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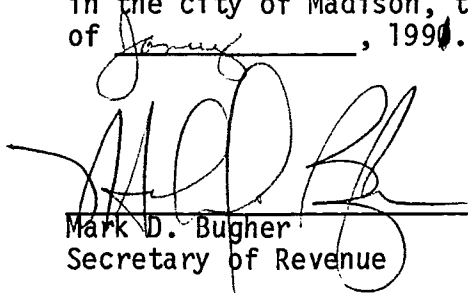
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to sales and use taxes was duly approved and adopted by this department on January 7, 1991.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 7th day of January, 1991.



Mark D. Bugher
Secretary of Revenue

MDB:VLG:1c
CKLEG/407

REVISOR OF STATUTES

JAN 14 1991

11:05 am

JAN 14 1991

ORDER OF THE DEPARTMENT OF REVENUE
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Department of Revenue adopts an order to amend Tax 11.15(1)(title), (a), (b) and (c)8, 11 and 12, (2)(title) and (g), (4)(a) and (b) and (5)(a), 11.19(title), (1), (2)(a), (c) and (d), (3)(d), (4)(a) and (b) and (5), 11.28(title), (2)(a) and (d), (3)(a), (b), and (c)2, and (4)(a) and 11.40(title), (1)(a) and (c), (2), (3)(a), (b), (d) and (e) and (4); to repeal and recreate Tax 11.28(1)(a) and (b) and (2)(intro.); and to create Tax 11.15(2)(L), 11.19(2)(e), 11.28(2)(e) and (6) and 11.40(1)(d) and (e), relating to sales and use taxes.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(4)(a), (8), (13h) and (14)(k), 77.52(2)(a)11, 77.54(2m), (3m), (5)(c) and (d), (6)(a) and (b), (6m), (6r), (9a), (15), (25) and (26m), 77.55(1) and 77.56(3), Stats.

SECTION 1. Tax 11.15(1)(title) and (2)(title) are amended to add reference to statutes. Tax 11.15(1)(a) is amended as a result of the creation of s. 77.51(4)(L), (7)(e) and (f), (24)(b) and (29), Stats., by 1983 Wisconsin Act 27, later renumbered. Tax 11.15(1)(b) and (c)8, 11 and 12 and (2)(g) are amended to update language and style per Legislative Council Rules Clearinghouse standards.

SECTION 2. Tax 11.15(2)(L) is created as a result of the creation of s. 77.51(4)(L), (7)(e) and (f), (24)(b) and (29), Stats., by 1983 Wisconsin Act 27, later renumbered.

SECTION 3. Tax 11.15(4)(a) and (b) are amended to update language and style per Clearinghouse standards. Subsection (5)(a) is amended to include the department's position that nursing homes are resellers of certain disposable items transferred to customers with the sale of food, food products and beverages.

SECTION 4. Tax 11.19(title) is amended to update statutory references due to the creation of s. 77.51(13h), Stats., by 1987 Wisconsin Act 399, to remove the inaccurate reference to s. 77.54(3), Stats., and add s. 77.55(1) addressed in sub. (5). Subsections (1) and (2)(a) and (c) are amended to update language and style per Clearinghouse standards. Subsection (2)(d) is amended to correct a statutory reference.

SECTION 5. Tax 11.19(2)(e) is created as a result of the creation of s. 77.51(13h), Stats., by 1987 Wisconsin Act 399 and amendment to s. 77.51(13h), Stats., by 1989 Wisconsin Act 336.

SECTION 6. Tax 11.19(3)(d), (4)(a) and (5) are amended to update language and style per Clearinghouse standards. Subsection (4)(b) is amended to address the department's position that stockholders' annual reports and proxy statements do not qualify for the printing exemption.

SECTION 7. Tax 11.28(title) is amended to add reference to s. 77.56(3), Stats., as created by 1989 Wisconsin Act 31.

SECTION 8. Tax 11.28(1)(a) and (b) and (2)(intro.) are repealed and recreated to remove unnecessary statutory language and to update language and style per Clearinghouse standards.

SECTION 9. Tax 11.28(2)(a) and (d) are amended as a result of the creation of s. 77.56(3), Stats., by 1989 Wisconsin Act 31 and to update language and style per Clearinghouse standards.

SECTION 10. Tax 11.28(2)(e) is created to address a part of what was previously in (2)(intro.) and because of the creation of s. 77.56(3), Stats., by 1989 Wisconsin Act. 31.

