

## 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 11.01 Sales and use tax return forms.** (section 77.58, Wis. Stats.) (1) For filing sales and use tax returns, the following forms shall be used:

- (a) Form S-010. For occasional sales of motor vehicles.
- (b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.
- (c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (d) Form S-012A (also called "ST-12A"). The annual information return for each registered retailer and consumer holding a Wisconsin seller's permit.
- (e) Form S-013. For concessionaires. (Annual return).
- (f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).
- (g) Form S-015. For occasional bingo sales.
- (h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.
- (i) Form S-001U. For occasional and non-Wisconsin sales of boats.
- (j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.
- (k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

(l) Form A-R-1 (Department of Transportation form). For the occasional sale of aircraft.

2. A single transaction or series of transactions at the time of termination of a business.

3. Piecemeal sales, whether part of a continuing business or upon termination.

(b) The tax does not apply to merchandise inventory purchased for resale in the regular course of the purchaser's business.

(2) **EFFECT OF HOLDING A SELLER'S PERMIT.** Pursuant to section 77.51 (10) (a), Wis. Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sale exemption. A person may qualify for the occasional sale exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department because a person may not continue regular business operations without a permit.

(3) **DELIVERY OF SELLER'S PERMIT.** A permit holder may deliver the seller's permit to the department for cancellation in any one of the following ways:

(a) Retailers may personally deliver their seller's permits to a representative of the department's Income, Sales, Inheritance and Excise Tax Division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

(b) The seller's permit may be mailed to the department (P.O. Box 8902, Madison 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, if the envelope and its contents are actually received by the department. If the retailer desires assurance that the department has received the permit, the retailer may use certified mail, return receipt requested.

(c) If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual seller's permit.

(4) **CANCELLATION OF SELLER'S PERMIT.** (a) Although a seller's permit may be deemed to have been delivered and canceled on a postmark date under sub. (3), cancellation shall not be effective prior to the postmark date.

(b) If a permit is delivered to the department for cancellation, the permittee shall immediately qualify for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. The person shall not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

(c) The fact that a business ceases operations and no longer conducts its day to day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. Section 77.52 (12), Wis. Stats., requires a permittee to ". . . forthwith surrender his permit . . ." when ceasing to operate as a seller. If the permittee does

not surrender the permit at that time, the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

(5) **THE "ACTIVITY" REQUIRING A PERMIT.** Under section 77.51 (10) (b), Wis. Stats., the transfer of substantially all the property held or used by a person in the course of an "activity" for which a seller's permit is required shall be an occasional sale if, after such transfer, the property's real or ultimate ownership is substantially similar to that which existed before the transfer. The "activity" contemplated in this statute relates solely to the distinction between an activity for which a seller's permit would be required and an activity for which a permit would not be required. Since permits issued by the department are general in nature and can be used to sell any kind of tangible personal property or taxable services, "activity" for which a permit would be required under the statute means the sum total of all of a person's operations which require the holding of a seller's permit. For example, assume that a person who holds a seller's permit operates a tavern and restaurant and disposes of the entire restaurant operation. That person cannot meet the exemption requirements of s. 77.51 (10) (b) because the person must continue to hold a seller's permit to operate the tavern. The tavern and restaurant (and any other operation engaged in by the person which produces receipts subject to the sales tax) are all part of the activity requiring the holding of a seller's permit.

**Note:** The interpretations in this rule are effective under the general sales tax law on and after September 1, 1969, except for subsections (2), (3) and (4). The procedure described in subsections (2), (3) and (4) are effective May 4, 1976 and reflect the Wisconsin Supreme Court's decision in *Three Lions Supper Club, Ltd. v. Dept. of Revenue* (May 4, 1976), 72 Wis. 2d. 546.

**History:** Cr. Register, March, 1978, No. 267, eff. 4-1-78.

**Tax 11.17 Hospitals, clinics and medical professions.** (sections 77.51 (21), (22) and (22m), 77.52 (2) (a) 1 and 77.54 (14), (20) (c) 4 and (22), Wis. Stats.) (1) **GENERAL.** (a) Although professional personnel in hospitals and clinics and other members of medical professions (i.e., physicians, surgeons, oculists, optometrists and podiatrists) regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

(b) Section 77.54 (14) (b), Wis. Stats., specifically provides an exemption for medicines furnished by a licensed physician, surgeon or podiatrist to that person's patient for medical treatment. Section 77.54 (22), Wis. Stats., provides an exemption for medical appliances and prosthetic devices. The scope of these exemptions is set forth in rules Tax 11.08, 11.09 and 11.45.

