

(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 s. 140.24, 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 11.10 Occasional sales. (ss. 77.51 (10) and 77.54 (7), Stats.) (1) **GENERAL.** Sales of tangible personal property and taxable services are not taxable if they are exempt "occasional sales". However, if the number, scope and character of the sales are such that they exceed the standards in the statutes and this rule, a taxable sale occurs.

(2) **STATUTES.** (a) "Occasional sales" is defined in s. 77.51 (10), Stats.

(b) Section 77.54 (7), Stats., exempts most occasional sales from the sales and use taxes.

(3) **SALES BY NONPROFIT ORGANIZATIONS.** No special statute exempts all sales by nonprofit organizations. However, the following sales by neighborhood, religious, charitable, civic or educational organizations and other nonprofit organizations which conduct one or more fund raising events during the year shall be occasional sales under the conditions shown:

(a) *Admissions or tickets.* Sales of admissions or tickets to an event conducted by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The event does not involve professional entertainment;

2. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

3. The organization did not conduct more than 3 events involving sales of admissions or tickets in the previous calendar year, no more than 3 are anticipated during the current calendar year and such events do not fall on more than 7 days within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the

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fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of such events in that year.

(b) *Meals, food and beverages.* Sales of meals, food, food products, and beverages, including beer, for direct consumption at an event including a church supper or refreshment stand at a fair by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

2. The organization conducted no more than 3 events involving sales of meals, food, food products and beverages in the previous calendar year, no more than 3 are anticipated during the current calendar year and such events do not fall on more than 7 days within the calendar year. If 3 or less events are anticipated, but a fourth event takes place during the year, only the fourth event shall be taxable. However, in the following year, all events shall be taxable, even though there are 3 or less of such events in that year.

(c) *Other sales of tangible personal property and services.* Except for sales under pars. (a) and (b), sales of tangible personal property and taxable services, including light bulbs, Christmas trees, candy or parking, by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization shall be exempt occasional sales if:

1. The organization is not engaged in a trade or business and is not otherwise required to have a seller's permit; and

2. The gross receipts from sales of property and services otherwise subject to the tax under s. 77.52 (1) and (2), Stats., do not exceed \$1,000 within a calendar year.

(d) *Exceeding the \$1,000 standard.* Nonprofit organizations with sales exceeding \$1,000 annually are taxable on all receipts unless the department of revenue determines that their sales of property or services are isolated and sporadic and that the organizations are not engaged in a part-time business or a partial vocation or occupation. Any organization may request a determination from the department as to whether it qualifies for the exemption. The request should be made in writing, listing items or services sold, unit costs and selling prices, anticipated total gross receipts from all sales activities for the calendar year, the number of days duration of sales throughout the year, and any other information that will assist the department in its determination. Requests for such determinations should be sent to the Wisconsin Department of Revenue, Income, Sales, Inheritance and Excise Tax Division; P.O. Box 8902, Madison, Wisconsin 53708.

(e) Each category of sale listed in pars. (a), (b) and (c) shall be treated separately. However, if an organization exceeds the exempt occasional sales standard in any category, it shall obtain a seller's permit and pay a tax on sales in all categories. If the \$1,000 standard described in par. (c) is exceeded, all receipts from sales of property or services described in

that paragraph and all subsequent receipts from admissions and meals shall be taxable.

Note: Example. If an organization engages in separate activities described in pars. (a), (b) and (c) during a year and has a fourth "admissions" event, but only one "meal" event and \$500 receipts from sales of other tangible personal property at that time, it shall obtain a seller's permit and pay the tax on receipts from the fourth "admissions" event and all subsequent receipts from "meal" events and from subsequent sales of other tangible personal property or services.

(4) SALES WHICH ARE NOT OCCASIONAL SALES. The following transactions shall not be exempt occasional sales:

(a) Sales by a person who holds or is required to hold a seller's permit. For example, sales of used equipment by a retail store or vending machine operator are taxable.

(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. Refer to s. Tax 11.13 for additional information concerning this subject.

(c) Sales of motor vehicles, aircraft, boats, mobile homes not exceeding 45 feet in length, snowmobiles, trailers and semitrailers, except as specifically provided in s. 77.54 (7), 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 not exceeding 45 feet in length is registered or titled for use within this state.

(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 s. 29.137 (3), 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 if the gross receipts from soft-drink sales do not exceed \$500 per year. These groups are deemed

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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.

(e) Sales by a sole proprietor who is, or is required to be, a holder of a seller's permit of tangible personal property which is not or has not been used in the course of the person's business activities and is not the type of property sold in the course of conducting such business activities. All tangible personal property sold by a corporation or partnership holding or required to hold a seller's permit shall be considered used or sold in the course of the organization's business activities and is taxable. Examples include the following:

1. Taxpayer is a sole proprietor and a service station operator who obtained a seller's permit for the purpose of selling cigarettes and repairing motor vehicles; taxpayer sold a refrigerator and stove used in the taxpayer's residence; the gross receipts from the sale of the refrigerator and stove are not subject to the sales tax.

2. Taxpayer in the prior example sold a desk and refrigerator which were used in the service station's business activities; the gross receipts from the sale of these 2 items are subject to the sales tax.

(f) Selling, performing or furnishing lawn maintenance and landscaping services by a person not otherwise required to hold a seller's permit, if the gross receipts from furnishing lawn maintenance and landscaping services is less than \$500 during the calendar year.

(g) Charges for parking by a person not otherwise required to hold a seller's permit, if the gross receipts from parking charges are less than \$500 during the calendar year.

(h) Sales of firewood by a person not otherwise required to hold a seller's permit, if the gross receipts from firewood sales are less than \$500 during the calendar year.

(i) Sales of books by a person not otherwise required to hold a seller's permit, if the gross receipts from book sales are less than \$500 during the calendar year.

Note: The interpretations in s. Tax 11.10 are effective under the general sales and use tax law on and after September 1, 1969, except that subsection (6) (e) became effective on March 1, 1979. Refer to s. Tax 11.50 for information regarding auction sales.

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; cr. (6) (e), Register, February, 1979, No. 278, eff. 3-1-79; am. (4) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (3) (b) (intro.) and (e), (4) (c), (6) (a), (b) and (d), r. and recr. (3) (c), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) THE STATUTE. (a) The sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility is contained in s. 77.54 (26), Stats.

(b) The general property tax exemption for a waste treatment facility is contained in s. 70.11 (21) (a), Stats. and the exemption for public utilities and railroads is contained in 76.02 (10), Stats.

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(2) **CONTRACTORS AND SUBCONTRACTORS.** (a) The sales and use tax exemption extends to and includes the purchases of tangible personal property by a contractor-installer who incorporates such property into an approved industrial waste treatment facility or who incorporates such property into a municipal waste treatment facility. The contractor-installer shall certify the intended exempt use of the item to each supplier in order to relieve the supplier of the duty of collecting and reporting the tax on the sale. Certification of exempt use shall be made on a Certificate of Exemption, Form S-207.

(b) Contractors shall ascertain whether the industrial waste treatment facility they are constructing has been properly approved by the department of revenue for a property tax exemption under s. 70.11 (21), Stats. If there has been no "approval", the contractor or subcontractor may be liable for the sales or use tax on his or her purchases.

(c) A contractor's purchases of items used or consumed in the performance of the construction contract, and which do not become a component part of the waste treatment facility, are subject to the tax. This includes industrial gases, form lumber, tunnel shields and supplies used by a contractor during construction. Payments by a contractor for equipment purchased or leased to perform a construction job are also taxable.

(3) **APPROVAL OF FACILITIES.** (a) Tangible personal property which becomes a component part of an industrial waste treatment facility qualified for the sales and use tax exemption if the facility has been approved for property tax exemption by the department of revenue as provided in s. 70.11 (21), Stats. Sections Tax 6.40 and 12.40 describe how "approval" may be obtained for public utilities and other commercial and industrial concerns, respectively.

(b) The property tax exemption approvals for public utility, industrial and commercial waste treatment facilities are effective January 1 of each year. Any approvals issued prior to January 1 which apply to contemplated construction must of necessity be "tentative approvals" based on the information presented to the department by the applicant.

(c) Contractors and others may determine whether a facility has been approved by the department of revenue as follows:

1. Public utility facilities, including railroads, airlines and pipelines: Write or call the Department of Revenue, Bureau of Utility and Special Taxes, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-3565.

2. Other commercial or industrial facilities: Write or call the Department of Revenue, Bureau of Property Tax, 125 South Webster Street, P.O. Box 8933, Madison, WI 53708; telephone (608) 266-8135.

(d) Property tax exemption approvals by the department of revenue are not required for municipal waste treatment facilities for the sales and use tax exemption under s. 77.54 (26), Stats., to apply. Contractors or others constructing municipal waste treatment facilities may purchase construction materials which become a component part of the exempt facility without tax by issuing a properly completed exemption certificate to their suppliers.

(4) **INDUSTRIAL WASTE TREATMENT EXEMPTION.** (a) If an industrial or utility waste treatment facility qualifies for the property tax exemption

under s. 70.11 (21) (a), or 76.02 (10), Stats., it qualifies for the sales and use tax exemption under s. 77.54 (26), Stats.

(b) When any plant or equipment has been approved as exempt from the property tax on January 1, the repair, service, alteration, cleaning, painting and maintenance of such exempt property and the repair parts and replacements therefor are also exempt through the following December 31. The sales and use tax exemption applies to chemicals and supplies used or consumed in operating a waste treatment facility.

(5) MUNICIPAL WASTE TREATMENT EXEMPTION. (a) Storm sewers, water supply systems and private domestic waste water facilities do not qualify for the sales and use tax exemption.

(b) Prior to July 31, 1975, an entire municipal sanitary sewer, including its collection system, qualified for the sales and use tax exemption. On and after July 31, 1975, only the central waste treatment plant which actually treats the sewage qualifies for the exemption.

(c) The collection system throughout the area served by the treatment facility, the effluent pipeline carrying the treated sewage away from the central treatment plant, earthen dikes and chain link fences on the boundary of a treatment plant, and dredge material disposal sites are not exempt. The collection systems includes the lift stations, force mains and associated pumping equipment used to bring the raw sewage to the central treatment plant.

(d) The repair, service, alteration, cleaning, painting and maintenance of a municipal central waste treatment facility, the repair parts and replacements therefor, and chemicals and supplies used or consumed in operating a waste treatment facility are exempt from the sales and use tax.

Note: The interpretations in this rule are effective July 31, 1975 when ss. 70.11 (21) (a) and 77.54 (26), Stats., were revised, except that the exemption for chemicals and supplies used or consumed in operating a waste treatment facility is effective September 1, 1979, the date s. 77.54 (26), Stats., was amended by Chapter 89, Laws of 1979.

History: Cr, Register, March, 1979, No. 279, eff. 4-1-79; am. (2), (4) (b) and (5) (d), r. and recr. (3), Register, September, 1982, No. 321, eff. 10-1-82.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27) and (30), Stats.) (1) STATUTES. Sections 77.54 (3) and (3m), 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. In this section and s. 77.54 (3), (3m), and (30), Stats.:

(a) 1. "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 chs. 29 and 94, 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 ginseng, mushrooms and sod. "Farm-

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ing" does not include home gardening and other similar noncommercial activities; breeding or raising dogs, cats, other pets or animals intended for use in laboratories; raising earthworms; operating sporting or recreational facilities (e.g., riding stables or shooting preserves); operating stockyards, slaughterhouses or feed lots as described in subd. 2; lumbering and logging, and pulpwood and sawmill operations; milling and grinding grain; and preparing sausage, canned goods, jellies, juices or syrup.

2. Effective on December 1, 1981 and thereafter, "feed lot" means a restricted area containing pens or lots where livestock are held and fed. A person who holds livestock in a feed lot for less than 30 days is not engaged in farming. Feed purchased for livestock held in a feed lot for less than 30 days is taxable. However, a person who holds livestock in a feed lot for 30 days or more is engaged in farming and the feed purchased for such livestock is exempt. If a person holds some livestock for less than 30 days and some livestock for 30 days or more and purchases feed for both types at the same time, an allocation of the feed costs may be made so that tax is paid on the feed consumed by livestock held for less than 30 days and is not paid on feed consumed by livestock held for 30 days or more.

(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), 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 use, including job contracting other than the performance of farm services by one farmer for another with machinery customarily used by the performing farmer in his own farming operation, is made of such property." (Emphasis added.)

1. *"Directly"*. Items used "directly" in farming include a plow and a combine. Items of "indirect" or non-qualifying use include typewriters, electric drills or other repair tools, dog and cat food, lawn and garden tractors and, prior to July 1, 1979, fuel oil for residential use.

2. *Accessories, attachments and parts*. Included within the exemption are accessories, attachments, parts and fuel for tractors and machines used directly in agriculture. "Accessories" and "attachments" include devices designed to be mounted on a machine or to be pushed or pulled by a machine. Examples include farm wagons and portable pipes attached to mobile irrigation pumps. A machine "part" means a durable unit of definite, fixed dimensions and includes tractor cabs, oil filters and slow-moving-vehicle signs. Canvas covers and paint for exempt machines are exempt. "Parts" does not include fluids (e.g., antifreeze or lubricants) nor milk filters which must be replaced every time a machine is used. These are "supplies" rather than "parts" and are not exempt. The exemption for fuel for farm machines does not apply to purchases of electricity.

