

Chapter Tax 11

SALES AND USE TAX

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Tax 11.001 Forward and definitions. (subchs. III and V, ch. 77, Stats.) Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to county sales and use taxes authorized under subch. V of ch. 77, Stats. 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; emerg. am. (intro.), eff. 3-24-86; am. (intro.), Register, October, 1986, No. 370, eff. 11-1-86.

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
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(a) Admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, ice skating fees and park shelter house fees).

(b) Food and gift stand sales, including sales of sandwiches, beverages, candy, cigarettes, ice cream, confections, tobacco products, postcards, books, magazines and other periodicals described in s. Tax 11.19, and novelties. Newspaper sales are exempt.

(c) Sales or rental of recreational equipment and supplies.

(d) Charges for access to or use of athletic facilities such as baseball and softball diamonds, stadiums and gymnasiums.

(e) Sales of electricity, gas and steam by municipal utilities, except as provided in sub. (3) (b).

(f) Sales of maps, plat books, photocopies or other printed material.

(g) Sales or rental of equipment and office furniture, including the rental of motor vehicles to employes. Governmental units shall not collect tax on their sales of motor vehicles. Instead, the purchaser shall pay the tax to the department of transportation when the motor vehicle is registered.

(h) Sales of buildings or timber when the purchaser acquires such property for removal.

(i) Rental of lodging facilities to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanitoriums nursing homes, colleges or universities operated by governmental units.

(j) Vending machines and amusement devices, if the governmental unit owns the machine or has control over the gross receipts from the machine and its contents.

(k) Sales of soda water beverages and beer, including sales of such items by hospitals, sanitoriums and nursing homes to patients, employes or guests.

(l) Charges for meals to "Huber" law prisoners.

(m) Sales of books and supplies, including sales by vocational, technical and adult education schools. Sales of tangible personal property by elementary and secondary schools are exempt under s. 77.54 (4), Stats.

(n) Sales of craft supplies for playground craft programs.

(o) Auction sales of tangible personal property, but excluding motor vehicles (see par. (g)).

(p) Sales and delivery of trees, shrubs or gravel to private purchasers.

(q) Sales of impounded animals, even though the amount received may be designated as a placement fee.

(r) The gross receipts from parking and providing parking space for motor vehicles and aircraft, and docking or providing storage space for boats.

(s) The gross receipts from landscaping and lawn maintenance services, including weed cutting in lawn, garden and other developed areas, but not charges for damages described in sub. (3) (c).

(3) NONTAXABLE RECEIPTS. Gross receipts of governmental units from the following are not taxable:

(a) Fees for licenses and permits, including tavern, cigarette, hunting and fishing, marriage, building and septic tank permits and I.D. cards, but not camping permits or I.D. cards issued exclusively for obtaining admission to facilities or events taxed under s. 77.52 (2) (a) 2, Stats.

(b) Water delivered through mains. Wood residue used for fuel and sold for use in a business activity. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel, sold for residential use. Electricity and natural gas sold for residential use and electricity sold for farm use during the months of November through April. "Sold" is defined in s. 77.54 (30) (b), Stats. In this paragraph, "residential use" has the meaning in s. Tax 11.57 (2) (1) 7.

(c) Claims assessed against persons for damaging government property.

(d) Rental of buildings or space, such as offices, warehouses and meeting rooms.

(e) Storage fees, notary public fees and bid deposits.

(f) Library fines, including charges for books that are not returned or charges for a duplicate library card.

(g) Police escort and ambulance service charges.

(h) Separately stated fees for instruction.

(i) Special assessments and fees for garbage or trash removal. However, sales of bags or receptacles for garbage or trash are taxable.

(j) Commissions on vending machines or amusement devices when the governmental unit does not own the machines or have control of the machines' gross receipts and contents.

(k) Sales or rental of tangible personal property or services to other governmental units, schools or organizations which hold a certificate of exempt status.

(l) Meals, food, food products or beverages (except soda water beverages and beer) sold by hospitals, sanitoriums and nursing homes to patients, employes or guests; dormitory meals furnished in accordance with any contract or agreement by a public or private institution of higher education; and meals sold to the elderly or handicapped by "mobile meals on wheels".

(m) Service charges for snow removal, police officers at social gatherings, service of legal papers including summons, complaints and civil process, and ushers and door guards.

(n) Sales for resale, if supported by a valid resale certificate obtained from the purchaser.

(o) Fees charged for admission to a university student union building.

(p) Charges for filing, entering, docketing, recording or furnishing certified or uncertified copies of records by a state registrar, register of deeds, health officers and clerk of court under ss. 59.42, 59.57, 69.24, Stats., or by a filing officer under s. 409.407 (2), Stats., and fees charged by a register in probate pursuant to s. 814.66, Stats. Also, charges by an "authority", as defined in s. 19.32 (1), Stats., for copying a public record or confidential record, including charges for search of records.

(q) The sale of all admission fees or admission stickers to state parks and recreational areas in state forests imposed under s. 27.01 (2r), Stats.

(4) PURCHASES. Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by this state or by any agency thereof, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 144.07 (4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., or any other unit of government, or any agency or instrumentality of one or more units of government within this state. However, the exemption does not apply to governmental units of other states.

(a) A Wisconsin governmental unit need not give a retailer an exemption certificate to purchase taxable property or services without tax. A purchase order identifying the Wisconsin governmental unit shall be acceptable evidence of the exempt nature of the purchase.

(b) A Wisconsin governmental unit's payments to sellers for welfare recipients' purchases are generally subject to the tax, except when the purchase is made directly by the governmental unit and:

1. The governmental unit gives its purchase order to the seller before the sale is completed or the taxable service is performed;

2. The seller bills the governmental unit directly; and

3. The seller retains a copy of each purchase order received from the governmental unit to substantiate the exempt sale.

(c) Purchases by state chartered credit unions are subject to the tax. Purchases by federally chartered credit unions and federal reserve banks are not subject to the tax.

(d) Purchases (such as for lodging, meals or uniforms) by employees of a governmental unit are not exempt, whether or not the employee is subsequently reimbursed for such purchases by the governmental unit.

(e) Purchases by consular and diplomatic personnel of other countries which have entered into multilateral treaties with the United States government providing for sales and use tax exemptions.

Note: The interpretations in s. Tax 11.05 are effective under the general sales and use tax law on and after September 1, 1969, except as follows: (a) Sales by vocational, technical and adult education schools were exempt from July 1, 1972 through October 3, 1973, (b) Mobile meals on wheels became exempt October 4, 1973, pursuant to Chapter 90, Laws of 1973, (c) Admission fees to state parks became exempt on July 1, 1978, pursuant to Chapter 418, Laws of 1977, (d) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979 and the electricity and natural gas six-month exemption became effective on November 1, 1979, both pursuant to Chapter 1, Laws of 1979, (e) A governmental unit's charges for parking motor vehicles and aircraft and docking and providing storage space for boats became taxable June 1, 1980 pursuant to Chapter 221, Laws of 1979, (f) Landscaping and lawn maintenance services became taxable on May 1, 1982 pursuant to Chapter 317, Laws of 1981

