

CR 82-190

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Revisor of Statutes  
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CERTIFICATE


STATE OF WISCONSIN )  
 )SS  
DEPARTMENT OF REVENUE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Michael Ley, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed Order relating to Clearinghouse Rule No. 82-190 was duly approved and adopted by this department on April 13, 1983.

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 125 South Webster Street in the city of Madison, this ~~13th~~ of April 1983.

  
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Michael Ley  
Secretary of Revenue

7-1-83

ORDER OF THE DEPARTMENT OF REVENUE

REPEALING, AMENDING AND CREATING RULES

To repeal Tax 11.15(5)(b); to amend Tax 11.15(5)(a), 11.51(2)(b), 11.87(2)(d)(3), (g) and (i), relating to the sales tax treatment of disposable items sold to retailers of prepared food, restaurant tips, meals sold to restaurant employes and yogurt sold by grocers.

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Analysis by the Department of Revenue

SECTIONS 1, 2 and 4. Rule Tax 11.15(5)(a) and 11.87(2) are amended and Tax 11.15(5)(b) is repealed to reflect the Wisconsin Tax Appeals Commission's January 29, 1982 decision in Rause Enterprises et. al. v. Wisconsin Department of Revenue which held that a restaurant operator may purchase under the resale exemption certain disposable items transferred to the operator's customers who make food purchases. See, also, Servomation Corporation v. Wisconsin Department of Revenue, (unpublished) 317 N.W. 2d 464 (1982).

SECTION 3. Rule Tax 11.51(2)(b) is amended to delete parentheses and the provision that only yogurt sold in a pint or larger sized container is exempt. As amended, all sales of yogurt by grocers will be exempt except yogurt sold for on premise consumption (s. 77.54(20)(c)1, Stats.), or yogurt sold as soda fountain items, such as bars, cones and sundaes (s. 77.54(20)(c)2, Stats.).

SECTION 4. Rule Tax 11.87(2)(g) is amended to make it clear that when a customer adds a tip to the price of a meal under an arrangement made with the seller, or restaurant operator, such tips are gross receipts which are taxable under s. 77.51(11)(c)2, Stats. Since tips and gratuities became taxable under Chapter 224, Laws of 1975, effective May 5, 1976, information regarding periods before that date is no longer needed and is deleted. Tax 11.87(2)(i) is amended to correct terminology.

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Pursuant to the authority vested in the Department by section 227.014, Stats., the Department of Revenue hereby repeals, amends and creates rules contained in Chapter Tax 11 which interpret 77.51(4)(f), (11)(c)(2) and (12)(c)1, 77.52(13), 77.54(6)(b) and (20), Stats., as follows:

SECTION 1. Tax 11.15(5)(a) is amended to read:

Tax 11.15(5)(a) Gross receipts from the sales to restaurants, cafeterias, caterers or vending machine operators of disposable items, including ~~(e.g.,~~ paper and plastic cups, paper-and-plastic plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, and wrapping materials, and toothpicks,} used transferred to customers for a valuable consideration by these persons restaurants, cafeterias, caterers or vending machines, to serve as part of the sale of food, food products and beverages to customers are not subject to the tax.

SECTION 2. Tax 11.15(5)(b) is repealed.

SECTION 3. Tax 11.51(2)(b) is amended to read:

(b) Exempt sales by grocers. Gross receipts from the sale of the following are exempt:

