

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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sales or rentals of tangible personal property or selling, performing or furnishing taxable services at retail in this state shall have a seller's permit, unless the seller is exempt from taxation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Form S-174. For determination of taxable status of temporary sellers and reporting of tax liability.

(i) Form S-001U. For occasional and non-Wisconsin sales of boats.

(j) Form S-050U (also called "UT-5"). For consumers other than persons holding a Wisconsin seller's permit, retailers having a use registration certificate and nonresident contractors.

(k) Form SU-051. For nonresident contractors having a use tax liability who do not have a Wisconsin seller's permit.

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

(m) Form S-108 (also called "ST-12X"). The amended sales and use tax return for filing refund claims or reporting additional taxes for prior periods.

(2) Returns required to be filed with the department shall be filed by mailing them to P.O. Box 8902, Madison, Wisconsin 53708 or by delivering them to 4638 University Avenue, Madison, Wisconsin.

Note: Forms may be obtained by mail request to the Wisconsin Department of Revenue, P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (a), r. (1) (d), cr. (1) (m), Register, January, 1983, No. 325, eff. 2-1-83.

Tax 11.03 Elementary and secondary schools and related organizations. (s. 77.54 (4), (9) and (9a), Stats.) (1) DEFINITIONS. (a) In this rule, elementary school means a school providing any of the first 8 grades of a 12 grade system and kindergarten where applicable. Secondary school means a school providing grades 9 through 12 of a 12 grade system and includes the junior and senior trade schools described in s. 119.30, Stats.

(b) Elementary and secondary schools include parochial and private schools not operated for profit which offer any academic levels comparable to those described in par. (a) and which are educational institutions having a regular curriculum offering courses for at least 6 months in the year.

(c) Elementary or secondary schools do not include flying schools, driving schools, art schools, music schools, dance schools, modeling schools, charm schools, or similar schools which do not offer systematic instruction of the scope and intensity common and comparable to elementary and secondary schools.

(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), (1), (m) 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, supple- ment, correction or substitute for the bodily structure including the extremities of the individual." This exemption includes trusses, sup- ports, 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 substi- tute for any functioning portion of the body." "Other equipment" in- cludes 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 cos- metic 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:

(12), Stats., requires a permittee to “. . . forthwith surrender his permit . . .” when ceasing to operate as a seller. If the permittee does not surrender the permit at that time, the person shall not qualify for the occasional sale exemption until the permit is surrendered to the department for cancellation.

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

History: Cr. Register, March, 1978, No. 267, eff. 4-1-78; renum. (2) to be (2) (a), cr. (2) (b), r. (5), Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.14 Exemption certificates (including resale certificates). (ss. 77.52 (13) to (16), and 77.53 (10) and (11), Stats.) (1) STATUTES. The sales tax status of exemption certificates is contained in s. 77.52 (13) to (16), Stats., and the use tax status of exemption certificates is contained in s. 77.53 (10) and (11), Stats.

(2) **GENERAL.** (a) Exemption certificates are signed by purchasers or lessees and are given to sellers or lessors to verify that a transaction is exempt. Sellers and lessors can exclude from taxable gross receipts transactions for which they have accepted a valid exemption certificate in good faith from a purchaser. The department has provided retailers with 4 types of exemption certificates, each of which is designed for use in specific types of transactions. These certificates, discussed individually in this rule, are the following:

1. Resale Certificate (Form S-205).
2. Certificate of Exemption (Form S-207).
3. Manufacturer's Exemption Certificate (Form S-207m).
4. Farmer's Exemption Certificate (Form S-206).

(b) Use of an exemption certificate designed by the department is not required by law. A person may use a substitute exemption certificate if it contains all the essential information relating to the transaction and if it is in a form approved by the department. The law requires that the certificate be signed by and bear the name and address of the purchaser and that it indicate the general character of the property or service being purchased and the basis of the claimed exemption.

(c) Under ss. 77.54 (3) and 77.57, Stats., if a purchaser certifies in writing by using an exemption certificate, other than a resale certificate, that the property purchased will be used for activities or under circumstances which makes the purchase of the property exempt from the sales tax, and the property is subsequently used in a manner that makes the property ineligible for exemption from tax, the purchaser shall pay the sales tax.

(3) **EFFECT OF OBTAINING CERTIFICATE.** (a) A seller is relieved of liability for the tax if the seller takes from the purchaser a valid, written resale or exemption certificate which certifies that the purchaser will use the property or service in a manner or for a purpose entitling the seller to accept the certificate in good faith.

(b) To be valid, a resale or other exemption certificate must upon its face disclose a proper basis for exemption. The use of phrases such as “nontaxable”, “exempt” or similar terminology do not provide a proper

basis for an exemption. A certificate must be properly executed, dated and contain all the necessary information. Thus, all retailers should be familiar with the instructions contained in the certificate. A certificate claiming an exemption not provided by law is not valid.

(c) If a certificate is valid, a seller or lessor who accepts the certificate in good faith is relieved of any liability for collection or payment of tax upon transactions covered by the certificate. For good faith to be shown, the certificate shall contain no statement or entry which the seller or lessor knows, or has reason to believe, is false or misleading. The question of good faith is one of fact and depends upon a consideration of all the conditions surrounding the transaction. If the seller accepts a certificate with knowledge which gives rise to a reasonable inference that the purchaser does not intend to use the item or service as claimed, the good faith of the seller will be questioned. The seller is presumed to be familiar with the law and rules of the department relating to the business or businesses in which the seller is involved.

(4) **FAILURE TO OBTAIN CERTIFICATE.** If a seller does not obtain a certificate, a seller is not relieved from liability for the tax, nor from the burden of proving the sale was for resale or otherwise exempt. It is not a satisfactory substitute for obtaining an exemption certificate from the purchaser, for the seller to accept payment of the seller's billing with the tax or tax reimbursement deleted, or to accept the purchaser's permit number, or a statement that the transaction is not taxable.

(5) **CONTINUOUS CERTIFICATES.** (a) Continuous exemption certificates do not expire and need not be renewed at any prescribed interval. However, they should be renewed at reasonable intervals in case of a business change, registration number change or discontinuance of the specific business claiming the exemption. The seller should periodically review exemption certificates on file to ascertain that the person claiming the exemption is the person who furnished the certificate.

(b) Continuous exemption certificates (including continuous resale certificates) approved by the department do not allow a purchaser to issue "this time only" purchase orders canceling the continuous tax exemption certificate for the one transaction only. The notation "taxable" on a purchase order is not sufficient to relieve a purchaser of the responsibility for his or her previously issued continuous certificate, unless it is accompanied by a separate letter explaining the inapplicability of the previously issued certificate to a particular order.

(6) **RESALE CERTIFICATE (Form S-205).** (a) *Effect of obtaining resale certificate.* 1. The burden of proving that a sale of property or services is not at retail is upon the seller unless the seller accepts a certificate from the purchaser certifying that the property is purchased for resale. If valid and accepted in good faith from a person who is in the business of selling tangible personal property or taxable services and who holds a seller's permit, the certificate relieves the seller from liability for the sales tax and the duty of collecting the use tax.

2. If a purchaser gives a resale certificate for property acquired and then makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first stored or used. The use tax shall be reported and paid by the purchaser

with the tax return for the period in which the property is first so stored or used.

(b) *Contents of resale certificates.* A resale certificate (Form S-205) shall contain the following information:

1. The name and address and the signature of the purchaser.
2. A description of the general character of the tangible personal property or service sold by the purchaser.
3. A general description of the property or service purchased for resale if a "continuous" resale certificate is used, or an itemization of the property or service purchased if a "single purchase" certificate is used.
4. The seller's permit number of the purchaser, except that: a. A wholesaler who sells only to other sellers for resale may insert "wholesale only" in the space for a seller's permit number; or

b. A person registered as a seller in another state, who makes no retail sales in Wisconsin, may insert the name of the state in which registered and the permit number issued to the person by that state.

5. An indication of the general character of the purchaser's business. This is for the protection of the seller, since it may enable the seller to determine whether a particular type of property or service may be sold without collecting the tax. If the nature of the business described is such that the property or services purchased normally would not be resold, the seller should question the purchaser's reason for issuing the certificate. If a satisfactory answer cannot be provided, the certificate should not be accepted. For example, a "continuous" resale certificate describing a business as a "tavern" normally should not be accepted for the sale of a radio, camera, auto part or other item not regularly sold by taverns. If all of these conditions are met, the seller is relieved from the burden of proving that the sale of property or services was not a taxable sale.

(7) **CERTIFICATE OF EXEMPTION (Form S-207).** (a) The certificate of exemption (Form S-207) is a multiple purpose form which may be used for purchasing any of the following 6 exempt types of property or services:

1. Containers and other packaging, packing and shipping materials used to transfer merchandise to customers of the purchaser.

2. Tangible personal property becoming an ingredient or component part of an article of tangible personal property in any form destined for sale.

3. Trailers or accessories, attachments, parts, supplies, materials and service on motor trucks, tractors and trailers which are used exclusively in common or contract carriage.