and (g) A governmental unit's charges for copying public records became exempt under s. 77.54 (32), Stats., effective April 27, 1984 pursuant to 1983 Wisconsin Act 287. The exemption language in s. 77.54 (32), Stats., was amended by 1985 Wisconsin Act 149, effective April 2, 1986, to clarify that the exemption also applies to confidential records, (h) Section 77.54 (30) (a) 1 was amended by 1985 Wisconsin Act 149 to add an exemption for peat and fuel cubes produced from solid waste, effective April 2, 1986, (i) Section 77.54 (9a) (e) was amended by 1985 Wisconsin Act 149 to provide that an agency or instrumentality of one Wisconsin governmental unit is exempt, effective June 1, 1986, (j) Wood residue used for fuel by businesses became exempt on September 1, 1987, pursuant to 1987 Wisconsin Act 27.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (f) and (h), (4) (c) and cr. (4) (e), Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (e) and (i), cr. (2) (r), r. and recr. (3) (b), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (b) and (m), (3) (a), (l), (n) and (p), cr. (2) (s) and (3) (q), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (p), Register, July, 1987, No. 379, eff. 8-1-87; reprinted to correct error in (2) (p), Register, October, 1987, No. 382; am. (3) (b) and (4) (intro.), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.08 Medical appliances, prosthetic devices and aids. (s. 77.54 (14s) and (22), Stats.) (1) **DEVICES FOR HANDICAPPED PERSONS.** Section 77.54 (22) (a), Stats., exempts gross receipts from the sale of "Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, supports, shoes, braces and elastic hose when specially fitted and altered to fit a particular person. "Altered" does not include the adjusting of straps or seams but does include the bending of metal stays. The following items normally are not designed for use by a particular person, and if that is the case, do not qualify for the exemption:

- (a) Kidney dialysis equipment.
- (b) Special communication equipment for the deaf.
- (c) Hydraulic lifts for wheelchairs.
- (d) Special controls installed in motor vehicles to steer and operate the vehicle.
- (e) Humidifiers.
- (f) Stationary walking machines.
- (g) Stairway chair elevators.
- (h) Electric nerve stimulators.
- (i) Insertion or application equipment and supplies used to insert or apply exempt devices.

(2) **PROSTHETIC DEVICES, APPLIANCES AND AIDS.** Section 77.54 (22) (b), Stats., exempts gross receipts from the sale of "Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body." "Other equipment" includes colostomy, ileostomy and urinary appliances, artificial breast forms and heart pacemakers. This exemption does not apply to:

- (a) Garments designed to restrict or enhance the body's shape for cosmetic purposes, or to wigs or hair pieces.
- (b) Incontinent briefs, pads, shields or adult diapers.
- (d) Bed wetting alarm systems.
- (e) Blood pressure kits.

(f) Insertion or application equipment and supplies used to insert or apply exempt devices.

(3) **EYE GLASSES.** Section 77.54 (22) (d), Stats., exempts gross receipts from the sale of "Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser." This exemption does not include tools and supplies, eyeglass cases, eye shields, thermal and chemical care units for contact lenses, chains, clips or other accessories associated with eye glasses. Frames for prescription glasses are exempt.

(4) **CRUTCHES AND WHEELCHAIRS.** Section 77.54 (22) (e), Stats., exempts gross receipts from the sale of "Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled." This exemption includes open and closed end walkers with or without casters and canes which provide walking support by making contact with the ground at more than one point.

(5) **OXYGEN EQUIPMENT.** Section 77.54 (14s), Stats., exempts the gross receipts from the sale of "Equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen." The exemption applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(6) **REPAIR PARTS AND SERVICE.** Gross receipts from the sale of repair parts and service for exempt property are exempt.

Note: The interpretations in s. Tax 11.08 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Charges for oxygen equipment became exempt September 1, 1983 pursuant to 1983 Wisconsin Act 27; (b) Charges for motorized wheelchairs and scooters became exempt September 1, 1985 pursuant to 1985 Wisconsin Act 29.

History: Cr. Register, September, 1977, No. 261, eff. 10-1-77; am. (1) and (4), Register, July, 1978, No. 271, eff. 8-1-78; am. (1), (2) and (3), Register, January, 1983, No. 325, eff. 2-1-83; r. (2) (c), renum. (5) to be (6), cr. (5), Register, September, 1984, No. 345, eff. 10-1-84; am. (4), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.09 Medicines. (s. 77.54 (14), (14g) and (33), Stats.) (1) **DEFINITION.** For the exemption in s. 77.54 (14), Stats., "medicines" means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use.

(2) **EXAMPLES OF MEDICINES.** Medicines include the following items described in sub. (1):

- (a) Bone pins.
- (b) Dyes.
- (c) Insulin (furnished by a registered pharmacist).
- (d) Liquids.
- (e) Oxygen for medicinal purposes.
- (f) Oral contraceptives.
- (g) Pacemakers.
- (h) Pills.

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- (i) Powders.
 - (j) Salves and ointments.
 - (k) Suppositories.
 - (l) Sutures.
 - (m) Vaccines.
 - (n) Vitamins.
 - (o) Other medicinal preparations consumed orally, injected or applied.
 - (p) Other articles permanently implanted in the human body which remain or dissolve in the body.
- (3) ITEMS WHICH ARE NOT MEDICINES. Items which are not described in sub. (1) and which are not medicines include:
- (a) Alcoholic beverages, soda water beverages or distilled water.
 - (b) Auditory, prosthetic, ophthalmic or ocular devices or appliances.
 - (c) Medical supplies (such as bandages, compresses, dressings, pads, splints and supports).
 - (d) Medical instruments or equipment.
 - (e) Cast materials.
 - (f) Intra-uterine devices.
- (4) EXEMPT SALES OR USE OF MEDICINES. Medicines shall be exempt if:
- (a) Prescribed by a licensed physician, surgeon, podiatrist or dentist for treatment of a human being and dispensed on prescription filled by a registered pharmacist in accordance with law.
 - (b) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being.
 - (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. 50.33 (2), 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 of medicines for pets and work stock, but not for farm livestock.

(6) **TAXABLE USE OF MEDICINES.** Persons who sell medicines are subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) 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; r. (3) (g), Register, September, 1984, No. 345, eff. 10-1-84; am. (4) (d) and (6), Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (b), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.10 Occasional sales. (ss. 77.51 (9), 77.52 (2) (a) 2. 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 (9), 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 the events do not fall on more than 9 different days or 9 consecutive 24-hour periods 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 the 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 the

events do not fall on more than 9 different days or 9 consecutive 24-hour periods 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 the 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 \$7,000 within a calendar year.

(d) *Exceeding the \$7,000 standard.* Nonprofit organizations with sales exceeding \$7,000 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) *Treatment of categories.* 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 \$7,000 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.

(f) *Applicability.* As a result of 1987 Wisconsin Act 399, this subsection does not apply on or after January 1, 1989.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department is required to act on permit applications.

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

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(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, all-terrain vehicles, trailers and semitrailers, except as specifically provided in s. 77.54 (7), Stats. Unless exempt, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) shall be paid by the purchaser at the time the motor vehicle, aircraft, boat, snowmobile, all-terrain vehicle, 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) Unless exempt under sub. (5) (c) 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) Unless exempt under sub. (5) (c) sales by persons engaged primarily in the business of making nontaxable 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.

(5) SALES WHICH ARE OCCASIONAL SALES. The following sales are exempt occasional sales:

(a) Auction sales of personal farm property and household goods.

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

Note: Example. Taxpayer operates a service station as a sole proprietor and holds a seller's permit for the purpose of selling cigarettes and repairing motor vehicles. The gross receipts from selling a refrigerator and stove used in the taxpayer's residence are not subject to the sales tax. However, the gross receipts from the sale of a desk and refrigerator which were used in the service station's business activities are subject to the sales tax.

(c) Sales of tangible personal property or taxable services by a person not otherwise required to hold a seller's permit, if the total taxable gross receipts of tangible personal property and taxable services are less than \$1,000 during the calendar year. However, purchases of tangible personal property or taxable services which when resold are exempt under this paragraph, are taxable purchases by that person, except when the person is able to claim exemption under s. 77.54 (9a), Stats.

