

CR 84-254

RECEIVED

JUN 20 1985
3:40 pm
Revisor of Statutes
Bureau

CERTIFICATE

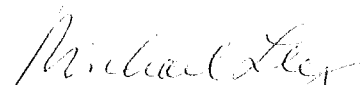
STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

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. 84-254 was duly approved and adopted by this department on June 14, 1985.

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 14TH day of June, 1985.



Michael Ley
Secretary of Revenue

ML:bet
430710

9-1-85

ORDER OF THE DEPARTMENT OF REVENUE
AMENDING AND CREATING RULES

To renumber Tax 8.51; to amend Tax 11.10(3)(e), 11.16(1)(i), 11.17(1)(a) and (4)(b)5, 11.52(2)(a), 11.53(2)(a), 11.54(5), 11.62(1)(b), 11.67(3)(a), 11.68(1)(a) and 11.69(2) and to create Tax 8.51(2), 8.61(3), 8.76(4), 8.81(3), 11.002 and 11.97(5)(c) relating to establishing a time period in which the department is required to review and make a determination on permit or other applications and establishing a sales/use tax rule setting forth permit requirements.

Analysis by the Department of Revenue

This rule order is made pursuant to 1983 Wisconsin Act 91 which provides that administrative rules requiring a business to obtain a permit be revised to specify the number of business days within which an agency will review and make a determination on a permit application.

This rule establishes a 15 day time period for review and determination of permit applications filed with the Department of Revenue. The only existing rules containing such a requirement apply to various intoxicating liquor and sales and use taxes. All of these rules are revised by this rule order.

This order also sets forth requirements for permits and registration certificates which must be obtained by sellers and users of property and services subject to the sales or use tax.

Pursuant to authority vested in the Department of Revenue by sections 125.03(1) and 227.014, Stats., the Department of Revenue hereby creates and amends various rules in interpreting ss. 77.52(7), (8), (9) and (12), 77.61(2), 125.10(2), 125.51(7), 125.58, 125.65(1) and (7), 125.68(9), 125.69(6), 139.06(1) and 227.0105, Stats., as follows:

SECTION 1. Tax 8.51 is renumbered Tax 8.51(1)

SECTION 2. Tax 8.51(2) is created to read:

Tax 8.51(2) The department of revenue shall review and make a determination on the items submitted for approval described in sub. (1) within 15 business days from the day the items are received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approval is mailed by the department to the applicant, or

(b) The department mails notification that the items submitted are incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

SECTION 3. Tax 8.61(3) is created to read:

Tax 8.61(3) The department of revenue shall review and make a determination on an application for a license required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved license is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application for a license is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

SECTION 4. Tax 8.76(4) is created to read:

Tax 8.76(4) The department of revenue shall review and make a determination on an application for a permit or registration required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit or registration is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

SECTION 5. Tax 8.81(3) is created to read:

Tax 8.81(3) The department of revenue shall review and make a determination on an application for approval of inventory transfer required by this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approval is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

SECTION 6. Tax 11.002 is created to read:

Tax 11.002 PERMITS, APPLICATION, DEPARTMENT DETERMINATION (ss. 77.52(7), (8), (9) and (12), 77.61(2) and 227.0105, Stats.) (1) PURPOSE. The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or consumers use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department of revenue will act on the application.

(2) PERMITS AND CERTIFICATES REQUIRED.

(a) Seller's permit. Every individual, partnership, corporation or other organization making retail sales or rentals of tangible personal property or selling, performing or furnishing taxable services at retail in this state shall have a seller's permit, unless the seller is exempt from taxation.

(b) Use tax registration certificate. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) Consumers use tax registration certificate. Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumers use tax registration certificate.

(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES. A person required to have a seller's permit or one of the use tax certificates described in sub. (2) shall file an "Application for Permit", Form A-101, with the department of revenue at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required. Form A-101 may be obtained at any department of revenue office, or by writing the department at P. O. Box 8902, Madison, Wisconsin 53708 or by telephone at (608)266-2776.

(4) REVIEW AND ACTION BY DEPARTMENT. The department of revenue shall review and make a determination on an application for a seller's permit or use tax certificate described in this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant, or

(b) The department mails notification to the applicant that security is required or that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

SECTION 7. Tax 11.10(3)(e), 11.16(1)(i), 11.17(1)(a) and (4)(b)5, 11.52(2)(a), 11.53(2)(a), 11.54(5), 11.62(1)(b), 11.67(3)(a), 11.68(1)(a) and 11.69(2) are amended to read:

Tax 11.10(3)(e) Each category treated separately. 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. 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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

Tax 11.16(1)(i) Motor carriers shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt from registration under this standard shall pay sales or use tax on all purchases of tangible personal property or taxable services not otherwise exempt, including items that may be resold to customers.

Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property for resale without paying tax by issuing to their supplier a properly completed resale certificate or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

Note: Refer to s. Tax 11.002 for description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

Tax 11.17(1)(a) Although professional personnel in hospitals and clinics and other members of medical professions (i.e., including physicians, surgeons, oculists, optometrists and podiatrists), regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sale of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.17(4)(b)5 An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from such sales are less than \$1,000 within a

calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications

Tax 11.52(2)(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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.53(2)(a) Each person who conducts business as a retailer at a temporary event shall hold one of the following:

1. Mobile seller's permit.
2. Temporary seller's permit.
3. Concessionaire permit.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit application.

Tax 11.54(5) As retailers, such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52(7), Stats., and may be required to post security as provided in s. 77.61(2), Stats. Such

retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.62(1)(b) Barbers and beauty shop operators shall not be required to register as retailers with the department if their gross receipts from sales of tangible personal property or taxable services are \$1,000 or less within a calendar year. Persons who are exempt as such occasional sellers shall pay sales or use tax to their suppliers on all purchases, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property (such as hair pieces), for resale without paying tax by issuing to their supplier a properly completed resale certificate.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.67(3)(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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.68(1)(a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

Tax 11.69(2) TAXABLE SALES. A financial institution shall obtain a seller's permit and regularly file sales and use tax returns if it has taxable gross receipts. Taxable gross receipts include sales of the following:

- (a) Coin savings banks.
- (b) Commemorative medals.
- (c) Collectors' coins or currency sold above face value.
- (d) Gold and silver bullion.
- (e) Repossessed merchandise.
- (f) Meals and beverages in the institution's cafeteria.
- (g) Charges for providing parking space for motor vehicles.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

SECTION 8 Tax 11.97(5)(c) is created to read:

Tax 11.97(5)(c) Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

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

DEPARTMENT OF REVENUE

Dated: June 14, 1985

By: Michael Ley
Michael Ley
Secretary of Revenue

43025



State of Wisconsin \ DEPARTMENT OF REVENUE

OFFICE LOCATED AT
125 SOUTH WEBSTER STREET

MAILING ADDRESS
POST OFFICE BOX 8933
MADISON, WISCONSIN 53708

RECEIVED

June 18, 1985

JUN 20 1985

Revisor of Statutes
Bureau

Orlan L. Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Re: Clearinghouse Rule 84-254

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue amending various intoxicating liquor and sales/use tax rules.

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,

A handwritten signature in cursive script that reads 'Michael Ley'.

Michael Ley
Secretary of Revenue

ML:bet
Enclosure
430810

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.