3. *Machines*. "Machines" include auxiliary power generators, bale loaders, balers, barn cleaners, barn elevators, chain saws for orchard use (not for use in lumbering, pulping or cutting firewood), choppers, conveyors, corn pickers, crop conditioners, crop thinners, cultivators, discs, drags, and loaders, electric clippers and hoof trimmers, electric dehorers, electric fence charges (not fencing or insulators), electric foggers, feed elevators and augers, fork lifts, grain dryers and grinders, harrows, harvesting combines, hay wagons, manure spreaders, milk coolers, milking machines (including piping, pipeline washer and compressor), mowers, planters, plows, powered feeders (not including platforms or troughs constructed from ordinary building materials), powered post-hole diggers, pumps and associated portable piping for irrigation, rock pickers, rotary hoes, silo unloaders, space heaters (not for residential use and not realty improvements), sprayers, stalk shredders and windrowers.

4. *Realty improvements*. a. Certain machines in addition to those in subd. 3 qualify for the exemption if purchased by farmers directly from retailers, even though they are used to make realty improvements. Machines included are automated livestock feeder bunks (but not ordinary building materials), automatic stock waterers (powered by electricity or water pressure and built into a permanent plumbing system), automatic water softeners (e.g., for milkhouses), barn fans and blowers and other ventilating units, unit heaters and other heating units, water heaters serving production areas, and water pumps serving production areas.

b. However, a person (such as a plumbing contractor) who contracts with a farmer to provide and install such a machine permanently into real estate is a consumer of the machine, not a seller. Such a contractor, not being a farmer, may not furnish a Farmer's Exemption Certificate on the person's purchase of the machine. Being the consumer, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department.

5. *Motor vehicles*. Specifically *excluded* from the statutory exemption are "motor vehicles for highway use". "For highway use" means licensed for that use or designed primarily for that use even though not licensed. Examples include motor trucks, automobiles, station wagons, self-pro-

pelled feed mills, buses and motorcycles. Sales of parts, supplies and repairs for these vehicles, nurse tanks and trailers designed primarily for highway use are also taxable.

6. *Other non-exempt sales.* The exemption does not apply to:

a. Tools used in construction or for making repairs to real estate or farm machinery, such as block and tackle sets, chain hoists, cutters, electric drills, hammers, hand tools, planers, sharpeners, sanders, saws and wheelbarrows.

b. Building materials used to repair or improve real estate such as cement, drain tile fencing, light fixtures, lumber, nails, stanchions and underground and fixed in place water supply systems.

c. Applicators for insecticides (non-powered), cattle chutes, farrowing crates, feed carts, fire extinguishers, flood gates, gravity flow feeders (non-powered), saddles and bridles, incinerators, lawn and garden tractors, portable calf stalls, rope and cable, scales, self-treating stations (oil-ers), snowmobiles, stationary salt and mineral feeders.

7. *Use tax.* A person who buys without tax by claiming the farming exemption owes the use tax at the time the person uses the item purchased more than nominally for a nonexempt purpose.

(b) Section 77.54 (3m), Stats., exempts: "The gross receipts from sales of and the storage, use or other consumption of seeds for planting, plants, feed, fertilizer, soil conditioners, sprays, pesticides, fungicides, breeding and other livestock, poultry, farm work stock, baling twine and baling wire, and containers for fruits, vegetables, grain and animal wastes used exclusively in farming, including dairy farming, agriculture, horticulture or floriculture when engaged in by the purchaser or user as a business enterprise." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (3m) and in this section means that the items mentioned in s. 77.54 (3m) are used solely in farming to the exclusion of all other uses, except that the sales and use tax exemption for such items will not be invalidated by an infrequent and sporadic use other than in farming.

1. *Seeds for planting.* "Seeds for planting" includes seeds for alfalfa, blue grass, canning peas, clover, field corn, field peas, rye grass, sweet corn, timothy and vegetable seeds; plant parts capable of propagation; and bulbs. "Seeds for planting" does not include sod.

2. *Plants.* "Plants" include herbs, shrubs or young trees, slips or saplings planted or ready to plant.

3. *Feed.* a. "Feed" includes processed vegetable and animal products and essential minerals required for the normal nutritional needs of livestock, poultry and domestic fur bearing animals and other materials which are required for the normal nutritional needs of animals in some domestic environments, such as vitamins A, B-complex, D and E. Essential minerals include phosphorous, calcium, sodium, chlorine, iodine, iron, copper, sulfur, potassium, magnesium and zinc. Common feed additives containing these substances include cod liver oil, salt (granular or block), ground limestone, fish oil, fish meal, oyster shells and bone meal.

b. "Feed" includes medicated feed or drug carriers purchased for use as an ingredient of medicated feed, the primary purpose of which is the pre-

vention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Medicines (including antibiotics) which are administered to animals or poultry directly or as an additive to drinking water are taxable.

4. *Fertilizers and soil conditioners.* a. "Fertilizer" means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content to improve the soil's agricultural qualities. "Fertilizer" and "soil conditions" include fertilizer and insecticide combinations, agricultural minerals, carbon dioxide for application to land, urea, sewage sludge, liquid spray mixtures of minerals and plant nutrients, lime, compost, manure, peat moss and soy bean straw.

b. "Fertilizer" and "soil conditioners" do not include fill dirt, top soil, wood chips, wood shavings, litter and hormone growth stimulants. (The difference between fertilizers and hormone growth stimulants is that fertilizers nourish plants whereas hormone growth stimulants act upon the cellular structure.)

5. *Sprays, pesticides and fungicides.* "Sprays", "pesticides" and "fungicides" include disinfectant sprays, fly sprays and preparations used to destroy insects, mites, nematodes, slugs or other invertebrate animals injurious to plants and animals; chemicals used for crop disease, pest and weed control, including insecticides, rodenticides and pesticides used to sanitize and clean dairy equipment. Products used to sanitize dairy equipment are exempt, if they are registered with the U.S. Environmental Protection Agency as pesticides, advertised and sold as pesticides, and each bottle, can or other container containing the pesticide has an EPA pesticide registration number on it.

6. *Containers for fruits, vegetables, grain and animal wastes.* a. "Containers for fruits, vegetables, grain and animal wastes" includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains or animal wastes. The phrase does not include feed carts designed to hold various green and dry feeds.

b. A complete corn crib or grain bin may be purchased "knocked-down" in kit form and still qualify for this exemption. However, a person who contracts with a farmer to provide and install such a bin permanently into real estate is a consumer of the bin, not its seller. Such a contractor, dealer or installer, not being a farmer, may not furnish a Farmer's Exemption Certificate on the bin's purchase. Being the consumer, not a seller, the contractor must pay the sales tax to the supplier or report the use tax on the purchase price directly to the department. A farmer who wishes to utilize the farmer's exemption certificate on the purchase of a grain bin or corn crib normally built on a slab or otherwise affixed to real estate may purchase the crib or bin separately and do any necessary installation work.

c. Farmers may purchase animal waste containers without tax or the component parts thereof, by issuing their supplier a properly completed "single purchase" Farmer's Exemption Certificate.

d. Silos are not included in the exemption. The purchaser of materials used in building a silo must pay the sales tax to the purchaser's supplier. A silo unloader may be purchased by a farmer as an exempt machine.

e. Milk cans are not covered by the farmer's exemption, but may be purchased without tax under the general exemption for shipping materials if they are used to transfer milk to the purchaser's customers.

7. *Livestock and poultry.* "Livestock" and "poultry" include animals, the products of which are normally used as food for human consumption, and domestically raised fur bearing animals (such as those purchased for breeding).

8. *Farm work stock.* "Farm work stock" means animals, such as draft horses and mules, which are used exclusively in farming. The phrase does not include dogs, riding horses, racing horses or laboratory animals. The food for animals which are not farm work stock is taxable (e.g., dog and cat food).

9. *Semen.* Semen used for artificial insemination of livestock is exempt.

(5) **SERVICES FURNISHED TO FARMERS.** (a) The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54 (3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52 (2) (a) 10, Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses shod, but not when having riding horses shod.

(b) Breeding fees, and charges for artificial insemination of animals and veterinarians' services are not taxable.

(c) The exemptions under s. 77.54 (3), Stats., do not apply to farmers' purchases of other services which are taxable under s. 77.52 (2) (a), Stats. (e.g., telephone, laundry, dry cleaning, photographic services and electricity and natural gas, except that beginning November 1, 1979, sales of electricity and natural gas for residential or farm use are exempt if billed during the period November 1 to April 30 each year).

(6) **SERVICES PROVIDED BY FARMERS.** (a) *Nontaxable services.* The following services performed by farmers are not subject to the sales tax:

1. *Custom work.* The performance of custom farm services by one farmer for another farmer, such as harvesting hay or grain.

2. *Training animals.* The training of horses, dogs or other animals.

(b) *Taxable services.* The following services performed by farmers are taxable:

1. *Boarding animals.* The boarding of dogs, cats, riding horses, ponies or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed Resale Certificate.

2. *Grooming animals.* The grooming of recreational animals.

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

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; am. (2) (intro.), (4) (a) 1., (4) (b) (intro.) and (5) (c), renum. (2) (a) to be (2) (a) 1. and am., cr. (2) (a) 2., Register, November, 1981, No. 311, eff. 12-1-81; am. (2) (a) 1., (4) (b) 5., 6. c. and 9., Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.13 Sale of a business or business assets. (ss. 77.51 (10) (a) and (b) and 77.54 (7), Stats.) (1) **GENERAL.** The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax.

(a) The tax applies if the business assets are sold as:

1. A disposition of surplus assets of a continuing business.

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4. Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization holding a Certificate of Exempt Status (C.E.S.). Sales to organizations holding a C.E.S. also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals which is located out-of-state, may use the Certificate of Exemption (Form S-207) to purchase without tax even though it has not been issued a Wisconsin Certificate of Exempt Status.

5. Railway cars, locomotives and other rolling stock used in railroad operations, or accessories, attachments, parts or fuel therefor.

6. Commercial vessels and barges of 50-ton burden or over engaged in interstate or foreign commerce or commercial fishing, and accessories, attachments, parts and fuel therefor.

(b) A certificate of exemption may also be used for any other exemption provided by law, except for resale, or for farmers' or manufacturers' exemption claims. The use of the Form S-207 is explained on the back of the certificate.

(8) MANUFACTURER'S EXEMPTION CERTIFICATE (Form S-207m). (a) A supplier which accepts a properly completed manufacturer's exemption certificate (Form S-207m) in good faith marked for "continuous" use may make sales to the manufacturer without collecting the tax if the nature of the property or services sold qualifies for one of the exempt uses claimed by the manufacturer on the form. If a Form S-207m is a "continuous" form, each purchase order of the manufacturer shall refer to it. If an individual order contains both exempt and non-exempt purchases, the purchaser must designate which items are taxable.

(b) If the manufacturer uses "single purchase" certificates, it may print these as an integral part of its purchase orders, as long as the essential information on the approved form is retained.

(9) FARMER'S EXEMPTION CERTIFICATE (Form S-206). A retailer shall have a signed farmer's exemption certificate (Form S-206) for every exempt sale made to a farmer. Rule Tax 11.12 describes the types of property which may be sold to farmers without tax, and the use of the farmer's exemption certificate.

(10) DIRECT PAY PERMITS. The law does not provide for use of direct pay permits by manufacturers or other businesses. Such permits are allowed in certain states and authorize a purchaser to report taxes directly to the state, even when making taxable purchases from in-state suppliers. Thus, under Wisconsin law, a purchaser must furnish a supplier with the appropriate exemption certificate when making exempt purchases. Assertions by a purchaser that the purchaser will pay the use tax directly to the state should not be accepted, as they do not relieve the seller of the obligation to report the tax on such sales.

(11) IMPROPER USE OF CERTIFICATES. A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor. (s. 77.52 (16), Stats.) Such purchaser

may also be liable for other penalties provided by law for filing incorrect returns.

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, 1978, No. 275, eff. 12-1-78; am. (7) (a) 4., Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.15 Containers and other packaging and shipping materials. (ss. 77.54 (3m) and (6) (b), Stats.) (1) **ITEMS EXEMPT UNDER s. 77.54 (6) (b).** (a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be "used by the purchaser to transfer merchandise to customers". Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor.

(b) Containers include barrels, bottles, cartons, chemical carboys and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize or protect the contents (such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice and batting) and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, pallets, skids and mailing tubes.

(c) Gross receipts from the sale of the following items are within the exemption:

1. Cans in which canned goods, paints and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses and hats are delivered to customers; and ice cream cartons.

2. Bottles and cases used by breweries, wineries or soda water beverage producers to transfer the product to customers.

3. Barrels, half-barrels, kegs and the like, used by a brewery to transfer draft beer to wholesalers or retailers.

4. Caps for milk, beer and soda water bottles.

5. "Fragile", "Handle with Care" or other shipping labels.