4. Property or services purchased directly by and used by a religious, charitable, educational, scientific or other organization holding a Certificate of Exempt Status (C.E.S.). Sales to organizations holding a C.E.S. also can be shown to be exempt by a retailer's recording the certificate number on its bill of sale. A corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty

to children or animals which is located out-of-state, may use the Certificate of Exemption (Form S-207) to purchase without tax even though it has not been issued a Wisconsin Certificate of Exempt Status.

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

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

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

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

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

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

(10) DIRECT PAY PERMITS. The law does not provide for use of direct pay permits by manufacturers or other businesses. Such permits are allowed in certain states and authorize a purchaser to report taxes directly to the state, even when making taxable purchases from in-state suppliers. Thus, under Wisconsin law, a purchaser must furnish a supplier with the appropriate exemption certificate when making exempt purchases. Assertions by a purchaser that the purchaser will pay the use tax or sales tax pursuant to sub. (2) (c) directly to the state should not be accepted, as they do not relieve the seller of the obligation to report the tax on such sales.

(11) IMPROPER USE OF CERTIFICATES. A purchaser who gives an exemption certificate knowing at the time that the transaction is not exempt may be guilty of a misdemeanor. (s. 77.52 (16), Stats.) Such purchaser may also be liable for other penalties provided by law for filing incorrect returns.

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

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (7) (a) 4., Register, June, 1983, No. 330, eff. 7-1-83; cr. (2) (c) and am. (10), Register, July, 1987, No. 379, eff. 8-1-87. Register, July, 1987, No. 379

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether such items are used to transfer merchandise to customers, are exempt.

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

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

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- (b) Coat hangers used on display racks in stores.
- (c) Shopping carts or baskets and similar equipment.
- (d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property to customers are exempt.
- (e) Containers or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and containers used in delivering bakery products to retailers.
- (f) Lumber or other material used for bracing, blocking, skidding or shoring items while in transit; and cardboard and paper used to line box cars.
- (g) "Valuable containers" such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A "valuable container" is a container which has some use by virtue of its shape or design such that the purchaser envisions further use of the container after the contents have been removed. If the container's contents are not subject to the tax and the cost to the seller of the container or containers in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable container or containers and pay a sales tax on that part of the selling price. If the contents of the container or containers are taxable items such candy, the entire gross receipts from the sale of the package are subject to the tax.
- (h) Price tags and advertising matter used in connection with the sale of tangible personal property, including counter display cards used for advertising and display purposes.
- (i) Tanks on trucks used to deliver merchandise to customers.
- (k) Corrugated boxes and other containers and related packing materials purchased by movers for use in transporting a customer's goods.

Note: In a decision dated November 23, 1979 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Wisconsin Tax Appeals Commission held that corrugated boxes and related packing materials used by Leicht to transport a customer's property from one location to another do not come within the exemption in s. 77.54 (6) (b), Stats. This decision was affirmed by the Dane County Circuit Court on May 19, 1980, by the Court of Appeals, District IV on May 26, 1981.

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

1. Fruit baskets used by commercial orchards.
2. Grain storage bins purchased by farmers to store unprocessed corn, wheat, oats or other types of grain.
3. Boxes and crates used by a potato or berry farmer.
4. Animal waste containers or component parts thereof. This includes the usual building materials used to construct an animal waste container.

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

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

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

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

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

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

(7) **CONTAINERS SOLD.** If a separate charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge and is subject to the tax.

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

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Note: The interpretations in s. Tax 11.15 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for meat packaging and shipping materials became effective on May 20, 1978 pursuant to Chapter 368, Laws of 1977.

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

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (5) (a) and (8), r. (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; cr. (2) (k), Register, December, 1983, No. 336, eff. 1-1-84; renum. (2) (j) to be (1) (c) 12, and am., Register, September, 1984, No. 345, eff. 10-1-84.

Tax 11.16 Common or contract carriers. (ss. 77.54 (5) (b), (12) and (13) and 77.57, Stats.) (1) MOTOR CARRIERS. (a) Section 77.54 (5) (b), Stats., provides a sales and use tax exemption for: "Motor trucks, truck tractors, road tractors, busses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, busses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38 (2) (a)." Effective on December 1, 1981 and thereafter, "exclusively" as used in s. 77.54 (5) (b) and this section means that the motor trucks, truck tractors, road tractors, busses, trailers and semitrailers are used solely as common or contract carriers to the exclusion of all other uses, except that the sales and use tax exemption for such tangible personal property will not be invalidated by an infrequent and sporadic use other than as a common or contract carrier.

(b) Accessories, attachments, parts and supplies for exempt vehicles are exempt from the sales and use tax under s. 77.54 (5) (b), Stats. This exemption includes the following items if they are assigned to and carried on vehicles used exclusively as common or contract carriers: dollies, pianoboards, ladders, walkboards, tire chains, fire extinguishers, flares, bug deflectors, engine block heaters, defroster fans, auxiliary heaters and cooling units and their fuel, radios, flag kits including flags and reflectors, and items designed to be used with a vehicle which protect or secure the vehicle's load including tape, fitted tarpaulins, tarpaulin straps, furniture pads and covers, load holding chains, logistic straps and shoring beams. This exemption does not include corrugated boxes, containers and related materials that are transferred to customers in conjunction with the selling, performing or furnishing of a moving service, as provided in par. (h).

Note: In a decision dated May 19, 1980 in the case of *Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue* the Dane County Circuit Court reversed the November 23, 1979 decision of the Wisconsin Tax Appeals Commission and held that van equipment and supplies that are exempt under s. 77.54 (5) (b), Stats., include furniture pads, covers, packing supplies, tape, pianoboards, ladders, walkboards, straps, lining paper and corrugated boxes. The Court also stated that "It must be kept in mind that it is undisputed that all of the items are assigned to and carried on the vans." The Court of Appeals District IV, affirmed the Circuit Court's decision. Under this interpretation, the only corrugated boxes and packing materials that qualify for exemption under s. 77.54 (5) (b), Stats., are those that are assigned to and carried on an exempt van and that are not transferred to a customer.

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

(d) The exemption shall not apply to the following property used by common or contract carriers: automobiles as defined in s. 340.01 (4), Stats., station wagons as defined in s. 340.01 (61), Stats., and self-propelled vehicles for off-highway use such as road machinery, fork lifts and other industrial trucks.

(e) Equipment acquired by a carrier for the repair, service or maintenance of its exempt vehicles is not exempt, including repair tools, welding torches, battery chargers and grinding discs.

(f) If a vehicle purchased without tax is converted to private use, a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) is due. The tax is measured by the sales price of the vehicle to the purchaser, except that if the taxable use first occurs more than 6 months after the sale to the purchaser, the measure of the tax may be, at the purchaser's option, either the sales price or the vehicle's fair market value at the time the taxable use first occurs.

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

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

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

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

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

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

(h) The transfer to a customer of corrugated boxes, containers and related packing materials in conjunction with moving or transporting a customer's goods is incidental to the selling, performing or furnishing of the moving or transportation service. The service provider is the consumer of the property and shall pay tax on its purchase of the property to be transferred.

(i) Motor carriers 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 from registration under this standard shall pay sales or use tax on all purchases of tangible personal property or taxable services not otherwise exempt, including items that may be resold to customers. Persons who exceed the standard shall register with the department and obtain a seller's permit. Persons who register may purchase tangible personal property for resale without paying tax by issuing to their supplier a properly completed resale certificate or they may pay the tax to their supplier and, if the property is resold, claim a credit for the tax paid against any sales tax due.

Note: Refer to s. Tax 11.002 for 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.

(2) RAILWAY ROLLING STOCK. (a) Section 77.54(12), Stats., provides a sales and use tax exemption for: "The gross receipts from the sales of and the storage, use or other consumption in this state of rail freight or pas-

senger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.”

(b) The exemption for rolling stock includes:

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

2. Purchases of any equipment which is operated on railroad rails, including an industrial firm's switching locomotives used to switch freight cars on its own property, except vehicles which may also be used on a highway.

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

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

(c) The exemption does not apply to:

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

2. Bracing materials, rough lumber and dunnage materials.

3. Ice to refrigerate a railway car.

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

(b) The exemption for commercial vessels applies to:

1. Vessels and barges primarily engaged in interstate or foreign commerce or commercial fishing that are documented under the laws of the United States showing a net volumetric tonnage of 50 tons or more.

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

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

(c) The exemption does not apply to consumable supplies or furnishings that are not attached to the vessel, such as bedding, linen, table and kitchenware, tables, chairs, lubricants, work clothes, acetylene gas, nets, fishing tackle, lumber for dry docking, bracing, blocking and dunnage materials and other materials not incorporated into the vessel.

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

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78; am. (1) (a) and (d), (3) (b) 1., Register, November, 1981, No. 311, eff. 12-1-81; am. (3) (b) 1., Register, January, 1983, No. 325, eff. 2-1-83; am. (1) (b), (d) and (2) (b) 2., r. and recr. (1) (e), cr. (1) (h) and (i), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (f) and (3) (b) 1., Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (e) and (3) (b) 1., Register, April, 1990, No. 412, eff. 5-1-90; correction in (1) (a) made under s. 13.93 (2m) (b) 7, stats., Register, April, 1990, No. 412.

