

DEPARTMENT OF REVENUE

Chapter Tax 11

SALES AND USE TAX

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

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

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

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

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

(12) "Tax" means the Wisconsin sales or use tax in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats.

(13) "Taxable", "subject to the tax", "tax applies", "the sale is taxable", "_____ (specific tangible personal property or a specific service) is/are taxable", or "the purchase of _____ (specific tangible personal property or a specific service) is taxable", means that: (a) The sales tax applies to a sale of the property or service, measured by the gross receipts from the sale; or

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (12), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.002 Permits, application, department determination. (ss. 77.52(7), (8), (9) and (12), 77.61(2) and 227.0105, Stats.) (1) **PURPOSE.** The purpose of this section is to set forth the requirements to apply for a seller's permit, use tax registration certificate or consumers use tax registration certificate on the part of persons intending to operate as a seller at retail in this state, to collect use tax for the convenience of customers, or to report use tax; and to establish time limits within which the department of revenue will act on the application.

(2) **PERMITS AND CERTIFICATES REQUIRED.** (a) **SELLER'S PERMIT.** Every individual, partnership, corporation or other organization making retail sales or rentals of tangible personal property or selling, performing or furnishing taxable services at retail in this state shall have a seller's permit, unless the seller is exempt from taxation.

(b) Use tax registration certificate. Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit or who is not engaged in business in this state but elects to collect use tax for the convenience of its Wisconsin customers shall have a use tax registration certificate.

(c) Consumers use tax registration certificate. Every person not required to have a seller's permit or use tax registration certificate who regularly has use tax obligations because purchases are made without sales or use tax being charged by the seller shall have a consumers use tax registration certificate.

(3) APPLICATION FOR SELLER'S PERMIT OR USE TAX CERTIFICATES. A person required to have a seller's permit or one of the use tax certificates described in sub. (2) shall file an "Application for Permit", Form A-101, with the department of revenue at the address shown on the form. The application shall include all information and fees required and shall be signed by the appropriate person described on the form. Security, as described in s. Tax 11.925, may be required. Form A-101 may be obtained at any department of revenue office, or by writing the department at P.O. Box 8902, Madison, Wisconsin 53708 or by telephone at (608) 266-2776.

(4) REVIEW AND ACTION BY DEPARTMENT. The department of revenue shall review and make a determination on an application for a seller's permit or use tax certificate described in this section within 15 business days from the day the application is received by the department. For this purpose, a determination is made on the day whichever of the following events occurs first:

(a) The approved permit is mailed by the department to the applicant,
or

(b) The department mails notification to the applicant that security is required or that the application is incomplete, incorrect or more information is needed. The 15-day period shall reapply from the day all information necessary to make a determination, including payment of a required fee, or payment of security is received by the department, or

(c) A notification of denial of the application with explanation for the denial is mailed by the department to the applicant.

History: Cr. Register, August, 1985, No. 356, eff. 9-1-85.

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

(a) Form MV-1. For occasional and dealer sales of motor vehicles, motor homes, trailers and semitrailers.

(b) Form S-011. For occasional and non-Wisconsin sales of snowmobiles.

(c) Form S-012 (also called "ST-12"). The monthly, quarterly or annual return for each registered retailer and consumer holding a Wisconsin seller's permit.

(e) Form S-013. For concessionaires. (Annual return).

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(f) Form S-014. For concessionaires (single events) and temporary sellers (limited) periods).

(g) Form S-015. For occasional bingo sales.

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business. Checking account and savings account forms provided customers free of charge are also subject to the tax. When such items are sold by a financial institution at a price in excess of cost, the financial institution is a retailer and shall report the sales tax on such sales. The financial institution may purchase such property without tax by giving its supplier a properly completed resale certificate when acting as a retailer.