6. Paper food dividers used to separate food sections in a container for transfer to a customer.

7. Paper bags purchased by grocery stores, bakeries or other retailers and used by their customers in carrying out their purchases.

8. Feed bags purchased by feed dealers who use such bags to transfer merchandise sold to their customers.

9. Bale ties sold to a hay owner and used to deliver hay to the owner's customers.

10. Ice used by a commercial fisherman inside a box of fish to preserve the fish during shipment to market.

11. LPG tanks used to transfer fuel to customers which are replaced each time the fuel is exhausted.

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(2) ITEMS NOT EXEMPT UNDER s. 77.54(6)(b). Gross receipts from the sales of the following items are not within the exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers and string holders.

(b) Coat hangers used on display racks in stores.

(c) Shopping carts or baskets and similar equipment.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property to customers are exempt.

(e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers.

(f) Lumber or other material used for bracing, blocking, skidding or shoring items while in transit; and cardboard and paper used to line box cars.

(g) "Valuable containers" such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A "valuable container" is a container which has some use by virtue of its shape or design such that the purchaser envisions further use of the container after the contents have been removed. If the container's contents are not subject to the tax and the cost to the seller of the container or containers in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable container or containers and pay a sales tax on that part of the selling price. If the contents of the container or containers are taxable items such as candy, the entire gross receipts from the sale of the package are subject to the tax.

(h) Price tags and advertising matter used in connection with the sale of tangible personal property, including counter display cards used for advertising and display purposes.

(i) Tanks on trucks used to deliver merchandise to customers.

(j) From June 1, 1976 to May 19, 1978 only, wrapping materials used in packaging the meat of livestock and poultry supplied by customers, which livestock and poultry have been custom slaughtered and cut to the order of the customers by the user of the wrapping materials. Effective May 20, 1978 and thereafter, packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether such items are used to transfer merchandise to customers, are exempt.

(3) FARMER'S CONTAINER EXEMPTION. (a) Gross receipts from the sales of the following items are within the exemption in s. 77.54 (3m), Stats.:

1. Fruit baskets used by commercial orchards.
2. Grain storage bins purchased by farmers to store unprocessed corn, wheat, oats or other types of grain.
3. Boxes and crates used by a potato or berry farmer.

4. Animal waste containers or component parts thereof. This includes the usual building materials used to construct an animal waste container.

(b) Gross receipts from sales of the following items are not within this exemption:

1. Silos.
2. Egg cases and crates used by a poultry farm for gathering and storing eggs.
3. Plastic or wooden boxes used by apiaries for the collection and storage of honey.
4. Fruit jars or other containers used for home canning.
5. Gasoline or fertilizer storage tanks used on a farm.

(4) DEPOSITS ON RETURNABLE CONTAINERS. (a) Returnable container deposits received by a retailer at the time of the retail sale of tangible personal property (e.g., soft drink bottles, beer bottles and milk containers) and refunds of such deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer's books of account.

(b) If a retailer's books of account include container deposits in gross receipts and if refunds of such deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(5) DISPOSABLE ITEMS USED BY RESTAURANTS. (a) Gross receipts from the sales to restaurants, cafeterias, caterers or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, and wrapping materials, and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products and beverages to customers are not subject to the tax.

(6) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier's monthly charge to a customer for the use of an LPG storage tank or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the container. If a reasonable charge is made to the customer for the use of the container and the container is used *exclusively* for such leasing purposes, the gas supplier can issue a resale certificate when such supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use or charges only a nominal rental, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of such containers or tanks.

(7) CONTAINERS SOLD. If a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used

in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to the tax.

(8) **GIFT WRAPPING.** The amount charged for gift wrapping packages is taxable.

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.

In *Dernehl-Taylor Co. v. Department of Revenue* (Wisconsin Tax Appeals Commission, May 26, 1978), it was held that the gross receipts for doggie bags qualify for the exemption under s. 77.54 (6) (b), Stats., because they are used to transfer merchandise to customers.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.16 Common or contract carriers. (ss. 77.54 (5) (b), (12) and (13) and 77.57, Stats.) (1) **MOTOR CARRIERS.** (a) Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: "Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a)." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (5) (b) and this section means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for such tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

(b) Accessories, attachments and parts for exempt vehicles shall be exempt from the sales and use tax. This includes tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units, and their fuel, radios, flag kits, including flags and reflectors, items designed to be used with a vehicle which protect the vehicle's load from the weather, such as fitted tarpaulins and tarpaulin straps, and items used to secure a vehicle's load, such as load holding chains, logistic straps and shoring beams.

(c) The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt vehicles shall be exempt.

(d) The exemption shall not apply to the following property used by common or contract carriers: automobiles, station wagons, and self-propelled vehicles for off-highway use such as road machinery, fork lifts and other industrial trucks.

(e) Items used for repair, service or maintenance of an exempt vehicle and items used to load or unload property being hauled shall not qualify for the exemption. Such non-exempt items include clean towel service, cleaning supplies, wrenches and repair tools, welding torches and welding gas, battery chargers, moving dollies, barrels and boxes, grinding discs, masking tape and shovels, conveyors, chutes, ramps, walk boards or similar equipment used in loading and unloading a truck or trailer.

(f) If a vehicle purchased without tax is converted to private use, a use tax is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months

after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.

(g) Examples of special situations related to this exemption include:

1. *Moving.* A truck purchased to transport pads and packing materials to and from moving jobs qualifies for this exemption.

2. *Timber cutting and log hauling.* Cutting down trees, cutting them into logs and hauling them to a mill as a private business operation voids the exemption, even though the trucker also hauls logs as a common or contract carrier for other persons at the same time.

3. *Refuse, garbage or snow hauling.* Trucks purchased for hauling refuse, garbage or snow do not qualify for the exemption.

4. *Milk hauling.* Vehicles of a milk or cheese factory that engages in hauling milk from farms to its plant for processing do not qualify for the exemption.

5. *Towing disabled vehicles.* Towing of vehicles to the repair facility of a garage-wrecker operator is part of a private repair business which is not exempt.

(2) RAILWAY ROLLING STOCK. (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor."

(b) The exemption for rolling stock includes:

1. The sale or furnishing of repair, alteration, cleaning, painting and maintenance service to exempt rolling stock.

2. Purchases of any equipment which is operated on railroad rails, except vehicles which may also be used on a highway.

3. Fuel used to heat a caboose, or run a compressor which cools a railway car.

4. A utility's coal cars used to haul coal from mines to the utility.

(c) The exemption does not apply to:

1. Rails, ties and other road building and maintenance materials.

2. Bracing materials, rough lumber and dunnage materials.

3. Ice to refrigerate a railway car.

(3) COMMERCIAL VESSELS. (a) Section 77.54 (13), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50-ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor."

(b) The exemption for commercial vessels applies to:

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing which have a document issued by the U.S. customs service showing a net tonnage of 50 tons or more.

2. Items that become a component part of the exempt commercial vessel.

3. The sale or furnishing of repair, alteration, cleaning, painting and maintenance of exempt commercial vessels.

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and

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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. (ss. 77.51 (27) and 77.54 (2) and (6) (a), 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 and cheeseplants.
- (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.

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(om) Heat treaters and metal platers performing these services on semi-finished products furnished by manufacturers.

- (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) Butcher shops.
- (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. Custom slaughtering of animals.
 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; am. (3) (j), (4) (c) and (r) 13., cr. (3) (om), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.40 Exemption of machines and processing equipment. (ss. 77.51 (27) and 77.54 (6) (a), 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." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (6) (a) and in this section means that the machines and specific processing equipment and repair parts or replacement thereof are used solely by a manufacturer in manufacturing tangible personal property to the exclusion of all other uses, except that the sales and use tax exemption will not be invalidated by an infrequent and sporadic use other than 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.

(2) CONDITIONS FOR EXEMPTION AND EXAMPLES. This exemption shall apply if all the following conditions are met: (a) Machines and processing

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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. For example, a forklift truck used on a production line to move products from machine to machine and used regularly or frequently 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 regularly, frequently 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 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.

(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).

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(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.

Note: For the sales and use tax status of wearing apparel, see Tax 11.41 (3) (a) 15. and (4) (h).

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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 par. (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% ($\$100,000 \div \$500,000$) 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 11.49 Service stations and fuel oil dealers (ss. 77.52 (2) (a) 10 and 77.54(3), (5), (9a), (11) and (30), Stats.) (1) TAXABLE SALES. Sales by service station operators and fuel oil dealers subject to the sales tax include the following:

(a) The sale of furnace or heating fuel to customers, other than for residential or farm use.

(b) The repair, service, cleaning, painting, towing, inspection and maintenance of motor vehicles, including the total amount charged for parts and labor.

(c) The towing of motor vehicles if the towing is related to the repair, service or maintenance of the vehicle. The following services are not considered taxable towing services:

1. Towing vehicles from "no parking" zones.
2. Towing a demolished vehicle to a junk yard.
3. House moving or relocating a mobile home.

(d) Retail sales of tangible personal property (e.g., motor oil, anti-freeze, motor vehicle parts and supplies, tobacco products, candy and soft drinks) by service stations except as provided in sub. (2).

(e) The gross receipts from operating car washes, whether automated or not.

(2) EXEMPT SALES. Sales by service station operators and fuel oil dealers not subject to the sales tax include the following:

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, Form S-207; to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. On special fuel sold or used for off-highway purposes, the licensee is required to pay the sales or use tax, unless the fuel is used in farm tractors or farm machines used directly in farming.

(b) Sales made directly to governmental units of this state, schools or any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes. Sales to employees of these entities are not exempt, even though the entity may reimburse the employe for the expenditure.

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.18 (2) (a), Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

(d) Sales to farmers of fuel, parts and repairs for tractors or farm machines used directly in farming, but this exemption does not apply if these items are used in motor vehicles for highway use.

(e) Sales of general aviation fuel to persons using aircraft as certified or licensed carriers of persons or property in interstate commerce are exempt under s. 77.54 (5) (a), Stats.

(f) Sales of coal, fuel oil, propane, steam and wood used for fuel sold for residential use. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence as defined in s. Tax 11.57 (2) (1) 7 and 8.

(3) PURCHASES. (a) Service station operators who repair motor vehicles may purchase without tax ("for resale") repair parts and materials used in such work which are physically transferred to their customers (e.g., auto parts, chassis lubricants, wheel greases, car waxes, paints, paint hardeners, plastic body fillers and welding rods).

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and

lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969. Sales of jet fuels to persons who were not certified or licensed carriers were subject to the sales or use tax prior to January 1, 1982.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.50 Auctions. (ss. 77.51 (4) (intro.) and (a), (7) (b) and (e) and (10) (e), Stats.) (1) **STATUTE.** Section 77.51 (7) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51 (4) (a), Stats., includes any sale at an auction.

(2) **THE RETAILER.** If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are responsible for reporting the sales tax on auction receipts even if the owner of the property has a Seller's Permit.

(3) **TAXABLE AUCTION RECEIPTS.** Taxable receipts from auctions include gross receipts from:

(a) Auction sales held regularly at an established place of business, such as an auction house or auction barn. The household goods exemption does not apply to such sales.

(b) Auctions held regularly on radio, television, or CATV. The household goods exemption does not apply to such auctions.

(c) Auctions sponsored on an annual or other regular basis by non-profit organizations or others. The household goods exemption does not apply to such auctions.

(d) Auction sales of heavy equipment and going-out-of-business auction sales of retail stores, motels, wholesalers, manufacturers, contractors and service enterprises. The household goods exemption does not apply to such sales.

(e) Auction sales of antiques (effective on and after July 31, 1975) and works of art except when sold with other household goods of which they were a part.

(f) Auction sales of professional or business inventories or equipment even though they may consist of household goods.

(g) Sheriffs' sales and other auction sales made pursuant to orders of a Wisconsin court.

(h) All other auction sales are not specifically exempt under the law.

(4) **EXEMPT AUCTION RECEIPTS.** Gross receipts from the following auction sales are exempt:

(a) Auction sales of personal farm property or household goods which are not held at regular intervals. Such auctions are generally held on the property owner's premises.

1. Household goods. "Household goods" includes tangible personal property which is associated with maintaining a household and is for family use. For example, household goods includes furniture necessary or ornamental to a house in furnishing or fitting it for use by members of the household. Thus, auction sales of goods removed from a family home (such as tables, chairs, lamps, appliances, beds, clocks, musical instruments, dressers, lawn and garden equipment, jugs and fruit jars) are not taxable. Items which are not considered "household goods" include:

a. Highway motor vehicles or trailers, snowmobiles, mini bikes, bicycles, aircraft, boats and other sporting goods.

b. Professional or business inventory equipment.

2. Personal farm property. "Personal farm property" includes tractors, implements of husbandry, machines, equipment or other tangible personal property used by a farmer to till the soil and raise crops. "Personal farm Property" does not include riding horses or other recreational animals or equipment for them, highway vehicles, boats, snowmobiles, mini bikes and bicycles.