(2) **PURCHASES BY HOSPITALS.** Purchases by hospitals are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Wis. Stats. Each is issued a Certificate of Exempt Status ("C.E.S.") by the department. When

purchasing goods and services a hospital can furnish its C.E.S. number to its supplier, and the supplier may make sales of every type of tangible personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

(3) PURCHASES BY CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS.

(a) Purchases made by medical clinics and physicians are subject to the sales or use tax unless specifically exempt by law. To be exempt, the items on the exempt list must be furnished to patients at the direction of a physician, surgeon or podiatrist in conjunction with providing medical service, except for items noted with an asterisk. These items are exempt even though not purchased under the direction of such health professional. The following is a partial list of taxable and exempt purchases of clinics and members of the medical professions.

Taxable	Exempt
Adhesive tape	*Artificial eyes and limbs
Alcoholic beverages	Bone pins and plates
Bandages, gauze and cotton	*Crutches and wheel chairs
Bed pans	*Dietary foods
Beds and linens	*Disposable syringes containing insulin
Compresses and dressings	Dye
Cosmetics	*Hearing aids and parts
Deodorants and disinfectants	Medical oxygen
Diaphragms	Medicines
Distilled water	*Needles and syringes used by diabetics (effective November 19, 1975)
Enema kits	Oral contraceptives
Instruments	Pacemakers
Laboratory equipment and supplies	Prescription drugs
Medical equipment	Prophylactics
Office equipment and supplies	Rubbing alcohol
Oxygen tanks	Suppositories
Paper products	Sutures
Printed material	Vaccines
Rib belts and supports	Vaginal creams and jellies
Soda water beverages	Vitamins
Soap	
Splints and cast materials	
Uniforms and gowns	
X-ray film and machines	

(4) SALES BY HOSPITALS, HOSPITAL AUXILIARIES AND CLINICS. (a) The gross receipts from sales of the following are exempt from the tax: 1. Charges made by hospitals to patients for medical services or rooms.

2. Hospitals' sales of meals, food, food products and beverages to patients, staff or visitors.

(b) The gross receipts from the sales of the following are taxable: 1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

3. Sales of tangible personal property or taxable service by a clinic, which sales are not directly related to the rendition of medical services.

4. Sales of meals and other tangible personal property by an organization affiliated with a hospital (e.g., if a ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, gross receipts from this business are taxable).

(5) **HOSPITAL DEFINITION.** Section 50.33 (1), Wis. Stats., provides the definition of hospital which is to be used for sales tax purposes.

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

**History:** Cr. Register, May, 1978, No. 269, eff. 6-1-78.

**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 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

(h) *Drafting*. Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by customers (e.g., architects, engineers or business firms). These charges are taxable because the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing (tangible personal property) for use by the customer.

(i) *Enuresis alarms*. Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives*. Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(k) *Community antenna systems (Cable TV)*. Effective October 1, 1975, services by a cable television company are subject to the tax. Persons offering such services are consumers of the tangible personal property they purchase or rent. Thus, sales of tangible personal property to these persons are subject to the tax. For further information see rule Tax 11.66.

(l) *Taxidermists*. Taxidermists perform service on tangible personal property. Gross receipts from such service are subject to the tax.

(m) *Car washes*. The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. Such persons are the consumers of the tangible personal property they purchase, except for the wax transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to such operators.

(n) *Soliciting advertising for telephone directories*. Persons who solicit advertising for telephone books and who, as an incident of such service, provide telephone books to telephone companies or their subscribers, are the consumers of and must pay tax on all the telephone books they distribute in Wisconsin.

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

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

**Tax 11.69 Financial institutions.** (section 77.51(4)(k)) (1) **EXEMPT SALES.** Financial institutions are primarily engaged in providing nontaxable services. Such services include charges to customers for cashier's checks, money orders, traveler's checks, checking accounts and the use of safe deposit boxes.

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

(a) Coin savings banks.

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

(h) Personalized imprinted checks, except where the financial institution has paid the tax on its purchases of such checks from a retailer and the financial institution resells the checks to customers at the same price or a price lower than its purchase price.

(3) PURCHASES. (a) A financial institution's purchases subject to sales or use tax include office furniture and equipment (such as desks, chairs, couches, writing tables and office machines), safe deposit boxes, drive-up and walk-up windows, night depository equipment, vault doors, remote TV auto teller systems and camera security equipment.