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

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

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

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

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (5) (a), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.70 Advertising agencies. (s. 77.51 (4) (intro.) and (h), 77.52 (1) and (2), Stats.) (1) **NONTAXABLE SERVICES.** Charges by advertising

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agencies are not subject to sales and use tax if they are for services that are not a part of the sale of tangible personal property, or that do not represent labor or service costs in the production of tangible personal property. Examples of such nontaxable services include:

- (a) Writing original manuscripts or news releases.
- (b) Writing copy to be used in media advertising.
- (c) Consultation, market research and compiling statistical or other information.
- (d) Recommendations for advertising themes or merchandising plans.
- (e) Obtaining media space and time.
- (f) Providing preliminary art (i.e., roughs, visualizations, sketches, layouts and comprehensives) prepared solely for presenting an idea to a client or prospective client. Thus, when a job involves production of sketches, but never results in the production of finished art or other tangible personal property by the advertising agency, the charges for preliminary art work are not taxable; however, if finished art or other tangible personal property is produced by the advertising agency as the result of the preliminary art work, all the charges for preliminary art are taxable because they are for the production of tangible personal property.

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

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

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

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

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

2. Charges for photographic services or photostats.

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

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

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

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

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

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

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers. (ss. 77.51 (4) (1), (7) (e) and (f) and (24) (a) and 77.52 (2) (a) 6, Stats.) (1) **LAUNDRIES AND DRY CLEANERS.** The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except when the services are performed on raw materials or goods in process destined for sale, or when the services are performed by the customer through the use of coin-operated, self-service machines.

(2) **LINEN AND CLOTHING SUPPLIERS.** The gross receipts of lessors from leasing or renting clothing (e.g., uniforms) towels, linens, diapers or similar items to commercial establishments or household users under agreements which provide for furnishing items and cleaning the items when they become soiled are subject to the tax. However, the items furnished to customers under such agreements may be purchased by the lessor without paying sales or use tax.

(3) **PURCHASES.** (a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and must pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. The also must pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hang-

ers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to such purchasers.

(b) The tax applies to gross receipts from sales, leases or rentals of machinery and equipment to persons engaged in performing or furnishing laundry, dry cleaning, pressing and dyeing services, and to persons leasing or renting linens, towels and clothing to industrial, commercial or household users.

Note: The interpretations in s. Tax 11.72 are effective under the general sales and use tax law on and after September 1, 1969, except that pursuant to 1983 Wisconsin Act 27, effective September 1, 1983, laundries and dry cleaners became the consumers of, and must pay tax on the purchases of, hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins.

History: Cr. Register, December, 1979, No. 288, eff. 1-1-80; am. (3) (a) and r. (3) (c), Register, September, 1984, No. 345, eff. 10-1-84.

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

- (a) Cancelled United States and foreign postage stamps.
- (b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.
- (c) Uncancelled foreign postage stamps.
- (d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.
- (e) Foreign coins and paper currency when sold or traded as collectors' items.
- (f) United States coins and paper currency when sold or traded as collectors' items above their face value.
- (g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

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

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

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

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

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

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

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

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

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

- (a) Motor fuel.
- (b) Vehicle license fees.
- (c) Federal highway use taxes.

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

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

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

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

- (a) Amounts spent for the lessor's own protection or for the protection of leased property, including collision or other insurance protection.
- (b) Maintenance or repair charges incurred by the lessor.
- (c) Interest and other financing costs incurred by the lessor.
- (d) Dispatch service.

(5) MULTISTATE USE. (a) Gross receipts from leases or rentals of motor vehicles and mobile equipment used on a highway are taxable if the vehicles and equipment are garaged in Wisconsin, even if the lease or rental agreement was executed in another state or if, at the contract's expiration, the vehicles or equipment must be returned to the lessor in another state.

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

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

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77; cr. (4) (d), Register, September, 1984, No. 345, eff. 10-1-84.

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

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

(a) Sales through vending machines.

