

## Chapter Tax 11

## SALES AND USE TAX

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**Tax 11.01 Concessionaires** (sections 77.52 (7), (19) and 77.61 (2), Wis. Stats.). (1) Each person desiring to engage in or conduct business as a concessionaire at a fair, carnival, circus or other temporary location shall file with the department of revenue an application for a temporary seller's permit for each concession on a form prescribed by the department. At the time of filing such application he shall pay to the department a security deposit to protect the revenue of the state, which deposit for each concession shall be \$10, regardless of the number of days a particular concession is operated at the event. At such time he shall also furnish the department with the name and address of his agent in this state upon whom any process, notice or demand required or permitted by law to be served upon him may be served.

(2) A temporary seller's permit shall be valid only for the duration of the event for which it is issued.

(3) Each person granted one or more temporary seller's permits in a calendar year shall, on or before January 31 of the succeeding year, file a concessionaire's annual sales tax return. On such return the security deposited during the calendar year may be claimed as a credit against the tax due.

(4) Examples of "concessionaires" are persons conducting the following businesses at such events: nickel pitch, pop in, ring toss, short range, basketball, guess your weight, jewelry stand, fish pond, photo stand and tip the bottle. Further examples include persons selling ice cream, cotton candy, candy apples, sno cones, popcorn, or frozen delight from stands at such events.

(5) For purposes of this rule, "concessionaire" does not include:

(a) A person who holds a permanent seller's permit for operating amusement rides, traveling vaudeville performances, menageries or object of curiosity shows;

(b) A person selling meals (including lunches or sandwiches).

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

**History:** Cr. Register, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 126, eff. 6-1-66; am. (1), Register, June, 1975, No. 234, eff. 7-1-75.

**Tax 11.02 Temporary amusement, entertainment or recreational events or places** (sections 77.51(7)(c), 77.52(7), (19) and 77.61(2), Wis. Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to section 77.51(3), Wis. Stats., and as used in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the purposes of section 77.51(7)(c), Wis. Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(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 section 77.52(7), Wis. Stats., and may be required to post security as provided in section 77.61(2), Wis. 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.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to

churches or other nonprofit groups which operate within the occasional sale limitations of section 77.51 (10) (c), Wis. Stats.

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

History: Cr. Register, March, 1976, No. 243, eff. 4-1-76.

**Tax 11.03 Elementary and secondary schools and related organizations.** (section 77.54(4), (9) and (9a), Wis. Stats.) (1) DEFINITIONS. (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in section 119.30, Wis. Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in paragraph (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(2) SALES BY ELEMENTARY AND SECONDARY SCHOOLS. (a) Sales by elementary or secondary schools, the gross receipts from which are exempt, include:

1. The sale or rental of books, yearbooks, annuals, magazines, directories, bulletins, papers or similar publications.

2. School lunches and library and book fines.

3. Rental of auditoriums or gymnasiums including any charges for lights, heat, janitor fees and equipment.

4. Admissions to school activities such as athletic events, art and science fairs, concerts, dances, film or other exhibits, lectures and school plays, if the event is sponsored by the school, the school has control over purchases and expenditures and the net proceeds are used for educational, religious or charitable purposes.

(b) The gross receipts of an elementary or secondary school from the sales of admissions to recreational facilities, such as golf courses which are open to the general public, are taxable.

(3) SALES BY SCHOOL-RELATED ORGANIZATIONS AND OTHERS. Sales by school-related organizations and others, the gross receipts from which are taxable, include:

(a) The sale of class rings, photographs or caps and gowns rented or sold to students by retailers or photographers whereby the school acts as a collection agent for the seller, whether or not the school receives a commission for such collection. The retailer (e.g., a photographer) is subject to the tax on these sales.

(b) Sales made by school-related organizations, such as parent-teacher associations and student organizations, not subject to the control and supervision of school officials.

(c) Sales of tangible personal property or taxable services by vocational, technical and adult education schools.

(4) SALES TO SCHOOLS AND SCHOOL-RELATED ORGANIZATIONS. Under section 77.54, Wis. Stats., gross receipts from sales to the following organizations are exempt: (a) All public schools, vocational schools, state colleges and universities and public school districts. This exemption may be claimed without use of an exemption certificate. A purchase order shall be acceptable evidence of a sale's exempt status.

(b) Private schools having certificates of exempt status.

(c) Related organizations of private or public schools having certificates of exempt status. Such organizations include parent-teacher associations and student organizations.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that gross receipts from sales by vocational, technical and adult education schools are exempt for the period from July 1, 1972 through October 3, 1973.

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.08 Medical appliances, prosthetic devices and aids.** (section 77.54(22), Wis. Stats.) (1) DEVICES FOR HANDICAPPED PERSONS. Section 77.54(22) (a), Wis. Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays.

(2) PROSTHETIC DEVICES, APPLIANCES AND AIDS. Section 77.54(22) (b), Wis. Stats., exempts gross receipts from the sale of "Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body." "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wigs or hair pieces.

(3) EYE GLASSES. Section 77.54(22) (d), Wis. Stats., exempts gross receipts from the sale of "Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser." This exemption does not include tools and supplies, eyeglass cases, eye shields, chains, clips or other accessories associated with eye glasses. Frames for prescription glasses are exempt.

(4) CRUTCHES AND WHEELCHAIRS. Section 77.54(22) (e), Wis. Stats., exempts gross receipts from the sale of "Crutches and wheelchairs for the use of invalids and crippled persons." This exemption includes open and closed end walkers (with or without casters) and canes

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which provide walking support by making contact with the ground at more than one point.

(5) **REPAIR PARTS AND SERVICE.** Gross receipts from the sale of repair parts and service for exempt property are exempt.

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.09 Medicines.** (section 77.51(21) and 77.54(14), Wis. Stats.) (1) **DEFINITION.** For the exemption in section 77.54(14), "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.