(b) Sales for resale or sales which are otherwise exempt. If such a sale is made at an auction, the person conducting the auction should obtain a properly completed resale or exemption certificate from the purchaser.

(c) Liquidation sales of an insolvent debtor's assets which are made pursuant to the order of a federal bankruptcy court.

(d) One-day auction sales by religious, charitable, educational or civic organizations and other nonprofit organizations which conduct a fund raising event, if:

1. The auctioneer is not the retailer, (because the auctioneer's services are donated); and

2. The organization is not engaged in a trade or business and not otherwise required to have a seller's permit; and

3. Gross receipts from the auction sale of tangible personal property and taxable services do not exceed \$1,000.

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 11.51 Grocers' guidelist. (s. 77.54 (20), Stats.) (1) GENERAL. All sales of tangible personal property are taxable except when a specific exemption applies. One of the exemptions is for "food, food products and beverages", which generally exempts all basic food items for human consumption necessary for the home preparation of meals. This exemption, however, does not include many items normally available in grocery and food stores, such as soda water beverages (including bases or concentrates to produce soft drinks and fruit drinks), beer, intoxicating liquors, candy, paper products and detergents. The following lists shall serve as a guide to grocers to determine the kinds of items that are taxable and exempt.

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(2) GUIDELISTS. (a) *Taxable sales by grocers.* Gross receipts from the sale of the following are taxable:

Adhesive tape.	Cigars.	Foil (aluminum and similar products).
Albums.	Cleaning equipment and supplies.	Frames.
Amonia.	Cleansers.	Fuel and lubricants.
Anti-acid products.	Clocks.	Fudgesicles.
Anti-freeze.	Clothes lines.	Furniture polish.
Appliances.	Clothespins.	Games.
Ash trays.	Clothing.	Garden needs.
Aspirin.	Cocktail mixes.	Garbage bags and cans.
Auto supplies.	Cod liver oil.	Gifts (non-food).
Baby needs (except food).	Cold remedies.	Ginseng.
Bags (all kinds).	Coloring extracts.	Glassware.
Bakeware.	Combs and brushes.	Gloves.
Baskets.	Confections.	Glue.
Barbeque supplies.	Cough drops.	Greeting cards.
Batteries.	Cracker jacks.	Grooming aids.
Beauty aids.	Crayons.	Gum.
Beer.	Dental aids.	Hair care products.
Beer making supplies.	Deodorants.	Hardware.
Binders (notebook).	Detergents.	Heated foods and beverages (1).
Bird food and supplies.	Dinnerware.	Health and beauty aids.
Bleach.	Disinfectants.	Hosiery.
Blueing.	Distilled spirits.	Household equipment and supplies.
Bobby pins and rollers.	Dixie cups.	Ice (cube and block).
Books.	Dog food and supplies.	Ice cream bars.
Bowl cleaner.	Dolls.	Ice cream in cones.
Breath mints.	Drain cleaners.	Internal remedies.
Brooms.	Drug sundries.	Intoxicating liquor.
Brushes.	Dry cleaners.	Insect and pest control products.
Bubble bath.	Dye.	Iron tablets.
Cameras and supplies.	Electrical supplies.	Jewelry.
Cake decorations (non-edible).	Eskimo pies.	Kool aid and similar items.
Calcium tablets.	Facial tissues.	Kotex and similar items.
Candied fruits.	Farm and garden implements.	Laundry products.
Candy.	Feminine hygiene needs.	Lawn furniture.
Candy apples.	Fermented malt beverages.	Life savers.
Canning and freezer supplies.	Fertilizers.	Light bulbs and fuses.
Can openers.	Fiddle faddle.	Lozenges.
Carbonated beverages.	Film.	Lunch boxes.
Cat food.	First aid products.	Lye.
Charcoal and starter.	Fizzes.	Lysol.
Chewing gum.	Flash bulbs.	
Cigarettes (Effective 9-1-75).	Flatware.	
Cigarette lighter fluid, wicks, flints.	Floor care products.	
	Flowers and seeds.	
	Food coloring.	
	Foot care products.	

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Manicure needs.	Raisins (candy coated).	Tape.
Mason jars.	Razors and blades.	Thermos bottles.
Matches.	Records.	Thread.
Medicinal preparations.	Rolaids.	Tobacco products.
Milk of magnesia.	Root beer and extracts.	Toilet tissue.
Mineral tablets.	Rotisseries.	Tonics.
Nail polish and remover.	Rubber bands.	Tools.
Nails.	Salt (water softener).	Tooth brushes.
Napkins.	Sandwiches (hot or cold).	Toothpaste and powders.
Notebooks.	Sanitary goods.	Toothpicks.
Nursery stock.	School supplies.	Toys.
Nuts (chocolate coated).	Scissors.	Tums.
Pails.	Sewing aids.	Utensils.
Paint and paint supplies.	Shampoo and rinse.	Vitamins.
Paper products (issues, plates, cups, towels, napkins and writing paper).	Shaving supplies.	Wash cloths.
Peanuts (candy coated).	Shelf coverings.	Waste baskets.
Pens and pencils.	Shoe laces and polishes.	Watches.
Pepto bismol.	Soaps.	Water (spring and distilled).
Pet food and supplies.	Soda water beverages (2).	Water conditioners.
Plastic utensils.	Soft drinks (2).	Waxes.
Polishes.	Sponges.	Wax paper.
Popcorn (raw or popped).	Starch.	Wearing apparel.
Popsicles.	Stationery.	Wine making supplies.
Pots and pans.	Steel wool.	Wrap (foil and waxed paper).
Powder (face and body).	Stockings.	Writing supplies.
	Sun glasses.	Yogurt bars, cones and sundaes.
	Sun tan lotion.	
	Tableware.	
	Taffy apples.	Zipper.

(b) *Exempt sales by grocers.* Gross receipts from the sale of the following are exempt:

Apple cider, sweet.	Cakes, Hostess and similar items.	Citrus fruits.
Baby food.	Canned foods.	Cocoa.
Bakery goods.	Catsup.	Coffee and coffee substitutes.
Baking chocolate.	Cereal and cereal products.	Condiments.
Baking powder and soda.	Certo and other pectins.	Cones, ice cream cups.
Barbeque sauces.	Cheese.	Cookies and crackers.
Berries.	Chicken.	Cooking oils.
Biscuit mix.	Chinese food.	Cream.
Boullion cubes.	Chip dip.	Desserts and toppings.
Bread and rolls.	Chips, potato, corn and similar items.	Dietary foods (4).
Brownies.	Chocolate, instant and baking.	Dinners, frozen.
Butter.		Doughnuts.
Cake mixes and flour.		

Dressing.	Magazines.	Puddings.
Dried fruits.	Malted milk powder.	Raisins.
Dried milk products.	Maraschino cherries.	Ravioli.
Eggs.	Marshmallows.	Relishes.
Federal food stamp receipts.	Mayonnaise.	Rice.
Fish and fish products.	Meal.	Rolls and biscuits.
Flavoring extracts.	Meat and meat products.	Saccharin.
Flour.	Meat extracts and tenderizers.	Salad dressing.
Fritos.	Melons.	Salt and salt substitutes.
Frozen desserts.	Meritene.	Salted nuts.
Frozen fruit juices (3)	Milk and milk products.	Sardines.
Frozen fruits and vegetables.	Mustard.	Seafoods.
Frozen pizza.	Newspapers.	Seasonings.
Frozen TV dinners.	Noodles.	Sherbet.
Fruit.	Nuts, except candy coated.	Shortening.
Garlic.	Oil, cooking, salad.	Soup.
Gelatin.	Oleomargarine.	Spaghetti products.
Gravy extracts and mixes.	Olives.	Spices.
Grits.	Pancake mix.	Spreads.
Hash.	Peanuts, in shell or canned, salted or not.	Sugar.
Honey.	Peanut butter.	Sweeteners.
Ice cream, pints or larger.	Pepper.	Syrup.
Jams.	Pickles.	Tea and ice tea.
Jellies.	Pie and pie fillings.	Turkey.
Jello.	Pie crust and mixes.	Vanilla and vanilla extract.
Juices, pure fruit (3).	Potato chips.	Vegetable juices.
Lobster.	Potato salad.	Vegetables.
Luncheon meats.	Poultry and poultry products.	Vinegar.
Macaroni.	Preserves.	Waffle mix.
	Pretzels.	Yeast.
		Yogurt, other than par. (a) items.

(c) *Explanations of some items noted above.* As indicated in (a) and (b) above:

1. "Heated Food" means those products, items or components which have been prepared for sale in a heated condition and which are sold at any temperature higher than the air temperature of the room or place where they are sold.

2. Sales of soda water beverages, bases, concentrates and powders which may be reconstituted into soft drinks, and fruit juice drinks, punches and nectars which have additives known as extenders are taxable. Extenders commonly used are citric acid, peel oil and artificial color.

3. Sales of pure fruit juices as defined in ch. 97 (Stats. 1967) are not taxable. Fruit juices are the clean, unfermented liquid product obtained by the first pressing of fresh ripe fruits. The only permissible additives

are sugar and one of the preservatives such as sodium benzoate, sorbic acid or sodium sorbate. Frozen concentrates conforming to the above description are also tax exempt.

4. "Dietary foods" include products intended to substitute in whole or in part for the ordinary diet such as Metrecal and meat base formula. It also includes those products which supplement the ordinary diet, such as Ovaltine, and compressed or concentrated foods taken in wafer form which can be identified as food because of higher concentrated food values of carbohydrates and proteins. For example, a protein concentrate used by persons engaged in athletic activities is an exempt food. Dietary foods do *not* include patent medicines, tonics, vitamins and medical-type preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form used for medicinal or remedial purposes. The sales of such items are taxable.

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, December, 1977, No. 264, eff. 1-1-78; am. (2) (b), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.52 Coin-operated vending machines and amusement devices. (ss. 77.51 (17) and (24), and 77.52 (1) and (2) (a) 2, 6, 7 and 10, Stats.) (1) **DEFINITION.** In this rule, "operator" means:

(a) A person who owns property sold through a coin-operated vending machine or device, has the right of access to the machine or device for stocking or restocking or for removing the gross receipts, or who, in general, has control over the machine or device and its contents; or

(b) A person who is responsible for providing laundry, dry cleaning, photographic, photocopy or other taxable services through vending machines.

(2) **SELLER'S PERMITS.** (a) Operators of coin-operated vending machines or devices dispensing taxable tangible personal property or services shall obtain a seller's permit. One permit shall be sufficient for all the machines of each operator.

(b) A notice must be affixed to each coin-operated machine or device showing the operator's name, address and seller's permit number.

(3) **TAXABLE RECEIPTS.** Taxable receipts include gross receipts from:

(a) Coin-operated machines dispensing tangible personal property such as:

1. Chewing gum, candy, cigarettes (effective September 1, 1975), peanuts, popcorn, soft drinks, heated foods and beverages, sandwiches, ice cream confections, photographs, tobacco products (not including cigarettes), handkerchiefs, combs and hygienic products; and

