

Tax 2, 3, 11

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

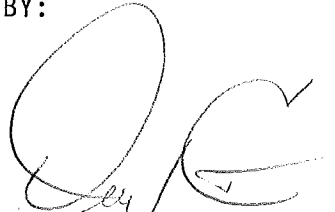
Pursuant to the authority vested in the Department of Revenue by ss. 71.11(24)(a) and 227.014(2), Wis. Stats., the Department hereby adopts the following 4 rules as shown on the attached copy.

- 1) "Revisor-type rule".
- 2) Section Tax 3.83, "Domestic international sales corporations (DISCs)".
- 3) Section Tax 11.10, "Occasional sales".
- 4) Section Tax 11.97, "'Engaged in business' in Wisconsin".

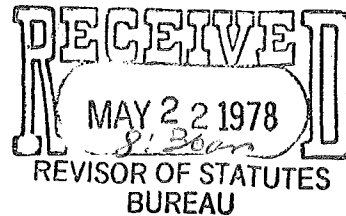
The rules contained herein shall take effect on July 1, 1978.

Dated this 17th day of May, 1978.

DEPARTMENT OF REVENUE
BY:



Dennis J. Conta
Secretary of Revenue



CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
)
DEPARTMENT OF REVENUE)

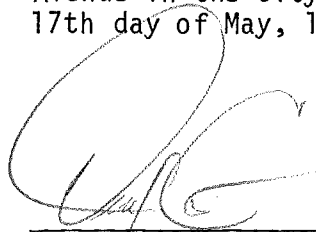
TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

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 May 17, 1978. These rules relate to the following:

- 1) Revisor-type rule.
- 2) Domestic international sales corporations (DISCs) (income tax).
- 3) Occasional sales (sales and use tax).
- 4) "Engaged in business" in Wisconsin (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 17th day of May, 1978.



Dennis J. Conta

REVISOR-TYPE RULE

SECTION 1. Tax 2.49(1)(b) of the Wis. Adm. Code is amended to read:

Tax 2.49(1)(b) The ratio of the total compensation paid to employes located in this state to the total compensation paid to employes located everywhere, determined in accordance with the provisions of section 71.07(2)(b), Wis. Stats., and ~~Wis. Adm. Code~~ section Tax 2.39(2) (4). "Compensation paid to employes" includes deductible management or service fees paid to a related corporation directly or indirectly for the performance of personal services, and the situs of such fees is in this state if such services are performed in this state. The recipient of such fees shall not include the compensation paid to its employes with respect to such personal services in either the numerator or denominator of its payroll factor.

NOTE: This corrects a cross-reference.

SECTION 2. Tax 2.74(4) of the Wis. Adm. Code is amended to read:

Tax 2.74(4). ~~With respect to~~ For the calendar year 1964 and corresponding fiscal years and thereafter, if the corporation with respect to any property has taken a deduction for depreciation properly under one of the methods ~~provided in section 71.04(13)(b), Wis. Stats.,~~ permitted for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable ~~in such case~~ will be the deduction under the method which was used by the corporation with respect to that property.

NOTE: This deletes a reference to an inappropriate statute.

SECTION 3. Tax 2.90(2), (14) and (15) of the Wis. Adm. Code are amended to read:

Tax 2.90(2). The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales, commissions on insurance premiums, pensions and ~~retired~~ retirement pay, and supplemental unemployment benefits are wages within the meaning of the statute if paid as compensation for services performed by the employe for ~~his~~ the employe's employer.

(14) Tips or gratuities paid directly to an employe by a customer of an employer, and not accounted for by the employe to the employer, are not subject to withholding are excepted from withholding only if the tips are non-cash tips or if the cash tips received during the course of a month are less than \$20.

(15) Withholding is not required: (a) upon Upon amounts paid to an employe by ~~his~~ the employe's employer under a wage continuation plan for a period during which the employe is absent

from work on account of personal injuries or sickness if such amounts are exempt from withholding taxation under the provisions of the internal revenue code, as defined in section 71.02(2)(b), Wis. Stats.

(b) When an employe certifies to an employer that the employe incurred no liability for income tax for the preceding taxable year and anticipates not incurring a liability for the current taxable year.

NOTE: This further clarifies when withholding is and is not required to reflect statute changes. It also removes gender references.

