:

a. Highway motor vehicles or trailers, snowmobiles, mini bikes, bicycles, aircraft, boats and other sporting goods.

b. Professional or business inventory equipment.

2. Personal farm property. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property used by a farmer to till the soil and raise crops. "Personal farm Property" does not include riding horses or other recreational animals or equipment for them, highway vehicles, boats, snowmobiles, mini bikes and bicycles.

(b) Sales for resale or sales which are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed resale or exemption certificate from the purchaser.

(c) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

(d) One-day auction sales by religious, charitable, educational or civic organizations and other nonprofit organizations which conduct a fund raising event, if: 1. The auctioneer is not the retailer, (because the auctioneer's services are donated); and

2. The organization is not engaged in a trade or business and not otherwise required to have a seller's permit; and

3. Gross receipts from the auction sale of tangible personal property and taxable services do not exceed \$1,000.

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



## COIN-OPERATED VENDING MACHINES AND AMUSEMENT DEVICES

Section Tax 11.52 of the Wis. Adm. Code is adopted to read:

Tax 11.52 Coin-operated vending machines and amusement devices. (Sections 77.51(17) and (24), and 77.52(1) and (2)(a)2, 6, 7 and 10, Wis. Stats.) (1) DEFINITION. In this rule, "operator" means:

(a) A person who owns property sold through a coin-operated vending machine or device, has the right of access to the machine or device for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine or device and its contents; or

(b) A person who is responsible for providing laundry, dry cleaning, photographic, photocopy or other taxable services through vending machines.

(2) SELLER'S PERMITS. (a) Operators of coin-operated vending machines or devices dispensing taxable tangible personal property or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each operator.

(b) A notice must be affixed to each coin-operated machine or device showing the operator's name, address and seller's permit number.

(3) TAXABLE RECEIPTS. Taxable receipts include gross receipts from: (a) Coin-operated machines dispensing tangible personal property such as:

1. Chewing gum, candy, cigarettes (effective September 1, 1975), peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, tobacco products (not including cigarettes), handkerchiefs, combs and hygienic products; and

2. Fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption. The total gross receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts from sales made for off-premise consumption involving exempt food.

(b) The license to use or the rental of coin-operated machines which are personal property or which provide a taxable service, such as hair drying machines, shoe shine machines and bowling ball cleaning machines.

(c) Coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

(4) NONTAXABLE RECEIPTS. Receipts from the following are not taxable: (a) Laundry, dry cleaning and pressing machines when the service is performed by the customer through the use of coin-operated, self-service machines.

(b) Coin-operated storage lockers, pay toilets and scales.

(c) Sales of cigarettes prior to September 1, 1975.

(5) REPORTING AND RECORD KEEPING. (a) The gross receipts of vending machine and amusement device operators are subject to the sales tax. Thus gross receipts include, for example, receipts from items selling for one, five and ten cents and more. No deduction shall be permitted for the cost of the property sold, materials used, labor or service cost, or any other expense (including commissions paid to place machines in an establishment).

(b) Sales tax collected from customers may be deducted from gross receipts before computing the tax payable, if the tax is collected under the bracket system and customers are advised of the amount of sales tax they are paying by a sign posted on the machine. If no tax is collected under the bracket system, no deduction shall be allowed.

(c) Each operator shall maintain adequate and complete records including: 1. The location of each machine;

2. The serial number of each machine;

3. Purchases and inventories of all merchandise sold through machines;

4. Receipts from sales of exempt merchandise; and

5. Purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user or consumer (for example, a vending machine or juke box, including repairs and parts therefor and records used in the juke box).

(6) SALE, LEASE OR RENTAL OF MACHINES. (a) Receipts from the sale, lease, rental or license to use coin-operated machines and attachments, parts and supplies therefor are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Machines purchased exclusively for rental to others may be purchased by the lessor without tax if the lessor gives a resale certificate to the lessor's supplier. If the lessor intends making any use of the machines other than rental, a resale certificate shall not be given. In either event, the lessor's rental receipts are taxable.