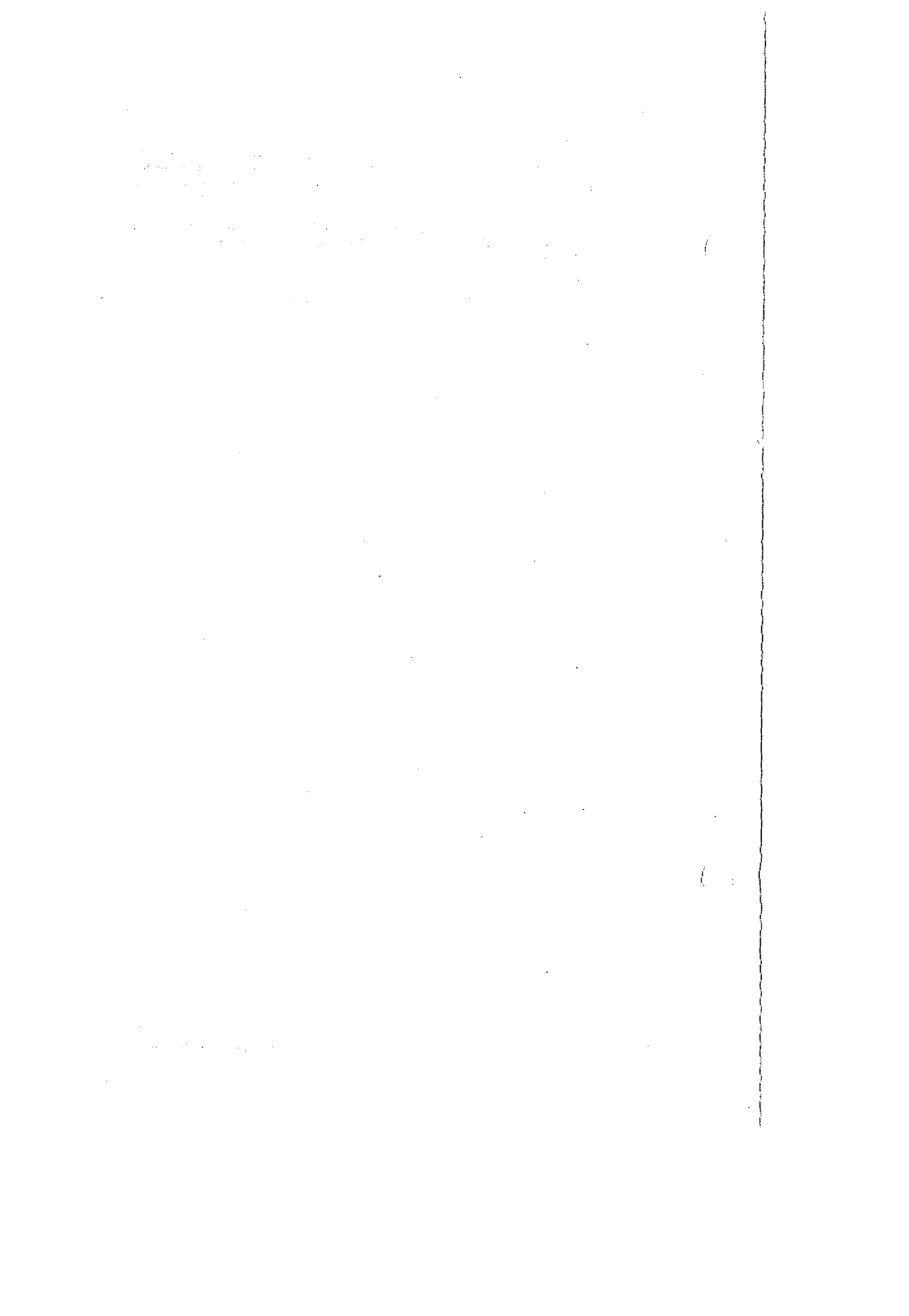
2. Fruit, milk, bakery goods, eggs, salads, cookies, crackers and all other foods and beverages for on-premise consumption. The total gross receipts from sales of food and beverages through vending machines shall be presumed derived from on-premise consumption and therefore taxable, unless the operator has records showing the portion of gross receipts from sales made for off-premise consumption involving exempt food.

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(b) The license to use or the rental of coin-operated machines which are personal property or which provide a taxable service, such as hair drying machines, shoe shine machines and bowling ball cleaning machines.

(c) Coin-operated amusement devices such as juke boxes, pinball machines, shuffleboards, pool tables, slot racing, mechanical rides and games, and penny arcades.

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(a) Connection or reconnection charges for natural gas, electricity and water.

(b) Utility services delivered to Indians living on a Indian reservation, or services delivered on the reservation to an Indian tribal governing board.

(c) Billings for repairs to persons who damaged utility property.

(d) Services coincidental with house moving.

(e) Pilot relight of yard gas lamp.

(f) Contributions in aid of construction (i.e., payments by a customer to have a line extended to the customer's property).

(g) The installation charge for a pole sold to customer, which is installed on land owned by the customer.

(h) "Wheeling" energy for another utility.

(i) Sales of gas or other fuel (electricity is not a fuel) to farmers if the fuel is used to heat farm buildings, including greenhouses.

(j) Labor charged a customer for the installation of a complete furnace or built-in appliance.

(k) Water delivered to customers through mains.

(l) 1. Coal, fuel oil, propane, steam and wood used for fuel, sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

4. For purposes of the exemptions in subds. 2 and 3, s. 77.54 (30), Stats., provides that electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed. In any event, each qualifying customer shall receive only 6 months of service exempt from taxation during the November through April period.

5. If fuel or electricity is sold to a person partly for an exempt use and partly for a use which is not exempt, no tax shall be collected by the seller on the portion of the gross receipts which is used for an exempt purpose, as specified on an exemption certificate provided by the purchaser to the seller, as described in subd. 6.

6. Where a building, which contains residential quarters and commercial operations, is heated by one central heating plant, it is necessary to determine the portion of the fuel purchased which qualifies for the "residential use" exemption. The percentage of residential use may be computed by dividing the number of square feet used for residential purposes, excluding common areas, by the total area heated, excluding common areas. If this does not produce a reasonable result, any other reasonable method of estimating may be used. The resulting percentage should be rounded to the nearest 10%.

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7. In this paragraph, "residential use" means use in a structure or portion of a structure which is a person's permanent residence. Use in a residence includes heating or cooling the premises, heating water, operating fans or other motors, providing lighting and other ordinary uses by the purchaser in a residence. Residential use includes use in single-family homes, duplexes, townhouses, condominiums, mobile homes, rooming houses, apartment houses, and farm houses, if the structure is used as a person's permanent residence. Residential use includes use in apartment houses and farm houses even though they are on a commercial or rural meter, respectively.

8. "Non-residential use" is use other than "residential use" and includes any use in the conduct of a trade, business or profession, whether such trade, business or profession is carried on by the owner of the premises or some other person. It includes use in motor homes not used as a permanent residence, travel trailers, other recreational vehicles and transient accommodations. "Transient accommodations" include: hotels, motels, inns, travel homes, tourist houses, summer cottages, apartment hotels or resort lodges or cabins, and any accommodation which is rented for a continuous period of less than one month.

9. A "continuous" certification designation is provided on the exemption certificate, form S-016 or S-017, and, if claimed, the form remains in effect until replaced or revoked. A new certificate shall be filed if there is a change in the percentage of exempt use.

(3) **TAXABLE PURCHASES.** (a) Persons engaged in the business of providing electrical or gas public utility service are consumers of the tangible personal property or taxable services used to provide such services. The tax applies to the sales of such items to them, except where a specific exemption applies, such as the exemptions shown in sub. (4).

(b) Examples of gross receipts from the sale, lease or rental of items to a public utility which are subject to the tax are:

1. Transformers, substation equipment and other tangible personal property purchased by a utility and used to construct, improve or repair a transmission or distribution line.

2. A contractor's charges for the construction, improvement or repair of an overhead utility transmission or distribution line installed under easement or license on land owned by others. (See Rule Tax 11.86.)

3. Charges for coating pipe or creosoting poles.

4. Charges for X-rays of welding joints.

5. Gas or electricity purchased for resale but used by a utility, but not gas used as a fuel in producing electricity or steam.

6. Charges for aerial photographs and maps.

(4) **NONTAXABLE PURCHASES.** The following sales to public utilities are not subject to the tax:

(a) Fuel converted to electrical energy, gas or steam by utilities (s. 77.54 (6) (c), Stats.).

(b) A steam generator or other machines and equipment exclusively and directly used in manufacturing electricity or steam. The manufac-

turing process begins when the coal starts moving by conveyor directly to the boiler bunker, and it ends at the generator bus duct. An overhead crane used for the installation and repair of a turbine, and a fuel storage tank are not directly used in manufacturing.

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law on and after September 1, 1969, except for sub. (1) (e) and (l) which became effective February 1, 1979 and subsection (4) (a) which provides an exemption for all fuel converted to electrical energy, gas or steam by utilities. Prior to October 1, 1981 only coal, oil, gas and nuclear fuels were exempt.

Subsection (2) (l) 9 refers to the following new forms: Form S-016, Certificate of Exemption for Fuel Oil, Propane, Coal, Steam and Wood Used for Fuel for Residential or Farm Use. Form S-017, Certificate of Exemption for Electricity and Natural Gas for Residential or Farm Use. These forms may be obtained at any Department of Revenue Office or by mail by writing to the department, P.O. Box 8902, Madison, WI 53708, or calling (608) 266-2776.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; cr. (2) (l), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.61 Veterinarians and their suppliers. (ss. 77.51 (7) (m) and (o) and 77.52 (2) (a) 10, 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)(a) Sales to veterinarians of medicines for animals and sales of other tangible personal property 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. Prior to June 24, 1974 sales to veterinarians of medicine for animals were taxable if the medicine was to be used or furnished by a veterinarian in the performance of services, but were exempt if they were purchased for resale independent of the performance of such service.

(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; am. (2)(a), Register, January, 1978, No. 265, eff. 2-1-78.

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Tax 11.62 Barbers and beauty shop operators. (s. 77.51 (7) (i) and 77.52 (2) (a) 10, 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 (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 sub. (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 11.63 Radio and television stations. (ss. 77.51 (4), 77.52 (2) (a) 11 and 77.54 (23m), Stats.) (1) **NONTAXABLE SERVICES.** Gross receipts from the sale of the following services are not subject to the sales and use tax.

(a) Air time.

(b) Advertising.

(2) **TAXABLE SALES.** (a) Gross receipts from charges imposed by a radio or television station for art work, slides, films, tapes or other tangible personal property which such station prepares or produces for its advertisers or sponsors are subject to the sales and use tax. Such gross receipts are taxable even though a station may retain possession of the tangible personal property because "sale" is defined to include the transfer of not only title to and possession of tangible personal property, but also the transfer of enjoyment of tangible personal property. If an advertiser maintains any control over the tangible personal property prepared or produced such as the right to determine when the property will be used for advertising purposes, the advertiser is deemed to have received the enjoyment of the property.

(b) Gross receipts from a radio or television auction are subject to the sales and use tax.

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(c) If a radio or television station advertises on behalf of out-of-state persons to sell merchandise (such as records or books), the station is the retailer of such merchandise and must pay sales tax on such sales if:

1. The advertising message does not clearly identify the out-of-state source of the merchandise; or

2. The merchandise orders are sent directly to the station which accounts for the gross receipts.

(3) **NONTAXABLE PURCHASES.** The gross receipts from the sale, lease or rental of motion picture films or tape, and advertising materials related thereto, to a motion picture theater or radio or television station are exempt from the sales and use tax under s. 77.54 (23m). Sales of sound tapes to radio stations are included in this exemption.

(4) **TAXABLE PURCHASES.** Radio and television stations are consumers of equipment, materials and supplies used to conduct their businesses and shall pay sales or use tax on purchases of such tangible personal property except as provided in sub. (3).

(5) **BROADCASTING TOWERS.** Commercial broadcasting towers constituting the transmission antenna system of a radio or television station are deemed real estate improvements for sales and use tax purposes if installed on land owned by the station. Contractors engaged in construction of such broadcasting towers are the consumers of building materials used by them in constructing, altering or repairing such towers and must pay tax on the cost of such materials.

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

Tax 11.64 Background music. (s. 77.51 (4) (intro) and (j), 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 pro-

viding 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 11.65 Admissions. (s. 77.52 (2) (a) 2, Stats.) (1) **TAXABLE SALES.**

(a) The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to movies, ballets, musical and dance performances, ball games, campgrounds, circuses, carnivals, plays, hockey games, ice shows, fairs, snowmobile and automobile races, and pleasure tours or cruises.

(b) The sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment or recreational facilities to their members such as country clubs, golf clubs, athletic clubs, swimming clubs, yachting clubs, tennis clubs and flying clubs. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment or recreational facilities to members are charges for the privilege of obtaining access to such clubs and are taxable receipts of the clubs.

(c) Admissions to customer participation events such as swimming, skiing, bowling, skating, bingo, golfing, curling, dancing, card playing, hayrides, hunting, fishing, and horseback or pony riding are taxable.

(d) The charge for the privilege of fishing in fish ponds is taxable, even if the charge is based in whole or in part on the pounds or size of fish caught.

(e) A person who provides boat, tackle, bait and guide service provides a combination of recreational items which is subject to the tax, but guide service alone is not taxable.

(f) The sales tax applies to the gross receipts from conducting bingo games. The tax is remitted to the bingo control board, rather than the department of revenue.

(2) **NONTAXABLE SALES.** The following are nontaxable admissions:

(a) The dues of civic, fraternal, religious, patriotic and lodge type organizations which are not organized for the purpose of furnishing amusement, athletic, entertainment or recreational facilities to their members.

(b) Admissions to museums of history, art or science, and to auto or trade shows, if professional entertainment is not provided at the show.

(c) Admissions to antique shows unless the admission charge can be used as a credit against the price of merchandise purchased.

(d) Entry fees in contests if the primary motive of the majority of the persons entering the contest is "business" and not "recreation". Generally, entry fees are not taxable for:

1. Professional golfers entering a major tournament.

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2. Professional riders entering a rodeo.
3. Professional stock car drivers entering an auto race.
4. Large snowmobile races where the entrants are primarily manufacturers' representatives.

(3) **PRIZE MONEY.** Bowling alley proprietors shall pay tax on all their regular bowling fees, including bowling tournament entrance fees. However, in the case of tournament entrance fees, the proprietor may subtract from its taxable gross receipts the amount advertised and set aside for prize money.

(4) **"DONATIONS"**. (a) Persons conducting recreational events occasionally assert that the receipts are not taxable because they are donations and not charges for admission. To qualify as a donation, a payment must be totally voluntary and no restriction whatsoever may be placed on the entrance of persons not making a donation. The facts surrounding the requests for the donation must be obvious that admittance is not restricted to those making a donation. A set amount for the donation (through newspaper publicity or signs at the entrance), a turnstile or restrictive device that must be passed through, or an attendant requesting a donation at the door shall be presumptive evidence that the charge is not a donation but that the payment is required.

