

ORDER OF THE DEPARTMENT OF REVENUE AMENDING RULES

The Wisconsin Department of Revenue proposes an order to: **amend** Tax 11.002 (3) (a) 3. a. and b., 11.01 (2) (c) 1. (Note), 11.09 (4) (a), 11.11 (2) (Note) and (3) (d) 2. (Note), 11.17 (3) (Chart), 11.20 (3) (a) 2., 11.34 (4) (a) 3. (Note), 11.46 (4) (b), 11.535 (4) (Note) and (5), 11.61 (1) (a) 4., (2) (b) 1., and (2) (c) (Note 2), 11.88 (6), and 11.925 (3) (b) 2; **relating to** sales and use tax provisions.

The scope statement for this rule, SS 099-19, was approved by the Governor on October 3, 2019, published in Register No. 766A1 on October 7, 2019, and approved by the Secretary of Revenue on October 29, 2019.

Analysis by the Department of Revenue

Statutes interpreted:

Tax 11.002 – ss. 77.982 (4), 77.991 (4), 77.9941 (4), 77.9951 (3), 77.996 (1), 77.9964 (2), and 196.025 (6) (cm), Stats.

Tax 11.01 – ss. 66.0165 (1m) (f) 2., 77.982, 77.991, 77.9941, 77.9951, 77.9964, and 196.025 (6) (cm), Stats.

Tax 11.09 – s. 77.54 (14m), Stats.

Tax 11.11 – s. 77.54 (26), Stats.

Tax 11.17 – ss. 77.51 (3pj) and (17w) and 77.54 (14), (20n), and (22b), Stats.

Tax 11.20 – s. 77.54 (3m), Stats.

Tax 11.34 – ss. 77.51 (9) (a) and (am) and (14g) (h), 77.52 (12), and 77.54 (7), Stats.

Tax 11.46 - s. 77.54 (7m), Stats.

Tax 11.535 – s. 73.03 (38), Stats.

Tax 11.61 - ss. 77.51 (1bm), 77.52 (2) (a) 10., 77.54 (33), Stats.

Tax 11.88 – ss. 77.51 (7i) and (13) (c) and (q), 77.52 (3m), and 77.523, Stats.

Tax 11.925 – s. 77.61 (2), Stats.

Statutory authority: Sections 77.65 (3) and 227.11 (2) (a), Stats.

Explanation of agency authority: Section 77.65 (3), Stats., provides "[t]he department may promulgate rules to administer this section..."

Section 227.11 (2) (a), Stats., provides "[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."

Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule: The department estimates it will take approximately 100 hours to develop the rule.

Related statute or rule: There are no other applicable statutes or rule.

Plain language analysis: The rule updates various sections as identified in the JCRAR report submitted on March 26, 2019, as follows.

- a. **Streamlined Sales Tax Registration System.** Section Tax 11.002 (3) (a) 3. a. and b. are amended to address a name change to the Streamlined Sales Tax Registration System.
- b. **Addresses and other contact information.** Sections Tax 11.01 (2) (c) 1. (Note), 11.11 (2) (Note) and (3) (d) 2. (Note), 11.34 (4) (a) 3. (Note), 11.535 (4) (Note) and (5) and Tax 11.925 (3) (b) 2. (Note) are amended to update old email and mailing addresses and telephone numbers.
- c. **Insulin.** Section Tax 11.09 (4) (a) is amended to clarify that insulin furnished by a licensed pharmacist for treatment of diabetes as directed by a physician is deemed dispensed on a prescription as provided by sec. 77.54(14m), Stats.
- d. **Purchases by medical clinics and hospitals.** Section Tax 11.17 (3) (Chart) is amended to remove several items from taxable and exempt lists, because they are no longer defined terms or are unclear as to use to definitively state they are taxable or exempt.
- e. **Beekeeping.** Sections Tax 11.20 (3) (a) 2. and 11.61 (1) (a) 4., (2) (b) 1., and (2) (c) (Note 2) are amended to include the tax treatment of drugs and services furnished by veterinarians for bees and products used in raising bees for research per 2017 WI Act 59.
- f. **Occasional sale exemption for nonprofit organizations.** Section Tax 11.46 (4) (b) is amended to update receipt and day thresholds for the nonprofit occasional sale exemption, as provided by 2015 Act 364, amending sec. 77.54(7m), Stats.
- g. **References.** Section Tax 11.88 (6) is amended to correct a rule reference.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: The department has created this proposed rule order to reflect these statutory changes as well as provide needed clarification and correction as described above.