SECTION 4. Tax 3.03(5) of the Wis. Adm. Code is adopted to read:

Tax 3.03(5). Distributions received from corporations which may deduct dividends paid from gross income for tax purposes do not qualify as deductible dividends.

NOTE: This reflects the statute change enacted by Chapter 214, Laws of 1975 in amending section 71.04(4) to prohibit the deduction of dividends received from a corporation permitted to deduct such dividends from gross income.

SECTION 5. Tax 3.10 of the Wis. Adm. Code is amended to read:

Tax 3.10 Salespersons' and officers' commissions, travel and entertainment expense of corporations. (section 71.04(1) and (2), Wis. Stats.) (1) Commissions, lump sum and per diem allowances for travel, entertainment and other expenses, or allowances for use of automobiles, are deductible from gross income, provided that if such items are reported on form WT-9 or 9b. Reimbursement of amounts actually expended by officers, employes or others for the benefit of ordinary and necessary expenses of a taxpayer are deductible if it is proven that the amounts thus reimbursed were actually so expended.

(2) Effective for the 1976 taxable year and thereafter, money or the value or cost of property given to or spent on behalf of a public official is not deductible. "Public official" includes any elected or appointed official, any candidate for public office and any employe of the United States or of any state or a political subdivision thereof.

NOTE: This reflects the statute change enacted by Chapter 224, Laws of 1975 amending section 71.04(2), Wis. Stats., to provide that ordinary and necessary expenses do not include money or the value or cost of property given to or spent on behalf of a public official.

SECTION 6. Tax 3.16 of the Wis. Adm. Code is repealed.

NOTE: This rule is repealed because it duplicates rule Tax 2.73(2).

SECTION 7. Tax 3.45 of the Wis. Adm. Code is amended to read:

Tax 3.45 Bond premium, discount and expense--corporations.
(section 71.04(2), Wis. Stats.) If bonds are issued at a discount or premium, the net amount of such the discount or premium should shall be amortized over the life of the bonds. If Except as provided in section 71.04(15)(g), Wis. Stats., if bonds are retired at a price in excess of or less than the issuing price, the profit or loss resulting is taxable income or deductible expense in the year in which such the bonds are retired, provided if proper adjustment is made for the discount or premium previously reflected in income and in all cases bond expense-should expenses shall be amortized over the life of the bonds. If a bond issue is refunded with another bond issue before the first issue matures, any unamortized discount or expense that is applicable to the first issue must shall be deducted as current expense in the year that the refinancing takes place and any unamortized premium must shall be taken up as income in such year.

NOTE: This amendment adds to the rule an exception provided by statute and corrects terminology.

SECTION 8. Tax 3.54 of the Wis. Adm. Code is amended to read:

Tax 3.54 Miscellaneous expenses not deductible--corporations.
(section 71.04(2), Wis. Stats.) Miscellaneous expenses which are not properly deductible in arriving at taxable net income include the following: (1) Charges made by a corporation against its income or surplus covering expenses incurred for personal purposes of its officers, stock holders or employes, unless reported as compensation paid on form WT-9 or form 9b;-dues.

(2) Dues to fraternal orders, and social clubs and-~~unheeh~~
clubs.

(3) Political contributions.

(4) For the 1976 taxable year and thereafter, any expenses incurred for or on behalf of a public official.

NOTE: This amendment adds political contributions to the list of nondeductible items for clarification. Expenses on behalf of public officials were prohibited as a deduction by chapter 224, Laws of 1975.

SECTION 9. Tax 3.91 of the Wis. Adm. Code is amended to read:

Tax 3.91 Petition for redetermination. (Sections 71.10(13), 71.12(1), 71.09(7)(k) and 77.59(b), Wis. Stats.) (1) ~~The application for abatement~~ petition for redetermination specified in sections 71.12(1), 71.09(7)(k) and 77.59(6), Wis. Stats., ~~must~~ shall be written, preferably ~~on typewriter typed,~~ on only one side of plain white paper not more than 8½ inches wide by 11 inches long and ~~must~~ shall be filed in duplicate. It ~~must~~ shall set forth clearly and concisely the specific grievances ~~to the additional assessment or to parts thereof, including a statement of the relevant facts and propositions of law upon which the grievance is based.~~ Every ~~application-must~~ petition shall be signed by the taxpayer or by his a duly authorized representative.