(b) When a charge to a patron bears little or no relationship to the actual value received, such as \$100 per ticket for fund raising dinner dance, the tax may be based on reasonable value of the tangible personal property and taxable services received.

(5) **LOCATION OF EVENT.** The receipts from sales of tickets of admissions to places of amusement or athletic events which take place in Wisconsin are taxable, even though some of the tickets may be sold out-of-state. For example, all sales of university of Wisconsin football tickets for games played in Wisconsin are taxable. However, if the university of Wisconsin, as agent, sells tickets for the university of Michigan, the receipts are not subject to the Wisconsin sales tax.

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, 1978, No. 265, eff. 2-1-78.

Tax 11.66 Communication and CATV services. (ss. 77.51 (28), 77.52 (2) (a) 3, 4 and 12 and 77.54 (24), Stats.) (1) **TAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are taxable:

- (a) Telegraph services.
- (b) Telephone services of whatever nature including, in addition to services connected with voice communication, any services connected with the transmission of sound, vision, information, data or material other than by voice communication, and connection, move and change charges, except directory advertising service and coin-operated telephone service. Interstate and international services are taxable if the service originates from and is charged to a telephone located in this state.
- (c) Two-way voice communication services over telephone or radio (commonly referred to as mobile telephone service). Nonmechanical telephone answering services are not taxable.

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(d) One-way paging service.

(e) Cable television system service, including installation charges.

(2) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing such services. The tax applies to the sale of such property to them. However, section 77.54 (24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals". The Dane county circuit court's decision of May 22, 1981 in *Wisconsin Department of Revenue v. North-West Services Corporation and North-West Telephone Company* held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature", except coin-operated and interstate services, and one-way paging service. Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975. Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (a), (b), (d) and (e), (2), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.67 Service enterprises. (ss. 77.51 (4) (intro.) and (h), (5), (7), (11) (a) and (c) and 77.52 (1), Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which furnishes without separate charge as an incidence to the service.

(2) **RECEIPTS AND PURCHASES OF PERSONS PROVIDING SERVICES.** (a) Since persons engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their services, tax applies to the sale of such property to them. Examples are physicians, lawyers and accountants.

(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to such sales, and the tax applies to the total gross receipts therefrom without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax. However, if the charges for taxable and nontaxable services are separately stated on an

invoice, the tax applies only to the charge attributable to the taxable services.

(3) **SPECIAL SITUATIONS.** (a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering such services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property are retailers which shall obtain a seller's permit and report the tax on such sales. For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

(b) *Original manuscripts or musical arrangements.* The transfer to a publisher of an original manuscript or musical arrangement for publication is not a sale of tangible personal property and is not subject of the tax. However, the sale of copies of an author's or composer's work is a sale of tangible personal property and is taxable. The sale of manuscripts is taxable if the manuscript itself is of particular value as an item of tangible personal property and the purchaser is buying the property, not the service which went into it.

(c) *Artistic expressions.* Sales of works of art, such as paintings and sculptures, are taxable.

(d) *Interior decorator's fee.* 1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement. Also, if a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered (such as designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands, or sources of supply) and there is no sale of tangible personal property involved with the transaction.

(e) *Research and development.* 1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(f) *Recording studios.* When a recording studio agrees to furnish or supply records, acetates or other tangible personal property which becomes the property of others, the tax applies to the total gross receipts resulting from the sale of such tangible personal property. Gross receipts shall not be reduced for labor or service costs, including charges for the use or rental of studio facilities, even though such costs may be itemized in billing the customer.

(g) *Architects.* Fees paid to architects to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(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 shall pay tax on all the telephone books they accept delivery of in Wisconsin and then 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; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.68 Construction contractors (ss. 77.51(4)(intro), (g), and (i); (11) (intro) and (c) 4; (12) (intro) and (c) 2 and (18); and 77.52 (2) (a) 10, Stats.) (1) GENERAL. (a) Construction contractors may be

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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:

1. In the case of motor vehicles licensed in the name of the retail dealer, the tax shall be \$1.35 per month until June 30, 1981, and \$2.25 per month thereafter.

2. In the case of motor vehicles being operated with retail dealer plates, the tax shall be 35¢ per month until June 30, 1981 and \$.60 per month thereafter 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. 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.

(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.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (7) (a) and (8), Register, May, 1981, No. 307, eff. 6-1-81.

Tax 11.84 Aircraft. (ss. 77.52 (2) (a) 9, 77.54 (5) (a) and (7) and 77.61 (1), Stats.) (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), 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 and delivery in Wisconsin of oil, equipment, parts and supplies for operation of aircraft, regardless of where the aircraft is flown or used. Sales of general aviation fuel subject to taxation under ch. 78, Stats., are exempt from the sales and use tax.
3. Charges for air frame and engine inspection, maintenance and repair.

(b) *Parking.* 1: Section 77.52 (2) (a) 9, Stats., imposes the tax on "Parking or providing parking space for motor vehicles and aircraft for a consideration . . ." "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.

(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.

Tax 11.84 (3) Exempt sales of aircraft. Section 77.54 (5) (a), Stats., provides that the tax shall not apply to gross receipts from aircraft, including accessories, attachments, parts and fuel therefor, sold to persons using the 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 the 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. This exemption does not apply to persons with air worthiness certificates which indicate certain safety standards have been met, if they do not otherwise qualify.

(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 s. Tax 11.84 are effective under the general sales and use tax law on and after September 1, 1969, except that an exemption for general aviation fuel was inserted in s. 77.54 (11) by Chapter 20, Laws of 1981, effective January 1, 1982. Prior to January 1, 1982 sales of aircraft jet fuel, including the state and federal fuel taxes in the price of such fuel, were subject to the tax.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (b) 1. and 2., Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) 2. and (3), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.85 Boats, vessels and barges. (ss. 77.51 (7) (am), 77.52 (2) (a) 9 and 10, 77.53 (17) and (18), 77.54 (7) and (13) and 77.61 (1), Stats.) (1) **TAXABLE SALES.** Taxable gross receipts involving boats include the following:

(a) Gross receipts from the sale, lease or rental of boats and boat accessories, and of attachments, parts, supplies and materials therefor.

(b) Charges for services involved in installing an item on a boat for a consumer.

(c) Charges for repair, service, alteration, fitting, cleaning, painting, coating, towing, inspecting and maintaining boats and their accessories or component parts. Services purchased outside Wisconsin, which would

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be taxable if purchased in Wisconsin, with respect to property later used in Wisconsin, are subject to use tax.

(d) Charges for docking and storing boats. The tax applies to boat storage in public storage warehouses.

(e) The use tax does not apply to household goods for personal use purchased outside Wisconsin 90 days or more before being brought into this state by a person becoming domiciled in this state. A boat is not household goods for this exemption.

(2) EXEMPT SALES. (a) A boat not required to be registered in Wisconsin with the Wisconsin department of natural resources or documented under the laws of the United States may be sold at retail as an exempt occasional sale if the transferor does not hold a seller's permit.

(b) Sales of boats to the spouse, parent or child of the transferor shall be exempt if the boat was previously registered with the Wisconsin department of natural resources or documented under the laws of the United States in the transferor's name and if the transferor does not hold and is not required to hold a seller's permit.

(c) Commercial vessels and barges of 50-ton burden and over primarily engaged in interstate or foreign commerce or commercial fishing shall be exempt from the tax. Accessories, attachments, parts and fuel for such vessels and barges are also exempt.

(d) A boat purchased outside Wisconsin by a nonresident and used by the nonresident while temporarily in Wisconsin shall be exempt from the tax if the boat is not used in Wisconsin in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

(e) A boat purchased by a governmental unit and by certain nonprofit organizations shall be exempt from the tax, regardless of the boat's size or kind (see s. 77.54 (9) (a) and s. 77.55 (1)).

(3) PAYMENT OF TAX. (a) No boat shall be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the transaction was exempt. If the boat is purchased from a person other than a person with a seller's permit, the purchaser shall pay the tax at the time the boat is registered with the Department of Natural Resources, Boat Registration Section, P.O. Box 7236, Madison, Wisconsin 53707.

(b) A boat purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax, regardless of the state of domicile of the person bringing the boat into Wisconsin or the use of the boat in Wisconsin.

(c) A credit is permitted against the Wisconsin use tax for the sales or use tax imposed by and paid to the state in which the boat was purchased.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that effective February 28, 1979 boats documented with the Coast Guard did not qualify for the occasional sale exemption pursuant to Chap. 1, Laws Register, June, 1983, No. 330

of 1979, and effective June 1, 1980 charges for docking and storing boats by governmental units became taxable pursuant to Chap. 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; am. (1) (d), (2) (a) and (b), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.86 Utility transmission and distribution lines. ss. 77.51 (5), 77.52 (2) (a) 10 and 77.52 (2) (a) 11, Stats.) (1) **PERSONAL PROPERTY.** "Tangible personal property", as defined in s. 77.51 (5), Stats., includes overhead telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the poles, transformers, towers (but not foundations), pipes, conduits, sleeves or other overhead property by which such lines are supported or in which they are contained or connected, if erected or installed under easement or license (including authorizations under ss. 86.16 and 182.017, Stats.) on land owned by a person other than the utility (such lines and facilities located above ground level being herein collectively referred to as "overhead utility facilities"). The term "tangible personal property", as defined in s. 77.51(5), Stats., does not include underground telephone and telegraph lines, electrical, water and gas transmission and distribution lines, and the foundations, pipes, conduits, sleeves or other underground property by which such lines are supported or in which they are contained or connected (such lines and facilities being herein sometimes collectively referred to as "underground utility facilities").

(2) **REAL PROPERTY.** (a) The lines, poles, foundations, towers, gravel and any buildings of a substation located on a utility's own land are part of the realty. However, transformers, circuit breakers and other equipment installed to control the flow of electricity remain personal property after installation.

(b) Concrete foundations (including anchors), crushed rock and backfill whether or not on land owned by the utility, are deemed part of the realty, and materials used in construction or forming the same are taxable when purchased by the contractor.

(3) **TAXABLE AND NONTAXABLE TRANSACTIONS.** (a) Gross receipts from the installation, sale, lease, rental, repair, service or maintenance of overhead utility facilities which are personal property as described in subs. (1) and (2) are subject to the sales and use tax. For example, the gross receipts of a contractor from the construction and installation of an overhead utility facility, or a portion thereof, and from a sale "in place" of such a facility, if installed under easement on land owned by a person other than the utility, are taxable. Materials used in the construction or installation of such property may be purchased without tax for resale. Gross receipts from the installation, sale, lease, rental, repair, service or maintenance and removal of underground utility facilities are not subject to the sales and use tax; however, the materials used in the construction or installation of such underground facilities cannot be purchased for resale and are subject to tax at the time of purchase unless otherwise exempt.

(b) A contractor performing a "lump sum contract" for the construction of an overhead utility facility, which is personal property as described in subs. (1) and (2), may not reduce gross receipts by the amount of related expenses, such as payments for crop damage, site preparation, restoration work, tree trimming, line clearing, relocating existing lines, engineering and design work, surveying, purchasing a right-of-way and

unloading and hauling materials. These payments are costs of performing the contract and do not affect the amount of taxable gross receipts.

(c) When a contractor enters into an agreement to construct or repair an overhead utility facility, which is personal property as described in subs. (1) and (2), the total charge for such construction or repair is taxable even though a portion of the total charge consists of hourly charges for the use of equipment.

(d) When equipment for the construction or repair of a utility line is rented to a utility, the rental charge is taxable. If an operator is included with such equipment and it is customary or mandatory that the utility accept the operator with the equipment, the entire charge for the equipment and operator is taxable. A rental agreement exists only if the utility employs the crew other than the equipment operator and provides on-the-job supervision; otherwise, the entire charge for the repair, service, maintenance or installation of the utility line is subject to the tax if so indicated in par. (c).

(4) **NONTAXABLE SERVICES.** (a) Gross receipts from a separate contract for tree trimming and line clearing in connection with the construction of a new utility line or in the maintenance of an existing line are not taxable.

(b) A separate charge for removing an existing utility line is not taxable.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1970. Therefore, a contractor's gross receipts from the installation of utility transmission and distribution lines in fulfillment of contracts entered into (or formal written bids made) on or after September 1, 1970 are subject to this rule. If the contractor became obligated to perform the contract on or after September 1, 1969 and before September 1, 1970, a retailer's sales of materials to the contractor or utility on or after September 1, 1969 for use in the job are taxable.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.

Tax 11.87 Meals, food, food products and beverages. (ss. 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) "Hospital" has the meaning in s. 50.33 (1), Stats.

(c) "Nursing home" has the meaning in s. 50.01 (3), Stats.

(d) "Retirement home" means a nonprofit residential facility, which as its primary function provides personal care above the level of room and board to retired persons, where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

(e) "Personal care" means assistance with the activities of daily living, including eating, dressing, bathing and ambulation.

(f) "Sanitorium" means an institution for the recuperation and treatment of the victims of physical or mental disorders.

