

Chapter Tax 11

SALES AND USE TAX

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Tax 11.001 Definitions and use of terms. In this chapter, unless otherwise specified:

(3) "Consumers" are persons who purchase and use tangible personal property, and sales to consumers are retail sales to which either the sales or use tax applies. Resale certificates should not be accepted from consumers.

(5) "Department" means the Wisconsin department of revenue.

(8) "Retailer" means a person who sells taxable tangible personal property or a taxable service and who shall comply with all requirements imposed upon retailers, including:

- (a) Obtaining a seller's permit for each place of business in this state;
- (b) Filing tax returns and paying tax;
- (c) Collecting use tax when applicable and remitting the tax with returns; and
- (d) Keeping proper records. (See Tax 11.92)

(12) "Tax" means the 4% Wisconsin sales or use tax.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "_____ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of _____ (specific tangible personal property or a specific service) is taxable", means that:

(a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

(b) The use tax applies to the storage, use or other consumption of the property or service sold, measured by the sales price.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.

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

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (4) (d), Wis. Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner of the property or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a Wisconsin manufacturer ships or turns over such property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller (who had received the original order from the Wisconsin purchaser), the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a Wisconsin manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) **TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

(b) An example of the correct computation of the tax when a seller charges the purchaser for delivery of the taxable tangible personal property follows:

Selling price of merchandise	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 4% ($\$110 \times 4\%$)	<u>4.40</u>
Total	\$114.40

(c) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no such allocation is made, the total delivery charge shall be taxable.

(d) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax based on the "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(e) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller. For example, if the "delivered price" of a carload of lumber is \$6,000 (including transportation) and the purchaser pays the transportation charges directly to the common carrier and deducts the payment

from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.