

Chapter Tax 11

SALES AND USE TAX

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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 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.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.01 Sales and use tax return forms. (s. 77.58, Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

(a) Form S-010. For occasional sales of motor vehicles.

(b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.

(c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.

(d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.

(e) Form S-013. For concessionaires. (Annual return).

(f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).

(g) Form S-015. For occasional bingo sales.

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(h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.

(3) **EXEMPT SALES.** The following meals shall be exempt: (a) *Health care facilities.* Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes or day care centers registered under ch. 48, Stats. ("Hospital" is defined in s. 50.33 (1), Stats. "Nursing Home" is defined in s. 146.30, Stats. "Sanitorium" means an institution for the recuperation and treatment of victims of physical or mental disorders.) However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) *"Meals on wheels".* Effective on and after October 4, 1973, meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education, effective for the fall semester of 1973.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of pre-packaged ice cream, ice milk, sherbet or yogurt (pint, quart, gallon or larger sizes), whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of ice cream, ice milk, sherbet or yogurt, or cones, sundaes, sodas, shakes and frozen chocolate bars made from these products shall be taxable.

(4) **SPECIAL SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

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.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78.

Tax 11.91 Successor's liability. (s. 77.52 (18), Stats.) (1) **DESCRIPTION OF SUCCESSOR.** (a) A purchaser or assignee of the business or stock of goods of any retailer liable for sales or use tax shall be personally liable for the payment of such sales or use tax if the purchaser or assignee fails to withhold a sufficient amount of the purchase price to cover the taxes due.

(b) If a corporation shall be created and shall acquire the assets of a sole proprietor in consideration for the corporation's capital stock, the corporation is liable for the sales tax of the sole proprietorship.

(c) A surviving joint tenant shall not have successor's liability for delinquent sales or use tax where the business or inventory passes by law to the remaining joint tenant.

(d) A financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use tax shall not incur successor's liability.

(e) If a retail business or stocks of goods shall pass from A to B to C, and B's successor's liability shall be unpaid, such liability shall not pass to C. The new successor, C, shall be liable only for B's unpaid sales and use tax.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a financial institution or other creditor actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered if it never operates the business and if its sole purpose is to sell the business in its entirety at whatever price it can obtain to recover its investment.

(2) EXTENT OF LIABILITY. (a) If there shall be no purchase price, there shall be no successor's liability.

(b) A successor shall be liable to the extent of the purchase price. The purchase price shall include:

1. Consideration paid for tangible property and for intangibles such as leases, licenses and good will.

2. Debts assumed by the purchaser, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) PROCEDURES FOR PURCHASER. (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. The letter requesting the certificate shall include the real name, business name and seller's permit number (if known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the

request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79.

Tax 11.92 Records and record keeping. (ss. 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9), Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in this state tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order. Sales to organizations holding a certificate of exempt status (e.g., religious or charitable organizations) can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller,

unless the merchandise sold is specifically exempted by statute regardless of use (such as groceries). Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in a manner in which they readily can be related to the transactions for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in this state.

(2) **MICROFILM RECORDS.** Microfilm (including microfiche) reproductions of general books of account (such as cash books, journals, voucher registers and ledgers) and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing (ADP) tax accounting system shall have the capability of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents (such as sales invoices, purchase invoices, exemption certificates, credit memoranda) shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.

2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

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

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

Tax 11.93 Annual filing of sales tax returns. (s. 77.58 (5), Stats.)

(1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

(3) A retailer who files on an annual basis shall not be required to file a sales and use tax "annual information return" if:

(a) Deductions and exemptions are itemized on the sales tax return filed for the year, and

(b) Gross receipts reported for income tax and sales tax purposes are the same amount.

Note: The interpretations in this rule are effective under the general sales and use tax law effective on and after September 1, 1969, except that the \$300 standard applies to taxable years beginning on and after the date of the rule's adoption. A \$100 standard applies to taxable years prior to the date of the rule's adoption. The \$300 standard was adopted effective January 1, 1979 to apply to the 1979 taxable year and thereafter.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

Tax 11.94 Wisconsin sales and taxable transportation charges. (ss. 77.51 (4) (intro.) and (d) and (4r), and 77.52 (1), Stats.) (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), Stats.

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(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), 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

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(2d) 235, states that income from a limited partnership interest is considered income from an intangible for Wisconsin tax purposes).

(c) Income tax paid to another state on income not considered taxable income for Wisconsin tax purposes.

(d) Income tax paid to a city, village, town or foreign country.

(4) **HOW TO CLAIM A CREDIT.** The amount of income tax credit claimed shall be entered on the line entitled "Net income tax paid to other states" on side one of Wisconsin income tax returns Forms 1 and 1A. The credit shall not exceed the Wisconsin net tax. To verify the credit claimed, the following information shall be attached to Form 1 or 1A in the following situations:

(a) If the credit is based entirely on tax withheld and a refund is due from the other state, attach a copy of the wage statement and that state's income tax return.

(b) If there is a tax due on the other state's return or if estimated tax payments were made to that state, attach proof of payment of such amounts along with a copy of the wage statement and that state's income tax return. Proof of payment is not required if either the tax due or estimated tax payments do not exceed \$10.

(5) **YEAR IN WHICH TO CLAIM INCOME TAX CREDIT.** The credit for income tax paid to another state shall be claimed on the Wisconsin return for the year in which the out-of-state income is considered taxable Wisconsin income. For example, a Wisconsin resident receives income of \$4,000 in 1975 from rental property located in Iowa. Such person files a 1975 declaration of estimated tax of \$200 with Iowa, with \$150 of declaration payments being made in 1975 and the fourth quarter payment of \$50 being made in January 1976. The Iowa income of \$4,000 is reported as income on the 1975 Iowa and Wisconsin returns. The 1975 Iowa income tax return shows the following:

	1975 <u>Iowa Return</u>
Iowa Rental Income	\$ <u>4,000</u>
Iowa Net Tax (amount to be claimed as a credit on 1975 Wisconsin return)	\$ 185
Declaration Payments	\$ <u>200</u>
Refund	\$ <u>15</u>

The taxpayer may claim a "Credit for net income tax paid to other states" of \$185 on the 1975 Wisconsin return, even though a part of such tax was paid in 1976.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79.

Tax 2.96 Extension of time to file corporation franchise or income tax returns. (s. 71.10(5) (a), Stats.) (1) **GENERAL.** Corporation franchise or income tax returns (Forms 4 and 5) are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year unless an extension of time for filing has been granted. Such returns and inventory reports (Form 10) due on and after April 24, 1976 may be

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filed within the same extension period allowed for filing corresponding federal income tax returns under the internal revenue code. In the alternative, for such returns, a corporation may obtain an extension from the department for a period not to exceed 30 days, if the extension is requested prior to the original due date of the return.

(2) PROCEDURE. (a) *The 30-day extension from department.* A request for a 30-day extension (Form IC-830) from the department shall be filed in duplicate by the taxpayer prior to the original due date of the tax return. A payment submitted with the extension request will be acknowledged on the copy of the extension request which is returned to the taxpayer.

(b) *The 3-month federal extension.* 1. A copy of federal extension Form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 3-month extension provision for the Wisconsin return to be considered timely filed.

2. A taxpayer using a federal extension who desires to minimize interest charges during the extension period may pay any estimated tax liability on or before the 15th day of the 3rd month following the taxable year. This may be done by attaching a remittance either to an amended