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

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(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, including dishes, silverware, linen 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 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. Disposable items transferred to customers for a valuable consideration, including paper and plastic cups and plates, plastic eating utensils, napkins, straws, placemats and toothpicks also may be purchased without tax for resale.

(e) *Vending machine sales.* A vending machine operator has a "premise" as defined in s. 77.54 (20) (c) 6, 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 in full to the employe, shall be exempt from the sales tax, if the amount of such tip is wholly in the discretion or judgment of the customer and the customer does not make the payment pursuant to an arrangement made with the seller.

2. A flat amount or flat percentage, whether designated as a tip or as a service charge, that is added to the price of a meal under a requirement of the seller or an arrangement made with the seller is a part of the selling price of such meals and shall be subject to the tax, regardless of whether the amount or flat percentage may be subsequently paid over in whole or in part by the seller to employes.

(h) *Huber law meals.* Meals sold to "Huber Law" prisoners by a sheriff or a governmental unit shall be subject to the tax.

(i) *Meals to employes.* Sales of meals to employes by an employer for a specific charge shall be taxable.

1. A specific charge shall be deemed made for meals if any one of the following conditions is met:

- a. The employe pays cash for meals consumed.
- b. An actual, specific charge for meals is deducted from an employe's wages.
- c. An employe receives meals in lieu of cash to bring the employe's compensation up to the legal minimum wage.
- d. An employe has the option to receive cash for meals not consumed.

2. In the absence of any of the conditions in subd. 1 a specific charge shall not be deemed made when:

a. A value is assigned to meals only as a means of reporting the fair market value of an employe's meals for FICA, social security, or union contract purposes.

b. An employe who does not consume available meals has no recourse against the employer for additional cash wages.

(j) *Transportation companies.* The sale of meals and liquor by transportation companies (e.g., airlines or railways) to a customer while operating in or over Wisconsin for a specific charge shall be taxable. Such meals and beverages may be purchased by the transportation companies without tax for resale. However, if the sales price of the meal or beverage shall

not be separately stated to the customer, the tax shall apply to purchases of such meals and beverages by transportation companies.

(k) *Organizations and their members.* 1. When members of an exempt or nonexempt organization meet at a hotel, restaurant or other place of business where food or drinks are sold and the members pay for such items, the place of business shall be considered selling directly to the members and not to the organization. The sales shall, therefore, be subject to the tax, even if the organization shall collect from the members and pay the seller, and retain a portion of the collections for its own purposes. In such situations, the organization shall be deemed acting for its members' convenience and not purchasing and reselling meals.

2. However, when an exempt religious, charitable or educational organization shall pay for food and beverages out of its own funds, and shall provide such items to members or others without charge, the sale of such items by a retailer to the organization shall not be subject to the tax. If such exempt organizations hold a Certificate of Exempt Status issued by the department, they shall give the retailer their certificate number to claim the exemption.

(3) **EXEMPT SALES.** The following meals shall be exempt:

(a) *Health care facilities.* Meals, food, food products, or beverages sold by hospitals, sanitoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells such items, the exemption shall not apply. For example, if the ladies' auxiliary of a hospital operates a coffee shop on the hospital premises, although the ladies' auxiliary is a nonprofit organization, the food and drinks sold at such coffee shop are taxable.

(b) *"Meals on wheels".* Meals, food, food products or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels".

(c) *Dormitory contracts.* Meals, food, food products or beverages furnished under any contract or agreement by a public or private institution of higher education.

(d) *Groceries.* Sales of the basic food items for human consumption purchased for the home preparation of meals. This includes sales of prepackaged ice cream, ice milk, sherbet or yogurt (pint, quart, gallon or larger sizes), whether prepackaged by the vendor or a supplier. Sales of smaller sized containers of ice cream, ice milk, sherbet or yogurt, or cones, sundaes, sodas, shakes and frozen chocolate bars made from these products shall be taxable.

(4) **SPECIAL SITUATIONS.** (a) *Specialty items.* A seller engaged principally in the sale of taxable food may also be engaged in the sale of exempt food. For example, a restaurant which specializes in serving pancakes may also sell containers of its specially prepared syrup to take home. Sales of this syrup are not taxable.

(b) *Fund-raising events.* When a charge to a customer bears little or no relationship to the actual value of meals, food, food products and beverages received, such as \$100 per ticket for a fund raising dinner dance, the

tax shall be based on the reasonable value of the tangible personal property and taxable services received by the customer.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that sales of meals by retirement homes became exempt on April 25, 1978, pursuant to Chap. 250, Laws of 1977.

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (1) (b) to be (1) (g), cr. (1) (b) to (f), am. (3) (a), (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (d) 3., (g) and (i), Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.88 Mobile homes. (ss. 77.51 (7) (am), 77.53 (17), 77.54 (7) and 77.61 (1) (a) and (c), Stats.) (1) **MOBILE HOME AS PERSONAL PROPERTY VS. REALTY IMPROVEMENT.** A mobile home is personal property if it is located in a mobile home park or other place where the land on which the mobile home is located is not owned by the mobile home owner. A mobile home is a realty improvement if it is permanently affixed to land owned by the owner of the mobile home. It is permanently affixed to the land for sales tax purposes if the mobile home sits on a foundation and is connected to utilities. "On a foundation" means it is off the wheels and sitting on some other support.

(2) **SALES OF MOBILE HOMES WHICH ARE REALTY IMPROVEMENTS.** (a) The sale of a mobile home and the land to which it is permanently affixed is the sale of a realty improvement not subject to the tax. The sale of a mobile home which is a realty improvement on the land of the seller, and which is acquired by the purchaser for removal from the seller's land for permanent attachment to the purchaser's land, is the sale of realty.

(b) If the seller of a mobile home as part of the sales transaction agrees to permanently affix the home on a foundation on land owned by the purchaser, the seller is a contractor-consumer engaged in improving realty. Sales of mobile homes to such a contractor-consumer are subject to the tax, but the gross receipts from the subsequent sale by the contractor-consumer to the purchaser of the mobile home are not taxable.

(3) **SALES OF MOBILE HOMES WHICH ARE PERSONAL PROPERTY.** (a) *By dealers.* A Wisconsin mobile home dealer's gross receipts from the sales of mobile homes which are personal property are subject to the tax.

(b) *By retailers who are not dealers.* Retailers who are not mobile home dealers shall not charge the sales tax on sales of mobile homes which are personal property. Instead, the purchaser shall pay the tax as described in sub. (4) (a), unless the transaction is exempt from the tax.

(c) *By others.* 1. The sales tax status of mobile homes that are personal property and that are purchased from persons who are not mobile home dealers or retailers is as follows, and any sales tax due shall be paid as described in sub. (4) (a):

a. Exempt from the tax prior to August 1, 1977, regardless of length.

b. Taxable beginning August 1, 1977, though June 30, 1978, regardless of length.

c. Exempt beginning July 1, 1978, and thereafter if the mobile home exceeds 45 feet in length excluding the towing hitch.

2. Mobile homes transferred to the spouse, parent or child of the transferor are exempt if the mobile home has been previously registered or Register, June, 1983, No. 330

titled in this state in the name of the transferor and the person transferring is not engaged in the business of selling mobile homes.

(4) **PAYMENT OF TAX.** (a) No mobile home may be registered in this state unless the registrant presents proof that the sales or use tax has been paid or that the registrant's acquisition of the mobile home was exempt from the tax. If the mobile home is purchased from a person other than a Wisconsin mobile home dealer and is subject to the tax, the purchaser shall pay the tax at the time the mobile home is registered with the department of transportation, division of motor vehicles.

(b) A mobile home purchased outside Wisconsin which is required to be registered under Wisconsin law is subject to the Wisconsin use tax. However, a credit is permitted against the Wisconsin use tax for any sales or use tax paid to the state in which the mobile home was purchased.

(5) **CONSIGNMENT SALES.** When a mobile home dealer has possession of a mobile home owned by another person (the principal), the dealer is the retailer responsible for reporting tax on the transaction if the dealer makes the sale without disclosing the identity of the principal to the purchaser (see rule Tax 11.55). If the principal is disclosed to the purchaser on the invoice or in the sales contract, the principal is the seller of the mobile home and the tax on the transaction shall be paid under sub. (4) (a), provided the mobile home dealer does not take title to the mobile home. If the dealer does take title, the dealer is the seller.

(6) **DEFINITION.** In this section "mobile home dealer" has the same meaning as "mobile home dealer" as defined in s. 218.10 (3), Stats., and a retailer is a person who has a seller's permit issued pursuant to s. 77.52 (9), Stats. A mobile home dealer is one type of retailer.

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, December, 1980, No. 300, eff. 1-1-81.

Tax 11.91 Successor's liability. (s. 77.52 (18), 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 financial institution or mortgagee who forecloses on a loan to a retailer owing delinquent sales or use 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.

(f) Successor's liability is not incurred in a sale by a trustee in bankruptcy, in a transfer by gift or inheritance, in a sheriff's sale, or in a sale by a personal representative or special administrator.

(g) If a financial institution or other creditor actually operates a business which has been voluntarily surrendered by a delinquent debtor in full or partial liquidation of a debt, the creditor is a successor. The creditor is not a successor if it acquires possession of a business voluntarily surrendered if it never operates the business and if its sole purpose is to sell the business in its entirety at whatever price it can obtain to recover its investment.

(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, or canceled by a creditor.

(c) A successor shall be liable only for the amount of the tax liability, not for penalties and interest. Although based on the predecessor's tax, the successor's liability shall not bear interest.

(d) A successor's liability shall be limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location while incurring a total liability for all locations, its liability incurred at the location sold shall be determined and shall represent the amount for which the successor may be held liable.

(e) Successor's liability is determined by law and shall not be altered by agreements or contracts between a buyer and seller.

(3) **PROCEDURES FOR PURCHASER.** (a) A purchaser shall withhold a sufficient amount from the purchase price to cover any possible sales or use tax liability.

(b) The purchaser shall submit a written request to the department for a clearance certificate. The letter requesting the certificate shall include the real name, business name and seller's permit number (if known) of the prior operator. The department shall have sales tax returns for all periods during which the predecessor operated before it can issue the certificate.

(c) By statute, the department has 60 days from the date it receives the request or from the date the former owner makes its records available, whichever is later, but no later than 90 days after it receives the request, to ascertain the amount of sales tax liability, if any. The department shall within these periods, issue either:

1. A clearance certificate; or

2. A notice of sales tax liability to purchaser and successor in business, which shall state the amount of tax due before a clearance certificate can be issued and which shall be served and handled as a deficiency determination under s. 77.59, Stats.

(d) The department's failure to mail the notice of liability within the 90 day period shall release the purchaser from any further obligation.

(4) DEPARTMENT'S COLLECTION PROCEDURES. (a) The department shall first direct collection against the predecessor.

(b) Action against the successor shall not be commenced prior to an action against a predecessor unless it appears that a delay would jeopardize collection of the amount due.

(c) A demand for a successor to pay a predecessor's tax liability shall be subject to the right of appeal.

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

History: Cr. Register, October, 1976, No. 250, eff. 11-1-76; am. (1) (d) and (2) (b) 2., cr. (1) (f) and (g), Register, December, 1978, No. 276, eff. 1-1-79.

Tax 11.92 Records and record keeping. (ss. 77.52 (13), 77.60 (8), 77.61 (4) (a) and (9), Stats.) (1) GENERAL. All persons selling, leasing or renting tangible personal property or taxable services and every person storing, using or otherwise consuming in this state tangible personal property or taxable services shall keep adequate and complete records so that they may prepare complete and accurate tax returns. These records shall include the normal books of account ordinarily maintained by a prudent business person, together with all supporting information such as beginning and ending inventories, records of purchases and sales, cancelled checks, bills, receipts, invoices (which shall contain a posting reference), cash register tapes, credit memoranda (which shall carry a reference to the document evidencing the original transaction) or other documents of original entry which are the basis for the entries in the books of account, and schedules used in connection with the preparation of tax returns. Such records shall show:

(a) The gross receipts from sales of tangible personal property or taxable services, or rentals or leases of tangible personal property (including any services that are a part of the sale or lease) made within Wisconsin irrespective of whether the seller or lessor regards the receipts as taxable or nontaxable.

(b) The basis for all deductions claimed in filing returns, including resale and exemption certificates obtained from customers. Exempt sales to governmental units and public schools need not be supported by exemption certificates, if the supplier retains a copy of the exempt entity's purchase order. Sales to organizations holding a certificate of exempt status (e.g., religious or charitable organizations) can be shown to be exempt by recording the exemption certificate number on the seller's copy of the bill of sale. All other exempt sales must be supported by an exemption certificate signed by the purchaser and retained by the seller, unless the merchandise sold is specifically exempted by statute regardless of use (such as groceries). Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in a manner in which they readily can be related to the transactions for which exemption is sought.

(c) Total purchase price of all tangible personal property or taxable services purchased for sale or consumption or lease in this state.

(2) **MICROFILM RECORDS.** Microfilm (including microfiche) reproductions of general books of account (such as cash books, journals, voucher registers and ledgers) and supporting records of detail shall be acceptable if the following conditions are met:

(a) Appropriate facilities are provided for preservation of the films for periods required.