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

## ADMISSIONS

Section Tax 11.65 of the Wis. Adm. Code is adopted to read:

Tax 11.65 Admissions. (Section 77.52(2)(a)2, Wis. Stats.)

(1) TAXABLE SALES. (a) The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs and flying clubs. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment or recreational facilities to members are charges for the privilege of obtaining access to such clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught.

(e) A person who provides boat, tackle, bait and guide service provides a combination of recreational items which is subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games. The tax is remitted to the bingo control board, rather than the department of revenue.

(2) NONTAXABLE SALES. The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment or recreational facilities to their members.

(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.
2. Professional riders entering a rodeo.
3. Professional stock car drivers entering an auto race.
4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(3) PRIZE MONEY. Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

(4) "DONATIONS". (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment must be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation must be obvious that admittance is not restricted to those making a donation. A set amount for the donation (through newspaper publicity or signs at the entrance), a turnstile or restrictive device that must be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for fund raising dinner dance, the tax may be based on reasonable value of the tangible personal property and taxable services received.

(5) LOCATION OF EVENT. The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-state. For example, all sales of University of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the University of Wisconsin, as agent, sells tickets for the University of Michigan, the receipts are not subject to the Wisconsin sales tax.

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

## SERVICE ENTERPRISES

Section Tax 11.67 of the Wis. Adm. Code is adopted to read:

Tax 11.67 Service enterprises. (Section 77.51(4)(intro.) and (h), (5), (7), (11)(a) and (c) and 77.52(1), Wis. Stats.) (1) GENERAL. When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which it furnishes without separate charge as an incidence to the service.

### (2) RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES.

(a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge attributable to the taxable services.

(3) SPECIAL SITUATIONS. (a) Hospitals and clinics. Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

(b) Original manuscripts or musical arrangements. The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject to the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) Artistic expressions. Sales of works of art, such as paintings and sculptures, are taxable.

(d) Interior decorator's fee. 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the transaction.

(e) Research and development. 1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) Recording studios. When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) Architects. Fees paid to architects to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(h) Drafting. Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by customers (e.g., architects, engineers or business firms). These charges are taxable because the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing (tangible personal property) for use by the customer.

(i) Enuresis alarms. Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) Detonating explosives. Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(k) Community antenna systems (Cable TV). Effective October 1, 1975, services by a cable television company are subject to the tax. Persons offering such services are consumers of the tangible personal property they purchase or rent. Thus, sales of tangible personal property to these persons are subject to the tax. For further information see rule Tax 11.66.

(l) Taxidermists. Taxidermists perform service on tangible personal property. Gross receipts from such service are subject to the tax.

(m) Car washes. The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such persons are the consumers of the tangible personal property they purchase, except for the wax transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such operators.

(n) Soliciting advertising for telephone directories. Persons who solicit advertising for telephone books and who, as an incident of such service, provide telephone books to telephone companies or their subscribers, are the consumers of and must pay tax on all the telephone books they distribute in Wisconsin.

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

WISCONSIN SALES AND TAXABLE TRANSPORTATION CHARGES

Section Tax 11.94 of the Wis. Adm. Code is adopted to read:

Tax 11.94 Wisconsin sales and taxable transportation charges.

(Sections 77.51(4)(intro.) and (d) and (4r), and 77.52(1).)

(1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51(4r), Wis. Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is not a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employes or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51(4)(d), Wis. Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner of the property or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a Wisconsin



manufacturer ships or turns over such property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller (who had received the original order from the Wisconsin purchaser), the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a Wisconsin manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) TAXABLE TRANSPORTATION CHARGES. (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

(b) An example of the correct computation of the tax when a seller charges the purchaser for delivery of the taxable tangible personal property follows:

Selling price of merchandise	\$100.00
Delivery charge	10.00
Subtotal	<u>\$110.00</u>
Tax at 4% (\$110 x 4%)	4.40
Total	<u>\$114.40</u>

(c) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no such allocation is made, the total delivery charge shall be taxable.

(d) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax based on the "sales price" of the goods to the consumer. The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(e) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller. For example, if the "delivered price" of a carload of lumber is \$6,000 (including transportation) and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

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