Tax 11.17 Hospitals, clinics and medical professions. (ss. 77.52 (2) (a) 1 and 9, 77.54 (9a), (14), (14g), (14m), (14r), (14s), (20) (c) 4, (22) and (28), Stats.) (1) **GENERAL.** (a) Although professional personnel in hospital Register, April, 1990, No. 412

tals and clinics and other members of medical professions including physicians, surgeons, oculists, optometrists and podiatrists regularly transfer antibiotics, bandages, splints and other tangible personal property to their patients in the performance of professional services, the transfer of such property is an incident of a service rather than a retail sale of such property. The persons are, therefore, deemed the consumers of the items in the same way they are the consumers of other materials and supplies used by them in the performance of their services. Accordingly, the suppliers of hospitals, clinics and members of medical professions are retailers obligated to register and report tax on sales of tangible personal property or taxable services, unless the transaction is specifically exempt from the tax.

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.

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

(2) PURCHASES BY HOSPITALS. Purchases by hospitals are exempt from the sales and use tax if the hospitals are nonprofit and, as such, qualify as charitable organizations under s. 77.54 (9a), Stats. Each is issued a Certificate of Exempt Status ("C.E.S.") by the department. When purchasing goods and services a hospital can furnish its C.E.S. number to its supplier, and the supplier may make sales of every type of tangible personal property or services to the hospital without tax. Hospitals organized for profit do not qualify for this exemption.

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

Taxable	Exempt
Adhesive tape	*Artificial eyes and limbs
Alcoholic beverages	Bone pins and plates
Bandages, gauze and cotton	*Crutches and wheel chairs
Bed pans	Diaphragms
Beds and linens	*Dietary foods
Compresses and dressings	*Disposable syringes containing insulin
Cosmetics	Dye
Deodorants and disinfectants	*Hearing aids and parts
Distilled water	Medical oxygen and equipment to administer oxygen
Enema kits	Medicines
Instruments	*Needles and syringes used by
Laboratory equipment and supplies	
Medical equipment	

Office equipment and supplies	diabetics
Paper products	Oral contraceptives
Printed material	Pacemakers
Rib belts and supports	Prescription drugs
Soda water beverages	Prophylactics
Soap	Rubbing alcohol
Splints and cast materials	Suppositories
Uniforms and gowns	Sutures
X-ray film and machines	Vaccines
	Vaginal creams and jellies
	Vitamins

(4) SALES BY HOSPITALS, HOSPITAL AUXILIARIES, CLINICS AND MEMBERS OF THE MEDICAL PROFESSIONS. (a) The gross receipts from sales of the following are exempt from the tax:

1. Charges made by hospitals to patients for rooms, medical services and other items including charges for anesthesia and anesthesia supplies, bandages applied in the hospital, blood and blood plasma, dressings applied in the hospital, intravenous solutions, laboratory tests, oxygen, radiation and x-ray treatment.

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

(b) The gross receipts from the sales of the following are taxable:

1. A hospital's specific charge to a patient for the rental of a television set.

2. Parking fees.

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

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

5. An optometrist's sales of nonprescription sun glasses, contact lens solution, thermal and chemical care units for contact lenses and other types of tangible personal property ordinarily taxable when sold at retail, unless the gross receipts from such sales are less than \$1,000 within a calendar year. Optometrists whose receipts from taxable items equal or exceed \$1,000 annually shall register with the department and obtain a seller's permit. Those whose receipts from taxable items are less than \$1,000 shall be exempt as occasional sellers and shall pay tax to their suppliers or a use tax, as appropriate, on purchases of taxable items.

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

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.

Note: The interpretations in s. Tax 11.17 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption in sub. (3) for needles and syringes used by diabetics became effective November 19, 1975 pursuant to Ch. 102, Laws of Register, April, 1990, No. 412

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. 275, 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 imprinting 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.

(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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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; am. (2) (d) and (e) and cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; cr. (2) (g), Register, December, 1983, No. 336, eff. 1-1-84; am. (3) (b), Register, April, 1990, No. 412, eff. 5-1-90.

Tax 11.27 Warranties. (s. 77.51 (4) (a), Stats.) (1) **RECEIPTS FROM WARRANTIES.** The total gross receipts from a sale of taxable personal property by a retailer, who sells a warranty applicable to such property and includes a charge for the warranty in the sales price are taxable.

(2) **REPAIRS BY RETAILERS.** (a) A retailer who performs repair work, including supplying parts and services, without charge under a warranty of a manufacturer or other person is not subject to tax on the amount of the reimbursement received from the warrantor whether the reimbursement is in the form of money or the replacement of parts used to perform the repair work.

(b) Gross receipts from charges by a retailer to a customer for repair parts or service performed under a warranty are taxable, including gross receipts from the sale of service contracts. Charges by a manufacturer or other person for service contracts are taxable.

(c) A retailer who provides free parts or services or both to a customer in order to maintain good customer relations, although not required to do so under the sales agreement, shall report and remit a use tax or sales tax pursuant to s. Tax 11.14 (2) (c) measured by the retailer's purchase price of any parts used in providing such free service.

(3) **REPAIRS NOT BY RETAILER.** If a retailer does not repair property under a warranty but instead has another person perform such repairs, that person's gross receipts from the retailer for such repairs are exempt, since the repair parts and service are for resale by the retailer to its customer (payment occurred at the time of the original sale of the property and warranty). Such repairs are exempt whether or not the original sale occurred in this state. The person performing such repairs shall obtain a resale certificate from the retailer as evidence of the exempt status of its charges to the retailer.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (1), (2) (a) and (b), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps. (s. 77.51 (4) (a) and (14) (k), Stats.) (1) **DEFINITIONS.** (a) Section 77.51 (14) provides that "sale", "sale, lease or rental", "retail sale", "sale at retail" or equivalent terms include:

"(k) Any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed gratis apart from the sale of other tangible personal property of service."

(b) For the privilege of selling, leasing or renting tangible personal property at retail, a sales and use tax is imposed upon all retailers' gross receipts from the sale, lease or rental of tangible personal property. Section 77.51 (4) (a) (intro.) provides:

“*Gross receipts*” means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise . . .”

(2) **GIFTS, GIFT CERTIFICATES, ADVERTISING SPECIALTIES AND SALES INCENTIVE PLANS.** Persons who make gifts of taxable personal property to others are the consumers of the property and the tax shall apply to the gross receipts from the sale of the property to such persons. Such taxable sales include sales of samples, advertising material, display cases, racks and other similar marketing aids to manufacturers, distributors, jobbers and wholesalers acquiring such property for the purpose of giving it to retailers for use in selling merchandise to customers. For example, a paint manufacturer is the consumer of color cards which it provides to retailers without charge to facilitate the sale of the manufacturer’s paint. A tavern operator is liable for the tax measured by the tavern operator’s purchase price of liquor given free to customers. Samples furnished to doctors by drug manufacturers are deemed consumed by the manufacturer, and the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) applies to the cost of the ingredients. When a person purchases property for resale but uses the property for any purpose other than resale, such as giving it to customers or to a charity, the purchaser shall be liable for use tax based on the purchaser’s cost of the merchandise.

(a) *Grand opening gifts.* A person who sells tangible personal property to a retailer who uses the property as gifts at a “grand opening” or similar event cannot accept a resale certificate in good faith if the seller is aware, or should be aware with the exercise of reasonable diligence, of how the property will be used. The seller shall be deemed to be aware of how the property is to be used if the retailer does not normally purchase this type of item or if the retailer does not normally purchase from the seller in such volume. In cases where a seller furnishes free property to a retailer for use as gifts at a “grand opening” or similar event, the person furnishing such property to the retailer is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) on its cost of the property donated.

(b) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable personal property, the transaction is completed and the retailer’s tax liability accrues at that time.

(c) *Gifts shipped out-of-state.* When taxable property to be given as a gift is purchased at retail and the purchaser, without obtaining possession of the gift, directs the seller to ship it to an out-of-state person, gross receipts from the sale are not subject to the sales tax.

(d) *Sales incentive plans.* Persons transferring taxable personal property to salespersons or distributors or both in redemption of awards, such as “points”, given under a sales incentive plan shall pay the tax on their purchases of such property.

(3) **COUPONS AND PREMIUMS.** (a) *Coupons for free property issued and redeemable by manufacturer.* When a manufacturer’s coupons are distributed to consumers and subsequently are redeemed by a retailer for personal property without charge, the transfer of property by the retailer to the coupon holder is a sale, not a gift. The consideration for the sale, upon which the measure of tax is based if taxable personal property is

transferred, is the amount the manufacturer reimburses the retailer for the coupon.

