

412, eff. 5-1-90; renum. (3) (d) and (e) to be (4) (f) and (3) (d), Register, March, 1991, No. 423, eff. 4-1-91; r. and recr., Register, September, 1993, No. 453, eff. 10-1-93.

Tax 11.67 Service enterprises. (ss. 77.51 (4), (12), (13), (14) (intro.), (h) and (l), (15), (20) and (22) (a) and (b) and 77.52 (1) (2) (a) 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 shall determine whether the 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.

Example: A person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service even though this person may provide forms and binders without charge as part of the service. The person is the consumer, not the seller, of tangible personal property furnished 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 the sale, and the tax applies to the total gross receipts from the sale 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, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

(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 the services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property or taxable services are retailers which shall obtain a seller's permit and report the tax on these sales.

Examples: 1) Sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.

2) Sales of parking by a hospital or clinic 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 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

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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. 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.

Example: A decorator's fee is taxable when it is added to the bill for tangible personal property on a cost-plus arrangement.

2. A decorator's fee is not taxable if the fee is solely for services rendered and there is no sale of tangible personal property involved with the transaction.

Example: Designing a decorative scheme, advising clients or recommending colors, paints, wallpaper, fabrics, brands or sources of supply are nontaxable services.

(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 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 to the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, is deemed not a sale of tangible personal property. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale.

Examples: 1) A prototype is developed by Company A for a manufacturer who will use it in its manufacturing activities. The materials used in producing the prototype may be purchased by Company A without tax as property for resale. The manufacturer may purchase the prototype from Company A without tax as property used exclusively and directly in manufacturing by providing Company A with a properly completed exemption certificate.

2) A prototype is developed by Company B for an organization who intends to sell it to one of its members. The materials used in producing the prototype may be purchased by Company B without tax as property for resale. The organization may purchase the prototype from company B without tax as property for resale by providing Company B with a properly completed exemption certificate.

3. A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to

the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

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

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

(h) *Drafting.* Charges made by a self-employed person for commercial drafting are subject to the tax when the charge is for detailed drawings based entirely on specifications and data supplied by architects, engineers, or other business firms. These charges are taxable if the concepts, ideas, specifications or designs depicted in the drawings produced are the customer's and the person performing the drafting simply transfers the details supplied by the customer to paper thereby producing a drawing, which is tangible personal property, for use by the customer. When the person performing drafting services uses his or her own concepts and ideas in producing detailed drawings for a customer, the sale of the drawings is not a sale of tangible personal property.

(i) *Enuresis alarms.* Charges for rental of bed-wetting alarm systems are taxable charges for the use of tangible personal property, not charges for personal services, whether or not the lessor analyzes information about the user and completes a report based on the information.

(j) *Detonating explosives.* Detonating explosives is a non-taxable service. A person who performs such service and furnishes the explosives used in conjunction with the service is the consumer of the explosives.

(l) *Taxidermists.* Gross receipts from services taxidermists perform on tangible personal property are subject to the tax.

(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car washes consisting of a pressurized spray of soap and water, are taxable. These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to these operators.

(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of the service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin.

Example: Company B located in Wisconsin solicits advertising for telephone books yellow pages and compiles, publishes and delivers the directories to the subscribers of telephone companies. Company B contracts with an out-of-state corporation to print the directories. The

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printer delivers a portion of the directories to the U.S. Postal Service for delivery directly to telephone subscribers in Wisconsin. The remaining directories are delivered to Company B who in turn distributes them to subscribers in Wisconsin. Company B is not subject to use tax on the directories delivered by the U.S. Postal Service. However, Company B is subject to use tax on the directories delivered to it which it distributes to subscribers.

Note: The interpretations in s. Tax 11.67 are effective under the general sales and use tax law on and after September 1, 1969, except that fees paid to architects performing landscaping planning became taxable effective May 1, 1982, pursuant to Chapter 317, Laws of 1981.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; am. (3) (n), Register, June, 1983, No. 330, eff. 7-1-83; r. (3) (k) and am. (3) (n), Register, September, 1984, No. 345, eff. 10-1-84; am. (3) (h), Register, April 1990, No. 412, eff. 5-1-90; am. (1), (2) (b) and (c), (3) (a), (d) 1. and 2., (e) 1. and 2., (g), (l), (m) and (n), Register, November, 1993, No. 455, eff. 12-1-93.

Tax 11.68 Construction contractors. (ss. 77.51 (2), (4) (b) 6 and (c) 4, (14) (intro.), (g) and (i) and (15) (b) 5 and (c) 2, 77.52 (2) (a) 10, 11 and 20, 77.54 (5) (d), (6) (a), (26), (26m), (31) and (41), 77.71 (3) and 77.77 (3), Stats.) (1) **GENERAL.** (a) Construction contractors may be retailers with respect to some activities and consumers with respect to others. When a construction contractor acts as a retailer, the contractor shall obtain a seller's permit and pay the tax on gross receipts from retail sales of tangible personal property or taxable services. When the contractor acts as a consumer, the contractor shall pay the tax on its purchases of property consumed.

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.

(b) Contractors are retailers of:

1. Property which retains its character as personal property after sale and installation.

Note: Refer to subs. (4) and (6) for the classification of property.

2. Labor or services furnished in installing tangible property which retains its character as personal property after installation.

Note: Refer to subs. (4) and (6) for the classification of property.

3. Labor and material furnished in the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of items of real property which retain their character as tangible personal property for repair purposes.

Note: Refer to sub. (10) for a description of real property which retains its character as tangible personal property for repair purposes.

4. Tangible personal property sold.

(c) Contractors are consumers of tangible personal property they use when engaged in real property construction activities, such as altering, repairing or improving real property.

(2) **REAL PROPERTY CONSTRUCTION CONTRACTORS.** (a) Generally, real property construction contractors are persons who perform real property construction activities and include persons engaged in activities such as building, electrical work, plumbing, heating, painting, steel work, ventilating, paper hanging, sheet metal work, bridge or road construction, well drilling, excavating, wrecking, house moving, landscaping, roofing, carpentry, masonry and cement work, plastering and tile and terrazzo work.

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(b) A retailer may also be a real property contractor, such as a department store which sells and installs tangible personal property which becomes a part of real property after installation.

Example: A hot water heater or water softener sold and installed in a purchaser's residence by a retailer becomes real property after installation. The retailer is considered to be a real property contractor.

(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to realty.

(3) PURCHASES BY CONTRACTORS. (a) Under s. 77.51 (2), Stats., contractors who perform real property construction activities are the con-

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