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Note: *Examples.* 1) If the gross receipts from a person's garage and rummage sales, lawn maintenance services, bait sales to fisherman, sales of books, charges for parking and other normally taxable receipts are less than \$1,000 during the calendar year, that person's receipts are deemed exempt occasional sales under par. (c).

2) Sales of soft drinks by employe groups are not taxable if the gross receipts from soft drink sales do not exceed \$1,000 per year. These groups are deemed consumers and suppliers' sales to them are taxable retail sales.

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: (a) sub. (5) (b) became effective on March 1, 1979, (b) non-retailer sales of all-terrain vehicles became taxable effective September 1, 1987, pursuant to 1987 Wis. Act 27, (c) the standard in sub. (3) (c) 2 was \$2,500 per year for the calendar years 1985, 1986 and 1987. Prior to January 1, 1985, the standard in sub. (3) (c) 2 was \$1,000 per year and the standard in sub. (5) (c) was \$500 per year for persons who had gross receipts from sales of fishing bait; soft drinks; garage, lawn or rummage sales; lawn maintenance and landscaping services; parking; firewood and books.

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 rec. (3) (e), cr. (6) (f) to (i), Register, June, 1983, No. 330, eff. 7-1-83; am. (3) (a) 3. and (b) 2., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (c) 2., (d) and (e), (4) (d) and (f), cr. (b), r. (6), Register, April, 1985, No. 352, eff. 5-1-85; am. (4) (c), Register, July, 1987, No. 379, eff. 8-1-87; am. (3) (c) 2., (d) and (e), Register, December, 1987, No. 384, eff. 1-1-88; cr. (3) (f), Register, April, 1989, No. 400, eff. 5-1-89; am. (4) (c), Register, April, 1990, No. 412, eff. 5-1-90.

Tax 11.11 Waste treatment facilities (industrial or governmental). (s. 77.54 (26), Stats.) (1) **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.

(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. As described in sub. (3) (d), approvals are not required for municipal waste treatment facilities.

(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 qualifies for the sales and use tax exemption if the facility has been approved

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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 an "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) 266-3964.

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) 266-8606.

(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) 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 s. Tax 11.11 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; am. (2) (b), (3) (a) and (b) and (5) (b), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.12 Farming, agriculture, horticulture and floriculture. (ss. 77.52 (2) (a) 10 and 77.54 (3), (3m), (27), (30), (33) and (34), 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) "Animal bedding" used in farming means disposable loose materials, including straw, shavings, sawdust, leaves, sand and shredded paper, used where an animal may lie, to promote cleanliness and absorb urine or liquid manure. It does not include nonabsorbent items, including rubber floor mats.

(b) "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.

(c) 1. "Farming" means the business of producing food products or other useful crops by tilling and cultivating the soil or by raising cattle, sheep, llamas, 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 and llamas for sale; and raising ginseng, mushrooms and sod. "Farming" does not include home gardening and other similar non-commercial 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.

(d) "Farm livestock medicine" means any substance or preparation intended for use by external or internal application to farm livestock in the cure or treatment of disease and which is commonly recognized by veterinarians as a substance or preparation intended for such use. This includes antibiotics, drugs, mastitis treatments and vaccines in the form of boluses, capsules, feed additives, fluids, pills, powders, ointments, and salves. Farm livestock medicine does not include medicines for work stock, riding horses, or small domestic animals, including dogs and cats. It also does not include vitamins, dewormers, teat dip, udder wash, disinfectants, shampoos, pet foods, flea powder and flea sprays, laboratory equipment used by a veterinarian, bandages, or plaster of paris that is used to set an animal's broken bone.

(e) "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).

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

(g) "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.

(h) "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 or animals which are a source of wool, such as llamas, including those purchased for breeding.

(i) "Milk house supplies" means items used exclusively in producing and handling milk on dairy farms, including milk filters, soaps, detergents, udder washes and balms, pipeline cleaners, manual cleaners, acid cleaners, disinfectants and sanitizers such as iodine and chlorine, teat dips, teat dilators, paper towels, insect strips, cloth udder towels, udder sponges, brushes and brooms, window cleaners and water softener salt. The exemption for milk house supplies does not include equipment such as dispensers, jug and barrel pumps, sinks, faucets, washup hoses and nozzles, buckets and pails, milk cans, strainers for milk cans or coolers, and electricity.

(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), 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 sales 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."*

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, and lawn and garden tractors.

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 all terrain vehicles or trucks not licensed for highway use, auxiliary power generators, bale loaders, balers, barn cleaners, barn elevators, chain saws for orchard use but 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 dehorners, 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 posthole 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", including motor trucks, auto mobiles, station wagons, buses and motor cycles. "For highway use" means licensed for that use. Sales of parts, supplies and repairs for vehicles for highway use, including nurse tanks and trailers, 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. Sales or use tax. A person who buys without tax by claiming the farming exemption owes the sales 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, animal bedding, 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.*" "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 prevention of diseases in livestock or poultry. "Feed" does not include a mixture labeled and sold for specific treatment or cure of a disease. Feed for farm livestock, poultry and work stock is exempt but feed for pets, such as dogs and cats, is 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 or sales tax pursuant to s. Tax 11.14 (2) (c) 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.

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., including telephone, laundry, dry cleaning and photographic services.

(d) A farmer's purchases of electricity and natural gas for residential use, and electricity for use in farming, are exempt under s. 77.54 (30), Stats., if billed during the period November 1 through April 30 each year. Natural gas sold to farmers for use in farm machines is exempt under s. 77.54 (3), Stats., during the entire 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.

(7) Sales of tangible personal property by farmers which are taxable include:

(a) Gamebirds sold to persons, regardless of whether the birds are used as food for human consumption, if the primary reason for the purchase of the gamebirds is for hunting.

(b) Horses for use in racing, riding or show.

(c) Llamas for use as pack animals, pets or to herd sheep.

(d) Flowers, Christmas trees and other decorative trees, plants or shrubs.

(e) Timber or gravel when the purchaser acquires this property for removal.

Note: The interpretations in s. Tax 11.12 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 64, Laws of 1971 created s. 77.54 (27), Stats., exempting semen, effective July 22, 1971; (b) Baling wire and twine became exempt under s. 77.54 (3m), Stats., on December 24, 1975 under Chapter 146, Laws of 1975; (c) Chapter 1, Laws of 1979 provided a 6 month exemption under s. 77.54 (30), Stats., each year for electricity for residential use or for use in farming and a 12 month exemption for fuel oil, propane, coal, steam or wood for residential use, and (d) The definition of "feed lot" in sub. (2) (a) 2 is effective on December 1, 1981, (e) The definition of "exclusively" in sub. (4) (b) (intro.) is effective October 1, 1989, pursuant to 1989 Wis. Act 31. Prior to October 1, 1989, and on or after December 1, 1981, "exclusively" meant used solely in farming to the exclusion of all other uses, except for infrequent or sporadic use other than farming, (f) Farm livestock medicines and milk house supplies became exempt under s. 77.54 (33) and (34), Stats., effective July 1, 1986 pursuant to 1985 Wisconsin Act 29, (g) Animal bedding became exempt under s. 77.54 (3m), Stats., effective July 1, 1986 under 1985 Wis. Act 29.