(b) Any tangible personal property purchased by a financial institution to be given away or sold at cost or less than cost to a customer, whether or not based upon the amount of a deposit, is taxable at the time it is purchased. This property includes calendars, playing cards, plat books, maps and any other items transferred to customers to promote business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

(c) If a financial institution is not required to have a seller's permit and has a use tax obligation because purchases are made without tax, it shall apply for a consumers' use tax registration and report the tax on such purchases.

(4) DEFINITION. In this rule "financial institution" includes a bank, savings and loan association and credit union.

(5) SPECIAL PROVISIONS. (a) Sales to federal and state chartered credit unions, banks and savings and loan associations are taxable.

(b) The use tax may not be imposed directly on a federal credit union due to federal restrictions.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78.

**Tax 11.70 Advertising agencies.** (sections 77.51 (4) (intro.) and (h), 77.52(1) and (2), Wis. Stats.) (1) NONTAXABLE SERVICES. Charges by advertising agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- (a) Writing original manuscripts or news releases.
- (b) Writing copy to be used in media advertising.



(c) Consultation, market research and compiling statistical or other information.

(d) Recommendations for advertising themes or merchandising plans.

(e) Obtaining media space and time.

(f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

(2) TAXABLE SALES. (a) Tax applies to an agency's gross receipts from the sale of tangible personal property located or used in Wisconsin whether the transfer is to the advertiser or to a third party at the direction of or on behalf of the advertiser. This applies to advertiser clients located both inside and outside Wisconsin. The sale of tangible personal property normally occurs when the advertising agency bills the client for the property and the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client. For example, an agency's billing to a client for finished art transferred to another Wisconsin business is taxable.

(b) Tax applies to an advertising agency's total retail sales price of tangible personal property, without any deduction for any cost element which becomes a part of the sales price. Such elements include preliminary art work, consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though such costs may be separately itemized in a billing to a client.

(c) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(d) The total sales price of the following items or services are subject to the tax:

1. Retail sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

2. Charges for photographic services or photostats.

3. Charges for producing, fabricating, processing, printing or imprinting tangible personal property for consumers for a consideration, even though the consumers may furnish the materials used in the producing, fabricating, processing, printing or imprinting of the tangible personal property.

4. Charges for "finished art". "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for

display purposes and includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced. The tax applies to sales of finished art whether it is used to produce a taxable item or an exempt item (e.g., periodical), or is used to provide an advertising service by placing advertising in an advertising media (such as newspapers, magazines, other publications and radio or television stations).

(3) **FEES ADDED TO BILLINGS.** When an amount billed as an agency "fee", "retainer", "service charge", or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable items is taxable in accordance with the ratio between the charges.

(4) **PURCHASES BY AGENCIES.** (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that it resells before use, or that becomes physically an ingredient or component part of tangible personal property which it produces and sells.

(b) An advertising agency is the consumer of all tangible personal property not purchased for resale or not becoming physically an ingredient or component part of tangible personal property sold by such agency.

*History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.*

**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.

(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. 253, 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.

(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 non-manufacturing 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 nonmanufacturer 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, 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 11.83 Motor vehicles.** (sections 77.51(7) (am), 77.53(16) and (18), 77.54(5) (a) and (7) and 77.61(1), Wis. Stats.) (1) **DEFINITION.** In this rule, "motor vehicle" means a self-propelled vehicle (e.g., automobile, truck, truck-tractor and motorcycle) designed for and capable of transporting persons or property on a highway. In this rule, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck, and road machinery as defined in section 340.01(52), Wis. Stats. "Motor vehicle" does not include a vehicle which is not self-propelled such as a trailer or semitrailer.

(2) **RETAILERS' TAXABLE GROSS RECEIPTS.** A retailer's taxable gross receipts include: (a) Gross receipts from the sale of a motor vehicle minus any trade-in allowance, if the sale and trade-in are one transaction. A separate or independent sale of a motor vehicle by either the buyer or seller of another motor vehicle is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of another motor vehicle. A dealer does not realize taxable receipts from a transaction in which one motor vehicle is traded for another of lesser value (a "trade-down").

(b) Gross receipts from charges for delivery, handling, preparation and any warranty.

(c) Gross receipts from equipment and accessories sold with a motor vehicle.

(d) Gross receipts from charges for all parts and labor for repair, service and maintenance performed on a motor vehicle, including charges for installation of accessories or attachments (e.g., a radio or air conditioner).

(3) **OCCASIONAL SALE OR PURCHASE OF MOTOR VEHICLES FROM NON-DEALERS.** (a) The occasional sale of a motor vehicle is taxable, unless the transfer is to the spouse, parent or child of the transferor; and the motor vehicle has been previously registered in this state in the name of the transferor; and the transferor is not a motor vehicle dealer. A son-in-law or daughter-in-law is not allowed this exemption.