(b) *“Cents-off” coupons redeemable by manufacturers.* A common arrangement between manufacturers and retailers involves the use of “cents-off” coupons. Such coupons are distributed as part of a retailer’s advertisements and are used by consumers toward the purchase of tangi-

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ble personal property. The retailer then is reimbursed by the manufacturer. In this situation, a retailer's taxable gross receipts include the amount which the retailer is reimbursed and the amount paid by the customer presenting the coupon.

(c) *Coupons issued and redeemable by retailers.* When a retailer distributes coupons which its customers may use to obtain free premiums in the form of tangible personal property, there is no tax liability for the premiums if exempt property is given. However, if taxable property is given:

1. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows is to be given as a premium to customers without the customers being required to purchase other property to receive the premium. If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer shall report the use tax based on the cost of the property.

2. A retailer may not use a resale certificate when purchasing taxable property which the retailer knows will be given as a premium to a customer when that customer purchases other property which is not subject to the sales tax (e.g., gasoline and exempt food). If the premium was acquired without tax for resale because the retailer did not know at the time of purchase whether the property would be sold or used as a premium, the retailer is required to report the use tax based on the cost of the property.

3. A retailer may use a resale certificate when purchasing taxable property which will be given as a premium to the retailer's customer when that customer purchases other property which is also subject to the sales tax. Since this transaction is deemed a sale of both the premium and the other property, the retailer may purchase the premium without payment of the sales tax by claiming an exemption for resale.

4. The taxable gross receipts of retailers, who issue "cents-off" coupons which reduce the price of merchandise they sell and who receive no reimbursement from a manufacturer, are the reduced amounts charged the customer.

(4) **COUPON BOOKS, INCLUDING DINNER CLUB MEMBERSHIPS.** (a) A sales promotional agency may sell coupon books or voucher books to purchasers who use the coupons or vouchers in obtaining reduced prices from participating retailers. For example, coupon books may contain coupons entitling the purchaser to a free meal with the purchase of another meal, free dry cleaning or free bowling games. The coupon books may contain coupons redeemable by several retailers or may contain coupons redeemable by only one retailer. The sales promotional agency may have agreed to retain all receipts from the sales of coupon books, or to remit some portion of such receipts to the participating retailers.

(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon. Any additional receipts received from the person using the coupons also are taxable.

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(c) Except for meals, retailers are subject to the sales and use tax on their cost of taxable property transferred when coupons are redeemed without consideration from a sales agency, the consumer or any other person. No use tax arises when a meal prepared from exempt food is given away, and the retailer shall not pass on any tax to the consumer of a free meal.

(5) **TRADING STAMPS.** (a) Furnishing trading stamps and stamp books, with or without charge, to a retailer is an advertising or sales promotional service. The person furnishing the stamps and books is the consumer of such material and shall pay the Wisconsin sales or use tax on purchases of the material.

(b) A retailer's taxable gross receipts shall not be reduced by the retailer's payments for trading stamps and stamp books or for payments to customers in redemption of such stamps.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; am. (2) (intro.) and (a), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.29 Leases and rentals of tangible personal property. (ss. 77.51 (4) (c) 5, (13) (k), and (14) (j), 77.52 (1) and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of tangible personal property shall be subject to the sales and use taxes to the same extent that gross receipts from the sale of the same property would be subject to the tax. Because a lease is a continuing sale for the duration of the lease while the leased property is situated in this state (s. 77.51 (14) (j), Stats.), a lessor shall pay tax on rental receipts for any period of time leased property is in Wisconsin, even though the property may have been acquired and/or used previously by the lessee in another state.

(2) **PURCHASES FOR RENTAL.** (a) A lessor's purchase of tangible personal property to be used solely for lease or rental shall be exempt as a purchase for resale.

(b) A lessor's purchase of lubricants, repair parts and repair services on personal property used solely for leasing shall also be exempt as a purchase for resale. However, if the same items are purchased by a renter or lessee, the purchases shall be taxable.

(c) Charges by a lessor to a lessee under a maintenance contract on leased personal property shall be taxable.

(3) **PROPERTY BOTH RENTED AND USED PERSONALLY.** If tangible personal property is purchased by a person who uses it part of the time and rents it out part of the time, the sale of the property to such person shall be taxable. The lessor's rental receipts shall also be taxable, unless the transaction is specifically exempt by statute.

(4) **SERVICE VS. RENTAL OF EQUIPMENT.** (a) A person who uses the person's own equipment to perform a job and who assumes responsibility for its satisfactory completion shall be performing a service.

(b) A person who furnishes equipment with an operator to perform a job which a lessee supervises and is responsible for the satisfactory completion of, shall be a lessor renting out such equipment. If it is customary or mandatory that the lessee accept an operator with leased equipment,

- (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.

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.

(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) (e), 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.

10. Lapping and grinding compounds.
11. Purification agents.
12. Sandpaper.
13. Shielding gases.
14. Wood used to smoke products.
15. Gloves and other wearing apparel used by employes on the production line to prevent contamination of the manufactured product.

(b) The exemption is not allowed when property is sold to and used by a person other than a manufacturer (e.g., by an automobile repair shop or other repair business). A purchaser also may not claim this exemption if the purchaser does not sell the item produced. For example, a modular home manufacturer-contractor is not entitled to the exemption when purchasing property consumed, destroyed or losing its identity in the manufacture of homes which it, as a contractor, will affix to real property, since the manufacturer-contractor is the consumer of all personal property used in such construction.

(4) **EXAMPLES OF PERSONAL PROPERTY NOT WITHIN S. 77.54(2) EXEMPTION.** The following property is not within the exemption provided by s. 77.54 (2), although such property may be exempt under s. 77.54 (6) (a) if the property is a part of a machine or processing equipment used exclusively and directly in manufacturing (as described in s. Tax 11.40):

- (a) Machine drills and auger bits.
- (b) Milling cutters
- (c) Grinding wheels.
- (d) Chucks, jigs and dies.
- (e) Saw blades.
- (f) Machine tool holders.
- (g) Hand tools, including files, wrenches, hammers, saws, screwdrivers, planes, punches, chisels and spray guns.
- (h) Wearing apparel for the comfort or welfare of the employe or for the protection of the employe's clothing, such as helmets, hard hats, work gloves, aprons, coveralls, pants, coats, and fur-lined boots and jackets.

(5) **FUEL AND ELECTRICITY.** Fuel and electricity are specifically excluded from the exemption provided by s. 77.54(2) even though such property may be consumed, destroyed or lose its identity in the manufacture of products destined for sale. However, s. 77.54 (30) (a) 4, Stats., exempts "*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, edging, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.*" Since "fuel" is not defined in s. 77.54 (2), it shall be given its ordinary meaning. Dictionaries generally define fuel as a material used to produce heat or power by burning, or something that feeds a fire. Fuel includes:

(a) Oxygen used to enrich the fuel mixture in an industrial furnace, or oxygen and acetylene used in a welding process.

(b) Coal or coke used by a foundry, except the portion of the coke which actually becomes an ingredient or component part of any grey-iron produced.

Note: The interpretations in s. Tax 11.41 are effective under the general sales and use tax law on and after September 1, 1969, except that the exemption for wood residue in sub. (5) was effective on September 1, 1987, pursuant to 1987 Wis. Act 27.

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77; cr. (3) (a) 15. and am. (4) (h), Register, October, 1979, No. 286, eff. 11-1-79; am. (3) (a) 4., Register, July, 1987, No. 379, eff. 8-1-87; am. (5) (intro.), Register, April, 1990, No. 412, eff. 5-1-90.

Tax 11.45 Sales by pharmacies and drug stores. (s. 77.54 (14), (14g), (14m), (14s), (22) and (28), Stats.) (1) **TAXABLE SALES.** All sales of tangible personal property by a pharmacy or drug store shall be taxable under the general sales tax law unless exempted by a specific statute. The most common exemptions are described and enumerated in this section.

(2) **EXEMPT SALES: MEDICINES AND PRESCRIPTION DRUGS.** (a) Medicines shall be exempt from the tax if prescribed by a licensed physician, surgeon, podiatrist or dentist to a patient for treatment.

(b) "Medicines" prescribed by an appropriate health care provider enumerated in par. (a) which shall be exempt from the tax include:

1. Pills and capsules.
2. Powders.
3. Liquids.
4. Salves and ointments.
5. Insulin (furnished by a registered pharmacist).
6. Other preparations consumed orally, injected or applied.
7. Sutures.
8. Pacemakers.
9. Suppositories.
10. Bone pins.
11. Dyes.
12. Other articles permanently implanted in the human body which remain or dissolve in the body.
13. Medical oxygen.
14. Vitamins.
15. Vaccines.
16. Oral contraceptives.

(c) This exemption shall *not* include:

1. Auditory, prosthetic, ophthalmic or ocular devices or appliances.
2. Splints, bandages, pads, compresses, supports, dressings, instruments or equipment.

3. Alcoholic beverages, soda water beverages or distilled water.
4. Cast materials.

(3) **EXEMPT SALES: MEDICAL APPLIANCES AND PROSTHETIC DEVICES.** The exemption for medical appliances and prosthetic devices under s. 77.54 (14s), (22) and (28), Stats., shall apply to sales of the following:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular crippled person which become a brace, support, supplement, correction or substitute for a bodily structure, including the extremities, of the individual.