(2) **EXAMPLES OF MEDICINES.** Medicines include the following items described in subsection (1):

- (a) Bone pins.
- (b) Dyes.
- (c) Insulin (furnished by a registered pharmacist).
- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.
- (i) Powders.
- (j) Salves and ointments.
- (k) Suppositories.
- (l) Sutures.
- (m) Vaccines.
- (n) Vitamins.
- (o) Other medicinal preparations consumed orally, injected or applied.
- (p) Other articles permanently implanted in the human body which remain or dissolve in the body.

(3) **ITEMS WHICH ARE NOT MEDICINES.** Items which are not described in subsection (1) and which are not medicines include:

- (a) Alcoholic beverages, soda water beverages or distilled water.
- (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
- (c) Medical supplies (such as bandages, compresses, dressings, pads, splints and supports).

- (d) Medical instruments or equipment.
  - (e) Cast materials.
  - (f) Intra-uterine devices.
  - (g) Oxygen tanks.
- (4) EXEMPT SALES OR USE OF MEDICINES. Medicines shall be exempt if:
- (a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filled by a registered pharmacist in accordance with law.
  - (b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.
  - (c) Furnished by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment of the patient.
  - (d) Furnished by a hospital for treatment of any person by the order of a licensed physician, surgeon, dentist or podiatrist. For this exemption, "hospital" has the meaning described in section 140.24, Wis. Stats., and does not include nursing homes.
  - (e) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(5) TAXABLE SALES OF MEDICINES. Taxable sales of medicines include:

- (a) Retail sales for use in laboratories.
- (b) Retail sales for use on domestic animals.

(6) TAXABLE USE OF MEDICINES. Persons who sell medicines are subject to the use tax on samples furnished without charge to hospitals, physicians, surgeons, podiatrists or dentists.

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

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.26 Other taxes in taxable gross receipts and sales price.** (section 77.51(11) (a) 4, (12) (a) 4 and (26), Wis. Stats.) (1) GENERAL RULE. (a) Tangible personal property sold at retail often is subjected to many direct and indirect taxes prior to reaching a retailer. Such taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. Such tax may be imposed by this state, the federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain separately stated or separately passed on taxes are included in gross receipts and the sales price, while others are not. However, the same taxes that are included or excluded from gross receipts are also included or excluded from sales price. Thus, the treatment of such

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taxes for sales and use tax purposes is identical, even though the measure of tax for each is gross receipts and sales price, respectively.

(2) **TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE.** The following taxes shall be included in a retailer's gross receipts and sales price:

(a) The fermented malt beverage tax imposed by section 139.02, Wis. Stats.

(b) The taxes imposed upon intoxicating liquors (including wine) by section 139.03, Wis. Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise tax. Presently there are federal excise taxes on tires, inner tubes, tread rubber, certain trucks, truck parts, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer, and intoxicating liquor (including wine).

(d) The federal fuel tax included in the price of special fuels subject to the sales tax (e.g., sales for use in aircraft, boats and other non-highway use).

(e) The cigarette tax imposed by section 139.31, Wis. Stats.

(3) **TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE.** The following taxes shall be excluded from a retailer's gross receipts or sales price:

(a) The federal communications tax imposed upon intrastate telegraph service and telephone service.

(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax (e.g., the tax provided in section 66.75, Wis. Stats., which municipalities are permitted to impose upon hotel and motel operators who furnish lodging to transients).

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.27 Warranties.** (section 77.51 (11) (a), Wis. Stats.) (1) **RECEIPTS FROM WARRANTIES.** The total gross receipts from a sale of taxable personal property by a retailer, who warrants such property and includes a charge for the warranty in the sales price, are taxable.

(2) **REPAIRS BY RETAILER.** (a) When a retailer does repair work, including supplying parts and services, without charge for a customer under a manufacturer's warranty, the retailer is not subject to tax on either the amount of reimbursement received from the manufacturer for such parts or service or on the value of any part the manufacturer replaces in the retailer's inventory.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a retailer's or manufacturer's warranty are taxable, including gross receipts from the sale of service

contracts. (Charges by a manufacturer for service contracts are taxable to the manufacturer).

(c) A retailer who provides free parts or services or both to a customer in order to maintain good customer relations, although not required to do so under the sales agreement, shall report and remit a use tax measured by the retailer's purchase price of any parts used in providing such free service.

(3) **REPAIRS NOT BY RETAILER.** If a retailer does not repair property under a warranty but instead has another person perform such repairs, that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

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

**History.** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps.** (section 77.51 (4) (k) and (11) (a), Wis. Stats.) (1) **DEFINITIONS.** (a) Section 77.51(4) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property of service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51(11) (a) (intro.) provides:

" 'Gross receipts' means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . . "

(2) **GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS.** Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, 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. A tavern operator is liable for the tax measured by the tavern operator's purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax

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applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser's cost of the merchandise.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a "grand opening" or similar event 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 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 property to the retailer is subject to the use tax on its cost of the property donated.

(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer's tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) *Sales incentive plans.* Persons transferring taxable 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 property.

(3) **COUPONS AND PREMIUMS.** (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer's coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of 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 personal property is transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) *"Cents-off" coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of "cents-off" coupons. Such 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.

(c) *Coupons issued and redeemable by retailers.* When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. 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 shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable 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 the 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.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS. (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 receipts to the participating retailers.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) TRADING STAMPS. (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales

promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

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

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.29 Leases and rentals of tangible personal property.** (sections 77.51 (4) (j), (7) (k) and (11) (c)5, 77.52(1) and 77.58(6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in this state (s. 77.51 (4) (j), Wis. Stats.), a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property may have been acquired and/or used previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to such person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services shall not be taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

(c) Charges for the rental of motor trucks shall be taxable. However, if drivers are provided by the truck's owner to operate the trucks

and the public service commission and the department of transportation's division of motor vehicles consider the arrangement a transportation service under statute or under rules adopted by either or both of those state agencies, the charges shall not be taxable.