Apple cider, {sweet}.	Eggs	Meritene.
Baby food.	Federal food stamp receipts.	Milk and milk products.
Bakery goods.	Fish and fish products.	Mustard.
Baking chocolate.	Flavoring extracts.	Newspapers.
Baking powder and soda.	Flour.	Noodles.
Barbeque sauces.	Fritos.	Nuts, {except candy coated}.
Berries.	Frozen desserts.	Oil, {cooking, salad}.
Biscuit mix.	Frozen fruit juices (3)	Oleomargarine.
Boullion cubes.	Frozen fruits and vegetables.	Olives.
Bread and rolls.	Frozen pizza.	Pancake mix.
Brownies.	Frozen TV dinners.	Peanuts, {in shell or canned, salted or not}.
Butter.	Fruit.	Peanut butter.
Cake mixes and flour.	Garlic.	Pepper.
Cakes, {Hostess and similar items}.	Gelatin.	Pickles.
Canned foods.	Gravy extracts and mixes.	Pie and pie fillings.
Catsup.	Grits.	Pie crust and mixes.
Cereal and cereal products.	Hash.	Potato chips.
Certo and other pectins.	Honey.	Potato salad.
Cheese.	Ice cream, {pints or larger}.	Poultry and poultry products.
Chicken.	Jams.	Preserves.
Chinese food.	Jellies.	Pretzels.
Chip dip.	Jello.	Puddings.
Chips, {potato, corn and similar items}.	Juices, {pure fruit} (3)	Raisins.
Chocolate, {instant and baking}.	Lobster.	Ravioli.
Citrus fruits.	Luncheon meats.	Relishes.
Cocoa.	Macaroni.	Rice.
Coffee and coffee substitutes	Magazines.	Rolls and biscuits.
Condiments.	Malted milk powder.	Saccharin.
Cones, {ice cream cups}.	Maraschino cherries.	Salad dressing.
Cookies and crackers.	Marshmallows.	Salt and salt substitutes.
Cooking oils.	Mayonnaise.	Salted nuts.
Cream.	Meal.	Sardines.
Desserts and toppings	Meat and meat products.	Seafoods.
Dietary foods (4).	Meat extracts and tenderizers.	Seasonings.
Dinners, {frozen}.	Melons.	Sherbet.
Doughnuts.		Shortening.
Dressing.		Soup.
Dried fruits.		Spaghetti products.
Dried milk products.		Spices.

Spreads.	Vanilla and vanilla	Yeast.
Sugar.	extract.	Yogurt, <del>{pints-or</del>
Sweeteners.	Vegetable juices.	<del>larger}</del> other
Syrup.	Vegetables.	<u>than par. (a) items.</u>
	Vinegar.	
Tea and ice tea.		
Turkey.	Waffle mix.	

SECTION 4. Tax 11.87(2)(d)3, (g) and (i) are amended to read:

Tax 11.87(2)(d)3 The tax shall apply to items purchased by caterers, including {such-as dishes, silverware, plastic-eating-utensils, straws, linen napkins, tablecloths, punch fountains, coffee silver service and glassware}, which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placemats and toothpicks also may be purchased without tax for resale.

Tax 11.87(2)(g) Tips. 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. On-and-after-May-6,-1976,-a A flat amount or flat percentage whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of such meals and shall be

subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

~~3. -- However, prior to May 5, 1976, a flat percentage service charge added to a customer's bill by a private club was not taxable if:~~

~~a. -- The charge was imposed under the club's bylaws;~~

~~b. -- The total amount collected was paid directly to food service employes; and~~

~~c. -- The amount was not part of employes' wages that brought them up to the legal minimum wage.~~

Tax 11.87(2)(i) Meals to employes. Sales of meals to employes by an employer for a specific charge shall be taxable.

1. A specific charge shall be deemed made for meals if any one of the following conditions shall be is met:

a. The employe shall ~~pay~~ pays cash for meals consumed.

b. An actual, specific charge for meals shall be is deducted from an employe's wages.

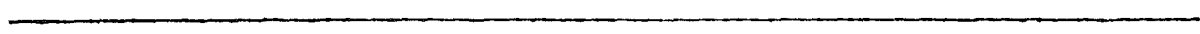
c. An employe shall ~~receive~~ receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.

d. An employe shall ~~have~~ has the option to receive cash for meals not consumed.

2. In the absence of any of the ~~following foregoing~~ conditions in subd. 1 a specific charge shall not be deemed made when:

a. A value shall be is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, ~~{social security}~~, or union contract purposes.

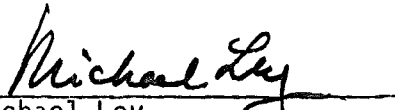
b. An employe who shall does not consume available meals shall ~~have~~ has no recourse against the employer for additional cash wages.



The rules, amendments and repeals contained in this order shall take effect as provided in s. 227.026(1)(intro.), Wis. Stats.

WISCONSIN DEPARTMENT OF REVENUE

Dated: 13 April 1983

By:   
Michael Ley  
Secretary of Revenue