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; am. (4) (a) 1., 3. and 5., and (5) (c), cr. (5) (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (4) (a) (intro.) and 7., (4) (b) 6. b., Register, July, 1987, No. 379, eff. 8-1-87; am. (2) (a) 1. and (4) (b) 7., cr. (7), Register, November, 1988, No. 395, eff. 12-1-88; renum. (2) (a) to (d) and (4) (b) 7. and 8. to be (2) (c), (g), (f), (b), (h) and (e), cr. (2) (a), and (d) and (i), am. (4) (b) (intro.) and 3. b., Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.13 Sale of a business or business assets. (ss. 77.51 (9) (a) and (14g) (h), 77.52 (12) 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.
2. A single transaction or series of transactions at the time of termination of a business.
3. Piecemeal sales, whether part of a continuing business or upon termination.

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

(2) EFFECT OF HOLDING A SELLER'S PERMIT. (a) Pursuant to s. 77.51 (9) (a), Stats., a person holding or required to hold a seller's permit at the time of disposition of business assets may not claim the occasional sale exemption. A person may qualify for the occasional sale exemption if that person delivers the seller's permit to the department for cancellation prior to the disposition. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the department.

ment because a person may not continue regular business operations without a permit.

(b) A person who operates at more than one business location each of which requires the holding of a seller's permit, and who ceases to operate at one of the business locations, and sells the assets at that location, cannot qualify for the occasional sale exemption.

Note: Permits issued by the department are general in nature and can be used to sell any kind of tangible personal property or taxable services at one location. One permit is required under the statute for each location at which a person has business operations which require the holding of a seller's permit.

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

(a) Retailers may personally deliver their seller's permits to a representative of the department's income, sales, inheritance and excise tax division at the representative's office during regular office hours. The department shall presume the permit was received at 12:01 a.m. on the day it is received.

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

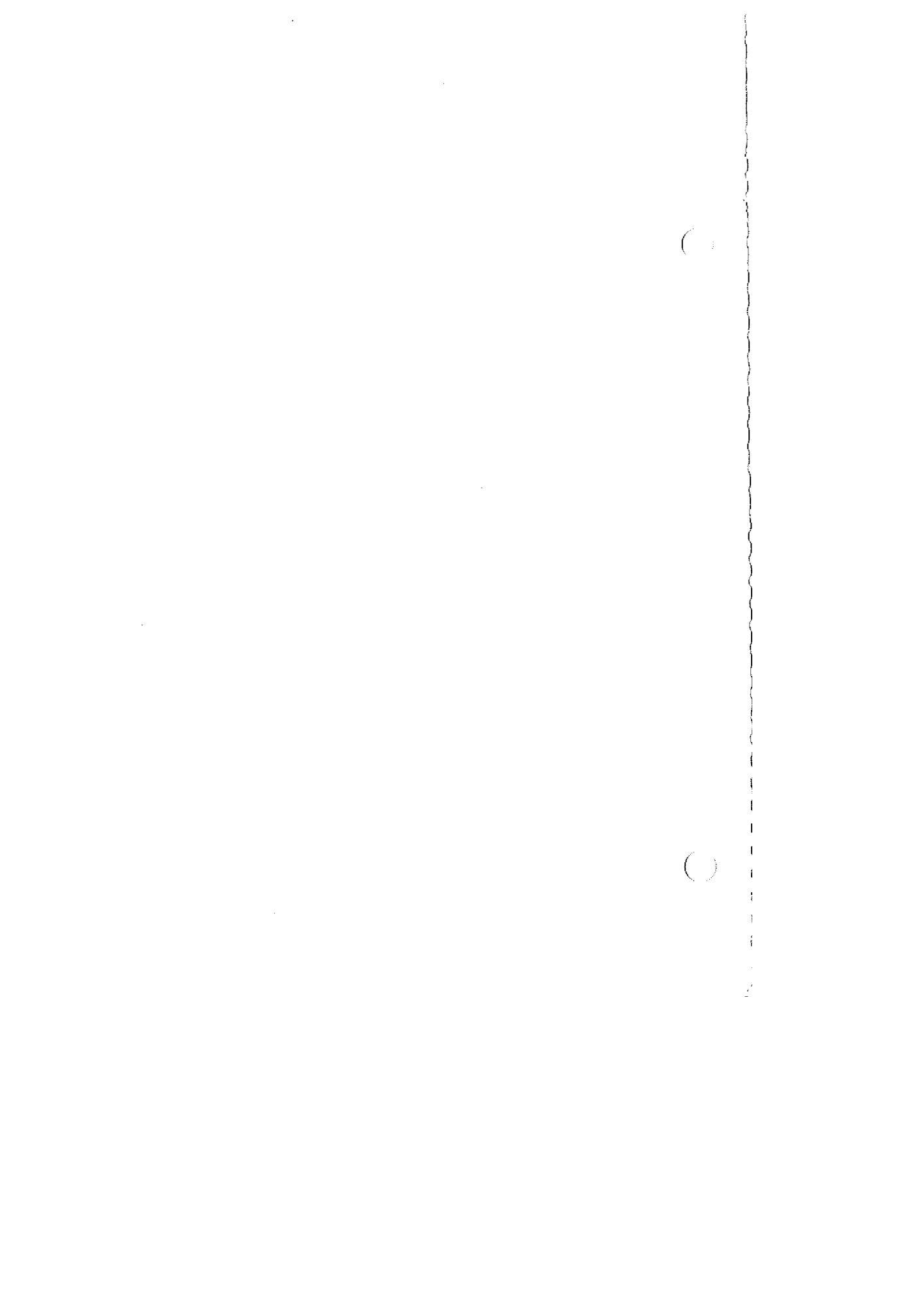
(c) If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to deliver the actual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

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

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

(c) The fact that a business ceases operations and no longer conducts its day to day sales of tangible personal property or taxable services shall not result in the automatic cancellation of a seller's permit. Section 77.52.

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1975, and the exemption in sub. (3) for oxygen equipment became effective September 1, 1983 pursuant to 1983 Wisconsin Act 27.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78; am. (4) (a) 1. and cr. (4) (b) 5., Register, January, 1983, No. 325, eff. 2-1-83; am. (3), Register, September, 1984, No. 345, eff. 10-1-84; am. (1) (a), Register, August, 1985, No. 356, eff. 9-1-85.

Tax 11.18 Dentists and their suppliers. (ss. 77.51 (13) (e) and (f) and (14) (L), 77.52 (2m) and 77.54 (14) and (22), Stats.).

(1) **DENTISTS CHARGES.** Charges by dentists for dental services are not subject to the sales tax. In addition, charges for items specifically designed for a patient which are installed in the patient's mouth, including artificial teeth, fillings, bridges, crowns, or inlays are not subject to the tax.

(2) **EXEMPT SALES TO DENTISTS.** (a) The gross receipts from the following sales to dentists are exempt under s. 77.54 (14) or (22), stats.:

1. Medicines, including nitrous oxide, oxygen, novocaine and bone regeneration materials.

2. Gold, silver, other alloys used to fill teeth and cement and bonding agents used in conjunction with fillings.

3. Crowns, bridges, bridgework, dentures, inlays, fillings and other items fabricated by a dental laboratory which the dentist installs in the patient's mouth.

(b) The items described in par. (a) include braces and other corrective and supporting devices individually designed or constructed for a particular patient, such as braces made by dental laboratories at the prescription of the orthodontist or dentist, and teeth, mouth and jaw braces and supports which are not fitted until the dentist puts them in a patient's mouth, but which are recognizable as fabricated supports at the time the dentist buys them.

(3) **TAXABLE SALES TO DENTISTS.** (a) The gross receipts from the following sales to dentists are taxable:

1. Metal, wire, plastic or other materials purchased by a dentist which the dentist uses to construct braces and other teeth, mouth and jaw supports.

2. Dental equipment, surgical instruments, office equipment, office supplies and consumable supplies used by dentists to conduct their business.