(5) **CREDIT FOR SALES TAX PAID.** If a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may either request a refund of the sales tax from the seller or claim a credit against the tax due on rental receipts from the property involved. (s. 77.51(11)(c)5). If a credit is claimed, it shall expire when the cumulative rental receipts equal the sales price upon which the seller paid sales tax to the state.

(6) **SPECIAL RENTAL SITUATIONS.** (a) *Demurrage.* The charge a gas supplier makes to a customer-consumer, because a gas cylinder is retained beyond a 30 day (or other) period, shall be taxable. Such "demurrage" charges shall constitute rentals paid for the continuing possession of the cylinders.

(b) *Water softeners.* The gross receipts from rental of a cylinder type water softener which is periodically removed from a customer's premises for recharging and replaced by another unit shall be taxable.

(c) *Chemical toilets.* A lessor's entire charge for the use of chemical toilets used at fairs and other similar events shall be taxable, including cleaning services provided as part of the total charge.

(d) *Mobile homes.* Rental of a mobile home shall be taxable unless the mobile home is converted to real property by hooking it up to utilities and placing it on a foundation on land owned by the lessor. However, even if it is placed on a foundation and hooked up to utilities, a mobile home shall remain tangible personal property if the lessor does not own the realty on which it is located.

(e) *Lease cancellation charge.* A payment by a lessee to a lessor for the cancellation of a lease of tangible personal property shall be taxable. The payment shall be deemed consideration arising from the original lease since it effectively decreases the term of the lease and thereby increases the rental payments for the actual period the property was used.

(f) *Delivery and erection.* Lessors of scaffolding or other tangible personal property who set forth separate charges for transportation, assembly and disassembly shall pay tax on their total gross receipts. A lessee rents property when it is assembled and in place and the charges for transportation, assembly and disassembly shall be deemed part of a lessor's rental receipts.

(g) *Funeral coaches.* An owner of a hearse shall receive taxable gross receipts when the owner furnishes it (with or without a driver) to a funeral director who is responsible for conducting the funeral service. If it is customary or mandatory that the lessee (funeral director) take the operator with the leased vehicle, the entire charge shall be taxable.

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

**History:** Cr. Register, July, 1977, No. 259, eff. 8-1-77.  
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**Tax 11.30 Credit sales, bad debts and repossessions.** (sections 77.51(4) (c), (4r), (11) (b), (c) 3 and (d), 77.52(6) and 77.53(4), Wis. Stats.) (1) **CREDIT SALES.** (a) *Sales.* If taxable personal property is sold on credit, the entire amount of the retailer's gross receipts from the sale shall be taxable and shall be reported in the tax return for the period in which the sale is made. A sale involving the transfer of ownership of property is completed at the time and place where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. The tax shall be reported on taxable gross receipts on the accrual basis, except when the department is satisfied that an undue hardship would exist and authorizes reporting on some other basis.

(b) *Repossessions.* No deduction from gross receipts shall be made if property sold on credit is repossessed unless the entire consideration paid by the purchaser is refunded or a deduction for worthless accounts is allowable under section 77.51(11) (b) 4, Wis. Stats.

(2) **BAD DEBTS.** (a) *Deduction from measure of tax.* A retailer is relieved from the liability for sales tax by sections 77.51(11) (b) 4 and 77.52(6), Wis. Stats., or from liability to collect and report use tax by section 77.53(4), Wis. Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax to this state on such accounts may claim the bad debt deduction. The deduction shall be taken from the measure of tax in the period in which the account is found to be worthless. That period is defined as any time within the retailer's fiscal or calendar year in which the account is written off. However, if the taxpayer is out of business when the account becomes worthless, a bad debt deduction may be claimed on the last annual information return filed by that business, or through a refund claim or amended return filed within the statutory time allowed. Notes, which later become worthless, received on the sale of tangible personal property shall be treated in the same manner as other worthless accounts.

(b) *Recovery of bad debts charged off.* If any accounts found worthless and charged off are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return.

(c) *Amount deductible.* 1. *Nontaxable receipts.* If an account found worthless and charged off is comprised in part of nontaxable receipts (such as interest, financing or insurance) and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only for the unpaid amount upon which tax has been paid. In determining that amount, all payments and credits to the account shall be applied ratably against the various charges comprising the amount the purchaser contracted to pay.

2. *Expenses of collection.* No deduction is allowable for expenses incurred by the retailer in attempting to collect any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(d) *Special situations.* 1. A purchaser of receivables is not entitled to a bad debt deduction for such receivables which subsequently become worthless.

2. A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

3. A contractor engaged in real property construction activities is not entitled to a bad debt deduction, even though the total amount due the contractor under a real property construction contract cannot be collected, as the contractor is the consumer, not the retailer, of the tangible personal property used to fulfill the construction contract.

4. A retailer permitted to report gross receipts on the cash receipts basis may not claim a bad debt deduction.

(e) *Repossessions.* When property on which a receivable exists is repossessed, a bad debt deduction is allowable only to the extent that the retailer sustains a net loss of gross receipts upon which tax was paid. A net loss occurs when the sum of the pro rata portion of all payments, credits and the wholesale value of the repossessed property, attributable to the cash sales price of the property, is less than the cash sales price upon which sales or use tax was paid.