(b) Microfilm rolls are indexed, cross referenced, labeled to show beginning and ending numbers or beginning and ending alphabetical listing of documents included and are systematically filed.

(c) Transcriptions are provided for any information contained on microfilm which may be required for purposes of verification of tax liability.

(d) Proper facilities are provided for the ready inspection and location of the particular records, including adequate projectors for viewing and copying the records.

(3) **RECORDS PREPARED BY AUTOMATED DATA PROCESSING (ADP) SYSTEMS.** An automatic data processing (ADP) tax accounting system shall have the capability of producing visible and legible records which will provide the necessary information for verification of the taxpayer's tax liability.

(a) *Recorded or reconstructible data.* ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, then the system must have the ability to readily reconstruct these transactions.

(b) *General and subsidiary books of account.* A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) *Audit trail and supporting documents.* The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the department upon request. The record keeping system should be so designed that supporting documents (such as sales invoices, purchase invoices, exemption certificates, credit memoranda) shall be readily available.

(d) *Program documentation.* A written description of the ADP portion of the accounting system shall be available. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. The application being performed.
2. The procedures employed in each application.
3. The controls used to ensure accurate and reliable processing.

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination

has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

(5) **EXAMINATION OF RECORDS.** All records described in this section shall be made available for examination by the department at its request.

(6) **FAILURE TO MAINTAIN RECORDS.** In the absence of suitable and adequate records, the department may determine the amount of tax due by using any information available, whether obtained from the taxpayer's records or from any other source. Failure to maintain and keep complete and accurate records may result in penalties or other appropriate action provided by law.

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

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77.

Tax 11.925 Sales and use tax security deposits. (s. 77.61 (2), Stats.) (1) GENERAL. Under s. 77.61 (2), the department may require any person liable to it for sales and use taxes to place with it, before or after a permit is issued, such security as the department determines. The amount of security shall not exceed \$5,000. If any person fails or refuses to place such security, the department may refuse to issue a permit or revoke the permit.

(2) **FACTORS FOR DEPARTMENT'S CONSIDERATION.** (a) In determining whether or not security will be required and the amount of security to be required, the department may consider all relevant factors including the person's:

1 Evidence of adequate financial responsibility. Such evidence may include a person's assets and liabilities, liquidity of assets, estimated expenditures and potential sales tax liability.

2 Prior record of filing tax returns and paying taxes of any kind with the department.

3 Type of business (e.g., a temporary or seasonal business having no fixed location which is frequently moved from city to city may be a greater security risk than one operating continually at a fixed location).

4 Type of entity (e.g., a sole proprietor or partner having nonbusiness financial resources may be a better risk than a corporation having limited assets).

(b) Although the individual factors listed in sub. (2) (a) may be considered in determining security requirements, each case shall be determined on its merits as evaluated by the department of revenue. Protection of the sales and use tax revenues shall be the major consideration in determining security requirements. However, due consideration shall be given to reasonable evidence that security is not necessary.

(c) In instances in which the department determines that a security deposit in excess of \$50.00 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

(3) TYPES OF SECURITY. Acceptable types of security include, but are not limited to:

- (a) *Non interest-bearing*. 1. Cash, certified check or money order.
2. Surety bonds issued by authorized underwriters.
3. Personal guarantee of a third party, if approved by the department.

(b) *Interest-bearing*. 1. Time certificates of deposit issued by financial institutions and made payable to the department. Interest earned on such certificates shall be paid to the depositor.

2. Fully paid investment certificates issued by savings and loan associations made payable to the depositor. A Security Assignment, Form S-127, shall be completed if this type of security is selected. (Note: Form S-127 may be obtained at any Department of Revenue office or by writing to: Wisconsin Department of Revenue, P.O. Box 8902, Madison, Wisconsin 53708).

3. Bearer bonds issued by the U.S. Government, any unit of Wisconsin municipal government or by Wisconsin schools. The depositor should clip 2 full years' coupons before depositing this type of security.

(4) DETERMINATION OF AMOUNT. (a) If a security deposit is required, the amount generally shall be equal to the depositor's average quarterly Wisconsin sales and use tax liability increased to the next highest even \$100 amount. The average quarterly sales and use tax liability shall be based on whichever of the following the department considers most appropriate in the circumstances:

1. The depositor's previous sales and use tax liability at the location specified on the permit.
2. The predecessor's sales and use tax liability at the location specified on the permit.
3. The estimated tax liability shown on the application for permit.
4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

(b) If at the time of the security review the retailer has an outstanding sales and use tax delinquency, the delinquent amount shall be added to the average quarterly sales and use tax liability.

(5) RETURN OF DEPOSIT. (a) Section 77.61 (2), Stats., provides: ". . . Any security deposited under this subsection shall be returned to the taxpayer if the taxpayer has, for 24 consecutive months, complied with all the requirements of this subchapter."

(b) The 24 month compliance requirement described in sub. (5) (a) shall begin on the day the deposit is received by the department.

(c) Within 30 days after the conclusion of the 24 month period described in sub. (5) (a) the department shall review the taxpayer's compliance record. If the taxpayer has complied with chapter 77, subchapter III the department shall within 60 days after the expiration of the 24 month period certify the deposit for refund.

(d) Compliance with subchapter III means that:

1. Sales and use tax returns were timely filed.
 2. All payments were made when due.
 3. No delinquencies of sales or use tax, interest or other charges existed.
 4. No penalties due to negligence or fraud were assessed for filing periods within the 24 month compliance period.
 5. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.
- e. If a taxpayer does not meet the compliance requirements set forth in sub. (5) (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

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

Subsection (5) relating to return of deposit is effective on March 13, 1980, the effective date of chapter 125, Laws of 1979.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Tax 11.93 Annual filing of sales tax returns. (s. 77.58 (5), Stats.) (1) A retailer holding a regular seller's permit who during the previous calendar or fiscal year had a sales and use tax liability not exceeding \$300 will be notified by the department of the option of filing one sales and use tax return for the following year or of continuing to file returns on a quarterly basis. Retailers who elect filing one return a year shall notify the department of that election.

(2) Returns and payments of retailers reporting on an annual basis shall be due and payable on the last day of the month following the close of their calendar or fiscal year.

(3) A retailer who files on an annual basis shall not be required to file a sales and use tax "annual information return" if:

(a) Deductions and exemptions are itemized on the sales tax return filed for the year, and

(b) Gross receipts reported for income tax and sales tax purposes are the same amount.

(4) The annual information return filing requirements do not apply to the 1981 tax year and thereafter.

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 \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to the date a \$100 standard applied. The "annual information return" was eliminated for 1981 and subsequent years pursuant to Chapter 221, Laws of 1979.

History: Cr. Register, December, 1978, No. 276, eff. 1-1-79; cr. (4), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.94 Wisconsin sales and taxable transportation charges. (ss. 77.51 (4) (intro.) and (d) and (4r), and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (4r), Stats.

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(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employes or by a contract carrier engaged by the seller.

(c) When property is transferred from a seller to a purchaser via a common carrier or by the United States postal service, the property shall be deemed in the possession of the purchaser when it is turned over to the purchaser or its agent by the common carrier or postal service at the destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid.

(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), 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 x 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 al-

located 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" of the goods to the purchaser. 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.

Tax 11.95 Retailer's discount. (s. 77.61 (4) (b), Stats.) (1) **DISCOUNT EFFECTIVE APRIL 1, 1976.** For reporting sales or use tax collected on their retail sales, retailers may deduct 1% of the total of sales or use tax payable for each tax reporting period if the tax payment is not delinquent. This discount shall be allowed only if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted. The discount is also not allowed on deficiency determinations or amended returns. On and after April 1, 1976, the discount shall be prohibited for consumer's use tax imposed pursuant to s. 77.53 (2), Stats.

(2) **DISCOUNT PRIOR TO APRIL 1, 1976.** Prior to April 1, 1976, persons holding a Wisconsin seller's permit could deduct the retailer's discount on any consumer's use tax paid, in addition to the discount as the sales or use tax paid on retail sales. Retailers could have deducted a 2% discount on retail sales and use taxes paid or payable and on consumer's use tax prior to January 1, 1972. The rate was reduced to 1% by statute effective January 1, 1972.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78.

Tax 11.96 Interest rates. (ss. 77.58 (7) and 77.60 (1) and (2), Stats.) (1) **INTEREST ON UNPAID TAXES WHICH ARE NOT DELINQUENT.** Unpaid sales or use taxes which are not delinquent but which are assessed by the department on or after August 1, 1981 shall bear interest computed at the rate of 12% per year from the due date of the taxes to the date paid or delinquent.

(a) For taxes due on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

(b) For taxes due prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

(2) INTEREST ON REFUNDS. Any refund of sales or use taxes shall include interest as follows:

(a) If the tax being refunded is from a return which has a filing due date on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the return to the first day of the month following the month in which the taxes are refunded by the department.

(b) If the tax being refunded is from a return which has a filing due date prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the first day of the month following the month in which the taxes are refunded by the department.

(3) DELINQUENT TAXES. Delinquent sales or use taxes shall include interest at the rate of 1.5% per month from the date on which the tax became delinquent until the taxes are paid.

(4) EXTENSION PERIODS. If an extension of time is granted for filing a sales or use tax return, any taxes owing with the return are subject to interest during the extension period at the rate of 12% per year. However, if the return is not filed or the taxpayer files but fails to pay the tax by the end of the extension period, the taxes owing become delinquent and shall be subject to delinquent interest under sub. (3) from the end of the extension period until paid.

Note: 1. For unpaid non-delinquent sales or use taxes due prior to November 1, 1975, interest was computed at the rate of 6% per year from the due date of the taxes to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date paid or delinquent.

2. For unpaid non-delinquent sales or use taxes due on or after November 1, 1975 and assessed by the Department of Revenue before August 1, 1981, interest was computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

3. Sales or use taxes which were delinquent before November 1, 1975 were subject to delinquent interest at the rate of 1% per month from the date the tax became delinquent to October 31, 1975 and at 1.5% per month from November 1, 1975 until paid.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and rec. (1) and (3), am. (4); Register, June, 1983, No. 330, eff. 7-1-83.

Tax 11.97 "Engaged in business" in Wisconsin (ss. 77.51 (4) (j), (7) (c) and (k) and (7g); 77.53 (3), (5), (7), (9) and (9m), Stats.) (1) GENERAL. (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the Fourteenth Amendment to the U.S. Constitution. Over the last 30 years the court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established; the out-of-state seller is required to register and collect the state's use tax.

(b) Some United State supreme court decisions concerning nexus include:

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- Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)
- Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)
- General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)
- Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)
- Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)
- National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)
- National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

(2) STATUTES. (a) Section 77.51 (7) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (4) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (7g), Stats., provides as follows:

"Retailer engaged in business in this state", unless otherwise limited by federal statute, for purposes of the use tax, means any of the following:

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an 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, salesperson, 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 or taxable services."

(c) Under s. 77.53 (5), Stats., the tax required to be collected by a use tax registrant is a debt owed by the registrant to this state, and s. 77.53 (7), 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; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.98 Reduction of delinquent interest rate under s. 77.62 (1), Stats. (ss. 71.13 (1) (b), 77.60 (2) and 77.62 (1), Stats.) (1) PROCEDURES. The secretary may reduce the delinquent interest rate from 18% to 12% per year effective for all determinations, assessments or other actions for additional tax made by the department on or after August 1, 1981 when the secretary determines the reduction fair and equitable, if the person from whom delinquent taxes are owing:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, Delinquent Tax Collection System, P.O. Box 8901, Madison, Wisconsin 53708.

(b) Clearly indicates why it is fair and equitable for the rate of interest to be reduced. Information regarding one or more of the factors under sub. (2) may be indicated.

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(c) Is current in all return and report filings and tax payments for all matters other than the delinquencies for which interest reduction is being sought.

(d) Pays the sales and use taxes, reduced amount of interest and any penalties associated with them within 30 days of receiving notice from the department of the reduction.

(2) **FACTORS FOR SECRETARY'S CONSIDERATION.** In determining whether an interest rate reduction is fair and equitable, the secretary may consider the following factors:

(a) The taxpayer's prior record of reporting and payment to the department.

(b) The taxpayer's financial condition.

(c) If the taxpayer is a natural person, any circumstances which may have prevented payment such as death, imprisonment, hospitalization or other institutionalization.

(d) Any unusual circumstances which may have caused the taxpayer to incur the delinquency or prevent its payment.

(e) Any other factor which the secretary believes pertinent.

(3) **DETERMINATION NOT APPEALABLE.** The secretary's determination under this rule is not appealable.

Note: The interpretations in s. Tax 11.98 are effective under the general sales and use tax law on and after September 1, 1969, except that the secretary could reduce the delinquent interest rate from 18% to 9% for determinations made prior to August 1, 1981.

History: Cr. Register, February, 1979, No. 278, eff. 3-1-79; am. (1) (intro.), Register, June, 1983, No. 330, eff. 7-1-83.

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