Analysis and supporting documents used to determine effect on small business:

This rule makes changes to reflect current law and current department policy. This proposed rule order makes no policy or other changes having an effect on small business.

Anticipated costs incurred by private sector: This proposed rule does not have a fiscal effect on the private sector.

Effect on small business: This proposed rule order makes no policy or other changes having an effect on small business.

Agency contact person: Contact Jen Chadwick at (608) 266-8253 or jennifer.chadwick@wisconsin.gov, if you have any questions regarding this proposed rule.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to the contact person shown below. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Jen Chadwick
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
jennifer.chadwick@wisconsin.gov

SECTION 1. Tax 11.002 (3) (a) 3. a. and b. are amended to read:

Tax 11.002 (3) (a) 3. a. Using the Streamlined Sales Tax ~~Governing Board's Central~~ Registration System (~~SSTGBCRS~~ SSTRS). The information submitted using the ~~SSTGBCRS~~ SSTRS is obtained by the department on a daily basis and ~~will be~~ used to automatically register a person in Wisconsin. If the department determines that additional information is necessary to process the registration, a person will be contacted by the department.

b. Except for a seller who uses a certified service provider, a seller who registers through the ~~SSTGBCRS~~ SSTRS may indicate at the time of registration that it anticipates making no taxable sales in Wisconsin and is not required to file a sales and use tax return in Wisconsin until ~~such time as~~ the seller makes a taxable sale that is sourced to Wisconsin. However, once the seller makes a taxable sale in Wisconsin, the seller is required to file a sales and use tax return in Wisconsin by the last day of the month following the end of the calendar quarter in which the sale occurred and continue to file returns by the last day of each calendar quarter thereafter, unless ~~they are~~ it is notified in writing by the department of a different filing frequency.

SECTION 2. Tax 11.01 (2) (c) 1. (Note) is amended to read:

Tax 11.01 (2) (c) 1. **Note:** Written requests should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~ DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to ~~Mandate eFile Waiver Request~~, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison WI 53708-8949.

SECTION 3. Tax 11.09 (4) (a) is amended to read:

Tax 11.09 (4) (a) Prescribed for the treatment of a human being by a person authorized to prescribe the drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law. Insulin furnished by a pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed dispensed on prescription.

SECTION 4. Tax 11.11 (2) (Note) and (3) (d) 2. (Note) are amended to read:

Tax 11.11 (2) **Note:** Refer to s. Tax 6.40 for information on how to request approvals for property tax exemption for utility waste treatment facilities. For more information regarding exemptions for waste treatment facilities owned by a utility, including railroads, airlines, and pipelines, approved by the department, write to Wisconsin Department of Revenue, Manufacturing and Utility ~~Section~~ Bureau, PO Box 8971, Madison WI 53708-8971; telephone (608) ~~266-8462~~ 3845; send an e-mail to ~~utility@revenue.wi.gov~~ mfgtelco@wisconsin.gov; or access the department's ~~internet~~ web site at ~~http://www.revenue.wi.gov/contact/slfbmta.html~~ www.revenue.wi.gov and search "waste treatment facilities".

(3) (d) 2. **Note:** For more information regarding the exemption for municipal treatment facilities, write, email or call Wisconsin Department of Revenue, ~~Bureau of Customer Service Bureau~~, Mail Stop 5-77, PO Box ~~8902~~ 8949, Madison WI 53708-~~8902~~ 8949, email dorsalesanduse@wisconsin.gov, telephone (608) ~~266-2772~~ 266-2776. The web site is www.revenue.wi.gov.

SECTION 5. Tax 11.17 (3) (Chart) is amended to read:

Tax 11.17 (3) (Chart)

Taxable	Exempt
Adhesive tape	*Antiembolism elastic hose and stockings, including parts and accessories
Alcoholic beverages	*Artificial eyes and limbs, including parts and accessories
Apparatus and equipment for treatment of diabetes	*Blood sugar level testing supplies
Bandages, gauze and cotton	Bone pins and plates, including parts and accessories
Bed pans	*Crutches and wheel chairs, including motorized wheelchairs and scooters, including parts and accessories
Beds and linens	
Blankets	
Cold packs and hot packs	
Compresses and dressings <u>Dressings</u>	
Cosmetics	
Deodorants and disinfectants	
Taxable	Exempt
Distilled water	Diaphragms
Enema kits	*Disposable syringes containing insulin