(b) The purchaser of a motor vehicle from a non-dealer shall pay the tax due to the department of transportation before the vehicle is registered for use in this state.

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

(d) When one co-owner transfers an interest in a motor vehicle to the other co-owner, tax shall apply on the transfer of such interest. The measure of the tax shall be the cash or its equivalent paid for the equity transferred plus the selling co-owner's share of the liabilities assumed by the buying co-owner.

(4) **PURCHASES BY NONRESIDENTS.** (a) The gross receipts from the sales of motor vehicles or truck bodies to nonresidents of this state (including members of the armed forces) who will not use such vehicles or trucks (for which the truck bodies were made) in this state other than in their removal from this state are exempt. However, the separate sale of a "slide-in" camper to a nonresident is taxable if delivery is in Wisconsin.

(b) Gross receipts from the repair by a Wisconsin retailer of a nonresident's motor vehicle is subject to the tax.

(c) A motor vehicle purchased by a nonresident of Wisconsin 90 days or more before bringing such vehicle into this state, in connection with a change of residence to this state, is not subject to the Wisconsin use tax.

(d) Except as provided in par. (c), nonresidents, including armed forces personnel stationed outside this state pursuant to military orders, who purchase motor vehicles outside this state, shall pay the Wisconsin use tax at the time the vehicle is registered with the Wisconsin department of transportation. However, a tax credit may be claimed as described in sub. (5).

(5) **TAX CREDIT FOR VEHICLE PURCHASED OUTSIDE WISCONSIN.** A motor vehicle purchased outside this state and registered in this state generally is subject to the Wisconsin use tax, except as noted in sub. (4) (c). However, if the purchase was subject to a sales or use tax by the state or the District of Columbia in which the purchase was made sales tax paid the other state or the District of Columbia shall be applied as a credit against and deducted from the Wisconsin use tax. This credit shall not apply to taxes paid to another country, to municipalities in other states or to motor vehicle registration fees.

(6) **TRANSFER BY INHERITANCE, GIFT OR PRIZE.** (a) The distribution of a motor vehicle to the heir (s) of an estate is not a taxable transfer subject to the Wisconsin sales or use tax. However, the sale of a motor vehicle by a personal representative of an estate is subject to the tax, and the purchaser is required to pay the tax to the department of transportation at time of registration.

(b) A motor vehicle transferred as a gift or as a prize in a contest or drawing is exempt when registered with the department of transportation by the recipient or prize winner. However, the sale of the vehicle to the donor of the gift or prize is taxable.

(7) **VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS.** (a) If salespersons use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson a reasonable amount for such use and such charge is subject to the tax. In lieu of making such charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis effective January 1, 1973:

1. In the case of motor vehicles licensed in the name of the retail dealer, the tax shall be \$1.35 per month.



2. In the case of motor vehicles being operated with retail dealer plates, the tax shall be 35¢ per month for each plate issued to the dealer.

(b) Retail dealers shall not report on the basis prescribed in par. (a) for service vehicles such as wreckers or pick-up trucks, or autos used by customers when their car is being repaired. Wholesalers, distributors, brokers or manufacturers may not report on this basis.

(8) **SALES BY DEALERS TO THEIR SALESPERSONS.** Effective September 1, 1972, when a licensed Wisconsin motor vehicle dealer sells a motor vehicle to one of the dealer's salespersons, the transaction is subject to the sales tax. Vehicles acquired in this type of taxable transaction after September 1, 1972 are not subject to the special method of reporting described in sub. (7). However, vehicles purchased by salespersons prior to September 1, 1972 are subject to such special provisions, and the tax is \$1 per month through December 1972 and \$1.35 per month thereafter.

(9) **HEAVY EQUIPMENT DEALERS.** Heavy equipment dealers who are not registered with the Wisconsin department of transportation as motor vehicle dealers because their sales are too few in number to require registration shall not charge the sales tax on their sales of motor vehicles. The tax shall be collected from the purchaser at the time the unit is registered with the state. Such heavy equipment dealers may purchase motor vehicles for resale without tax.

(10) **MOTOR VEHICLE REPAIR PARTS AND SUPPLIES.** (a) Motor vehicle dealers with body shops and any other person engaged in motor vehicle repair may purchase for resale without tax tangible personal property which is physically transferred to the customer's vehicle and which leaves the repair facility with the repaired vehicle. Such property includes paints, paint hardeners, plastic fillers, welding rods and auto parts.