(b) Trusses, supports, shoes, braces and elastic hose only when specially fitted or altered to fit a particular person. "Altered" includes the bending of metal stays but does not include adjusting straps or seams.

(c) Artificial limbs, artificial eyes, hearing aids and batteries, colostomy, ileostomy and urinary appliances, artificial breast forms, pace-makers, and other equipment worn as a correction or substitute for any functioning part of the body. This exemption shall not apply to wigs or hair pieces, to garments designed to restrict or enhance the body shape for cosmetic purposes, nor to breathing therapy units which are not "worn" by a person.

(d) Crutches and wheelchairs including motorized wheelchairs and scooters for use by persons who are ill or disabled, 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.

(e) Apparatus or equipment for the injection of insulin and equipment used to administer oxygen for medical purposes if the patient has a prescription for oxygen written by a person authorized to prescribe oxygen. The exemption for oxygen equipment applies to oxygen carts acquired for use by patients with a prescription for oxygen.

(f) Parts for and services to the exempt items listed in this subsection.

(4) **MEDICARE CLAIMS.** The administrator of Medicare claims (such as Surgical Care-Blue Shield) is under contract to withdraw funds from the United States treasury to pay the providers of medical services or for medical supplies and equipment. If the provider of a taxable item bills such administrator directly, the sale shall be a tax exempt sale to the United States. If the provider of a taxable item bills an individual who then seeks reimbursement from Medicare, the sale shall not be an exempt sale to the United States.

Note: The interpretations in s. Tax 11.45 are effective under the general sales and use tax law, effective 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, October, 1976, No. 250, eff. 11-1-76; r. (2) (c) 5., am. (3) (intro.) and (e), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (d), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.46 Summer camps. (s. 77.52 (1) and (2) (a) 1, Stats.) (1) **DEFINITIONS.** In this rule:

(a) "Agency camps" means camps operated by corporations or associations organized and operated exclusively for religious, charitable or

educational purposes when no part of the net earnings inure to the benefit of any private shareholder or individual (e.g., the YMCA and Boy Scouts of America).

(b) "Private camps" means all other camps including those camps organized and operated with the expectation of profit, whether or not profit is actually realized.

(2) **TAXABLE RECEIPTS.** Receipts from the following are taxable:

(a) Meals or other tangible personal property sold by agency camps or private camps.

(b) Lodging provided by private camps for a continuous period of less than one month.

(3) **EXEMPT RECEIPTS.** Receipts from the following are exempt:

(a) All lodging provided by agency camps.

(b) Lodging provided by private camps for a continuous period of one month or more.

(c) Groceries sold to campers, such as for cookouts.

(4) **COMBINED CHARGE.** An allocation between taxable and exempt receipts must be made when a single (combined) charge is made for all the privileges extended by a camp. Adequate records must be kept and maintained to enable the proper allocation; otherwise, the total charge shall be taxable.

(a) If there is no separate charge for meals; gross receipts from the sale of meals may be determined by adding 10% (to cover overhead costs) to the cost of the food and labor for food preparation.

(b) If there is no separate charge for lodging; gross receipts from lodging furnished by private camps to any person residing for a continuous period of less than one month shall be presumed to be \$3 per person per night.

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969, except that the amount shown in sub. (4) (b) became effective September 15, 1970. Prior to that date the tax was based on \$2 per person per night.

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

Tax 11.47 Commercial photographers and photographic services. (ss. 77.52 (2) (a) 7 and 77.54 (2), Stats.) (1) **TAXABLE GROSS RECEIPTS.** Taxable services and sales of tangible personal property of commercial photographers and others providing photographic services include gross receipts from:

(a) Taking, reproducing and selling photographs.

(b) Processing, developing, printing and enlarging film.

(c) Enlarging, retouching, tinting or coloring photographs.

(d) Processing exposed film into color transparencies, mounted or unmounted.

(e) Reproducing copies of documents, drawings, photographs, or prints by mechanical and chemical reproduction machines, blue printing and process camera equipment.

(f) Sales of photographs to students through schools, even though school personnel may participate by collecting payments from students.

(2) AMOUNTS INCLUDED IN GROSS RECEIPTS. (a) Gross receipts subject to the tax include charges for photographic materials, time and talent.

(b) Modeling fees, mileage charges, equipment rental and charges for props or similar items made by photographers shall not be deducted from gross receipts subject to the tax, whether or not these charges are separately itemized on the billing to a customer.

(3) PURCHASES BY PERSONS PROVIDING PHOTOGRAPHIC SERVICES. (a) Commercial photographers and others providing photographic services may purchase, without paying sales or use tax, any item which becomes a component part of an article destined for sale if a properly completed exemption certificate is given the seller. Such items include:

1. Mounts, frames and sensitized paper used in the finished photograph and transferred to the customer.

2. Film (i.e., colored transparencies and movie film) in which the negative and the positive are the same, and are permanently transferred to a customer as part of the taxable photographic service.

3. Containers, labels or other packaging and shipping materials used to transfer merchandise to customers.

(b) Photographers and others providing photographic services are required to pay tax when purchasing tangible personal property which is used, consumed or destroyed in providing photographic services. Such items include:

1. Chemicals.
2. Trays.
3. Film (other than noted in par. (a) 2).
4. Plates.
5. Proof paper.
6. Cameras.
7. Other photographic equipment.

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

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

Tax 11.48 Landlords, hotels and motels. (ss. 77.51 (13) (n) and 77.52 (2) (a) 1 and 9 and (2m), Stats.) (1) LANDLORDS. (a) Landlords are the consumers of household furniture, furnishings, equipment, appliances or other items of tangible personal property purchased by them for use by their tenants in leased or rented living quarters. The sales or use tax applies to a landlord's purchases of all such items. The gross receipts from a

landlord's charges to the tenant for use of these items are not subject to the tax even though there may be a separate charge for them.

(b) The gross receipts from providing parking space for motor vehicles and aircraft and from providing docking and storage space for boats are taxable. If a separate charge is made for such parking, docking or storage space, the charge is taxable. However, if a separate charge is not made and the price of a rental unit includes a charge for a parking, docking or storage space, and if similar units are rented at a reduced price if the parking, docking or storage space is not utilized, the difference between the rental price of the 2 similar units is taxable as a charge for parking, docking or storage.

(2) **HOTELS AND MOTELS.** The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations to the public, regardless of whether membership is required for use of the accommodations, is a taxable service.

(a) "Transient" means any person residing for a continuous period of less than one month. A continuing monthly rental of a particular room or rooms by a business (such as a trucking company, railway or airline) to be used by its employees for layover is not taxable.

(b) The rental of space for meetings, conventions and similar activities is not taxable. However, the rental of hotel or motel rooms generally used as sleeping accommodations is taxable, regardless of the use to which the room is put. For example, the rental of a motel sleeping room by a salesman from 8:00 a.m. to 4:00 p.m. for use as a display room is taxable.

(c) Hotels, motels and inns are the consumers of all the items used to conduct their business, such as beds, bedding, equipment, advertising materials, supplies and items consumed by the occupants of a room. The tax applies to their purchases of all such items.

(3) **MOTELS LEASED TO OPERATORS.** (a) The owner of a motel often leases the complete unit, including real and personal property, to a second party who operates the motel. If the lease does not indicate the amount of the lease receipts derived from tangible personal property, as opposed to the realty and intangible property, the taxable receipts shall be determined by multiplying the total lease receipts of each reporting period by the ratio of the lessor's gross investment in tangible personal property to the lessor's total gross investment in all real and personal property on the effective date of the lease. This ratio shall apply as long as the lease agreement between the lessor and lessee remains unchanged. However, the original ratio and any change in the ratio resulting from changes in the lease, due to additions to or removal of real or personal property leased, are subject to review by the department of revenue for reasonableness.

(b) In computing the ratio in par. (a), tangible personal property includes property subject to the sales tax, such as furniture, furnishings equipment or trade fixtures in an office, kitchen, restaurant, lounge, rooms, patio and other indoor and outdoor areas; beds, bedding, linen and towels; vending machines; and maintenance equipment. For example, if the investment (valued at undepreciated original cost) on the effective date of a lease is \$100,000 for tangible personal property and

\$500,000 for all real and personal property, taxable lease receipts shall be determined by applying a ratio of 20% ($\$100,000 \div \$500,000$) to the gross lease receipts for each sales tax reporting period.

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

History: Cr. Register, November, 1977, No. 263, eff. 12-1-77.