SECTION 11. Tax 11.28(3)(a), (b), (c)2 and (4)(a) are amended to clarify the department's position that the amount of a manufacturer's coupon is reduced by any handling fees for purposes of determining gross receipts. Also, language and style are updated per Clearinghouse standards.

SECTION 12. Tax 11.28(6) is created to address the department's position regarding manufacturer rebates.

SECTION 13. Tax 11.40(title) is amended to add s. 77.54(5)(c) and (26m), Stats., as created by 1983 Wisconsin Act 426, s. 77.54(5)(d), Stats., as created by 1985 Wisconsin Act 29 and s. 77.54(6r), Stats., as created by 1989 Wisconsin Act 31. Subsection (1)(a) is amended to reflect the creation of s. 77.54(6r), Stats., by 1989 Wisconsin Act 31. Subsection (1)(c) is amended to improve clarity.

SECTION 14. Tax 11.40(1)(d) is created as a result of the creation of s. 77.54(5)(d), Stats., by 1985 Wisconsin Act 29. Subsection (1)(e) is created as a result of the creation of s. 77.54(5)(c) and (26m), Stats., by 1983 Wisconsin Act 426.

SECTION 15. Tax 11.40(2), (3)(a), (b), (d) and (e) and (4) are amended to update language and style per Clearinghouse standards.

SECTION 1. Tax 11.15(1)(title), (a), (b) and (c)8, 11 and 12 and (2)(title) and (g) are amended to read:

Tax 11.15(1)(title) ITEMS EXEMPT UNDER s. 77.54(6)(b), STATS. (a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be "used by the purchaser to transfer merchandise to customers". Whether the containers or other packaging or shipping materials

are returnable or nonreturnable is not a factor. The exemption shall not apply to containers used in the incidental transfer of property to customers by persons providing services.

(b) Containers include barrels, bottles, cartons, chemical carboys and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize or protect the contents {,such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice and batting}, and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, pallets, skids and mailing tubes.

(c)8. Feed bags purchased by feed dealers who use ~~such~~ the bags to transfer merchandise sold to their customers.

11. LPG tanks ~~used~~ used to transfer fuel to customers which are replaced each time the fuel is exhausted.

12. Packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether ~~such~~ these items are used to transfer merchandise to customers, ~~are exempt.~~

(2)(title) ITEMS NOT EXEMPT UNDER s. 77.54(6)(b), STATS.

(g) "Valuable containers" such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A "valuable container" is a container which has some use by virtue of its shape or design such that the purchaser envisions further use of the container after the contents have been removed. If the container's contents are not subject to the tax and the cost to the seller of the container or containers in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable container or containers and pay a sales tax on that

part of the selling price. If the contents of the container or containers are taxable items, such as candy, the entire gross receipts from the sale of the package are subject to the tax.

SECTION 2. Tax 11.15(2)(L) is created to read:

Tax 11.15(2)(L) Bags, boxes, hangers and other containers transferred to customers by laundries, dry cleaners and other persons providing services.

SECTION 3. Tax 11.15(4)(a) and (b) and (5)(a) are amended to read:

Tax 11.15(4)(a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property ~~(e.g.,~~ such as soft drink bottles, beer bottles and milk containers~~),~~ and refunds of ~~such~~ the deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer's books of account.

(b) If a retailer's books of account include container deposits in gross receipts and if refunds of ~~such~~ the deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

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

Note to Revisor: Replace the note at the end of Tax 11.15 with the following note:

Note: The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except (a) The exemption for meat packaging and shipping materials became effective on May 20, 1978, pursuant to Chapter 368, Laws of 1977; (b) Laundries and dry cleaners became the consumers of bags, boxes, hangers and other containers transferred to customers effective September 1, 1983, pursuant to 1983 Wisconsin Act 27.

SECTION 4. Tax 11.19(title), (1) and (2)(a), (c) and (d) are amended to read:

Tax 11.19(title) PRINTED MATERIAL EXEMPTIONS. (ss. 77.51(8) and (13h), 77.52(2)(a)11, 77.54(2m), (9a), (15) and (25) and 77.55(1), Stats.)

(1) GENERAL. All retail sales of tangible personal property, including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This ~~rule~~ section describes exemptions which commonly apply to sales of printed material.