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

An example of the computation of the net loss described in sub (2) (e) follows: Assume a motor home is purchased on January 1 of a year for a cash price of \$15,000 and sales tax of \$600. A down payment of \$2,000 is made at the date of purchase, leaving a balance to finance of \$13,600. The motor home is financed with the seller for a period of one year at the rate of 10% of the amount financed. After receiving periodic payments totalling \$6,800, the mobile home is repossessed. The wholesale value of the property is \$6,000 on the date of repossession due to rather extensive damage to the mobile home. The deductible bad debt loss upon repossession of the mobile home is computed as follows:

	Cash Sales Price	Sales Tax	Finance Charge	Total
1. Sales price and tax	\$15,000.00	\$600.00	-	\$15,600.00
2. Down payment allocation (1)	<u>1,923.08</u>	<u>76.92</u>	-	<u>2,000.00</u>
3. Balance to finance	\$13,076.92	\$523.08	-	\$13,600.00
4. Add: Finance charge			<u>1,360.00</u>	<u>1,360.00</u>
5. Contract balance	\$13,076.92	\$523.08	\$1,360.00	\$14,960.00
6. Payments on contract (2)	<u>5,944.06</u>	<u>237.76</u>	<u>618.18</u>	<u>6,800.00</u>
7. Contract balance - date of repossession	\$7,132.86	\$285.92	\$ 741.82	\$ 8,160.00
8. Wholesale value of repossession (2)	<u>5,244.76</u>	<u>209.79</u>	<u>546.45</u>	<u>6,000.00</u>
9. Deductible loss	<u>\$1,888.10</u>			\$ 1,888.10
10. Nondeductible loss		<u>\$ 75.53</u>	<u>\$ 196.37</u>	<u>271.90</u>
11. Total loss				<u>\$ 2,160.00</u>
12. Percentage of sales price and tax (Line 1)	96.1538%	3.8462%		100%
13. Percentage of contract balance (Line 5)	87.4126%	3.4965%	9.0909%	100%

(1) The down payment (line 2) is allocated between the total cash sales price of the motor home and the sales tax thereon (line 1) on the basis of the percentage of each to their total (the percentages are shown on line 12).

(2) The payments on the contract (line 6) and the wholesale value on the date of repossession of the property repossessed (line 8) are allocated to the cash sales price,

each to the total contract balance (after allocation of the down payment). The contract balances are shown on line 5 and the percentages thereof are shown on line 13.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.38 Fabricating and processing.** (sections 77.61(4) (f) and (h) and 77.52(2) (a) 10 and 11, Wis. Stats.) (1) **TAXABLE FABRICATION.** Except for sales for resale described in section 77.52(13) to (15), Wis. Stats., types of fabrication charges which are taxable, regardless of whether the customer or fabricator furnishes the materials, include charges for the following:

- (a) Printing and imprinting.
- (b) Tailoring a suit.
- (c) Fabricating steel which may involve cutting the steel to length and size, bending and drilling holes in the steel to the specifications of a particular construction job. The end result of the fabrication is a modification of a previously manufactured article.
- (d) Making curtains, drapes, slip covers or other household furnishings.
- (e) Making a fur coat from pelts, gloves or a jacket from a hide.
- (f) Cutting lumber to specifications and producing cabinets, counter tops or other items from lumber for customers (often referred to as "millending").

- (g) Bookbinding.
- (h) Heat treating or plating.
- (i) Firing of ceramics or china.
- (j) Assembling kits to produce a completed article.
- (k) Production of a sound recording or a motion picture.
- (l) Threading pipe, or welding pipe.
- (m) Tanning hides.
- (n) Bending glass tubing into neon signs.
- (o) Laminating identification cards.

(2) **TAXABLE PROCESSING.** Except for sales for resale described in sections 77.52(13) to (15), Wis. Stats., types of processing charges which are taxable, regardless of whether the customer or processor furnishes the materials, include charges for the following:

- (a) A caterer's preparation of food for consumption on or off the premises.
- (b) Dyeing or fireproofing fabric.
- (c) Cutting or crushing stones, gravel or other construction materials.
- (d) Retreading tires.
- (e) Drying, planing or ripping lumber.

(f) Cleaning used oil.

(g) Application of coating to pipe.

**Note:** Sales or use tax may not apply in many cases because the customer is a manufacturer or other business entitled to issue a valid resale certificate to the producer, fabricator or processor. Such customer purchases the service "for resale" without tax. This rule does not impose a tax in such cases.

**Tax applies to charges for producing, fabricating or processing tangible personal property for a consideration for consumers, whether or not the consumers furnish, either directly or indirectly, the materials used in the producing, fabricating or processing operation. Producing, fabricating and processing include any operation which results in the creation or production of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of tangible personal property except sales for resale. Sales or use tax applies to the entire amount charged for such services, including the charge for materials on which the service is performed.**

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

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Tax 11.39 Manufacturing.** (sections 77.51(27) and 77.54(2) and (6) (a), Wis. Stats.) (1) **DEFINITION.** Manufacturing means an operation at a fixed location complete in itself, or one of a series of operations each at a fixed location, whereby, through the application of machines to tangible personal property by a process popularly regarded as manufacturing, a new article of tangible personal property with a different form, use and name is produced.

(2) **SCOPE OF MANUFACTURING.** (a) Manufacturing includes the assembly of finished units of tangible personal property and packaging when it is a part of an operation performed by the producer of the product or by another on his behalf and the package or container becomes a part of the tangible personal property as such unit is customarily offered for sale by the manufacturer. It includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and conveyance of finished products to the point of first storage on the plant premises. It includes the testing or inspection throughout the production cycle.

(b) Manufacturing does not include storage, delivery to or from the plant, repairing or maintaining facilities or research and development.

(3) **MANUFACTURERS.** Manufacturers ordinarily include the following:

(a) Asphalt plants.

(b) Bakeries

(c) Battery makers.

(d) Breweries and soda water bottling plants.

(e) Candy factories.

(f) Cement and concrete plants (but not concrete mixing units mounted on trucks).

(g) Chemical processing plants.

(h) Concrete block and tile producers.