(2) ~~An application for abatement~~ A petition for redetermination is not "filed" within the proper statutory 30-day time to meet the requirements of section 71.12(1), Wis. Stats., period unless it is actually received within the 30-day period, or unless it is mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the thirtieth day of the period provided in sections 71.12(1), 71.09(7)(k) and 77.59(6), Wis. Stats., and actually received by the department of revenue within 5 days of such 30-day period.

NOTE: This amendment conforms terminology of the rule with statutory language and expands the rule to reflect current practice regarding appeals of sales and use tax and homestead credit claims.

SECTION 10. Tax 3.92 of the Wis. Adm. Code is amended to read:

Tax 3.92 Informal conference. The taxpayer may request in ~~said application~~ its petition, or at any time before the department of revenue has acted thereon, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. Any such conference will be held at a time and place determined by the department.

NOTE: This amendment conforms terminology of the rule with statutory language.

SECTION 11. Tax 3.94(1) of the Wis. Adm. Code is amended to read:

Tax 3.94(1) Claims for refund may be filed as provided in section 71.10(10) or 77.59(4), Wis. Stats., and shall be in the same form as applications for abatement petitions for redetermination under Wis. Adm. Code section Tax 3.91. A claim for refund is not "filed" within the proper time to meet the requirements of sections 71.10(10) and 77.59(4), Wis. Stats., unless it is actually in the possession of the department of revenue prior to the expiration of the limitation period provided in section

71.10(10) or 77.59(4), Wis. Stats., or unless mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the last day of said the limitation period, ~~and actually received by the department of revenue within 5 days of said limitation period.~~

NOTE: This amendment conforms terminology of the rule with the statutes and expands the rule to reflect current practice regarding claims for refund of sales and use taxes.

DOMESTIC INTERNATIONAL SALES CORPORATIONS

Section Tax 3.83 of the Wis. Adm. Code is adopted to read:

Tax 3.83 Domestic international sales corporations (DISCs).
(Sections 71.04(4), 71.07(2) and (3), 71.10(1) and (5)(a), 71.11(7) and (7m), 71.20 and 71.22, Wis. Stats.) (1) RETURNS. (a) Franchise/income tax returns. All domestic international sales corporations (DISCs) having operations in Wisconsin, even though they may have no employees or property in Wisconsin or elsewhere, shall file corporation returns and pay franchise or income tax in the same manner as other corporations. DISCs are accorded no special treatment under chapter 71 of the Wisconsin statutes.

(b) Consolidated returns. A DISC may not elect, nor may it be required, to file combined or consolidated returns with its parent or any other entity.

(c) Due date. The Wisconsin corporation return (Form 4 or 5) of a DISC is due on or before the 15th day of the 3rd month following the close of its taxable year. If a complete return cannot be filed by the due date, a tentative return may be filed by such date or a 30-day extension may be requested from the department under section 71.10(5)(a), Wis. Stats., and a tentative return filed before the end of the extension period, to avoid the imposition of late filing penalties. Since the federal annual information return of a DISC is not due before the 15th day of the 9th month following the close of the income year, federal extensions do not apply to a DISC's Wisconsin returns.

(d) Declarations of estimated tax. DISCs are subject to the declaration provisions of section 71.22, Wis. Stats.

(e) Withholding tax. DISCs shall register and withhold income tax from the wages of their employees under section 71.20, Wis. Stats..

(2) PRICING AND ALLOCATION ADJUSTMENTS. The pricing adjustments provided in section 71.11(7), Wis. Stats., and the allocation adjustments provided in section 71.11(7m), Wis. Stats., apply in full to the determination of the net income of a DISC.

(3) DISTRIBUTIONS BY DISCs. The net income of a DISC is not taxable to its corporate shareholders by Wisconsin unless actually distributed as dividends. However, such dividends may be deductible under section 71.04(4), Wis. Stats.

(4) COMMISSION DISCS. The income of a Commission DISC is considered to be income from personal services rather than from sales of tangible property.