(b) Items included in par. (a) include tongue depressors, bandages, cleaning paste, tooth brushes, dental floss and cotton.

History: Cr. Register, November, 1978, No. 276, eff. 12-1-78; am. (1), r. and recr. (2) and (3), Register, April, 1990, No. 412, eff. 5-1-90.

Tax 11.19 Printed material exemptions. (ss. 77.51 (8), 77.52 (2) (a) 11, 77.54 (2m), (9a), (15), (25) and (30), Stats.) (1) **GENERAL.** All retail sales of tangible personal property, including printed material, are subject to the tax, except when a specific exemption applies to the transaction. This rule describes exemptions which commonly apply to sales of printed material.

(2) **STATUTES.** (a) Section 77.52 (2) (a) 11 imposes the sales and use tax on certain services. However, an exemption is provided for the printing

or imprinting of tangible personal property furnished by consumers, which property will be subsequently transported outside the state for use outside the state by the consumer for advertising purposes.

(b) Section 77.54 (15), Stats., provides an exemption for the sale of newspapers, of periodicals sold by subscription and regularly issued at average intervals not exceeding 3 months, of controlled circulation publications sold to commercial publishers for distribution without charge or mainly without charge or regularly distributed by or on behalf of publishers without charge or mainly without charge to the recipient and of shoppers guides which distribute no less than 48 issues in a 12-month period.

(c) Section 77.54 (25) provides an exemption for printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

(d) Section 77.54 (2m), Stats., provides an exemption for "The gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient." This exemption applies to newspapers, shoppers guides and to periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (30), Stats.

(3) NEWSPAPERS, SHOPPERS GUIDES, CONTROLLED CIRCULATION PUBLICATIONS AND PERIODICALS DEFINED. (a) Section 77.51 (8), Stats., defines a "newspaper" under ch. 77 as: ". . . those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of current news and information of a general character and of a general interest to the public. In addition, any publication which qualifies as a newspaper under s. 985.03 (1) is a newspaper. 'Newspaper' also includes advertising supplements if they are printed by a newspaper and distributed as a component part of one of that newspaper's publications or if they are printed by a newspaper or a commercial printer and sold to a newspaper for inclusion in publications of that newspaper. A 'newspaper' does not include handbills, circulars, flyers, or the like, advertising supplements not described in this subsection which are distributed with a newspaper, nor any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within this subsection. In this subsection, advertising is not considered news of a general character and of a general interest."

(b) Section 77.54 (15), Stats., defines a shoppers guide as: "a community publication delivered, or attempted to be delivered, to most of the households in its coverage area without a required subscription fee, which advertises a broad range of products and services offered by several types of businesses and individuals" and it defines a controlled circulation publication as "a publication that has at least 24 pages, is issued at

regular intervals not exceeding 3 months, that devotes not more than 75% of its pages to advertising and that is not conducted as an auxiliary to, and essentially for the advancement of, the main business or calling of the person that owns and controls it".

Example: A taxpayer publishes a quarterly publication which it mails to current and prospective customers. The publication contains articles of interest to customers which contain endorsement of the taxpayer's business and products. The publication also contains advertising of the taxpayer's products as well as products of other vendors. This publication is conducted essentially for the advancement of the taxpayer's business and does not qualify as a controlled circulation publication.

(c) The exemption for periodicals is limited to publications which are sold by subscription and which are regularly issued at average intervals not exceeding 3 months each issue of which contains news or information written by different authors which is of general interest to the public, or to some particular organization or group of persons. Each issue must bear a relationship to prior or subsequent issues in respect to continuity of literary character or similarity of subject matter, and there must be some connection between the different issues of the series in the nature of the articles appearing in them. To qualify for the exemption, the publication must qualify for the second class mail rate or as a controlled circulation publication under U.S. postal laws and regulations.

(d) The newspaper and periodical exemption does not apply to books complete in themselves, even those issued at stated intervals (for example, books sold by the Book of the Month Club or similar organizations); paperback books, a new one of which may be issued once a month or some other interval; or so-called "one-shot" magazines that have no literary or subject matter connection or continuity between prior or subsequent issues. The exemption also does not apply to catalogs, programs, scorecards, handbills, maps, real estate brokers' listings, price/order books, corporate reports to stockholders, house organs, or to advertising materials which become a component part of a periodical.

(4) **PRINTED ADVERTISING MATERIALS FOR OUT-OF-STATE USE.** (a) Printed advertising materials including catalogs and their mailing envelopes may be purchased from Wisconsin or out-of-state suppliers without tax pursuant to s. 77.54 (25), Stats., when those materials are purchased and stored for the purpose of subsequently transporting the same outside the state by the purchaser for use thereafter solely outside this state. The exemption applies to catalogs designed to be used by a retailer's potential customers.

(b) The exemption does not apply to materials shipped to Wisconsin addresses. It also does not apply to parts price lists, parts stock order books, order forms, stocking and purchasing guides, display racks, or 3-dimensional plastic items designed to be used by wholesalers and retailers. Matchbooks, calendars, calendar pads, desk pads, folders, binders, envelopes which do not contain exempt advertising material and playing cards also do not qualify for the exemption.

(5) **EXEMPT PURCHASERS.** Sales of printed material to governmental units, public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from such organization is retained. Sales

to persons holding a certificate of exempt status can be shown to be exempt by recording the certificate number on the bill of sale.

Note: The interpretations in s. Tax 11.19 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) the exemption for printing or inprinting of tangible personal property furnished by customers and used out-of-state in sub. (2) (a) became effective March 1, 1970; (b) the exemption for advertising materials used out-of-state in sub. (4) (a) was effective May 21, 1972; (c) the second class mail standard described in sub. (3) became effective on August 1, 1974; (d) the exemption for sales of shoppers guides became effective July 1, 1978; (e) the exemption for ingredients and components of shoppers guides, newspapers and periodicals described in par. (2) (d) became effective July 2, 1983; (f) the definition of newspaper in par. (3) (a) was added to the law effective July 2, 1983; and the limitation of the periodical exemption to "periodicals sold by subscription" became effective July 2, 1983; (g) a controlled circulation exemption was created by 1985 Wisconsin Act 149, effective September 1, 1983, as reflected in pars. (2) (b) and (3) (b).

History: Cr. Register, August, 1979, No. 284, eff. 9-1-79; am. (2) (c) and (4) (b), Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (b) and (3) (c), cr. (2) (d), r. and recr. (3) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (a) and (b), (3) (b) and (4) (a), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.26 Other taxes in taxable gross receipts and sales price. (s. 77.51 (4) (a) 4, and (15) (a) 4, Stats.) (1) **GENERAL RULE.** (a) Tangible personal property sold at retail often is subjected to many direct and indirect taxes prior to reaching a retailer. Such taxes are commonly included in the price the retailer pays for the property and are not separately identifiable as taxes. Occasionally, however, a tax is either separately passed on to a retailer or is imposed at the retail level of activity, but is different from and in addition to the sales tax. Such tax may be imposed by this state, the federal government or a municipality.

(b) In determining the measure of sales and use taxes, certain separately stated or separately passed on taxes are included in gross receipts and the sales price, while others are not. However, the same taxes that are included or excluded from gross receipts are also included or excluded from sales price. Thus, the treatment of such taxes for sales and use tax purposes is identical, even though the measure of tax for each is gross receipts and sales price, respectively.

(2) **TAXES SPECIFICALLY INCLUDED AS PART OF GROSS RECEIPTS AND SALES PRICE.** The following taxes shall be included in a retailer's gross receipts and sales price:

(a) The fermented malt beverage tax imposed by s. 139.02, Stats.