(2)(a) Section 77.52(2)(a)11, Stats., imposes the sales and use tax on certain services. However, an exemption is provided for the printing or imprinting of tangible personal property furnished by customers, which property will be subsequently transported outside ~~the-state~~ Wisconsin by the consumer for advertising purposes.

(c) Section 77.54(25), Stats., provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside ~~the-state~~ Wisconsin by the purchaser for use thereafter solely outside ~~the state~~ Wisconsin.

(d) Section 77.54(2m), Stats., provides an exemption for "~~The-the~~ "gross receipts from the sales of and storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals,

whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient." This exemption applies to newspapers, shoppers guides and ~~to~~ periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. ~~77.51(30)~~ 77.51(8), Stats.

SECTION 5. Tax 11.19(2)(e) is created to read:

Tax 11.19(2)(e) Section 77.51(13h), Stats., provides an exemption for sales of printed material in Wisconsin by a foreign corporation that is a publisher of printed materials whose only activities in Wisconsin are:

1. The storage of its raw materials in Wisconsin in or on property not owned by the foreign corporation and delivery of its raw materials to another person in Wisconsin if the storage and delivery are for printing by that other person. "Raw material" means tangible personal property which becomes an ingredient or component part of the printed materials or which is consumed or destroyed or loses its identity in the printing of the printed materials.

2. The purchase from a printer of printing services or tangible personal property printed in Wisconsin for the publisher.

3. The storage of the printed material or raw material for any length of time in Wisconsin in or on property owned by a person other than the publisher.

4. Maintaining, occupying and using, directly or by means of another person, a place that is in Wisconsin, that is not owned by the publisher and that is used for the distribution of printed material.

SECTION 6. Tax 11.19(3)(d), (4)(a) and (b) and (5) are amended to read:

Tax 11.19(3)(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals-~~{for example, books sold by the Book-of-the-Month-Club-or-similar-organizations}~~; paperback books, a new one of which may be issued once a month or some other

interval; or so-called "one shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, ~~price/order~~ price or order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

Example: Books sold by the Book of the Month Club or similar organizations do not qualify for the newspaper and periodical exemption.

(4)(a) Printed advertising materials, including catalogs and their mailing envelopes, may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54(25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside ~~the-state~~ Wisconsin by the purchaser for use thereafter solely outside ~~the-state~~ Wisconsin. The exemption applies to catalogs designed to be used by a retailer's potential customers.

(b) The exemption does not apply to materials shipped to Wisconsin addresses. It also does not apply to parts price lists, parts stock order books, order forms, stocking and purchasing guides, stockholders' annual reports or proxy statements, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Matchbooks Envelopes which do not contain exempt advertising, matchbooks, calendars, calendar pads, desk pads, folders, binders, ~~-envelopes-which-do-not-contain-exempt-advertising~~ material and playing cards also do not qualify for the exemption.

(5) Sales of printed material to governmental units, public schools and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54(9a) or 77.55(1), Stats. Sales to governmental units and public

schools need not be supported by exemption certificates, if a copy of the purchase order from such the organization is retained. Sales to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

Note to Revisor: Replace the note at the end of Tax 11.19 with the following note:

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state in sub. (2)(a) became effective March 1, 1970; (b) The exemption for advertising materials used out-of-state in sub. (4)(a) became effective May 21, 1972; (c) The second class mail standard described in sub. (3) became effective on August 1, 1974; (d) The exemption for sales of shoppers guides became effective July 1, 1978; (e) The exemption for ingredients and components of shoppers guides, newspapers and periodicals described in sub. (2)(d) became effective July 2, 1983; (f) the definition of newspaper in sub. (3)(a) and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) The exemption for controlled circulation publication reflected in subs. (2)(b) and (3)(b) became effective September 1, 1983, pursuant to 1985 Wisconsin Act 149; (h) The exemption for foreign publishers described in sub. (2)(e) became effective January 1, 1980 for publishers of books or periodicals or both other than catalogs and January 1, 1990, for all other foreign publishers pursuant to 1989 Wisconsin Act 336.

SECTION 7. Tax 11.28(title) is amended to read:

Tax 11.28(title) GIFTS, ADVERTISING SPECIALTIES, COUPONS, PREMIUMS AND TRADING STAMPS. (ss. 77.51(4)(a) and (14)(k) and 77.56(3), Stats.)