(5) APPORTIONMENT BY THE DISC. (a) In order for a DISC that has Wisconsin activities to use the apportionment method of filing provided by section 71.07(2), Wis. Stats., it must have net income subject to taxation in at least one other state or foreign country. (See rule Tax 2.39(2).)

(b) If a DISC qualifies for apportionment, it shall use the statutory 3-factor formula of property, payroll and sales under section 71.07(2), Wis. Stats., unless the use of any factor will give an unreasonable or inequitable final average ratio because such factor is not employed to any appreciable extent in producing the income taxed. In such cases, the department may require or permit the omission of that factor under section 71.07(3), Wis. Stats..

(c) Beginning with the 1973 taxable year, the payroll factor of a DISC includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services. Such fees are includable in the numerator of the payroll factor, if the services are performed in this state. (See Tax 2.39(4).)

(d) Beginning with the 1973 taxable year: 1. The sales factor of a buy-sell DISC shall be computed under section 71.07(2)(c)2, Wis. Stats..

2. The sales factor of a commission DISC shall be computed under section 71.07(2)(c)3, Wis. Stats.. (See Tax 2.39(5).)

(6) PARENT CORPORATION'S SALES FACTOR. When sales are made to a DISC by the DISC's parent corporation, which is permitted to use the apportionment method of computing its Wisconsin net income, and the property sold is shipped from Wisconsin to a customer in a foreign country at the designation of the DISC, such sales are considered to be sales of property shipped to a foreign country which shall not be includible in the numerator of the parent's sales factor. However, if the DISC takes physical possession of the property within Wisconsin and then the property is shipped to a foreign country, the parent shall include such shipments in the numerator of its sales factor.

OCCASIONAL SALES

Section Tax 11.10 of the Wis. Adm. Code is adopted to read:

Tax 11.10 Occasional sales. (Sections 77.51(10) and 77.54(7), Wis. Stats.) (1) GENERAL. Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this rule, a taxable sale occurs.

(2) STATUTES. (a) "Occasional sales" is defined in section 77.51(10), Wis. Stats.

(b) Section 77.54(7), Wis. Stats., exempts most occasional sales from the sales and use taxes.

(3) SALES BY NONPROFIT ORGANIZATIONS. No special statute exempts all sales by nonprofit organizations. However, the following sales by neighborhood, religious, charitable, civic or educational organizations and other nonprofit organizations which conduct one or more fund raising events during the year shall be occasional sales under the conditions shown:

(a) Admissions or tickets. Sales of admissions or tickets to an event conducted by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The event does not involve professional entertainment;
2. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
3. The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and such events do not fall on more than 7 days within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of such events in that year.

(b) Meals, food and beverages. Sales of meals, food, food products, and beverages for direct consumption at an event (e.g., church supper or refreshment stand at a fair) by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
2. The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current

calendar year and such events do not fall on more than 7 days within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of such events in that year.

(c) Other sales of tangible personal property and services. Sales of tangible personal property (e.g., light bulbs, Christmas trees and candy) and services (e.g., parking)--other than sales covered by par. (a) and (b)--by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and
2. The gross receipts from these sales do not exceed \$1,000 within a calendar year.

(d) Exceeding the \$1,000 standard. Nonprofit organizations with sales exceeding \$1,000 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that will assist the department in its determination. Requests for such determinations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

(e) Each category of sale listed in pars. (a), (b) and (c) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and pay a tax on sales in all categories. For example, if an organization engages in separate activities described in pars. (a), (b) and (c) during a year and has a fourth "admissions" event (but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time), it shall obtain a seller's permit and pay the tax on receipts from the fourth "admissions" event and all subsequent receipts from "meal" events and from subsequent sales of other tangible personal property or services. If the \$1,000 standard described in par. (c) is exceeded, all receipts from sales of property or services described in that paragraph and all subsequent receipts from admissions and meals shall be taxable.

(4) SALES WHICH ARE NOT OCCASIONAL SALES. The following transactions shall not be exempt occasional sales: (a) Sales by a person who holds or is required to hold a seller's permit. For example, sales of used equipment by a retail store or vending machine operator are taxable.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

(c) Sales of motor vehicles, aircraft, boats, mobile homes, snowmobiles, trailers and semitrailers, except as specifically provided in section 77.54(7), Wis. Stats. Unless exempt, a use tax shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, trailer or semitrailer is registered or the mobile home is registered or titled for use within this state. Except as provided in section 77.54(7), Wis. Stats., the occasional sales of snowmobiles, mobile homes, trailers and semitrailers required to be registered or titled under the laws of Wisconsin are taxable effective August 1, 1977.