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

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

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

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

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

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

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

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

(a) Sales of gasoline, general aviation fuel and special fuel including diesel and L.P. fuel, which are subject to the Wisconsin motor vehicle fuel taxes under ch. 78, Stats. The holder of a Wisconsin special fuel license may issue an exemption certificate, Form S-207, to purchase special fuel without sales tax. On special fuel which a licensee puts into highway motor vehicles, the licensee is required to pay the special fuel tax. If motor fuel or special fuel is purchased without tax under s. 77.54 (11), Stats., because it is subject to the excise tax imposed under ch. 78, Stats., and then the excise taxes are later refunded under s. 78.75, Stats., because the buyer does not use the fuel in operating a motor vehicle upon the public highways, the fuel is subject to the tax, unless otherwise exempt under ss. 77.54 (1), (3), (5), (6) (c), (9a), (12), (13), (30) (a) or other exemptions in subch. 3, ch. 77, Stats.

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

(c) Sales of accessories, attachments, parts, supplies and highway fuel for common or contract carrier motor trucks, truck tractors, road tractors, buses, trailers and semi-trailers used exclusively in common or contract carriage, including the urban mass transportation of passengers as defined in s. 71.38, Stats. This exemption applies to purchases for school buses operated under contract with a public or private school to transport students. A station wagon or van which is not registered as a bus with the division of motor vehicles in the Wisconsin department of transportation does not qualify for this exemption.

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

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

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

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

(b) A service station operator's purchases of equipment, tools, supplies and other property not transferred to customers as part of the performance of a taxable service are subject to the sales and use tax. Supplies such as sandpaper, masking paper, masking tape, buffing pads, paint and lacquer thinner, clean and glaze compound, paint remover, tack rags, steel wool, metal conditioner, lacquer removing solvent, rubbing compound, wax and grease remover, fluxing materials, disc adhesives and other items used or consumed in performing motor vehicle repair service are taxable.

Note: The interpretations in s. Tax 11.49 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) Sales of coal, fuel oil, propane, steam and wood used for fuel became exempt July 1, 1979 pursuant to Chapter 1, Laws of 1979; (b) Sales of jet fuel to persons who were not certified or licensed carriers were taxable prior to January 1, 1982; (c) If the excise tax on motor fuel or special fuel is refunded under s. 78.75, Stats., a tax is payable pursuant to 1985 Wis. Act 29, effective September 1, 1985.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (a), cr. (2) (f), Register, January, 1983, No. 325, eff. 2-1-83; am. (2) (a) and (e), Register, June, 1983, No. 330, eff. 7-1-83; am. (2) (a), Register, July, 1987, No. 379, eff. 8-1-87; correction in (2) (c) made under s. 13.93 (2m) (b) 7, Stats., Register, April, 1990, No. 412.

Tax 11.50 Auctions. (ss. 77.51 (9) (e), (13) (b), (14) (intro.) and (a), Stats.) (1) **STATUTE.** Section 77.51 (13) (b), Stats., provides that every person engaged in the business of making sales at auction of tangible personal property owned by the person making the sale or others is a "retailer". The definition of "retail sale" contained in s. 77.51 (14) (a), Stats., includes any sale at an auction.

(2) **RETAILER.** If an auction company provides complete auction service, it is the retailer. If an auctioneer contracts with the owner of the Register, April, 1990, No. 412

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auctioned property and arranges for clerking the auction, the auctioneer is the retailer. Auctioneers and auction companies who are retailers are

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(b) Coin-operated storage lockers, pay toilets and scales.

(5) **REPORTING AND RECORD KEEPING.** (a) The gross receipts of vending machine and amusement device operators are subject to the sales tax. Thus gross receipts include, for example, receipts from items selling for one, 5 and 10 cents and more. No deduction shall be permitted for the cost of the property sold, materials used, labor or service cost, or any other expense (including commissions paid to place machines in an establishment).

(b) Sales tax collected from customers may be deducted from gross receipts before computing the tax payable, if the tax is collected under the bracket system and customers are advised of the amount of sales tax they are paying by a sign posted on the machine. If no tax is collected under the bracket system, no deduction shall be allowed.

(c) Each operator shall maintain adequate and complete records including

1. The location of each machine;
2. The serial number of each machine;
3. Purchases and inventories of all merchandise sold through machines;
4. Receipts from sales of exempt merchandise; and
5. Purchase records of all machines and the cost of all supplies of which the machine operator is deemed to be the user or consumer (for example, a vending machine or juke box, including repairs and parts therefor and records used in the juke box).

(6) **SALE, LEASE OR RENTAL OF MACHINES.** (a) Receipts from the sale, lease, rental or license to use coin-operated machines and attachments, parts and supplies therefor are subject to the sales tax. Taxable receipts include sales to persons providing a service, such as laundry and dry cleaning service. If the machines, attachments, parts, or supplies are purchased for use in Wisconsin from an unregistered out-of-state supplier, the purchaser shall remit the use tax directly to the department.

(b) Machines purchased exclusively for rental to others may be purchased by the lessor without tax if the lessor gives a resale certificate to the lessor's supplier. If the lessor intends making any use of the machines other than rental, a resale certificate shall not be given. In either event, the lessor's rental receipts are taxable.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (a)1. and r. (4) (c), Register, December, 1983, No. 336, eff. 1-1-84.

Tax 11.53 Temporary events. (ss. 77.52 (7), (8), (9), (10), (11), (12), and (19), 77.58 and 77.61 (2), Stats.).

(1) **DEFINITIONS.** In this section:

(a) 1. "Concessionaire" includes any person conducting games at temporary events such as coin pitch, pop-in, ring toss, short range basketball, guess your weight, fish pond, and tip the bottle. Further examples

include persons selling snack foods and other tangible personal property from stands at temporary events such as ice cream, cotton candy, candy apples, sno cones, popcorn, frozen delight, jewelry, photos, hats, signs or kitchenware.

2. "Concessionaire" does not include:

a. A person operating amusement rides, traveling vaudeville performances, menageries, or objects of curiosity shows.

b. A person selling meals or beverages including lunches, sandwiches or beer.

c. A person in subpar. a. or b. who also operates as a concessionaire.

(b) "Concessionaire permit" means a permit for a temporary event conducted by a concessionaire which is valid for only one temporary event for the duration of the event.

(c) "Mobile seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at any temporary event conducted by the permittee within the state but which is valid at only one event at a time. Except for its use at more than one place of operations, all provisions of s. 77.52 (7), (8), (9), (10), (11) and (12), Stats., apply to it.

(d) "Temporary event" means an activity at one place of operation for a brief duration where taxable sales are made. A place of operation includes a fair, carnival, circus, festival or portable roadside stand.

(e) "Temporary seller's permit" means a permit issued under s. 77.52 (7) and (19), Stats., which is valid at only one temporary event for the duration of the event.

(2) PERMITS FOR TEMPORARY EVENTS. (a) Each person who conducts business as a retailer at a temporary event shall hold one of the following:

1. Mobile seller's permit.
2. Temporary seller's permit.
3. Concessionaire permit.

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.

(b) Any retailer, including a concessionaire, intending to conduct business at temporary events may apply for and hold a mobile seller's permit. Retailers who are not concessionaires may acquire either a mobile seller's permit or a temporary seller's permit for temporary events. Concessionaires who do not hold a mobile seller's permit shall acquire a concessionaire permit for a temporary event.

(c) A concessionaire who is not a resident of Wisconsin shall furnish the department with the name and address of his or her agent in this state upon whom may be served any process, notice or demand required or allowed by statutes to be served upon the applicant.

(3) SECURITY. Application for permits referred to in this section shall be on such forms as prescribed by the department. The applicant shall be subject to security requirements of s. 77.61 (2), Stats., except that for Register, July, 1987, No. 379

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, 1975, 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; renum. 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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(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-

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. 356, 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.

(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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backup records identify the call as originating in and taking place over telephone lines serving Corporation A. In this circumstance, the call is charged to a telephone located in Wisconsin.

2) Corporation C has offices in Milwaukee, Wisconsin, and Chicago, Illinois. Employees at Corporation C's Milwaukee office originate telephone calls to customers and others at various locations outside Wisconsin. The telephone calls are identifiable in the telephone service provider's records as originating in Milwaukee and taking place over telephone lines serving Corporation C's Milwaukee office. Because Corporation C's accounting office is in Chicago, Illinois, the telephone bill is mailed by the service provider to Corporation C's Chicago office. The service originated in Wisconsin and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines serving Corporation C's Milwaukee office.

3) An employe of Corporation D initiates the transmission of data from Corporation D's office in Wisconsin to Corporation D's office in another state via a telecommunication service provider's facilities. The service provider's records and equipment identify the transmission as originating in and taking place over telephone lines or other transmission mediums serving Corporation D's office in Wisconsin. The service originated in and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines or other transmission mediums serving Corporation D's Wisconsin office.

2. Telephone calls made from a location in Wisconsin other than the caller's own telephone for which the caller instructs the operator to charge the call to the caller's own telephone located in Wisconsin.

Example: A customer is away from her home telephone but wishes to place a long distance call from another location in Wisconsin. The customer requests that the charge for that call be included with other calls made from the caller's home or business phone in Wisconsin rather than appear on the bill of the person from whose telephone the call was placed.

3. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is also the dial 1 equal access service provider for the customer's telephone in Wisconsin, the credit card number is derived all or in part from the customer's telephone number and the charge for the call is made to the customer's account.