SECTION 8. Tax 11.28(1)(a) and (b) and (2)(intro.) are repealed and recreated to read:

Tax 11.28(1)(a) Section 77.51(14)(k), Stats., provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms includes the sale of tangible personal property to a purchaser even though the property may be used or consumed by another person to whom the purchaser transfers the property without valuable consideration, such as gifts and advertising specialties distributed gratis apart from the sale of other tangible personal property or services.

(b) Section 77.51(4)(a)(intro.), Stats., provides that "gross receipts" means the total amount of the sale, lease or rental price from sales at retail of tangible personal property or taxable services, valued in money or otherwise.

(2)(intro.) Persons who make gifts of taxable tangible personal property or distribute tangible personal property gratis to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to persons making gifts. Taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring the property for the purpose of giving it to retailers for use in selling merchandise to customers.

Examples: (1) A paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer's paint.

(2) A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given to customers.

(3) Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer and the sales or use tax, pursuant to s. Tax 11.14(2)(c), applies to the cost of the ingredients.

SECTION 9. Tax 11.28(2)(a) and (d) are amended to read:

Tax 11.28(2)(a) A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event, such as an open house, celebrity appearance or "farm days," cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in such this volume. In cases

where a seller furnishes free property to a retailer for use as gifts at a "grand opening" or similar event, the person furnishing ~~such~~ the property to the retailer is subject to the sales or use tax ~~or sales-tax~~ pursuant to s. 11.14(2)(c) on its cost of the property donated.

(d) Persons transferring ~~taxable~~ tangible personal property to salespersons or distributors or both in redemption of awards, such as "points", given under a sales incentive plan shall pay the tax on their purchases of ~~such~~ the property.

SECTION 10. Tax 11.28(2)(e) is created to read:

Tax 11.28(2)(e) Gifts originally purchased for resale. When a person purchases property for resale or for other exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or other exempt purpose and does not donate the property to an entity described in s. 77.54(9a), Stats., the purchaser shall be liable for use tax based on the purchaser's cost of the new merchandise or ingredients.

SECTION 11. Tax 11.28(3)(a), (b) and (c)2 and (4)(a) are amended to read:

Tax 11.28(3)(a) When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for tangible personal property without charge, the transfer of the property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable tangible personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon, less any coupon handling fees paid by the manufacturer.

(b) A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. ~~Such~~ The coupons are distributed as part of a retailer's advertisements and are used by consumers toward the purchase of tangible personal property. The retailer then is reimbursed by the

manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon, less any coupon handling fees paid by the manufacturer.

(c)2 A retailer may not use a resale certificate when purchasing taxable tangible personal property which the retailer knows will be given as a premium to a customer when that customer purchases other property which is not subject to sales tax ~~(e.g., gasoline and exempt food)~~. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

Example: If a retailer knows key chains it purchases will be given as a premium to customers when those customers purchase gasoline, certain food items or other tangible personal property not subject to sales tax, the retailer may not purchase the key chains without sales tax by giving a resale certificate. If the retailer did not know it would give the key chains as a premium at the time of purchase and used a resale certificate to purchase the key chains without sales tax, the retailer is liable for use tax measured by the cost of the key chains.

(4)(a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. ~~For example, coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games.~~ The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of such the receipts to the participating retailers.

Example: Coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games.

SECTION 12. Tax 11.28(6) is created to read:

Tax 11.28(6) MANUFACTURER REBATES. A manufacturer's rebate to a person who purchases tangible personal property or taxable services from a retailer is not a reduction of the retailer's gross receipts or sales price for the item for sales or use tax purposes.

Examples: (1) An automobile manufacturer gives an automobile dealer's customer a cash rebate of \$1,500 for an automobile purchased by a customer for \$15,000. Taxable gross receipts of the dealer from the sale of the automobile are \$15,000.

(2) An automobile manufacturer gives an automobile dealer's customer the option of receiving a \$1,500 cash rebate or allowing the \$1,500 rebate to be applied against the price of the automobile (\$15,000). The customer chooses to apply the rebate against the price paid for the automobile and pays the dealer \$13,500 (\$15,000 - \$1,500) for the automobile. The manufacturer subsequently reimburses the dealer \$1,500. Taxable gross receipts of the dealer from the sale of the automobile are \$15,000.

Note to Revisor: Replace the note at the end of s. Tax 11.28 with the following note:

Note: The interpretations in this section are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption from use tax of certain donated property became effective August 9, 1989, pursuant to 1989 Wisconsin Act 31.