(b) Tangible personal property not physically transferred to a customer's motor vehicle are subject to tax. Such property includes tools, equipment and supplies used or consumed in performing motor vehicle repair service. Examples of taxable supplies include: sandpaper, masking paper and tape, buffing pads, paint and lacquer thinner, clean and glaze compound, disc pads, paint remover, paint masks, tack rags, steel wool, industrial gases, metal conditioner, brushes, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesive and all other items not physically transferred to the customer's vehicle.

(c) A supplier cannot accept a resale certificate in good faith on items which are not physically transferred to the purchaser's customer, *except* when the purchaser:

1. Inventories such property;
2. Certifies that the purchaser sells significant amounts of the property over-the-counter to walk-in trade; and
3. The purchaser specifies on the resale certificate each type of item the purchaser sells over-the-counter.

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

From September 1, 1969 through December 31, 1972, the tax payable by motor vehicle dealers in lieu of other methods of computing the tax, as described in (7) (a) 1 and 2 of this

rule, was \$1 per month in the case of motor vehicles licensed in the name of the retail dealer and 25¢ per month in the case of motor vehicles operated with dealer plates.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78.

**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 11.87 Meals, food, food products and beverages.** (sections 77.51(4) (b) and (f), (11) (c) 2, (12) (c) 1 and 77.54(20), Stats.) (1) **DEFINITIONS.** In this rule: (a) "Exempt food" means food, food products and beverages not subject to the sales and use tax.

(b) "Taxable food" means food, food products and beverages subject to the sales and use tax.

(2) **TAXABLE SALES.** (a) *General.* Generally, the gross receipts from sales of food or beverages shall be taxable when sold by restaurants, cafeterias, lunch counters, coffee shops, snack bars, eating houses, hotels, motels, lodging houses, sororities, fraternities, drug stores, diners, taverns, vending machines, drive-ins, mobile sales units, clubs and similar businesses, organizations or establishments.

(b) *Sales by generally exempt seller.* Certain foods that have been prepared by a seller by cooking, baking or other methods shall be taxable food even though the seller is principally engaged in the sale of exempt food. For example, when a supermarket sells chickens roasted on a

rotisserie, the roasted chickens are taxable food because heated food (or heated beverages) are taxable. Heated food or beverages mean those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

(c) *Food components of meals.* Food items which comprise or are components of a meal (for example, a basket of chicken with cole slaw and french fries) shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere.

(d) *Caterers.* Meals, food, food products and beverages sold by caterers shall be taxable. 1. "Caterer" means a person engaged in the business of preparing meals, food and drinks, and serving these items on premises designated by a purchaser. When an agreement with a caterer provides that the caterer shall prepare and serve food either for a stated price per meal, for a lump sum, or for a price per plate, the consideration paid shall constitute the sale of taxable food. Any rental charges made by a caterer for items such as tableware, tablecloths or other tangible personal property, whether or not separately stated on the bill, shall be includable in the consideration paid and shall be taxable.

2. Charges made by a caterer for preparing and serving meals or drinks to social clubs, service clubs, fraternal organizations or other nonexempt purchasers shall constitute exempt sales for resale *only* if the purchasers are regularly engaged as retailers of meals, hold a seller's permit and give resale or exemption certificates to the caterer.

3. The tax shall apply to items purchased by caterers (such as dishes, silverware, plastic eating utensils, straws, napkins, tablecloths, punch fountains, coffee silver service and glassware) which are used by caterers to serve food or beverages to their customers, or used in conjunction with providing food or beverages to their customers, or used in conjunction with providing catering service. However, the following items may be purchased without tax for resale, if used exclusively for rental purposes by a caterer and if customers pay specific taxable rental charges for such use: tents, public address systems, portable dance floors, portable bars, chairs and tables.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in section 77.54(20)(c)6, Wis. Stats. The operator's total gross receipts shall be presumed derived from on-premise consumption unless records show which portion of the sales were made for off-premise consumption and involve food which could be treated as exempt food.

(f) *Cover and minimum charges.* Cover charges or minimum charges, whether listed separately on a bill or collected as an admission fee or fixed charge, which entitle the patron to receive entertainment or to dance as well as to receive food, meals or drinks, shall be taxable. If food, meals or drinks are furnished, prepared or served at locations other than the place of business of the seller or in a room other than a regular dining room and an extra charge is made for such service, the entire amount shall be taxable.

(g) *Tips.* 1. A tip which is given directly to an employe in cash or which is added by a customer to a bill which amount is then turned over