- (i) Creameries and instant milk producers.
- (j) Dairies.
- (k) Electric generating companies.
- (l) Flour and feed mills (but not mobile units).
- (m) Food processing plants (canning and freezing).
- (n) Foundries.
- (o) Glass making plants.
- (p) Limestone calcination plants.
- (q) Machine and equipment producers.
- (r) Malting plants.
- (s) Meat packing and processing plants.
- (t) Motor vehicle and aircraft factories.
- (u) Oil refineries.
- (v) Paint factories.
- (w) Paper making plants.
- (x) Printers.
- (y) Sawmills.
- (z) Scrap processors.
- (za) Shoe and clothing factories.
- (zb) Smelting and steel mills.
- (zc) Tanneries.
- (zd) Tool and die making plants.
- (4) NONMANUFACTURERS. Examples of nonmanufacturers are:
  - (a) Automobile and auto parts rebuilders.
  - (b) Contractors.
  - (c) Creosoting plants.
  - (d) Dental labs.
  - (e) Farmers.
  - (f) Fish hatcheries.
  - (g) Freezer and locker plants.
  - (h) Highway truckers.
  - (i) Hotels.
  - (j) Junk and scrap dealers.
  - (k) Key shops.

- (l) Laundries and dry cleaners.
- (m) Repairmen.
- (n) Restaurants.
- (o) Television and radio stations.
- (p) Sand and gravel pit operators.
- (q) Tire retreaders.
- (r) Persons engaged in:
  1. Corn shelling.
  2. Performing custom work to the individual order of household consumers.
  3. Experimental and development activities.
  4. Grain drying.
  5. Logging and forestry operations.
  6. Mining.
  7. Paper recycling.
  8. Photography.
  9. Popping corn.
  10. Quarrying and rock crushing operations.
  11. The business of raising and breeding animals.
  12. Real property construction activities.
  13. Typesetting.
  14. Vending machine operations.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.40 Exemption of machines and processing equipment.** (sections 77.51(27) and 77.54(6)(a), Wis. Stats.) (1) GENERAL. (a) Section 77.54(6)(a) 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."

(b) Section 77.51(27) provides "For purposes of s. 77.54(6)(a) 'manufacturing' is the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

(c) In determining whether a particular machine or piece of processing equipment is included in this exemption, these 2 statutes must be considered together.

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(2) **CONDITIONS FOR EXEMPTION AND EXAMPLES.** This exemption 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.

(b) Machines and processing equipment shall be used *exclusively in manufacturing*. The exemption shall not apply if machines and processing equipment are used partially or totally in nonmanufacturing activities. For example, a forklift truck used partially on a production line to move products from machine to machine and used in a warehouse to move and stack 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 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.

(3) **OTHER EXAMPLES OF THE EXEMPTION.** Other examples of application of the exemption are as follows: (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 items are used partially 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 manufacturer to produce tangible personal property for sale. 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.

(c) The exemption applies if machines and processing equipment are used exclusively and directly by a manufacturer to produce component parts of tangible personal property destined for sale. For example, a printing press used by a manufacturer exclusively to print labels for its manufactured products is exempt. However, if the press

is used partially to print advertising materials and office forms, 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).

(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. Gloves, shoes, coveralls and similar items are personal apparel 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.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.41 Exemption of property consumed or destroyed in manufacturing.** (sections 77.54(2) and 77.54(6)(a), Wis. Stats.) (1) GENERAL. (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in section 77.54(2), Wis. Stats., "manufacture" shall conform to the definition of "manufacturing" in section 77.51(27), Wis. Stats.

(2) RELATIONSHIP OF SECTIONS 77.54(2) AND 77.54(6)(a). In construing the exemption provided in section 77.54(2), it is necessary to refer to another exemption provided in section 77.54(6)(a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Sections 77.54(2) and 77.54(6)(a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by section 77.54(6)(a) and if they are not, cannot be within the exemption provided by section 77.54(2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN SECTION 77.54(2) EXEMPTION. (a) The following property is within the exemption provided by section 77.54(2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.

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2. Bleaching agents.
3. Chemicals.
4. Cleaning compounds and solvents for maintaining manufacturing machinery during the manufacturing process.
5. Cutting and lubricating oils.
6. Filtering clay.
7. Fluxing material.
8. Foundry sand.
9. Greases.
10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) EXAMPLES OF PERSONAL PROPERTY NOT WITHIN SECTION 77.54(2) EXEMPTION. (a) The following property is not within the exemption provided by section 77.54(2), although such property may be exempt under section 77.54(6)(a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in rule Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screw-drivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel.

(5) FUEL AND ELECTRICITY. Fuel and electricity are specifically excluded from the exemption provided by section 77.54(2) even though such property may be consumed, destroyed or lose its identity

in the manufacture of products destined for sale. Since "fuel" is not defined in section 77.54(2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

(a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.45 Sales by pharmacies and drug stores.** (sections 77.51(21) and (22) and 77.54(14), (22) and (28), Wis. Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in paragraph (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.
3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.
5. Oxygen tanks.

(3) **EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES.** The exemption for medical appliances and prosthetic devices under ss. 77.54(22) and (28), Wis. Stats., shall apply to sales of the following:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

(c) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pacemakers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

(d) Crutches and wheelchairs for the use of invalids and crippled persons, open and closed end walkers (with or without casters) and canes which provide walking support by making contact with the ground at more than one point.

(e) Apparatus or equipment for the injection of insulin.

(f) Parts for and services to the exempt items listed in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

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

**History:** Cr. Register, October, 1976, No. 250, eff. 11-1-76.

**Tax 11.46 Summer camps.** (sections 77.52(1) and (2) (a)1, Wis. Stats.) (1) **DEFINITIONS.** In this rule:

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(a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable or educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual (e.g., the YMCA and Boy Scouts of America).