SECTION 13. Tax 11.40(title) and (1)(a) and (c) are amended to read:

Tax 11.40(title) EXEMPTION OF MACHINES AND PROCESSING EQUIPMENT. (s. 77.54(5)(c) and (d), (6)(a), (6m), (6r) and (26m), Stats.)

(1)(a) Section 77.54(6)(a), Stats., exempts the gross receipts from the sale of and the storage, use or other consumption of "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property." Effective on December 1, 1981 and thereafter, "exclusively", as used in s. 77.54(6)(a), Stats., and in this section, means that the machines and specific processing equipment and repair parts or replacement thereof are used solely by a manufacturer in manufacturing tangible personal property to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than in manufacturing tangible personal property. This exemption is to be strictly construed.

(c) In determining whether a particular machine or piece of processing equipment is included in ~~this~~ the exemption, these 2 statutes under par (a), s. 77.54(6)(a) and (6m), Stats., must be considered together.

SECTION 14. Tax 11.40(1)(d) and (e) are created to read:

Tax 11.40(1)(d) Section 77.54(5)(d), Stats., provides an exemption for mobile mixing and processing units and the motor vehicle or trailer on which they are mounted, including accessories, attachments, parts, supplies and materials for those vehicles, trailers and units.

(e) Section 77.54(5)(c) and (26m), Stats., provide exemptions for certain motor vehicles, machinery and equipment used in waste reduction and recycling processes.

Note to Revisor: Insert the following note after sub. (1)(e):

Note: See s. Tax 11.11 for more information on waste reduction and recycling exemptions.

SECTION 15. Tax 11.40(2), (3)(a), (b), (d) and (e) and (4) are amended to read:

Tax 11.40(2)(intro.) ~~This exemption~~ The exemption under sub. (1)(a) shall apply if all the following conditions are met:

(a) Machines and processing equipment shall be used by a manufacturer in manufacturing tangible personal property. The exemption shall not apply to machines and processing equipment used in providing services or in other nonmanufacturing activities. ~~For example, machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor produces tangible personal property.~~

Example: Machines and equipment of a dry cleaner are not used by a manufacturer in manufacturing, because a dry cleaner provides a service and is neither a manufacturer nor producer of tangible personal property.

(b) Machines and processing equipment shall be used exclusively in manufacturing. ~~For example, a forklift truck used on a production line to move products from machine to machine and used regularly or frequently in a warehouse to move and stock finished products is not used exclusively in manufacturing.~~

Example: A forklift truck used on a production line to move products from machine to machine and also used regularly or frequently in a warehouse to move and stock finished products is not used exclusively in manufacturing.

(c) Machines and processing equipment shall be used directly in manufacturing. The exemption shall not apply if machines and processing equipment are not used directly in the step-by-step processes by which an end product results, even though such the machine and equipment are indirectly related to the step-by-step processes. ~~For example, machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications; lighting; safety; fire protection or prevention; research; storage; delivery to or from a plant or repair or maintenance of machines; processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing.~~ Machine foundations are real property improvements rather than personal property and do not qualify for exemption.

Example: Machines and equipment are not used directly in manufacturing if used for sweeping a plant; disposing of scrap or waste; plant heating or air conditioning; communications; lighting, safety, fire protection or prevention; research; storage; or delivery to or from a plant or repair or maintenance of machines, processing equipment or facilities. In addition, electric substations, tool storage facilities, water softening equipment, refrigerated storage facilities and catwalks that provide access to various parts of a building are not used directly in manufacturing.

(3)(a) Small tools used exclusively and directly in the manufacturing process qualify as "processing equipment". Small tools include hand tools such as drills, saws, micrometers and hammers. However, if ~~such~~ the items are also used ~~regularly, frequently or totally~~ for machine repair or general maintenance, they are not exempt.

(b) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce other machines or processing equipment which, in turn are used by ~~such~~ the manufacturer to produce tangible personal property. ~~For example, a lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of such machines and partly for repair purposes, it is not exempt.~~

Example: A lathe purchased by a manufacturer and used directly and exclusively to produce machines which are used on the manufacturer's production line is exempt. However, if the lathe is used partly for production of the machines and partly for repair purposes, it is not exempt.

(d) The exemption does not apply to machines or processing equipment used in whole or in part by a manufacturer before the manufacturing process has begun or after it has been completed (~~e.g., machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities, research, or crating or packaging for shipment~~).

Example: Machines or equipment used for storage, delivery to or from a plant, repair or maintenance of facilities or equipment, research, or crating or packaging of tangible personal property for shipment are not exempt.