Instruments
Laboratory equipment and supplies
Medical equipment
Needles and syringes
Office equipment and supplies
Oxygen delivery equipment
Paper products
Printed material
~~Soda water beverages~~
Soap
Soft drinks
Uniforms and gowns
X-ray film and machines

Drugs
~~Dye~~
*Hearing aids, including parts and accessories
Medical oxygen
Oral contraceptives
Pacemakers, including parts and accessories
Prophylactics
Rib belts and supports
Rubbing alcohol
Splints and cast materials
Suppositories
Sutures
Vaccines
Vaginal creams and jellies
Vitamins

SECTION 6. Tax 11.20 (3) (a) 2. is amended to read:

Tax 11.20 (3) (a) 2. Seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides and fungicides, breeding and other livestock, bees, beehives and bee combs, poultry, farm work stock, baling twine and baling wire, containers for fruits, vegetables, grain, hay, silage and animal wastes, plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage, drugs, semen for artificial insemination, fuel, and electricity, that are used exclusively and directly in raising such animals.

SECTION 7. Tax 11.34 (4) (a) 3. (Note) is amended to read:

Tax 11.34 (4) (a) 3. **Note:** A person requesting seller's permit inactivation by ~~electronic mail~~ email should send its request to ~~sales10@revenue.wi.gov~~ dorsalesanduse@wisconsin.gov.

SECTION 8. Tax 11.46 (4) (b) is amended to read:

Tax 11.46 (4) (b) An agency camp is not engaged in a trade or business if its sales of otherwise taxable tangible personal property, items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., or services or its events occur on ~~20~~ 75 days or less during the calendar year or if its taxable receipts for the calendar year are ~~\$25,000~~ \$50,000 or less.

SECTION 9. Tax 11.535 (4) (Note) and (5) are amended to read:

Tax 11.535 (4) **Note:** Copies of ~~the Form S-240, "Wisconsin Temporary Event Operator and Seller Information reporting form,"~~ may be obtained from the department's website at revenue.wi.gov, at any Department of Revenue office, by calling (608) ~~266-2776~~ 266-1961, by

electronic mail email at sales10@revenue.wi.gov or dorformsrequests@wisconsin.gov, or by writing to Wisconsin Department of Revenue, Post Office Box ~~8902~~ 8949, Madison, WI 53708-8949.

(5) Alternative reporting method. Operators of continuing or successive events may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Temporary Events Program, ~~265 W Northland Avenue, Appleton, WI 54911~~ PO Box 8910, Madison, WI 53708-8910. It shall list the dates and locations of events to be held during the calendar year and the proposed method for reporting the information required.

SECTION 10. Tax 11.61 (1) (a) 4., (2) (b) 1., and (2) (c) (Note 2) are amended to read:

Tax 11.61 (1) (a) 4. Services performed to animals which are livestock or poultry as defined in s. Tax 11.12 (2) (j), bees, or farm work stock as defined in s. Tax 11.12 (2) (e), regardless of whether the service is a veterinary service.

(2) (b) 1. Veterinarians' purchases of drugs used on farm livestock, bees, and farm work stock, are exempt from tax.

(c) **Note:** Section Tax 11.61 interprets ss. 77.51 (1bm), (2d), (3p), and (13) (m) and (o), 77.52 (2) (a) 10., and 77.54 (3), (3m), (33), and (42), Stats.

SECTION 11. Tax 11.88 (6) is amended to read:

Tax 11.88 (6) Consignment sales. When a recreational vehicle dealer has possession of a recreational vehicle owned by another person, the principal, the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser. If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the recreational vehicle and the tax on the transaction shall be paid under sub. ~~(4)~~ (5) (a), provided the recreational vehicle dealer does not take title to the recreational vehicle. If the dealer does take title, the dealer is the seller.

SECTION 12. Tax 11.925 (3) (b) 2. (Note) is amended to read:

Tax 11.925 (3) (b) 2. **Note:** Form S-127 may be obtained from the department's website at www.revenue.wi.gov, any Department of Revenue office, or by writing, emailing, or calling: Wisconsin Department of Revenue, P.O. Box ~~8902~~ 8901, Madison, WI 53708-8901, DORSpecialProcedures@wisconsin.gov, (608) ~~266-2278~~ 266-0833.

SECTION 13. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Peter W. Barca
Secretary of Revenue

E:Rules/172 – Biennial Review – Tax 11 Update – SS 099-19/Tax 11 Biennial Review Proposed Rule Order