(b) The taxes imposed upon intoxicating liquors (including wine) by s. 139.03, Stats.

(c) Any federal stamp tax and manufacturer's or importer's excise tax. Presently there are federal excise taxes on tires, inner tubes, tread rubber, certain trucks, truck parts, firearms, ammunition, lubricating oils, fishing equipment, cigarettes, beer, and intoxicating liquor (including wine).

(d) A federal, county or municipal fuel tax included in the price of special fuels and general aviation fuel subject to the sales tax (e.g., sales for use in aircraft, boats and other non-highway use).

(e) The cigarette tax imposed by s. 139.31 or 139.33, Stats.

(f) The Canadian or any other country's export gallonage tax on fuels.

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(g) The tobacco products tax imposed under ss. 139.76 and 139.78, Stats.

(3) TAXES SPECIFICALLY EXCLUDED FROM GROSS RECEIPTS OR SALES PRICE. The following taxes shall be excluded from a retailer's gross receipts or sales price:

(a) The federal communications tax imposed upon intrastate telegraph service and telephone service.

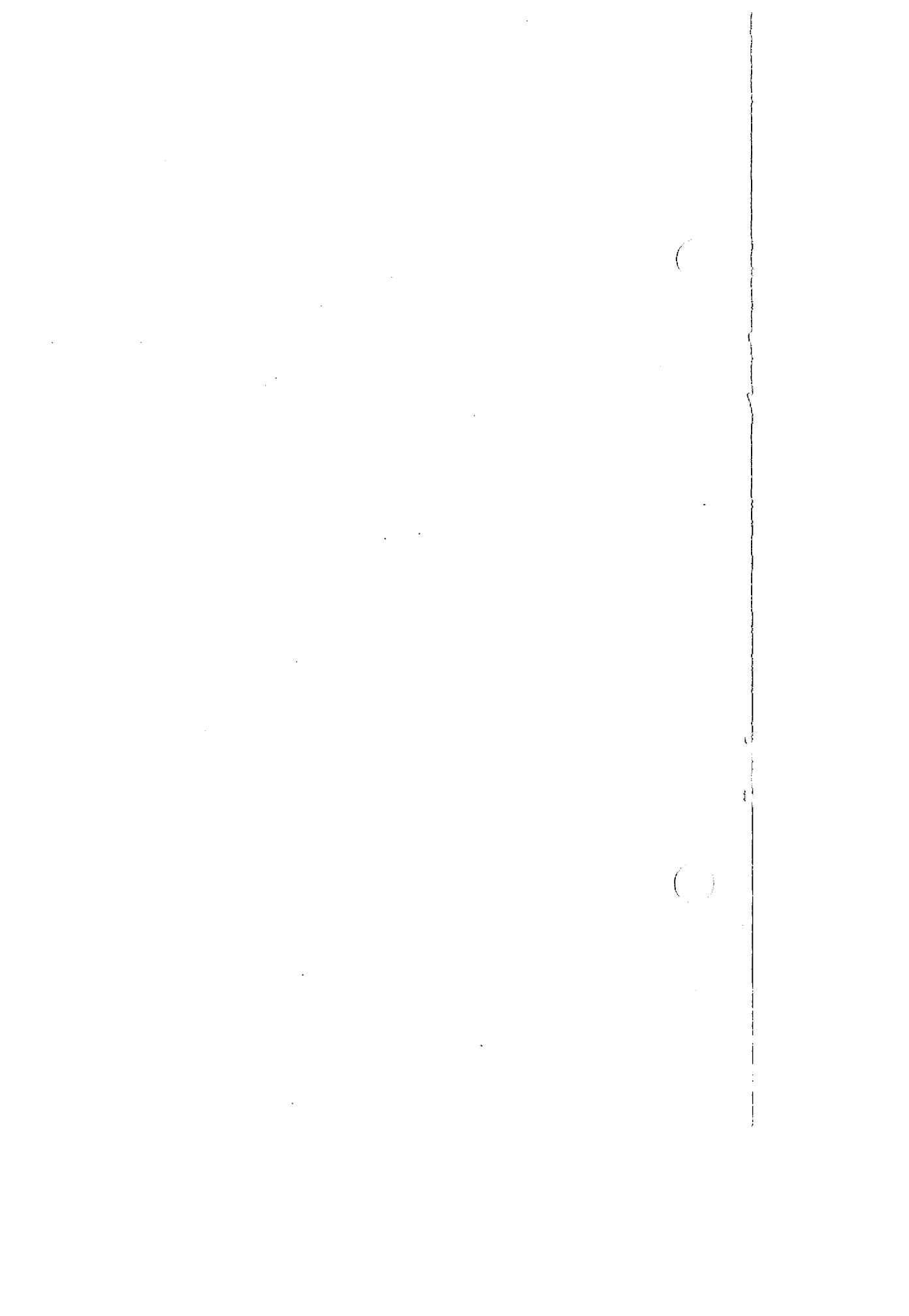
(b) Any tax imposed by the United States, this state or a Wisconsin municipality upon or with respect to retail sales, whether imposed upon the retailer or consumer, if measured by a percentage of sales price or gross receipts and if the retailer is required to pay the tax to the governmental unit which levied the tax.

Note: Examples: Taxes which are not included in a retailer's gross receipts include:

1. The room tax imposed under s. 66.75, Stats., which municipalities impose on persons furnishing lodging to transients.

2. The federal excise tax imposed on the first retail sale of heavy trucks and trailers under section 4051 of the Internal Revenue Code.

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- (z) Scrap processors.
- (za) Shoe and clothing factories.
- (zb) Smelting and steel mills.
- (zc) Tanneries.
- (zd) Tool and die making plants.
- (ze) Crushing, washing, grading and blending sand, rock, gravel and other minerals.
- (zf) Ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

(zg) Tire retreaders.

(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.
- (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.

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7. Paper recycling.
8. Photography.
9. Popping corn.
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 s. Tax 11.39 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; am. (1), (3) (f), cr. (3) (ze), (zf) and (zg), r. (4) (p), (q) and (r) 10., Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (f), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.40 Exemption of machines and processing equipment. (s. 77.54 (6) (a) and (6m), 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 and safety attachments for those machines and equipment." "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 77.54 (6m), Stats., 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 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.

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(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).

(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).

(4) REPAIR OF EXEMPT MACHINERY AND PROCESSING EQUIPMENT. The gross receipts from the sale of and the storage, use or other consumption of repair or replacement parts and from repair service for exempt machines and processing equipment are exempt. Examples of such parts include conveyor belts, grinding wheels, grinding balls, machine drills, auger bits, milling cutters, emery wheels, jigs, saw blades, machine tool holders, reamers, dies, molds and patterns.

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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.

Note: The interpretations in s. Tax 11.40 are effective under the general sales and use tax law on and after September 1, 1969, except that: (a) the "exclusive" standard in sub. (1) (a) became effective December 1, 1981, and (b) the exemption for "safety attachments" became effective on June 1, 1986, pursuant to 1985 Wis. Act 149.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (4) (c), Register, October, 1979, No. 286, eff. 11-1-79; am. (1) (a), (2) (b), (3) (a) to (c), Register, November, 1981, No. 311, eff. 12-1-81; am. (1) (a), Register, June, 1990, No. 414, ef. 7-1-90.

Tax 11.41 Exemption of property consumed or destroyed in manufacturing. (s. 77.54 (2) and (6) (a), Stats.) (1) GENERAL. (a) Section 77.54 provides in part: "There are exempted from the taxes imposed by this subchapter: . . . (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property . . . which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, but this exemption shall not include fuel or electricity."

(b) As used in s. 77.54 (2), Stats., "manufacture" shall conform to the definition of "manufacturing" in s. 77.54 (6m), Stats.