(e) The exemption does not apply to tangible personal property, which is not machinery or equipment, but is used in a manufacturing plant. ~~For example, sweeping compounds are factory supplies rather than processing equipment.~~

Example: Sweeping compounds are factory supplies rather than processing equipment.

(4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. ~~Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.~~

Example: Conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns used as replacement parts for exempt machines and processing equipment are exempt.

Note to Revisor: Replace the note at the end of Tax 11.40 with the following note.

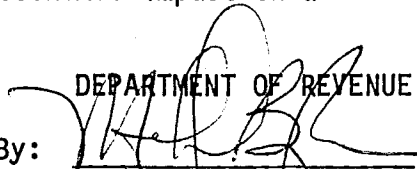
Note: The interpretations in this section are effective under the general sales and use tax law on and after September 1, 1969, except (a) Mobile mixing units are exempt effective September 1, 1983, pursuant to 1983 Wisconsin Act 27; (b) Vehicles and machines used in waste reduction and recycling are exempt effective July 1, 1984, pursuant to 1983 Wisconsin Act 426; (c) Motor vehicles or trailers upon which mobile mixing units are mounted are exempt effective July 20, 1985, pursuant to 1985 Wisconsin Act 29; (d) Safety attachments became exempt effective June 1, 1986, pursuant to 1985 Wisconsin Act 149; and (e) The exemption in s. 77.54(6) shall be strictly construed effective October 1, 1989, pursuant to 1989 Wisconsin Act 31.

This rule order shall take effect on the first day of the month following publication as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: January 7, 1991

DEPARTMENT OF REVENUE
By: 
Mark D. Bugher
Secretary of Revenue

CKLEG/M020610C

REVISOR OF STATUTES
JAN 14 1991

1989 Session

LRB or Bill No./Adm. Rule No.

Tax 11

Amendment No. if Applicable

FISCAL ESTIMATE

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

DOA-2048 (R 10/88)

Subject

Miscellaneous Rule Changes

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Section 3 of the proposed rule, amending Tax 11.15(5)(a), provides that nursing homes are resellers of disposable items, such as napkins and eating utensils, that are transferred to customers with the sale of food, food products and beverages; thus, sales of these items to nursing homes are not subject to tax. The amendment represents a change in the Department of Revenue's position. Information allowing an estimate of the revenue loss associated with change is not available; however, the loss is believed to be minimal.

Other revisions in the proposed rule reflect changes in language and style to conform with Legislative Council Rules Clearinghouse Standards. These changes have no fiscal effect.

REVISOR OF STATUTES

JAN 14

JAN 14 1991

Long-Range Fiscal Implications

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R 10/88) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Tax 11	Amendment No.
---	---------------

Subject
Miscellaneous Rule Changes

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
		Increased Costs	Decreased Costs
Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).			
A. State Costs by Category			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
TOTAL State Costs by Category		\$ -	\$ +
B. State Costs by Source of Funds			
GPR		\$ -	\$ +
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
C. FTE Position Changes		Increased Pos. + ()	Decreased Pos. - ()
III. State Revenues-		Decreased Rev.	Increased Rev.
GPR Taxes	Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	\$ - minimal	\$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
TOTAL State Revenues		\$ -	\$ +

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ -	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+	- minimal	Total Revenues	+	- minimal

NET Impact \$ (+)
or

NET Impact \$ (+)
on Local Funds or



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-8466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugar
Secretary of Revenue

January 8, 1991

REVISOR OF STATUTES

Gary L. Poulson
Assistant Revisor
2nd Floor
119 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703

JAN 14 1991

Re: Clearinghouse Rule 90-103

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use taxes.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Mark D. Bugar
Secretary of Revenue

MDB:VLG:1c
CKLEG/406

Enclosure

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



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

January 8, 1991

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, Wisconsin 53703

REVISOR OF STATUTES

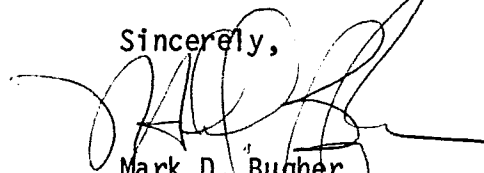
JAN 14 1991

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 90-103.

These materials are filed with you pursuant to s. 227.20, Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:VLG:1c
CKLEG/405

Enclosure

cc: Revisor of Statutes