Example: Tom Edwards has a credit card from DEF Corporation, which is his dial 1 equal access telecommunication service provider. Tom's local telephone number is area code (608) 555-1234 and his credit card number is 608-555-1234-7777. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or credit card account number appear on the bill and regardless of where the bill is mailed.

4. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is not the cardholder's dial 1 equal access service provider, but where the cardholder's telephone is in Wisconsin and the telephone number is a part of the credit card account number.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. Ed's local telephone number is area code (608) 555-4321 and his number on the credit card issued by DEF Corporation is 608-555-4321-8888. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

5. Service which originates in a local exchange that does not provide dial 1 equal access, but where the account number used to identify the customer is or contains the customer's telephone number as assigned by the local telephone company.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunication service provider for her law office. Jill's office is in an area where the local exchange does not yet provide dial 1 equal access service to long distance carriers other than AT&T. When Jill wants to send data to an out-of-state client she 1) dials the access number called Point of Presence or POP number, of GHI Corporation's system, 2) enters her account

number, to identify herself as the party paying for the call; the account number is 0555-9630 and her local telephone number is 555-9630, and 3) enters the area code and telephone number of her out-of-state client. All long distance service which originates in Wisconsin and which Jill charges to her account is considered to be charged to a telephone in this state, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

(3) **OTHER TAXABLE COMMUNICATION SERVICES.** Other communication services which are subject to the sales or use tax include:

(a) Two-way voice communication services over telephone or radio, commonly referred to as mobile telephone service.

(b) One-way paging service.

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

(d) Transfers of services, commonly called "access services" to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange.

(e) Facsimile, or FAX, transmission service.

(4) **NONTAXABLE SERVICES.** Gross receipts from the sale or charge for the following services are not taxable:

(a) Interstate or international telecommunication service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a telephone located in another state or country and is not billed to a subscriber in this state.

(b) Basic or sophisticated emergency telephone system serviced provided by a telecommunication utility for which charges are levied pursuant to a county ordinance under s. 146.70 (3), Stats.

(c) Access services, Measured Toll Service, or MTS, and Wide Area Transport Service, or WATS, services resellers purchase, repackage, and resell to customers.

(d) Interstate private line circuits, including tie lines and foreign exchange service, charged on a flat rate periodic basis which consist of a circuit or circuits dedicated to the use of that subscriber.

(e) Nonmechanical telephone answering services.

(5) **PURCHASES BY PERSONS PROVIDING SERVICE.** Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing those services. The tax applies to the sale of property to them. However, s. 77.54 (24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals."

Note: The Dane County Circuit Court's decision of May 22, 1981 in *Wisconsin Department of Revenue v. North-West services Corporation and North-West Telephone Company* held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

Note: The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television Register, April, 1990, No. 412

service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (d) Access services provided to an interchange carrier became taxable pursuant to 1985 Wis. Act 29, effective July 20, 1985; (e) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; and (f) Telecommunication services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (a), (b), (d) and (e), (2), Register, January, 1983, No. 325, eff. 2-1-83; cr. (1) (f), Register, July, 1987, No. 379, eff. 8-1-87; emerg. r. and recr. (1) (a) and (b), eff. 10-1-89; r. and recr. Register, April, 1990, No. 412, eff. 5-1-90.

Tax 11.67 Service enterprises. (ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (l), (15), (20) and (22) (a) and (b), 77.52 (1) and (2m) (a) and (b), Stats.) (1) **GENERAL.** When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser must be considered to determine whether such transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which furnishes without separate charge as an incidence to the service.

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

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

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

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

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.

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

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

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

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

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

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

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

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

In *Janesville Data Center, Inc. v. Department of Revenue* (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto tangible personal property and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86.

Tax 11.72 Laundries, dry cleaners, and linen and clothing suppliers. (ss. 77.51 (13) (e) and (f) and (14) (1) and 77.52 (2) (a) 6 and (2m) (a), Stats.)

(1) **LAUNDRIES AND DRY CLEANERS.** The gross receipts from selling, performing or furnishing laundry, dry cleaning, pressing and dyeing services are taxable, except when the services are performed on raw materials or goods in process destined for sale, or when the services are performed by the customer through the use of coin-operated, self-service machines.

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

(3) **PURCHASES.** (a) Laundries, dry cleaners and linen or clothing suppliers are the consumers of and must pay tax on their purchases of all items transferred to customers incidentally in providing laundry and dry cleaning services, including solvents, soaps, detergents, spotting compounds, water repellents, disinfectants, fabric softeners, starch, dyes, mat compounds, fire repellent compounds and marking tags they use for identification purposes. The also must pay tax on their purchases of items transferred to customers with clean linen or clothes, such as hangers, handkerchiefs, bags, boxes, shirt boards, shoulder guards, twisters and pins. The tax applies to the gross receipts on the sale of these items to such purchasers.

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

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

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

Tax 11.78 Stamps, coins and bullion. (s. 77.51 (20), Stats.) (1) **TAXABLE SALES.** Retail sales of the following tangible personal property are subject to the sales and use tax:

(a) Cancelled United States and foreign postage stamps.

(b) Uncancelled United States postage stamps when sold or traded as collectors' items above their face value.

(c) Uncancelled foreign postage stamps.

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(d) Postage charges which are billed by the seller to the purchaser in connection with the sale and delivery of tangible personal property if the sale of the property is subject to the tax.

(e) Foreign coins and paper currency when sold or traded as collectors' items.

(f) United States coins and paper currency when sold or traded as collectors' items above their face value.

(g) Silver bullion and gold bullion which is physically located in Wisconsin is subject to the sales tax whether the sales contract is entered into or outside of Wisconsin. Such bullion purchased and delivered to the purchaser outside Wisconsin is subject to the use tax when brought into the state.

(h) Commemorative medals.

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

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

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

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

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

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

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

Tax 11.79 Leases of highway vehicles and equipment. (ss. 77.51 (13) (k) and (14) (intro.) and (j), and 77.58 (6), Stats.) (1) **GENERAL RULE.** Gross receipts from the lease or rental of motor vehicles and mobile equipment used on a highway are subject to the sales and use tax.

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

(a) Motor fuel.

(b) Vehicle license fees.

(c) Federal highway use taxes.

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

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

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

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

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

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

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

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

(4) **RECORDS RETENTION.** The records shall be preserved and retained for the 4-year period open to audit under s. 77.59 (3), Stats. If any agreement is entered into to extend the 4-year audit period, the records shall be preserved for that extended period. If a notice of tax determination has been issued to the taxpayer by the department and if the taxpayer files a petition for redetermination, the records for the period covered by the notice of the tax determination shall be preserved and retained until such tax redetermination has been finally resolved.

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

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

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and accurate records may result in penalties or other appropriate action provided by law.

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

History: Cr. Register, July, 1977, No. 259, eff. 8-1-77; emerg. cr. (1) (d), eff. 3-24-86; cr. (1) (d), Register, October, 1986, No. 370, eff. 11-1-86.

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

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

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

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

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

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

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

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

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

(a) *Non interest-bearing.* 1. Cash, certified check or money order.

2. Surety bonds issued by authorized underwriters.

3. Personal guarantee of a third party, if approved by the department.

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

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

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

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

1. The depositor's previous sales and use tax liability at the location specified on the permit.

2. The predecessor's sales and use tax liability at the location specified on the permit,

3. The estimated tax liability shown on the application for permit.

4. Other factors, such as the department's estimate of estimated tax liability based on its experience with other similar activities.

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

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

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

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

(d) Compliance with subch. III means that:

1. Sales and use tax returns were timely filed.

2. All payments were made when due.

3. No delinquencies of sales or use tax, interest or other charges existed.

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4. No penalties due to negligence or fraud were assessed for filing periods within the 24 month compliance period.

5. No assessment of additional tax, interest or other charges for filing periods within the 24 month compliance period is unpaid at the end of the 24 month compliance period.

e. If a taxpayer does not meet the compliance requirements set forth in par. (d), the deposit shall be retained by the department until the taxpayer is in compliance for 24 consecutive months from the date of the latest non-compliance.

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

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

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

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

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

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

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

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

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

Note: The interpretations in this rule are effective under the general sales and use tax law on and after September 1, 1969 except that the \$300 standard applies to taxable years beginning on and after January 1, 1979. Prior to the date a \$100 standard applied. The "annual information return" was eliminated for 1981 and subsequent years pursuant to Chapter 221, Laws of 1979.

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

Tax 11.94 Wisconsin sales and taxable transportation charges. (ss. 77.51 (14) (intro.) and (d) and (14r), and 77.52 (1), Stats.) (1) "WISCONSIN SALE." (a) A Wisconsin sale takes place at the time and place possession of tangible personal property transfers from the seller or its agent to the purchaser or its agent pursuant to s. 77.51 (14r), Stats.