(2) RELATIONSHIP OF S. 77.54 (2) AND (6) (a). In construing the exemption provided in s. 77.54 (2), it is necessary to refer to another exemption provided in s. 77.54 (6) (a). The latter section exempts gross receipts from the sale of certain machines, equipment and parts thereof used in manufacturing (this exemption is interpreted in rule Tax 11.40). Section 77.54 (2) and (6) (a) do not overlap and are mutually exclusive. Accordingly, machines, processing equipment and parts thereof must be within the exemption provided by s. 77.54 (6) (a) and if they are not, cannot be within the exemption provided by s. 77.54(2).

(3) EXAMPLES OF PERSONAL PROPERTY WITHIN S. 77.54(2) EXEMPTION.
(a) The following property is within the exemption provided by s. 77.54(2) if the property is consumed, destroyed or loses its identity in the manufacture of tangible personal property destined for sale:

1. Acids.

2. Bleaching agents.

3. Chemicals.

4. Cleaning compounds and solvents for maintaining manufacturing machinery whether used during the manufacturing process or while the machinery is idle. A food processor, who is required to maintain strict sanitation standards by a regulatory agency, may also purchase chemicals and cleaning agents used to clean the walls, ceilings, floors and drains of the rooms in which manufacturing takes place without tax.

Note: Refer to the Wisconsin Tax Appeals Commission decision of May 25, 1984, in *Oscar Mayer & Co., Inc. vs. Wisconsin Department of Revenue*.

5. Cutting and lubricating oils.

6. Filtering clay.

7. Fluxing material.

8. Foundry sand.

9. Greases.

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events of 7 consecutive days or less retailers holding concessionaire permits shall deposit security of \$10 per concession for each event beginning prior to January 1, 1982 and \$25 per concession for each event beginning on or after that date and deposits for events which exceed 7 consecutive days shall be \$10 per concession for each event beginning prior to January 1, 1982 and \$50 per concession for each event beginning on and after that date.

Note: The revision to this section is effective on February 1, 1982 and the increases in security deposits are effective on that date.

(4) RETURNS. (a) Sales and use tax returns due from persons holding permits referred to in this section shall be subject to the provisions of s. 77.58, Stats. The returns shall report the tax due for the period of time or event covered by the return and shall be due as follows:

1. Mobile seller's permittee: Quarterly, on the last day of the next month following a calendar quarter unless notified by the department to file on some other basis under s. 77.58 (1), (2) and (19), Stats., and shall include on such return gross receipts from all temporary events and other taxable transactions of the permittee during the quarter.

2. Temporary seller's permittee: Per event, within 10 days after the close of the event for which the permit was issued.

3. Concessionaire permittee: Annually, on or before January 31 of the next succeeding calendar year, and including on such return the gross receipts from all concessionaire events conducted by the permittee during the calendar year.

(b) Concessionaire and temporary seller permittees may claim the security deposited in cash for the event or events reported on as a credit against the tax due, unless the department notifies the permittee otherwise.

(5) VIOLATION. Under s. 77.52 (12), Stats., any person who operates without a permit is guilty of a misdemeanor and shall immediately cease selling when requested by a department representative.

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, 1965, No. 114, eff. 7-1-65; am. Register, May, 1966, No. 125, eff. 6-1-66; am. (1), Register, June, 1976, No. 234, eff. 7-1-75; renum. from Tax 11.01, Register, January, 1978, No. 265, eff. 2-1-78; r. and recr., Register, January, 1982, No. 313, eff. 2-1-82.

Tax 11.535 Operators of a swap meet, flea market, craft fair or similar event (s. 73.03 (38), Stats.) (1) PURPOSE. This section clarifies requirements and establishes a time standard for the reports required under s. 73.03 (38), Stats., which authorizes the department to require operators of swap meets, flea markets, craft fairs and similar events to report to the department specific identifying information of each vendor selling merchandise at these events.

(2) DEFINITIONS. In this section:

(a) "Event" means an occurrence, occasion, activity, or function at which merchandise is sold or traded.

(b) "Operator" means a person who, or an entity such as an association, partnership, corporation, or nonprofit organization, which arranges, organizes, promotes or sponsors an event.

(c) "Selling merchandise" means the sale, rental, lease, exchange, trade or barter of, or taking orders for merchandise, goods, or products for money or other consideration, or both.

(d) "Similar events" means events which are similar to swap meets, flea markets and craft fairs and includes tradeshow, carnivals, fairs and fund-raising events.

(e) "Vendor" means a person or entity selling merchandise at retail at an event. An operator might also be a vendor at an event.

(3) **REPORT REQUIRED.** Each operator shall furnish to the department within 10 days following the close of an event, the name of the event; the date or dates and location of the event; and the real name, business name, address, social security number and, if available, the seller's permit number of each vendor at the event.

(4) **FORMS.** Operators shall report the information required by sub. (3) on forms provided by the department or in a format similar to that form.

Note: Copies of the reporting form may be obtained at any Department of Revenue office, by calling (608) 266-2776, or by writing to: Wisconsin Department of Revenue, Post Office Box 8902, Madison, Wisconsin 53708.

(5) **ALTERNATIVE REPORTING METHOD.** Operators of continuing or successive events may report all vendors for each event or may report under an alternative method approved by the department. Any operator may request approval from the department of an alternative method of reporting which will provide the department with the required information on all vendors at each event. The request shall be made in writing to: Wisconsin Department of Revenue, Operator/Vendor Program, Post Office Box 8902, Madison, Wisconsin 53708. It shall list the dates and locations of events to be held during the calendar year and the proposed method for reporting the information required.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.54 Temporary amusement, entertainment or recreational events or places (ss. 77.51 (13) (c), 77.52 (7), (19) and 77.61 (2), Stats.). (1) "Admission" for the purpose of this rule means the right or privilege to have access to or use of a place, facility or location in Wisconsin where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions are subject to sales tax.

(2) "Places of amusement, entertainment or recreation" for the purpose of this rule include, but are not limited to, auditoriums, race tracks, street fairs, rock festivals or other places where there is any show or exhibition for which any charge is made including, but not limited to, the sale of tickets, gate charges, seat charges, entrance fees and motor vehicle parking fees.

(3) Pursuant to s. 77.51 (10), Stats., and in this rule, "person" includes any natural person, firm, partnership, joint venture, joint stock company, association, public or private corporation, cooperative, estate, trust, receiver, executor, administrator, any other fiduciary, and any representative appointed by order of any court or otherwise acting on behalf of others.

(4) Entrepreneurs, promoters, sponsors or managers of an amusement, entertainment or recreational event shall be regarded as retailers for the Register, June, 1990, No. 414

purposes of s. 77.51 (13) (c), Stats., if said entrepreneurs, promoters, sponsors or managers have control and direction of the event including activities such as controlling the sale of admissions or admission tickets; controlling or regulating the admittance of all persons to the event or place; determining the nature of the amusement, entertainment or recreation to be offered; deciding the scale of prices to be charged for admission; receiving the proceeds from ticket sales, including amounts from ticket agents or brokers; and deciding, or having the right to decide, the disposition of the net profits, if any, realized from the event.

(5) As retailers, such entrepreneurs, promoters, sponsors or managers are persons liable for the sales tax and are required to hold a seller's permit for each place of operations pursuant to s. 77.52 (7), Stats., and may be required to post security as provided in s. 77.61 (2), Stats. Such retailers are required to have a seller's permit on the first date on which tickets or admission to an event to be conducted in this state are offered for sale.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(6) This rule does not apply to traveling attractions which perform in stadiums, theaters or other places where the permanent management of such stadium, theater or other location holds a valid seller's permit, controls the sale of tickets or admissions and assumes the liability for the payment of the sales tax. Further, it does not apply to churches or other nonprofit groups which operate within the occasional sale limitations of s. 77.51 (10) (c), Stats.