(d) Sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of such property.

(e) Sales by persons conducting bingo games.

(f) Sales by persons engaged primarily in the business of making nontaxable sales of personal property, such as manufacturers, wholesalers and grocers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

(6) SALES WHICH ARE OCCASIONAL SALES. The following sales shall be exempt occasional sales: (a) Sales of fishing bait by minors who are not licensed or required to be licensed as bait dealers, if the sales are made by minors not required to hold a seller's permit for some other activity, such as operating a lunch stand. (Under section 29.137(3), Wis. Stats., all bait dealers must obtain a license from the Wisconsin department of natural resources except that "resident children under 16 years of age, without license or permit, may barter or sell bait to consumers, but no such resident child shall make bait sales totaling more than \$500 annually.") However, sales of bait by licensed bait dealers are taxable without regard to the total amount of gross receipts from such bait sales.

(b) Sales of soft drinks by employe groups whose markup (gross profit) from such sales does not exceed \$250 per year. These groups are deemed consumers and need not obtain a seller's permit. Their suppliers, however, shall treat all sales to such groups as taxable retail sales.

(c) A garage, lawn and rummage sale held at a private residence by a person who does not have a seller's permit, if the gross receipts from such sales are less than \$500 during the calendar year.

(d) Auction sales of personal farm property and household goods. (See rule Tax 11.50).

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.

"ENGAGED IN BUSINESS" IN WISCONSIN

Section Tax 11.97 of the Wis. Adm. Code is adopted to read:

Tax 11.97 "Engaged in business" in Wisconsin. (Section 77.51(4)(j), (7)(c) and (k); 77.53(3), (5), (7), (9) and (9m), Wis. Stats.) (1)
GENERAL. (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States Supreme Court has resolved certain jurisdictional questions by interpreting the due process clause of the Fourteenth Amendment to the U.S. Constitution. Over the last 30 years the Court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established; the out-of-state seller is required to register and collect the state's use tax.

(b) Some United States Supreme Court decisions concerning nexus include:
Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)
Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)
General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)
Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)
Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)
National Bellas Hess, Inc. vs. Illinois Department of Revenue, 368 U.S. 753 (1967)
National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977).

(2) STATUTES. (a) Section 77.51(7)(k), Wis. Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and section 77.51(4)(j), Wis. Stats., defines a lease as a continuing sale.

(b) Section 77.53(3), Wis. Stats., provides in part as follows:

"(3) . . . 'Retailer engaged in business in this state', unless otherwise limited by federal statute, means any of the following:

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or the taking of orders for any tangible personal property."

(c) Under section 77.53(5), Wis. Stats., the tax collected by a use tax registrant is a debt owed by the registrant to this state, and section 77.53(7), Wis. Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS". Unless otherwise limited by federal statute, a retailer engaged in business in this state who must register includes the following:

(a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property.

(e) Any person servicing, repairing or installing its products in this state.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(4) ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS". Activities which, in themselves, do not create nexus in this state, include: (a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(5) REGISTRATION. (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state shall apply for a use tax registration certificate. The

registration form, entitled "Application for Permit" (Form A-101), may be obtained from any department office. There is no fee for registration. Retailers engaged in business in Wisconsin for use tax purposes are not necessarily engaged in business in Wisconsin for franchise/income tax purposes.

(b) Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may register and pay taxes directly to this department. Holders of such permits shall collect the use tax from Wisconsin customers, give receipts therefor and pay the use tax in the same manner as retailers engaged in business in this state.

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

MEDICAL APPLIANCES, PROSTHETIC DEVICES AND AIDS
(To Reflect Statute Language Changes Only)

Section Tax 11.08(1) and (4) of the Wis. Adm. Code are amended to read:

Tax 11.08(1) DEVICES FOR HANDICAPPED PERSONS. Section 77.54(22)(a), Wis. Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular ~~crippled~~ physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22)(e), Wis. Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for the use of ~~invalids and crippled~~ persons who are ill or disabled." This exemption includes open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.