(b) When a Wisconsin seller transfers possession to a purchaser at the seller's Wisconsin place of business and the purchaser either removes the property itself or hires a contract carrier to remove the property, possession transfers to the purchaser in Wisconsin and there has been a Wisconsin sale. Register, July, 1987, No. 379

sin sale. Conversely, when a Wisconsin seller ships or delivers property from the seller's Wisconsin place of business to an out-of-state location, possession is transferred outside Wisconsin and the sale is *not* a Wisconsin sale. In the latter situation, the result is the same if property is delivered using the seller's vehicle and employes or by a contract carrier engaged by the seller.

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

(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser shall not be subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(e) Section 77.51 (14) (d), Stats., applies to a situation where tangible personal property is delivered to a purchaser in this state by an owner or former owner of the property holding or required to hold a Wisconsin sales or use tax permit or where a Wisconsin office of the owner or former owner of the property aids in making the delivery. Therefore, if a manufacturer ships or turns over such property to a purchaser in Wisconsin based on an order received from an unregistered out-of-state seller, who had received the original order from the Wisconsin purchaser, the manufacturer shall report the Wisconsin tax measured by the retail selling price. However, a manufacturer may drop ship an item to a purchaser in Wisconsin without the tax being applicable, if the purchaser is entitled to purchase the property without tax and gives the manufacturer a properly completed exemption certificate.

(2) **TAXABLE TRANSPORTATION CHARGES.** (a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller's vehicle, a common or contract carrier, or the United States postal service.

Note: Example. When the seller charges the purchaser for delivery of the taxable tangible personal property the correct computation of tax is as follows:

Selling price of merchandise	\$100.00
Delivery charge	<u>10.00</u>
Subtotal	\$110.00
Tax at 5% ($\$110 \times 5\%$)	<u>5.50</u>
Total	\$115.50

(b) If a shipment includes both taxable and nontaxable property, the seller shall determine and set forth on the invoice the portion of the delivery charge reasonably allocable to the taxable property. The portion allocated to nontaxable property is not taxable. If no such allocation is made, the total delivery charge shall be taxable.

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14 (2) (c) based on the "sales price" of the goods to the purchaser.

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The "sales price" shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser.

(d) When taxable tangible personal property is sold for a "delivered price", tax applies to the charge for transporting the property to the purchaser even though the purchaser may directly pay the transportation charges. Property is sold for a "delivered price" when the price agreed upon includes all costs or charges for transporting the property directly to the purchaser, and under circumstances such that if there is an increase or decrease in the cost of transportation, it is borne by the seller. For example, if the "delivered price" of a carload of lumber is \$6,000 (including transportation) and the purchaser pays the transportation charges directly to the common carrier and deducts the payment from the amount due the seller, the transportation charges are borne by the seller and are included in the seller's measure of the tax.

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

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (1) (e), r. (2) (b), renum. (2) (c), (d) and (e) to be (2) (b), (c) and (d), Register, September, 1984, No. 345, eff. 10-1-84; am. (2) (c), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.95 Retailer's discount. (s. 77.61 (4) (b), 77.76 (3) and 77.785 (2), Stats.) (1) For timely reporting state and county sales or use tax collected on their retail sales, retailers may deduct 2% of the first \$10,000 sales and use tax payable during the retailer's tax year, 1% of the second \$10,000 of tax payable and .5% of the sales and use tax payable in excess of \$20,000 each year. Section 77.785 (2), Stats., requires dealers to collect and remit the county tax to the state agency which registers or titles a boat, all-terrain vehicle, trailer, semi-trailer, aircraft, motor vehicle, mobile home not exceeding 45 feet in length or snowmobile, and the dealer is entitled to the retailer's discount on these county taxes paid timely.

(2) The retailer's discount is allowed if the taxes are paid on or before the due date of the return, or on or before the expiration of any extension period if one has been granted. The discount is not allowed if the payment is delinquent. It is also not allowed on deficiency determinations, amended returns filed after the due date or consumer's use tax imposed pursuant to s. 77.53 (2), Stats.

Note: The interpretations of s. 77.61 (4) (b) and (c), Stats., in s. Tax 11.95 are effective for a retailer's taxable year beginning on or after January 1, 1983 pursuant to Chapter 20, Laws of 1981. Effective January 1, 1972 until the effective date of Chapter 20, Laws of 1981 retailers could deduct 1% of the tax payable for each reporting period if the payment was not delinquent. Prior to January 1, 1972 the discount was 2%. Prior to April 1, 1976 persons with a Wisconsin seller's permit were allowed the discount on consumer's use tax paid timely; after that date the discount does not apply.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; r. and recr., Register, September, 1984, No. 345, eff. 10-1-84; emerg. am. (1), eff. 3-24-86; am. (1) Register, October, 1986, No. 370, eff. 11-1-86.

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

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(a) For taxes due on or after November 1, 1975 and assessed by the department before August 1, 1981, interest shall be computed at the rate of 9% per year from the due date of the taxes to the date paid or delinquent.

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

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

(a) If the tax being refunded is from a return which has a filing due date on or after November 1, 1975, interest shall be computed at the rate of 9% per year from the due date of the return to the date on which the refund is certified on the refund rolls.

(b) If the tax being refunded is from a return which has a filing due date prior to November 1, 1975, interest shall be computed at the rate of 6% per year from the due date of the return to October 31, 1975, and at the rate of 9% per year from November 1, 1975 to the date on which the refund is certified on the refund rolls.

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

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

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

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

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

4. Refunds bear interest from the due date of the return to the date certified on the refund roll, effective September 1, 1983. Prior to that date interest was computed on refunds from the due date of the return to the first day of the month following the month in which the taxes were refunded.

History: Cr. Register, January, 1979, No. 277, eff. 2-1-79; r. and recr. (1) and (3), am. (4), Register, June, 1983, No. 330, eff. 7-1-83; am. (1) (a), (2) (a) and (b), Register, July, 1987, No. 379, eff. 8-1-87.

Tax 11.97 "Engaged in business" in Wisconsin (ss. 77.51 (13) (c) and (k) and (13g), (14) (j); 77.53 (3), (5), (7), (9) and (9m), Stats.) (1) GENERAL. (a) Out-of-state retailers are required to register and collect a state's use tax if the retailer is subject to the state's jurisdiction. The United States supreme court has resolved certain jurisdictional questions by interpreting the due process clause of the Fourteenth Amend-

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ment to the U.S. Constitution. Over the last 30 years the court has said due process requires that there be some definite link, some minimum connection between the state and the person, property or transaction it seeks to tax. If this minimum connection, often called "nexus", is established; the out-of-state seller is required to register and collect the state's use tax.

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

Nelson vs. Sears Roebuck & Co., 312 U.S. 359 (1941)

Nelson vs. Montgomery Ward & Co., 312 U.S. 373 (1941)

General Trading Co. vs. State Tax Commission of the State of Iowa, 322 U.S. 335 (1944)

Miller Bros. Co. vs. Maryland, 347 U.S. 340 (1954)

Scripto, Inc. vs. Carson, 362 U.S. 207 (1960)

National Bellas Hess, Inc. vs. Illinois Department of Revenue, 386 U.S. 753 (1967)

National Geographic Society vs. California Board of Equalization, 430 U.S. 551 (1977)

(2) STATUTES. (a) Section 77.51 (13) (k), Stats., defines "retailer" to include any person deriving rentals from a lease of tangible personal property situated in this state, and s. 77.51 (14) (j), Stats., defines a lease as a continuing sale.

(b) Section 77.51 (13g), Stats., provides as follows:

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

(a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property located in this state or maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state.

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

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

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

(a) Any retailer owning any real property in this state.

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

(c) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary, agent or other

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

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

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

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

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

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

(a) Advertising in newspapers published in or outside this state.

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

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

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

(5) REGISTRATION. (a) Every out-of-state retailer engaged in business in this state and not required to hold a seller's permit who makes sales for storage, use or other consumption in this state shall apply for a use tax registration certificate. The registration form, entitled "Application for Permit" (Form A-101), may be obtained from any department office. There is no fee for registration. Retailers engaged in business in Wisconsin for use tax purposes are not necessarily engaged in business in Wisconsin for franchise/income tax purposes.

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

(c) 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) ACTIVITIES WHICH IN THEMSELVES DO AND DO NOT CREATE "NEXUS" FOR COUNTY SALES TAX PURPOSES. The activities described in sub. (3) which create "nexus" for state sales tax purposes also create "nexus" for county sales tax purposes if the activities take place in a

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county which has adopted the tax. The activities in sub. (4) which do not create "nexus" for state sales tax purposes also do not create "nexus" for county sales tax purposes, even if the activities take place in a county which has adopted the tax.

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

History: Cr. Register, July, 1978, No. 271, eff. 8-1-78; am. (2) (b) and (c), Register, January, 1983, No. 325, eff. 2-1-83; cr. (5) (c), Register, August, 1985, No. 356, eff. 9-1-85; emerg. am. (6), eff. 3-24-86; cr. (6), Register, October, 1986, No. 370, eff. 11-1-86.

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

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

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

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

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

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

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

(b) The taxpayer's financial condition.

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

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

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

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

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

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