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

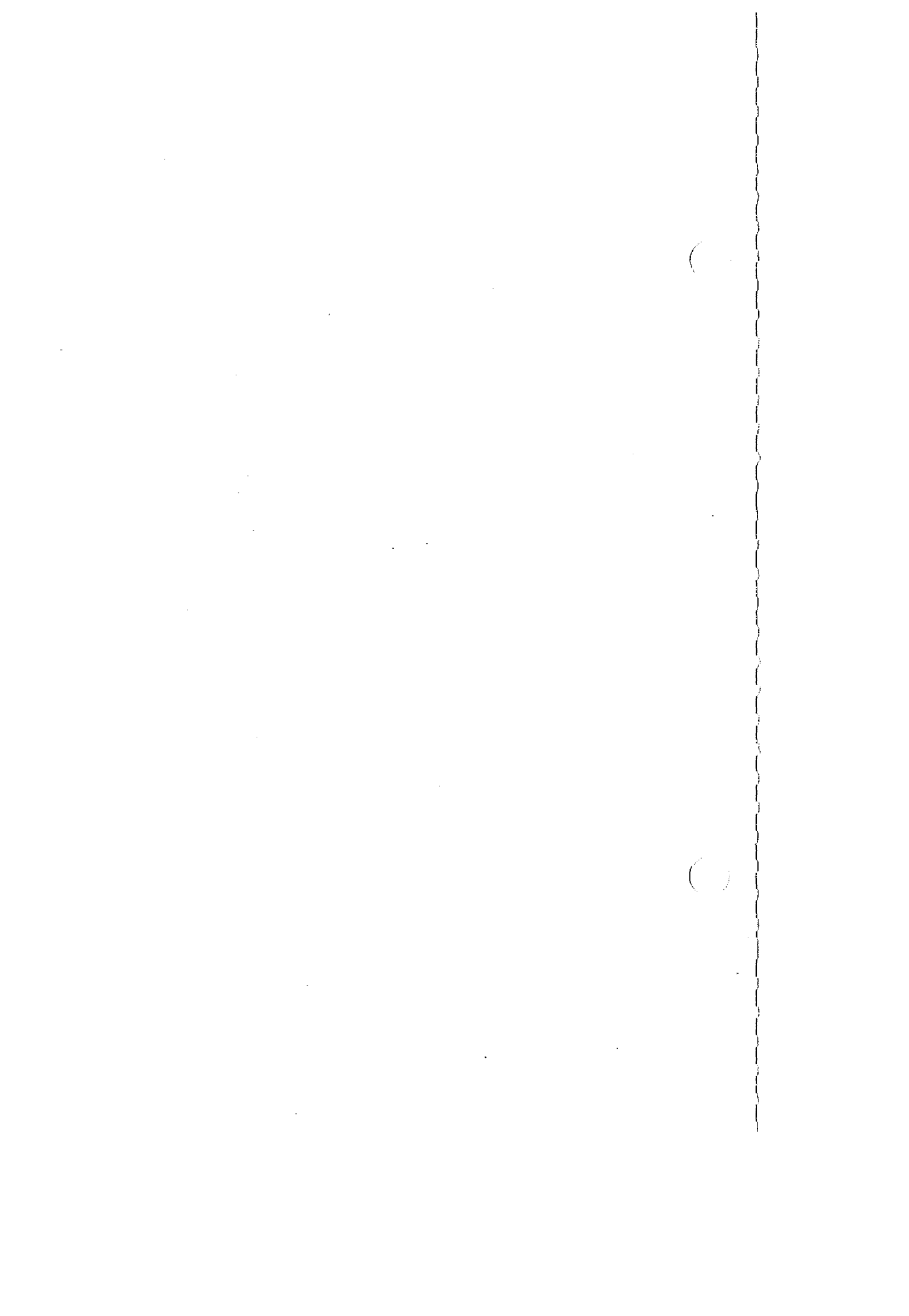
History: Cr. Register, March, 1976, No. 243, eff. 4-1-76; renun. from Tax 11.02; Register, January, 1978, No. 265, eff. 2-1-78.

Tax 11.55 Agents, consignees, lienors and brokers. (s. 77.51 (1), (13) and (14g) (f), Stats.) (1) **UNDISCLOSED PRINCIPAL.** A person who has possession of personal property owned by an unknown or undisclosed principal and has the power to transfer title to that property to a third person, and who exercises that power, is a retailer whose gross receipts are subject to the tax.

(2) **DISCLOSED PRINCIPAL.** (a) Gross receipts from the sale of tangible personal property made by a person with possession of the property, who is acting for a known or disclosed principal, are taxable to the principal if the principal is engaged in the full or part-time business of selling tangible personal property. If the principal fails to pay the tax, the agent may be liable for it.

(b) A principal shall be deemed disclosed to a purchaser only when the evidence shows that the identity of the principal is made known to the

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(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, peat, fuel cubes produced from solid waste 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%.

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 use 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 manufacturing 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.

(c) Section 77.54 (30) (a) 4, Stats., exempts sales of "Any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue."

Note: The interpretations in s. Tax 11.57 are effective under the general sales and use tax law effective September 1, 1969, except: (a) The exemptions in sub. (2) (L) 1, 2 and 3 were created by Chapter 1, Laws of 1979. Sales of coal, fuel oil, propane, steam and wood described in sub. (2) (L) 1 became exempt July 1, 1979; and the six-month exemption for electricity and natural gas in sub. (2) (L) 2 and 3 was effective November 1, 1979, (b) the exemption described in sub. (4) (a) for fuel converted to electrical energy, gas or steam by utilities was effective October 1, 1981, pursuant to Chapter 20, Laws of 1981, (c) The exemption, effective April 2, 1986, for peat and fuel cubes produced from solid waste in sub. (2) (L) 1 was created by 1985 Wisconsin Act 149.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; cr. (2) (1), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (4) (a), Register, June, 1983, No. 330, eff. 7-1-83; cr. Register, June, 1990, No. 414

(4) (c), Register, April, 1990, No. 412, eff. 5-1-90; am. (2) (e) 1., Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.61 Veterinarians and their suppliers. (ss. 77.51 (13) (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 pets 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. A veterinarian's purchases of medicines used on farm livestock, not including workstock, are exempt from tax.

(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.

Note: The interpretations in s. Tax 11.61 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Chapter 333, Laws of 1973, effective June 24, 1974, provided that a veterinarian is the consumer of all the animal medicines purchased. Prior to June 24, 1974, such purchases were exempt purchases for resale if sold independent of the performance of veterinarian services, (b) purchases of medicines used on farm livestock, but not workstock, became exempt under s. 77.54 (33), Stats., pursuant to Chapter 29, Laws of 1985, effective July 1, 1986.

History: Cr. Register, August, 1976, No. 248, eff. 9-1-76; am. (2) (a), Register, January, 1978, No. 265, eff. 2-1-78; am. (2) (a), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 11.62 Barbers and beauty shop operators. (s. 77.51 (13) (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 regis-

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ter 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.

Note: Refer to s. Tax 11.002 for a description of permit requirements, how to apply for a permit, and the 15-day time period within which the department of revenue is required to act on permit applications.

(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; am. (1) (b), Register, August, 1985, No. 366, eff. 9-1-85.

Tax 11.63 Radio and television stations. (ss. 77.51 (14), 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.

(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.

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(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

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