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) **TAXABLE RECEIPTS.** Receipts from the following are taxable:

(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) **EXEMPT RECEIPTS.** Receipts from the following are exempt: (a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

(4) **COMBINED CHARGE.** An allocation between taxable and exempt receipts must be made when a single (combined) charge is made for all the privileges extended by a camp. Adequate records must be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable.

(a) If there is no separate charge for meals, gross receipts from the sale of meals may be determined by adding 10% (to cover overhead costs) to the cost of the food and labor for food preparation.

(b) If there is no separate charge for lodging; gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$3 per person per night.

**Note:** The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that the amount shown in sub. (4) (b) became effective September 15, 1970. Prior to that date the tax was based on \$2 per person per night.

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.47 Commercial photographers and photographic services.** (sections 77.52(2) (a) 7 and 77.54(2), Wis. Stats.) (1) **TAXABLE GROSS RECEIPTS.** Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services include gross receipts from:

(a) Taking, reproducing and selling photographs.

(b) Processing, developing, printing and enlarging film.

(c) Enlarging, retouching, tinting or coloring photographs.

(d) Processing exposed film into color transparencies, mounted or unmounted.

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(e) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) AMOUNTS INCLUDED IN GROSS RECEIPTS. (a) Gross receipts subject to the tax include charges for photographic materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES. (a) Commercial photographers and others providing photographic services may purchase, without paying sales or use tax, any item which becomes a component part of an article destined for sale if a properly completed exemption certificate is given the seller. Such items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.

2. Film (i.e., colored transparencies and movie film) in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. Such items include:

1. Chemicals.

2. Trays.

3. Film (other than noted in subsection (3) (a) 2).

4. Plates.

5. Proof paper.

6. Cameras.

7. Other photographic equipment.

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.48 Landlords, hotels and motels.** (sections 77.51(7)(n) and (24) and 77.52(2)(a)1 and 9, Wis. Stats.) (1) LANDLORDS. (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all

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such items. The gross receipts from a landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employes for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in paragraph (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and \$500,000 for all real and personal property,

taxable lease receipts shall be determined by applying a ratio of 20% (\$100,00 ÷ \$500,000) to the gross lease receipts for each sales tax reporting period.

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

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.61 Veterinarians and their suppliers.** (sections 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, Wis. Stats.) (1) VETERINARIANS. (a) Charges made by veterinarians which shall be exempt from the sales tax include charges for the following professional services for animals:

1. Medical services.
2. Hospitalization services.

(b) Charges made by veterinarians which shall be subject to the sales tax include charges for the following activities for animals:

1. Boarding.
2. Grooming.
3. Clipping.

(c) Sales of tangible personal property by veterinarians which shall be taxable include the following:

1. Leashes, collars and other pet equipment.
2. Pets.
3. Pet food.

(2) SUPPLIERS. (a) Sales to veterinarians of medicines and items to be used or furnished by them in the performance of their professional services to animals shall be subject to the sales or use tax.

(b) If the tax on sales to veterinarians is not collected by a supplier (for example, because the supplier is located out-of-state and is not required to be registered with the department), the veterinarian shall be responsible for and shall report and pay a use tax on such purchases directly to the department.

**History:** Cr. Register, August, 1976, No. 248, eff. 9-1-76.

**Tax 11.62 Barbers and beauty shop operators.** (section 77.51 (7) (i) and 77.52 (2) (a) 10, Wis. Stats.) (1) NONTAXABLE SALES AND SERVICES. (a) Barbers and beauty shop operators are engaged primarily in a service occupation and charges for services on human beings shall be exempt from the sales tax.

(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

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(such as hair pieces) for resale without paying tax by issuing to their supplier a properly completed resale certificate.

(2) **TAXABLE SALES AND SERVICES.** (a) Barbers and beauty shop operators are the consumers of the materials and supplies which are used in performing their services and shall pay sales tax to their suppliers on such purchases.

(b) Over the counter sales by barbers or beauty shop operators of packaged cosmetics, hair tonics, lotions, wigs, falls, toupees or other merchandise and their charges for servicing wigs, hair pieces or other tangible personal property shall be subject to the sales tax. Unless a barber or beauty shop operator falls within the occasional sales standard set forth in subsection (1) (b), the person shall be responsible for collecting and remitting to the department the tax on all such sales or charges.

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

**History:** Cr. Register, August, 1976, No. 248, eff. 9-1-76.

**Tax 11.64 Background music.** (section 77.51(4) (intro) and (j), Wis. Stats.) (1) **GENERAL.** Persons in the business of providing background music commonly utilize one or both of the methods set forth below. The sales and use tax consequences depend upon the method used.

(2) **MUSIC PLAYED AT CENTRAL STUDIO.** The gross receipts from the furnishing of background music to business, industry and others from a central studio over telephone circuits or by FM radio are not subject to the sales or use tax. The persons who provide such service are the consumers of the tapes, tape players, transmitters and other tangible personal property used to provide the service, and their purchases of these items, as well as telephone services from the telephone company, are taxable. However, the gross receipts from equipment leased or rented to the customer as part of providing this service are taxable, and an exemption for resale may be claimed on the purchase of such leased or rented equipment, if the equipment is used exclusively for lease or rental.

(3) **MUSIC PLAYED BY CUSTOMER.** The gross receipts from the lease, rental, hire or license to use all tangible personal property comprising a background music system are taxable when the system is located on a customer's (e.g., lessee's or licensee's) premises and is operated by the customer. Any charge for installing the system is taxable. The sale of the tapes, equipment and other tangible personal property to the person providing the system (e.g., the lessor or licensor) is exempt as a sale for resale, since rental is the equivalent of a resale.

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.78 Stamps, coins and bullion.** (section 77.51 (5), Wis. Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

(a) Cancelled United States and foreign postage stamps.

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(b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.

