

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. (s. 77.58, 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.

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(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.

(b) The sale of a business or the assets of a business when the seller holds or is required to hold a seller's permit. The tax applies to the portion of the gross receipts reasonably attributable to the taxable personal property such as equipment, furniture and fixtures.

(c) Sales of motor vehicles, aircraft, boats, mobile homes, snowmobiles, trailers and semitrailers, except as specifically provided in section 77.54 (7), Wis. Stats. Unless exempt, a use tax shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, trailer or semitrailer is registered or the mobile home is registered or titled for use within this state. Except as provided in section 77.54 (7), Wis. Stats., the occasional sales of snowmobiles, mobile homes, trailers and semitrailers required to be registered or titled under the laws of Wisconsin are taxable effective August 1, 1977.

(d) Sales made by persons who hold themselves out to the public as engaged in business, even though their sales may be few and infrequent. This includes the sales of works of art, handmade articles, antiques or used property by artists or others who are pursuing a vocation or part-time business as a seller of such property.

(e) Sales by persons conducting bingo games.

(f) Sales by persons engaged primarily in the business of making non-taxable sales of personal property, such as manufacturers, wholesalers and grocers. Since these persons are in the business of selling tangible personal property, the mere fact that only a small fraction of their total sales are taxable retail sales does not make these sales exempt occasional sales.

(6) SALES WHICH ARE OCCASIONAL SALES. The following sales shall be exempt occasional sales: (a) Sales of fishing bait by minors who are not licensed or required to be licensed as bait dealers, if the sales are made by minors not required to hold a seller's permit for some other activity, such as operating a lunch stand. (Under section 29.137 (3), Wis. Stats., all bait dealers must obtain a license from the Wisconsin department of natural resources except that "resident children under 16 years of age, without license or permit, may barter or sell bait to consumers, but no such resident child shall make bait sales totaling more than \$500 annually.") However, sales of bait by licensed bait dealers are taxable without regard to the total amount of gross receipts from such bait sales.

(b) Sales of soft drinks by employe groups whose markup (gross profit) from such sales does not exceed \$250 per year. These groups are deemed consumers and need not obtain a seller's permit. Their suppliers, however, shall treat all sales to such groups as taxable retail sales.

(c) A garage, lawn and rummage sale held at a private residence by a person who does not have a seller's permit, if the gross receipts from such sales are less than \$500 during the calendar year.

(d) Auction sales of personal farm property and household goods. (See rule Tax 11.50).

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, July, 1978, No. 271, eff. 8-1-78.

Register, July, 1978, No. 271

Tax 11.12 Farming, agriculture, horticulture and floriculture. (sections 77.52 (2) (a) 10 and 77.54 (3), (3m) and (27), Stats.) (1) STATUTES. Sections 77.54 (3) and (3m), Wis. Stats., provide exemptions for certain sales to persons who are engaged in farming, agriculture, horticulture and floriculture as a business enterprise. Persons who contract with farmers to do agreed upon jobs are not engaged in farming as a business enterprise.

(2) DEFINITIONS. (a) "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, poultry, domesticated rabbits or other animals which produce a food product or which are themselves a food product. In addition, consistent with chapters 29 and 94, Wis. Stats., "farming" includes raising pheasants, foxes, fitch, nutria, marten, fisher, mink, chinchilla, rabbit, caracul and bees; producing honey products by a beekeeper of 50 or more hives; commercial raising of fish for food; commercial breeding and raising of horses for sale; and raising sod. "Farming" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; operating sporting or recreational facilities (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots where livestock is held for a short period of time; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

(b) "Horticulture" means the business of producing vegetables, vegetable plants, fruits and nursery stock, including the operation of commercial nurseries and orchards. "Nurseries" do not include businesses which hold stock for purposes other than propagation or growth. Horticulture does not include the business of servicing plants owned by others; the raising of trees as timber; or lumber or sawmill operations.

(c) "Floriculture" means the business of producing flowers, Christmas trees or other decorative trees, plants or shrubs, including such operations as greenhouses.

(d) "Dairy farming" means the business of feeding and raising cattle and other milk producing animals, but does not include operations such as pasteurizing, homogenizing or making butter, cheese or ice cream.

(3) OBTAINING EXEMPTION CERTIFICATES. A retailer shall have a signed exemption certificate for every exempt sale made to a farmer. The standard "Farmer's Exemption Certificate" (Form S-206) provides for continuous use under certain conditions. The certificate shall be used only for categories of items listed on it. Every invoice to which the certificate refers must contain the seller's name, the farmer's name and address, the date of sale and a brief description of the product sold.

(4) STATUTORY EXEMPTIONS. (a) Section 77.54 (3). Section 77.54 (3), Wis. Stats., exempts: "The gross receipts from the sales of and the storage, use or other consumption of tractors and machines, including accessories, attachments, fuel and parts therefor, used directly in farming, including dairy farming, agriculture, horticulture or floriculture, but excluding automobiles, trucks, and other motor vehicles for highway use, when engaged in by the purchaser or user as a business enterprise, but the purchaser of property exempt under this subsection shall be liable for use tax under s. 77.57 at the time any more than nominal other

office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or the taking of orders for any tangible personal property."

(c) Under section 77.53 (5), Wis. Stats., the tax collected by a use tax registrant is a debt owed by the registrant to this state, and section 77.53 (7), Wis. Stats., provides the tax is to be stated separately from the list price of the goods sold.

(3) ACTIVITIES WHICH IN THEMSELVES CREATE WISCONSIN "NEXUS". Unless otherwise limited by federal statute, a retailer engaged in business in this state who must register includes the following: (a) Any retailer owning any real property in this state.

(b) Any retailer leasing or renting out any tangible personal property located in this state.

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other person, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

(d) Any retailer having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property.

(e) Any person servicing, repairing or installing its products in this state.

(f) Any person delivering goods into this state in company operated vehicles.

(g) Any person performing construction activities in this state.

(4) ACTIVITIES WHICH IN THEMSELVES DO NOT CREATE "NEXUS". Activities which, in themselves, do not create nexus in this state, include: (a) Advertising in newspapers published in or outside this state.

(b) Sending catalogues into this state from an out-of-state location if subsequent orders are shipped either by mail or common carrier to Wisconsin consumers.

(c) Receiving mail or telephone orders outside this state from consumers located in Wisconsin if such orders are shipped either by mail or common carrier into Wisconsin.

(d) Making cash or credit sales over-the-counter at an out-of-state location to Wisconsin consumers, when the goods are shipped by mail or common carrier by the retailer into this state, or when possession of the goods is taken at the out-of-state location by the consumer.

(5) REGISTRATION. (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state shall apply for a use tax registration certificate. The registration form, entitled "Application for Permit" (Form A-101), may be obtained from any department office.

There is no fee for registration. Retailers engaged in business in Wisconsin for use tax purposes are not necessarily engaged in business in Wisconsin for franchise/income tax purposes.

(b) Retailers who are not engaged in business in Wisconsin, but who elect to collect use tax for the convenience of their Wisconsin customers may register and pay taxes directly to this department. Holders of such permits shall collect the use tax from Wisconsin customers, give receipts therefor and pay the use tax in the same manner as retailers engaged in business in this state.

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

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78.