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

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

(3) Examples of nontaxable sales of ice are:

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

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

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

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

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

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

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

Tax 11.81 Industrial gases, welding rods and fluxing materials. (s. 77.54 (2), Stats.) (1) **GENERAL STATEMENT.** The tax status of retail sales of industrial gases, welding rods and fluxing materials depends upon the use of the property by the purchaser. Section 77.54 (2), Stats., exempts from the sales tax "The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangi-

ble personal property in any form destined for sale, but this exemption shall not include fuel or electricity." Therefore, the sale of industrial gases, welding rods or fluxing materials shall be:

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

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

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

(2) **INDUSTRIAL GASES.** Common types of industrial gases are argon, helium, hydrogen, nitrogen, acetylene, carbon dioxide and oxygen.

(a) Sales of industrial gases which are exempt because they become an ingredient or component of tangible personal property destined for sale by the purchaser include:

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

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

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

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

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

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

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

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

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

Tax 11.82 Mailing lists and mailing services. (ss. 77.51 (5), 77.52 (1), 77.53 (1) and 77.54 (2), Stats.) (1) **MAILING LISTS.** (a) In this subsection, "mailing list" means a written or printed list, series, set, group or aggregation of names or addresses or both or other information concerning persons which is used in circulating material by mail. A mailing list may be in the form of a manuscript list, directory, Cheshire tape, Dick tape, magnetic tape, gummed labels, index cards or other similar means of identification.

(b) A mailing list is tangible personal property, except for written or typed lists of names and addresses, and the sales and use tax shall apply to the gross receipts from the sale of and the storage, use or other consumption of mailing lists in the form of tangible personal property, including the rental of or the granting of a license to use such lists. Examples of taxable mailing lists include, but are not limited to magnetic tapes and mailing lists which are physically attached to the envelopes, such as Cheshire tapes, gummed labels and heat transfers.

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

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

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

(c) Persons in the business of providing mailing services are consumers of the tangible personal property they purchase and use in performing

such services. Consequently, they must pay the tax when purchasing such property.

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

Note: The amendment to sub. (1) (b) effective January 1, 1979, codifies the department of revenue's policy and conforms the rule to the Minnesota Supreme Court's decision in *Fingerhut Products Company et al. vs. Commissioner of Revenue*, Docket No. 96-906, September 27, 1977, that typed lists of names and addresses are not tangible personal property subject to the sales and use tax, but are rather nontaxable transfers of information.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1) (b), Register, December, 1978, No. 276, eff. 1-1-79.

Tax 11.83 Motor vehicles. (ss. 77.51 (4) (j) and (7) (am), 77.52 (1) and (15), 77.53 (1), (16) and (18), 77.54 (7), 77.56 (2) and 77.61 (1), Stats.) (1) **DEFINITION.** In this rule, "motor vehicle" means a self-propelled vehicle (e.g., automobile, truck, truck-tractor and motorcycle) designed for and capable of transporting persons or property on a highway. In this rule, "motor vehicle" does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck, and road machinery as defined in s. 340.01 (52), Stats. "Motor vehicle" does not include a vehicle which is not self-propelled such as a trailer or semitrailer.

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

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

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

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

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

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

(c) A Wisconsin resident purchasing a motor vehicle in a foreign country, or for delivery in a foreign country, shall pay the Wisconsin use tax

when the resident registers the vehicle in Wisconsin for use in Wisconsin, subsequent to use in the foreign country. The tax is measured by the full "sales price" of the vehicle.

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

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

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

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

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

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

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

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

(7) VEHICLES USED BY LICENSED WISCONSIN RETAIL MOTOR VEHICLE DEALERS. (a) If salespersons use a licensed Wisconsin retail motor vehicle dealer's motor vehicles for purposes in addition to retention, demonstration or display, the dealer may charge the salesperson a reasonable amount for such use, and such charge is subject to the tax. In lieu of

making such charge or reporting the tax on the cost of the vehicle, the dealer may report tax on the following basis:

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; am. (4) (c), Register, September, 1984, No. 345, eff. 10-1-84.

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.

(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 Register, September, 1984, No. 345