(c) Uncancelled foreign postage stamps.

(d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.

(e) Foreign coins and paper currency when sold or traded as collectors' items.

(f) United States coins and paper currency when sold or traded as collectors' items above their face value.

(g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

(2) **NONTAXABLE SALES.** Retail sales of the following tangible personal property are not subject to the sales and use tax:

(a) United States postage stamps, coins and paper currency sold at face value.

(b) The portion of the selling price attributable to postage in the sale of prestamped envelopes if the nontaxable postage is separately itemized to the customer.

(c) Sales of bullion to persons in Wisconsin when the purchaser takes a document of ownership covering bullion remaining outside the state.

(d) Foreign coins and paper currency in current circulation, when sold at face value and when acquired as a medium of exchange.

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

**History:** Cr. Register, January, 1977, No. 253, eff. 2-1-77.

**Tax 11.79 Leases of highway vehicles and equipment.** (sections 77.51 (4) (intro.) and (j), (7) (k) and 77.58 (6), Wis. Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

(2) **DEDUCTIONS FROM GROSS RECEIPTS.** If the lease or rental agreement is for a long term, in determining a lessor's taxable gross receipts under subsection (1), the cost of the following items may be deducted if they meet the conditions in subsection (3):

(a) Motor fuel.

(b) Vehicle license fees.

(c) Federal highway use taxes.

(d) Public liability insurance furnished by the lessor solely for the protection of the lessee but not including collision and comprehensive coverage.

(3) **CONDITIONS FOR DEDUCTIONS.** The items listed in subsection (2) may be deducted if:

- (a) The charge is reasonable.
- (b) The charge is separately stated in the lease agreement, billing or invoice.
- (c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the items listed in subsection (2).
- (d) The deduction is limited to the lessor's cost of the items furnished with the leased equipment.

(4) **NONDEDUCTIBLE ITEMS.** In determining a lessor's taxable gross receipts under subsection (1), the cost of the following may not be deducted:

- (a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.
- (b) Maintenance or repair charges incurred by the lessor.
- (c) Interest and other financing costs incurred by the lessor.
- (5) **MULTISTATE USE.** (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

(b) "Drive it yourself" motor vehicles or mobile equipment which are used for one-way trips and leased for less than one month are deemed garaged in the state in which they come into the lessee's possession.

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

**History:** Cr. Register, January, 1977, No. 263, eff. 2-1-77.

**Tax 11.80 Sales of ice.** (section 77.52(1) and 77.53(1), Wis. Stats.)  
(1) Ice is tangible personal property, the retail sale of which is subject to sales tax, unless sold in an exempt transaction supported by a properly executed exemption certificate. Ice is sold at retail when it is sold for use or consumption but not for resale. For example, ice used for refrigeration purposes is consumed in the process of refrigeration; whereas, ice used in drinks is purchased for resale by the seller of the drink.

(2) Examples of taxable sales of ice (including dry ice) are:

- (a) Sales through vending machines.

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(b) Sales to restaurants, taverns, grocery stores and meat markets when the ice is consumed in cooling bottled drinks or preserving foods.

(c) Sales to railroads or commercial fishermen for use in refrigerating railway cars or vessels.

(3) Examples of nontaxable sales of ice are:

(a) Sales to restaurants, taverns and soda fountains to be used exclusively in drinks (exempt as sales for resale).

(b) Sales to manufacturers, producers or food processors for use inside the shipping cases of merchandise being transferred to a customer (exempt as "shipping material" under section 77.54 (6) (b), Wis. Stats.).

(c) Ice sold to manufacturers which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

(4) (a) If ice is sold to a person who will use it both for a taxable purpose (ex., refrigeration) and nontaxable purpose (ex., for resale), the total charge shall be divided between taxable and nontaxable use. The tax is then payable on the ice to be used in a taxable manner. If no division is made, the tax applies to the total sale.

(b) Ice purchased without payment of the tax and subsequently used in a taxable manner is subject to the use tax under section 77.53 (1), Wis. Stats.

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.81 Industrial gases, welding rods and fluxing materials.** (section 77.54(2), Wis. Stats.) (1) **GENERAL STATEMENT.** The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54(2), Wis. Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity." Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

(a) Exempt if they become ingredients or components of tangible personal property destined for sale; or

(b) Exempt if they are consumed, destroyed or lose their identity in the manufacture of tangible personal property destined for sale, except the sale of gas is taxable if the gas is used as a fuel. Fuel is a material used to produce heat or power by burning, or is something that feeds a fire; or

(c) Taxable if they are sold to a person who consumes them in a nonmanufacturing activity.

(2) **INDUSTRIAL GASES.** Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen. (a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

1. Carbon dioxide used to produce dry ice or carbonated soft drinks.
2. Gases such as neon, helium or argon used as a filler in the production of light bulbs and tubes.
3. Hydrogen used in hydrogenating vegetable oils.
4. Acetylene used as a base in the manufacture of synthetic materials.
5. Oxygen used in the chemical industry for oxidation processes, when not used as a fuel to produce heat.

(b) Taxable sales of gases used by a manufacturer as fuel include:

1. Oxygen used in industrial furnaces.
2. Acetylene or other gases used in torches in the manufacture of tangible personal property.

(c) Taxable sales of gases to nonmanufacturers, whether or not used by the purchaser as fuel, include:

1. Acetylene or other gases used by automobile body shops or by other repair establishments.
2. Gases used in mining or quarrying.
3. Nitrogen used by telephone companies in underground cables.

(3) **WELDING RODS** (stick electrode or filler rods). Since welding rods (stick electrode or filler rods) are physically transferred and become a part of an item produced or repaired, their sale is exempt if used by the purchaser in producing tangible personal property destined for sale or in repairing tangible personal property for a consideration. The sale of welding rods to manufacturers who use them in repairing their machinery used directly and exclusively in manufacturing is exempt. However, the sale of such rods to construction contractors for use in fulfilling real property construction contracts is taxable.

(4) **FLUXING MATERIALS.** Fluxing materials sold to a manufacturer for use in manufacturing tangible personal property destined for sale are exempt because they are consumed in the manufacturing process. When fluxing materials are sold for use by a manufacturer to repair its own production machinery or equipment (a nonmanufacturing activity) they are taxable. Fluxing materials sold to a repair shop or to a real property construction contractor or to any other non-manufacturer are taxable.

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

**History:** Cr. Register, September, 1977, No. 261, eff. 10-1-77.

**Tax 11.82 Mailing lists and mailing services.** (sections 77.51(5), 77.52(1), 77.53(1) and 77.54(2), Wis. Stats.) (1) **MAILING LISTS.** (a) In this subsection, "mailing list" means a written or printed list, Register, November, 1977, No. 263



series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists, including the rental of or the granting of a license to use such lists.

(c) Persons in the business of providing mailing lists are the consumers of the tangible personal property they purchase and use in producing such lists. However, any tangible personal property becoming a component part of mailing lists when such mailing lists are physically transferred to a customer by either sale, rental or license may be purchased for resale and without tax if the purchaser gives the seller a properly completed resale certificate.

(2) MAILING SERVICES. (a) In this subsection, "addressing" means the preparation of property to be mailed by writing, typewriting, printing, imprinting or affixing addresses or names and addresses to such property. Addressing includes the preparation of Cheshire tapes, Dick tapes, cards, gummed labels or similar items which are to be affixed to, or enclosed in, property to be mailed for the purpose of serving as addresses for such property. However, addressing does not include such tapes, cards or labels when they are used for some other purpose, such as reproduction or reference.

(b) The tax shall not apply to charges for services rendered in preparing material for mailing (including addressing, enclosing, sealing, metering, affixing stamps, sorting, tying and sacking in compliance with postal rules and regulations) if such charges are stated separately on invoices and in accounting records. Gross receipts from charges for envelopes are taxable, but not separately stated charges for postage in the sale of prestamped envelopes.

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing such services. Consequently, they must pay the tax when purchasing such property.

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

**History:** Cr. Register, November, 1977, No. 263, eff. 12-1-77.

**Tax 11.84 Aircraft.** (sections 77.52(2)(a)9, 77.54(5)(a) and (7) and 77.61(1)) (1) GENERAL. (a) The sales and use tax applies to the gross receipts from the sale, lease or rental of aircraft and from the sale of accessories, components, attachments, parts, supplies and materials for aircraft.

(b) An occasional sale of aircraft in Wisconsin is taxable unless all three of the following conditions exist:

1. The transfer is to the spouse, parent or child of the transferor;
2. The aircraft was previously registered in Wisconsin in the transferor's name; and

3. The transferor does not hold and is not required to hold a Wisconsin seller's permit.

(c) Section 77.61 (1) (a), Wis. Stats., provides that no aircraft shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid. If the aircraft is purchased from a person other than a Wisconsin aircraft dealer, the purchaser shall pay the tax at the time the aircraft is registered with the Wisconsin Department of Transportation, Division of Aeronautics. The tax applies to aircraft registered or customarily hangared or both in this state, even though such aircraft also may be used out-of-state.

(2) **TAXABLE SALES.** (a) *Aircraft, supplies and repairs.* Gross receipts from the following shall be taxable:

1. The sale, lease or rental of aircraft.
2. The sale of aircraft jet fuel, oil, equipment, parts and supplies sold and delivered in Wisconsin for operation of aircraft, regardless of where the aircraft is flown or used. Federal fuel taxes are part of the "sales price" of jet fuel subject to the sales tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1. Section 77.52 (2) (a) 9, Wis. Stats., imposes the tax on "Parking or providing parking space for aircraft for a consideration . . . except when provided by a governmental unit." "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational. For example, an aircraft kept in a hangar and available for normal use is parked, but an aircraft kept in a hangar with its wings off is stored rather than parked.

2. Indoor parking, such as single or multiple "T" hangar parking, and outdoor (tie down) parking are taxable, except when provided directly by a governmental unit to the owner of the aircraft. The gross receipts of a nongovernmental operator of a hangar from the rental of hangar space for aircraft are subject to the sales tax whether or not such operator leases the hangar from a governmental unit.

(c) *Other taxable receipts.* The gross receipts from charges for aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.

(3) **EXEMPT SALES OF AIRCRAFT.** Section 77.54 (5) (a), Wis. Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using such aircraft as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or to aircraft sold to a nonresident of this state who will not use such aircraft in this state other than to remove it from Wisconsin. Scheduled air carriers and commuter carriers with air carrier operating certificates shall qualify for this exemption.

(4) **NONTAXABLE SERVICES.** Gross receipts from the following services or fees shall not be taxable:

(a) Transporting customers or property for hire when the customer only designates the time of departure and destination while the owner retains control over the aircraft in all other respects.

(b) Flight instruction when the fees for such instruction are separately stated from the charge for the rental of the aircraft.

(c) Advertising promotions such as sky writing and banner towing, except when the aircraft is leased to a person who provides a pilot.

(d) Emergency rescue service, forest fire spotting and pipeline inspection service, except where the aircraft is leased to a company which provides its own pilot.

(e) Crop dusting, spraying, fertilizing and seeding a farmer's crops. A person in this business may purchase weed killers, fertilizer and seed without tax for resale, if these items are separately itemized on the invoice to the farmer.

(f) Landing fees.

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

**History:** Cr. Register, November, 1977, No. 263, *eff.* 12-1-77.

**Tax 11.91 Successor's liability.** (section 77.52(18), Wis. 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 mortgagee who forecloses on a loan to a retailer owing delinquent sales 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.

(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.